

02-12-2002



Form PTO-1594 (Rev. 03/01) OMB No. 0651-0027 (exp. 5/31/2002) Tab settings

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U.S. DEPARTMENT OF COMMERCE U.S. Patent and Trademark Office

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

1. Name of conveying party(ies):

JOHN Y. KEFFER

1-24-02

- Individual(s) [X], Association [], General Partnership [], Limited Partnership [], Corporation-State [], Other []

Additional name(s) of conveying party(ies) attached? [] Yes [X] No

3. Nature of conveyance:

- Assignment [], Merger [], Security Agreement [X], Change of Name [], Other []

Execution Date: December 19, 2001

2. Name and address of receiving party(ies)

Name: PEOPLES HERITAGE BANK, N.A.

Internal Address:

Street Address: One Portland Square

City: Portland State: ME Zip: 04112-9540

- Individual(s) citizenship [], Association [X], National Banking Association, General Partnership [], Limited Partnership [], Corporation-State [], Other []

If assignee is not domiciled in the United States, a domestic representative designation is attached: [] Yes [X] No (Designations must be a separate document from assignment) Additional name(s) & address(es) attached? [] Yes [X] No

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

A. Trademark Application No.(s) 78063343, 76059660

B. Trademark Registration No.(s) 1,860,514; 1,879,312; 1,878,867

Additional number(s) attached [X] Yes [] No

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

Name: Thomas G. Leahy, Esq.

Internal Address:

Monaghan Leahy, LLP

P.O. 7046, Portland, ME 04112-7046

Street Address: 95 Exchange Street

Portland, Maine 04101

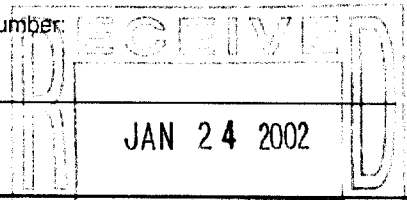
City: State: Zip:

6. Total number of applications and registrations involved: 8

7. Total fee (37 CFR 3.41) \$ 215.00

- Enclosed [X], Authorized to be charged to deposit account []

8. Deposit account number:



DO NOT USE THIS SPACE

9. Signature.

Thomas G. Leahy

Name of Person Signing

Signature

December 19, 2001

Date

Total number of pages including cover sheet, attachments, and document: 10

02/ 27/2002 LMUELLER 00000062 79063343

Mail documents to be recorded with required cover sheet information to: Commissioner of Patent & Trademarks, Box Assignments Washington, D.C. 20231

11 TC:48 40.00 DP 12 TC:48 175.00 DP

**RECORDATION FORM COVER SHEET
TRADEMARKS ONLY**

Continuation of Item 4 (Application numbers or registration numbers)

4. Trademark Registration No.(s) continued:

2,017,073

1,820,799

1,830,884

PEOPLES HERITAGE BANK, N.A.

SECURITY AGREEMENT

Re: Term Loan

Dated: December 19, 2001

I. Parties, Collateral and Obligations.

A **JOHN Y. KEFFER**, an individual residing in the State of Maine and with a mailing address of Two Portland Square, Portland, Maine 04101, referred to in the singular as "**DEBTOR**"), with a principal office at Two Portland Square, Portland, Maine (hereinafter, the "**Premises**"), hereby assigns and grants to **PEOPLES HERITAGE BANK, N.A.**, a national banking association with a place of business in Portland, Maine, and a mailing address of One Portland Square, P.O. Box 9540, Portland, Maine 04112-9540 (hereinafter referred to as "**SECURED PARTY**"), of and to the extent owned by Debtor, a security interest in the following described property, all whether now owned or hereafter acquired or arising, or wherever located, together with all additions, accessions, substitutions, replacements, products and cash and non-cash proceeds thereof and thereto (all of which is hereinafter referred to as "**COLLATERAL**"):

1. All "general intangibles" as such term is defined in Section 9-1102 of the Maine Uniform Commercial Code, including but not limited to, patents and applications therefor; trademarks, trade names, corporate names, company names, business names, domain names, fictitious business names, trade styles, service marks, logos, telephone numbers, other source and business identifiers, trademark registrations and applications for registration for any of the foregoing; including those registered and applied for tradenames, trademarks, logos and designs set forth on **EXHIBIT A** attached hereto; and all renewals, extensions and continuations-in-part of the items referred to above; any written agreement granting any right to use any of the foregoing; the right to sue for past, present and future infringements of the foregoing.

B. This security interest is given to secure:

1. repayment of a Term Loan in the current amount of THREE MILLION FIVE HUNDRED THOUSAND DOLLARS (\$3,500,000.00) of even date herewith from Forum Financial Group, Limited Liability Company ("**FFG**") to Secured Party, together with all modifications, renewals or extensions thereof in the future, for which Debtor has given a full or limited recourse guaranty, joint and several with certain other parties;
2. future advances to be made by Secured Party to FFG at Secured Party's option;

3. all expenditures by Secured Party for taxes, insurance, repairs to and maintenance of the Collateral;
4. all costs and expenses incurred by Secured Party in collecting, proving or enforcing the aforementioned obligations, including such expenses which may be incurred upon the exercise by Secured Party of any rights upon default such as preservation, preparation for sale and sale of collateral, such expenses to further include those paid or incurred, with or without formal proceedings or litigation, in dealing with any receiver, trustee, creditor's committee, debtor-in-possession, or any other person or entity in any bankruptcy, reorganization or insolvency proceeding; and
5. all liabilities of Debtor to Secured Party now existing or hereafter incurred, matured or unmatured, direct or contingent, and any renewals and extensions thereof and substitutions therefor, (all of which are hereinafter REFERRED TO AS "OBLIGATIONS" and/or "OTHER INDEBTEDNESS").

II. Warranties, Covenants and Filing Information

Debtor warrants that:

- A. The Collateral has been, and as to collateral to be acquired in the future, will be, bought and held for business use.
- B. The correct mailing address of each Debtor is set forth in Article I, Paragraph A.
- C. Debtor will not permit any records relating to the Collateral to be removed from Debtor's place of business set forth in Article I, Paragraph A, without the prior written consent of the Secured Party.
- D. Debtor will not change his residence without providing Secured Party with written notice at least thirty (30) days in advance of such change.
- E. If requested by Secured Party, Debtor will execute and deliver to Secured Party one or more financing statements which may be filed by the Secured Party in the appropriate filing offices. Debtor's signature upon, or authentication of, this Security Agreement, shall authorize Secured Party to file one or more financing statements and/or amendments thereto, in any office in any jurisdiction which Secured Party deems necessary or reasonable to perfect the security interest of Secured Party granted hereby and in all other Security Documents (as described in a Loan Agreement of even date). If any such filings have been made by Secured Party prior to the date hereof, Debtor's execution hereof shall serve to ratify the authority of Secured Party to make such filings. In the event there are any other financing statements or liens on file covering the Collateral described herein, with the exception of those between the parties hereto, Debtor shall immediately obtain the release from such other lienholders in proper form for filing.

- F. So long as any indebtedness to Secured Party secured hereby remains unpaid, Debtor will not, without the prior written consent of Secured Party, pledge or grant any new security interest in any of the Collateral to any party except Secured Party, or permit any lien or encumbrance to attach thereto, or levy to be made thereon, or any financing statement to be filed with respect thereto.
- G. Debtor shall execute any documents requested by Secured Party to register or otherwise perfect the security interest granted hereby to Secured Party, including without limitation, registration with the U.S. Patent and Trademark Office and/or U.S. Copyright Office. Debtor hereby constitutes and appoints Secured Party, while this Security Agreement remains in effect, irrevocably, and with full power of substitution and revocation, its true and lawful attorney for and in its name, place and stead, to execute and deliver from time to time financing statements and other forms for registering or perfecting the security interest created and conveyed to Secured Party under this Agreement.
- H. **Other Actions as to Any and All Collateral.** The Debtor further agrees to take any other action reasonably requested by the Secured Party to insure the attachment, perfection and priority of, and the ability of the Secured Party to enforce, the Secured Party's security interest in any and all of the Collateral including, without limitation: (a) executing, delivering and, where appropriate, filing financing statements and amendments or addenda relating thereto under the Uniform Commercial Code, to the extent, if any, that the Debtor's signature thereon is required therefor; (b) causing the Secured Party's name to be noted as secured party on any certificate of title for a titled good if such notation is a condition to attachment, perfection, or priority of, or ability of the Secured Party to enforce, the Secured Party's security interest in such Collateral; (c) complying with any provision of any statute, regulation, or treaty of the United States as to any Collateral if compliance with such provision is a condition to attachment, perfection, or priority of, or ability of the Secured Party to enforce, the Secured Party's security interest in such Collateral; (d) obtaining governmental and other third-party consents and approvals, including without limitation any consent of any licensor, lessor, or other person obligated on Collateral; (e) obtaining waivers from mortgagees and landlords in form and substance satisfactory to the Secured Party; and (f) taking all actions required by any earlier versions of the Uniform Commercial Code or by other law, as applicable in any relevant Uniform Commercial Code jurisdiction, or by other law as applicable in any foreign jurisdiction.

III. Further Warranties and Covenants of Debtor.

Debtor hereby makes the following warranties and agrees to perform the following specific duties in addition to any warranties or duties which may be prescribed by the Maine Uniform Commercial Code and not stated herein:

- A. The Debtor will perform all of the covenants of this Agreement, a Loan Agreement of even date herewith relating to the Indebtedness secured hereby (the "**Loan Agreement**"), the Note evidencing the indebtedness secured hereby and all other documents securing or relating to the Indebtedness secured hereby.

- B. Debtor shall not license the use of any of the Collateral, to any third party under an agreement not terminable upon thirty (30) days written notice other than to FFG or the parties constituting the "Companies" described in a Loan Agreement of even date herewith.
- C. Debtor will, at all times, maintain accurate books and records covering the Collateral. Secured Party is hereby given the right and privilege of auditing the books and records of the Debtor relating to the Collateral at Debtor's principal place of business set forth in Article I, Paragraph A, at any reasonable time, and from time to time, as Secured Party deems proper.
- D. Except for the security interest granted hereby and a separate security interest in connection with a separate line of credit loan from Secured Party to FFG of even date herewith, which separate security interest shall be of junior priority to the interest created hereby, the Debtor is, and as to collateral to be hereafter acquired shall be, the owner of the Collateral free from any lien, security interest or encumbrance, and Debtor shall defend the Collateral and proceeds and products thereof against all claims and demands of all persons at any time claiming the same or any interest therein adverse to Secured Party.
- E. Debtor agrees not to sell, offer to sell, or otherwise transfer, the Collateral or any interest in it except as permitted in the Loan Agreement without the prior written consent of Secured Party. If Debtor's rights in the Collateral are otherwise voluntarily or involuntarily transferred in any manner, such transfer is a default under this agreement. Whether or not Secured Party has consented to a transfer out of the ordinary course of business, or the encumbrance of the Collateral, the proceeds of such sale or encumbrance at the option of the Secured Party, shall be (1) applied on the obligations secured by this agreement, or (2) subject to the lien of this agreement.
- F. Debtor will maintain the Collateral in good condition and repair, but without permitting any lien or security interest to attach to the Collateral as a result thereof except to Secured Party as described above. If required by law, Debtor will keep the Collateral duly licensed and registered. Debtor will not use the Collateral in violation of any statute or ordinance.
- G. Debtor will join with the Secured Party in executing any further and additional security agreements, financing statements, and amendments or addenda thereto, or other instruments in form satisfactory to Secured Party as Secured Party may from time to time request in connection with the Obligations (and irrevocably authorize Secured Party from time to time to file without joinder or execution by Debtor). Debtor hereby irrevocably makes, constitutes and appoints Secured Party its attorney-in-fact with full power of substitution, for and on behalf and in the name of Debtor, to execute any additional, corrective or supplemental financing statements or other documents to perfect the security interest in the Collateral granted hereby. Debtor also ratifies its authorization for the Secured Party to have filed in any

Uniform Commercial Code jurisdiction any initial financing statements, and addenda or amendments thereto, if filed prior to the date hereof.

IV. Additional Rights of Parties

- A. Secured Party shall have the right at any time from time to time, without notice, to insure the Collateral at Debtor's expense if Debtor fails to do so, and to pay for the account of Debtor, any taxes, levies and other charges affecting the Collateral which Debtor fails to pay. Any such payments shall constitute a part of the Indebtedness of Debtor to Secured Party secured hereby.
- B. So long as Debtor is not in default hereunder, Debtor shall have the right to use the Collateral in any lawful manner not inconsistent with this agreement and with the terms of insurance thereon.

V. Events of Default.

Without waiving the demand nature of the Obligations secured hereby, Debtor shall be in default under this agreement upon the occurrence of any Event of Default as described in the Loan Agreement, and the following additional events or conditions ("**Events of Default**"):

- A. Debtor's failure to perform any covenant in this Agreement or any other agreement executed by Debtor in connection with the Obligations and/or Indebtedness referred to in Article 1, Paragraph B of this Agreement or the taking of action by Debtor which endangers the security interest of Secured Party.
- B. Uninsured loss, theft, substantial damage, destruction, or sale or encumbrance to or of the Collateral, or the making of a levy, seizure or attachment upon it, which levy, seizure or attachment is not removed within thirty (30) days thereof.
- C. Failure of the Debtor to comply with any statute, requirement, rule, regulation, order or decree of any federal, state, municipal, or other governmental authority relating to the Collateral.
- D. Any voluntary or involuntary transfer, in any manner, of Debtor's rights in any of the Collateral, except in the ordinary course, or with the prior written consent of Secured Party.

VI. Remedies.

In addition to any other remedies provided to Secured Party, including under any other Security Document or applicable law, upon an Event of Default, Secured Party may declare all obligations secured hereby immediately due and payable and may proceed to enforce payment of the same and exercise any and all of the rights and remedies provided by the Maine Uniform Commercial Code (as well as all other rights and remedies possessed by Secured Party). Secured Party shall be entitled to the immediate possession of all lists and records of Collateral, secured by this Agreement and shall have authority to enter upon any premises on which the Collateral or records with regard thereto may be situated and remove the same therefrom. Secured Party will

give Debtor reasonable notice of the time and place of any public sale of the Collateral, or of the time after which any private sale or any intended disposition of the Collateral other than public sale, is to be made. The requirement of reasonable notice shall be met if notice is mailed, postage prepaid, to the address of the Debtor designated in Article I, Paragraph A of this Agreement, at least ten (10) days before the time of sale or disposition. Secured Party may demand, collect, receipt for, settle, compromise, adjust, sue for, foreclose, or realize upon collateral, in its own name or in the name of Debtor as Secured Party may determine. Secured Party shall not be liable for any act or omission on the part of the Secured Party, its agents or employees, provided the Secured Party proceeds in a commercially reasonable manner. Debtor shall be liable for and agrees to pay to Secured Party any and all expenses incurred or paid by Secured Party in protecting or enforcing its rights under this Agreement, including reasonable attorneys' fees and legal expenses.

VII. Rules of Construction and Miscellaneous.

- A. No waiver by Secured Party of any default shall be effective unless in writing. The Secured Party's acceptance of a partial or late payment, or the failure of the Secured Party to exercise a right or remedy available to it, is not a waiver of any obligation of the Debtor or right of the Secured Party. No such act or omission on the part of the Secured Party shall constitute a modification of this Agreement, nor a waiver of any other default which may occur at a later date.
- B. This Agreement shall inure to the benefit of, and shall bind, the successors and assigns of the Secured Party and Debtor.
- C. No party to this Agreement shall be discharged by any extension of time, additional advances and notes, renewals, and extensions of any note, the taking of further security, releasing security, extinguishment of the security interest as to all or any part of the Collateral, or any other act, except a release or discharge of the secured interest upon the full payment of the obligations secured by this Agreement, including charges, expenses, fees, costs and interest.
- D. If any of the provisions of this Agreement is declared ineffective or invalid, the other provisions shall continue to be in full force and effect, and the Debtor shall continue to be liable under this Agreement.
- E. This Agreement shall be governed in all respects by the laws of the State of Maine.
- F. Debtor acknowledges that Maine law provides that a party may not maintain an action upon any agreement to lend money, extend credit, forbear from collection of a debt or make any other accommodation for the repayment of a debt for more than \$250,000.00 unless the promise, contract or agreement is in writing and is signed by a person lawfully authorized to sign for the party to be charged with the promise, contract or agreement.
- G. **IN ORDER TO OBTAIN A PROMPT DETERMINATION OF RIGHTS AND REDUCE COSTS, DEBTOR, AND BY ITS ACCEPTANCE HEREOF, SECURED PARTY, FOR THEMSELVES, THEIR HEIRS, SUCCESSORS AND ASSIGNS, HEREBY KNOWINGLY, VOLUNTARILY AND**

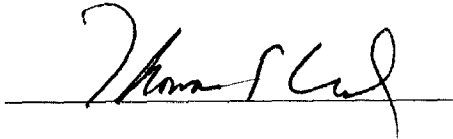
MUTUALLY WAIVE ANY AN ALL RIGHTS SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN AN ACTION OR PROCEEDING BASED UPON OR RELATED TO THIS SECURITY AGREEMENT, ANY RIGHTS WITH RESPECT TO THE COLLATERAL, AND ANY OTHER LOAN DOCUMENTS RELATING TO THE OBLIGATIONS SECURED HEREBY. DEBTOR AND SECURED PARTY HEREBY AGREE THAT ANY SUCH ACTION OR PROCEEDING SHALL BE HEARD BEFORE A SINGLE JUSTICE OF THE MAINE SUPERIOR COURT OR A FEDERAL DISTRICT JUDGE SITTING IN THE DISTRICT OF MAINE.

Signed and delivered on the day and year first above written.

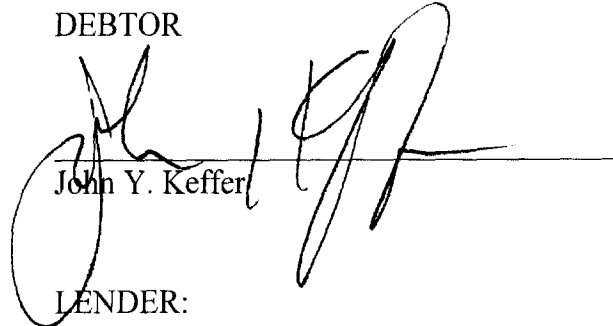
WITNESS:



WITNESS:




DEBTOR



John Y. Keffer

LENDER:

PEOPLES HERITAGE BANK, N.A.



By David A. Bronson
Its Vice President