

4-6-00

05-04-2000

Form PTO-1594  
1-31-92

RECORDA

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U.S. DEPARTMENT OF COMMERCE  
Patent and Trademark Office

101344303

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

7:00 APR -6 PM 3:34

1. Name of conveying party(ies):  
Peapod, Inc.  
**OPR/FINANCE**

Individuals  Association  
 General Partnership -  Limited Partnership  
 Corporation - State: Delaware  
 Other

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

2. Name and address of receiving party(ies):  
Name: BEW, Inc.  
Internal Address: \_\_\_\_\_  
Street Address: 19 Skelley Avenue  
City: Weymouth State: Massachusetts ZIP: 02189

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

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

3. Nature of conveyance:

Assignment  Merger  
 Security Interest  Change of Name  
 Other - \_\_\_\_\_

Execution Date: April 5, 2000

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

Additional numbers attached?  Yes  No

Trademark Registration No.(s)  
**Please see attached Schedule A**

5. Name and address of party to whom correspondence concerning document should be mailed:  
Name: Brian Jaenicke, Legal Assistant  
Internal Address: White & Case LLP  
  
  
Street Address: 1155 Avenue of the Americas  
City: New York State: NY ZIP: 10036

6. Total number of applications and registration involved: 30

7. Total fee (37 CFR 3.41): ..... \$ 765.00  
 Enclosed  
 Authorized to be charged to deposit account

8. Deposit account number: 23-1705  
 (Attach duplicate copy of this page if paying by deposit account)

05/03/2000 DNGUYEN 00000081 231705 2220473

DO NOT USE THIS SPACE

01 FC:481 40.00 CH  
02 FC:482 725.00 CH

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.*

Brian T. Jaenicke *Brian T. Jaenicke* 4/6/2000  
Name of Person Signing Signature Date

Total number of pages comprising cover sheet: 1

OMB No. 0651-0011 (exp. 4/94)

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Commissioner of Patents and Trademarks  
Box Assignments  
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Public burden reporting for this sample cover sheet is estimated to average about 30 minutes per document to be recorded, including time for reviewing the document and gathering the data needed, and completing and reviewing the sample cover sheet. Send comments regarding this burden estimate to the U.S. Patent and Trademark Office, Office of Information Systems, PK2-1000C, Washington, D.C. 20231, and to the Office of Management and Budget, Paperwork Reduction Project (0651-0011), Washington, D.C. 20503.

**Trademark Registrations**

<b><u>Mark</u></b>	<b><u>Registration No.</u></b>	<b><u>Registration Date</u></b>
SPLIT PEA	2,220,473	01/26/99
SMART SHOPPING FOR BUSY PEOPLE	2,286,965	10/19/99
PEAPOD	1,719,180	12/13/91
PEAPOD	1,709,175	08/18/92
PEAPOD	1,765,041	04/13/93
PEAPOD	1,775,744	06/08/93
PEAPOD	1,922,433	09/26/95
PEAPOD	1,922,505	09/26/95
SMART SHOPPING FOR BUSY PEOPLE	2,035,762	02/04/97

**Trademark Applications**

<b><u>Mark</u></b>	<b><u>Application No.</u></b>	<b><u>Filing Date</u></b>
PEABUCKS	75/306,004	06/10/97
PEAPOD	75/306,546	06/10/97
PEAPOD	75/306,547	06/10/97
PEAPOD	75/310,583	06/10/97
PEAPOD	75/306,483	06/10/97
PEAPOD	75/306,479	06/10/97
PEAPOD.COM	75/306,485	06/10/97
THE POD	75/306,478	06/10/97

1-800-5-PEAPOD	75/306,598	06/10/97
PEABANK	75/306,484	06/10/97
SMART SHOPPING FOR BUSY PEOPLE	75/306,487	06/10/97
SPLITPEA.COM	75/414,860	01/07/98
COOL BY DESIGN	75/513,503	07/06/98
PEAPOD PACKAGES	75/554,805	09/17/98
YOUR PERSONAL GROCER & MORE	75/793,988	09/03/99
YOUR PERSONAL GROCER & MORE	75/792,642	09/03/99
MY PEAPOD	75/860,991	11/30/99
SHOP SMARTER, SHOP PEAPOD	75/883,328	12/29/99
SHOP SMARTER. ANYWHERE	75/884,700	12/30/99
PODWEAR	75/911,367	02/07/00
PODGEAR	75/912,127	02/07/00

## SECURITY AGREEMENT

This SECURITY AGREEMENT ("Agreement"), dated as of April 5, 2000 is made by PEAPOD, INC., a Delaware corporation (the "Grantor"), in favor of BEW, Inc., a Delaware corporation (the "Lender").

### PRELIMINARY STATEMENT

Grantor has entered into a certain Promissory Note of even date herewith executed by the Grantor in favor of the Lender (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "Promissory Note"), evidencing certain financial accommodations (all such financial accommodations being hereinafter referred to collectively as the "Term Loan") to or for the benefit of Grantor. It is a condition precedent to the making of the Term Loan under the Promissory Note that Grantor shall have granted the security interest contemplated by this Agreement.

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

***Section 1.*** Defined Terms. Unless otherwise defined herein, terms defined in the Promissory Note are used herein as therein defined, and the following terms shall have the following meanings (such meanings being equally applicable to both the singular and the plural forms of the terms defined):

"Agreement" shall mean this Security Agreement, as the same may from time to time be amended, restated, modified or supplemented, and shall refer to this Agreement as the same may be in effect at the time such reference becomes operative.

"Collateral" shall mean all property and rights in property now owned or hereafter at any time acquired by Grantor in or upon which a Lien is granted in favor of the Lender by Grantor under this Agreement, including, without limitation, the property described in Section 2.

"Person" means any individual, corporation, firm, enterprise, partnership, trust, incorporated or unincorporated association, joint venture, joint stock company, limited liability company or other entity of any kind, or any government or political subdivision or any agency, department or instrumentality thereof.

"UCC" shall mean the Uniform Commercial Code as the same may, from time to time, be in effect in the State of New York; provided, however, in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection or priority of the Lender's security interest in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, the term "UCC" shall mean the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof

relating to such attachment, perfection or priority and for purposes of definitions related to such provisions.

**Section 2. Grant of Security.** To secure the prompt and complete payment, observance and performance of the Indebtedness, Grantor hereby assigns and pledges to Lender, and hereby grants to Lender, a security interest in all of Grantor's right, title and interest in and to the following, whether now owned or existing or hereafter arising or acquired and wheresoever located:

**ACCOUNTS:** All "accounts" as such term is defined in Section 9-106 of the UCC, whether now owned or hereafter acquired or arising; Grantor intends that the term "accounts", as used herein, be construed in its broadest sense, and such term shall include, without limitation, all present and future accounts, accounts receivable and other rights of Grantor to payment for goods sold or leased or for services rendered (except those evidenced by instruments or chattel paper), whether now existing or hereafter arising and wherever arising, and whether or not they have been earned by performance (collectively, "Accounts");

**GENERAL INTANGIBLES:** All "general intangibles" as defined in Section 9-106 of the UCC, whether now owned or hereafter acquired or arising; Grantor intends that the term "general intangibles", as used herein, be construed in its broadest sense, and such term shall include, without limitation, the uniform resource locator, www.peapod.com, all patents, and patent applications (including all reissues, divisions, continuations and extensions); all service marks and service mark applications; all trade secrets and inventions; all copyrights and copyright applications (including all computer software and related documentation); all rights and interests in and to trademarks, trademark registrations and applications therefor, trade names, corporate names, brand names, slogans, all goodwill associated with the foregoing; and all other intangible property, whether or not similar to the foregoing; together, in each instance, with all accessions and additions thereto, substitutions therefor and replacements, proceeds and products thereof.

**Section 3. Representations and Warranties.** Grantor represents and warrants, as of the date of this Agreement and as of each date hereafter until termination of this Agreement pursuant to Section 17:

(A) The correct corporate name of Grantor is set forth in the first paragraph of this Agreement. The chief place of business and chief executive office of Grantor are located at the following address:

9933 Woods Drive  
Skokie, IL 60077  
Facsimile No.: (847) 583-9540  
Confirmation No.: (847) 583-6267

(B) Grantor is the legal and beneficial owner of the Collateral free and clear of all liens (other than the liens in favor of the Lender granted hereunder). Grantor currently conducts business under the name PEAPOD, INC.

(C) This Agreement creates in favor of the Lender a legal, valid and enforceable security interest in the Collateral. When financing statements have been filed in the appropriate offices against Grantor in the location listed in Section 3, and upon the filing of a copy of this Agreement with the United States Patent and Trademark Office, all filings, registrations and recordings necessary or appropriate to create, preserve the security interest granted by the Grantor to the Lender hereby in respect of the Collateral will have been accomplished, and the Lender will have a fully perfected security interest in the Collateral, prior to the rights of all other persons or entities therein, subject to no other liens, encumbrances or other restrictions.

(D) No authorization, approval or other action by, and no notice to or filing with, and no other action to, with or by, any governmental authority that has not already been taken or made and which is in full force and effect, is required for (i) the grant by Grantor of the security interest in the Collateral granted hereby; (ii) the execution, delivery or performance of this Agreement by Grantor; or (iii) the exercise by the Lender of any of its rights or remedies hereunder.

**Section 4. Grantor Remains Liable; Perfection and Maintenance of Security Interest and Lien.**

(A) Anything herein to the contrary notwithstanding, (i) Grantor shall remain solely liable under the contracts and agreements included in the Collateral to the extent set forth therein to perform all of its duties and obligations thereunder to the same extent as if this Agreement had not been executed, (ii) the exercise by Lender of any of its rights hereunder shall not release Grantor from any of its duties or obligations under the contracts and agreements included in the Collateral, and (iii) the Lender shall have no responsibility, obligation or liability under the contracts and agreements included in the Collateral by reason of this Agreement, nor shall the Lender be required or obligated, in any manner, to (a) perform or fulfill any of the obligations or duties of Grantor thereunder, (b) make any payment, or make any inquiry as to the nature or

sufficiency of any payment received by Grantor or the sufficiency of any performance by any party under any such contract or agreement or (c) present or file any claim, or take any action to collect or enforce any claim for payment assigned hereunder.

(B) Grantor agrees that until all of the obligations under the Promissory Note have been fully satisfied and the Promissory Note has been terminated, the Lender's security interests in and liens on and against the Collateral and all proceeds and products thereof, shall continue in full force and effect. Grantor shall perform any and all steps reasonably requested by the Lender to perfect, maintain and protect the Lender's security interests in and liens on and against the Collateral granted or purported to be granted hereby or to enable the Lender to exercise its rights and remedies hereunder with respect to any Collateral, including, without limitation, (i) executing and filing financing or continuation statements, or amendments thereof, in form and substance reasonably satisfactory to the Lender, and (ii) executing and delivering all further instruments and documents, and taking all further action, as the Lender may reasonably request.

**Section 5. Financing Statements.** To the extent permitted by applicable law, Grantor hereby authorizes the Lender, after the occurrence and during the continuance of an Event of Default, to file one or more financing or continuation statements and amendments thereto, disclosing the security interest granted to the Lender under this Agreement without Grantor's signature appearing thereon and the Lender agrees to notify Grantor when such a filing has been made, but failure to do so will not affect the validity or enforceability thereof. Grantor agrees that a carbon, photographic, photostatic, or other reproduction of this Agreement or of a financing statement is sufficient as a financing statement.

**Section 6. Filing Costs.** Lender shall pay the costs of, or incidental to, all recordings or filings of all financing statements, including, without limitation, any filing expenses incurred by the Grantor pursuant to Section 5.

**Section 7. License.** The Lender is hereby granted a license or other right to use, following the occurrence and during the continuance of an Event of Default, without charge, (i) Grantor's labels, patents, copyrights, trade secrets, trade names, trademarks, service marks, customer lists and advertising matter, or any property of a similar nature, as it pertains to the Collateral, in advertising for sale and selling any Collateral and (ii) Grantor's rights under all licenses and all franchise agreements shall inure to the Lender's benefit to the extent permitted under the terms of the applicable license or franchise agreement.

**Section 8. Accounts.** Grantor covenants and agrees with the Lender that from and after the date of this Agreement and until termination of this Agreement pursuant to Section 17, Grantor shall:

(A) Keep its chief place of business and chief executive office and the office where it keeps its records concerning the Accounts at its address set forth in Section 3, or, upon thirty (30) days' prior written notice to the Lender, at such other locations within the United States in a

jurisdiction where all actions required by Section 4 shall have been taken with respect to the Accounts; and

(B) In any suit, proceeding or action brought by the Lender under any Account comprising part of the Collateral, Grantor will save, indemnify and keep the Lender harmless from and against all expenses, loss or damage suffered by reason of any defense, setoff, counterclaim, recoupment or reduction of liability whatsoever of the obligor thereunder, arising out of a breach by Grantor of any obligation or arising out of any other agreement, indebtedness or liability at any time owing to or in favor of the Lender from Grantor, and all such obligations of Grantor shall be and shall remain enforceable against and only against Grantor and shall not be enforceable against the Lender.

**Section 9. General Covenants.** Grantor covenants and agrees with the Lender that from and after the date of this Agreement and until termination of this Agreement pursuant to Section 17, Grantor shall:

(A) Keep and maintain at Grantor's own cost and expense satisfactory and complete records of Grantor's Collateral in a manner consistent with Grantor's current business practice, including, without limitation, a record of all payments received and all credits granted with respect to such Collateral; and

(B) Grantor will not create, permit or suffer to exist, and will defend the Collateral against, and take such other action as is necessary to remove, any lien on such Collateral (other than the lien in favor of the Lender granted hereunder), and will defend the right, title and interest of the Lender in and to Grantor's rights to such Collateral, including, without limitation, the proceeds and products thereof, against the material claims and demands of all Persons whatsoever.

**Section 10. Lender Appointed Attorney-in-Fact.** Grantor hereby irrevocably appoints the Lender as Grantor's attorney-in-fact, with full authority in the place and stead of Grantor and in the name of Grantor or otherwise, from time to time in the Lender's reasonable discretion, following the occurrence and during the continuance of an Event of Default, to take any action and to execute any instrument which the Lender may deem reasonably necessary or advisable to accomplish the purposes of this Agreement.

**Section 11. Lender May Perform.** If Grantor fails to perform any agreement contained herein or in the Promissory Note, the Lender may, upon two (2) days prior written notice to the Grantor, perform, or cause performance of, such agreement, and the expenses of the Lender incurred in connection therewith shall be payable by Grantor under Section 15.

**Section 12. Lender's Duties.** The powers conferred on the Lender hereunder are solely to protect its interest in the Collateral and shall not impose any duty upon it to exercise any such powers. Except for the safe custody of any Collateral in its possession and the accounting for monies actually received by it hereunder, the Lender shall not have any duty as to any Collateral.



The Lender shall be deemed to have exercised reasonable care in the custody and preservation of the Collateral in its possession if the Collateral is accorded treatment substantially equal to that which the Lender accords its own property, it being understood that the Lender shall be under no obligation to take any necessary steps to preserve rights against prior parties or any other rights pertaining to any Collateral, but may do so at its option, and all reasonable expenses incurred in connection therewith shall be for the sole account of Grantor and shall be added to the Indebtedness.

***Section 13. Remedies.***

(A) If any Event of Default shall have occurred and be continuing:

(i) The Lender shall have, in addition to other rights and remedies provided for herein or otherwise available to it, all the rights and remedies of a secured party upon default under the UCC (whether or not the UCC applies to the affected Collateral). Grantor agrees that, to the extent notice of sale shall be required by law, at least ten (10) days' notice to Grantor of the time and place of any public sale or the time after which any private sale is to be made shall constitute reasonable notification. The Lender shall not be obligated to make any sale of Collateral regardless of notice of sale having been given. The Lender may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned; and

(ii) The Lender shall apply all cash proceeds received by the Lender in respect of any sale of, collection from, or other realization upon all or any part of the Collateral (after payment of any amounts payable to the Lender pursuant to Section 15), for the benefit of the Lender, against all or any part of the Indebtedness, as is determined by the Lender in its sole reasonable discretion. Any surplus of such cash or cash proceeds held by the Lender and remaining after payment in full of all the Indebtedness shall be paid over to Grantor or to whomsoever may be lawfully entitled to receive such surplus.

(B) Grantor waives all claims, damages and demands against the Lender arising out of the repossession, retention or sale of any of the Collateral or any part or parts thereof, except any such claims, damages and awards arising out of the gross negligence or willful misconduct of the Lender as determined in a final non-appealed judgment of a court of competent jurisdiction; and

(C) The rights and remedies provided under this Agreement are cumulative and may be exercised singly or concurrently and are not exclusive of any rights and remedies provided by law or equity.

***Section 14. Exercise of Remedies.*** In connection with the exercise of its remedies pursuant to Section 13, the Lender may, (i) exchange, enforce, waive or release any portion of the Collateral and any other security for the Indebtedness; (ii) apply such Collateral or security and direct the order or manner of sale thereof as the Lender may, from time to time, determine; and (iii) settle, compromise, collect or otherwise liquidate any such Collateral or security in any manner following the occurrence of an Event of Default, without affecting or impairing the

Lender's right to take any other further action with respect to any Collateral or security or any part thereof.

**Section 15. Expenses.** Grantor will upon demand pay to the Lender the amount of any and all expenses, including the reasonable fees and disbursements of its counsel and of any experts and agents in connection with the restructure, workout or collection of the Indebtedness and enforcement (whether by legal proceedings, negotiation or otherwise) of the Promissory Note and the Security Agreement (collectively, "Expenses"), and all such Expenses shall be deemed to be Indebtedness as and when incurred.

**Section 16. Amendments, Etc.** No amendment or waiver of any provision of this Agreement nor consent to any departure by Grantor herefrom shall in any event be effective unless the same shall be in writing and signed by the Lender and Grantor, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

**Section 17. Continuing Security Interest; Termination.**

(A) Except as provided in Section 17(b), this Agreement shall create a continuing security interest in the Collateral and shall (i) remain in full force and effect until the later of the payment or satisfaction in full of the Indebtedness and the termination of the Promissory Note, (ii) be binding upon Grantor, its successors and assigns and (iii) except to the extent that the rights of any transferor, or assignor are limited by the terms of the Promissory Note, inure, together with the rights and remedies of the Lender hereunder, to the benefit of Lender. Nothing set forth herein or in the Promissory Note is intended or shall be construed to give any other Person any right, remedy or claim under, to or in respect of this Agreement or the Promissory Note or any Collateral. Grantor's successors and assigns shall include, without limitation, a receiver, trustee or debtor-in-possession thereof or therefor.

(B) Upon the payment in full in cash of the Indebtedness and the termination of the Promissory Note, this Agreement and the security interest granted hereby shall terminate and all rights to the Collateral shall revert to Grantor. Upon any such termination of security interest, Grantor shall be entitled to the return, upon its request and at its expense, of such of the Collateral held by the Lender as shall not have been sold or otherwise applied pursuant to the terms hereof and the Lender will, at Grantor's expense, execute and deliver to Grantor such other documents as Grantor shall reasonably request to evidence such termination.

**Section 18. Severability.** It is the parties' intention that this Agreement be interpreted in such a way that it is valid and effective under applicable law. However, if one or more of the provisions of this Agreement shall for any reason be found to be invalid or unenforceable, the remaining provisions of this Agreement shall be unimpaired.

**Section 19. GOVERNING LAW.** THIS AGREEMENT SHALL BE INTERPRETED, GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF NEW YORK. THE BORROWER HEREBY

WAIVES ANY RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING  
ARISING UNDER OR WITH RESPECT HERETO.

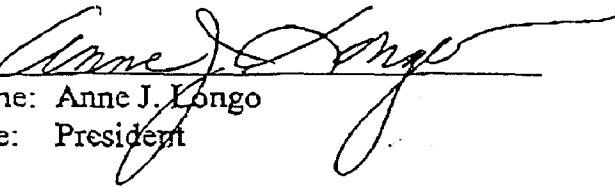
IN WITNESS WHEREOF, Grantor has caused this Agreement to be duly executed and delivered by its officer thereunto duly authorized as of the date first above written.

PEAPOD, INC., as Grantor

By: D. R. D.  
Name: Dan Rabinowitz  
Title: & VP: CFO

IN WITNESS WHEREOF, Grantor has caused this Agreement to be duly executed and delivered by its officer thereunto duly authorized as of the date first above written.

BEW, Inc., as Lender

By:   
Name: Anne J. Longo  
Title: President