

12-12-2000



101547427

RECORDATION FORM COVER SHEET TRADEMARKS ONLY

02.02.01

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

Effective Date
Month Day Year

Other _____

Conveying Party

Mark if additional names of conveying parties attached

Name Acirca, Inc.

Execution Date
Month Day Year
10/24/2000

Formerly _____

Individual General Partnership Limited Partnership Corporation Association

Other _____

Citizenship/State of Incorporation/Organization Delaware

Receiving Party

Mark if additional names of receiving parties attached

Name Manufacturers and Traders Trust Company

DBA/AKA/TA M&T Bank

Composed of _____

Address (line 1) One M&T Plaza

Address (line 2) _____

Address (line 3) Buffalo

NY

14240

City

State/Country

Zip Code

Individual General Partnership Limited Partnership Association

Corporation Association

Other _____

Citizenship/State of Incorporation/Organization New York

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.)

12/11/2000 GTON11 00000175 2238136

FOR OFFICE USE ONLY

01 FC:481 40.00 OP
02 FC:482 75.00 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, D.C. 20231

TRADEMARK

REEL: 002192 FRAME: 0560

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)

| | | |
|----------------------|----------------------|----------------------|
| <input type="text"/> | <input type="text"/> | <input type="text"/> |
| <input type="text"/> | <input type="text"/> | <input type="text"/> |
| <input type="text"/> | <input type="text"/> | <input type="text"/> |

Registration Number(s)

| | | |
|--|--|--------------------------------------|
| <input type="text" value="2,238,136"/> | <input type="text" value="1,651,143"/> | <input type="text" value="901,110"/> |
| <input type="text" value="901,418"/> | <input type="text"/> | <input type="text"/> |
| <input type="text"/> | <input type="text"/> | <input type="text"/> |

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.

Nedric L. Nissly, Esquire



10-24-00

Name of Person Signing

Signature

Date Signed

**COLLATERAL ASSIGNMENT OF TRADEMARKS, COPYRIGHTS AND
OTHER INTELLECTUAL PROPERTY RIGHTS AND SECURITY AGREEMENT**

THIS COLLATERAL ASSIGNMENT OF TRADEMARKS, COPYRIGHTS AND OTHER INTELLECTUAL PROPERTY RIGHTS AND SECURITY AGREEMENT ("**Security Agreement**"), is entered into as of October 24, 2000, between ACIRCA, INC., a Delaware corporation having its chief executive office at 4350 North Fairfax Drive, Suite 350, Arlington, Virginia 22203 ("**Assignor**"), and MANUFACTURERS AND TRADERS TRUST COMPANY, d/b/a M&T BANK, a New York banking corporation with banking offices at One M&T Plaza, Buffalo, NY 14240 ("**Bank**").

A. Assignor has executed and delivered to the Bank its Term Note, dated contemporaneously herewith ("**Note**"), in the aggregate principal amount of One Million One Hundred Ninety One Thousand Six Hundred Seventy Dollars and Thirty Six Cents (\$1,191,670.36), pursuant to a certain Workout and Payment Agreement dated contemporaneously herewith, between Assignor and the Bank, and various other loan documents ("**Loan Documents**").

B. Pursuant to and/or as contemplated by that certain Share Purchase Agreement between Walnut Acres, Inc. ("**WAI**") and Pan Pacific Ventures, LP ("**PPV**") of even date herewith, WAI and PPV constituting the only members in Walnut Acres Organic Farms, LLC ("**WAOF**"), WAI has, among other things, transferred to WAOF all of its rights, title and interest in and to the Intellectual Property (as hereinafter defined). Additionally, pursuant to that certain Amendment No. 1 to Assignment of Trademarks, Copyrights and Other Intellectual Property Rights between and among WAOF, PPV, WAI and Ruth Keene Anderson, Robert B. Anderson, Marjorie Hartley, Jocelyn Keene, the Estate of Betty Keene (by its executor and/or trustees) and Paul Keene (collectively, the "**Anderson/Keene Group**") of even date herewith, such parties have confirmed, supplemented, amended or restated certain of the rights and restrictions, to become effective as of the date hereof, under that certain Assignment of Trademarks, Copyrights and Other Intellectual Property Rights dated as of July 13, 1999 between and among WAI, WAOF, PPV and each member of the Anderson/Keene Group.

C. Pursuant to that certain Assignment of Trademarks, Copyrights and Other Intellectual Property Rights between WAOF and Assignor of even date, WAOF has assigned all of its rights, title and interest in and to the Intellectual Property to Assignor.

D. To secure the complete and timely satisfaction of all existing and future indebtedness and obligations of the Assignor to Bank ("**Liabilities**"), Assignor has agreed to assign to Bank all now owned and after acquired Intellectual Property, including without limitation the Trademarks (as hereinafter defined).

NOW, THEREFORE, in consideration of the premises, and intending to be legally bound hereby, Assignor hereby agrees with Bank as follows:

1. Definitions.

(a) **"Trademarks"** means, collectively, (a) the names "Walnut Acres" and "Walnut Acres Organic Farms" (as trade names, trademarks, service marks and otherwise), all variations thereof and all names, marks and logos that include such name, (b) all other marks listed on **Schedule "A"** attached hereto, (c) all other trademarks, trade names, service marks, logos and other marks used to identify Assignor's products, services and business, whether or not registered (d) any other marks that are part of Assignor's Intellectual Property, (e) all trademark applications and registrations with respect to any of the foregoing, and (f) all goodwill associated with or related to any of the foregoing.

(b) **"Intellectual Property"** means, collectively, all of the following intangible legal rights, existing or applicable anywhere in the world, acquired directly or indirectly from WAI, WAOF and/or the Anderson/Keene Group and/or their respective successors and assigns, including those existing or acquired by ownership, license or other legal operation, whether or not filed, perfected, registered or recorded: (i) all patents, patent applications, patent disclosures and related patent rights, including any and all preliminary applications, continuations (in part or whole), divisions, reissues, reexaminations, renewals, substitutions or extensions thereof which have been filed by any person or entity of any nature (**"Person"**) or are issued to any Person or are in preparation anywhere in the world (the **"Patent Rights"**); (ii) all copyrights, whether or not registered, including all registrations and applications therefor, and all creative works or other works of authorship, including computer programs (the **"Copyright Rights"**); (iii) all Trademarks, whether or not registered; (iv) all rights to inventions, trade secrets, confidential information, designs, drawings and know-how; (v) all rights to technology and other intellectual or industrial property and proprietary rights; (vi) all rights relating to the protection of the foregoing or premised upon any of the foregoing; and (vii) all rights to sue or make any claims for any past, present or future infringement, misappropriation or unauthorized use of any of the foregoing rights and the right to all income, damages and other payments that are now or may hereafter become due or payable with respect to any of the foregoing rights, including damages for past, present or future infringement, misappropriation or unauthorized use thereof.

2. To secure the complete and timely satisfaction and performance of the Liabilities, Assignor hereby grants, assigns and conveys to Bank Assignor's entire right, title and interest in all now owned and after-acquired Intellectual Property and all associated slogans, phrases, and historical references, including without limitation the Trademarks.

3. Assignor covenants and warrants that:

(a) Assignor is the sole and exclusive owner of the entire and, other than with respect to any indebtedness of WAOF to the Bank, unencumbered right, title and interest in the Intellectual Property, free and clear of any liens, charges and encumbrances, including without limitation pledges, assignments, licenses, and covenants by Assignor not to sue third persons;

(b) The registrations of the Trademarks identified in Schedule "A" are subsisting and have not been adjudged invalid or unenforceable, in whole or in part;

(c) To the best of Assignor's knowledge, each of the Trademarks and other Intellectual Property rights is valid and enforceable;

(d) To the best of Assignor's knowledge the Trademarks and other Intellectual Property rights do not infringe upon the marks of any third parties, and Assignor is aware of no claims of infringement relative to the Trademarks or other Intellectual Property Rights;

(e) Assignor has the unqualified right to enter into this Security Agreement and perform its terms;

(f) Assignor will use for the duration of this Security Agreement proper statutory notice of trademark registration and ownership; and

(g) Assignor will use for the duration of this Security Agreement consistent standards of quality in its manufacture of products and delivery of services sold under the Intellectual Property, including without limitation the Trademarks, and specifically shall continue to meet the high standards of quality which have become associated with such products and services.

4. Assignor agrees that, until all of the Liabilities shall have been satisfied in full, it will not enter into any license or any other agreement which is inconsistent with Assignor's obligations under this Security Agreement, without Bank's prior written consent.

5. If, before the Liabilities shall have been satisfied in full, Assignor shall obtain rights to any additional Intellectual Property, the provisions of paragraph 1 shall automatically apply thereto and Assignor shall give to Bank prompt notice thereof in writing.

6. Assignor authorizes Bank to modify this Security Agreement by amending Schedules "A" to include any future Intellectual Property, and trademark, Patent and Copyright applications and registrations under paragraphs 1 or 5 hereof.

7. Unless and until there shall have occurred and be continuing a default hereunder or under any of the Loan Documents, Bank hereby grants to Assignor and Assignor's duly authorized licensees the exclusive, nontransferable right and license to use the Intellectual Property on and in connection with the products sold and services rendered by Assignor and/or such licensees for Assignor's and/or such licensee's own benefit and account and for none other. Assignor agrees not to sell or assign its interest in, or grant any sublicense under, the license granted to Assignor in this paragraph 7, without the prior written consent of Bank, which consent shall not unreasonably be withheld or delayed. Assignor hereby grants to Bank and its employees and agents the right to visit Assignor's and such licensees' plants and facilities which manufacture, inspect or store products or services sold under any of the Intellectual Property, and to inspect the products or services, and quality control records relating thereto at reasonable times during the regular business hours.

Assignor shall do any and all acts required by Bank to ensure Assignor's compliance with paragraph 3 (g) herein.

8. If any default shall have occurred and be continuing hereunder or any of the Loan Documents, Assignor's license under the Intellectual Property as set forth in paragraph 7. shall terminate thereupon, and the Bank shall have, in addition to all other rights and remedies given it by this Agreement, those allowed by law and the rights and remedies of a secured party under the Uniform Commercial Code as entered in any jurisdiction in which the Intellectual Property may be located and, without limiting the generality of the foregoing, the Bank may immediately, without demand of performance and without other notice (except, in each case, as required by applicable law or as set forth next below) or demand whatsoever to Assignor, all of which are hereby expressly waived, and without advertisement, sell at public or private sale or otherwise realize upon, in Pennsylvania, or elsewhere, all or from time to time any of the Intellectual Property, or any interest which the Assignor may have therein, and after deducting from the proceeds of sale or other disposition of the Intellectual Property all expenses (including all reasonable expenses for brokers' fees and legal services), shall apply the residue of such proceeds toward the payment of the Liabilities. Any remainder of the proceeds after payment in full of the Liabilities shall be paid over to the Assignor. Notice of any sale or other disposition of the Intellectual Property shall be given to Assignor at least ten (10) days before the time of any intended public or private sale or other disposition of the Trademarks is to be made, which Assignor hereby agrees shall be reasonable notice of such sale or other disposition. At any such sale or other disposition, any holder of the Note or Bank may, to the extent permissible under applicable law, purchase the whole or any part of the Intellectual Property sold, free from any right of redemption on the part of Assignor, which right is hereby waived and released.

9. Assignor hereby authorizes and empowers Bank to make, constitute and appoint any officer or agent of Bank, as Bank may select in its exclusive discretion, as Assignor's true and lawful attorney-in-fact, with the power to endorse Assignor's name on all instruments, documents, Uniform Commercial Code financing and continuation statements to perfect, continue or maintain perfected the Bank's lien on assignment of and security interest in the Intellectual Property so long as any of the Liabilities remain outstanding and unpaid. If any default shall have occurred and be continuing hereunder or under any of the Loan Documents, Assignor hereby further authorizes and empowers Bank to make, constitute and appoint any officer or agent of Bank, as Bank may select in its exclusive discretion, as Assignor's true and lawful attorney-in-fact, with the power to endorse Assignor's name on all applications, documents, papers and instruments necessary for Bank to use all or any portion of the Intellectual Property, or to grant or issue any exclusive or non-exclusive license under all or any portion of the Intellectual Property to any third person, or necessary for Bank to assign, pledge, convey, or otherwise transfer title in or dispose of the Intellectual Property to any third person. Assignor hereby ratifies all that such attorney-in-fact shall lawfully do or cause to be done by virtue hereof. This power of attorney shall be irrevocable for the life of this Security Agreement.

10. At such time as Assignor shall completely satisfy all of the Liabilities, this Security Agreement shall terminate and Bank shall execute and deliver to Assignor all deeds, assignments and other instruments as may be necessary or proper to re-vest in Assignor full title to the Intellectual Property, subject to any disposition thereof which may have been made by Bank pursuant hereto.

11. Any and all fees, costs and expenses, of whatever kind or nature, including reasonable attorneys' fees and legal expenses incurred by Bank in connection with the enforcement of any of the provisions of this Security Agreement and all other documents relating hereto and the consummation of the transaction contemplated by the Loan Documents, the filing or recording of any documents (including all taxes in connection therewith) in public offices, the payment or discharge of any taxes, counsel fees, maintenance fees, encumbrances or otherwise protecting, maintaining or preserving the Intellectual Property, or in defending or prosecuting any actions or proceedings arising out of or related to the Intellectual Property, shall be borne and paid by Assignor on demand by Bank and until so paid shall be added to the principal amount of the Liabilities and shall bear interest at the highest rate prescribed in the Note.

12. Assignor shall have the duty, through counsel acceptable to Bank, to prosecute diligently any applications of the Intellectual Property pending as of the date of this Agreement or thereafter until the Liabilities shall have been paid in full, to make federal application on registerable but unregistered Intellectual Property and to preserve and maintain all rights in the Intellectual Property, including without limitation the payment of all maintenance fees and the prosecution of opposition and cancellation proceedings. Any expenses incurred in connection with the Intellectual Property shall be borne by Assignor. The Assignor shall not abandon any Intellectual Property application without the consent of the Bank, which consent shall not be unreasonably withheld.

13. Assignor shall have the right, with the consent of Bank, which will not be unreasonably withheld, to bring suit or to defend any opposition or cancellation proceedings in its own name to enforce or protect the Intellectual Property, in which case Bank may, if necessary be joined as a nominal party to such suit if Bank is satisfied that such joinder will not subject it to any risk of liability. Assignor shall promptly, upon demand, reimburse and indemnify Bank for all damages, costs and expenses, including legal fees, incurred by Bank pursuant to this paragraph 13.

14. If Assignor fails to comply with any of its obligations hereunder, Bank may do so in Assignor's name or in Bank's name, but at Assignor's expense, and Assignor hereby agrees to reimburse Bank in full for all expenses, including reasonable attorneys' fees incurred by Bank in protecting, defending and maintaining the Intellectual Property.

15. No course of dealing between Assignor and Bank, nor any failure to exercise, nor any delay in exercising, on the part of Bank, any right, power or privilege hereunder or under the Loan Documents shall operate as a waiver thereof, nor shall any single or partial exercise of any right.

power or privilege hereunder or thereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege

16. All of Bank's rights and remedies with respect to the Intellectual Property, whether established hereby or by the Loan Documents, or by any other agreements or by law shall be cumulative and may be exercised singularly or concurrently.

17. The provisions of this Security Agreement are severable, and if any clause or provision shall be held invalid or unenforceable in whole or in part in any jurisdiction, then such invalidity or unenforceability shall affect only such clause or provision, or part thereof, in such jurisdiction, and shall not in any manner affect such clause or provision in any other jurisdiction or any other clause or provision of this Security Agreement in any jurisdiction.

18. This Security Agreement is subject to modification only by a writing signed by the parties, except as provided in paragraph 6.

19. The benefits and burdens of this Security Agreement shall inure to the benefit of and be binding upon the respective successors and permitted assigns of the parties.

20. The validity and interpretation of this Security Agreement and the rights and obligations of the parties shall be governed by the laws of the Commonwealth of Pennsylvania and of the United States of America as interpreted in the United States Court of Appeals for the Third Circuit and the United States District Court for the Middle District of Pennsylvania.

21. Assignor hereby irrevocably consents to the exclusive jurisdiction of any state or federal court in Dauphin County, Pennsylvania and consents that the Bank may effect any service of process in the manner and at Assignor's address first set forth above; provided that nothing contained in this Security Agreement will prevent the Bank from bringing any action, enforcing any award or judgment or exercising any rights against Assignor, against any security or against any property of Assignor within any other county, state or other foreign or domestic jurisdiction. Assignor acknowledges and agrees that the venue provided above is the most convenient forum for both the Bank and the Assignor. Assignor waives (a) any objection to venue and any objection based on a more convenient forum in any action instituted under this Security Agreement; (b) any right to assert any counterclaim or setoff or any defense based upon a statute of limitations, upon a claim of laches or any other legal theory, and (c) any right to attack a final judgment that is obtained as a direct or indirect result of any such action.

WITNESS the execution hereof, under seal, as of the day and year first above written.

ATTEST:

ACIRCA, INC.

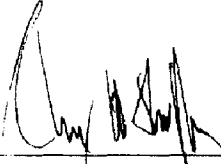
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- 0 -

By: _____ (SEAL)
(Charles C. Moore, Director/ Asst. Secty.)


**MANUFACTURERS AND TRADERS TRUST
COMPANY d/b/a M&T BANK**

Susan E. Potts
ASST. Secretary

By:  _____ (SEAL)
(Denry Shaffer, Vice President)

ATTEST:

ACIRCA, INC.

By:  (SEAL)
(Charles C. Moore, Director/ Asst. Secty.)

**MANUFACTURERS AND TRADERS TRUST
COMPANY d/b/a M&T BANK**

By: _____ (SEAL)
(Denny Shaffer, Vice President)

ACKNOWLEDGMENT

City of Washington

~~COMMONWEALTH OF VIRGINIA~~

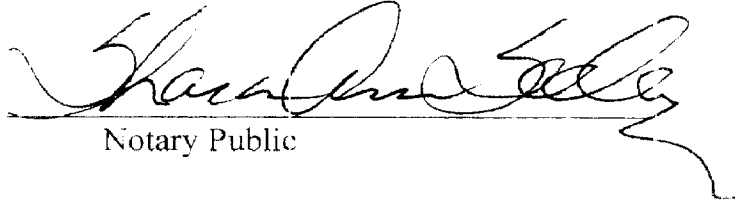
District of

~~CITY/COUNTY OF~~

Columbia

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) SS.
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On the 24th day of October, in the year 2000, before me, the undersigned, a Notary Public in and for said Commonwealth, personally appeared Charles C. Moore, known to me as a Director and Assistant Secretary of ACIRCA, INC., a corporation, known to me (or satisfactorily proven) to me to be the individual whose name is subscribed to the within instrument, and as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained.


Notary Public

My Commission Expires February 14, 2001