

08-08-2000



101426928

COVER SHEET

ONLY

Docket No.:

546-1002

Tab settings

To the Honorable Commissioner of Patents and Trademarks, U.S. Patent & Trademark Office, Washington, DC 20503. Record the attached original documents or copy thereof.

1. Name of conveying party(ies):

ZAJICK ACQUISITION CORPORATION
SALES COMPANY



Name and address of receiving party(ies):

Progress Bank

07-17-2000

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #31

Postal Address:

- Individual(s)
- General Partnership
- Corporation-State Pennsylvania
- Other

- Association
- Limited Partnership

Street Address: 4 Sentry Parkway, Suite 200
City: Blue Bell State: PA ZIP: 19422

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

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

3. Nature of conveyance:

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

Execution Date: March 3, 2000

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

A. Trademark Application No.(s)

B. Trademark Registration No.(s)

2,226,254
1,712,229

Additional numbers attached? Yes No

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

Name: Richard P. Gilly, Reg. No. 37,630
Internal Address: RPG Intellectual Property Law Offices
One Penn Center - Suite 1500

Street Address: 1617 John F. Kennedy Boulevard

City: Philadelphia State: PA ZIP: 19103

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

2

7. Total fee (37 CFR 3.41):.....\$ \$65.00

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number:

50-0695

08/07/2000 NTHAI1 00000189 2226254

DO NOT USE THIS SPACE

01 FC:481 40.00 OP
02 FC:482 25.00 OP

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.

Richard P. Gilly, Reg. No. 37,630

Name of Person Signing

Signature

July 13, 2000

Date

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

9

Rider to Term Loan and Revolving Loan and Security Agreement

Assignment of Trademarks

THIS RIDER TO TERM LOAN AND REVOLVING LOAN AND SECURITY AGREEMENT is executed as of this 3rd day of March, 2000, by and between ZAJICK ACQUISITION CORP. d/b/a NORRIS SALES COMPANY, ("Grantor") with an address at 1300 E. Ridge Pike, Plymouth Meeting, PA and PROGRESS BANK (the "Bank"), with an address at 4 Sentry Parkway, Suite 200, Blue Bell, PA. This Rider is incorporated into and made part of that certain Term Loan and Revolving Loan and Security Agreement ("Loan Agreement") between the Grantor and the Bank, dated March 3, 2000. All capitalized terms not otherwise defined in this Rider shall have the same meanings ascribed to such terms in the other Loan Agreement.

The Grantor has adopted, used and is using (or has filed applications for the registration of) the trademarks, servicemarks and tradenames listed on Schedule "A" attached hereto and made part hereof (all such marks or names hereinafter referred to as the "Trademarks").

The Bank desires to acquire a lien and security interest on the Trademarks and the registration thereof, together with all the goodwill of the Grantor associated therewith and represented thereby, as security for all of the Obligations (as defined in the Loan Agreement) to the Bank, and the Bank desires to have its security interest in such Trademarks confirmed by a document identifying same and in such form that it may be recorded in the United States Patent and Trademark Office.

NOW, THEREFORE, with the foregoing background deemed incorporated by reference and made a part hereof, the parties hereto, intending to be legally bound hereby, covenant and agree as follows:

- 1. Grant of Security Interest.** In consideration of and pursuant to the terms of the Loan Agreement, and for other good, valuable and sufficient consideration, the receipt of which is hereby acknowledged, and to secure the Grantor's present and future Obligations to the Bank, the Grantor grants a lien and security interest to the Bank in all its present and future right, title and interest in and to the Trademarks, together with all the goodwill of the Grantor associated with and represented by the Trademarks, and the registration thereof, and the right (but not the obligation) to sue for past, present and future infringements, and the proceeds thereof, including, without limitation, license royalties and proceeds of infringement suits.
- 2. Maintenance of Trademarks.** The Grantor hereby covenants and agrees to maintain the Trademarks in full force and effect until all of the Obligations to the Bank are satisfied in full.
- 3. Representations and Warranties.** The Grantor represents and covenants that: (a) the Trademarks are subsisting and have not been adjudged invalid or unenforceable; (b) each of the Trademarks is valid and enforceable; (c) the Grantor is the sole and exclusive owner of the entire and unencumbered right, title and interest in and to each of the Trademarks, and each of the Trademarks is free and clear of any liens, charges and encumbrances including, without limitation, pledges, assignments, licenses and covenants by the Grantor not to sue third persons; (d) the Grantor has the unqualified right to enter into this Rider and perform its terms; (e) the Grantor has used, and will continue to use for the duration of this Rider, proper notices as required by 15 U.S.C. §§ 1051-1127 in connection with its use of the Trademarks; and (f) the Grantor has used, and will continue to use for the duration of this Rider, consistent standards of quality in products leased or sold under the Trademarks and hereby grants to the Bank and its employees and agents the right to visit the Grantor's locations which lease, sell, or store products under any of the Trademarks and to inspect the products and quality control records relating thereto at reasonable times and upon reasonable notice during regular business hours to ensure the Grantor's compliance with this subparagraph 3(f).
- 4. Covenants.** The Grantor further covenants that: (a) until all of the Obligations have been satisfied in full, it will not without the prior written consent of Bank, which consent will not be unanimously withheld, enter into any agreement including, without limitation, license agreements, which are inconsistent with the Grantor's obligations under this Rider; and (b) if the Grantor acquires rights to any new Trademarks, the provisions of this Rider shall automatically apply thereto and the Grantor shall give the Bank prompt written notice thereof along with an amended Schedule "A".
- 5. Exclusive Use of Trademarks.** So long as this Rider is in effect and so long as the Grantor has not received notice from the Bank that an Event of Default has occurred under the Loan Agreement and that the Bank has elected to exercise its rights hereunder, the Grantor shall continue to have the exclusive right to use the Trademarks and the Bank shall have no right to use the Trademarks or issue any exclusive or non-exclusive license with respect thereto, or assign, pledge or otherwise transfer title in the Trademarks to anyone else.
- 6. Negative Pledge.** The Grantor agrees not to sell, assign, license or further encumber its rights and interest in the Trademarks without prior written consent of the Bank, which consent will not be unanimously withheld.

7. Remedies Upon Default. (a) Anything herein contained to the contrary notwithstanding, if and while the Grantor shall be in default hereunder or an Event of Default exists under the Loan Agreement, the Grantor hereby covenants and agrees that the Bank, as a holder of a security interest under the Uniform Commercial Code, as now or hereafter in effect in Pennsylvania, may take such action permitted under the Loan Agreement or permitted by law, in its exclusive discretion, to foreclose upon the Trademarks covered hereby.

(b) For such purposes, and in the event of the Grantor's default hereunder or an Event of Default under the Loan Agreement and while such default or Event of Default exists, the Grantor hereby authorizes and empowers the Bank to make, constitute and appoint any officer or agent of the Bank as the Bank may select, in its exclusive discretion, as the Grantor's true and lawful attorney-in-fact, with the power to endorse the Grantor's name on all applications, documents, assignments, papers and instruments necessary for the Bank to assign or use the Trademarks or to grant or issue any exclusive or non-exclusive license under the Trademarks to anyone else, or necessary for the Bank to assign, pledge, convey or otherwise transfer title in or dispose of the Trademarks to anyone else. The Grantor hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof, except for the gross negligence or wilful misconduct of such attorney. This power of attorney shall be irrevocable for the life of this Rider and the Loan Agreement, and until all the Obligations are satisfied in full.

(c) The Grantor expressly acknowledges that this Rider shall be recorded with the Patent and Trademark Office in Washington, DC. At Bank's request, the Grantor shall also execute and deliver to the Bank such documents as the Bank shall reasonably require to assign all rights in the Trademarks to the Bank, which documents shall be held by the Bank, in escrow, until the occurrence of an Event of Default hereunder or under the Loan Agreement. After such occurrence, the Bank may, at its sole option, record such escrowed documents with the Patent and Trademark Office.

8. Subject to Loan Agreement. This Rider shall be subject to the terms, provisions and conditions set forth in the Loan Agreement and may not be modified without the written consent of the party against whom enforcement is being sought.

9. Inconsistent with Loan Agreement. All rights and remedies herein granted to the Bank shall be in addition to any rights and remedies granted to the Bank under the Loan Agreement. In the event of an inconsistency between this Rider and the Loan Agreement, the language of the Loan Agreement shall control. The terms and conditions of the Loan Agreement are hereby incorporated herein by reference.

10. Termination of Agreement. Upon payment and performance of all Obligations under the Loan Agreement and full satisfaction of all of the Grantor's liabilities and obligations to the Bank, the Bank shall execute and deliver to the Grantor all documents necessary to terminate the Bank's security interest in the Trademarks.

11. Fees and Expenses. Any and all reasonable fees, costs and expenses, of whatever kind or nature, including the reasonable attorneys' fees and legal expenses incurred by the Bank in connection with the preparation of this Rider and all other documents relating hereto and the consummation of this transaction, the filing or recording of any documents (including all taxes in connection therewith) in public offices, the payment or discharge of any taxes, reasonable counsel fees, maintenance fees, encumbrances or costs otherwise incurred in protecting, maintaining, preserving the Trademarks, or in defending or prosecuting any actions or proceedings arising out of or related to the Trademarks, in each case in accordance with the terms of this Rider, shall be borne and paid by the Grantor on demand by the Bank and until so paid shall be added to the principal amount of the Obligations to the Bank and shall bear interest at the contract rate therefor.

12. Prosecution of Trademark Applications. (a) Subject to the terms of the Loan Agreement, the Grantor shall have the duty to prosecute diligently any Trademark application with respect to the Trademarks pending as of the date of this Rider or thereafter, until the Obligations shall have been satisfied in full, to preserve and maintain all rights in the Trademarks, and upon reasonable request of the Bank, the Grantor shall make federal application on registrable but unregistered Trademarks belonging to the Grantor. Any reasonable expenses incurred in connection with such applications shall be borne by the Grantor. The Grantor shall not abandon any Trademark without the written consent of the Bank.

(b) The Grantor shall have the right to bring suit in its own name to enforce the Trademarks, in which event the Bank may, if the Grantor deems it necessary or after an Event of Default under the Loan Agreement, be joined as a nominal party to such suit if the Bank shall have been satisfied that it is not thereby incurring any risk of liability because of such joinder. The Grantor shall promptly, upon demand, reimburse and indemnify the Bank for all damages, reasonable costs and reasonable expenses, including attorneys' fees, incurred by the Bank in the fulfillment of the provisions of this paragraph.

13. Additional Remedies. Upon the occurrence of an Event of Default under the Loan Agreement, the Bank may, without any obligation to do so, complete any obligation of the Grantor hereunder, in the Grantor's name or in the Bank's name, but at the Grantor's

expense, and Grantor hereby agrees to reimburse the Bank in full for all reasonable expenses, including reasonable attorneys' fees, incurred by the Bank in protecting, defending and maintaining the Trademarks.

14. **GOVERNING LAW.** THIS RIDER WILL BE INTERPRETED AND THE RIGHTS AND LIABILITIES OF THE PARTIES HERETO DETERMINED IN ACCORDANCE WITH THE LAWS OF THE COMMONWEALTH OF PENNSYLVANIA, EXCLUDING ITS CONFLICT OF LAWS RULES, EXCEPT THAT THE FEDERAL LAWS OF THE UNITED STATES OF AMERICA SHALL GOVERN TO THE EXTENT APPLICABLE.

15. **Counterparts.** This Rider may be signed in any number of counterpart copies and by the parties hereto on separate counterparts, but all such copies shall constitute one and the same instrument.

WITNESS the due execution hereof as a document under seal, as of the date first written above.

ATTEST:

**ZAJICK ACQUISITION CORP.
d/b/a NORRIS SALES COMPANY**

[Corporate Seal]

By: Rachel Zajick
Rachel Zajick, Secretary

By: Donald Zajick
Donald Zajick, President

PROGRESS BANK

By: Kathleen T. Minnick
Kathleen T. Minnick, Vice President

COMMONWEALTH OF PENNSYLVANIA

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: SS

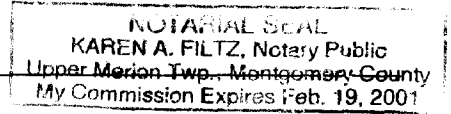
COUNTY OF MONTGOMERY

On this the 3rd day of March, 2000, before me, a Notary Public, the undersigned officer, personally appeared Kathleen T. Minnick, who acknowledged herself to be the Vice President of Progress Bank and that she, as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing on behalf of said bank as such officer.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Karen A. Filtz
Notary Public

My Commission Expires:



COMMONWEALTH OF PENNSYLVANIA

:
: SS

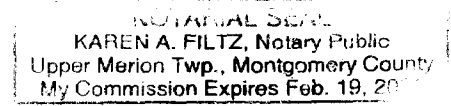
COUNTY OF MONTGOMERY

On this the 3rd day of March, 2000, before me, a Notary Public, the undersigned officer, personally appeared Donald C. Zajick and Rachel Zajick, who acknowledged themselves to be the President/Secretary, respectively, of Zajick Acquisition Corp. d/b/a Norris Sales Company and that he and she, as such officers, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing on behalf of said corporation as such officers.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Karen A. Filtz
Notary Public

My Commission Expires:



SCHEDULE "A"
TO
RIDER TO LOAN AGREEMENT - TRADEMARKS

<u>TRADEMARK</u>	<u>APPLICATION OR REGISTRATION NO.</u>	<u>REGISTRATION OR FILING DATE</u>
The Super E Store, The Equipment Supermarket	2,226,254	February 23, 1999
Norris Sales Company Incorporated (& Design)	1,712,229	September 1, 1992

TRADEMARK ASSIGNMENT

WHEREAS, ZAJICK ACQUISITION CORP. d/b/a NORRIS SALES COMPANY (the "Grantor") is the owner of the entire right, title and interest in and to the trademarks, tradenames and registrations listed on Schedule "A" attached hereto and made a part hereof (the "Trademarks") and any corresponding trademarks; and

WHEREAS, Progress Bank, having a place of business at 4 Sentry Parkway, Suite 200, Blue Bell, PA, is desirous of acquiring said Trademarks;

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, and intending to be legally bound hereby, the Grantor, its successors and assigns, does hereby transfer, assign and set over unto Grantee, its successors, transferees and assigns, all of its present and future right, title and interest in and to the Trademarks and the registrations, if any, and all proceeds thereof, and all goodwill associated therewith.

IN WITNESS WHEREOF, the undersigned has caused this Trademark Assignment to be executed by its duly authorized officer on this 3rd day of March, 2000.

ATTEST:

[Corporate Seal]

By: Rachel Zajick
Rachel Zajick, Secretary

ZAJICK ACQUISITION CORP.
d/b/a NORRIS SALES COMPANY

By: Donald Zajick
Donald Zajick, President

**SCHEDULE "A"
TO
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COMMONWEALTH OF PENNSYLVANIA

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SS

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COUNTY OF MONTGOMERY

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IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Karen A. Filz

Notary Public

My Commission Expires:

NOTARIAL SEAL
KAREN A. FILTZ, Notary Public
Upper Merion Twp., Montgomery County
My Commission Expires Feb. 19, 2001