

01/24/00

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

Malcolm C. Lindquist
Attorney at Law
P.O. Box 1317
Tacoma, WA 98401-1317

09-27-2000



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OPR/FINANCE

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 Change of Name
 - Other _____
- Effective Date
Month Day Year

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/AKA/TA

Composed of

Address (line 1)

Address (line 2)

Address (line 3)

City State/Country Zip Code

- Individual General Partnership Limited Partnership 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.)
- Corporation Association
- Other
- Citizenship/State of Incorporation/Organization

03/06/2000 BCOATES 00000069 191430

FOR OFFICE USE ONLY

01 FC:481 40.00 OP
 02 FC:482 625.00 OP
 03 FC:998 15.00 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 information to:
 Commissioner of Patents and Trademarks, Box Assignments, Washington, D.C. 20231

TRADEMARK

REEL: 002148 FRAME: 0078

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

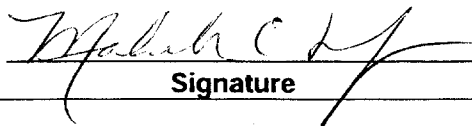
No

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.

Malcolm C. Lindquist, Attorney

Name of Person Signing



Signature

1-7-2000

Date Signed

RECORDATION FORM COVER SHEET
CONTINUATION
TRADEMARKS ONLY

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

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**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

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Other

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**TRADEMARK AND TRADE NAME COLLATERAL ASSIGNMENT
AND SECURITY AGREEMENT**

This Trademark and Trade Name Collateral Assignment and Security Agreement, dated as of December 1, 1999, is made by **BROWN & HALEY**, a Washington corporation with its chief executive office located at 110 East 26th Street, Tacoma, Washington, 98421 ("**Borrower**"), in favor of **BANC OF AMERICA COMMERCIAL FINANCE CORPORATION, THROUGH ITS COMMERCIAL FUNDING DIVISION**, 1177 Avenue of the Americas, 36th Floor, New York, New York, 10036, and its successors, assigns, and other legal representatives ("**Secured Party**").

W I T N E S S E T H:

WHEREAS, Borrower and Secured Party are parties to a Loan and Security Agreement, dated as of the date hereof (the "Loan Agreement"), and certain supplements, agreements, documents, and instruments entered into pursuant thereto (collectively, with the Loan Agreement, the "Loan Documents"), pursuant to which Secured Party may make certain loans and credit accommodations to Borrower; and

WHEREAS, Secured Party's willingness to enter into the Loan Documents and make the loans and credit accommodations available thereunder is subject to the condition, among others, that Borrower execute and deliver this Trademark and Trade Name Collateral Assignment and Security Agreement;

NOW, THEREFORE, in consideration of the foregoing, Borrower hereby agrees for the benefit of Secured Party as follows:

1. **DEFINITIONS.**

1.1 All capitalized terms used herein and not otherwise defined herein shall have the respective meanings provided therefor in the Loan Agreement. In addition, the following terms shall have the meanings set forth in this Section 1 or elsewhere in this Security Agreement referred to below:

"Proceeds" shall mean any consideration received from the sale, exchange, license, lease, or other disposition or transfer of any right, interest, asset, or property which constitutes Trademark Collateral, any value received as a consequence of the ownership, possession, use, or practice of any Trademark Collateral, and any payment received from any insurer or other person or entity as a result of the destruction or the loss, theft, or other involuntary conversion, of whatever nature, of any right, interest, asset, or property which constitutes Trademark Collateral.

PTO shall mean the United States Patent and Trademark Office.

Trade Name shall be any the trade name utilized by **BROWN &**

HALEY.

Trademarks shall mean all of the following now or hereafter owned or used by the Borrower:

(a) all trademarks of the United States or any other country, and all applications for trademarks of the United States or any other country;

(b) all re-issues, continuations, divisions, continuations-in-part, renewals, or extensions thereof;

(c) the trademarks disclosed or claimed therein, including the right to make, use, practice, and/or sell or license or otherwise transfer or dispose of the trademarks disclosed or claimed therein; and

(d) the right (but not the obligation) to make and prosecute applications for such Trademarks.

Trademarks shall include, but not be limited to, those set forth on Schedule A attached hereto.

Trademark Collateral shall mean all of the Borrower's right, title, and interest in and to all of the Trademarks, the Trademark License Rights, and the Trademark Rights, and all additions, improvements, and accessions thereto, all substitutions for and replacements of, and all products and Proceeds (including insurance proceeds) of any and all of the foregoing, and all books and records and technical information and data describing or used in connection with any and all such rights, interests, assets, or property.

Trademark License Rights shall mean any and all past, present, or future rights and interests of the Borrower pursuant to any and all past, present, and future licensing agreements in favor of the Borrower, or to which the Borrower is a party, pertaining to any Trademarks or Trademark Rights, owned or used by third parties in the past, present, or future, including the right in the name of the Borrower or Secured Party to enforce, sue, and recover for any past, present, or future breach or violation of any such agreements.

Trademark Rights shall mean any and all past, present, or future rights in, to, and associated with the Trademarks throughout the world, whether arising under federal law, state law, common law, foreign law, or otherwise, including but not limited to the following: all such rights arising out of or associated with the Trademarks; the right (but not the obligation) to register claims under any federal, state, or foreign trademark law or regulation; the right (but not the obligation) to sue or bring opposition or bring cancellation

proceedings in the name of the Borrower or the Secured Party for any and all past, present, and future infringements of or any other damages or injury to the Trademarks or the Trademark Rights, and the rights to damages or profits due or accrued arising out of or in connection with any such past, present, or future infringement, damage, or injury; and the Trademark License Rights.

2. GRANT OF SECURITY; COLLATERAL ASSIGNMENT.

2.1 **Grant of Security Interest.** As collateral security for the complete and timely performance and satisfaction of all Obligations, the Borrower hereby unconditionally grants to Secured Party a continuing security interest in and first priority lien on the Trademark Collateral and the Trade Name, and Borrower hereby pledges, mortgages, and hypothecates the Trademark Collateral and the Trade Name to Secured Party.

2.2 **Collateral Assignment.**

(a) In addition, and not by way of limitation of, the grant, pledge, mortgage, and hypothecation of the Trademark Collateral and the Trade Name provided in Section 2.1, to secure the complete and timely payment, performance, and satisfaction of all Obligations, the Borrower hereby grants, assigns, transfers, and conveys to Secured Party, **BY WAY OF COLLATERAL SECURITY**, the Borrower's entire right, title and interest in and to the Trademark Collateral and in the Trade Name. The foregoing grant, assignment, transfer, and conveyance shall be referred to from time to time herein as the "Section 2.2 Assignment." **SECURED PARTY ASSUMES NO LIABILITY OR RESPONSIBILITY ARISING IN ANY WAY BY REASON OF ITS HOLDING SUCH COLLATERAL SECURITY EXCEPT RESULTING FROM ITS GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.**

(b) Unless and until there shall have occurred and be continuing an Event of Default and Secured Party has notified the Borrower that the license granted hereunder is terminated, Secured Party hereby grants to the Borrower the sole and exclusive, non-transferable, royalty-free, worldwide right and license under the Trademark Collateral to make, have made for it, use, sell, and otherwise practice the Trademarks for the Borrower's own benefit and account and for none other, with the right to prosecute and maintain Trademarks in the PTO and in foreign countries; provided, however, that the foregoing right and license shall be no greater in scope than, and limited by, the rights assigned to Secured Party by the Borrower hereby. The Borrower agrees not to sell, assign, transfer, or sub-license any of its rights or interests in the license granted to the Borrower in this Section 2.2(b), without the prior written consent of Secured Party; *provided, however*, that so long as no Event of Default shall have occurred and be continuing, the Borrower may license the Trademark Collateral in any lawful manner that is in the ordinary course of its business and is otherwise not inconsistent with the provisions of this Security Agreement or the Loan

Documents. Any such sub-licenses granted on or after the date hereof shall be terminable by Secured Party upon termination of the Borrower's license hereunder.

2.3 **License.** In addition to, and not by way of limitation of, all other rights of Secured Party and obligations of the Borrower pursuant to this Security Agreement and the other Loan Documents, upon the effectuation of a Section 2.2 Assignment, the Secured Party shall hold a fully-paid-up, worldwide right and license to make, use, practice, and sell (or license or otherwise transfer) the Trademark Collateral, for the exclusive purpose of, and to the extent necessary and sufficient for, the full and complete enjoyment and exercise of and realization upon the rights, remedies, and interests of Secured Party pursuant to this Security Agreement and the other Loan Documents.

2.4 **Supplement to Loan Documents.** The parties expressly acknowledge and agree that they have simultaneously executed and delivered the Loan Documents pursuant to which the Borrower unconditionally granted to Secured Party a continuing security interest in and first priority lien on the Collateral (including the Trademark Collateral). In no event shall this Security Agreement, the Section 2.2 Assignment of the Trademark Collateral hereunder, or the recordation of this Security Agreement (or any document hereunder) with the PTO, or any other governmental or public office or agency, adversely effect or impair, in any way or to any extent, the other Loan Documents, the security interest of Secured Party in the Collateral (including the Trademark Collateral) pursuant to the other Loan Documents, the attachment and perfection of such security interest under the Code, or the present or future rights and interests of Secured Party in and to the Collateral under or in connection with this Security Agreement, the other Loan Documents, and/or the Code. Any and all rights and interests of Secured Party in and to the Trademark Collateral (and any and all obligations of the Borrower with respect to the Trademark Collateral) provided herein, or arising hereunder or in connection herewith, shall only supplement and be cumulative and in addition to the rights and interests of Secured Party (and the obligations of the Borrower) in, to, or with respect to the Collateral (including the Trademark Collateral) provided in or arising under or in connection with the other Loan Documents.

3. **REPRESENTATIONS, WARRANTIES, AND COVENANTS OF THE BORROWER**. The Borrower represents and warrants to, and covenants and agrees with, Secured Party as follows:

3.1 **Schedules of Trademarks and Licenses**. Set forth on Schedule A hereto is a true and complete list of all Trademarks (excluding any trademarks for which trademark applications have not yet been filed). Set forth on Schedule A hereto is a true and complete list of all license or other agreements pursuant to which any person (other than the Borrower) has the right to use or have any right, title, or interest in any of the Trademarks and/or Trademark Registrations applicable thereto. All licenses and other agreements applicable to the Trademarks are the valid and binding obligations of all of the parties thereto, enforceable against each of such parties in accordance with their respective terms (*provided that*, with respect to any such parties other than the Borrower and its affiliates, such representation and warranty is made to the best of the Borrower's knowledge and belief).

3.2 **Title**. Except as set forth in Schedule A hereto, the Borrower is and will, subject to license, continue to be the sole and exclusive owner of the entire legal and beneficial right, title, and interest in and to the Trademarks and the Trademark Collateral (other than the ownership and other rights reserved by the owners of the Licensed Trademarks), free and clear of any lien, charge, security interest, or other encumbrance, except for the security interest and conditional assignment created by this Agreement and the other Loan Documents, except for liens and encumbrances explicitly permitted pursuant to the Loan Documents. The Borrower will defend its right, title, and interest in and to the Trademarks and the Trademark Collateral against any and all claims of any third parties.

3.3 **Validity and Enforceability**. The Trademarks and Trademark Rights related thereto are subsisting, have not been adjudged invalid or unenforceable, and are valid and enforceable; and the Borrower has not received any written claim by any third party that any of the Trademarks and Trademark Rights related thereto are invalid or unenforceable.

3.4 **Exclusive Right to Use**. To the best of the Borrower's knowledge and belief, except to the extent "Roca" is a common family name or otherwise as set forth in Schedule A, the Borrower has, and shall continue to have, the exclusive right to practice, make, sell, and use all the Trademarks, throughout the countries of issue, free and clear of any liens, charges, encumbrances, claims or rights of any third party, or restrictions on the rights of the Borrower to protect or enforce any of its Trademark Rights against any third party.

3.5 **After-Acquired Trademark Collateral**. The Borrower agrees that, upon its commencement of use of or acquisition of any right, title, or interest in or to any Trademark or Trademark Right, other than the Trademarks or Trademark Rights set forth on Schedule A, hereto (including any reissues, continuations, divisions, continuations-in-part, renewals, or extensions thereof, or any variations or new versions of any such scheduled Trademarks or Trademark Rights), the provisions of this Security Agreement shall

automatically apply thereto; and the Borrower shall promptly notify Secured Party thereof (and for this purpose, Secured Party agrees that the Borrower may satisfy such notification obligation by providing to Secured Party, upon the use of a new trademark or upon the reasonable request of the Secured Party, up-to-date, amended and/or supplemented Schedule A). Secured Party shall be authorized to amend such Schedule A, as appropriate, to include such additional Trademarks and Trademark Rights, without the necessity for the Borrower's approval of or signature to such amendment, and the Borrower shall do all such other acts (at its own expense) deemed reasonably necessary or appropriate by Secured Party to implement or preserve Secured Party's interest therein (including, but not limited to, executing and delivering and recording in all places where this Security Agreement or notice hereof is recorded, an appropriate counterpart of or other instrument pursuant to this Security Agreement). Such additional Trademarks and Trademark Rights shall be automatically included in the "Trademarks" and "Trademark Rights" as defined herein, and all representations and warranties of the Borrower set forth herein shall be deemed to be restated by the Borrower as of the date of any such amendment of or supplement to Schedule A, with the full force and effect as though made on such date.

3.6 **Maintenance Trademark Collateral.** The Borrower shall take any and all actions (including, but not limited to, institution and maintenance of suits, proceedings or actions) as are necessary or appropriate to properly maintain, protect, preserve, care for, and enforce the Trademark Collateral. Without limiting the generality of the foregoing, the Borrower shall pay when due such fees, taxes, and other expenses which shall be incurred or which shall accrue with respect to any of the Trademark Collateral. The Borrower shall not abandon or dedicate to the public any of the Trademarks or related Trademark Rights, nor do any act nor omit to do any act if such act or omission is of a character that tends to cause or contribute to the abandonment or dedication to the public of any Trademark or related Trademark Rights or loss of or adverse effect on any rights in any Trademark or related Trademark Rights, except in the ordinary course of its business in situations where the Borrower has ceased using the Trademarks or Trademark Rights, and the Trademark Collateral has no continuing value.

3.7 **Enforcement of Licenses.** The Borrower shall do all things which are necessary or appropriate to ensure that such licensee of any Trademark, in its use of any or all of the Trademark Collateral in its business, shall (a) comply fully with all applicable license agreements, and (b) satisfy and perform all the same obligations set forth herein (with respect to the Borrower's use of the Trademark Collateral) as fully as though such obligations were set forth with respect to such licensee's use of the licensed Trademark Collateral.

3.8 **No Infringements.** To the best of the Borrower's knowledge and belief, except as set forth on Schedule A hereto, there is at present no material infringement or unauthorized or improper use of the Trademarks or related Trademark Rights. The Borrower shall use efforts consistent with past practices to detect any such infringement or unauthorized or improper use. In the event of any such infringement or unauthorized or improper uses by

any third party has been reasonably established by the Borrower, the Borrower shall promptly notify Secured Party.

3.9 **Filing for Perfection of Interest.** Borrower shall cause this Security Agreement to be recorded with the PTO.

3.10 **Collections.** Except as otherwise provided in the Loan Documents, the Borrower shall continue to collect, at its own expense, all amounts due or to become due to the Borrower in respect of the Trademark Collateral or any part thereof; *provided, however*, that Borrower shall cause all such amounts to be paid over to the lock box account maintained by Borrower for the benefit of Secured Party in accordance with the Loan Documents.

3.11 **Remedies Upon Default; Secured Party's Right to Perform Borrower's Obligations.** If the Borrower shall fail to do any act which is has covenanted to do hereunder or if any representation or warranty of the Borrower shall be breached, Secured Party, in its own name or that of the Borrower (in the sole discretion of Secured Party) may (but shall not be obligated to) do such act or remedy such breach (or cause such act to be done or such breach to be remedied), and any cost or expense incurred by Secured Party in so doing shall be added to the principal amount of the Obligations and shall bear interest at the rate applicable to overdue principal under the Loan Documents. The Borrower shall cooperate with Secured Party in any such act or remedy.

4. **RIGHTS UPON AN EVENT OF DEFAULT.**

4.1 **Actions on Trademarks and Trademark Collateral.** If any Event of Default shall have occurred and be continuing, then Secured Party shall have the right, as the true and lawful agent of the Borrower, with power of substitution for the Borrower and in the Borrower's name, Secured Party's name, or otherwise, for the use and benefit of Secured Party, (i) to notify any and all obligors with respect to the Trademark Collateral or any part thereof; (ii) upon notice from Secured Party, to receive, endorse, assign, and/or deliver any and all notes, acceptances, checks, drafts, money orders, or other evidences of payment relating to the Trademark Collateral or any part thereof; (iii) to demand, collect, sue for, and receive payment of, for its own use and account, and give receipt for and give discharges and releases of, all or any of the Trademark Collateral and all amounts due or to become due in respect of the Trademark Collateral; (iv) to sign the name of the Borrower on any invoice relating to any of the Trademark Collateral; (v) to commence and prosecute any and all suits, actions, or proceedings, at law or in equity, in any court of competent jurisdiction to collect or otherwise realize on all or any of the Trademark Collateral or to enforce any rights or remedies in respect of any Trademark Collateral; (vi) to settle, compromise, compound, adjust, or defend any actions, suits, or proceedings relating to or pertaining to all or any of the Trademark Collateral; (vii) to license, or to the extent permitted by any applicable law, sublicense, whether general, special, or otherwise, and whether on an exclusive or non-exclusive basis any of the Trademark Collateral throughout the world, for such term or terms,

on such conditions, and in such manner as Secured Party shall determine (other than in violation of any then existing licensing arrangements to the extent that waivers or other adequate provision cannot be secured therefor); and (viii) generally to make, use, practice, sell, assign, transfer, pledge, make any agreement with respect to, or otherwise deal with all or any of the Trademark Collateral, and to do all other acts and things necessary to carry out the purposes of this Security Agreement and the Loan Documents, as fully and completely as though Secured Party were the absolute owner of the Trademark Collateral for all purposes; provided, however, that except as provided for by law or the Code or its equivalent in other jurisdictions, nothing herein contained shall be construed as requiring or obligating Secured Party to make any commitment or to make any inquiry as to the nature or sufficiency of any payment received by Secured Party, or to present or file any claim or notice, or to take any action with respect to the Trademark Collateral or any part thereof, or the moneys due or to become due in respect thereof, or any property covered thereby, and no action taken by Secured Party or omitted to be taken with respect to the Trademark Collateral or any part thereof shall give rise to a defense, counterclaim, or offset in favor of the Borrower's claim or action against Secured Party. Whether or not Secured Party shall have so notified any obligors, the Borrower shall, at its expense, cooperate with Secured Party and render all reasonable assistance to Secured Party in enforcing claims against such obligors. It is understood and agreed that the appointment of Secured Party as the agent of the Borrower for the purposes set forth above in this Section 4.1 is coupled with an interest and is irrevocable.

4.2 **Other Remedies Upon Default.** Upon the occurrence and during the continuation of an Event of Default, then, forthwith upon notice by Secured Party to the Borrower, in addition to all other rights and remedies of Secured Party, whether under law, the other Loan Documents, or otherwise (all such rights and remedies being cumulative, not exclusive, and enforceable alternatively, successively, or concurrently, without notice to or consent by the Borrower, except as expressly provided otherwise herein), Secured Party's rights and remedies with respect to the Trademark Collateral shall include, but not be limited to, the following, without payment of royalty or compensation of any kind to the Borrower, except as expressly provided herein:

(a) The Borrower's license with respect to the Trademarks as set forth in Section 2.2(b) shall terminate, and the Borrower shall immediately cease and desist from the practice, manufacture, use, and sale (or license or other transfer) of the Trademarks.

(b) Secured Party may, to the same extent that the Borrower has the right to do so immediately prior to such notice, license or sublicense, whether general, special, or otherwise, and whether on an exclusive or non-exclusive basis, any of the Trademark Collateral, throughout the world, for such term or terms, on such conditions, and in such manner as Secured Party shall, in its sole discretion, determine.

(c) Secured Party may (without assuming any obligations or liability thereunder), at any time, enforce (and shall have the exclusive right, but not the obligation to

enforce) against any licensor, licensee, or sublicensee all Trademark License Rights of the Borrower, and take or refrain from taking any such action.

(d) Secured Party may, on one or more occasions at any time, with or without legal process and with or without previous notice or demand for performance, take possession of all tangible manifestations or embodiments of the Trademark Collateral and documentation relating thereto and all business records, documents, and files with respect to the Trademark Collateral and, without liability for trespass, to enter any premises where such tangible manifestations or embodiments, business records, documents, and files with respect to the Trademark Collateral may be located for the purpose of taking possession of or removing such tangible manifestations or embodiments, business records, documents, and files.

(e) In general, Secured Party may exercise, in respect of the Trademark Collateral, all of the rights and remedies provided under the other Loan Documents or otherwise, including, without limitation, all rights and remedies of a secured party on default under the Uniform Commercial Code (whether or not such Code applies to the affected Trademark Collateral).

4.3 **No Obligation of Secured Party.** Nothing herein shall be construed as obligating Secured Party to take any of the foregoing actions at any time.

4.4 **Costs and Application of Proceeds.** The Borrower agrees to pay when due all costs incurred in any license, assignment, sale, transfer, or other disposition of all or any portion of the Trademark Collateral to or by the Secured Party, including any taxes, fees, and reasonable attorneys' fees, and all such costs shall be added to the Obligations. Secured Party may apply the Proceeds actually received from any such license, assignment, sale, transfer, other disposition, or other collection or realization, to the out-of-pocket costs and expenses thereof, including, without limitation, attorneys' fees and all legal, travel, and other expenses which may be incurred or paid by Secured Party in protecting or enforcing its rights upon or under this Security Agreement, the Trademark Collateral, the Collateral, or the Obligations, and any proceeds remaining shall be held by Secured Party as collateral for, and/or then or at any time thereafter applied (after payment of any amounts payable to Secured Party pursuant to Section 6) to the Obligations; and the Borrower shall remain liable and will pay the Secured Party on demand any deficiency remaining, together with interest thereon at a rate equal to the highest rate then payable on the Obligations and the balance of any expenses unpaid.

5. **LIABILITIES, INDEMNITY AND COSTS.**

5.1 **Liability for Uses of Trademark Collateral.** The Borrower shall be liable for any and all uses or misuses of and the practice, manufacture, sales (or other transfers or dispositions) of any of the Trademark Collateral by the Borrower and its affiliates and for

any failure to take reasonable measures to avoid and prevent the improper use, practice or sale (or other transfer or disposition) of the Trademark Collateral by any other party (including but not limited to any licensee of the Trademarks), any failure to use or practice the Trademarks in accordance with this Security Agreement, or any other claim, suit, loss, damage, expense or liability of any kind or nature (except those resulting from any gross negligence or willful misconduct of Secured Party) arising out of or in connection with the Trademark Collateral or the production, marketing, delivery, sale, license or other transfer or disposition of the goods and services provided under or in connection with or which use, practice or incorporate any of the Trademarks or the Trademark Collateral prior to the termination of the Borrower's license pursuant to Section 4.2(a). The Borrower shall also be exclusively liable for any claim, suit, loss, damage, expense or liability arising out of or in connection with the fault, negligence, acts or omissions of the Borrower (regardless of whether such fault, negligence, acts or omissions occurred or occur prior to or after such license termination).

5.2 **License Agreement Obligations.** Nothing in this Security Agreement shall relieve the Borrower from any performance of any covenant, agreement or obligation of the Borrower under any license agreement now or hereafter in effect licensing any part of the Trademark Collateral, or from any liability to any licensee or licensor under any such license agreement or to any other party, or shall impose any liability on Secured Party for any act or omission of the Borrower in connection with any such license agreement.

5.3 **Indemnification.** The Borrower shall indemnify and hold harmless Secured Party from and against, and shall pay to Secured Party on demand, any and all claims, actions, suits, judgments, penalties, losses, damages, costs, disbursements, expenses, obligations or liabilities of any kind or nature (except those resulting from Secured Party's gross negligence or willful misconduct) arising in any way out of or in connection with this Security Agreement, the Trademark Collateral, custody, preservation, use, practice, operation, sale, license (or other transfer or disposition) of the Trademark Collateral, any alleged infringement of the intellectual property rights of any third party, the production, marketing, provision, delivery and sale of the goods and services provided under or in connection with or using or practicing any of the Trademarks or the Trademark Collateral, the sale of, collection from or other realization upon any of the Trademark Collateral, the failure of the Borrower to perform or observe any of the provisions hereof, or matters relating to any of the foregoing. The Borrower shall also indemnify and hold harmless Secured Party from and against any and all claims, actions, suits, judgments, penalties, losses, damages, costs, disbursements, expenses, obligations or liabilities arising out of or in connection with any fault, negligence, act or omission of the Borrower (regardless of whether such fault, negligence, act or omission occurred or occurs prior to or after such license termination). The Borrower shall make no claim against Secured Party for or in connection with the exercise or enforcement by Secured Party of any right or remedy granted to it hereunder, or any action taken or omitted to be taken by Secured Party hereunder (except for the gross negligence or willful misconduct of Secured Party).

6. **POWER OF ATTORNEY.**

6.1 **Grant.** The Borrower hereby grants to Secured Party, and any officer or agent of Secured Party as Secured Party may designate in its sole discretion, a power of attorney, thereby constituting and appointing Secured Party (and Secured Party's designee) its true and lawful attorney-in-law and attorney-in-fact, effective upon the occurrence and during the continuation of an Event of Default, for the purpose of assigning, selling, licensing, or otherwise disposing of all right, title, and interest of the borrower in and to any of the Trademark Collateral. The Borrower hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof.

6.2 **Irrevocable.** The foregoing power of attorney is coupled with an interest and is irrevocable until this Security Agreement shall terminate.

6.3 **Release.** The Borrower hereby releases Secured Party from any claims, causes of action, and demands at any time arising out of or in connection with any actions taken or omitted to be taken by Secured Party under the power of attorney granted herein (except for the gross negligence or willful misconduct of Secured Party).

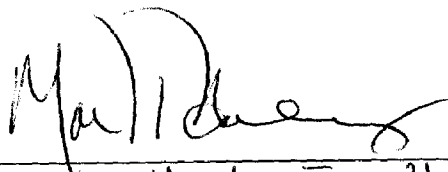
7. **GENERAL PROVISIONS.**

7.1 **Loan and Security Agreement Controls.** This Security Agreement is supplemental to the Loan Agreement, the terms of which, including, without limitation, the notice and governing law provisions, the waiver of jury trial, consent to service of process and jurisdiction, and prohibitions of non-written waivers, the Borrower expressly accepts, confirms, and acknowledges are incorporated herein by reference. In the event of any irrevocable conflict between the provisions of this Security Agreement and the Loan Agreement, the provisions of the Loan Agreement shall govern.

7.2 **Specific Enforcement.** Due to the unique nature of the Trademark Collateral and in order to preserve its value, the Borrower agrees that the Borrower's agreements, duties, and obligations under this Security Agreement shall be subject to specific enforcement and other appropriate equitable orders and remedies.

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

BROWN & HALEY

X By: 
Name: Mark T. Haley
TITLE Chairman + CEO

Title: _____

BANC OF AMERICA COMMERCIAL FINANCE CORPORATION, THROUGH ITS COMMERCIAL FUNDING DIVISION

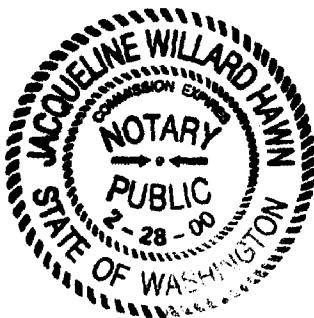
By: Brad Hall
Name: Brad Hall
Title: Senior Vice President

STATE OF WASHINGTON)
)
County of Pierce) ss.

I certify that I know or have satisfactory evidence that Mark T. Haley is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath, stated that he was authorized to execute the instrument and acknowledge it as the CEO of **BROWN & HALEY**, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: December 17, 1999.

Jacqueline W. Maun
NOTARY PUBLIC
Print Name: Jacqueline W. Maun
My appointment expires: 2/28/00



STATE OF NEW YORK)

) ss.

County of New York)

I certify that I know or have satisfactory evidence that Ben Hall is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath, stated that he was authorized to execute the instrument and acknowledge it as the Senior Vice Pres of **BANC OF AMERICA COMMERCIAL FINANCE CORPORATION, THROUGH ITS COMMERCIAL FUNDING DIVISION**, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: December 17, 1999.



[Signature]
NOTARY PUBLIC
Print Name: Matthew Lindeman
My appointment expires: 5-20-2000

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EXHIBIT "A"**BROWN & HALEY****TRADEMARK APPLICATIONS/ISSUANCES****United States Trademarks**

Registration No.	Trademark	Registration Date
191,430	Almond Roca	11/11/24
1,231,271	Almond Roca	03/15/83
2,191,144	Almond Roca	09/22/98
1,179,421	Almond Roca & Design	11/24/81
1,958,366	America's Finest Confection	02/27/96
2,096,571	Belgian Cremes	09/16/97
834,846	Brown & Haley	09/05/67
905,608	Brown & Haley Almond Roca	01/05/71
1,766,065	Brown & Haley Belgian Cremes	04/20/93
1,688,447	Brown & Haley Selections	05/19/92
1,933,046	Brown & Haley Stylized	11/07/95
641,498	Canterbury	02/12/57
1,928,092	Cherubs Design	10/17/95
2,220,622	Chocolate Sweeties	01/26/99
1,664,285	For All the Sweet Moments in Life	11/12/91
1,266,502	Gremlins	02/07/84
1,078,011	Heart of Roca	11/22/77
1,955,209	King of My Heart & Design	02/06/96
2,261,232	Miscellaneous Design (Flame Head Logo)	07/13/99
1,676,024	Mountain	02/18/92
641,499	Mountain	02/12/57
1,253,117	Mountain Chew	10/04/83
1,595,621	Mountains	05/08/90
1,693,381	Queen of My Heart & Design	06/09/92
1,156,555	Roca	06/02/81
2,196,160	Roca	10/13/98
1,693,400	Roca Bar European White	06/09/92
1,693,399	Roca Bits	06/09/92
2,037,692	Roca Nuggets	02/11/97
2,044,856	Roca Nuts	03/11/97
1,243,812	Signature	06/28/83
1,623,868	Signature Collection	11/26/90
822,393	Smart Card	01/17/67

Austria Trademark

Registration No.	Trademark	Registration Date
74,586	Almond Roca	06/04/73

Australia Trademarks

Registration No.	Trademark	Registration Date
B460114	Almond Roca America's Finest Confection	02/17/87
B154669	Almond Roca Label	07/02/59
B193774	Roca	03/31/65

Brunei Trademarks

Registration No.	Trademark	Registration Date
11,700	Almond Roca	08/02/82
12,025	Brown and Haley	08/02/82
11,699	Roca	08/02/82

Myanmar Trademarks

Registration No.	Trademark	Registration Date
4/1532/95	Almond Roca	07/06/95
4/1531/95	Roca	07/06/95

Benelux Trademarks

Registration No.	Trademark	Registration Date
317014	Almond Roca	01/26/73
317013	Brown & Haley Almond Roca	01/26/73
320603	Label	01/26/73

Canada Trademarks

Registration No.	Trademark	Registration Date
278,325	Almond Roca	03/31/83
157,480	Brown & Haley	07/05/68
300,870	Gremlins	03/15/85
229,710	Heart of Roca	08/18/78
155,141	Mountain	01/19/88
277,798	Roca	03/18/83

Switzerland Trademark

Registration No.	Trademark	Registration Date
344,268	Almond Roca	02/07/66

China Trademark

Registration No.	Trademark	Registration Date
169875	Roca	01/15/83

Community Trademarks

Registration No.	Trademark	Registration Date
42028	Almond Roca	04/01/96
41988	Roca	04/01/96

Germany Trademark

Registration No.	Trademark	Registration Date
845,628	Almondroca	01/25/67
1,065,200	Brown & Haley Almond Roca & Design	06/29/84

Denmark Trademark

Registration No.	Trademark	Registration Date
472/65	Almond Roca	02/13/65
622/65	Almond Roca Picture Mark	03/06/65

Spain Trademark

Registration No.	Trademark	Registration Date
1,047,838	Brown & Haley Almond Roca & Design	10/23/86

France Trademarks

Registration No.	Trademark	Registration Date
1221957	Almond Roca	12/29/72
1221959	Almond Roca Label	12/29/72
1221958	Brown & Haley Almond Roca	12/29/72

United Kingdom Trademarks

Registration No.	Trademark	Registration Date
1301206	Almond Roca	02/17/87
B832370	Almond Roca & Design	03/22/62
B889307	Almond Roca Containers	01/14/66
1407587	Brown & Haley Stylized	12/08/89
1400590	Roca	10/06/86

Hong Kong Trademarks

Registration No.	Trademark	Registration Date
807/1993	Almond Roca	08/02/89
B1698/1983	Almond Roca	09/12/80
B72/1988	Almond Roca	04/24/82
1700/1983	Almond Roca in Chinese Characters	05/15/81
B1699/1983	Brown & Haley Almond Roca "Label" (Older Form)	05/15/81
1320/1965	Roca	04/23/65

Indonesia Trademarks

Registration No.	Trademark	Registration Date
358,670	Brown & Haley Almond Roca "Label" (Older Form)	04/14/96
110,002	Roca and Design (Box)	04/13/76

Italy Trademark

Registration No.	Trademark	Registration Date
714857	Almond Roca	07/03/95

Japan Trademarks

Registration No.	Trademark	Registration Date
627604	Almond Roca	10/28/63
1857559	Almond Roca in Katakana	04/23/86
1752335	Roca	03/25/85
1752334	Roca in Katakana	03/25/85

Cambodia Trademarks

Registration No.	Trademark	Registration Date
2992	Almond Roca	05/03/93
2991	Roca	05/03/93

South Korea Trademarks

Registration No.	Trademark	Registration Date
204529	Almond Roca	11/08/90
63073	Roca	07/16/79
64779	Roca in Korean Characters	09/27/79

Malaya Trademark

Registration No.	Trademark	Registration Date
M/B59090	Brown & Haley Almond Roca "Label" (Older Form)	03/03/72

Mexico Trademark

Registration No.	Trademark	Registration Date
303959	Almond Roca	05/21/81

Malaysia Trademark

Registration No.	Trademark	Registration Date
85/05304	Almond Roca	12/05/85

Norway Trademark

Registration No.	Trademark	Registration Date
63912	Almond Roca	05/14/64

New Zealand Trademark

Registration No.	Trademark	Registration Date
B68305	Almond Roca Label	03/20/61
B78139	Roca	03/26/65

Panama Trademark

Registration No.	Trademark	Registration Date
056,365	Almond Roca	01/20/93

Philippines Trademarks

Registration No.	Trademark	Registration Date
36,427	Almond Roca	01/07/87
36,426	Almond Roca & Design	01/07/87
36,425	Roca	01/07/87

Portugal Trademarks

Registration No.	Trademark	Registration Date
136,021	Almond Roca (Stylized)	09/11/70
214,843	Roca	10/10/88

Puerto Rico Trademark

Registration No.	Trademark	Registration Date
23,328	Almond Roca	12/29/80

Saudi Arabia Trademarks

Registration No.	Trademark	Registration Date
114/74	Almond Roca & Design	06/19/83
116/25	Almond Roca in Arabic Characters	11/22/81
116/24	Roca	11/22/81

Sweden Trademark

Registration No.	Trademark	Registration Date
112 931	Almondroca	05/14/65

Singapore Trademarks

Registration No.	Trademark	Registration Date
5431/85	Almond Roca	12/02/85
B54199	Brown & Haley Almond Roca "Label" (Older Form)	03/06/72
B54032	Roca	02/17/72

Thailand Trademarks

Registration No.	Trademark	Registration Date
5346	Almond Roca	06/25/82
229460/TM810	Almond Roca Label	06/25/82
8958	Roca	05/17/83

Taiwan Trademarks

Registration No.	Trademark	Registration Date
34868	Almond Roca	04/01/69
65595	Almond Roca in Chinese Characters	10/01/73

Vietnam Trademarks

Registration No.	Trademark	Registration Date
10963	Almond Roca	01/28/94
10962	Roca	01/28/94

Sarawak Trademarks

Registration No.	Trademark	Registration Date
10807	Brown & Haley Almond Roca "Label" (Older Form)	03/07/72
10744	Roca (Label)	02/18/72

South Africa Trademark

Registration No.	Trademark	Registration Date
62/3824	Roca	11/09/62

U.S. Application

U.S. Serial Number	Trademark	Application Date
75/551,312	Profile Head Design	09/11/98 (first use 06/96)

State Registrations

State and Registration Number	Trademark	Registration Date
Arkansas 1198	Roca	01/29/75
West Virginia 178161	Roca	04/30/45
Pennsylvania 0774770	Almond Roca	11/27/78