

03-13-2003



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): NINE DOTS LLC
Individual(s) Association General Partnership Limited Partnership Corporation-State Other LIMITED LIABILITY COMPANY-NEW YORK
Additional name(s) of conveying party(ies) attached? Yes No

3-1003

2. Name and address of receiving party(ies) Name: TWO MUNKYS LLC Internal Address: Street Address: 112 Windsor Gate City: Lake Success State: NY Zip: 11020
Individual(s) citizenship Association General Partnership Limited Partnership Corporation-State Other Limited Liability Company-NEW YORK
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

3. Nature of conveyance: Assignment Merger Security Agreement Change of Name Other
Execution Date: FEBRUARY 14, 2003

4. Application number(s) or registration number(s): A. Trademark Application No.(s) B. Trademark Registration No.(s) 2,448,955; 2,454,933; 2,486,272; 2,587,299
Additional number(s) attached Yes No

5. Name and address of party to whom correspondence concerning document should be mailed: Name: William H. Cox Internal Address: Janvey, Gordon, Herlands, Randolph & Cox, LLP Street Address: 355 Lexington Avenue City: New York State: New York Zip: 10017

6. Total number of applications and registrations involved: 4
7. Total fee (37 CFR 3.41): \$ 115 Enclosed Authorized to be charged to deposit account

8. Deposit account number: (Attach duplicate copy of this page if paying by deposit account)

DO NOT USE THIS SPACE

9. 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. William H. Cox Signature Date March, 2003

03/12/2003 ECDDPER 00000143 2448955 41 FC:8521 40.00 DP 02 FC:8522 73.00 DP

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

TRADEMARK REEL: 002689 FRAME: 0187

## SECURITY AGREEMENT

This Security Agreement (this "*Agreement*"), dated as of February 14, 2003, is made between NINE DOTS LLC, a New York limited liability company (the "*Debtor*"), in favor of TWO MUNKYS LLC, a New York limited liability company (the "*Secured Party*").

WHEREAS, Debtor is or may be indebted to Secured Party pursuant to a promissory note dated as of the date hereof in the principal amount of One Million Dollars (\$1,000,000) payable to the order of Secured Party (the "*Note*") and other obligations referred to below;

NOW THEREFORE, in consideration of the premises, the mutual covenants herein contained and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the parties hereto, intending legally to be bound, hereby agree as follows:

### 1. DEFINITIONS

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

"*Collateral*" has the meaning specified in Section 2.

"*Default*" means the occurrence of any of the following events: (a) nonpayment, when due, of any amount payable on any of the Secured Obligations or failure to perform any agreement of Debtor contained herein; (b) any warranty of Debtor herein being or becoming untrue in any material respect; (c) any Obligor's becoming insolvent or unable to pay debts as they mature or making an assignment for the benefit of creditors, or any proceeding being instituted by or against any Obligor alleging that such Obligor is insolvent or unable to pay debts as they mature; (d) entry of any judgment against any Obligor; (e) death of any Obligor who is a natural person, or of any partner of any Obligor that is a partnership, or the direct or indirect majority shareholder of any Obligor that is a corporation; (f) dissolution, merger or consolidation, or transfer of a substantial part of the property of any Obligor that is not an individual; or (g) the Secured Party's feeling insecure for any reason whatsoever.

"*Obligor*" means Debtor and each other party primarily or secondarily liable any of the Secured Obligations.

"*Permitted Security Interests*" has the meaning specified in Section 3(g).

"*Secured Obligations*" means (i) all obligations of Debtor under the Note and each other promissory note by Debtor payable to the Secured Party and/or any of its affiliates, (ii) all obligations of Debtor hereunder, and (iii) all other obligations of Debtor to the Secured Party and/or any of its Affiliate and their respective successors and assigns, howsoever created, arising or evidenced, whether direct or indirect, absolute or contingent, or now or hereafter

existing, or due or to become due, in each case, as the same may be extended, renewed, amended or otherwise modified from time to time.

"UCC" means the Uniform Commercial Code as the same may, from time to time, be in effect in the State of New York.

(b) Certain Incorporated Terms. Terms (including, without limitation, "account", "chattel paper," "deposit account," "document," "goods," "instrument," "general intangible," "payment intangible," "inventory," "equipment," "investment property," "supporting obligation" and "proceeds") not otherwise defined herein, are used herein as defined in the UCC.

**2. SECURITY INTEREST.** As security for the payment and performance of the Secured Obligations, Debtor hereby grants to the Secured Party a security interest in all of Debtor's right, title and interest in, to and under all assets, wherever located and whether now existing or owned or hereafter acquired or arising, including the following (collectively, the "Collateral"): (i) all accounts; (ii) all chattel paper; (iii) all deposit accounts; (iv) all instruments; (v) all intellectual property and all general intangibles (including all payment intangibles and all patents, trademarks and copyrights and all trademark registrations listed in Schedule 2); (vi) all goods (including all inventory and all equipment); (vii) all investment property; (viii) all supporting obligations, (ix) all documents (including all warehouse receipts and bills of lading), and (x) all products and proceeds of any and all of the foregoing.

**3. DEBTOR'S REPRESENTATIONS AND WARRANTIES.** Debtor hereby represents and warrants to the Secured Party, as follows:

(a) Organization. Debtor is a limited liability company duly existing under the laws of the State of New York.

(b) Authorization. No Conflict. The execution, delivery and performance by Debtor of this Agreement (i) are within Debtor's company powers, (ii) have been duly authorized by all necessary company action, (iii) do not require any consent or approval of any person or entity (including any governmental authority), (iv) do not and will not result in a violation of any provision of law or of Debtor's organizational documents, and (v) do not and will not result in a violation of or a default under any agreement binding upon Debtor or its assets.

(c) Validity. This Agreement is the legal, valid and binding obligation of Debtor enforceable in accordance with its terms.

(d) Location of Collateral. Schedule I accurately sets forth the location of Debtor's chief executive office, its principal place of business, and all locations where Collateral is kept.

(e) Names. Trade Names and Trade Styles. Except as set forth in Schedule 1, Debtor has not at any time during the preceding five years (i) been known as or used any other company, trade or fictitious name, (ii) changed its name, (iii) been the surviving or resulting company in a merger or consolidation, or (iv) acquired through asset purchase or otherwise any business of any person or entity, other than SMLXL, Inc., a California corporation. Debtor's name (as indicated in its articles of formation) is exactly as set forth in its signature hereto.

(f) Enforceability; Priority of Security Interest. This Agreement creates in favor of the Secured Party a valid, enforceable perfected security interest in the Collateral.

(g) Other Financing Statements. No effective UCC financing statement naming Debtor as debtor (or the like) and covering any of the Collateral is on file in any filing office in any jurisdiction, except for UCC financing statements in favor of the Secured Party under this Agreement (collectively, "Permitted Security Interests").

(h) Ownership of Collateral. Debtor is (and except as permitted by Section 4(e) will continue to be) the sole and complete owner of the Collateral, free from any security interest other than Permitted Security Interests.

(i) Deposit and Security Accounts. Schedule I sets forth the names and addresses of (i) all investment property, (ii) all financial institutions at which Debtor maintains its deposit accounts and securities accounts, together with the related account names and numbers.

4. COVENANTS. Debtor agrees that it will:

(a) Preservation and Defense of Collateral. Preserve, protect and defend the Collateral against any adverse claims and demands (other than Permitted Security Interests in favor of the Secured Party).

(b) Compliance with Laws. Comply in all material respects with all applicable laws, and with all policies of insurance relating in a material way to the Collateral.

(c) Change in Name, Identity or Structure. Not change its name, identity or organizational structure, without giving the Secured Party at least 30 days' prior written notice thereof.

(d) Maintenance of Records. Keep accurate and complete books and records with respect to the Collateral.

(e) Disposition of Collateral. Not sell or assign, agree to sell or assign, or otherwise dispose of, any of the Collateral or any right or interest therein, except for the sale of inventory in the ordinary course of business.

(f) Security Interests. Keep the Collateral free of all security interests of any kind, except for Permitted Security Interests.

(g) Merger. Not be a party to any merger or consolidation.

(h) Notices, Reports and Information. (i) Notify the Secured Party of any material claim made or asserted against the Collateral by any person or entity and of any event which could materially adversely affect the value of the Collateral or the Secured Party's security interest therein; (ii) furnish to the Secured Party such statements and schedules further identifying and describing the Collateral and such other reports and other information in connection with the Collateral as the Secured Party may from time to time request, all in

reasonable detail; and (iii) permit the Secured Party to inspect the Collateral and to have reasonable access to the Debtor's books and records.

(i) Insurance. Keep the Collateral at all times insured against loss, damage, theft and other risks, in such amounts and companies and under such policies and in such form, all as shall reasonably be satisfactory to the Secured Party, which policies shall provide that loss thereunder shall be payable to the Secured Party as its interest may appear and such policies or certificates thereof shall, if the Secured Party so requests, be deposited with the Secured Party.

## 5. FURTHER ASSURANCES.

(a) Control. Promptly, upon request of the Secured Party, Debtor will take all actions necessary or desirable to establish the Secured Party's control (within the meaning of the UCC) over all securities accounts and deposit accounts.

(b) Filings. Debtor hereby authorizes the Secured Party to file a record or records (as defined in Article 9 of the UCC), including, without limitation, financing statements, in all jurisdictions and with all filing offices as the Secured Party may determine, in its sole discretion, are necessary or advisable to perfect the security interest granted to the Secured Party herein. Such financing statements may describe the Collateral in the same manner as described herein or may contain an indication or description of collateral that describes such property in any other manner as the Secured Party may determine, in its sole discretion, is necessary, advisable or prudent to ensure the perfection of the security interest in the Collateral granted to the Secured Party herein, including, without limitation, describing such property as "all assets" or "all personal property."

(c) Other Action. Debtor agrees that from time to time at the expense of Debtor, that it shall promptly execute and deliver all further instruments and documents, and take all further action, that may be necessary or desirable, or that the Secured Party may reasonably request, in order to create and/or maintain the validity, perfection or priority of and protect any security interest granted or purported to be granted hereby or to enable the Secured Party to exercise and enforce its rights and remedies hereunder with respect to any Collateral. Without limitation of the foregoing, Debtor agrees that it will, upon request of the Secured Party (i) deliver to the Secured Party all certificated securities representing any or all of the Collateral (accompanied by stock powers executed in blank), (ii) deliver to the Secured Party, all instruments and chattel paper, and all other rights to payment at any time evidenced by promissory notes, trade acceptances or other instruments (in each case appropriately endorsed and accompanied by instruments of transfer and assignment), (iii) mark all chattel paper with such legends as the Secured Party shall reasonably specify, and (iv) cause the Secured Party's security interest to be duly noted on any certificate of title covering the Collateral.

(d) Power of Attorney. The Secured Party shall have the right to, in the name of Debtor, or in the name of the Secured Party or otherwise, without notice to or assent by Debtor, and Debtor hereby constitutes and appoints the Secured Party (and any of the Secured Party's officers, employees or agents designated by the Secured Party) as Debtor's true and lawful attorney-in-fact, with full power and authority to execute any and all such other documents and

instruments, and do any and all acts and things for and on behalf of Debtor, which the Secured Party may deem necessary or advisable to maintain, protect, realize upon and preserve the Collateral and the Secured Party's security interest therein and to accomplish the purposes of this Agreement.

6. **DEFAULT**. Whenever a Default shall be existing, all Secured Obligations may (notwithstanding any provisions thereof), at the option of the Secured Party, and without demand or notice of any kind, be declared, and thereupon immediately shall become, due and payable, and the Secured Party may exercise from time to time any rights and remedies available to it under applicable law. Debtor agrees, in case of Default, to assemble, at its expense, all Collateral at a convenient place acceptable to the Secured Party. Any notification of intended disposition of any of the Collateral required by law, shall be deemed reasonable and properly given if given at least five (5) days before such disposition. Any proceeds of any disposition by the Secured Party of any of the Collateral may be applied by the Secured Party to the payment of expenses in connection with the Collateral, including reasonable attorneys' fees and legal expenses, and any balance of such proceeds may be applied by the Secured Party toward the payment of such of the Secured Obligations, and in such order of application, as the Secured Party may from time to time elect.

## 7. **GENERAL**

(a) **Debtor Remains Liable**. Anything herein to the contrary notwithstanding, (i) Debtor shall remain liable under any agreements and other documents included in the Collateral, to the extent set forth therein, to perform all of its duties and obligations thereunder to the same extent as if this Agreement had not been executed, (ii) the exercise by the Secured Party of any of the rights hereunder shall not release Debtor from any of its duties or obligations under such agreements and other documents included in the Collateral, and (iii) the Secured Party shall not have any obligation or liability under any agreements and other documents included in the Collateral by reason of this Agreement, nor shall the Secured Party be obligated to perform any of the obligations or duties of Debtor thereunder or to take any action to collect or enforce any such agreement or other document included in the Collateral hereunder.

(b) **Secured Party Performance of Debtor's Obligations**. The Secured Party may perform or pay any obligation which a Debtor has agreed to perform or pay under or in connection with this Agreement, and Debtor shall reimburse the Secured Party on demand for any amounts paid by the Secured Party pursuant to this Section 7(b).

(c) **Secured Party's Duties**. Notwithstanding any provision contained in this Agreement, the Secured Party shall have no duty to exercise any of the rights, privileges or powers afforded to it and shall not be responsible to Debtor or any other Person for any failure to do so or delay in doing so. Beyond the exercise of reasonable care to assure the safe custody of Collateral in the Secured Party's possession and the accounting for moneys actually received by the Secured Party hereunder, the Secured Party shall have no duty or liability to exercise or preserve any rights, privileges or powers pertaining to the Collateral.

(d) **License**. For the purpose of enabling the Secured Party to exercise its rights and

remedies in connection with this Agreement, Debtor hereby grants to the Secured Party an irrevocable, non-exclusive and assignable license (exercisable without payment or royalty or other compensation to Debtor) to use, license or sublicense any general intangibles to the extent relating to the Collateral.

(e) Notices. All notices required under this Agreement shall be personally delivered or sent by first-class mail, postage prepaid, or by overnight courier, to the addresses on the signature page of this Agreement, or to such other addresses as the Secured Party and the Debtor may specify from time to time in writing. Notices and other communications shall be effective (i) upon personal delivery; (ii) if mailed, upon the earlier of receipt or five (5) business days after deposit in the U.S. mail, first class, postage prepaid, or (iii) if by overnight courier, upon the earlier of receipt or two (2) business days after deposit with the courier.

(f) No Waiver; Cumulative Remedies. No failure on the part of the Secured Party to exercise, and no delay in exercising, any right, remedy, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, remedy, power or privilege preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights and remedies under this Agreement are cumulative and not exclusive of any rights, remedies, powers and privileges that may otherwise be available to the Secured Party.

(g) Costs and Expenses. Debtor agrees to pay on demand the reasonable out-of-pocket costs and expenses of the Secured Party, and the Secured Party's reasonable attorney costs, in connection with the preparation, execution, delivery, administration and enforcement of this Agreement, and any amendments, modifications or waivers of the terms thereof, and the custody of the Collateral.

(h) Binding Effect. This Agreement shall be binding upon, inure to the benefit of and be enforceable by Debtor, the Secured Party and their respective successors and assigns.

(i) Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF NEW YORK, EXCEPT AS REQUIRED BY MANDATORY PROVISIONS OF LAW AND TO THE EXTENT THE VALIDITY OR PERFECTION OF THE SECURITY INTERESTS HEREUNDER, OR THE REMEDIES HEREUNDER, IN RESPECT OF ANY COLLATERAL ARE GOVERNED BY THE LAW OF A JURISDICTION OTHER THAN NEW YORK.

(j) Termination. Either the Secured Party or Debtor may terminate this Agreement at any time upon written notice to the other of such termination; provided, however, that such termination shall in no way affect, and this Agreement shall remain fully operative as to, any transactions entered into or rights granted or Secured Obligations incurred prior to the receipt of such notice by the party to whom given. Prior to such termination, this Agreement shall be a continuing Agreement in every respect.

(k) Forum Selection And Consent To Jurisdiction Subject to Secured Party's sole and absolute election, ALL ACTIONS OR PROCEEDINGS IN ANY WAY ARISING OUT OF,

FROM OR RELATED TO THIS AGREEMENT WILL BE LITIGATED IN COURTS HAVING SITUS WITHIN NEW YORK, NEW YORK. DEBTOR HEREBY CONSENTS AND SUBMITS TO THE JURISDICTION OF ANY COURT LOCATED WITHIN NEW YORK, NEW YORK, WAIVES PERSONAL SERVICE OF PROCESS UPON DEBTOR, AND AGREES THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE BY REGISTERED MAIL DIRECTED TO DEBTOR AT THE ADDRESS STATED ON THE SIGNATURE PAGE HEREOF, AND SERVICE SO MADE WILL BE DEEMED TO BE COMPLETED UPON ACTUAL RECEIPT.

(l) WAIVER OF JURY TRIAL. DEBTOR HEREBY EXPRESSLY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS AGREEMENT OR UNDER ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION HEREWITH, AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. DEBTOR AGREES THAT IT WILL NOT ASSERT ANY CLAIM AGAINST SECURED PARTY ON ANY THEORY OF LIABILITY FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES.

(m) Entire Agreement; Amendment. This Agreement contains the entire agreement of the parties with respect to the subject matter hereof and shall not be amended except by the written agreement of the parties.

(n) Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under all applicable laws and regulations. If, however, any provision of this Agreement shall be prohibited by or invalid under any such law or regulation in any jurisdiction, it shall, as to such jurisdiction, be deemed modified to conform to the minimum requirements of such law or regulation, or, if for any reason it is not deemed so modified, it shall be ineffective and invalid only to the extent of such prohibition or invalidity without affecting the remaining provisions of this Agreement, or the validity or effectiveness of such provision in any other jurisdiction.

(o) Counterparts. This Agreement may be executed in any number of 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.



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

DEBTOR

NINE DOTS LLC

Address:

112 WINDSOR GATE  
LAKE SUCCESS, NY 11020

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

Name: BRUCE WEISFELD

Title: PRESIDENT

SECURED PARTY

TWO MUNKYS LLC

Address

112 WINDSOR GATE  
LAKE SUCCESS, NY 11020

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

Name: BRUCE WEISFELD

Title: PRESIDENT

**SCHEDULE 1**

**TO THE SECURITY AGREEMENT**

**1. Locations of Chief Executive Office and Other Locations, including of Collateral**

a. Chief Executive Office and Principal Place of Business:

b. Other locations where Debtor conducts business or Collateral is kept:

**2. Names, Trade Names and Trade Styles; Other Corporate, Trade or Fictitious Names, Etc.**

**3. Deposit and Securities Accounts (§3(i))**

**4. Investment Property - §3(i)**

Name and Address of Financial Institution		
Account Name	Account Number	

SCHEDULE 2

TO THE SECURITY AGREEMENT

U.S. Trademark Registrations Included Within "Collateral"

<u>Mark</u>	<u>Registration No.</u>	<u>Date of Issuance</u>
DRUNKNMUNKY	2448955	5/8/01
DRUNKNMUNKY	2486272	9/4/01
Nine Dots Design	2454933	5/29/01
Monkey Design	2587299	7/2/02