

Form PTO-1594 (Rev. 06/04)
 OMB Collection 0651-0027 (exp. 6/30/2005)

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

**RECORDATION FORM COVER SHEET
 TRADEMARKS ONLY**

To the Director of the U. S. Patent and Trademark Office: Please record the attached documents or the new address(es) below.

1. Name of conveying party(ies)/Execution Date(s):

Party America Franchising, Inc.

- Individual(s) Association
 General Partnership Limited Partnership
 Corporation-State
 Other: _____

Citizenship: MN

Execution Date(s): 10/8/04

Additional names of conveying parties attached? Yes No

3. Nature of conveyance:

- Assignment Merger
 Security Agreement Change of Name
 Other _____

2. Name and address of receiving party(ies):

Additional names, addresses, or citizenship attached? Yes No

Name: Wells Fargo Retail Finance, LLC

Internal Address: _____

Street Address: One Boston Place, 18th Floor

City: Boston

State: MA

Country: US Zip: 02108

- Association Citizenship: _____
 General Partnership Citizenship: _____
 Limited Partnership Citizenship: _____
 Corporation Citizenship: _____
 Other: ^{Limited Liability} _{Company} _____ Citizenship: DE

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)

4. Application number(s) or registration number(s) and identification or description of the Trademark(s):

A. Trademark Application No.(s):

B. Trademark Registration No.(s):

2228444; 2884374; 2113189; 2009146;
 1766370; 1517587; 1514067; 2028821;
 1349279; 2234177; 2530246; 2340998;
 2035401; 1974933

Additional sheet(s) attached? Yes No

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

Name: Christopher E. Kondracki

Address: 2001 Jefferson Davis Highway

Suite 1007

Arlington, Virginia 22202

Phone Number: (703) 415-1555

Fax Number: (703) 415-1557

Email Address: _____

6. Total number of applications and registrations involved:

14

7. Total Fee (37 CFR 2.6(b)(6) & 3.41): \$ 365.00

- Authorized to be charged by credit card
 Authorized to be charged by Deposit Account
 Fees Enclosed

8. Payment Information:

Deposit Account Number: 19-3545

Authorized User Name: Christopher E. Kondracki

9. Signature:

CKondracki
 Signature

11/19/04
 Date

Christopher E. Kondracki
 Name of Person Signing

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

CH \$365.00 193646 2228444

Conveying Party(ies)

PA Acquisition Corp. - Delaware Corporation

Party Concepts, Inc. - Wisconsin Corporation

INTELLECTUAL PROPERTY SECURITY AGREEMENT

INTELLECTUAL PROPERTY SECURITY AGREEMENT (this "**Agreement**") dated as of October 8, 2004 by and among (a) each of the Persons listed on Schedule I hereto (each such Person, individually, a "**Borrower**" and, collectively, the "**Borrowers**"), (b) Party America Franchising, Inc., a Minnesota corporation (the "**Guarantor**") (the Borrowers and the Guarantor are hereinafter referred to, individually, as a "**Grantor**" and, collectively, as the "**Grantors**"), and (b) Wells Fargo Retail Finance, LLC, a Delaware limited liability company (the "**Lender**"), in consideration of the mutual covenants contained herein and benefits to be derived herefrom.

WITNESSETH:

Reference is made to: (a) the Loan and Security Agreement dated as of October 8, 2004 (as amended, modified, supplemented or restated hereafter, the "**Loan Agreement**") by and among (i) the Borrowers, and (ii) the Lender; (b) the Guaranty dated as of October 8, 2004 executed by the Guarantor in favor of the Lender (as amended, modified, supplemented or restated hereafter, the "**Guaranty**"); and (c) the Security Agreement dated as of October 8, 2004 (as amended, modified, supplemented or restated hereafter, the "**Security Agreement**") by and between the Guarantor and the Lender. Capitalized terms used herein and not defined herein shall have the meanings assigned to such terms in the Loan Agreement.

The Lender has agreed, among other things, to make Revolving Credit Loans to the Borrowers pursuant to, and upon the terms and subject to the conditions specified in, the Loan Agreement. The Guarantor has executed the Guaranty, pursuant to which the Guarantor guarantees the Liabilities of the Borrowers. The obligations of the Lender to make Revolving Credit Loans are each conditioned upon, among other things, the execution and delivery by the Grantors of an agreement in the form hereof to secure the Liabilities.

Accordingly, the Grantors and the Lender (and each of their respective successors or assigns), hereby agree as follows:

1. **DEFINITIONS:** As used herein, the following terms shall have the following meanings:

"Copyrights" shall mean all copyrights and like protections in each work of authorship or derivative work thereof of each of the Grantors, whether registered or unregistered and whether published or unpublished, including, without limitation, the copyrights listed on **EXHIBIT A** annexed hereto and made a part hereof, together with all registrations and recordings thereof, all applications in connection therewith, and any goodwill of the business connected with, and symbolized by, any of the foregoing.

"Copyright Licenses" shall mean all agreements, whether written or oral, providing for the grant by or to any Grantor of any right to use any Copyright, including, without limitation, the agreements listed on **EXHIBIT A** annexed hereto and made a part hereof.

“Copyright Office” shall mean the United States Copyright Office or any other federal governmental agency which may hereafter perform its functions.

“Intellectual Property” shall have the meaning assigned to such term in Section 3 hereof.

“IP Collateral” shall have the meaning assigned to such term in Section 2 hereof.

“Licenses” shall mean, collectively, the Copyright Licenses, Patent Licenses and Trademark Licenses.

“Material Adverse Effect” shall mean a result, consequence, or outcome which constitutes a Material Adverse Change. In determining whether any individual event would result in a Material Adverse Effect, notwithstanding that such event in and of itself does not have such effect, a Material Adverse Effect shall be deemed to have occurred if the cumulative effect of such event and all other then existing events would result in a Material Adverse Effect.

“Material Adverse Change” shall mean any material adverse change to (a) the business, operations, property, assets, or financial condition of (i) the Grantors taken as a whole, or (ii) the Lead Borrower, or (b) the validity or enforceability of the Loan Agreement or any of the other Loan Documents or any of the material rights or remedies of the Lender thereunder.

“Patents” shall mean all letters patent and applications for letters patent of each of the Grantors, and the inventions and improvements therein disclosed, and any and all divisions, reissues and continuations of said letters patent including, without limitation the patents listed on **EXHIBIT B** annexed hereto and made a part hereof.

“Patent Licenses” shall mean all agreements, whether written or oral, providing for the grant by or to any Grantor of any right to manufacture, use or sell any invention covered by a Patent, including, without limitation, the agreements listed on **EXHIBIT B** annexed hereto and made a part hereof.

“PTO” shall mean the United States Patent and Trademark Office or any other federal governmental agency which may hereafter perform its functions.

“Trademarks” shall mean all trademarks, trade names, corporate names, company names, business names, fictitious business names, trade dress, trade styles, service marks, designs, logos and other source or business identifiers of the Grantors, whether registered or unregistered, including, without limitation, the trademarks listed on **EXHIBIT C** annexed hereto and made a part hereof, together with all registrations and recordings thereof, all applications in connection therewith, and any goodwill of the business connected with, and symbolized by, any of the foregoing.

“Trademark Licenses” shall mean all agreements, whether written or oral, providing for the grant by or to any Grantor of any right to use any Trademark, including, without limitation, the agreements listed on **EXHIBIT C** annexed hereto and made a part hereof.

2. **GRANT OF SECURITY INTEREST:** In furtherance and as confirmation of the security interest granted by the Borrowers to the Lender under the Loan Agreement and by the Guarantor to the Lender under the Security Agreement, and as further security for the payment or performance, as the case may be, in full of the Liabilities, each Grantor hereby ratifies such security interest and grants to the Lender a continuing security interest, with a power of sale (which power of sale shall be exercisable only following the occurrence of an Event of Default), in all of the present and future right, title and interest of the Grantors in and to the following property, and each item thereof, whether now owned or existing or hereafter acquired or arising, together with all products, proceeds, substitutions, and accessions of or to any of the following property (collectively, the "IP Collateral"):

- (a) All Copyrights and Copyright Licenses.
- (b) All Patents and Patent Licenses.
- (c) All Trademarks and Trademark Licenses.
- (d) All renewals of any of the foregoing.
- (e) All General Intangibles connected with the use of, or related to, any and all Intellectual Property (including, without limitation, all goodwill of the Grantors and their business, products and services appurtenant to, associated with, or symbolized by, any and all Intellectual Property and the use thereof).
- (f) All income, royalties, damages and payments now and hereafter due and/or payable under and with respect to any of the foregoing, including, without limitation, payments under all Licenses entered into in connection therewith and damages and payments for past or future infringements or dilutions thereof.
- (g) The right to sue for past, present and future infringements and dilutions of any of the foregoing.
- (h) All of the Grantors' rights corresponding to any of the foregoing throughout the world.

3. **PROTECTION OF INTELLECTUAL PROPERTY BY GRANTORS:** Except as set forth below in this Section 3, the Grantors shall undertake the following with respect to each of the items respectively described in Sections 2(a), (b), (c), (d) and (e) (collectively, the "Intellectual Property"):

- (a) Pay all renewal fees and other fees and costs associated with maintaining the Intellectual Property and with the processing of the Intellectual Property and take all other reasonable and necessary steps to maintain each registration of the Intellectual Property.

- (b) Take all actions reasonably necessary to prevent any of the Intellectual Property from becoming forfeited, abandoned, dedicated to the public, invalidated or impaired in any way.
- (c) At the Grantors' sole cost, expense, and risk, pursue the reasonably prompt, diligent processing of each application for registration which is the subject of the security interest created herein and not abandon or delay any such efforts.
- (d) At the Grantors' sole cost, expense, and risk, take any and all action which the Grantors reasonably deem appropriate under the circumstances to protect the Intellectual Property from infringement, misappropriation or dilution, including, without limitation, the prosecution and defense of infringement actions.

Notwithstanding the foregoing, so long as no Event of Default has occurred and is continuing, and no Material Adverse Effect would result therefrom, no Grantor shall have an obligation to use or to maintain any Intellectual Property (i) that relates solely to any product that has been discontinued, abandoned or terminated or (ii) that has been replaced with Intellectual Property substantially similar to the Intellectual Property that may be abandoned or otherwise become invalid, so long as the failure to use or maintain such Intellectual Property does not materially adversely affect the validity of such replacement Intellectual Property and so long as such replacement Intellectual Property is subject to the lien created by this Agreement.

4. **GRANTORS' REPRESENTATIONS AND WARRANTIES:** The Grantors represent and warrant that:

- (a) **EXHIBIT A** is a true, correct and complete list of all Copyrights and Copyright Licenses owned by the Grantors as of the date hereof.
- (b) **EXHIBIT B** is a true, correct and complete list of all Patents and Patent Licenses owned by the Grantors as of the date hereof.
- (c) **EXHIBIT C** is a true, correct and complete list of all Trademarks and Trademark Licenses owned by the Grantors as of the date hereof.
- (d) Except as set forth in **EXHIBITS A, B and C**, none of the Intellectual Property is the subject of any licensing or franchise agreement pursuant to which any Grantor is the licensor or franchisor.
- (e) All IP Collateral is, and shall remain, free and clear of all liens, Encumbrances, or security interests in favor of any Person, other than Permitted Encumbrances and liens in favor of the Lender.
- (f) The Grantors own, or are licensed to use, all Intellectual Property necessary for the conduct of its business as currently conducted. No material claim has been asserted and is pending by any Person challenging or questioning the use by any Grantor of any of its Intellectual Property or the validity or effectiveness of any of

its Intellectual Property, nor does any Grantor know of any valid basis for any such claim, except as otherwise set forth in the Loan Agreement. The Grantors consider that the use by the Grantors of the Intellectual Property does not infringe the rights of any Person in any material respect. No holding, decision or judgment has been rendered by any governmental authority which would limit, cancel or question the validity of, or any Grantor's rights in, any Intellectual Property in any respect that could reasonably be expected to have a Material Adverse Effect on the business or the property of any Grantor.

- (g) The Grantors shall give the Lender written notice (with reasonable detail) within ten (10) days following the occurrence of any of the following:
- (i) The Grantors' obtaining rights to, and filing applications for registration of, any new Intellectual Property, or otherwise acquiring ownership of any newly registered Intellectual Property (other than the Grantors' right to sell products containing the trademarks of others in the ordinary course of the Grantors' business).
 - (ii) The Grantors' becoming entitled to the benefit of any registered Intellectual Property whether as licensee or licensor (other than the Grantors' right to sell products containing the trademarks of others in the ordinary course of the Grantors' business).
 - (iii) The Grantors' entering into any new Licenses.
 - (iv) The Grantors' knowing or having reason to know that any application or registration relating to any Intellectual Property may become forfeited, abandoned or dedicated to the public, or of any adverse determination or development (including, without limitation, the institution of, or any such determination or development in, any proceeding in the PTO, the Copyright Office or any court or tribunal) regarding the Grantors' ownership of, or the validity of, any Intellectual Property or the Grantors' right to register the same or to own and maintain the same.

5. AGREEMENT APPLIES TO FUTURE INTELLECTUAL PROPERTY:

- (a) The provisions of this Agreement shall automatically apply to any such additional property or rights described in subsections (i), (ii) and (iii) of Section 4(g), above, all of which shall be deemed to be and treated as "Intellectual Property" within the meaning of this Agreement.
- (b) Upon the reasonable request of the Lender, the Grantors shall execute and deliver, and have recorded, any and all agreements, instruments, documents and papers as the Lender may request to evidence the Lender's security interest in any Copyright, Patent or Trademark and the goodwill and General Intangibles of the Grantors relating thereto or represented thereby (including, without limitation,

filings with the PTO, the Copyright Office or any similar office), and the Grantors hereby constitute the Lender as their attorney-in-fact to execute and file all such writings for the foregoing purposes, all acts of such attorney being hereby ratified and confirmed; *provided, however*, the Lender's taking of such action shall not be a condition to the creation or perfection of the security interest created hereby.

6. **GRANTORS' RIGHTS TO ENFORCE INTELLECTUAL PROPERTY:** Prior to the Lender's giving of notice to the Grantors following the occurrence of an Event of Default, the Grantors shall have the exclusive right to sue for past, present and future infringement of the Intellectual Property including the right to seek injunctions and/or money damages, in an effort by the Borrowers to protect the Intellectual Property against encroachment by third parties, *provided, however*:

- (a) The Grantors provide the Lender with written notice of any such suit for enforcement of any Intellectual Property.
- (b) Any money damages awarded or received by the Grantors on account of such suit (or the threat of such suit) shall constitute IP Collateral.
- (c) Following the occurrence and during the continuance of any Event of Default, the Lender, by notice to the Grantors may terminate or limit the Grantors' rights under this Section 6.

7. **LENDER'S ACTIONS TO PROTECT INTELLECTUAL PROPERTY:** In the event of:

- (a) the Grantors' failure, within five (5) days of written notice from the Lender, to cure any failure by the Grantors to observe or perform any of the Grantors' covenants, agreements or other obligations hereunder; and/or
- (b) the occurrence and continuance of any other Event of Default,

the Lender, acting in its own name or in that of the Grantors, may (but shall not be required to) act in the Grantors' place and stead and/or in the Lender's own right in connection therewith.

8. **RIGHTS UPON DEFAULT:** Upon the occurrence of any Event of Default, the Lender may exercise all rights and remedies of a secured party upon default under the Uniform Commercial Code as adopted in the Commonwealth of Massachusetts, with respect to the Intellectual Property, in addition to which, in connection with the exercise of any such rights and remedies, the Lender may sell, license, assign, transfer, or otherwise dispose of the Intellectual Property. The Lender shall give the Grantors at least ten (10) days' prior written notice, by authenticated record, of any such intended disposition of the Intellectual Property. Any person may conclusively rely upon an affidavit of an officer of the Lender that an Event of Default has occurred and that the Lender is authorized to exercise such rights and remedies.

9. **LENDER AS ATTORNEY IN FACT:**

- (a) The Grantors hereby irrevocably constitute and designate the Lender as and for the Grantors' attorney in fact, effective following the occurrence and during the continuance of any Event of Default:
- (i) To supplement and amend from time to time **EXHIBITS A, B and C** of this Agreement to include any new or additional Intellectual Property of the Grantors.
 - (ii) To exercise any of the rights and powers referenced herein.
 - (iii) To execute all such instruments, documents, and papers as the Lender determines to be appropriate in connection with the exercise of such rights and remedies and to cause the sale, license, assignment, transfer, or other disposition of the Intellectual Property.
- (b) The within grant of a power of attorney, being coupled with an interest, shall be irrevocable until this Agreement is terminated by a duly authorized officer of the Lender.
- (c) The Lender shall not be obligated to do any of the acts or to exercise any of the powers authorized by Section 9(a), but if the Lender elects to do any such act or to exercise any of such powers, it shall not be accountable for more than it actually receives as a result of such exercise of power, and shall not be responsible to any Grantor for any act or omission to act except for any act or omission to act as to which there is a final determination made in a judicial proceeding (in which proceeding the Lender has had an opportunity to be heard) which determination includes a specific finding that the subject act or omission to act had been grossly negligent or in actual bad faith.

10. **LENDER'S RIGHTS:**

- (a) Any use by the Lender of the Intellectual Property, as authorized hereunder in connection with the exercise of the Lender's rights and remedies under this Agreement and under the Loan Agreement shall be coextensive with the Grantors' rights thereunder and with respect thereto and without any liability for royalties or other related charges.
- (b) None of this Agreement, the Loan Agreement, or any act, omission, or circumstance taken or arising hereunder may be construed as directly or indirectly conveying to the Lender any rights in and to the Intellectual Property, which rights are effective only following the occurrence of any Event of Default.

11. **INTENT:** This Agreement is being executed and delivered by the Grantors for the purpose of registering and confirming the grant of the security interest of the Lender in the IP

Collateral with the PTO and the Copyright Office. It is intended that the security interest granted pursuant to this Agreement is granted as a supplement to, and not in limitation of, the security interest granted to the Lender under the Loan Agreement and the Security Agreement. All provisions of the Loan Agreement and the Security Agreement shall apply to the IP Collateral. The Lender shall have the same rights, remedies, powers, privileges and discretions with respect to the security interests created in the IP Collateral as in all other Collateral. In the event of a conflict between this Agreement and the Loan Agreement or the Security Agreement, the terms of this Agreement shall control with respect to the IP Collateral and the Loan Agreement and the Security Agreement with respect to all other Collateral.

12. **CHOICE OF LAWS:** It is intended that this Agreement take effect as a sealed instrument and that all rights and obligations hereunder, including matters of construction, validity, and performance, shall be governed by the laws of the Commonwealth of Massachusetts.


[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the Grantors and the Lender respectively have caused this Agreement to be executed by their respective duly authorized officers as of the date first above written.


GRANTORS:

BORROWERS:

FA ACQUISITION CORP.


By: 
Name: Matthew R. Kahn
Title: Vice President

PARTY CONCEPTS, INC.

By: 
Name: Matthew R. Kahn
Title: Vice President


GUARANTOR:

PARTY AMERICA FRANCHISING, INC.

By: 
Name: Matthew R. Kahn
Title: Vice President

LENDER:

WELLS FARGO RETAIL FINANCE, LLC

By: 
Name: Eileen P. Quinn
Title: Senior Vice President/LPM

SCHEDULE I

Borrowers

PA Acquisition Corp.
Party Concepts, Inc.

EXHIBIT A

List of Copyrights and Copyright Licenses

Copyright Registrations and Applications

Title

Serial No.

Registration No.

Registration Date

None

Copyright Licenses

None

EXHIBIT B

List of Patents and Patent Licenses

Patents and Patent Applications

<u>Title</u>	<u>Serial No.</u>	<u>Patent No.</u>	<u>Date of Filing</u>	<u>Date of Issuance</u>
--------------	-------------------	-------------------	-----------------------	-------------------------

None

Patent Licenses

None

EXHIBIT C

List of Trademarks and Trademark Licenses

Trademark Registrations and Applications

PA ACQUISITION CORP.

<u>Trademark</u>	<u>Serial No.</u>	<u>Registration No.</u>	<u>Registration Date</u>
Party America	75432254	2228444	March 2, 1999
Party America	78301539	2884374	September 14, 2004

PARTY CONCEPTS, INC.

<u>Trademark</u>	<u>Jurisdiction</u>	<u>Serial No.</u>	<u>Registration No.</u>	<u>Registration Date</u>
Super Roll	United States	75167624	2113189	November 11, 1997
Memo Stack	United States	74690346	2009146	January 30, 1996
Great Party	United States	74242933	1766370	January 26, 1993
The Paper Factory	United States	73688429	1517587	December 20, 1988
The Paper Factory	Nebraska		1679354	October 29, 1998
The Paper Factory	New Hampshire		305618	December 16, 1998

PARTY AMERICA FRANCHISING, INC.

<u>Trademark</u>	<u>Serial No.</u>	<u>Registration No.</u>	<u>Registration Date</u>
Paper Warehouse	73685402	1514067	August 30, 1988
Paper Warehouse	75051765	2028821	January 7, 1997

Paper Warehouse	73494988	1349279	July 16, 1985
Party Blasters	75446125	2234177	March 23, 1999
Party Perks	75620493	2530246	January 15, 2002
Party Smart	75693788	2340998	April 11, 2000
Party Universe	75051759	2035401	February 4, 1997
Party Universe	74678238	1974933	May 21, 1996

Trademark Licenses

852259.2

None