

11-12-03

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

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

102597775

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

1. Name of conveying party(ies): Sunstate Equipment Co., LLC

- Individual(s), Association, General Partnership, Limited Partnership, Corporation-State, Other Delaware 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 Col Assignment & Security Agreement

Execution Date: 11/5/03

2. Name and address of receiving party(ies)

Name: GE Commercial Distribution Finance Corporation, Internal Address: as Administrative Agent

Street Address: P.O. Box 411934

City: St. Louis State: MO Zip: 63141

- Individual(s) citizenship, Association, General Partnership, Limited Partnership, Corporation-State Nevada, 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 registration number(s):

A. Trademark Application No. (s)

B. Trademark Registration No. (s)

1,939,559 and 1,929,650

Additional number(s) attached Yes No

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

Name: Terri Branson

Internal Address: Lewis, Rice & Fingersh, L.C.

Street Address: 500 N. Broadway, Suite 2000

City: St. Louis State: MO Zip: 63102

6. Total number of applications and registrations involved:

2

7. Total fee (37 CFR 3.41): \$ 65.00

- Enclosed, Authorized to be charged to deposit account

8. Deposit account number:

DO NOT USE THIS SPACE

9. Signature.

Terri Branson Name of Person Signing

Terri L. Branson Signature

11/10/03

Date

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

11

11/12/2003 ECOOPER 00000277 1939559

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

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TRADEMARK REEL: 002861 FRAME: 0204

## TRADEMARK COLLATERAL ASSIGNMENT AND SECURITY AGREEMENT

This TRADEMARK COLLATERAL ASSIGNMENT AND SECURITY AGREEMENT (this "Agreement") is entered into as of November 5, 2003, by and between SUNSTATE EQUIPMENT CO., LLC, a Delaware limited liability company ("Assignor"), and GE COMMERCIAL DISTRIBUTION FINANCE CORPORATION, a Nevada corporation, as Administrative Agent for the ratable benefit of each of the Lenders ("Assignee").

In consideration of the mutual agreements below and other sufficient consideration, the receipt of which is hereby acknowledged, the parties hereto hereby agree as follows:

**1. General.** Unless the context of this Agreement clearly requires otherwise, (i) references to the plural include the singular and vice versa, (ii) references to any Person include such Person's successors and assigns but, if applicable, only if such successors and assigns are permitted by this Agreement, (iii) references to one gender include all genders, (iv) "including" is not limiting, (v) "or" has the inclusive meaning represented by the phrase "and/or", (vi) the words "hereof", "herein", "hereby", "hereunder" and similar terms in this Agreement refer to this Agreement as a whole, including its Exhibits, and not to any particular provision of this Agreement, (vii) the word "Section" or "section" and "Page" or "page" refer to a section or page, respectively, of this Agreement unless it expressly refers to something else, (viii) reference to any agreement, document, or instrument, including this Agreement, any other Loan Document and any agreement, document or instrument defined herein, means such agreement, document, or instrument as it may have been or may be amended, restated, extended, renewed, replaced, or otherwise modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof, and includes all attachments thereto and instruments incorporated therein, if any, and (ix) general and specific references to any Law means such Law as amended, modified, codified or reenacted, in whole or in part, and in effect from time to time. Section captions are for convenience only and do not affect the interpretation or construction of this Agreement.

**2. Defined Terms.** All capitalized terms not otherwise defined herein have the meanings given them in that certain Credit Facilities Agreement of even date herewith by and among Assignor, Assignee, and the other Lenders (the "Credit Agreement"). Capitalized terms used and not otherwise defined in this Agreement or the Loan Agreement have the meanings given to them in the UCC.

**3. Assignment of Trademark Collateral.** As security for the full and prompt payment and performance of all of the Loan Obligations (collectively, the "Secured Obligations"), Assignor hereby grants, assigns and conveys to Assignee a Security Interest in Assignor's entire right, title and interest in and to the Trademark Collateral. As used herein, "Trademark Collateral" means: all of Assignor's right, title and interest in and to all of its now owned or existing, filed and unfiled, and hereafter acquired or arising, filed and unfiled, trademarks, service marks, trademark or service mark registrations, trade names, and trademark or service mark applications, including each name, mark, registration, and application listed on Exhibit A attached hereto and made a part hereof (as the same may be amended pursuant hereto from time to time), and (i) renewals thereof, (ii) all income, royalties, damages and payments now and hereafter due and/or payable with respect thereto, including damages and payments for past or future infringements thereof, (iii) the right to sue for past, present and future infringements thereof, (iv) all rights, title, and interests corresponding thereto throughout the world (except that Assignor is not obligated to register the Trademark Collateral in any country in which Assignor does not conduct business) and (v) the good will of Assignor's business connected with the use of each item of Trademark Collateral, and symbolized by, the Trademark Collateral.

**4. Representations and Warranties.** Assignor represents and warrants as follows:

4.1. Exhibit A contains a complete and accurate list of all trademarks, trade names, service marks, trademark and service mark registrations, and applications for trademark or service mark registrations owned by Assignor.

4.2. Except as otherwise disclosed in Exhibit A, Assignor is the sole and exclusive owner of the Trademark Collateral, free and clear of any Security Interests, and claims of infringement upon the rights of third parties.

4.3. Except as contemplated in the Loan Agreement or as otherwise disclosed in Exhibit A, Assignor has not granted any license, release, covenant not to sue, or non-assertion assurance to any Person with respect to any part of the Trademark Collateral.

4.4. The Trademark Collateral is subsisting and has not been adjudged invalid or unenforceable, and, to Assignor's knowledge, each material item comprising the Trademark Collateral is valid and enforceable in the United States.

4.5. Assignor is duly authorized to execute and deliver this Agreement to Assignee, and this Agreement constitutes the legal, valid and binding obligation of Assignor, enforceable against Assignor in accordance with its terms.

## 5. Further Assurances.

5.1. Assignor agrees that from time to time, at its expense, it will promptly execute and deliver all further instruments and documents, and take all further action, that may be reasonably necessary in order (i) to continue, perfect, amend or protect the assignment and the Security Interest granted hereby or (ii) to enable Assignee to exercise and enforce its rights and remedies hereunder with respect to any part of the Trademark Collateral. Without limiting the generality of the foregoing, Assignor will execute and file such financing or continuation statements, amendments hereto, and such other instruments or notices as may be necessary or desirable, or as Assignee may reasonably request, in order to perfect and preserve the assignment and Security Interest granted hereby.

5.2. Assignor hereby authorizes Assignee to file one or more financing or continuation statements, and amendments thereto (and hereto as to Exhibit A), relative to all or any part of the Trademark Collateral, or subsequent additions thereto, without the signature of Assignor where permitted by law. A carbon, photographic or other reproduction of this Agreement or any financing statement covering the Trademark Collateral or any part thereof is sufficient as a financing statement where permitted by law.

5.3. Assignor agrees that, should it obtain an ownership interest in any trademark, service mark, trade name, trademark or service mark registration, or application for trademark or service mark registration which is not now identified in Exhibit A, (i) Assignor will give prompt written notice thereof to Assignee, (ii) the provisions of this Agreement, including without limitation, Section 3 will automatically apply to any such mark, registration, or application, and (iii) any such mark, registration, or application, together with the good will of the business connected with the use of the mark and symbolized by it, will automatically become part of the Trademark Collateral.

5.4. With respect to any Trademark Collateral reasonably necessary to the conduct of Assignor's business, Assignor agrees to take all reasonable steps in any proceeding before the United States Patent and Trademark Office or any similar office or agency in any other country or any political subdivision thereof, or in any court, to maintain each registered trademark, service mark, and trademark or service mark registration, and to pursue each application for trademark or service mark registration now or hereafter included in the Trademark Collateral, including the filing of applications for renewal, the

payment of maintenance fees, and participation in opposition, interference and infringement proceedings if such action is reasonably requested by Assignee or if in the reasonable judgment of Assignor's board of managers it is reasonable to undertake such action. To the extent reasonably necessary to the conduct of its business, Assignor agrees to take corresponding steps with respect to each new or other registered trademark, service mark, trademark or service mark registration to which Assignor is now or later becomes entitled. Assignor will be relieved of the obligations of this Section 5.4 upon the prior written consent of Assignee, which consent will not be unreasonably withheld. Assignor is obligated under this Section 5.4 to apply for the registration of any item of the Trademark Collateral with any government trademark office or agency of any country, other than the United States, only to the extent Assignor is conducting business in any such country.

**5.5.** If Assignor becomes aware that any item of the Trademark Collateral is infringed or misappropriated by a third party, Assignor will promptly notify Assignee and, if such action is reasonably requested by Assignee or if in the reasonable judgment of Assignor's board of managers it is reasonable to undertake such action, will promptly sue for infringement or misappropriation and for recovery of all damages caused by such infringement or misappropriation, or, with the prior written consent of Assignee, which consent will not be unreasonably withheld, will take such other actions as Assignor deems appropriate under the circumstances to protect such Trademark Collateral.

**5.6.** Assignor will continue to use reasonable and proper statutory notice in connection with its use of each registered trademark or service mark.

**6. Transfers and Other Security Interests.** Assignor will not: (i) sell, assign (by operation of law or otherwise), grant a license in or with respect to, or otherwise dispose of any of the Trademark Collateral, except as permitted by the Loan Agreement, (ii) create or suffer to exist any Security Interest or other charge upon or with respect to any of the Trademark Collateral except as otherwise disclosed in Exhibit A, or as otherwise permitted by the permitted by the Loan Agreement, or (iii) take any other action in connection with any of the Trademark Collateral that would impair the value of the interests or rights of Assignor thereunder.

**7. Assignee Appointed Attorney-in-Fact.** Assignor hereby irrevocably appoints Assignee as Assignor's attorney-in-fact, with full authority in Assignor's place, stead and on behalf of Assignor and in Assignor's names or otherwise, from time to time in Assignee's reasonable discretion, to take any action and to execute any instrument that Assignee deems reasonably necessary to accomplish the purposes of this Agreement, including after the occurrence and during the continuance of a Default: (i) to ask, demand, collect, sue for, recover, compromise, receive and give acquittance and receipts for moneys due and to become due under or in respect of any of the Trademark Collateral, (ii) to receive, endorse, and collect any drafts or other instruments, documents and chattel paper, in connection with clause (i) above, and (iii) to file any claims, take any action, or institute any proceedings that Assignee may deem necessary for the collection of any of the Trademark Collateral or otherwise to enforce the rights of Assignee with respect to any of the Trademark Collateral.

**8. Assignee May Perform.** If Assignor fails to perform any of the obligations contained herein, Assignee may perform, or cause performance of, such obligations, and the expenses of Assignee incurred in connection therewith will be payable by Assignor pursuant to the terms of this Agreement. If no Default has occurred and is continuing, Assignee shall make demand on Assignor prior to performing such obligations on Assignor's behalf.

**9. Assignee's Duties.** The powers conferred on Assignee hereunder are solely to protect its interest in the Trademark Collateral and do not impose any duty upon Assignee to exercise any such powers or to pay any royalties or related charges with respect to the Trademark Collateral. Except for the accounting for moneys actually received by it hereunder, Assignee has no duty as to any Trademark Collateral, or as

to the taking of any steps to preserve rights against other parties or any other rights pertaining to any Trademark Collateral.

**10. Remedies.** Upon the occurrence and during the continuation of any Default, (i) Assignee shall have all of the rights and remedies provided for in the Loan Agreement and the other Loan Documents and at law and equity, and (ii) all payments received by Assignor under or in connection with any of the Trademark Collateral will be received in trust for the benefit of Assignee and will be immediately paid over to Assignee in the same form as so received (with any necessary endorsement).

**11. Releases.** Release of the Trademark Collateral is governed by the Security Agreement.

**12. Survival of Provisions.** All representations, warranties, and covenants of Assignor contained herein survive the execution and delivery of this Agreement, and terminate only upon the full and irrevocable payment of all of the Secured Obligations, cancellation or termination of all of the Commitments, and when the Lenders have no other commitment to extend credit or make advances to or for the account of Assignor.

**13. Miscellaneous.**

**13.1. Notices.** All notices, consents, requests and demands to or upon the respective parties hereto must be in writing, and will be deemed to have been given or made when delivered in person to those Persons listed on the signature pages of the Loan Agreement or when deposited in the United States mail, postage prepaid, or, in the case of telegraphic notice, or the overnight courier services, when delivered to the telegraph company or overnight courier service, or in the case of telex or telecopy notice, when sent, verification received, in each case addressed as set forth on the signature pages of the Loan Agreement, or to such other address as either party may designate by notice to the other in accordance with the terms of this Section. No notice given to or demand made on Assignor by Assignee or the Lenders in any instance entitles Assignor to notice or demand in any other instance.

**13.2. Amendments and Waivers.** No amendment to, waiver of, or departure from full compliance with any provision of this Agreement, or consent to any departure by Assignor herefrom, will be effective unless it is in writing and signed by authorized officers of Assignor and Assignee; provided, however, that any such waiver or consent will be effective only in the specific instance and for the purpose for which given. No failure by Assignee or any Lender to exercise, and no delay by Assignee or any Lender in exercising, any right, remedy, power or privilege hereunder will operate as a waiver thereof, nor will any single or partial exercise by Assignee or such Lender of any right, remedy, power or privilege hereunder preclude any other exercise thereof, or the exercise of any other right, remedy, power or privilege.

**13.3. Rights Cumulative.** Each of the rights and remedies of Assignee and the Lenders under this Agreement is in addition to all of their other rights and remedies under applicable Law, and nothing in this Agreement may be construed as limiting any such rights or remedies.

**13.4. Successors and Assigns.** This Agreement binds Assignor and its successors and assigns and inures to the benefit of Assignee and the Lenders, and each of their successors, transferees, participants and assigns. Assignor may not delegate or transfer any of its obligations under this Agreement without the prior written consent of Assignee. With respect to Assignor's successors and assigns, such successors and assigns include any receiver, trustee or debtor-in-possession of or for Assignor.

**13.5. Severability.** Any provision of this Agreement which is prohibited, unenforceable or not authorized in any jurisdiction is, as to such jurisdiction, ineffective to the extent of such prohibition,

unenforceability or nonauthorization without invalidating the remaining provisions hereof or affecting the validity, enforceability or legality of such provision in any other jurisdiction unless the ineffectiveness of such provision would result in such a material change as to cause completion of the transactions contemplated hereby to be unreasonable.

**13.6. Governing Law; No Third Party Rights.** This Agreement is to be governed by and construed and interpreted in accordance with the internal Laws of the State of Missouri applicable to contracts made and to be performed wholly within such state, without regard to choice or conflicts of law principles. This Agreement is solely for the benefit of the parties hereto and the Lenders and their respective successors and assigns, and no other Person has any right, benefit, priority or interest under, or because of the existence of, this Agreement.

**13.7. Counterparts.** This Agreement may be executed by the parties hereto on any number of separate counterparts, and all such counterparts taken together constitute one and the same instrument. It is not necessary in making proof of this Agreement to produce or account for more than one counterpart signed by the party to be charged.

**13.8. Counterpart Facsimile Execution.** For purposes of this Agreement, a document (or signature page thereto) signed and transmitted by facsimile machine or telecopier is to be treated as an original document. The signature of any Person thereon, for purposes hereof, is to be considered as an original signature, and the document transmitted is to be considered to have the same binding effect as an original signature on an original document. At the request of any party hereto, any facsimile or telecopy document is to be re-executed in original form by the Persons who executed the facsimile or telecopy document. No party hereto may raise the use of a facsimile machine or telecopier or the fact that any signature was transmitted through the use of a facsimile or telecopier machine as a defense to the enforcement of this Agreement or any amendment or other document executed in compliance with this Section.

**13.9. Final Expression; No Course of Dealing.** This Agreement, together with the Loan Agreement, the other Loan Documents and any other agreement executed in connection herewith or therewith, is intended by the parties as a final expression of their agreement and is intended as a complete and exclusive statement of the terms and conditions thereof. Acceptance of or acquiescence in a course of performance or course of dealing rendered or taken under or with respect to this Agreement, the Loan Agreement or the other Loan Documents will not be relevant to determine the meaning of this Agreement, the Loan Agreement or the other Loan Documents even though the accepting or acquiescing party had knowledge of the nature of the performance and opportunity for objection.

**13.10. Negotiated Transaction.** Assignor and Assignee each represent to the other that in the negotiation and drafting of this Agreement each has been represented by and has relied upon the advice of counsel of its choice. Each of Assignor and Assignee affirm that its counsel has had a substantial role in the drafting and negotiation of this Agreement; therefore, this Agreement will be deemed drafted by each of Assignor and Assignee, and the rule of construction to the effect that any ambiguities are to be resolved against the drafter will not be employed in the interpretation of this Agreement.

**13.11. Attorney's Fees and Other Costs.** Assignor will reimburse Assignee for all expenses incurred by Assignee in seeking to collect or enforce the Secured Obligations and any other rights under this Agreement or any of the other Loan Documents or under any other instrument, document or agreement evidencing or executed in connection with any of the Secured Obligations, including reasonable attorneys' fees and actual attorneys' expenses (whether or not there is litigation), court costs and all costs in connection with any proceedings under the United States Bankruptcy Code.

**13.12. Assignment By Assignee.** To the extent permitted in the Loan Agreement, Assignee may grant a participation interest in or assign or transfer to another Person any instrument, document or agreement evidencing any of the Secured Obligations and Assignee's rights under this Agreement, and may deliver all the property which is part of the Trademark Collateral and in its possession to the participant, assignee or transferee or to any Person acting as agent for Assignee.

**13.13. Binding Arbitration.** This Agreement and the parties hereto are subject to the binding arbitration provision set forth in Section 19 of the Credit Agreement relating to any controversy or claim arising out of or relating to this Agreement. The arbitration provision is governed by the Federal Arbitration Act, Title 9 U.S.C. Sections 1 et seq., as amended.

**13.14. Invalidity/Unenforceability of Binding Arbitration; Forum; Service of Process; Jury Trial Waiver.** *IF THIS AGREEMENT IS FOUND TO BE NOT SUBJECT TO ARBITRATION, THEN:*

**13.14.1. Choice of Forum.** Subject only to the exception in the next sentence, Assignor and Assignee hereby agree to the exclusive jurisdiction of the federal court of the Eastern District of Missouri and the state courts of Missouri located in St. Louis County, Missouri and waive any objection based on venue or forum non conveniens with respect to any action instituted therein, and agree that any dispute concerning the relationship between Assignor, Assignee or any Lender or the conduct of any of them in connection with this Agreement or otherwise shall be heard only in the courts described above. Notwithstanding the foregoing: (1) Assignee shall have the right to bring any action or proceeding against any Assignor or its property in any courts of any other jurisdiction Assignee deems necessary or appropriate in order to realize on the Collateral or other security for the Secured Obligations, and (2) each party hereto acknowledges that any appeals from the courts described in the immediately preceding sentence may have to be heard by a court located outside those jurisdictions.

**13.14.2. Service of Process.** Assignor and Assignee hereby waive personal service of any and all process upon it and consent that all such service of process may be made by registered mail (return receipt requested) directed to such party at its address set forth on the signature pages of the Credit Agreement, and service so made shall be deemed to be completed five (5) days after the same shall have been so deposited in the U.S. mails. Nothing in this Section shall affect the right of Assignee to serve legal process in any other manner permitted by Law.

**13.14.3. Waiver of Jury Trial.** ANY LEGAL PROCEEDING WITH RESPECT TO ANY DISPUTE (1) ARISING UNDER THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, or (2) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM IN RESPECT OF THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR THE TRANSACTIONS RELATED HERETO OR THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER OR NOT SOUNDING IN CONTRACT OR TORT OR OTHERWISE, WILL BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE WITHOUT A JURY. ASSIGNOR, ASSIGNEE, AND EACH LENDER WAIVE ANY RIGHT TO A JURY TRIAL IN ANY SUCH PROCEEDING. Assignor, Assignee and each Lender further agrees and consents that any such claim, demand, action or cause of action shall be decided by court trial without a jury and that either may file an original counterpart or a copy of this Agreement with any court as written evidence of the consent of the parties hereto to the waiver of their right to trial by jury.

**13.15. Reinstatement.** This Agreement and any and all assignments and Security Interests created or evidenced hereby will continue to be effective or be reinstated, as the case may be, as though

such payments had not been made, if at any time any amount received by Assignee or any Lender in respect of the Secured Obligations is rescinded or must otherwise be restored or returned by Assignee or such Lender, including upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of Assignor or upon the appointment of any intervenor or conservator of, or trustee or similar official for, Assignor, any substantial part of its assets, or otherwise.

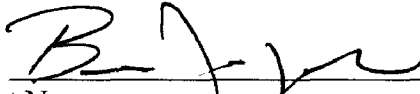
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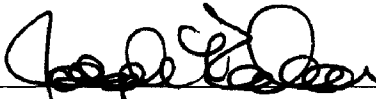
**THIS CONTRACT CONTAINS A BINDING ARBITRATION CLAUSE WHICH  
MAY BE ENFORCED BY THE PARTIES.**

IN WITNESS WHEREOF, this Agreement has been duly executed as of the date first above  
written.

SUNSTATE EQUIPMENT CO., LLC

By:   
Print Name: Benno Jurgemeyer  
Title: Executive Vice President

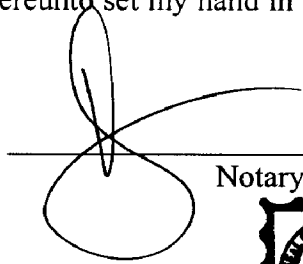
GE COMMERCIAL DISTRIBUTION FINANCE  
CORPORATION, as Administrative Agent

By:   
Print Name: Joseph F. Kinkenon  
Title: Vice President

STATE OF Arizona )  
County of Maricopa ) SS.

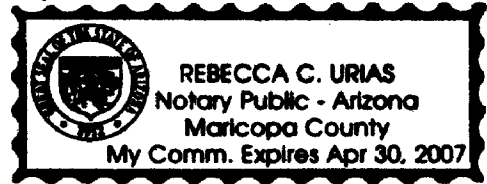
On this 5<sup>th</sup> day of November, 2003, before me personally appeared Benno Jurgemeyer, to me personally known, who being by me duly sworn, did say that he/she is the Executive Vice President of Sunstate Equipment Co., LLC, a Delaware limited liability company, and that said instrument was signed in behalf of said limited liability company, by authority of its members; and said Executive Vice President acknowledged said instrument to be the free act and deed of said limited liability company.

IN TESTIMONY WHEREOF, I have hereunto set my hand in the County and State aforesaid, the day and year first above written.



Notary Public

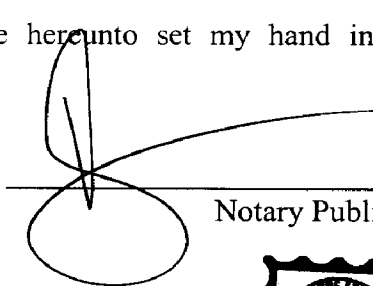
My Commission expires: 4/30/07



STATE OF Arizona )  
County of Maricopa ) SS.

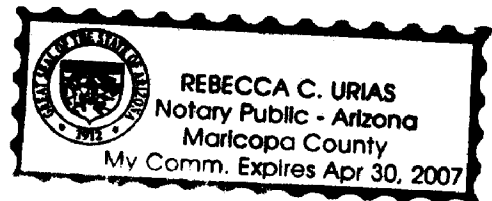
On this 5<sup>th</sup> day of November, 2003, before me personally appeared Joseph Kinkenen, to me personally known, who being by me duly sworn, did say that he/she is a Vice President of GE COMMERCIAL DISTRIBUTION FINANCE CORPORATION, a Nevada corporation, and that said instrument was signed in behalf of said corporation by authority of its Board of Directors; and said Vice President acknowledged said instrument to be the free act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand in the County and State aforesaid, the day and year first above written.



Notary Public

My Commission expires: 4/30/07



**EXHIBIT A**

**ISSUED TRADEMARK REGISTRATIONS**

<u>MARK</u>	<u>REG. NO.</u>	<u>APP. DATE</u>	<u>FIRST USE</u>	<u>COUNTRY</u>
SUNSTATE EQUIPMENT CO. and Design	1,939,559	9/26/94	8/25/78	USA
SUNSTATE EQUIPMENT CO.	1,929,650	9/26/94	8/25/78	USA