

05-09-2001

P. 62

FORM PTO-1594
(Rev. 6-93) **5-9-01**
OMB No. 0651-0011 (exp. 4/94)

REC



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U.S. DEPARTMENT OF COMMERCE
Patent and Trademark Office

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

1. Name of conveying party(ies):

VSS Enterprises, LLC

- ☐ Individual(s) ☐ Association
☐ General Partnership ☐ Limited Partnership

☐ Corporation-State
☒ Other Nevada limited liability company

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

3. Nature of conveyance:

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

Execution Date: March 29, 2000

2. Name and address of receiving party(ies)

Name: Foothill Capital CorporationInternal Address: 3000 WStreet Address: 2450 Colorado AvenueCity: Santa Monica State: CA ZIP: 90404

- ☐ Individual(s) citizenship
☐ Association
☐ General Partnership
☐ Limited Partnership
☒ Corporation-State California
☐ 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

4. Application number(s) or patent number(s):

A. Trademark Application No.(s)

See Schedule

B. Trademark Registration No.(s)

See Schedule2049268Additional numbers attached? ☐ Yes ☐ No

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

Name: Brobeck, Phleger & Harrison LLPInternal Address: 2100Street Address: 550 South Hope StreetAttn: Kai WilliamsonCity: Los Angeles State: CA ZIP: 900716. Total number of applications and registrations involved: 77. Total fee (37 CFR 3.41).....\$ 5190.00☐ Enclosed☒ Authorized to be charged to deposit account

8. Deposit account number:

(Attach duplicate copy of this page if paying by deposit account)

05/10/2001 DBYRNE 00000036 2049268

DO NOT USE THIS SPACE

3. 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.

Kai Williamson

Name of Person Signing

Kai Williamson

Signature

5/7/01

Date

Total number of pages including cover sheet, attachments, and document: 14Mail documents to be recorded with required cover sheet information to TRADEMARK
Commissioner of Patents & Trademarks, Box Assignment

REEL: 002290 FRAME: 0747

SCHEDULE A

to the Trademark Security Agreement Trademarks of Borrower

<u>Type</u>	<u>Jurisdiction</u>	<u>Mark</u>	<u>Registration/ Application Date</u>	<u>Registration/ Application No.</u>
Trademark	United States	Big Easy Club		2,049,268
Trademark	United States	One Stop Family Fun Spot		1,432,418
Trademark	United States	Superstar Bingo		1,770,519
Trademark	United States	Superstar Bingo and Design		1,779,268
Trademark	United States	The Flagship of the Boulder Strip		2,125,508
Trademark	United States	Don't Miss the Boat		1,418,677
Trademark	United States	Castaways	March 1, 2001	76/220157

TRADEMARK SECURITY AGREEMENT

This **TRADEMARK SECURITY AGREEMENT** (this "Agreement"), dated as of March 29, 2000, is made by **VSS ENTERPRISES, LLC**, a Nevada limited liability company ("Borrower"), in favor of **FOOTHILL CAPITAL CORPORATION**, a California corporation, ("Lender").

RECITALS

A. Borrower and Lender have entered into that certain Loan and Security Agreement, of even date herewith (as amended, restated, modified, renewed or extended from time to time, the "Loan Agreement"), pursuant to which Lender has agreed to make certain financial accommodations to Borrower, and pursuant to which (among other things) Borrower has granted to Lender a security interest in all of the general intangibles of Borrower.

B. Pursuant to the Loan Agreement and as one of the conditions precedent to the obligations of Lender under the Loan Agreement, Borrower has agreed to execute and deliver this Agreement to Lender for filing with the PTO and with any other relevant recording systems in any domestic jurisdiction, and as further evidence of and to effectuate Lender's existing security interests in the trademarks and other general intangibles described herein.

ASSIGNMENT

NOW, THEREFORE, for valuable consideration, the receipt and adequacy of which is hereby acknowledged, Borrower hereby agrees in favor of Lender as follows:

1. Definitions; Interpretation.

(a) Certain Defined Terms. As used in this Agreement, the following terms shall have the following meanings:

"Event of Default" shall have the meaning ascribed thereto in the Loan Agreement.

"Lender" shall have the meaning ascribed to such terms in the introductory paragraph of this Agreement.

"Lien" means any pledge, security interest, assignment, charge or encumbrance, lien (statutory or other), or other preferential arrangement (including any agreement to give any security interest).

"Obligations" shall have the meaning ascribed thereto in the Loan Agreement.

"Proceeds" means whatever is receivable or received from or upon the sale, lease, license, collection, use, exchange or other disposition, whether voluntary or involuntary, of any Trademark Collateral, including "proceeds" as defined at UCC Section 9306, all insurance proceeds and all proceeds of proceeds. Proceeds shall include (i) any and all accounts, chattel paper, instruments, general intangibles, cash and other proceeds, payable to or for the account of Borrower, from time to time in respect of any of the Trademark Collateral, (ii) any and all proceeds of any insurance, indemnity, warranty or guaranty payable to or for the account of Borrower from time to time with respect to any of the Trademark Collateral, (iii) any and all claims and payments (in any form whatsoever) made or due and payable to Borrower from time to time in connection with any requisition, confiscation, condemnation, seizure or forfeiture of all or any part of the Trademark Collateral by any Person acting under color of governmental authority, and (iv) any and all other amounts from time to time paid or payable under or in connection with any of the Trademark Collateral or for or on account of any damage or injury to or conversion of any Trademark Collateral by any Person.

"PTO" means the United States Patent and Trademark Office and any successor thereto.

"Trademark Collateral" has the meaning set forth in Section 2.

"Trademarks" has the meaning set forth in Section 2.

"UCC" means the Uniform Commercial Code as in effect from time to time in the State of California.

"United States" and "U.S." each mean the United States of America.

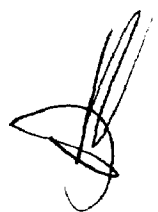
(b) Terms Defined in UCC. Where applicable and except as otherwise defined herein, terms used in this Agreement shall have the meanings assigned to them in the UCC.

(c) Interpretation. In this Agreement, except to the extent the context otherwise requires:

(i) Any reference to a Section or a Schedule is a reference to a section hereof, or a schedule hereto, respectively, and to a subsection or a clause is, unless otherwise stated, a reference to a subsection or a clause of the Section or subsection in which the reference appears.

(ii) The words "hereof," "herein," "hereto," "hereunder" and the like mean and refer to this Agreement as a whole and not merely to the specific Section, subsection, paragraph or clause in which the respective word appears.

(iii) The meaning of defined terms shall be equally applicable to both the singular and plural forms of the terms defined.



(iv) The words "including," "includes" and "include" shall be deemed to be followed by the words "without limitation."

(v) References to agreements and other contractual instruments shall be deemed to include all subsequent amendments and other modifications thereto.

(vi) References to statutes or regulations are to be construed as including all statutory and regulatory provisions consolidating, amending or replacing the statute or regulation referred to.

(vii) Any captions and headings are for convenience of reference only and shall not affect the construction of this Agreement.

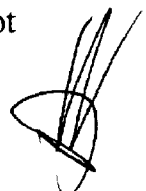
(viii) Capitalized words not otherwise defined herein shall have the respective meanings ascribed to them in the Loan Agreement.

(ix) In the event of a direct conflict between the terms and provisions of this Agreement and the Loan Agreement, it is the intention of the parties hereto that both such documents shall be read together and construed, to the fullest extent possible, to be in concert with each other. In the event of any actual, irreconcilable conflict that cannot be resolved as aforesaid, the terms and provisions of the Loan Agreement shall control and govern; provided, however, that the inclusion herein of additional obligations on the part of Borrower and supplemental rights and remedies in favor of Lender (whether under federal law or applicable California law), in each case in respect of the Trademark Collateral, shall not be deemed a conflict in the Loan Agreement.

2. Security Interest.

(a) Assignment and Grant of Security Interest. To secure the Obligations, Borrower hereby grants, assigns, transfers and conveys to Lender a continuing security interest in all of Borrower's right, title and interest in and to the following property, whether now existing or hereafter acquired or arising and whether registered or unregistered (collectively, the "Trademark Collateral"):

(i) all state (including common law) and federal trademarks, service marks and trade names, corporate names, company names, business names, fictitious business names, trade styles, trade dress, logos, other source or business identifiers, designs and general intangibles of like nature, now existing or hereafter adopted or acquired, together with and including all licenses therefor held by Borrower, and all registrations and recordings thereof, and all applications filed or to be filed in connection therewith, including registrations and applications in the PTO, any State of the United States and all extensions or renewals thereof, including without limitation any of the foregoing identified on Schedule A hereto (as the same may be amended, modified or supplemented from time to time), and the right (but not



the obligation) to register claims under any state or federal trademark law or regulation and to apply for, renew and extend any of the same, to sue or bring opposition or cancellation proceedings in the name of Borrower or in the name of Lender for past, present or future infringement or unconsented use thereof, and all rights arising therefrom throughout the world (collectively, the "Trademarks");

(ii) all claims, causes of action and rights to sue for past, present or future infringement or unconsented use of any Trademarks and all rights arising therefrom and pertaining thereto;

(iii) all general intangibles related to or arising out of any of the Trademarks and all the goodwill of Borrower's business symbolized by the Trademarks or associated therewith; and

(iv) all Proceeds of any and all of the foregoing.

(b) Certain Exclusions from Grant of Security Interest. Anything in this Agreement and the other Loan Documents to the contrary notwithstanding, the foregoing grant, assignment, transfer, and conveyance of a security interest shall not extend to, and the term "Trademark Collateral" shall not include, any item of Trademark Collateral described in Section 2(a) above that is now or hereafter held by Borrower as licensee or otherwise, solely in the event and to the extent that: (i) as the proximate result of the foregoing grant, assignment, transfer, or conveyance of a security interest, Borrower's rights in or with respect to such item of Trademark Collateral would be forfeited or would become void, voidable, terminable, or revocable, or if Borrower would be deemed to have breached, violated, or defaulted the underlying license or other agreement that governs such item of Trademark Collateral pursuant to the restrictions in the underlying license or other agreement that governs such item of Trademark Collateral; (ii) any such restriction shall be effective and enforceable under applicable law, including Section 9318(4) of the Code; and (iii) any such forfeiture, voidness, voidability, terminability, revocability, breach, violation, or default cannot be remedied by Debtor using its best efforts (but without any obligation to make any material expenditures of money or to commence legal proceedings); provided, however, that the foregoing grant, assignment, transfer, and conveyance of security interest shall extend to, and the term "Trademark Collateral" shall include, (y) any and all Proceeds of such item of Trademark Collateral to the extent that the assignment or encumbering of such Proceeds is not so restricted, and (z) upon any such licensor or other applicable party's consent with respect to any such otherwise excluded item of Trademark Collateral being obtained, thereafter such item of Trademark Collateral as well as any Proceeds thereof that might theretofore have been excluded from such grant, assignment, transfer, and conveyance of a security interest and the term "Trademark Collateral."

(c) Continuing Security Interest. Debtor agrees that this Agreement shall create a continuing security interest in the Trademark Collateral which shall remain in effect until terminated in accordance with Section 17.

(d) Incorporation into Loan Agreement. This Agreement shall be fully incorporated into the Loan Agreement and all understandings, agreements and provisions contained in the Loan Agreement shall be fully incorporated into this Agreement. Without limiting the foregoing, the Trademark Collateral described in this Agreement shall constitute part of the Collateral in the Loan Agreement.

(e) Licenses. Anything in the Loan Agreement or this Agreement to the contrary notwithstanding, Borrower may grant non-exclusive licenses of the Trademark Collateral (subject to the security interest (if any) of Secured Party therein) in the ordinary course of business consistent with past practice. For purposes hereof, licenses of any item of Trademark Collateral covering the whole of any particular product, market, or territory, in each case, in respect of any market entered into by Borrower after the date hereof, shall not be considered an exclusive license.

3. Further Assurances; Appointment of Lender as Attorney-in-Fact.

Borrower at its expense shall execute and deliver, or cause to be executed and delivered, to Lender any and all documents and instruments, in form and substance reasonably satisfactory to Lender, and take any and all action, which Lender may reasonably request from time to time, to perfect and continue perfected, maintain the priority of or provide notice of Lender's security interest in the Trademark Collateral and to accomplish the purposes of this Agreement. If Borrower refuses to execute and deliver, or fails timely to execute and deliver, any of the documents it is requested to execute and deliver by Lender in accordance with the foregoing, Lender shall have the right, in the name of Borrower, or in the name of Lender or otherwise, without notice to or assent by Borrower, and Borrower hereby irrevocably constitutes and appoints Lender (and any of Lender's officers or employees or agents designated by Lender) as Borrower's true and lawful attorney-in-fact with full power and authority, (i) to sign the name of Borrower on all or any of such documents or instruments and perform all other acts that Lender reasonably deems necessary or advisable in order to perfect or continue perfected, maintain the priority or enforceability of or provide notice of Lender's security interest in, the Trademark Collateral, and (ii) to execute any and all other documents and instruments, and to perform any and all acts and things for and on behalf of Borrower, which Lender reasonably may deem necessary or advisable to maintain, preserve and protect the Trademark Collateral and to accomplish the purposes of this Agreement, including (A) after the occurrence and during the continuance of any Event of Default, to defend, settle, adjust or institute any action, suit or proceeding with respect to the Trademark Collateral, (B) after the occurrence and during the continuance of any Event of Default, to assert or retain any rights under any license agreement for any of the Trademark Collateral, and (C) after the occurrence and during the continuance of any Event of Default, to execute any and all applications, documents, papers and instruments for Lender to use the Trademark Collateral, to grant or issue any exclusive or non-exclusive license with respect to any Trademark Collateral, and to assign, convey or otherwise transfer title in or dispose of the Trademark Collateral. The power of attorney set forth in this Section 3, being coupled with an interest, is irrevocable so long as this Agreement shall not have terminated in accordance with Section 17.



4. Representations and Warranties. Borrower represents and warrants to Lender, in each case to the best of its knowledge, information, and belief, as follows:

(a) No Other Trademarks. Schedule A sets forth, as of the Closing Date, a true and correct list of all of the existing Trademarks (whether registered or otherwise), or for which any application for registration has been filed with the PTO or any corresponding or similar trademark office of any other U.S. jurisdiction, and that are owned or held (whether pursuant to a license or otherwise) and used by Borrower.

(b) Trademarks Subsisting. Each of the Trademarks listed in Schedule A is subsisting and has not been adjudged invalid or unenforceable, in whole or in part, and, to the best of Borrower's knowledge, each of the Trademarks is valid and enforceable.

(c) Ownership of Trademark Collateral; No Violation. (i) Borrower has rights in and good and defensible title to the existing Trademark Collateral, (ii) with respect to the Trademark Collateral shown on Schedule A hereto as owned by it, Borrower is the sole and exclusive owner thereof, free and clear of any Liens and rights of others (other than the security interest created hereunder and other than Permitted Liens), including licenses, registered user agreements and covenants by Borrower not to sue third persons, and (iii) with respect to any Trademarks for which Borrower is either a licensor or a licensee pursuant to a license or licensee agreement regarding such Trademark, each such license or licensing agreement is in full force and effect, Borrower is not in material default of any of its obligations thereunder and, (i) other than the parties to such licenses or licensing agreements, or (ii) in the case of any non-exclusive license or license agreement entered into by Borrower or any such licensor regarding such Trademark, the parties to any other such non-exclusive licenses or license agreements entered into by Borrower or any such licensor with any other Person, no other Person has any rights in or to any of the Trademark Collateral. To the best of Borrower's knowledge, the past, present and contemplated future use of the Trademark Collateral by Borrower has not, does not and will not infringe upon or violate any right, privilege or license agreement of or with any other Person.

(d) No Infringement. No material infringement or unauthorized use presently is being made of any of the Trademark Collateral by any Person.

(e) Powers. Borrower has the unqualified right, power and authority to pledge and to grant to Lender a security interest in all of the Trademark Collateral pursuant to this Agreement, and to execute, deliver and perform its obligations in accordance with the terms of this Agreement, without the consent or approval of any other Person except as already obtained.

5. Covenants. So long as any of the Obligations remain unsatisfied, Borrower agrees that it will comply with all of the covenants, terms and provisions of this Agreement, the Loan Agreement and the other Loan Documents, and Borrower will promptly give Lender written notice of the occurrence of any event that could have a material adverse effect on any of the Trademarks or the Trademark Collateral, including any

petition under the Bankruptcy Code filed by or against any licensor of any of the Trademarks for which Borrower is a licensee.

6. Future Rights. For so long as any of the Obligations shall remain outstanding, or, if earlier, until Lender shall have released or terminated, in whole but not in part, its interest in the Trademark Collateral, if and when Borrower shall obtain rights to any new Trademarks, or any reissue, renewal or extension of any Trademarks, the provisions of Section 2 shall automatically apply thereto and Borrower shall give to Lender prompt notice thereof. Borrower shall do all things reasonably deemed necessary or advisable by Lender to ensure the validity, perfection, priority and enforceability of the security interests of Lender in such future acquired Trademark Collateral. If Borrower refuses to execute and deliver, or fails timely to execute and deliver, any of the documents it is requested to execute and deliver by Lender in connection herewith, Borrower hereby authorizes Lender to modify, amend or supplement the Schedules hereto and to re-execute this Agreement from time to time on Borrower's behalf and as its attorney-in-fact to include any future Trademarks which are or become Trademark Collateral and to cause such re-executed Agreement or such modified, amended or supplemented Schedules to be filed with the PTO.

7. Lender's Duties. Notwithstanding any provision contained in this Agreement, Lender shall have no duty to exercise any of the rights, privileges or powers afforded to it and shall not be responsible to Borrower or any other Person for any failure to do so or delay in doing so. Except for the accounting for moneys actually received by Lender hereunder or in connection herewith, Lender shall have no duty or liability to exercise or preserve any rights, privileges or powers pertaining to the Trademark Collateral.

8. Remedies. From and after the occurrence and during the continuation of an Event of Default, Lender shall have all rights and remedies available to it under the Loan Agreement and applicable law (which rights and remedies are cumulative) with respect to the security interests in any of the Trademark Collateral or any other Collateral. Borrower agrees that such rights and remedies include the right of Lender as a secured party to sell or otherwise dispose of its Collateral after default, pursuant to UCC Section 9504. Borrower agrees that Lender shall at all times have such royalty-free licenses, to the extent permitted by law, for any Trademark Collateral that is reasonably necessary to permit the exercise of any of Lender's rights or remedies upon or after the occurrence of (and during the continuance of) an Event of Default with respect to (among other things) any tangible asset of Borrower in which Lender has a security interest, including Lender's rights to sell inventory, tooling or packaging which is acquired by Borrower (or its successor, assignee or trustee in bankruptcy). In addition to and without limiting any of the foregoing, upon the occurrence and during the continuance of an Event of Default, Lender shall have the right but shall in no way be obligated to bring suit, or to take such other action as Lender deems necessary or advisable, in the name of Borrower or Lender, to enforce or protect any of the Trademark Collateral, in which event Borrower shall, at the request of Lender, do any and all lawful acts and execute any and all documents required by Lender in aid of such enforcement. To the extent that Lender shall elect not to bring suit to enforce such Trademark Collateral, Borrower, in the exercise of its reasonable business judgment, agrees



to use all reasonable measures and its diligent efforts, whether by action, suit, proceeding or otherwise, to prevent the infringement, misappropriation or violation thereof by others and for that purpose agrees diligently to maintain any action, suit or proceeding against any Person necessary to prevent such infringement, misappropriation or violation.

9. Binding Effect. This Agreement shall be binding upon, inure to the benefit of and be enforceable by Borrower and Lender and their respective successors and assigns.

10. Notices. All notices and other communications hereunder shall be in writing and shall be mailed, sent or delivered in accordance with the Loan Agreement.

11. Governing Law. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California, except to the extent that the validity or perfection of the security interests hereunder in respect of any Trademark Collateral are governed by federal law, in which case such choice of California law shall not be deemed to deprive Lender of such rights and remedies as may be available under federal law.

12. Entire Agreement; Amendment. This Agreement and the Loan Agreement, together with the Schedules hereto and thereto, contains the entire agreement of the parties with respect to the subject matter hereof and supersede all prior drafts and communications relating to such subject matter. Neither this Agreement nor any provision hereof may be modified, amended or waived except by the written agreement of the parties as provided in the Loan Agreement. Notwithstanding the foregoing, Lender may re-execute this Agreement or modify, amend or supplement the Schedules hereto as provided in Section 6 hereof.

13. Severability. If one or more provisions contained in this Agreement shall be invalid, illegal or unenforceable in any respect in any jurisdiction or with respect to any party, such invalidity, illegality or unenforceability in such jurisdiction or with respect to such party shall, to the fullest extent permitted by applicable law, not invalidate or render illegal or unenforceable any such provision in any other jurisdiction or with respect to any other party, or any other provisions of this Agreement.

14. Counterparts; Telefacsimile Execution. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute but one and the same agreement. Delivery of an executed counterpart of this Agreement by telefacsimile shall be equally as effective as delivery of an original executed counterpart of this Agreement. Any party delivering an executed counterpart of this Agreement by telefacsimile also shall deliver an original executed counterpart of this Agreement but the failure to deliver an original executed counterpart shall not affect the validity, enforceability, and binding effect of this Agreement



15. Loan Agreement. Borrower acknowledges that the rights and remedies of Lender with respect to the security interest in the Trademark Collateral granted hereby are more fully set forth in the Loan Agreement and all such rights and remedies are cumulative.

16. No Inconsistent Requirements. Borrower acknowledges that this Agreement and the other Loan Documents may contain covenants and other terms and provisions variously stated regarding the same or similar matters, and Borrower agrees that all such covenants, terms and provisions are cumulative and all shall be performed and satisfied in accordance with their respective terms. To the extent of any conflict between the provisions of this Agreement and the Loan Agreement, however, the provisions of the Loan Agreement shall govern.

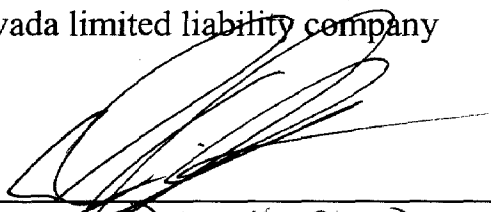
17. Termination. Upon the payment in full of the Obligations, including the cash collateralization, expiration, or cancellation of all Obligations, if any, consisting of letters of credit, and the full and final termination of any commitment to extend any financial accommodations under the Loan Agreement, this Agreement shall terminate, and Lender shall execute and deliver such documents and instruments and take such further action reasonably requested by Borrower, at Borrower's expense, as shall be necessary to evidence termination of the security interest granted by Borrower to Lender hereunder, including cancellation of this Agreement by written notice from Lender to the PTO.

[Remainder of page intentionally left blank]



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

VSS ENTERPRISES, LLC,
a Nevada limited liability company

By: 
Name: Dan K. Shaw
Title: Manager

FOOTHILL CAPITAL CORPORATION,
a California corporation

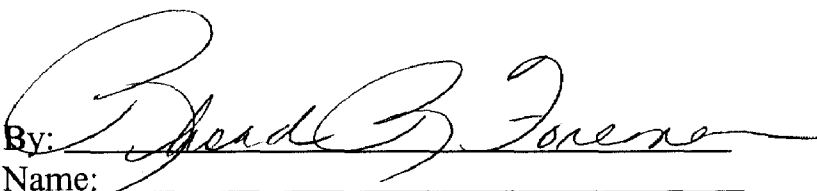
By: _____
Name: _____
Title: _____

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

VSS ENTERPRISES, LLC,
a Nevada limited liability company

By: _____
Name: _____
Title: _____

FOOTHILL CAPITAL CORPORATION,
a California corporation

By:  _____
Name: _____
Title: _____

SCHEDULE A

to the Trademark Security Agreement
Trademarks of Borrower

<u>Type</u>	<u>Jurisdiction</u>	<u>Mark</u>	<u>Registration/ Application Date</u>	<u>Registration/ Application No.</u>
Trademark	United States	Big Easy Club		2,049,268
Trademark	United States	One Stop Family Fun Spot		1,432,418
Trademark	United States	Superstar Bingo		1,770,519
Trademark	United States	Superstar Bingo and Design		1,779,268
Trademark	United States	The Flagship of the Boulder Strip		2,125,508
Trademark	United States	Don't Miss the Boat		1,418,677
Trademark	United States	Castaways	March 1, 2001	76/220157