

05-02-2000

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FORM PTO-158 (Rev. 8-93) OMB No. 0651-0011 (exp. 4/94)

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U.S. DEPARTMENT OF COMMERCE Patent and Trademark Office

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

1. Name of conveying party(ies):

Aqua Products, Inc.

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

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

3. Nature of conveyance:

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

Execution Date: 3/30/00

2. Name and address of receiving party(ies)

Name: The Bank of New York

Internal Address: 4th Floor

Street Address: 385 Rifle Camp Road

City: West Paterson State: NJ ZIP: 07424

- Individual(s) citizenship, Association, General Partnership, Limited Partnership, Corporation-State, Other

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 patent number(s):

A. Trademark Application No.(s)

B. Trademark Registration No.(s)

1780116

1776339

1780115

Additional numbers attached? Yes No

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

Name: Richard Baldwin, The Bank of New York

Internal Address: 4th floor

Street Address: 385 Rifle Camp Road

City: West Paterson State: NJ ZIP: 07424

6. Total number of applications and registrations involved:

3

7. Total fee (37 CFR 3.41) \$ 90.00

Enclosed

Authorized to be charged to deposit account

8. Deposit account number:

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

05/01/2000 INCOATES 00000134 1780116

01 F8-481 02 F8-482

40.00 DP 50.00 DP

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.

The Bank of New York

By: Richard Baldwin, AVP

Name of Person Signing

Signature

3/31/00

Date

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

19

Mail documents to be recorded with required cover sheet information to: Commissioner of Patents & Trademarks, Box Assignments Washington, D.C. 20231

TRADEMARK REEL: 002064 FRAME: 0170

# TRADEMARK COLLATERAL ASSIGNMENT AND SECURITY AGREEMENT

## TRADEMARK COLLATERAL ASSIGNMENT AND SECURITY AGREEMENT

(as amended, supplemented or otherwise modified from time to time, this "Trademark Agreement") dated March 30, 2000 by AQUA PRODUCTS, INC., a Delaware corporation ("Assignor"), to and in favor of THE BANK OF NEW YORK ("Assignee").

**WHEREAS**, pursuant to a line of credit held available by Assignee to Assignor, Assignee may make loans and otherwise extend credit to Assignor; and

**WHEREAS**, Assignor has executed in favor of Assignee a Security Agreement dated February 11, 1998 (as amended, supplemented or otherwise modified from time to time, the "Security Agreement") pursuant to which Assignor has granted to Assignee a security interest in and a lien upon Assignor's personal property, including without limitation the trademarks, trademark registrations, trademark applications, service marks, service mark registrations and service mark applications listed on Schedule A attached hereto, all to secure the payment and performance of the Obligations (as defined herein); and

**WHEREAS**, this Trademark Agreement is supplemental to the provisions contained in the Security Agreement;

**NOW, THEREFORE**, in consideration of the premises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

§1. **DEFINITIONS**. The following terms shall have the following meanings:

"Assignment of Marks" shall have the meaning assigned to such term in §2.1.

"Associated Goodwill" shall mean all goodwill of Assignor and its business, and products and services appurtenant to, associated with or symbolized by the Trademarks and the use thereof.

"Collateral" shall have the meaning assigned to such term in the Security Agreement.

"Obligations" shall mean all present and future obligations and liabilities of any and all kinds of Assignor to Assignee, whether incurred by Assignor as maker, indorser, drawer, acceptor, guarantor, accommodation party, counterparty, purchaser, seller or otherwise, whether due or to become due, secured or unsecured, absolute or contingent, joint and/or several, and howsoever or whensoever acquired by Assignee, including interest accruing thereon before or after the commencement of any insolvency,

bankruptcy or reorganization proceeding of Assignor whether or not such interest is an allowable claim in any proceeding and irrespective of the discharge or release of Assignor in such proceeding.

“Proceeds” shall have the meaning assigned to such term in Schedule A to the Security Agreement.

“PTO” shall mean The United States Patent and Trademark Office.

“Related Assets” shall mean all assets, rights and interests of Assignor that uniquely reflect or embody the Associated Goodwill, including the following:

(a) All patents, inventions, copyrights, trade secrets, confidential information, formulae, methods or processes, compounds, recipes, know-how, methods and operating systems, drawings, descriptions, formulations, manufacturing and production and delivery procedures, quality control procedures, product and service specifications, catalogs, price lists, and advertising materials, relating to the manufacture, production, delivery, provision and sale of goods or services under or in association with any of the Trademarks;

(b) All renewals, extensions and continuations-in-part of the Trademarks (or any of them); and

(c) The following documents and things in the possession or under the control of Assignor, or subject to its demand for possession or control, related to the production, delivery, provision and sale by Assignor, or any affiliate, franchisee, licensee or contractor, of products or services sold or provided by or under the authority of Assignor in connection with the Trademarks or the Trademark Rights, whether prior to, on or subsequent to the date hereof:

(i) All lists, contracts, ancillary documents and other information that identify, describe or provide information with respect to any customers, dealers or distributors of Assignor, its affiliates or franchisees or licensees or contractors, for products or services sold or provided under or in connection with the Trademarks or the Trademark Rights, including all lists and documents containing information regarding each customer's, dealer's or distributor's name and address, credit, payment, discount, delivery and other sale terms, and history, pattern and total of purchases by brand, product, style, size and quantity;

(ii) All agreements (including franchise agreements), product and service specification documents and operating, production and quality control manuals relating to or used in the design, manufacture, production, delivery, provision and sale of products or services under or in connection with the Trademarks or the Trademark Rights;

(iii) All documents and agreements relating to the identity and locations of all sources of supply, and all terms of purchase and delivery, for all materials, components, raw materials and other supplies and services used in the manufacture, production, provision, delivery and sale of products or services under or in connection with the Trademarks or the Trademark Rights; and

(iv) All agreements and documents constituting or concerning the present or future, current or proposed advertising and promotion by Assignor (or any of its affiliates, franchisees, licensees or contractors) of products or services sold or provided under or in connection with the Trademarks or the Trademark Rights.

“Trademark Collateral” shall mean all of Assignor’s right, title and interest in and to all of the Trademarks, the Trademark Registrations, the Trademark License Rights, the Trademark Rights, the Associated Goodwill, the Related Assets, and all accessions to, substitutions for, replacements of, and products and Proceeds (including insurance proceeds) of, any and all of the foregoing.

“Trademark License Rights” shall mean any and all past, present and future rights and interests of Assignor pursuant to any and all past, present and future franchising or licensing agreements in favor of Assignor, or to which Assignor is a party, pertaining to any Trademarks, Trademark Registrations or Trademark Rights owned or used by third parties in the past, present or future, including the right (but not the obligation) in the name of Assignor or Assignee to enforce, and sue and recover for, any breach or violation of any such agreement.

“Trademark Registrations” shall mean any and all past, present and future federal, state, local and foreign registrations of the Trademarks, any and all past, present and future applications for any such registrations (and any such registrations thereof upon approval of such applications), together with the right (but not the obligation) to apply for such registrations (and prosecute such applications) in the name of Assignor or Assignee, and to take any and all actions necessary or appropriate to maintain such registrations in effect and renew and extend such registrations.

“Trademark Rights” shall mean any and all past, present and future rights in, to and associated with the Trademarks throughout the world, whether arising under federal law, state law, common law, foreign law or otherwise, including (a) all such rights arising out of or associated with the Trademark Registrations, (b) the right (but not the

obligation) to register claims under any state, federal or foreign trademark law or regulation, (c) the right (but not the obligation) to sue or bring opposition or cancellation proceedings in the name of Assignor or Assignee for any and all past, present and future infringements or dilution of or any other damages or injury to the Trademarks, the Trademark Rights or the Associated Goodwill, and the rights to damages or profits due or accrued arising out of or in connection with any such past, present or future infringement, dilution, damage or injury, and (d) the Trademark License Rights.

“Trademarks” shall mean all of the trademarks, service marks, designs, logos, indicia, trade names, corporate names, company names, business names, fictitious business names, trade styles, elements of package or trade dress, and other source, business and product or service identifiers, used or associated with or appurtenant to the products, services and business of Assignor, that (a) are set forth on Schedule A hereto or (b) have been adopted, acquired, owned, held or used by Assignor or are now owned, held or used by Assignor, in Assignor’s business, or with Assignor’s products and services, or in which Assignor has any right, title or interest, or (c) are in the future adopted, acquired, owned, held and used by Assignor in Assignor’s business or with Assignor’s products and services, or in which Assignor in the future acquires any right, title or interest.

“use” shall mean, with respect to any Trademark, all uses of such Trademark by, for or in connection with Assignor or its business or for the direct or indirect benefit of Assignor or its business, including all such uses by Assignor itself, by any of the affiliates of Assignor, or by any franchisee, licensee or contractor of Assignor.

## **§2. GRANT OF SECURITY INTEREST.**

§2.1. Security Interest; Assignments of Marks. As collateral security for the payment and performance in full of all of the Obligations, Assignor hereby unconditionally grants to Assignee a continuing security interest in and first priority lien on the Trademark Collateral, and pledges and mortgages (but does not transfer title to) the Trademark Collateral to Assignee. In addition, Assignor has executed in blank and delivered to Assignee an assignment of United States federally registered trademarks in substantially the form of Exhibit 1 hereto (the “Assignment of Marks”). Assignor hereby authorizes Assignee to complete and record with the PTO the Assignments of Marks upon the occurrence and during the continuance of any default in respect of any of the Obligations and the proper exercise of Assignee’s remedies under this Trademark Agreement and the Security Agreement.

§2.2. Conditional Assignment. In addition to, and not by way of limitation of, the grant, pledge and mortgage of the Trademark Collateral provided in §2.1, Assignor grants, assigns, transfers, conveys and sets over to Assignee Assignor’s entire right, title and interest in and to the Trademark Collateral; provided that such grant, assignment, transfer and conveyance shall be and become of force and effect only (a) upon or after the occurrence and during the continuance of any default in respect of any of the Obligations and (b) either (i) upon the written demand of Assignee at any time during such continuance or (ii) immediately and automatically

(without notice or action of any kind by Assignee) upon the occurrence of any default in respect of any of the Obligations for which acceleration of the Obligations is automatic or upon the sale or other disposition of or foreclosure upon the Collateral pursuant to (and as defined in) the Security Agreement and applicable law (including the transfer or other disposition of the Collateral by Assignor to Assignee or its nominee in lieu of foreclosure).

§2.3. Supplemental to Security Agreement. Pursuant to the Security Agreement, Assignor has granted to Assignee a continuing security interest in and lien on the Collateral (including the Trademark Collateral). The Security Agreement, and all rights and interests of Assignee in and to the Collateral (including the Trademark Collateral) thereunder, are hereby ratified and confirmed in all respects. In no event shall this Trademark Agreement, the grant, assignment, transfer and conveyance of the Trademark Collateral hereunder, or the recordation of this Trademark Agreement (or any document hereunder) with the PTO or any other agency, adversely affect or impair, in any way or to any extent, the Security Agreement, the security interest of Assignee in the Collateral (including the Trademark Collateral) pursuant to the Security Agreement and this Trademark Agreement, the attachment and perfection of such security interest under the Uniform Commercial Code (including the security interest in the Trademark Collateral), or any present or future rights and interests of Assignee in and to the Collateral under or in connection with the Security Agreement, this Trademark Agreement or the Uniform Commercial Code. Any and all rights and interests of Assignee in and to the Trademark Collateral (and any and all obligations of Assignor with respect to the Trademark Collateral) provided herein, or arising hereunder or in connection herewith, shall only supplement and be cumulative and in addition to the rights and interests of Assignee (and the obligations of Assignor) in, to or with respect to the Collateral (including the Trademark Collateral) provided in or arising under or in connection with the Security Agreement and shall not be in derogation thereof.

§3. REPRESENTATIONS, WARRANTIES AND COVENANTS. Assignor represents, warrants and covenants that (a) Schedule A attached hereto sets forth a true and complete list of all Trademarks and Trademark Registrations now owned, licensed, controlled or used by Assignor, (b) the Trademarks and the Trademark Registrations are subsisting and have not been adjudged invalid or unenforceable, in whole or in part, and there is no litigation or proceeding pending concerning the validity or enforceability of any of the Trademarks or any of the Trademark Registrations, (c) to the best of Assignor's knowledge, each of the Trademarks, and each of the Trademark Registrations, is valid and enforceable, (d) to the best of Assignor's knowledge, there is no infringement by others of any of the Trademarks, any of the Trademark Registrations or any of the Trademark Rights, (e) no claim has been made that the use of any of the Trademarks does or may violate the rights of any third person, and to the best of Assignor's knowledge there is no infringement by Assignor of the trademark rights of others, (f) Assignor is the sole and exclusive owner of the entire and unencumbered right, title and interest in and to each of the Trademarks (other than ownership and other rights reserved by third party owners with respect to Trademarks which Assignor is licensed to use), free and clear of any liens, charges, encumbrances and adverse claims, including without limitation pledges, assignments, licenses, registered user agreements and covenants by Assignor not to sue third persons, other than those created by the Security Agreement and this Trademark Agreement, (g) Assignor has

the unqualified right to enter into this Trademark Agreement and perform its terms and has entered and will enter into written agreements with each of its present and future employees, agents, consultants, licensors and licensees which will enable it to comply with the covenants herein contained, (h) Assignor has used, and will continue to use, proper statutory and other appropriate proprietary notices in connection with its use of the Trademarks, (i) Assignor has used, and will continue to use for the duration of this Trademark Agreement, consistent standards of quality in its manufacture and provision of products and services sold or provided under the Trademarks, (j) this Trademark Agreement, together with the Security Agreement, will create in favor of Assignee a valid and perfected first priority security interest in the Trademark Collateral upon making the filings referred to in clause (k) of this §3, and (k) except for the filing of financing statements where required under the Uniform Commercial Code and the recording of this Trademark Agreement with the PTO, no authorization, approval or other action by, and no notice to or filing with, any governmental or regulatory authority, agency or office is required either (x) for the grant by Assignor or the effectiveness of the security interest and assignment granted hereby or for the execution, delivery and performance of this Trademark Agreement by Assignor or (y) for the perfection of or the exercise by Assignee of any of its rights and remedies hereunder or under the Security Agreement in respect of the Trademark Collateral.

**§4. INSPECTION RIGHTS.** Assignor hereby grants to Assignee and its employees and agents the right to visit Assignor's plants and facilities that manufacture, inspect or store products sold under any of the Trademarks, and to inspect the products and quality control records relating thereto at reasonable times during regular business hours.

**§5. NO TRANSFER OR INCONSISTENT AGREEMENTS.** Without Assignee's prior written consent, and except for licenses of the Trademark Collateral in the ordinary course of Assignor's business consistent with its past practice, Assignor will not (a) mortgage, pledge, assign, encumber, grant a security interest in, transfer, license or alienate any of the Trademark Collateral or (b) enter into any agreement that is inconsistent with Assignor's obligations under this Trademark Agreement or the Security Agreement.

**§6. AFTER-ACQUIRED TRADEMARKS, ETC.**

§6.1. After-Acquired Trademarks. If, before the Obligations shall have been finally paid and satisfied in full, Assignor shall obtain any right, title or interest in or to any other or new Trademarks, Trademark Registrations or Trademark Rights, the provisions of this Trademark Agreement shall automatically apply thereto and Assignor shall promptly provide to Assignee notice thereof in writing and execute and deliver to Assignee such documents or instruments as Assignee may reasonably request further to implement, preserve or evidence Assignee's interest therein.

§6.2. Amendment to Schedule. Assignor authorizes Assignee to modify this Trademark Agreement and the Assignments of Marks, without the necessity of Assignor's further approval or signature, by amending Schedule A hereto and the Annexes to the Assignments of Marks to include any future or other Trademarks, Trademark Registrations or Trademark Rights under §2 or this §6.

**§7. TRADEMARK PROSECUTION.**

§7.1. Assignors Responsible. Assignor shall assume full and complete responsibility for the prosecution, defense, enforcement or any other necessary or desirable actions in connection with the Trademark Collateral, and shall hold Assignee harmless from any and all costs, damages, liabilities and expenses which may be incurred by Assignee in connection with Assignee's interest in or title to any of the Trademark Collateral or any other action or failure to act in connection with this Trademark Agreement or the transactions contemplated hereby. In respect of such responsibility, Assignor shall retain trademark counsel acceptable to Assignee.

§7.2. Assignor's Duties, etc. Assignor shall have the right and the duty, through trademark counsel acceptable to Assignee, to prosecute diligently any trademark registration applications of the Trademarks pending as of the date of this Trademark Agreement or thereafter, to preserve and maintain all rights in the Trademarks and the Trademark Registrations, including the filing of appropriate renewal applications and other instruments to maintain in effect the Trademark Registrations and the payment when due of all registration renewal fees and other fees, taxes and other expenses which shall be incurred or which shall accrue with respect to any of the Trademarks or any of the Trademark Registrations. Any expenses incurred in connection with such applications and actions shall be borne by Assignor. Assignor shall not abandon any filed trademark registration application, any pending trademark registration application or any Trademark Registration or Trademark, without the prior written consent of Assignee.

§7.3. Assignor's Enforcement Rights. Assignor shall have the right and the duty to bring suit or other action in Assignor's own name to maintain and enforce the Trademarks, the Trademark Registrations and the Trademark Rights. Assignor may require Assignee to join in such suit or action as may be necessary to assure Assignor's ability to bring and maintain any such suit or action in any proper forum if (but only if) Assignee is completely satisfied that such joinder will not subject Assignee to any risk of liability. Assignor shall promptly, upon demand, reimburse and indemnify Assignee for all damages, costs and expenses, including legal fees, incurred by Assignee pursuant to this §7.3.

§7.4. Protection of Trademarks, etc. In general, Assignor shall take any and all such actions (including but not limited to institution and maintenance of suits, proceedings or actions) as may be necessary or appropriate to properly maintain, protect, preserve, care for and enforce the Trademark Collateral. Assignor shall not take or fail to take any action, or permit any action to be taken or not taken by others under its control, which would affect the validity, grant or enforcement of any of the Trademark Collateral.

§7.5. Notification by Assignor. Promptly upon obtaining knowledge thereof, Assignor will notify Assignee in writing of the institution of, or any final adverse determination in, any proceeding in the PTO or any similar office or agency of the United States or any foreign country, or any court, regarding the validity of any of the Trademarks or any of the Trademark Registrations or Assignor's rights, title or interests in and to any of the Trademark Collateral, and



of any event which does or reasonably could materially adversely affect the value of any of the Trademark Collateral, the ability of Assignor or Assignee to dispose of any of the Trademark Collateral or the rights and remedies of Assignee in relation thereto (including but not limited to the levy of any legal process against any of the Trademark Collateral).

**§8. REMEDIES.** Upon the occurrence and during the continuance of any default in respect of any of the Obligations, Assignee shall have, in addition to all rights and remedies given it by this Trademark Agreement (including, without limitation, those set forth in §2.2) and the Security Agreement, those allowed by law and the rights and remedies of a secured party under the Uniform Commercial Code as enacted in the State of New Jersey, and, without limiting the generality of the foregoing, Assignee may immediately, without demand of performance and without other notice (except as set forth next below) or demand whatsoever to Assignor, all of which are hereby expressly waived, and without advertisement, sell or license at public or private sale or otherwise realize upon the whole or from time to time any part of the Trademark Collateral, or any interest that Assignor may have therein, and after deducting from the proceeds of sale or other disposition of the Trademark Collateral all expenses incurred by Assignee in attempting to enforce this Trademark Agreement and the Security Agreement (including all reasonable expenses for broker's fees and legal services), shall apply the residue of such proceeds toward the payment of the Obligations as set forth in the Security Agreement. Notice of any sale, license or other disposition of any of the Trademark Collateral shall be given to Assignor at least five (5) days before the time that any intended public sale or other public disposition of such Trademark Collateral is to be made or after which any private sale or other private disposition of such Trademark Collateral may be made, which Assignor hereby agrees shall be reasonable notice of such public or private sale or other disposition. At any such sale or other disposition, Assignee may, to the extent permitted under applicable law, purchase or license the whole or any part of the Trademark Collateral or interests therein sold, licensed or otherwise disposed of.

**§9. COLLATERAL PROTECTION.** If Assignor shall fail to do any act that it has covenanted to do hereunder, or if any representation or warranty of Assignor shall be breached, Assignee, in its own name or that of Assignor (in the sole discretion of Assignee), may (but shall not be obligated to) do such act or remedy such breach (or cause such act to be done or such breach to be remedied), and Assignor agrees promptly to reimburse Assignee for any cost or expense incurred by Assignee in so doing.

**§10. POWER OF ATTORNEY.** If any default in respect of any of the Obligations shall have occurred and be continuing, Assignor does hereby make, constitute and appoint Assignee (and any officer or agent of Assignee as Assignee may select in its exclusive discretion) as Assignor's true and lawful attorney-in-fact, with the power to endorse Assignor's name on all applications, documents, papers and instruments necessary for Assignee to use any of the Trademark Collateral, to grant or issue any exclusive or nonexclusive license of any of the Trademark Collateral to any third person, or to take any and all actions necessary for Assignee to assign, pledge, convey or otherwise transfer title to or dispose of any of the Trademark Collateral or any part thereof or interest therein to any third person, and, in general, to execute and deliver any instruments or documents and do all other acts which Assignor is obligated to execute and

do hereunder. Assignor hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue of this §10, and releases Assignee from any claims, liabilities, causes of action or demands arising out of or in connection with any action taken or omitted to be taken by Assignee under this power of attorney (except for Assignee's gross negligence or willful misconduct). This power of attorney shall be irrevocable for the duration of this Trademark Agreement.

**§11. FURTHER ASSURANCES.** Assignor shall, at any time and from time to time, and at its expense, make, execute, acknowledge and deliver, and file and record as necessary and as appropriate with governmental or regulatory authorities, agencies or offices, such agreements, assignments, documents and instruments, and do such other and further acts and things (including, without limitation, obtaining consents of third parties), as Assignee may request or as may be necessary or appropriate in order to implement and effect fully the intentions, purposes and provisions of this Trademark Agreement, or to assure and confirm to Assignee the grant, perfection and priority of Assignee's security interest in any of the Trademark Collateral.

**§12. COURSE OF DEALING.** No course of dealing among Assignor and Assignee, and no failure to exercise or delay in exercising, on the part of Assignee, any right, power or privilege hereunder or under the Security Agreement shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder or thereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

**§13. EXPENSES.** Any and all fees, costs and expenses of whatever kind or nature, including the reasonable attorneys' fees and legal expenses incurred by Assignee in connection with the preparation of this Trademark Agreement and all other documents relating hereto, the consummation of the transactions contemplated hereby or the enforcement hereof, the filing or recording of any documents (including all taxes in connection therewith) in public offices, the payment or discharge of any taxes, counsel fees, maintenance fees, encumbrances or otherwise protecting, maintaining or preserving any of the Trademark Collateral, or in defending or prosecuting any actions or proceedings arising out of or related to any of the Trademark Collateral, shall be borne and paid by Assignor.

**§14. NO ASSUMPTION OF LIABILITY; INDEMNIFICATION.** NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, ASSIGNEE DOES NOT ASSUME ANY LIABILITIES OF ASSIGNOR WITH RESPECT TO ANY CLAIM OR CLAIMS REGARDING ASSIGNOR'S OWNERSHIP OR PURPORTED OWNERSHIP OF, OR RIGHTS OR PURPORTED RIGHTS ARISING FROM, ANY OF THE PLEDGED TRADEMARKS OR ANY USE, LICENSE OR SUBLICENSE THEREOF, WHETHER ARISING OUT OF ANY PAST, CURRENT OR FUTURE EVENT, CIRCUMSTANCE, ACT OR OMISSION OR OTHERWISE. ALL OF SUCH LIABILITIES SHALL BE EXCLUSIVELY THE RESPONSIBILITY OF ASSIGNOR, AND ASSIGNOR SHALL INDEMNIFY ASSIGNEE FOR ANY AND ALL COSTS, EXPENSES, DAMAGES AND CLAIMS, INCLUDING LEGAL FEES, INCURRED BY ASSIGNEE WITH RESPECT TO SUCH LIABILITIES.

**§15. RIGHTS AND REMEDIES CUMULATIVE.** All of Assignee's rights and remedies with respect to the Trademark Collateral, whether established hereby or by the Security Agreement or by any other agreements or by law, shall be cumulative and may be exercised singly or concurrently.

**§16. AMENDMENT AND WAIVER.** This Patent Agreement may not be amended, or compliance with its terms waived, orally or by course of dealing, but only by a writing signed by an authorized officer of the Bank.

**§17. GOVERNING LAW.** THIS PATENT AGREEMENT SHALL BE CONSTRUED AND INTERPRETED, AND ALL RIGHTS AND OBLIGATIONS HEREUNDER SHALL BE DETERMINED, IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW JERSEY WITHOUT REGARD TO PRINCIPLES OF CONFLICT OF LAWS.

**§18. CONSENT TO JURISDICTION.** ASSIGNOR SUBMITS TO THE JURISDICTION OF STATE AND FEDERAL COURTS LOCATED IN THE STATE OF NEW JERSEY AND THE CITY OF NEWARK IN PERSONAM AND AGREES THAT ALL ACTIONS AND PROCEEDINGS RELATING DIRECTLY OR INDIRECTLY TO THIS PATENT AGREEMENT SHALL BE LITIGATED ONLY IN SAID COURTS OR IN COURTS LOCATED ELSEWHERE AS ASSIGNEE MAY SELECT AND THAT SUCH COURTS ARE CONVENIENT FORUMS AND WAIVES PERSONAL SERVICE UPON IT AND CONSENTS TO SERVICE OF PROCESS OUT OF SAID COURTS BY MAILING A COPY THEREOF TO IT BY REGISTERED OR CERTIFIED MAIL.

**§19. WAIVER OF JURY TRIAL.** ASSIGNOR AND ASSIGNEE WAIVE THE RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS PATENT AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

**§20. MISCELLANEOUS.** The headings of each section of this Trademark Agreement are for convenience only and shall not define or limit the provisions thereof. This Trademark Agreement and all rights and obligations hereunder shall be binding upon Assignor and its successors and assigns, and shall inure to the benefit of Assignee and its successors and assigns; provided, however, that Assignor may not assign any of its rights or obligations hereunder without the prior written consent of Assignee. In the event of any irreconcilable conflict between the provisions of this Trademark Agreement and the Security Agreement, the provisions of the Security Agreement shall control. If any term of this Trademark Agreement shall be held to be invalid, illegal or unenforceable, the validity of all other terms hereof shall in no way be affected thereby, and this Trademark Agreement shall be construed and be enforceable as if such invalid, illegal or unenforceable term had not been included herein. Assignor acknowledges receipt of a copy of this Trademark Agreement.


IN WITNESS WHEREOF, Assignor has executed this Trademark Collateral Assignment and Security Agreement as of the day and year first above written.

AQUA PRODUCTS, INC.

By:

Name:

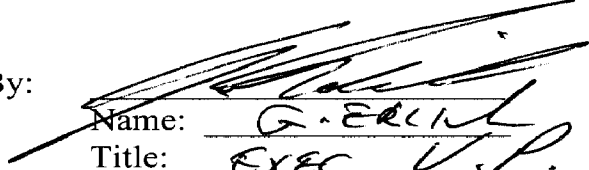
Title:

  
JOSEPH PORAT  
PRESIDENT

By:

Name:

Title:

  
G. ERLIN  
EXEC. V.P.

State of NJ)  
County of Essex)ss.:

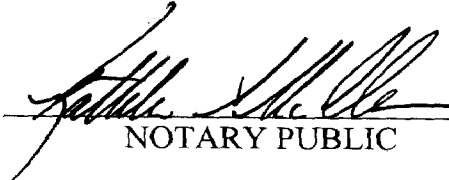
On the 30th day of March, 2000, before me personally came Joseph Purat, to me known, who, being by me duly sworn, did depose and say that (s)he is the President of AQUA PRODUCTS, INC., the corporation described in and which executed the foregoing instrument; and that (s)he signed (his) (her) name thereto by order of the board of directors of said corporation.

  
NOTARY PUBLIC

**KATHLEEN A. MCCLARNON**  
NOTARY PUBLIC OF NEW JERSEY  
MY COMMISSION EXPIRES JUNE 20, 2000

State of NJ)  
County of Essex)ss.:

On the 30th day of March, 2000, before me personally came Giorgo Erlich, to me known, who, being by me duly sworn, did depose and say that (s)he is the Vice President of AQUA PRODUCTS, INC., the corporation described in and which executed the foregoing instrument; and that (s)he signed (his) (her) name thereto by order of the board of directors of said corporation.

  
NOTARY PUBLIC

**KATHLEEN A. MCCLARNON**  
NOTARY PUBLIC OF NEW JERSEY  
MY COMMISSION EXPIRES JUNE 20, 2000

**SCHEDULE A  
TO  
TRADEMARK COLLATERAL ASSIGNMENT AND SECURITY AGREEMENT  
DATED MARCH 30, 2000  
EXECUTED BY  
AQUA PRODUCTS, INC.**

**List of Trademarks**

TRADEMARK OR SERVICE MARK	REGISTRATION NO.
AQUABOT	1780116
AQUAMAX	1776339
ROBOTECH	1780115

aqualine.nvk(S24)

**EXHIBIT 1  
TO  
TRADEMARK COLLATERAL ASSIGNMENT AND SECURITY AGREEMENT  
DATED MARCH 30, 2000  
EXECUTED BY  
AQUA PRODUCTS, INC.**

**Assignment of Marks**

FORM PTO-1795 (Rev. 6-03) OMB No. 0651-0011 (exp. 4/94)

RECORDATION FORM COVER SHEET PATENTS ONLY

U.S. DEPARTMENT OF COMMERCE Patent and Trademark Office

Tab settings

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

1. Name of conveying party(ies):

Aqua Products, Inc.

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

3. Nature of conveyance:

- Assignment Merger Security Agreement Change of Name Other

Execution Date: 3/30/00

2. Name and address of receiving party(ies)

Name: The Bank of New York

Internal Address: 305 4th floor

Street Address: 385 Rifle Camp Road

City: West Paterson State: NJ ZIP: 07424

Additional name(s) & address(es) attached? Yes No

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

If this document is being filed together with a new application, the execution date of the application is:

A. Patent Application No.(s)

see attached list

B. Patent No.(s)

see attached list

Additional numbers attached? Yes No

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

Name: Richard Baldwin, The Bank of New York

Internal Address: 4th floor

Street Address: 385 Rifle Camp Road

City: West Paterson State: NJ ZIP: 07424

6. Total number of applications and patents involved: 12

7. Total fee (37 CFR 3.41).....\$ 480.00

- Enclosed Authorized to be charged to deposit account

8. Deposit account number:

(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.

The Bank of New York By: Richard Baldwin, AVP

Name of Person Signing

Signature

3/31/00

Date

Total number of pages including cover sheet, attachments, and document.

13

Mail documents to be recorded with required cover sheet information to: Commissioner of Patents & Trademarks, Box Assignments



# PATENT COLLATERAL ASSIGNMENT AND SECURITY AGREEMENT

**PATENT COLLATERAL ASSIGNMENT AND SECURITY AGREEMENT** (as amended, supplemented or otherwise modified from time to time, this "Patent Agreement") dated March 30, 2000 by AQUA PRODUCTS, INC., a Delaware corporation ("Assignor"), to and in favor of THE BANK OF NEW YORK ("Assignee").

**WHEREAS**, pursuant to a line of credit held available by Assignee to Assignor, Assignee may make loans and otherwise extend credit to Assignor; and

**WHEREAS**, Assignor has executed in favor of Assignee a Security Agreement dated February 11, 1998 (as amended, supplemented or otherwise modified from time to time, the "Security Agreement") pursuant to which Assignor has granted to Assignee a security interest in and a lien upon Assignor's personal property, including without limitation the patents and patent applications listed on Schedule A attached hereto, all to secure the payment and performance of the Obligations (as defined herein); and

**WHEREAS**, this Patent Agreement is supplemental to the provisions contained in the Security Agreement;

**NOW, THEREFORE**, in consideration of the premises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

§1. **DEFINITIONS**. The following terms shall have the following meanings:

"Collateral" shall have the meaning assigned to such term in the Security Agreement.

"Obligations" shall mean all present and future obligations and liabilities of any and all kinds of Assignor to Assignee, whether incurred by Assignor as maker, indorser, drawer, acceptor, guarantor, accommodation party, counterparty, purchaser, seller or otherwise, whether due or to become due, secured or unsecured, absolute or contingent, joint and/or several, and howsoever or whensoever acquired by Assignee, including interest accruing thereon before or after the commencement of any insolvency, bankruptcy or reorganization proceeding of Assignor whether or not such interest is an allowable claim in any proceeding and irrespective of the discharge or release of Assignor in such proceeding.

"Patent Collateral" shall mean all of the Assignor's right, title and interest in and to all of the Patents, the Patent License Rights, and all other Patent Rights, and all additions, improvements, and accessions to, all substitutions for and replacements of, and

all products and Proceeds (including insurance proceeds) of any and all of the foregoing, and all books and records and technical information and data describing or used in connection with any and all such rights, interests, assets or property.

“Patent License Rights” shall mean any and all past, present and future rights and interests of Assignor pursuant to any and all past, present and future licensing agreements in favor of Assignor, or to which Assignor is a party, pertaining to any Patents or Patent Rights, owned or used by third parties in the past, present or future, including the right in the name of Assignor or Assignee to enforce, and sue and recover for, any past, present or future breach or violation of any such agreement.

“Patent Rights” shall mean any and all past, present and future rights in, to and associated with the Patents throughout the world, whether arising under federal law, state law, common law, foreign law, or otherwise, including but not limited to (a) all such rights arising out of or associated with the Patents, (b) the right (but not the obligation) to register claims under any federal, state or foreign patent law or regulation, (c) the right (but not the obligation) to sue or bring opposition or cancellation proceedings in the name of Assignor or Assignee for any and all past, present and future infringements of or any other damages or injury to the Patents or the Patent Rights, and the rights to damages or profits due or accrued arising out of or in connection with any such past, present or future infringement, damage or injury, and (d) the Patent License Rights.

“Patents” shall mean all patents and patent applications, whether United States or foreign, that are owned by Assignor or in which Assignor has any right, title or interest, now or in the future, including but not limited to:

- (a) The patents and patent applications listed on Schedule A hereto (as the same may be amended pursuant hereto from time to time);
- (b) All letters patent of the United States or any other country, and all applications for letters patent of the United States or any other country;
- (c) All re-issues, continuations, divisions, continuations-in-part, renewals or extensions thereof;
- (d) The inventions disclosed or claimed therein, including the right to make, use, practice and/or sell (or license or otherwise transfer or dispose of) the inventions disclosed or claimed therein; and
- (e) The right (but not the obligation) to make and prosecute applications for such Patents.

“Proceeds” shall have the meaning assigned to such term in Schedule A to the Security Agreement.

“PTO” shall mean The United States Patent and Trademark Office.

## **§2. GRANT OF SECURITY INTEREST.**

§2.1 Grant of Security Interest. To secure the payment and performance in full of all of the Obligations, Assignor hereby grants to Assignor a security interest in, and assigns, transfers and conveys to Assignee, BY WAY OF COLLATERAL SECURITY, all of the Patent Collateral. ASSIGNEE DOES NOT ASSUME ANY LIABILITY ARISING IN ANY WAY BY REASON OF ITS HOLDING SUCH COLLATERAL SECURITY.

§2.1. Supplemental to Security Agreement. Pursuant to the Security Agreement, Assignor has granted to Assignee a continuing security interest in and lien on the Collateral (including the Patent Collateral). The Security Agreement, and all rights and interests of Assignee in and to the Collateral (including the Patent Collateral) thereunder, are hereby ratified and confirmed in all respects. In no event shall this Patent Agreement, the grant, assignment, transfer and conveyance of the Patent Collateral hereunder, or the recordation of this Patent Agreement (or any document hereunder) with the PTO or any other agency, adversely affect or impair, in any way or to any extent, the Security Agreement, the security interest of Assignee in the Collateral (including the Patent Collateral) pursuant to the Security Agreement and this Patent Agreement, the attachment and perfection of such security interest under the Uniform Commercial Code (including the security interest in the Patent Collateral), or any present or future rights and interests of Assignee in and to the Collateral under or in connection with the Security Agreement, this Patent Agreement or the Uniform Commercial Code. Any and all rights and interests of Assignee in and to the Patent Collateral (and any and all obligations of Assignor with respect to the Patent Collateral) provided herein, or arising hereunder or in connection herewith, shall only supplement and be cumulative and in addition to the rights and interests of Assignee (and the obligations of Assignor) in, to or with respect to the Collateral (including the Patent Collateral) provided in or arising under or in connection with the Security Agreement and shall not be in derogation thereof.

**§3. REPRESENTATIONS, WARRANTIES AND COVENANTS.** Assignor represents, warrants and covenants that (a) Schedule A attached hereto sets forth a true and complete list of all the patents, rights to patents and patent applications now owned, licensed, controlled or used by Assignor, (b) the issued Patents are subsisting and have not been adjudged invalid or unenforceable, in whole or in part, and there is no litigation or proceeding pending concerning the validity or enforceability of any issued Patent, (c) to the best of Assignor's knowledge, each of the issued Patents is valid and enforceable, (d) to the best of Assignor's knowledge, there is no infringement by others of any of the issued Patents or Patent Rights, (e) no claim has been made that the use of any of the Patents does or may violate the rights of any third person, and to the best of Assignor's knowledge there is no infringement by Assignor of the patent rights of others, (f) Assignor is the sole and exclusive owner of the entire and unencumbered right, title and interest in and to each of the Patents (other than ownership and other rights reserved by third party owners with respect to Patents which Assignor is licensed to practice or use), free and clear of any liens, charges, encumbrances and adverse claims, including without limitation pledges, assignments, licenses, shop rights and covenants by Assignor not to sue third persons, other than those created by the Security Agreement and this Patent Agreement, (g) Assignor has the unqualified right to enter into this Patent Agreement and perform its terms

and has entered and will enter into written agreements with each of its present and future employees, agents, consultants, licensors and licensees which will enable it to comply with the covenants herein contained, (h) this Patent Agreement, together with the Security Agreement, will create in favor of Assignee a valid and perfected first priority security interest in the Patent Collateral upon making the filings referred to in clause (i) of this §3, and (i) except for the filing of financing statements where required under the Uniform Commercial Code and the recording of this Patent Agreement with the PTO, no authorization, approval or other action by, and no notice to or filing with, any governmental or regulatory authority, agency or office is required either (x) for the grant by Assignor or the effectiveness of the security interest and assignment granted hereby or for the execution, delivery and performance of this Patent Agreement by Assignor or (y) for the perfection of or the exercise by Assignee of any of its rights and remedies hereunder or under the Security Agreement in respect of the Patent Collateral.

**§4. NO TRANSFER OR INCONSISTENT AGREEMENTS.** Without Assignee's prior written consent, and except for licenses of the Patent Collateral in the ordinary course of Assignor's business consistent with its past practice, Assignor will not (a) mortgage, pledge, assign, encumber, grant a security interest in, transfer, license or alienate any of the Patent Collateral or (b) enter into any agreement that is inconsistent with Assignor's obligations under this Patent Agreement or the Security Agreement.

**§5. AFTER-ACQUIRED PATENTS, ETC.**

§5.1. After-Acquired Patents. If, before the Obligations shall have been finally paid and satisfied in full, Assignor shall obtain any right, title or interest in or to any other new patents, patent applications or patentable inventions, or become entitled to the benefit of any patent application or patent or any reissue, division, continuation, renewal, extension, or continuation-in-part of any of the Patent Collateral or any improvement on any of the Patent Collateral, the provisions of this Patent Agreement shall automatically apply thereto and Assignor shall promptly give to Assignee notice thereof in writing and execute and deliver to Assignee such documents or instruments as Assignee may reasonably request further to transfer title thereto to Assignee.

§5.2. Amendment to Schedule. Assignor authorizes Assignee to modify this Patent Agreement, without the necessity of Assignor's further approval or signature, by amending Schedule A hereto to include any future or other Patents or Patent Rights under §2 or this §5.

**§6. PATENT PROSECUTION.**

§6.1. Assignors Responsible. Assignor shall assume full and complete responsibility for the prosecution, grant, enforcement or any other necessary or desirable actions in connection with the Patent Collateral, and shall hold Assignee harmless from any and all costs, damages, liabilities and expenses which may be incurred by Assignee in connection with Assignee's interest in or title to any of the Patent Collateral or any other action or failure to act in connection with this Patent Agreement or the transactions contemplated hereby. In respect of such responsibility, Assignor shall retain patent counsel acceptable to Assignee.

§6.2. Assignor's Duties, etc. Assignor shall have the right and the duty, through patent counsel acceptable to Assignee, to prosecute diligently any patent applications of the Patents pending as of the date of this Patent Agreement or thereafter, to make application for unpatented but reasonably patentable inventions and to preserve and maintain all rights in the Patents, including without limitation the payment when due of all maintenance fees and other fees, taxes and other expenses which shall be incurred or which shall accrue with respect to any of the Patents. Any expenses incurred in connection with such applications and actions shall be borne by Assignor. Assignor shall not abandon any filed patent application, or any pending patent application or patent, without the prior written consent of Assignee.

§6.3. Assignor's Enforcement Rights. Assignor shall have the right and the duty to bring suit or other action in Assignor's own name to enforce the Patents and the Patent Rights. Assignor may require Assignee to join in such suit or action as may be necessary to assure Assignor's ability to bring and maintain any such suit or action in any proper forum if (but only if) Assignee is completely satisfied that such joinder will not subject Assignee to any risk of liability. Assignor shall promptly, upon demand, reimburse and indemnify Assignee for all damages, costs and expenses, including legal fees, incurred by Assignee pursuant to this §6.3.

§6.4. Protection of Patents, etc. In general, Assignor shall take any and all such actions (including but not limited to institution and maintenance of suits, proceedings or actions) as may be necessary or appropriate to properly maintain, protect, preserve, care for and enforce the Patent Collateral. Assignor shall not take or fail to take any action, or permit any action to be taken or not taken by others under its control, which would affect the validity, grant or enforcement of any of the Patent Collateral.

§6.5. Notification by Assignor. Promptly upon obtaining knowledge thereof, Assignor will notify Assignee in writing of the institution of, or any final adverse determination in, any proceeding in the PTO or any similar office or agency of the United States or any foreign country, or any court, regarding the validity of any of the Patents or Assignor's rights, title or interests in and to any of the Patent Collateral, and of any event which does or reasonably could materially adversely affect the value of any of the Patent Collateral, the ability of Assignor or Assignee to dispose of any of the Patent Collateral or the rights and remedies of Assignee in relation thereto (including but not limited to the levy of any legal process against any of the Patent Collateral).

**§7. LICENSE BACK TO ASSIGNORS.** Unless and until there shall have occurred and be continuing a default in respect of any of the Obligations and Assignee has notified Assignor that the license granted hereunder is terminated, Assignee hereby grants to Assignor the sole and exclusive, nontransferable, royalty-free, worldwide right and license under the Patents assigned to Assignee by it hereunder to make, have made for it, use, sell and otherwise practice the inventions disclosed and claimed in the Patents for Assignor's own benefit and account and for none other; provided, however, that the foregoing right and license shall be no greater in scope than, and limited by, the rights assigned to Assignee by Assignor hereby. Assignor agrees not to sell, assign, transfer, encumber or sublicense its interest in the license granted to Assignor in this §7 without the prior written consent of Assignee. Any such sublicenses granted on or

after the date hereof shall be terminable by Assignee upon termination of Assignor's license hereunder.

**§8. REMEDIES.** Upon the occurrence and during the continuance of any default in respect of any of the Obligations:

(a) Upon notice by Assignee to Assignor, (i) Assignor's license with respect to the Patents as set forth in §7 shall terminate, and (ii) Assignor shall immediately cease and desist from the practice, manufacture, use and sale of the inventions claimed, disclosed or covered by the Patents; and

(b) Assignee shall have, in addition to all rights and remedies given it by this Patent Agreement and the Security Agreement, those allowed by law and the rights and remedies of a secured party under the Uniform Commercial Code as enacted in the State of New Jersey and, without limiting the generality of the foregoing, Assignee may immediately, without demand of performance and without other notice (except as set forth next below) or demand whatsoever to Assignor, all of which are hereby expressly waived, and without advertisement, sell or license at public or private sale or otherwise realize upon the whole or from time to time any part of the Patent Collateral, or any interest Assignor may have therein, and after deducting from the proceeds of sale or other disposition of the Patent Collateral all expenses incurred by Assignee in enforcing this Patent Agreement and the Security Agreement (including all reasonable expenses for broker's fees and legal services), shall apply the residue of such proceeds toward the payment of the Obligations as set forth in the Security Agreement. Notice of any sale, license or other disposition of any of the Patent Collateral shall be given to Assignor at least five (5) days before the time that any intended public sale or other public disposition of such Patent Collateral is to be made or after which any private sale or other private disposition of such Patent Collateral may be made, which Assignor hereby agrees shall be reasonable notice of such public or private sale or other disposition. At any such sale or other disposition, Assignee may, to the extent permitted under applicable law, purchase or license the whole or any part of the Patent Collateral or interests therein sold, licensed or otherwise disposed of.

**§9. COLLATERAL PROTECTION.** If Assignor shall fail to do any act that it has covenanted to do hereunder, or if any representation or warranty of Assignor shall be breached, Assignee, in its own name or that of Assignor (in the sole discretion of Assignee), may (but shall not be obligated to) do such act or remedy such breach (or cause such act to be done or such breach to be remedied), and Assignor agrees promptly to reimburse Assignee for any cost or expense incurred by Assignee in so doing.

**§10. POWER OF ATTORNEY.** If any default in respect of any of the Obligations shall have occurred and be continuing, Assignor does hereby make, constitute and appoint Assignee (and any officer or agent of Assignee as Assignee may select in its exclusive discretion) as Assignor's true and lawful attorney-in-fact, with the power to endorse Assignor's name on all applications, documents, papers and instruments necessary for Assignee to use any of the Patent Collateral, to practice, make, use or sell the inventions disclosed or claimed in any of the Patent

Collateral, to grant or issue any exclusive or nonexclusive license of any of the Patent Collateral to any third person, or to take any and all actions necessary for Assignee to assign, pledge, convey or otherwise transfer title to or dispose of the Patent Collateral or any part thereof or interest therein to any third person, and, in general, to execute and deliver any instruments or documents and do all other acts which Assignor is obligated to execute and do hereunder. Assignor hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue of this §10, and releases Assignee from any claims, liabilities, causes of action or demands arising out of or in connection with any action taken or omitted to be taken by Assignee under this power of attorney (except for Assignee's gross negligence or willful misconduct). This power of attorney shall be irrevocable for the duration of this Patent Agreement.

**§11. FURTHER ASSURANCES.** Assignor shall, at any time and from time to time, and at its expense, make, execute, acknowledge and deliver, and file and record as necessary and as appropriate with governmental or regulatory authorities, agencies or offices, such agreements, assignments, documents and instruments, and do such other and further acts and things (including, without limitation, obtaining consents of third parties), as Assignee may request or as may be necessary or appropriate in order to implement and effect fully the intentions, purposes and provisions of this Patent Agreement, or to assure and confirm to Assignee the grant, perfection and priority of Assignee's security interest in any of the Patent Collateral.

**§12. COURSE OF DEALING.** No course of dealing among Assignor and Assignee, and no failure to exercise or delay in exercising, on the part of Assignee, any right, power or privilege hereunder or under the Security Agreement shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder or thereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

**§13. EXPENSES.** Any and all fees, costs and expenses of whatever kind or nature, including the reasonable attorneys' fees and legal expenses incurred by Assignee in connection with the preparation of this Patent Agreement and all other documents relating hereto, the consummation of the transactions contemplated hereby or the enforcement hereof, the filing or recording of any documents (including all taxes in connection therewith) in public offices, the payment or discharge of any taxes, counsel fees, maintenance fees, encumbrances or otherwise protecting, maintaining or preserving any of the Patent Collateral, or in defending or prosecuting any actions or proceedings arising out of or related to any of the Patent Collateral, shall be borne and paid by Assignor.

**§14. NO ASSUMPTION OF LIABILITY; INDEMNIFICATION.** NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, ASSIGNEE DOES NOT ASSUME ANY LIABILITIES OF ASSIGNOR WITH RESPECT TO ANY CLAIM OR CLAIMS REGARDING ASSIGNOR'S OWNERSHIP OR PURPORTED OWNERSHIP OF, OR RIGHTS OR PURPORTED RIGHTS ARISING FROM, ANY OF THE PATENT COLLATERAL OR ANY PRACTICE, USE, LICENSE OR SUBLICENSE THEREOF, OR ANY PRACTICE, MANUFACTURE, USE OR SALE OF ANY OF THE INVENTIONS DISCLOSED OR CLAIMED THEREIN, WHETHER ARISING OUT OF ANY PAST, CURRENT OR FUTURE EVENT, CIRCUMSTANCE, ACT OR OMISSION OR OTHERWISE. ALL OF SUCH LIABILITIES SHALL BE

**EXCLUSIVELY THE RESPONSIBILITY OF ASSIGNOR, AND ASSIGNOR SHALL INDEMNIFY ASSIGNEE FOR ANY AND ALL COSTS, EXPENSES, DAMAGES AND CLAIMS, INCLUDING LEGAL FEES, INCURRED BY ASSIGNEE WITH RESPECT TO SUCH LIABILITIES.**

**§15. RIGHTS AND REMEDIES CUMULATIVE.** All of Assignee's rights and remedies with respect to the Patent Collateral, whether established hereby or by the Security Agreement or by any other agreements or by law, shall be cumulative and may be exercised singly or concurrently. This Patent Agreement is supplemental to the Security Agreement, and nothing contained herein shall in any way derogate from any of the rights or remedies of Assignee contained therein. Nothing contained in this Patent Agreement shall be deemed to extend the time of attachment or perfection of or otherwise impair the security interest in any of the Patent Collateral granted to Assignee under the Security Agreement.

**§16. AMENDMENT AND WAIVER.** This Patent Agreement may not be amended, or compliance with its terms waived, orally or by course of dealing, but only by a writing signed by an authorized officer of the Bank.

**§17. GOVERNING LAW. THIS PATENT AGREEMENT SHALL BE CONSTRUED AND INTERPRETED, AND ALL RIGHTS AND OBLIGATIONS HEREUNDER SHALL BE DETERMINED, IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW JERSEY WITHOUT REGARD TO PRINCIPLES OF CONFLICT OF LAWS.**

**§18. CONSENT TO JURISDICTION. ASSIGNOR SUBMITS TO THE JURISDICTION OF STATE AND FEDERAL COURTS LOCATED IN THE STATE OF NEW JERSEY AND THE CITY OF NEWARK IN PERSONAM AND AGREES THAT ALL ACTIONS AND PROCEEDINGS RELATING DIRECTLY OR INDIRECTLY TO THIS PATENT AGREEMENT SHALL BE LITIGATED ONLY IN SAID COURTS OR IN COURTS LOCATED ELSEWHERE AS ASSIGNEE MAY SELECT AND THAT SUCH COURTS ARE CONVENIENT FORUMS AND WAIVES PERSONAL SERVICE UPON IT AND CONSENTS TO SERVICE OF PROCESS OUT OF SAID COURTS BY MAILING A COPY THEREOF TO IT BY REGISTERED OR CERTIFIED MAIL.**

**§19. WAIVER OF JURY TRIAL. ASSIGNOR AND ASSIGNEE WAIVE THE RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS PATENT AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.**

**§20. MISCELLANEOUS.** The headings of each section of this Patent Agreement are for convenience only and shall not define or limit the provisions thereof. This Patent Agreement and all rights and obligations hereunder shall be binding upon Assignor and its successors and assigns, and shall inure to the benefit of Assignee and its successors and assigns; provided, however, that Assignor may not assign any of its rights or obligations hereunder without the prior written consent of Assignee. In the event of any irreconcilable conflict between the provisions of this Patent Agreement and the Security Agreement, the provisions of the Security



Agreement shall control. If any term of this Patent Agreement shall be held to be invalid, illegal or unenforceable, the validity of all other terms hereof shall in no way be affected thereby, and this Patent Agreement shall be construed and be enforceable as if such invalid, illegal or unenforceable term had not been included herein. Assignor acknowledges receipt of a copy of this Patent Agreement.

IN WITNESS WHEREOF, Assignor has executed this Patent Collateral Assignment and Security Agreement as of the day and year first above written.

AQUA PRODUCTS, INC.

By:

Name: Joseph P. Pugh  
Title: President

By:

Name: G. ERLICH  
Title: EXEC. V.P.

State of NJ )  
 )ss.:  
County of Essex )

On the 30th day of March, 2000, before me personally came Joseph Perat, to me known, who, being by me duly sworn, did depose and say that (s)he is the President of AQUA PRODUCTS, INC., the corporation described in and which executed the foregoing instrument; and that (s)he signed (his) (her) name thereto by order of the board of directors of said corporation.

  
NOTARY PUBLIC

**KATHLEEN A. MCCLARNON  
NOTARY PUBLIC OF NEW JERSEY  
MY COMMISSION EXPIRES JUNE 20, 2000**

State of NJ )  
 )ss.:  
County of Essex )

On the 30th day of March, 2000, before me personally came Giorgo Erlich, to me known, who, being by me duly sworn, did depose and say that (s)he is the Vice President of AQUA PRODUCTS, INC., the corporation described in and which executed the foregoing instrument; and that (s)he signed (his) (her) name thereto by order of the board of directors of said corporation.

  
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**KATHLEEN A. MCCLARNON  
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**SCHEDULE A  
TO  
PATENT COLLATERAL ASSIGNMENT AND SECURITY AGREEMENT  
DATED MARCH 30, 2000  
EXECUTED BY  
AQUA PRODUCTS, INC.**

**List of U.S. Patents**

TITLE	PATENT NO.
<b>Apparatus and method of operation for high-speed swimming pool cleaner,</b> Reference #203,842, Filed 9/29/98, Serial #09/162,953	PENDING
<b>Controlled pool cleaner and tracking system,</b> Reference #204,061, Filed 4/1/99, Serial #09/285,020	PENDING
<b>Drive track for self-propelled pool cleaner,</b> Reference #203,759, Filed 8/21/98, Serial #09/137,638	PENDING
<b>Floating battery housing for electric powered swimming pool cleaners,</b> Reference #203,803	PROPOSED
<b>Integral pool cleaner cart and power supply,</b> Reference #203,841	PENDING
<b>Light emitting handle,</b> Reference #203,634, Filed 10/27/98, Serial #09/179,567	PENDING
<b>Manually propelled pool cleaner,</b> Reference #203,384, Filed 4/24/97, Serial #08/847,581, Issued 12/1/98	5,842,243
<b>Pool cleaner housing with curvilinear contour line,</b> Reference #204,127, Filed 6/24/99, Serial #29/107,064	PENDING
<b>Pool cleaner housing with vertical ridges,</b> Reference #204,166, Filed 6/24/99, Serial #29/107,065	PENDING
<b>Segmented brush assembly for power driven pool cleaner,</b> Reference #203,840, Filed 9/29/98, Serial #09/162,952	PENDING
<b>Water jet reversing propulsion and directional controls for automated swimming pool cleaners,</b> Reference #203,633, Filed 1/25/99, Serial #09/237,301	PENDING
<b>Water sterilizing apparatus for portable submersible pool cleaner,</b> Reference #203,770	PROPOSED

**SCHEDULE A (continued)  
TO  
PATENT COLLATERAL ASSIGNMENT AND SECURITY AGREEMENT  
DATED MARCH 30, 2000  
EXECUTED BY  
AQUA PRODUCTS, INC.**

**List of Foreign Patents**

TITLE	PATENT NO.
<b>EUROPEAN PATENT CONVENT:</b>	
<b>Apparatus and method of operation for high-speed swimming pool cleaner,</b> Reference #204,240, Filed 9/22/99, Serial #99118039.9	PENDING
<b>Light emitting handle,</b> Reference #204,271, Filed 10/26/99, Serial #99120847.1	PENDING
<b>Manually propelled pool cleaner,</b> Reference #204,256	PROPOSED
<b>Segmented brush assembly for power driven pool cleaner,</b> Reference #204,239, Filed 9/22/99, Serial #99118038.1	PENDING
<b>Water jet reversing propulsion and directional controls for automated swimming pool cleaners,</b> Reference #204,308	PROPOSED
<b>FRANCE:</b>	
<b>Pool cleaner housing with curvilinear contour line,</b> Reference #204,250	PROPOSED
<b>Pool cleaner housing with vertical ridges,</b> Reference #204,247	PROPOSED
<b>GERMANY:</b>	
<b>Pool cleaner housing with curvilinear contour line,</b> Reference #204,249	PROPOSED
<b>Pool cleaner housing with vertical ridges,</b> Reference #204,246	PROPOSED
<b>ISRAEL:</b>	
<b>Apparatus and method of operation for high-speed swimming pool cleaner,</b> Reference #204,241, Filed 9/22/99, Serial #131998	PENDING
<b>Pool cleaner housing with curvilinear contour line,</b> Reference #204,251	PROPOSED
<b>Pool cleaner housing with vertical ridges,</b> Reference #204,248	PROPOSED
<b>Pool cleaning device,</b> Reference #203,724, Filed 4/1/98, Serial #29632, Issued 1/31/99	29632
<b>WIPO:</b>	
<b>Manually propelled pool cleaner,</b> Reference #203,742, Filed 4/24/98, Serial #PCT/US98/08355	PENDING

# RECORDATION FORM COVER SHEET TRADEMARKS ONLY

Tab settings ⇨ ⇨ ⇨ ▼

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

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

Sorrento Cheese Company, Inc.

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

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

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

Name: Sorrento Lactalis, Inc.

Internal Address: \_\_\_\_\_

Street Address: 2375 South Park Avenue

City: Buffalo State: NY ZIP: 14230

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

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

**3. Nature of conveyance:**

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

Execution Date: \_\_\_\_\_

**4. Application number(s) or registration number(s):**

**A. Trademark Application No.(s)**

75/469,102  
75/839,380  
75/839,381

**B. Trademark registration No.(s)**

228,320	1,822,995	1,903,687
963,768	1,253,876	1,802,870
1,822,996	1,336,984	
1,386,941	1,235,353	

Additional numbers attached?  Yes  No

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

Name: Phillips, Lytle, Hitchcock, Blaine & Huber LLP

Internal Address: Intellectual Property Group

Street Address: 3400 HSBC Center

City: Buffalo State: NY ZIP: 14203

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

13

**7. Total fee (\$7 CFR 3.41):..... \$ 340.00**  
(1 x \$40.00 and 12 x \$25.00 = 340.00)

Enclosed

Authorized to be charged to deposit account

**8. Deposit account number:**

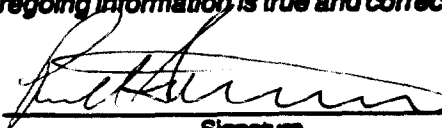
(Attach duplicate copy of this page if paying by deposit account)

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.

Peter K. Sommer, Reg. No. 26,587  
Name of Person Signing



Signature

March 31, 2000

Date

Total number of pages comprising cover sheet: 1

CT-07

1991214000843

CERTIFICATE OF MERGER  
OF  
SORRENTO, INC.  
INTO  
SORRENTO CHEESE COMPANY, INC.

UNDER SECTION 905 OF THE NEW YORK BUSINESS CORPORATION LAW

1. Sorrento Cheese Company, Inc., pursuant to the provisions of Section 905 of the Business Corporation Law of the State of New York hereby certifies as follows:

(a) Sorrento, Inc., corporation of the State of New York owns all of the outstanding shares of Sorrento Cheese Company, Inc., a corporation of the State of New York

(b) The surviving corporation is Sorrento Cheese Company, Inc.

2. As each constituent corporation, the designation and number of outstanding shares of each class and series and the voting rights thereof are as follows:

<u>Company</u>	<u>Number and Designation of Outstanding Shares</u>	<u>Name of Class or Series Entitled to Vote as a Class or Series</u>	<u>Number of Shares of Such Class or Series</u>
Sorrento, Inc.	2819 shares of Common Stock- No Par Value	Common	2819
Sorrento Cheese Company, Inc.	200 shares of Common Stock	Common	200

3. (a) The plan of merger adopted by the board of directors of Sorrento Cheese Company, Inc., by resolution, was approved by unanimous written consent by the shareholders of Sorrento Cheese Company, Inc., in accordance with Section 903 of the New York Business Corporation Law;

(b) The plan of merger adopted by the board of directors of Sorrento, Inc., was approved by the unanimous written consent of the shareholders of Sorrento, Inc., in accordance with Section 903 of New York Business Corporation Law; Sorrento, Inc., has complied with the applicable provisions of the laws of the State of New York.

4. The date and place of filing of the certificate of incorporation of each constituent corporation is as follows:

(i) The certificate of incorporation of Sorrento Cheese Company, Inc., was filed by the Secretary of State of the State of New York on June 30, 1986, under the name "Sorrento Cheese Company, Inc."

(ii) The Certificate of Incorporation of Sorrento, Inc., was filed with the Secretary of State of the State of New York on May 31, 1957, under the name "Sorrento Cheese Company, Inc."; the certificate of incorporation was amended on June 30, 1986, upon the change of name to "Sorrento, Incorporated", the corporation further amended its articles of incorporation on July 21, 1986 to reflect the change of name of the corporation to "Sorrento, Inc."

5. The merger shall be effective on December 30, 1999.

IN WITNESS WHEREOF, we have signed this certificate on the 16<sup>th</sup> day of November, 1999, and we affirm the statements contained therein as true under penalties of perjury.

SORRENTO, INC.

By: 

Paul Bensabat, President

By: FCU-1  
François Chateau, Assistant Secretary

SORRENTO CHEESE COMPANY, INC.

By: [Signature]  
Paul Bensabat, President

By: FCU-1  
François Chateau, Assistant Secretary

3



1991214000843

CT-07

FILED

Dec 14 4 09 PM '99

**CERTIFICATE OF MERGER**

**OF**

**SORRENTO, INC.**

**INTO**

**SORRENTO CHEESE COMPANY, INC.**

**UNDER SECTION 905**

**OF THE BUSINESS CORPORATION LAW**

*000 000 000*

RECEIVED

Dec 7 12 03 PM '99

*2.00*  
STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED DEC 14 1999

TAX \$

BY:           *ML*          

*Eric*

RECEIVED

Dec 14 2 16 PM '99

Filed by:

**Darrick Grimes**

**Salans Hertzfeld Heilbronn Christy & Viener**

**620 Fifth Avenue**

**New York, NY 10020**

*4*

991214000879

# RECORDATION FORM COVER SHEET TRADEMARKS ONLY

APR 6 2000

Tab settings → → → ▼

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

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

Sorrento, Inc.

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

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Street Address: 2375 South Park Avenue

City: Buffalo State: NY ZIP: 14230

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

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(Designations must be a separate document from Assignment)

Additional name(s) & address(es) attached?  Yes  No

**3. Nature of conveyance:**

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

Execution Date: 11/16/99

**4. Application number(s) or registration number(s):**

**A. Trademark Application No.(s)**

75/469,102

**B. Trademark registration No.(s)**

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Internal Address: Intellectual Property Group

Street Address: 3400 HSBC Center

City: Buffalo State: NY ZIP: 14203

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

11

**7. Total fee (37 CFR 3.41):** \$ 295.00

(1 x \$40.00 and 10 x \$25.00 = 250.00 = 295.00)

Enclosed

Authorized to be charged to deposit account

**8. Deposit account number:**

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

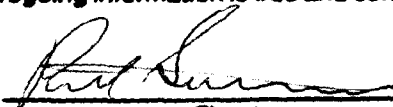
DO NOT USE THIS SPACE

**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.

Peter K. Sommer, Reg. No. 26,587

Name of Person Signing



Signature

March 31, 2000

Date

Total number of pages comprising cover sheet:

1

# THE BANK OF NEW YORK

385 RIFLE CAMP ROAD, WEST PATERSON, NJ 07424-0403

(973) 357-7772

March 31, 2000

U.S. PTO  
Office of Public Records  
Crystal Gateway 4, Room 335  
Washington, D.C. 20231

Re: Aqua Products, Inc.

Dear Sir or Madam:

I have enclosed our checks # 331281152 for \$90.00 and #331281153 for \$480.00 the fees to record the enclosed "Assignments" for the customer referenced above.

Please return them to me at the address referenced above.

If you need any additional information, please call me.

Thank you.



Allene Schweiker  
Assistant Treasurer

/as  
Enclosures

**ASSIGNMENT OF TRADEMARKS AND SERVICE MARKS**

WHEREAS, Aqua Products, Inc., a Delaware corporation having a place of business at 25 Rutgers Place, Cedar Grove, New Jersey 07009 ("Assignor"), has adopted and used and is using the trademarks and service marks (the "Marks") identified on the Annex hereto and is the owner of the registrations of and pending registration applications for such Marks in the United States Patent and Trademark Office identified on such Annex; and

WHEREAS, \_\_\_\_\_ ("Assignee") is desirous of acquiring the Marks and the registrations thereof and the registration applications therefor;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Assignor does hereby assign, sell and transfer unto Assignee all right, title and interest of Assignor in and to the Marks, together with (i) the registrations of and the registration applications for the Marks, (ii) the goodwill of the business symbolized by and associated with the Marks and the registrations thereof, and (iii) the right to sue and recover for, and the right to profits and/or damages due or accrued arising out of or in connection with, any and all past, present and future infringements or dilution of or damage or injury to the Marks or the registrations thereof or such associated goodwill.

This Assignment of Trademarks and Service Marks is intended to and shall take effect as a sealed instrument at such time as Assignee shall complete this Assignment of Trademarks and Service Marks by inserting its name in the second paragraph above and signing its acceptance of this Assignment of Trademarks and Service Marks below.

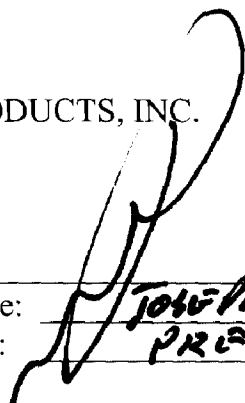
IN WITNESS WHEREOF, Assignor, by its duly authorized officer, has executed this Assignment of Trademarks and Service Marks, as an instrument under seal, this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

AQUA PRODUCTS, INC.

By:

Name:

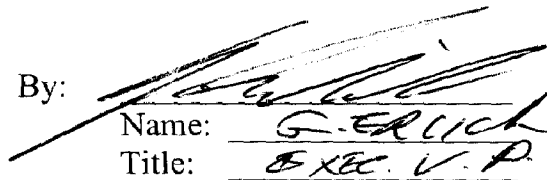
Title:

  
JOSEPH PORT  
PRESIDENT

By:

Name:

Title:

  
G. ERLICH  
EXEC. V.P.



The foregoing assignment of the Marks and the registrations thereof and registration applications therefor by Aqua Products, Inc., as assignor, to the undersigned, as assignee, is hereby accepted as of the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

ASSIGNEE:

\_\_\_\_\_

By:

\_\_\_\_\_  
Name: \_\_\_\_\_

Title: \_\_\_\_\_

