



04-25-2000

U.S. Patent & TMO/TM Mail Rpt Dt. #57

05-19-2000

U.S. Department of Commerce  
Patent and Trademark Office  
TRADEMARK



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4.25-00

### RECORDATION FORM COVER SHEET TRADEMARKS ONLY

TO: The Commissioner of Patents and Trademarks: Please record the attached original document(s) or copy(ies).

#### Submission Type

New

Resubmission (Non-Recordation)  
Document ID #

Correction of PTO Error  
Reel #  Frame #

Corrective Document  
Reel #  Frame #

#### Conveyance Type

Assignment  License

Security Agreement  Nunc Pro Tunc Assignment

Merger  Effective Date  
Month Day Year

Change of Name

Other

#### Conveying Party

Mark if additional names of conveying parties attached

Name  Execution Date  
Month Day Year

Formerly

Individual  General Partnership  Limited Partnership  Corporation  Association

Other

Citizenship/State of Incorporation/Organization

#### Receiving Party

Mark if additional names of receiving parties attached

Name

DBA/AKATA

Composed of

Address (line 1)

Address (line 2)

Address (line 3)     
City State/Country Zip Code

Individual  General Partnership  Limited Partnership  Corporation  Association

Other

Citizenship/State of Incorporation/Organization

If document to be recorded is an assignment and the receiving party is not domiciled in the United States, an appointment of a domestic representative should be attached. (Designation must be a separate document from Assignment.)

05/19/2000 JSWBAZZ 00000022 921309

FOR OFFICE USE ONLY

01 FC:481 40.00 OP  
02 FC:482 225.00 OP

Public burden reporting for this collection of information is estimated to average approximately 30 minutes per Cover Sheet to be recorded, including time for reviewing the document and gathering the data needed to complete the Cover Sheet. Send comments regarding this burden estimate to the U.S. Patent and Trademark Office, Chief Information Officer, Washington, D.C. 20231 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (0651-0027), Washington, D.C. 20503. See OMB Information Collection Budget Package 0651-0027, Patent and Trademark Assignment Practice. DO NOT SEND REQUESTS TO RECORD ASSIGNMENT DOCUMENTS TO THIS ADDRESS.

Mail documents to be recorded with required cover sheet(s) information to:  
Commissioner of Patents and Trademarks, Box Assignments, Washington, DC 20503

REEL: 002075 FRAME: 0713

**Domestic Representative Name and Address**

Enter for the first Receiving Party only.

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

**Correspondent Name and Address**

Area Code and Telephone Number

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

**Pages**

Enter the total number of pages of the attached conveyance document including any attachments.

#

**Trademark Application Number(s) or Registration Number(s)**

Mark if additional numbers attached

Enter either the Trademark Application Number or the Registration Number (DO NOT ENTER BOTH numbers for the same property).

Trademark Application Number(s)			Registration Number(s)		
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**Number of Properties**

Enter the total number of properties involved.

#

**Fee Amount**

Fee Amount for Properties Listed (37 CFR 3.41):

\$

Method of Payment:

Enclosed

Deposit Account

Deposit Account

(Enter for payment by deposit account or if additional fees can be charged to the account.)

Deposit Account Number:

#

Authorization to charge additional fees:

Yes



No

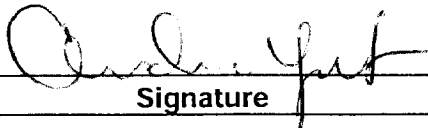


**Statement and Signature**

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. Charges to deposit account are authorized, as indicated herein.

Andrew H. Yost

Name of Person Signing



Signature

4-25-00

Date Signed

**RECORDATION FORM COVER SHEET  
CONTINUATION  
TRADEMARKS ONLY**

FORM PTO-1618C  
Expires 06/30/99  
OMB 0651-0027

U.S. Department of Commerce  
Patent and Trademark Office  
**TRADEMARK**

**Conveying Party**

Enter Additional Conveying Party

Mark if additional names of conveying parties attached

Execution Date  
Month Day Year

Name

Formerly

Individual  General Partnership  Limited Partnership  Corporation  Association

Other

Citizenship State of Incorporation/Organization

**Receiving Party**

Enter Additional Receiving Party

Mark if additional names of receiving parties attached

Name

DBA/AKA/TA

Composed of

Address (line 1)

Address (line 2)

Address (line 3)

City

State/Country

Zip Code

Individual  General Partnership  Limited Partnership

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Other

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If document to be recorded is an assignment and the receiving party is not domiciled in the United States, an appointment of a domestic representative should be attached (Designation must be a separate document from the Assignment.)

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**Trademark Application Number(s)**

**Registration Number(s)**

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# INTELLECTUAL PROPERTY SECURITY AGREEMENT

THIS INTELLECTUAL PROPERTY SECURITY AGREEMENT (this "Agreement"), is made as of March 12, 1999, by and among each corporation identified as a "Pledgor" on the signature pages hereto (each a "Pledgor" and collectively the "Pledgors"), in favor of BANKBOSTON, N.A. (the "Secured Party").

## RECITALS

A. The Pledgors are parties to a Credit Agreement dated as of March 12, 1999 (as amended from time to time, the "Credit Agreement"), pursuant to which the Secured Parties agreed, subject to the terms and conditions set forth therein, to establish certain credit facilities for the benefit of the Pledgors.

B. Pledgors are the owners of, or have the exclusive right to use, the Pledged Collateral (as defined herein).

C. In connection with the execution and delivery of the Credit Agreement, the Secured Party has requested and the Pledgors have agreed to enter into this Intellectual Property Security Agreement, pursuant to which the Pledgors are granting security interests in favor of the Secured Party in all of the Pledgors trademarks, trade names, copyrights, patents and other intellectual property.

F. This Agreement is given by Pledgor in favor of the Secured Party to secure the payment and performance of all of the Secured Obligations (as defined in Section 2). Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to them in the Credit Agreement.

## AGREEMENT

NOW, THEREFORE, in consideration of the foregoing premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each Pledgor and the Secured Party hereby agree as follows:

Section 1. Pledge. Each Pledgor hereby pledges and grants to the Secured Party a continuing first priority security interest in all of such Pledgor's rights, title and interests, whether now existing or hereafter acquired, in and to the following property (collectively, the "Pledged Collateral") to secure all of the Secured Obligations:

(a) Patents issued or assigned to and all patent applications made by such Pledgor and, to the extent that such licenses and rights are assignable, all exclusive licenses to such Pledgor from third parties and rights to use patents owned by such third parties, including, without limitation, the patents, patent applications and exclusive licenses listed on Schedule A hereto, along with any and all (1) inventions and improvements described and claimed therein, (2) reissues, divisions, continuations, extensions and continuations-in-part thereof, (3) income, royalties, damages, claims and payments now and hereafter due and/or payable under and with respect thereto,

including, without limitation, damages and payments for past or future infringements thereof, (4) rights to sue for past, present and future infringements thereof, and (5) any other rights corresponding thereto throughout the world (collectively, "Patents");

(b) Trademarks (including service marks), federal and state trademark registrations and applications made by such Pledgor (including Federal Intent To Use Applications), common law trademarks and trade names owned by or assigned to such Pledgor, all registrations and applications for the foregoing and, to the extent that such licenses are assignable, all exclusive licenses from third parties of the right to use trademarks of such third parties, including, without limitation, the registrations, applications, unregistered trademarks, service marks and exclusive licenses listed on Schedule B hereto, along with any and all (1) renewals thereof, (2) income, royalties, damages and payments now and hereafter due and/or payable with respect thereto, including, without limitation, damages, claims and payments for past or future infringements thereof, (3) rights to sue for past, present and future infringements thereof, and (4) trademarks, trademark registrations, and trade name applications for any thereof and any other rights corresponding thereto throughout the world (collectively, "Trademarks");

(c) Copyrights, whether statutory or common law, owned by or assigned to such Pledgor, and, to the extent that such licenses and rights are assignable, all exclusive licenses to such Pledgor from third parties to use copyrights owned by such third parties, including, without limitation, the registrations, applications and exclusive licenses listed on Schedule C hereto, along with any and all (1) renewals and extensions thereof, (2) income, royalties, damages, claims and payments now and hereafter due and/or payable with respect thereto, including, without limitation, damages and payments for past, present or future infringements thereof, (3) rights to sue for past, present and future infringements thereof, and (4) copyrights and any other rights corresponding thereto throughout the world (collectively, "Copyrights");

(d) The entire goodwill of such Pledgor's business and other general intangibles (including know-how, trade secrets, customer lists, proprietary information, inventions, methods, procedures and formulae) connected with the use of and symbolized by Trademarks of such Pledgor; and

(e) All Proceeds (as defined under the Uniform Commercial Code as in effect in any relevant jurisdiction (the "UCC") or other relevant law) of any of the foregoing, and in any event including, without limitation, any and all (1) proceeds of any insurance, indemnity, warranty or guaranty payable to the Secured Party or to such Pledgor from time to time with respect to any of the Pledged Collateral, (2) payments (in any form whatsoever) made or due and payable to such Pledgor from time to time in connection with any requisition, confiscation, condemnation, seizure or forfeiture of all or any part of the Pledged Collateral by any Governmental Authority (or any person acting on behalf of a Governmental Authority), (3) instruments representing amounts receivable in respect of any Patents, Trademarks or Copyrights, (4) products of the Pledged Collateral and (5) other amounts from time to time paid or payable under or in connection with any of the Pledged Collateral.

Section 2. Secured Obligations. The security interest hereby granted shall secure the due and punctual payment and performance of the following liabilities and obligations of the Pledgors (herein called the "Secured Obligations"):

- (a) Principal of and premium, if any, and interest on the Loans;
- (b) Any and all other obligations of the Credit Parties to the Secured Party under the Credit Agreement or under any agreement or instrument relating thereto, all as amended from time to time; and
- (c) Any and all other liabilities, obligations and Indebtedness of the Credit Parties to the Secured Party, whether direct or indirect, absolute or contingent, due or to become due or now existing or hereafter arising, including, without limitation, any and all other fees, premiums, penalties or other obligations, liabilities or Indebtedness of the Credit Parties to the Secured Party.

Section 3. No Release. Nothing set forth in this Agreement shall relieve any Pledgor from the performance of any term, covenant, condition or agreement on such Pledgor's part to be performed or observed under or in respect of any of the Pledged Collateral or from any liability to any Person under or in respect of any of the Pledged Collateral or impose any obligation on the Secured Party to perform or observe any such term, covenant, condition or agreement on such Pledgor's part to be so performed or observed or impose any liability on the Secured Party for any act or omission on the part of such Pledgor relating thereto or for any breach of any representation or warranty on the part of such Pledgor contained in this Agreement or any other Loan Document or under or in respect of the Pledged Collateral or made in connection herewith or therewith.

Section 4. **SUPPLEMENTS; FURTHER ASSURANCES**. Each Pledgor agrees that it will join with the Secured Party in executing and, at its own expense, will file and refile, or permit the Secured Party to file and refile, such financing statements, continuation statements and other documents (including, without limitation, this Agreement and exclusive licenses to use software and other property protected by copyright), in such offices (including, without limitation, the United States Patent and Trademark Office, appropriate state trademark offices and the United States Copyright Office), as the Secured Party may reasonably deem necessary or appropriate, wherever required or permitted by law in order to perfect and preserve the rights and interests granted to the Secured Party hereunder. Each Pledgor hereby authorizes the Secured Party to file financing statements and amendments, relative to all or any part thereof, without the signature of such Pledgor where permitted by law and agrees to do such further acts and things, and to execute and deliver to the Secured Party such additional assignments, agreements, powers and instruments, as the Secured Party may reasonably require to carry into effect the purposes of this Agreement or better to assure and confirm unto the Secured Party its respective rights, powers and remedies hereunder. Each Pledgor shall, upon the reasonable request of the Secured Party, and hereby authorizes the Secured Party to, take any and all such actions as may be deemed advisable by the Secured Party to perfect and preserve the rights and interests granted to the Secured Party with respect to the Pledged Collateral wherever located. All of the foregoing shall be at the sole cost and expense of such Pledgor.

Section 5. Representations and Warranties of Each Pledgor. Each Pledgor hereby represents and warrants to the Secured Party as follows:

(a) Such Pledgor is, and, as to Pledged Collateral acquired by it from time to time after the date hereof, such Pledgor will be, the sole and exclusive owner or, as applicable, to the best of such Pledgor's knowledge, the sole and exclusive licensee of all Pledged Collateral. The pledge and security interest created by this Agreement shall not at any time be subject to any prior lien, pledge, security interest, encumbrance, license, assignment, collateral assignment or charge of any kind, including, without limitation, any filing or agreement to file a financing statement as debtor under the UCC or any similar statute or any subordination arrangement in favor of any party other than such Pledgor (collectively, "Liens"), except for those Liens set forth on Schedule D hereto (collectively, "Prior Liens"), except for Liens granted by licensors of the Pledge Collateral to which such Pledgor is without knowledge, and except as expressly permitted hereunder and under the Credit Agreement. Such Pledgor further represents and warrants to the Secured Party that the portions of Schedules A, B and C hereto, respectively applicable to such Pledgor, are true, correct and complete lists as of the date hereof of all Patents, Trademarks and Copyrights owned by such Pledgor and that Schedules D, E and F hereto are true and correct with respect to the matters set forth therein as of the date hereof.

(b) Such Pledgor has full corporate power, authority and legal right to pledge and grant a security interest in the Pledged Collateral in accordance with the terms of this Agreement and this Agreement constitutes the legal, valid and binding obligation of Pledgor, enforceable against such Pledgor in accordance with its terms.

(c) Except as set forth on Schedule E hereto and except for filings with the Patent and Trademark Office, under the UCC and under applicable foreign law, to the best of such Pledgor's knowledge after due inquiry, no authorization, consent, approval, license, qualification or formal exemption from, nor any filing, declaration or registration with, any court (other than in connection with the exercise of judicial remedies), governmental agency or regulatory authority, or with any securities exchange or any other Person is required in connection with (1) the pledge by such Pledgor of the Pledged Collateral pursuant to this Agreement, or the execution, delivery or performance by such Pledgor of this Agreement, (2) the grant of a security interest (including the priority thereof when the appropriate filings have been made and accepted) in, the Pledged Collateral by such Pledgor in the manner and for the purpose contemplated by this Agreement or (3) the exercise of the rights and remedies of the Secured Party created hereby.

(d) Such Pledgor has made and will continue to make all necessary filings and recordations from time to time and use appropriate statutory notice to protect its interests in the Pledged Collateral, including, without limitation, recordations of all its interests in the Patents and Trademarks in the United States Patent and Trademark Office and in corresponding offices throughout the world and its claims to Copyrights in the United States Copyright Office, in each case including exclusive licenses and as otherwise

requested from time to time by Secured Party and in a manner consistent with prudent business practices.

(e) Such Pledgor owns or has rights to use all the Pledged Collateral and all rights with respect to any of the foregoing used in, necessary for or material to such Pledgor's business as currently conducted and as contemplated to be conducted pursuant to the Loan Documents. To such Pledgor's best knowledge after due inquiry, the use of such Pledged Collateral and all rights with respect to the foregoing by such Pledgor does not infringe on the rights of any Person and, to the best of such Pledgor's knowledge after due inquiry, except as set forth on Schedule F attached hereto, no material claim has been made and remains outstanding that such Pledgor's use of the Pledged Collateral does or may violate the rights of any third person.

(f) Upon filings and the acceptance thereof in the appropriate offices under the UCC and in the United States Patent and Trademark Office and the United States Copyright Office, this Agreement will create a valid and duly perfected first priority lien and security interest in the United States in the Pledged Collateral on such property and to the extent that a lien can be perfected by such filings, subject to no Liens other than the Prior Liens set forth on Schedule D hereto. This Agreement has been duly and validly executed and delivered by such Pledgor, constitutes the legal, valid and binding obligation of such Pledgor and is enforceable against such Pledgor in accordance with its terms.

#### Section 6. Covenants.

(a) On a continuing basis, each Pledgor will, at the expense of such Pledgor, subject to any prior licenses, Liens and restrictions make, execute, acknowledge and deliver, and file and record in the proper filing and recording offices, all such instruments or documents, including, without limitation, appropriate financing and continuation statements, exclusive licenses and collateral agreements, and take all such action (limited, as aforesaid, if applicable) as may reasonably be deemed necessary or appropriate by the Secured Party:

(1) to carry out the intent and purposes of this Agreement,

(2) to assure and confirm to the Secured Party the grant or perfection of a security interest in the Pledged Collateral for the benefit of the Secured Party, and

(3) after the occurrence and during the continuation of an Event of Default, to enable the Secured Party to exercise and enforce its rights and remedies hereunder with respect to any Pledged Collateral.

(b) Without limiting the generality of the foregoing, each Pledgor:

(1) will not enter into any agreement that would impair or conflict with Pledgor's obligations hereunder;



(2) will, from time to time, upon the Secured Party's request, cause its books and records to be marked with such legends or segregated in such manner as the Secured Party may specify and take or cause to be taken such other action and adopt such procedures as the Secured Party may specify to give notice or to perfect the security interest in the Pledged Collateral intended to be conveyed hereby;

(3) will, promptly following any senior officer of such Pledgor obtaining actual knowledge thereof, notify the Secured Party of

(A) any materially adverse determination in any proceeding in the United States Patent and Trademark Office or United States Copyright Office with respect to any Patent, Trademark or Copyright material to Pledgor's business; or

(B) the institution of any proceeding or any materially adverse determination in any federal, state, local or foreign court or administrative bodies regarding such Pledgor's claim of ownership in or right to use any of the Pledged Collateral, its right to register the Pledged Collateral, or its right to keep and maintain such registration in full force and effect;

(4) will properly maintain and protect the Pledged Collateral to the extent necessary or appropriate for the conduct of such Pledgor's business (as presently conducted and as contemplated by the Loan Documents) and consistent with such Pledgor's current practice in accordance with applicable statutory requirements;

(5) will not grant or permit to exist any Lien upon or with respect to the Pledged Collateral or any portion thereof except Liens in favor of the Secured Party or as permitted under the Credit Agreement and Liens permitted by Section 7 hereof, and will not execute any security agreement or financing statement covering any of the Pledged Collateral except in the name of the Secured Party as permitted under this Agreement;

(6) except in accordance with prudent business practices or as permitted under the Credit Agreement, will not permit to lapse or become abandoned, settle or compromise any pending or future litigation or administrative proceeding with respect to the Pledged Collateral without the consent of the Secured Party, or contract for sale or otherwise dispose of the Pledged Collateral or any portion thereof except pursuant to Section 7 hereof;

(7) until the Secured Party exercises its rights to make collection, will diligently keep adequate records respecting the Pledged Collateral;

(8) subject to Section 6(a), hereby authorizes the Secured Party, in its sole discretion, to file one or more financing or continuation statements and amendments thereto, relative to all or any part of the Pledged Collateral without the signature of such Pledgor where permitted by law;

(9) will furnish to the Secured Party from time to time statements and amended schedules further identifying and describing the Pledged Collateral and such other materials evidencing or reports pertaining to the Pledged Collateral as the Secured Party may from time to time request, all in reasonable detail;

(10) will pay when due any and all taxes, levies, maintenance fees, charges, assessments, licenses fees and similar taxes or impositions payable in respect of the Pledged Collateral unless contested in good faith pursuant to the Credit Agreement;

(11) will comply in all material respects with all laws, rules and regulations applicable to the Pledged Collateral; and

(12) will deposit with the Secured Party as the Secured Party shall reasonably request, subject to appropriate confidentiality restrictions, copies of all source code of software owned by such Pledgor which is material to the operation of such Pledgor's business.

(c) If, before the Secured Obligations shall have been paid and satisfied in full in cash or cash equivalents, any Pledgor shall, obtain any rights to any additional Patents, Trademarks or Copyrights or become entitled to the benefit of any additional Patents, Trademarks or Copyrights or any renewal or extension thereof, including any reissue, division, continuation, or continuation-in-part of any Patent, or any improvement on any Patent, the provisions of this Agreement shall automatically apply thereto and such additional Patents, Trademarks and Copyrights shall automatically constitute Pledged Collateral if such would have constituted Pledged Collateral at the time of execution of this Agreement, and be subject to the assignment, Lien and security interest created by this Agreement without further action by any party. Each Pledgor shall promptly provide to the Secured Party written notice of any of the foregoing. Each Pledgor shall, at least once in each calendar quarter, provide written notice to the Secured Party of all applications for Patents and all applications for registration of Trademarks or Copyrights made during the preceding calendar quarter. Each Pledgor agrees, promptly following the written request by the Secured Party, to confirm the attachment of the lien and security interest created by this Agreement to any additional Patents, Trademarks or Copyrights, or rights in respect thereof, acquired or obtained by such Pledgor, if such would have constituted Pledged Collateral at the time of execution of this Agreement by execution of an instrument in form acceptable to the Secured Party.

(d) Each Pledgor authorizes the Secured Party to modify this Agreement by amending Schedules A, B and/or C annexed hereto to include any future Pledged Collateral of such Pledgor.

(e) Each Pledgor shall file and prosecute diligently all applications for Patents, Trademarks or Copyrights now or hereafter pending that would be useful or beneficial to the businesses of such Pledgor to which any such applications pertain, and to do all acts necessary to preserve and maintain all rights in the Pledged Collateral unless such Pledged Collateral has become obsolete to such Pledgor's business, as

reasonably determined by such Pledgor consistent with prudent business practices. Any and all costs and expenses incurred in connection with any such actions shall be borne by such Pledgor. Except in accordance with prudent business practices, such Pledgor shall not abandon any right to file a Patent, Trademark or Copyright application or any pending Patent, Trademark or Copyright application or any Patent, Trademark or Copyright without the consent of the Secured Party.

Section 7. Transfers and Other Liens. No Pledgor will sell, convey, assign or otherwise dispose of, or grant any option with respect to, any of the Pledged Collateral except for licensing in the ordinary course of business and such other transactions as may be permitted under the Credit Agreement. No Pledgor will create or permit to exist any Lien upon or with respect to any of the Pledged Collateral, except for Liens permitted under the Credit Agreement.

Section 8. Remedies upon Default.

(a) If any Event of Default shall have occurred and be continuing, the Secured Party may to the full extent permitted by law (subject to the rights of third party licensors), (1) exercise any and all rights as beneficial and legal owner of the Pledged Collateral, including, without limitation, perfecting assignment of any and all consensual rights and powers with respect to the Pledged Collateral, and (2) sell or assign or grant a license to use, or cause to be sold or assigned or a license granted to use any or all of the Pledged Collateral (in the case of Trademarks, along with the goodwill associated therewith) or any part thereof, in each case, free of all rights and claims of any Pledgor therein and thereto. In accordance with such rights, the Secured Party shall have the right subject to the rights of third party licensors) (A) to cause any or all of the Pledged Collateral to be transferred of record into the name of the Secured Party or its nominee and (B) the right to impose (i) such limitations and restrictions on the sale or assignment of the Pledged Collateral as the Secured Party may deem to be necessary or appropriate to comply with any law, rule or regulation (federal, state or local) having applicability to the sale or assignment, and (ii) any necessary or appropriate requirements for any required governmental approvals or consents.

(b) Except as provided in this Section 8 and other express notice provisions of the Loan Documents, each Pledgor hereby expressly waives, to the fullest extent permitted by applicable law, any and all notices, advertisements, hearings or process of law in connection with the exercise by the Secured Party of any of its rights and remedies hereunder.

(c) Each Pledgor agrees that, to the extent notice of sale shall be required by law, ten (10) days' notice from the Secured Party of the time and place of any public sale or of the time after which a private sale or other intended disposition is to take place shall be commercially reasonable notification of such matters. In addition to the rights and remedies provided in this Agreement and in the other Loan Documents, the Secured Party shall have all the rights and remedies of a secured party under the UCC.

(d) Except as otherwise provided herein, each Pledgor hereby waives, to the fullest extent permitted by applicable law, notice or judicial hearing in connection with

the Secured Party's taking possession or the Secured Party's disposition of any of the Pledged Collateral, including, without limitation, any and all prior notice and hearing for any prejudgment remedy or remedies and any such right which Pledgor would otherwise have under law, and such Pledgor hereby further waives to the extent permitted by applicable law: (1) all damages occasioned by such taking of possession; (2) all other requirements as to the time, place and terms of sale or other requirements with respect to the enforcement of the Secured Party's rights hereunder; and (3) all rights of redemption, appraisal, valuation, stay, extension or moratorium now or hereafter in force under any applicable law. Any sale of, or the grant of options to purchase, or any other realization upon, any Pledged Collateral shall operate to divest all right, title, interest, claim and demand, either at law or in equity, of any Pledgor therein and thereto, and shall be a perpetual bar both at law and in equity against any Pledgor and against any and all Persons claiming or attempting to claim the Pledged Collateral so sold, optioned or realized upon, or any part thereof, from, through or under any Pledgor.

Section 9. Application of Proceeds. The proceeds of any Pledged Collateral obtained pursuant to the exercise of any remedy set forth in Section 8 shall be applied, together with any other sums then held by the Secured Party pursuant to this Agreement, promptly by the Secured Party:

First, to the payment of all costs and expenses, fees, commissions and taxes of such sale, collection or other realization, including, without limitation, reasonable reimbursement to the Secured Party and its agents and counsel for all expenses, fees, liabilities and advances made or incurred by them in connection therewith and all expenses, liabilities and advances made or incurred by the Secured Party in connection therewith, together with interest on each such amount at the rate then in effect under the Credit Agreement;

Second, to the indefeasible payment in full in cash of the Secured Obligations, ratably according to the unpaid amounts thereof, without preference or priority of any kind among amounts so due and payable; and

Third, to the appropriate Pledgor, or its successors or assigns, or to whomsoever may be lawfully entitled to receive the same or as a court of competent jurisdiction may direct, of any surplus then remaining from such Proceeds.

Section 10. Expenses. Each Pledgor will pay on demand all reasonable expenses of the Secured Party in connection with the preparation, waiver or amendment of this Agreement or other Loan Documents executed in connection therewith, or the administration, default or collection of the Loans or administration, default, collection in connection with the Secured Party's exercise, preservation or enforcement of any of its rights, remedies or options thereunder, including, without limitation, reasonable fees and disbursements of outside legal counsel or accounting, consulting, brokerage or other similar professional fees or expenses, and any fees or expenses associated with any travel or other costs relating to any appraisals or examinations conducted in connection with the Secured Obligations or any Collateral therefor, and the amount of all such expenses shall, until paid, bear interest at the rate applicable to principal hereunder (including any default rate).

Section 11. No Waiver; Cumulative Remedies.

(a) No failure on the part of the Secured Party to exercise, no course of dealing with respect to, and no delay on the part of the Secured Party in exercising, any right, power or remedy hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any such right, power or remedy hereunder preclude any other or further exercise thereof or the exercise of any other right, power or remedy. The remedies herein provided are cumulative and are not exclusive of any remedies provided by law.

(b) In the event the Secured Party shall have instituted any proceeding to enforce any right, power or remedy under this instrument by foreclosure, sale, entry or otherwise, and such proceeding shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Secured Party, then and in every such case, each Pledgor and the Secured Party shall, to the extent permitted by applicable law, be restored to their respective former positions and rights hereunder with respect to the Pledged Collateral, and all rights, remedies and powers of the Secured Party shall continue as if no such proceeding had been instituted.

Section 12. The Secured Party May Perform; the Secured Party Appointed Attorney-in-Fact. If any Pledgor shall fail to do any act or thing that it has covenanted to do hereunder or any warranty on the part of such Pledgor contained herein shall be breached, the Secured Party may (but shall not be obligated to) do the same or cause it to be done or remedy any such breach, and may expend funds for such purpose. Any and all amounts so expended by the Secured Party shall be paid by such Pledgor promptly upon demand therefor, with interest at the highest rate then in effect under the Credit Agreement during the period from and including the date on which such funds were so expended to the date of repayment. Such Pledgor's obligations under this Section 12 shall survive the termination of this Agreement and the discharge of such Pledgor's other obligations hereunder. Each Pledgor hereby appoints the Secured Party its attorney-in-fact with an interest, with full authority in the place and stead of such Pledgor and in the name of such Pledgor, or otherwise, from time to time in the Secured Party's reasonable discretion to take any action and to execute any instruments consistent with the terms of this Agreement and the other Loan Documents which the Secured Party may deem necessary or advisable to accomplish the purposes of this Agreement. The foregoing grant of authority is a power of attorney coupled with an interest and such appointment shall be irrevocable for the term of this Agreement. Each Pledgor hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof.

Section 13. Litigation.

(a) Each Pledgor shall have the right to commence and prosecute in its own name, as real party in interest, for its own benefit and at its own expense, such applications for protection of Pledged Collateral, suits, proceedings or other actions for infringement, counterfeiting, unfair competition, dilution or other damage as are in its reasonable business judgment necessary to protect the Pledged Collateral. Such Pledgor shall promptly notify the Secured Party in writing as to the commencement and prosecution of any such actions, or threat thereof relating to the Pledged Collateral and

shall provide to the Secured Party such information with respect thereto as may be reasonably requested. The Secured Party shall provide all reasonable and necessary cooperation in connection with any such suit, proceeding or action, including, without limitation, joining as a necessary party.

(b) Upon the occurrence and during the continuation of an Event of Default, the Secured Party shall have the right but shall in no way be obligated to file applications for protection of the Pledged Collateral and/or bring suit in the name of any Pledgor or the Secured Party to enforce the Pledged Collateral and any license thereunder; in the event of such suit, each Pledgor shall, at the request of the Secured Party, do any and all lawful acts and execute any and all documents required by the Secured Party in aid of such enforcement and the Pledgors shall promptly, upon demand, reimburse and indemnify the Secured Party, as the case may be, for all reasonable costs and expenses incurred by the Secured Party in the exercise of its rights under this Section 13. In the event that the Secured Party shall elect not to bring suit to enforce the Pledged Collateral, the Pledgors agree to use all measures, whether by action, suit, proceeding or otherwise, to prevent the infringement, counterfeiting or other diminution in value of any of the Pledged Collateral by others and for that purpose agrees to diligently maintain any action, suit or proceeding against any person so infringing necessary to prevent such infringement as is in the reasonable business judgment of the Pledgors necessary to protect the Pledged Collateral and the Secured Party shall provide, at the Pledgors' expense, all necessary and reasonable assistance to the Pledgors to maintain such action.

Section 14. Modifications in Writing. No amendment, modification, supplement, termination or waiver of or to any provision of this Agreement, nor consent to any departure by any Pledgor therefrom, shall be effective unless the same shall be in writing and signed by the Secured Party. Any amendment, modification or supplement of or to any provision of this Agreement, any waiver of any provision of this Agreement, and any consent to any departure by any Pledgor from the terms of any provision of this Agreement, shall be effective only in the specific instance and for the specific purpose for which made or given. Except where notice is specifically required by this Agreement or any other Loan Document, no notice to or demand on any Pledgor in any case shall entitle any Pledgor to any other or further notice or demand in similar or other circumstances.

Section 15. Termination; Release. When all the Secured Obligations (other than Secured Obligations in the nature of continuing indemnities or expense reimbursement obligations not yet due and payable) have been paid in full and have been terminated and the commitments of the Secured Party to make any Loan under the Credit Agreement have expired, this Agreement shall terminate. Upon termination of this Agreement or any release of Pledged Collateral in accordance with the provisions of the Credit Agreement, the Secured Party shall, upon the request and at the expense of the Pledgors, forthwith assign, transfer and deliver to the Pledgors against receipt and without recourse to or warranty by the Secured Party, such of the Pledged Collateral to be released (in the case of a release) as may be in the possession of the Secured Party and as shall not have been sold or otherwise applied pursuant to the terms hereof, on the order of and at the expense of the Pledgors, and proper instruments (including UCC termination statements on Form UCC-3 and documents suitable for recordation in the United States Patent and Trademark Office, the United States Copyright Office or similar domestic or

foreign authority) acknowledging the termination of this Agreement or the release of such Pledged Collateral, as the case may be.

Section 16. Reinstatement. Notwithstanding the provisions of Section 16, this Agreement shall continue to be effective or be reinstated, as the case may be, if at any time any amount received by the Secured Party in respect of the Secured Obligations is rescinded or must otherwise be restored or returned by the Secured Party upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of any Pledgor or upon the appointment of any intervenor or conservator of, or trustee or similar official for, any Pledgor or any substantial part of its properties, or otherwise, all as though such payments had not been made.

Section 17. Credit Agreement. Notwithstanding any other provision of this Agreement, the rights of the parties hereunder are subject to the provisions of the Credit Agreement, including the provisions thereof pertaining to the rights and responsibilities of the Secured Party. The term "Secured Party" as used herein shall include BankBoston, N.A. and any other Person holding any interest in the Notes issued pursuant to the terms of the Credit Agreement.

Section 18. Notices. Unless otherwise provided herein or in the Credit Agreement (with respect to the Secured Party), any notice or other communication herein required or permitted to be given shall be in writing and may be personally served, telecopied, telexed or sent by United States mail, if to any Pledgor, addressed to it at the address set forth in the Credit Agreement, if to the Secured Party, addressed to it at the address set forth in the Credit Agreement, or as to any party at such other address as shall be designated by such party in a written notice to the other party complying as to delivery with the terms of this Section 18. All such notices and other communications shall be deemed to have been given when delivered in person, or received by telecopy or telex; or four Business Days after deposit in the United States mail, registered or certified, with postage prepaid and properly addressed; provided that notices to the Secured Party shall not be effective until received by the Secured Party.

Section 19. Continuing Security Interest; Assignment. This Agreement shall create a continuing security interest in the Pledged Collateral and shall remain in full force and effect until the payment in full in cash of all Secured Obligations, be binding upon each Pledgor, its successors and assigns, and inure to the benefit of the Secured Party and its successors, transferees and assigns; no other Persons (including, without limitation, any other creditor of Pledgor) shall have any interest herein or any right or benefit with respect hereto. Without limiting the generality of the foregoing, any the Secured Party may assign or otherwise transfer any indebtedness held by it secured by this Agreement to any other Person, and such other Person shall thereupon become vested with all the benefits in respect thereof granted to the Secured Party, herein or otherwise, subject however, to the provisions of the Credit Agreement.

Section 20. GOVERNING LAW; TERMS. THIS AGREEMENT SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE COMMONWEALTH OF MASSACHUSETTS, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS, EXCEPT TO THE EXTENT THAT THE VALIDITY OR PERFECTION OF THE SECURITY INTEREST HEREUNDER, OR REMEDIES HEREUNDER IN RESPECT OF ANY PARTICULAR INTELLECTUAL

PROPERTY ARE GOVERNED BY THE LAWS OF A JURISDICTION OTHER THAN THE COMMONWEALTH OF MASSACHUSETTS.

Section 21. CONSENT TO JURISDICTION AND SERVICE OF PROCESS. ALL JUDICIAL PROCEEDINGS BROUGHT AGAINST ANY PLEDGOR WITH RESPECT TO THIS AGREEMENT MAY BE BROUGHT IN ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION IN THE COMMONWEALTH OF MASSACHUSETTS AND BY EXECUTION AND DELIVERY OF THIS AGREEMENT EACH PLEDGOR ACCEPTS FOR ITSELF AND IN CONNECTION WITH ITS PROPERTIES, GENERALLY AND UNCONDITIONALLY THE NONEXCLUSIVE JURISDICTION OF THE AFORESAID COURTS, AND IRREVOCABLY AGREES TO BE BOUND BY ANY JUDGMENT RENDERED THEREBY IN CONNECTION WITH THIS AGREEMENT. THE PARTIES HERETO HEREBY IRREVOCABLY WAIVE TRIAL BY JURY, AND EACH PLEDGOR HEREBY IRREVOCABLY WAIVES ANY OBJECTION, INCLUDING, WITHOUT LIMITATION, ANY OBJECTION TO THE LAYING OF VENUE OR BASED ON THE GROUNDS OF FORUM NON CONVENIENS, WHICH IT MAY NOW OR HEREAFTER HAVE TO THE BRINGING OF ANY SUCH ACTION OR PROCEEDING IN SUCH RESPECTIVE JURISDICTIONS. IN THE EVENT THAT SUCH PLEDGOR DESIGNATES AND APPOINTS ANY PERSON AS ITS AGENT AND SUCH PERSON IRREVOCABLY AGREES IN WRITING TO SO SERVE AS SUCH PLEDGOR'S AGENT TO RECEIVE ON SUCH PLEDGOR'S BEHALF, SERVICE OF ALL PROCESS IN ANY SUCH PROCEEDINGS IN ANY SUCH COURT, SUCH SERVICE IS HEREBY ACKNOWLEDGED BY SUCH PLEDGOR TO BE EFFECTIVE AND BINDING SERVICE IN EVERY RESPECT. A COPY OF SUCH PROCESS SO SERVED SHALL BE MAILED BY REGISTERED MAIL TO SUCH PLEDGOR AT ITS ADDRESS PROVIDED FOR IN SECTION 19 HEREOF. IF ANY AGENT APPOINTED BY ANY PLEDGOR REFUSES TO ACCEPT SERVICE, EACH PLEDGOR HEREBY AGREES THAT SERVICE UPON IT BY MAIL SHALL CONSTITUTE SUFFICIENT NOTICE. NOTHING HEREIN SHALL AFFECT THE RIGHT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR SHALL LIMIT THE RIGHT OF THE SECURED PARTY TO BRING PROCEEDINGS AGAINST ANY PLEDGOR IN THE COURTS OF ANY OTHER JURISDICTION.

Section 22. Severability of Provisions. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

Section 23. Execution in Counterparts. This Agreement and any amendments, waivers, consents or supplements hereto may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed to be an original, but all such counterparts together shall constitute one and the same agreement.

Section 24. Headings. The Section headings used in this Agreement are for convenience of reference only and shall not affect the construction of this Agreement.



Section 25. Obligations Absolute. To the extent permitted by applicable law, all obligations of Pledgor hereunder shall be absolute and unconditional irrespective of:

- (a) any bankruptcy, insolvency, reorganization, arrangement, readjustment, composition liquidation or the like of any Pledgor;
- (b) any lack of validity or enforceability of the Credit Agreement, any other Loan Document, or any other agreement or instrument relating thereto;
- (c) any change in the time, manner or place of payment of, or in any other term of, all or any of the Secured Obligations, or any other amendment or waiver of or any consent to any departure from the Credit Agreement, any other Loan Document, or any other agreement or instrument relating thereto;
- (d) any exchange, release or non-perfection of any other collateral, or any release or amendment or waiver of or consent to any departure from any guarantee, for all or any of the Secured Obligations; or
- (e) any exercise or non-exercise, or any waiver of any right, remedy, power or privilege under or in respect of this Agreement or any other Loan Document except as specifically set forth in a waiver granted pursuant to the provisions of Section 15 hereof.

Section 26. Waiver of Single Action. Each Pledgor hereby waives to the greatest extent permitted under law the right to a discharge of any of the Secured Obligations under any statute or rule of law now or hereafter in effect which provides that the exercise of any particular right or remedy as provided for herein (by judicial proceedings or otherwise) constitutes the exclusive means for satisfaction of the Secured Obligations or which makes unavailable any further judgment or any other right or remedy provided for herein because the Secured Party elected to proceed with the exercise of such initial right or remedy or because of any failure by the Secured Party to comply with laws that prescribe conditions to the entitlement to such subsequent judgment or the availability of such subsequent right or remedy. In the event that, notwithstanding the foregoing waiver, any court shall for any reason hold that such subsequent judgment or action is not available to the Secured Party, each Pledgor shall not introduce in any other jurisdiction any judgment so holding as a defense to enforcement against such Pledgor of any remedy in the Credit Agreement or executed in connection with the Credit Agreement or seek to have such judgment recognized or entered in any other jurisdiction, and any such judgment shall in all events be limited in application only to the state or jurisdiction where rendered and only with respect to the collateral referred to in such judgment.

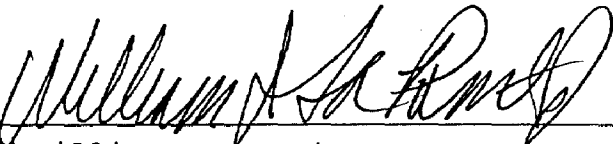
Section 27. Future Advances. This Agreement shall secure the payment of any amounts advanced from time to time pursuant to the Credit Agreement.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

"PLEDGORS"

**APPLESEED'S HOLDINGS, INC.**

By:   
Name: William J. Lapoint, Jr.  
Title: Treasurer

**JOHNNY APPLESEED'S, INC.**

By:   
Name: William J. Lapoint, Jr.  
Title: Treasurer

"SECURED PARTY"

**BANKBOSTON, N.A.**

By: Patricia K. Conroy  
Name: Patricia K. Conroy  
Title: Director

**PATENTS**  
(including exclusive licenses)

None.

**TRADEMARKS & SERVICE MARKS**  
 (including registrations and applications and exclusive licenses)

Trademark Registrations:

1. “Johnny Appleseed’s”:

Reg. no. 921309	Reg. date 9/28/71	Renewal due 9/28/01
Reg. no. 756119	Reg. date 9/03/63	Renewal due 9/03/03
Reg. no. 760280	Reg. date 11/19/63	Renewal due 11/19/03
Reg. no. 921206	Reg. date 9/28/71	Renewal due 9/28/01
  
2. Design showing silhouette profile:

Reg. no. 941094	Reg. date 8/15/72	Renewal due 8/15/02
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3. “Appleseed’s”:

Reg. no. 1771355	Reg. date 5/18/93	Renewal due 5/18/03
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4. Medallion design:

Reg. no. 767621	Reg. date 3/31/64	Renewal due 3/31/04
Reg. no. 769116	Reg. date 5/5/64	Renewal due 5/5/04
  
5. “Just Right”:

Reg. no. 1967598	Reg. date 4/16/96	Renewal due 4/16/06
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6. Appleseed’s and design:

Reg. no. 1809067	Reg. date 12/07/93	Renewal due 12/07/03
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Trademark Applications: None.

Unregistered Trademarks: None.

Service marks: None.

Exclusive Licenses: None.

**COPYRIGHTS**

(including registrations and applications and exclusive licenses)

None.

**LIENS**

None.

**REQUIRED CONSENTS AND LICENSES**

None.

**CLAIMS, LITIGATION, ETC.**

None.



## SCHEDULES

Schedule A	Patents
Schedule B	Trademarks & Service Marks
Schedule C	Copyrights
Schedule D	Liens
Schedule E	Required Consents & Licenses
Schedule F	Claims, Litigation, Etc.