

01-28-2002

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101962867

COVER SHEET

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

<p>1. Name of conveying party(ies): Lutece Inc. A corporation of New York</p> <p>Additional names(s) of conveying party(ies) attached? NO</p>	<p>2. Name and Address of receiving party(ies): Bank Leumi USA 562 Fifth Avenue New York, NY 10036</p> <p>A banking corporation organized and existing under the laws of New York</p> <p>If assignee is not domiciled in the United States, a domestic representative designation is attached: NO</p> <p>(Designation must be a separate document from Assignment)</p> <p>Additional name(s) &amp; address(es) attached? NO</p>
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1-16-02

<p>3. Nature of conveyance: Assignment and Trademark Security Agreement</p> <p>Execution Date: November 1, 2001</p>	<p>3. Nature of conveyance: Assignment and Trademark Security Agreement</p> <p>Execution Date: November 1, 2001</p>
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<p>4. A. Trademark Application No.(s)</p>	<p>B. Trademark Registration No.(s) 1,223,765 1,063,562</p> <p>Additional numbers attached? NO</p>
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<p>5. Name and address of party to whom correspondence concerning document should be mailed: OSTROLENK, FABER, GERB &amp; SOFFEN, LLP 1180 Avenue of the Americas New York, New York 10036-8403</p>	<p>6. Total number of documents involved: 2</p> <p>7. Total fee (37 CFR 3.41): \$ 65.00</p> <p>Enclosed as part of Check No. 07495</p> <p>In the event the actual fee is greater than the payment submitted or is inadvertently not enclosed or if any additional fee due is not paid, the Patent and Trademark Office is authorized to charge the underpayment to Deposit Account No. 15-0700.</p>
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DO NOT USE THIS SPACE

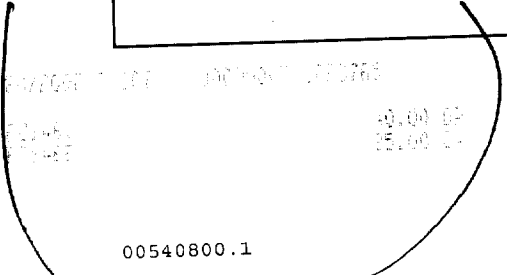
8. To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Robert C. Faber  
Name of Person Signing

*Robert C. Faber*  
Signature

November 28, 2001  
Date

Total number of pages including cover sheet, attachments, and document: 16



NOTICE OF ASSIGNMENT FOR SECURITY

(TRADEMARKS)

WHEREAS, **LUTECE, INC.** (the "Assignor") has adopted, used and is using the trademarks and service marks listed on the annexed Schedule A, which trademarks and service marks are registered or applied for in the United States Patent and Trademark Office (the "Trademarks");

WHEREAS, the Assignor has entered into a Trademark Security Agreement dated as of November 1, 2001 (the "Security Agreement") in favor of **BANK LEUMI USA** (the "Assignee");

WHEREAS, pursuant to the Security Agreement, the Assignor has assigned to the Assignee and granted to the Assignee a security interest in all right, title and interest of the Assignor in, to and under the Trademarks, together with the good-will of the business symbolized by the Trademarks and the applications and restrictions thereof, and all proceeds thereof, including, without limitation, any and all causes of action which may exist by reason of infringement thereof (the "Collateral"), to secure the payment of Indebtedness (as defined in the Security Agreement);

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, the Assignor does hereby assign unto the Assignee and grants to the Assignee a security interest in the Collateral to secure the prompt payment of Indebtedness.

The Assignor does hereby further acknowledge and affirm that the rights and remedies of the Assignee with respect to the Collateral are more fully set forth in the Security Agreement, the terms and provisions of which are hereby incorporated herein by reference as if fully set forth herein.

IN WITNESS WHEREOF, the Assignor has caused this Notice of Assignment for Security to be duly executed by its officer thereunto duly authorized as of November 1, 2001.

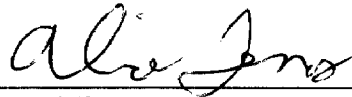
**LUTECE, INC.**

By: \_\_\_\_\_

Name: Andrew Kuruc  
Title: Secretary

STATE OF NEW YORK     )  
  ) ss.:  
COUNTY OF NEW YORK )

On this 1st day of November, 2001, before me personally came Andrew Kuruc, to me known to be the person who executed the foregoing instrument, and who, being duly sworn by me, did depose and say that he/she is the Secretary of LUTECE, INC., a New York corporation, and that he executed the foregoing instrument in the firm name of LUTECE, INC., and that he/she had authority to sign the same, and he/she acknowledged to me that he/she executed the same as the act and deed of said firm for the uses and purposes therein mentioned.



\_\_\_\_\_  
Notary Public

ALICE LEMOS  
Notary Public State of New York  
No. 41-4884038  
Qualified in Queens County  
Commission Expires Jan 26, 2003

DSN:117859.1  
00152775.1  
10/31/01 18:27

TRADEMARK  
REEL: 002430 FRAME: 0626

SCHEDULE A  
TO  
NOTICE ASSIGNMENT FOR SECURITY

**Registered Trademarks**

	Mark	Owner	Country	Class	Registration No.	Date of Registration
1.	Lutece	Lutece, Inc.	USA	42	1,223,765	1/11/83
2.	Lutece	Lutece, Inc.	USA	42	1,063,562	4/12/77

DSN:117859.1  
00152775.1  
10/31/01 18:27

**TRADEMARK**  
**REEL: 002430 FRAME: 0627**

# TRADEMARK SECURITY AGREEMENT

THIS TRADEMARK SECURITY AGREEMENT (this "Agreement") dated November 1, 2001, by and between LUTECE INC., a New York corporation ("Grantor"), and BANK LEUMI USA, as New York banking corporation, (the "Bank").

## WITNESSETH:

A. Ark Restaurants Corp., as borrower ("Borrower") and the Bank, as lender, entered into a Fourth Amended and Restated Credit Agreement dated as of December 27, 1999 (as amended, restated, supplemented or otherwise modified from time to time, including by the Amendment (as herein defined), the "Credit Agreement").

B. The Grantor is a Subsidiary, and heretofore executed and delivered a security agreement, as debtor, in favor of the Bank, as secured party; which security agreement is concurrently being amended and restated by an amended and restated security agreement dated as of even date herewith (the "Restated Security Agreement").

C. The Grantor owns and uses Trademarks (as herein defined) which are registered in the United States Patent and Trademark Office and in the future may grant Trademark Licenses (as herein defined), all as more fully described on Schedule I attached hereto and by reference made part hereof; and

D. The Bank and the Borrower concurrently are entering into an amendment to the Credit Agreement, dated even date herewith (the "Amendment"), whereby the Bank has agreed to continue to make certain Loans, and provide certain other credit facilities, to the Borrower (capitalized terms used herein and not defined shall have the meanings ascribed to them in the Credit Agreement); and

E. As a condition precedent to the execution and delivery of the Amendment and the extension of further financial accommodations to the Borrower pursuant to the Credit Agreement, the Bank has required that the Grantor grant the Bank a security interest in the Property (as defined in Section 2);

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. For purposes of this Agreement, and in addition to terms defined elsewhere in this Agreement, the following terms shall have the meanings herein specified (such meaning to be equally applicable to both the singular and plural forms of the terms defined):

“Trademark Licenses” means any written agreement or license hereafter in existence granting any Person the right to use any Trademarks, including, without limitation, the agreements listed on Schedule I attached hereto.

“Trademarks” means all of the following now or hereafter in existence, now or hereafter owned by the Grantor, or in which the Grantor now or hereafter acquires any rights, title or interest, including without limitation due to estoppel or prior use: (i) all trademarks, trade names, corporate names, company names, business names, fictitious business names, service marks logos, other source or business identifiers, and general intangibles of like nature, now existing or hereafter adopted or acquired, all registrations thereof, and all applications for registrations thereof, including, without limitation, registrations thereof and applications in the United States Patent and Trademark Office or in any similar office or agency of the United States, any state thereof or any other country or any political subdivision thereof, including, without limitation, those listed on Schedule I attached hereto together with all the rights, benefits and privileges derived therefrom and the goodwill of the business symbolized thereby, (ii) all reissues, extensions or renewals thereof and (iii) all proceeds of the foregoing.

2. As security for all of the Indebtedness of the Borrower to the Bank, the Grantor hereby assigns, grants and conveys a security interest to the Bank, in all of its rights, title and interest in, to and under the following (collectively, the “Property”):

(a) all Trademarks now or hereafter owned by the Grantor or in which the Grantor now has or hereafter acquires rights and wherever located and the goodwill of the business of the Grantor relating thereto or represented thereby, including, without limitation, each Trademark listed on Schedule I hereto; and

(b) all Trademark Licenses hereafter held by the Grantor or in which the Grantor hereafter acquires rights and wherever located, including, without limitation, the Trademark Licenses listed in Schedule I hereto, to the fullest extent permitted thereunder by such Trademark Licenses; and

(c) all products and proceeds of the foregoing, including without limitation, any claim by the Grantor against third parties for past, present or future infringement of any of the Trademarks or breach of any of the Trademark Licenses, including, without limitation, all Trademarks or Trademark Licenses listed in Schedule I hereto.

Notwithstanding the foregoing or anything else contained in this Agreement to the contrary, the assignment, grant and conveyance under this Section 2 shall not be effective as a transfer of title to the Property unless and until the Bank exercises the rights and remedies accorded to it under the Credit Agreement and by law with respect to the realization upon its security interest in the Property, and until such time the Grantor shall own, and may use and enjoy the Property in connection with its business operations, and exercise all incidents of ownership, including, without limitation, enforcement of its rights and remedies with respect to the Property, but with respect to all Property being used in the Grantor's businesses, only in a manner consistent with the preservation of the current substance, validity, registration and the

security interest herein granted in such Property except as expressly permitted by the Credit Agreement.

3. The Grantor hereby acknowledges and affirms the representations, warranties and covenants of the Grantor with respect to the Property and the rights and remedies of the Bank with respect to the security interest in the Property made and granted in the Restated Security Agreement, the terms and provisions of which are incorporated by reference herein as if fully set forth herein.

In addition, the Grantor covenants, represents and warrants that as of the date of this Agreement:

(a) The Trademarks are subsisting and have not been adjudged invalid or unenforceable;

(b) The Trademarks are valid and enforceable;

(c) To the Grantor's knowledge, there is no outstanding claim, pending or threatened in writing, that the use by the Grantor of any of the Trademarks infringes the intellectual property rights of any third person;

(d) To the Grantor's knowledge, the Grantor is the sole and exclusive owner of the entire and unencumbered right, title and interest in and to the Trademarks, free and clear of any liens, charges and encumbrances (other than in favor of the Bank), including without limitation pledges, assignments, licenses, and covenants by the Grantor not to sue third persons.

(e) The Grantor has the right to enter into this Agreement and perform its terms; and

(f) The Grantor has used, and will continue to use for the duration of this Agreement where commercially reasonable, proper statutory notice, where appropriate, in connection with its use of the Trademarks.

4. The Grantor also covenants, represents and warrants as follows:

(a) The Grantor assumes all responsibility and liability arising from the use of the Trademarks, and the Grantor hereby indemnifies and holds the Bank harmless from and against any claim, suit, loss, damage or expense (including reasonable attorneys' fees) arising out of the Grantor's operations of its businesses arising from the use of the Trademarks; and

(b) in any suit, proceeding or action brought by the Bank under any of the Trademark Licenses for any sum owing thereunder, or to enforce any provisions of such Trademark Licenses, the Grantor will indemnify and hold the Bank harmless from and against all expense, loss or damage suffered by reason of any defense, set off, counterclaim, recoupment

or reduction or liability whatsoever of the obligee thereunder, arising out of a breach of the Grantor of any obligation thereunder or arising out of any other agreement, indebtedness or liability at any time owing to or in favor of such obligee or its successors from the Grantor and all such obligations of the Grantor shall be and remain enforceable against and only against the Grantor and shall not be enforceable against the Bank.

5. (a) If, before the Indebtedness of the Borrower to the Bank shall have been paid in full, the Grantor shall (i) obtain rights to any new trademarks, (including, but not limited to, intent to use applications if a statement of use or an amendment to allege use had been filed with the U.S. Patent and Trademark Office) or (ii) enter into any Trademark Licenses the provisions of the Agreement shall automatically apply thereto and the Grantor shall give the Bank prompt written notice thereof.

(b) The Grantor grants the Bank a power-of-attorney, irrevocable so long as the Credit Agreement is in existence, to modify this Agreement by amending Schedule I to include any future Property.

6. The Grantor covenants and agrees with the Bank that from and after the date of this Agreement and until the Indebtedness of the Borrower to the Bank is fully satisfied:

(a) Further Documentation: Pledge of Instruments. The Grantor covenants, represents and warrants that at any time and from time to time, upon the written request of the Bank, it will promptly and duly execute and deliver any and all such further instruments and documents and take such further action as the Bank may reasonably deem desirable in obtaining the full benefits of this Agreement and of the rights and powers herein granted, including, without limitation, the filing of any financing or continuation statements under the Uniform Commercial Code with respect to the liens and security interests granted hereby. The Grantor also hereby authorizes the Bank to file any such financing or continuation statement without the signature of the Grantor to the extent permitted by applicable law. If any amount payable under or in connection with any of the Property shall be or become evidenced by any promissory note or other instrument, such note or instrument shall be immediately pledged to the Bank hereunder, duly endorsed in a manner satisfactory to the Bank.

(b) Maintenance of Trademarks. The Grantor will not do any act, or omit to do any act, whereby any of the Trademarks or the Trademark Licenses may become abandoned, invalidated, unenforceable, avoided, avoidable, or will otherwise diminish in value except where the Grantor deems such action or omission to be, in the exercise of its reasonable business Judgment, commercially reasonable, and shall notify the Bank immediately if it knows of any reason or has reason to know of any ground under which this result may occur. The Grantor shall, in exercising its reasonable business judgment, take appropriate action at their expense to halt the infringement of the Trademarks and shall properly exercise its duty to control the nature and quality of the goods offered by any licensees of the Trademarks in connection with the Trademark Licenses set forth in Schedule I.

7. The Grantor will not, except where it deems such action or omission to be,



in the exercise of its reasonable business judgment: (a) amend, modify, terminate or waive any provision of any of the Trademark Licenses in any manner which might materially adversely affect the value of such Trademark Licenses or any of the Trademarks, without the written consent of the Bank, (b) fail to exercise promptly and diligently each and every material right which it may have under each of the Trademark Licenses (other than any right of termination), without the prior written consent of the Bank, or (c) fail to deliver to the Bank a copy of each material demand, notice or document sent or received by it relating, in any way to any Trademark Licenses or Trademarks.

8. The Grantor will advise the Bank promptly, in reasonable detail: (a) of any lien or claim made or asserted against any of the Property, (b) of any material change in the composition of the Property, and (c) of the occurrence of any other event which would have a material adverse effect on the Property, or on the security interests created hereunder.

9. (a) The Grantor hereby irrevocably constitutes and appoints the Bank and any officer or agent thereof, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of the Grantor and in the name of the Grantor or in its own name, from time to time in the Bank's discretion, for the purposes of carrying out the terms of this Agreement, to take any and all appropriate action and to execute any and all documents and instruments which may be necessary or desirable to accomplish the purposes of this Agreement and, without limiting the generality of the foregoing, hereby gives the Bank the power and right, on behalf of the Grantor, to do the following:

(i) Upon the occurrence and continuance of an Event of Default, to ask, demand, collect, receive and give acquittances and receipts for any and all moneys due and to become due under any of the Trademark Licenses and, in the name of the Grantor or its own name or otherwise, to take possession of and endorse and collect all), checks, drafts, notes, acceptances or other instruments for the payment of moneys due under any of the Trademark Licenses and to file any claim or to take any other action or proceeding in any court of law or equity or otherwise deemed appropriate by the Bank for the purpose of collecting any and all such moneys due under any of the Trademark Licenses whenever payable;

(ii) To pay or discharge any taxes, liens, security interests or other encumbrances levied or placed on or threatened against the Property; and

(iii) Upon the occurrence and continuance of an Event of Default, (A) to direct any party liable for any payment under any of the Trademark Licenses to make payment of any and all moneys due and to become due thereunder directly to the Bank or as the Bank shall direct; (B) to receive payment of and receipt for any and all moneys, claims and other amounts due and to become due at any time in respect of or arising out of any Property; (C) to commence and prosecute any suits, actions or proceedings at law or in equity in any court of competent jurisdiction to collect the Property or any part thereof and to enforce any other right in respect of any Property; (D) to defend any suit, action or proceeding brought against the Grantor with respect to any Property; (E) to settle, compromise, or adjust any suit, action or proceeding

described above and, in connection therewith, to give such discharges or releases as the Bank may deem appropriate; and (F) generally to sell, transfer, pledge, make any agreement with respect to or otherwise deal with any of the Property as fully and completely as though the Bank were the absolute owner thereof for all purposes, and to do, at the Bank's option all acts and things which the Bank deems necessary to protect, preserve or realize upon the Property and the Bank's security interest therein, in order to effect the intent of this Agreement, all as fully and effectively as the Grantor might do.

This power of attorney is a power coupled with an interest and shall be irrevocable. Notwithstanding the foregoing, the Grantor further agrees to execute any additional documents which the Bank may require in order to confirm this power of attorney, or deem necessary to enforce any of its rights contained in this Agreement.

(b) The powers conferred on the Bank hereunder are solely to protect its interests in the Property and shall not impose any duty upon it to exercise any such powers. The Bank shall be accountable only for amounts that it actually receives as a result of the exercise of such powers and neither it nor any of its officers, directors, employees or agents shall be responsible to the Grantor for any act or failure to act, except for its own gross negligence or willful misconduct.

(c) The Grantor also authorizes the Bank to execute, in connection with any sale provided for in this Trademark Security Agreement, any endorsements, assignments or other instruments of conveyance or transfer with respect to the Property.

10. The Grantor covenants, represents and warrants that if the Grantor fails to perform or comply with any of its agreements contained herein, and the Bank, as provided for by the terms of this Agreement, shall perform or comply, or otherwise cause performance or compliance, with such agreements, the expenses of the Bank incurred in connection with such performance or compliance shall be payable by the Grantor to the Bank on demand and shall constitute Obligations secured hereby.

11. This Agreement shall terminate upon termination of the Credit Agreement in accordance with the provisions thereof. At any time and from time to time prior to such termination, the Bank may terminate its security interest in or reconvey to the Grantor any rights with respect to any or all of the Property. Upon termination of this Agreement and following a request from the Grantor, the Bank shall, at the expense of the Grantor, execute and deliver to the Grantor all assignments and other instruments as may be necessary or proper in the reasonable judgment of the Grantor in order to evidence such termination, subject to any disposition of the Property which may have been made by the Bank pursuant hereto or pursuant to the Credit Agreement.

12. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, APPLIED TO CONTRACTS TO BE PERFORMED WHOLLY WITHIN THE STATE OF NEW YORK, AND ANY APPLICABLE LAW(S) OF THE UNITED STATES OF AMERICA.

13. Simultaneous with the execution and delivery of this Agreement, Grantor will execute and deliver to the Bank a Notice of Assignment for Security in the form attached hereto as Exhibit A for recordation in the U.S. PTO.

14. To the extent that any terms of this Agreement are expressly contradicted by the terms of the Credit Agreement, the terms of the Credit Agreement will apply.

IN WITNESS WHEREOF, the Grantor and the Bank have duly executed this Agreement.

LUTECE, INC..

By: 

Name: Andrew Kuruc  
Title: Secretary

BANK LEUMI USA

By: 

Name: Richard Oleszewski  
Title: First Vice President

By: 

Name: Iris Schechter  
Title: Vice President

STATE OF NEW YORK

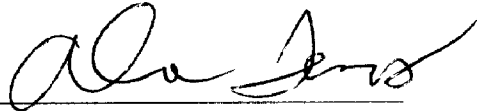
)

) ss.:

COUNTY OF NEW YORK

)

On the 1<sup>st</sup> day of November, 2001 before me personally came Iris Schechter, to me personally known and known to me to be the person described in an who executed the foregoing instrument as a Vice President of BANK LEUMI USA; who being by me duly sworn, did depose and say that she is a Vice President of BANK LEUMI USA; that the said instrument was signed on behalf of said corporation; that she signed her name thereto at the direction of the corporation; and that she acknowledged said instrument to be the free act and deed of said corporation.



Notary Public

My Commission Expires:

ALICE LEMOS  
Notary Public State of New York  
No. 41-4884038  
Qualified in Queens County  
Commission Expires Jan 26, 2003

[NOTARY SEAL]

STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF NEW YORK)

On the 1st day of November, 2001 before me personally came Andres Karsic, to me personally known and known to me to be the person described in and who executed the foregoing instrument as Secretary of Lutece, Inc., who being by me duly sworn, did depose and say that he is the Secretary of Lutece, Inc., the corporation described in and which executed the foregoing instrument; that the said instrument was signed on behalf of said corporation by order of its Board of Directors; that he signed his name thereto by like order; and that he acknowledged said instrument to be the free act and deed of said corporation.

  
\_\_\_\_\_  
Notary Public

My Commission Expires:

**ALICE LEMOS**  
Notary Public State of New York  
No. 41-4884038  
Qualified in Queens County  
Commission Expires Jan 26, 2003

\_\_\_\_\_  
[NOTARIAL SEAL]

**Schedule I**

**Trademarks**

**A. Registered Trademarks**

	Mark	Owner	Country	Class	Registration No.	Date of Registration
1.	Lutece	Lutece, Inc.	USA	42	1,223,765	1/11/83
2.	Lutece	Lutece, Inc.	USA	42	1,063,562	4/12/77
3.	Lutece	Lutece, Inc.	Japan	42	4,031,250	7/18/97
4.	Lutece	Lutece, Inc.	Mexico	42	500,855	3/5/96

**B. Pending Trademark Applications**

	Mark	Owner	Country	Class	Filing Date
1.	Lutece	Lutece, Inc.	Canada	8	12/23/94
2.	Lutece	Lutece, Inc.	Canada	32	12/23/94
3.	Lutece	Lutece, Inc.	Canada	42	12/23/94

**C. Licenses**

None.

NOTICE OF ASSIGNMENT FOR SECURITY  
(TRADEMARKS)

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WHEREAS, pursuant to the Security Agreement, the Assignor has assigned to the Assignee and granted to the Assignee a security interest in all right, title and interest of the Assignor in, to and under the Trademarks, together with the good-will of the business symbolized by the Trademarks and the applications and restrictions thereof, and all proceeds thereof, including, without limitation, any and all causes of action which may exist by reason of infringement thereof (the "Collateral"), to secure the payment of Indebtedness (as defined in the Security Agreement);

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The Assignor does hereby further acknowledge and affirm that the rights and remedies of the Assignee with respect to the Collateral are more fully set forth in the Security Agreement, the terms and provisions of which are hereby incorporated herein by reference as if fully set forth herein.

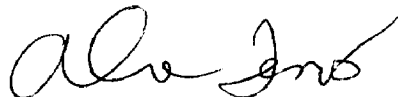
IN WITNESS WHEREOF, the Assignor has caused this Notice of Assignment for Security to be duly executed by its officer thereunto duly authorized as of November 1, 2001.

**LUTECE, INC.**

By: \_\_\_\_\_  
Name: Andrew Kuruc  
Title: Secretary

STATE OF NEW YORK     )  
  ) ss.:  
COUNTY OF NEW YORK )

On this 1st day of November, 2001, before me personally came Andrew Kuruc, to me known to be the person who executed the foregoing instrument, and who, being duly sworn by me, did depose and say that he/she is the Secretary of LUTECE, INC., a New York corporation, and that he executed the foregoing instrument in the firm name of LUTECE, INC., and that he/she had authority to sign the same, and he/she acknowledged to me that he/she executed the same as the act and deed of said firm for the uses and purposes therein mentioned.



\_\_\_\_\_  
Notary Public

ALICE LEMOS  
Notary Public State of New York  
No. 41-4884038  
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Commission Expires Jan 26, 2003

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**TRADEMARK**  
**REEL: 002430 FRAME: 0639**



SCHEDULE A  
TO  
NOTICE ASSIGNMENT FOR SECURITY

**Registered Trademarks**

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**RECORDED: 01/16/2002**

**TRADEMARK  
REEL: 002430 FRAME: 0640**