

## TRADEMARK ASSIGNMENT

Electronic Version v1.1  
 Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT		
NATURE OF CONVEYANCE:	SECURITY INTEREST		
CONVEYING PARTY DATA			
Name	Formerly	Execution Date	Entity Type
J.P. Licks Homemade Ice Cream Company Inc.		09/05/2012	CORPORATION: MASSACHUSETTS
RECEIVING PARTY DATA			
Name:	Rockland Trust Company		
Street Address:	288 Union Street		
City:	Rockland		
State/Country:	MASSACHUSETTS		
Postal Code:	02370		
Entity Type:	Trust Company: MASSACHUSETTS		
PROPERTY NUMBERS Total: 2			
Property Type	Number	Word Mark	
Registration Number:	3284604	J.P. LICKS HOMEMADE ICE CREAM CAFE	
Registration Number:	3158134	J.P. LICKS	
CORRESPONDENCE DATA			
Fax Number:	8602758299		
<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent via US Mail.</i>			
Phone:	860-275-8285		
Email:	jscheib@rc.com		
Correspondent Name:	Jacqueline P. Scheib		
Address Line 1:	280 Trumbull Street		
Address Line 2:	Robinson & Cole LLP		
Address Line 4:	Hartford, CONNECTICUT 06279		
NAME OF SUBMITTER:	Jacqueline P. Scheib		
Signature:	/Jacqueline P. Scheib/		

OP \$65.00 3284604

Date:

09/11/2012

**Total Attachments: 24**

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INTELLECTUAL PROPERTY SECURITY AGREEMENT

THIS INTELLECTUAL PROPERTY SECURITY AGREEMENT (this "Agreement") is made and entered into as of September 5, 2012 by and among J.P. LICKS HOMEMADE ICE CREAM COMPANY INC., a Massachusetts corporation (the "Grantor"), and the ROCKLAND TRUST COMPANY (the "Bank"), having an office at 288 Union Street, Rockland, Massachusetts 02370, (together with any successor thereto appointed) for itself.

RECITALS

A. Pursuant to that certain Loan and Security Agreement (as the same may be amended, restated, supplemented or otherwise modified from time to time, (the "Loan and Security Agreement") among (i) Grantor, (ii) J.P. LICKS STORE, INC., J.P. LICKS MFG CORP., J.P. LICKS AT NEWBURY STREET, INC., J.P. LICKS AT ONE BRIGHAM CIRCLE, INC., J.P. LICKS AT COOLIDGE CORNER, INC. J.P. LICKS AT NEWTON CENTRE, INC., J.P. LICKS AT WEST ROXBURY, INC., J.P. LICKS AT DAVIS SQUARE, INC. J.P. LICKS MGMT ASSOC., INC., J.P. LICKS AT HARVARD SQUARE, INC., J.P. LICKS AT LEGACY PLACE, INC., J.P. LICKS AT WELLESLEY CENTER, INC., J.P. LICKS AT CHARLES STREET, INC., J.P. LICKS AT MARKET STREET INC., (each individually, and collectively, the "Co-Borrowers"), (iii) VINCENT R. PETRYK, individually ("Petryk") and as trustee of the VINCENT R. PETRYK 2011 TRUST (the "Trust Guarantor"), and (iv) the Bank, dated as of even date herewith, the Bank has agreed to make certain loans (the "Loans") and otherwise extend credit to Grantor and Co-Borrowers for the amounts and for the purposes described therein and Grantor has incurred certain Obligations to the Bank as set forth therein and in the Loan Documents. Capitalized terms not otherwise defined herein shall have the meaning ascribed thereto in the Loan and Security Agreement.

B. In order to induce the Bank to extend credit to the Grantor and the Co-Borrowers in accordance with the Loan and Security Agreement, and in consideration therefore, the Grantor and the Co-Borrowers have agreed to grant to the Bank a security interest in all of the Grantor's and Co-Borrower's trademarks, copyrights, patents, whether now or hereafter existing, owned or acquired, all pursuant to the terms of this Agreement in order to secure, for the benefit of the Bank, the due and punctual payment and performance of all of the Obligations, including all such which would become due but for the operation of the automatic stay pursuant to §§502(b) and 506(b) of the Federal Bankruptcy Code (all items set forth in this Recital are collectively, the "Secured Obligations").

C. It is a condition precedent to the extension of the Loans that the Grantor executes and delivers this Agreement.

**NOW, THEREFORE**, for and in consideration of the covenants and provisions set forth herein, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Grantor agrees as follows:

Section 1.

**Grant of Security Interest in the Collateral; Obligations Secured.**

(a) As security for the Obligations, the Grantor hereby:

(1) sells, mortgages, conveys, assigns, pledges and grants to the Bank, its successors and assigns, a continuing and unconditional security interest in, any and all right, title and interest of the Grantor and the Co-Borrowers, whether now existing or hereafter acquired or arising, in and to the following:

i. **Patents.** Patents, whether now owned or hereafter acquired, or in which the Grantor or the Co-Borrowers now have or hereafter acquire any rights (the term "Patent" means and includes (A) all letters patent of the United States of America or any other country or any political subdivision thereof, now existing or hereafter acquired, all registrations and recordings thereof, and all applications for letters patent of the United States of America or any other country or any political subdivision thereof, now existing or hereafter acquired, including without limitation registrations, recordings and applications therefore in the United States Patent and Trademark Office or any other country or any political subdivision thereof and (B) all reissues, continuations, continuations-in-part or extensions thereof), including without limitation each Patent listed on Schedule A-1 hereto, and all of the inventions now or hereafter described and claimed in the Grantor's and Co-Borrowers' Patents;

ii. **Patent Licenses.** Patent Licenses, whether now owned or hereafter acquired, or in which the Grantor or the Co-Borrowers now have or hereafter acquire any rights (the term "Patent Licenses" means and includes any written agreement granting to any person any right to exploit, use or practice any invention on which a Patent is owned by another person), including without limitation each Patent License listed on Schedule A-2 hereto, and all royalties and other sums due or to become due under or in respect of the Grantor's and Co-Borrowers' Patent Licenses, together with the right to sue for and collect all such royalties and other sums;

iii. **Trademarks.** Trademarks, whether now owned or hereafter acquired, or in which the Grantor or Co-Borrowers now have or hereafter acquire any rights (the term "Trademarks" means and includes (A) all trademarks, trade names, trade styles, service marks and logos, all prints and labels on which said trademarks, trade names, trade styles, service marks and logos have appeared or appear and all designs and general intangibles of like nature, now existing or hereafter adopted or acquired, all registrations and recordings thereof, and all applications in connection therewith, including without limitation registrations, recordings and applications in the United States Patent and Trademark Office or in any similar office or agency of the United States of America, any state thereof or any other country or any political subdivision thereof and (B) all renewals thereof), including without limitation each Trademark application and registration listed on Schedule B-1 hereto, and all of the goodwill of the business connected with the use of, and symbolized by, each Trademark;

iv. **Trademark Licenses.** Trademark Licenses, whether now owned or hereafter acquired, or in which the Grantor or Co-Borrowers now have or

hereafter acquire any rights (the term "Trademark Licenses" means and includes any written agreement granting to any person any right to use or exploit any Trademark or Trademark registration of another person), including without limitation the agreements described in Schedule B-2 hereto, and all of the goodwill of the business connected with the use of, and symbolized by, each Trademark licensed and all royalties and other sums due or to become due under or in respect of the Grantor's or Co-Borrowers' Trademark Licenses, together with the right to sue for and collect all such royalties and other sums;

v. **Copyrights.** Copyrights and Copyright registrations, whether now owned or hereafter acquired, or in which the Grantor or Co-Borrowers now have or hereafter acquire any rights (the term "Copyrights" means and includes (A) all original works of authorship fixed in any tangible medium of expression, now existing or hereafter adopted or acquired, all registrations and recordings thereof, and all applications in connection therewith, including without limitation registrations, recordings and applications in the United States Copyright Office or in any similar office or agency of the United States of America, any state thereof or any other country or any political subdivision thereof and (B) all renewals thereof), including without limitation each Copyright registration listed on Schedule C-1 hereto;

vi. **Copyright Licenses.** Copyright Licenses, whether now owned or hereafter acquired, or in which the Grantor or Co-Borrowers' now have or hereafter acquire any rights (the term "Copyright Licenses" means and includes any written agreement granting to any person any right to use or exploit any Copyright or Copyright registration of another person), including without limitation the agreements described in Schedule C-2 hereto, and all royalties and other sums due or to become due under or in respect of the Grantor's and the Co-Borrower's Copyright Licenses, together with the right to sue for and collect all such royalties and other sums; and

vii. **Proceeds and Products.** All proceeds and products of the foregoing and all insurance of the foregoing and proceeds thereof, whether now existing or hereafter arising, including without limitation (A) any claim of the Grantor or Co-Borrowers against third parties for damages by reason of past, present or future infringement of any Patent or any Patent licensed under any Patent License, (B) any claims by the Grantor or Co-Borrowers against third parties for damages by reason of past, present or future infringement or dilution of any Trademark or of any Trademark licensed under any Trademark License, or for injury to the goodwill of the business connected with the use of, or symbolized by, any Trademark or of any Trademark licensed under any Trademark License, (C) any claim of the Grantor or Co-Borrowers against third parties for damages by reason of past, present or future infringement of any Copyright or any Copyright licensed under any Copyright License, and (D) any claim of the Grantor or the Co-Borrowers against third parties for damages by reason of past, present or future infringement of any Copyright or any Copyright licensed under any Copyright License, and (E) any claim by the Grantor or the Co-Borrowers against third parties for damages by reason of past, present or future misappropriation or wrongful use or disclosure of any trade secret or other property or right described above or of any such trade secret or other property or right licensed under any license or agreement described

above, and together with the right to sue for and collect the damages described in the immediately preceding clauses (A), (B), (C) and (D);

all of the foregoing being herein sometimes referred to as the "Collateral";

(2) provided, however, the Collateral described above shall not include any interest of the Grantor or Co-Borrowers in any contract, license, permit or similar general intangible if the granting of a security interest therein is prohibited by the terms of the written agreement creating or evidencing such contract, license, permit or similar intangible, provided, further, that, notwithstanding anything set forth in the proviso set forth above to the contrary, to the extent not prohibited by law, the Bank shall at all times have a security interest in all rights of the Grantor and the Co-Borrowers to payments of money due or to become due under any such contract, license, permit or similar general intangible, and all proceeds thereof, and, if and when the prohibition which prevents the granting of a security interest in any such property is removed, terminated or otherwise becomes unenforceable as a matter of law, the Bank will be deemed to have, and at all times to have had, a security interest in such property and the Collateral will be deemed to include, and at all times to have included, such property; and

(3) in furtherance of granting such security interests, grants, bargains, sells, transfers, conveys and assigns as security to the Bank, the Patents, the Patent Licenses, the Copyrights and the Copyright Licenses. Notwithstanding anything herein to the contrary, this Agreement shall not operate as a sale, transfer, conveyance or other assignment to the Bank of any applications by the Grantor or the Co-Borrowers for a Trademark based on an intent to use the same if and so long as such application is pending and not matured into a registered Trademark (such pending applications which are based on intent to use being hereinafter referred to collectively as "Intent-To-Use Applications"), but rather, if and so long as any Grantor or Co-Borrower Intent-To-Use Application is pending this Agreement shall operate only to create a security interest for collateral purposes in favor of the Bank on such Intent-To-Use Application as collateral security for the Secured Obligations.

(b) This Agreement, including the security interest granted hereunder, is made and given to secure, and shall secure, the prompt payment or performance in full when due, whether by lapse of time, acceleration or otherwise, of the Secured Obligations.

Section 2. **Continuing Agreement; Termination and Release.** This Agreement is made for collateral purposes only. This Agreement shall be a continuing agreement in every respect and shall remain in full force and effect until all of the Obligations shall have been indefeasibly paid and satisfied and all commitments of the Bank under the Loan and Security Agreement have been terminated. Upon such termination of this Agreement, the Bank shall, upon the request and at the expense of the Grantor and the Co-Borrowers, forthwith release, assign and transfer, without recourse, and, to the extent applicable, deliver, against receipt and without recourse to the Bank, such of the Collateral as may then be in the possession of the Bank and as shall not have been sold or otherwise applied pursuant to the terms hereof to or on the order of the Grantor or the Co-Borrowers. Said release, assignment, transfer and delivery shall include an instrument in form recordable in the United States Patent and Trademark Office and the United States Copyright Office by which the Bank shall terminate, release and, without representation, recourse or warranty, reassign to the Grantor or the Co-Borrowers all of their

respective rights in each Patent, Patent License, Trademark, Trademark License, Copyright and Copyright License, including each registration thereof and application therefore, conveyed and transferred to the Bank pursuant to this Agreement.

Section 3. **No Release.** Nothing set forth in this Agreement shall relieve the Grantor or Co-Borrowers from the performance of any term, covenant, condition or agreement on the Grantor's or Co-Borrowers' part to be performed or observed under or in respect of any of the Collateral or from any liability to any party under or in respect of any of the Collateral or impose any obligation on the Bank to perform or observe any such term, covenant, condition or agreement on the Grantor's or Co-Borrower's part to be so performed or observed or impose any liability on the Bank for any act or omission on the part of the Grantor or Co-Borrowers relative thereto or for any breach of any representation or warranty on the part of the Grantor or Co-Borrowers contained in this Agreement or under or in respect of the Collateral or made in connection herewith or therewith.

Section 4. **Use of Collateral.** Notwithstanding anything to the contrary contained herein, until an Event of Default has occurred and is continuing and until otherwise notified by the Bank, the Grantor and the Co-Borrowers may continue to exploit, license, use, enjoy and protect the Collateral throughout the world and the Bank shall from time to time execute and deliver, upon written request of the Grantor or the Co-Borrowers, any and all instruments, certificates or other documents, in the form so requested, necessary or appropriate in the reasonable judgment of the Grantor or the Co-Borrowers to enable the Grantor or the Co-Borrowers to continue to exploit, license, use, enjoy and protect the Collateral throughout the world. In furtherance of the foregoing but subject to Sections 9 and 10 hereof and any superior rights of third parties not in derogation of this Agreement, the Grantor hereby grants to the Bank a non-exclusive, perpetual, world-wide, royalty-free right and license, with the right to exploit, license, use, enjoy and protect the Patents, the Patent Licenses, the Copyrights and the Copyright Licenses upon the occurrence and during the continuance of any Event of Default for any and all purposes in connection with the Bank's exercise of remedies hereunder.

Section 5. **Representations and Warranties of the Grantor.** The Grantor hereby represent and warrant to the Bank as follows:

(a) The Grantor is, and, as to the Collateral acquired by it from time to time after the date hereof, the Grantor will be, the owner or, as applicable, licensee of all the Collateral. The Grantor's and the Co-Borrowers' rights in the Collateral are and shall remain free and clear of any lien, pledge, security interest, encumbrance, assignment, collateral assignment or charge of any kind, including without limitation any filing of, or agreement to file, a financing statement as Grantor under the Uniform Commercial Code or any similar statute, except for the lien and security interest created by this Agreement and for the liens described in the Goldstein Subordination Agreement. Except as herein provided, the Grantor or the Co-Borrowers have made no previous assignment, conveyance, transfer or agreement in conflict with the liens granted hereby. The Grantor further represents and warrants to the Bank, that Schedules A-1, A-2, B-1, B-2, C-1 and C-2 hereto, respectively, are true and correct lists of all Patents, Patent Licenses, Trademarks, Trademark Licenses, Copyrights and Copyright Licenses owned or used by the Grantor and the Co-Borrowers as of the date hereof and that Schedules A-1, A-2, B-1,

B-2, C-1 and C-2 are true and correct with respect to the matters set forth therein as of the date hereof.

(b) The Grantor has made all reasonably necessary filings and recordations to protect its interests in the Collateral.

(c) The Grantor owns directly or has rights to use all the Collateral and all rights with respect to any of the foregoing used in or necessary for the business of the Grantor and the Co-Borrowers in the ordinary course as presently conducted, except for such Collateral the lack of which could not reasonably be expected to have a Material Adverse Change. The use of the Collateral and all rights with respect to the foregoing by the Grantor or the Co-Borrowers does not, to the actual knowledge of the Grantor, infringe on the rights of any party, nor has any claim of such infringement been made, except for such Collateral the lack of which could not reasonably be expected to have a Material Adverse Change.

(d) Upon the filing of financing statements including the Collateral in the appropriate offices under the Uniform Commercial Code, and the filing of this Agreement in the United States Patent and Trademark Office and the United States Copyright Office, as applicable, this Agreement will create a valid and duly perfected lien on and security interest in the Collateral which is registered in and with the United States of America effective against purchasers from and creditors of the Grantor or the Co-Borrowers, subject to no prior liens or encumbrances.

Section 6. **Covenants and Agreements of the Grantor.** The Grantor hereby covenants and agrees with the Bank as follows:

(a) On a continuing basis, the Grantor and the Co-Borrowers will, at the expense of the Grantor or Co-Borrowers, subject to any prior licenses, encumbrances and restrictions and prospective licenses, encumbrances and restrictions permitted hereunder, make, execute, acknowledge and deliver, and file and record in the proper filing and recording places within the United States of America, all such instruments, including without limitation appropriate financing and continuation statements and collateral agreements, and take all such action as may reasonably be deemed necessary or advisable by the Bank in accordance with prudent and customary lending procedure (i) to carry out the intent and purposes of this Agreement, (ii) to assure and confirm to the Bank the grant or perfection of the security interest in the Collateral intended to be created hereby, subject to no prior Liens or encumbrances or (iii) to enable the Bank to exercise and enforce its rights and remedies hereunder with respect to the Collateral.

(b) Without limiting the generality of the foregoing paragraph (a) of this Section 6, the Grantor and the Co-Borrowers (i) will not enter into any agreement that would impair or conflict with the Grantor's obligations hereunder; (ii) will, promptly following its becoming aware thereof, notify the Bank of (x) any final adverse determination in any proceeding in the United States Patent and Trademark Office or the United States Copyright Office or (y) the institution of any proceeding or any adverse determination in any federal, state, local or foreign court or administrative body regarding the Grantor's or Co-Borrowers' claims of ownership in or right to use any of the Collateral, their right to register any such Collateral or their right to keep and maintain such registration; (iii) will preserve and maintain all rights in the Collateral, unless



no longer used in the ordinary course of the Grantor's or the Co-Borrowers' business or no longer deemed necessary to the Grantor's or the Co-Borrower's business; (iv) except for the liens described in the Goldstein Subordination Agreement, will not grant or permit to exist any lien or encumbrance upon or with respect to the Collateral or any portion thereof and will not execute any security agreement or financing statement covering any of the Collateral except in favor of the Bank; (v) will not permit to lapse or become abandoned (unless no longer used in the ordinary course of the Grantor's or Co-Borrower's business or no longer deemed necessary to the Grantor's or Co-Borrower's business), or settle or compromise any pending or future material litigation or material administrative proceeding with respect to any Collateral without the prior written consent of the Bank, or, except for licenses of Collateral in the ordinary course of business, contract for sale or otherwise sell, convey, assign or dispose of, or grant any option with respect to, the Collateral or any portion thereof; (vi) upon the Grantor obtaining knowledge thereof, will promptly notify the Bank in writing of any event that could have a Material Adverse Change on the value of any of the Collateral, the ability of the Grantor or the Bank to dispose of any such Collateral or the rights and remedies of the Bank in relation thereto, including without limitation a levy or threat of levy or any legal process against any such Collateral; (vii) will diligently keep reasonable records respecting the Collateral; (viii) hereby authorizes the Bank, in its sole discretion, to file one or more financing or continuation statements relative to all or any part of the Collateral without the signature of the Grantor where permitted by law; (ix) will furnish to the Bank from time to time statements and schedules further identifying and describing the Collateral and such other materials evidencing or reports pertaining to the Collateral as the Bank may reasonably request, all in reasonable detail; (x) will pay when due any and all taxes, levies, maintenance fees, charges, assessments, licenses fees and similar taxes or impositions payable in respect of the Collateral except to the extent being contested in good faith by appropriate proceedings which prevent the enforcement of the matter being contested (and for which the Grantor or Co-Borrowers has established adequate reserves) and do not interfere with the business of the Grantor or Co-Borrowers in the ordinary course or unless no longer necessary to the Grantor's or Co-Borrowers' business; and (xi) comply in all material respects with all laws, rules and regulations applicable to the Collateral.

(c) If, before the Obligations shall have been indefeasibly paid and satisfied in full in cash and all commitments of the Bank under the Loan and Security Agreement have been terminated, the Grantor or Co-Borrowers shall obtain any rights to or become entitled to the benefit of any new Patent, patent application, service mark, trade name, Trademark, trademark application, trademark registration, Copyright, copyright application, copyright registration, license renewal or extension, or patent for any reissue, division, continuation, renewal, extension, or continuation-in-part of any Patent or any improvement on any Patent, the provisions of this Agreement shall automatically apply thereto and the same shall automatically constitute Collateral and be and become subject to the assignment, lien and security interest created hereby, as the case may be, without further action by any party, all to the same extent and with the same force and effect as if the same had originally been Collateral hereunder. If the Grantor or Co-Borrowers so obtain or become entitled to any of the rights described above, the Grantor shall promptly give written notice thereof to the Bank. The Grantor agrees to confirm the attachment of the lien and security interest created hereby to any such rights described above by execution of instruments, including, but not limited to, instruments for recordation with the United States Patent and Trademark Office and the United States Copyright Office, in form and substance acceptable to the Bank.

(d) The Grantor shall promptly notify the Bank of any future Collateral of the Grantor or the Co-Borrowers and, upon receipt of such notice by the Bank, Schedules A-1, A-2, B-1, B-2, C-1 and C-2 hereto shall be deemed amended to include reference to any such future Collateral.

(e) The Grantor shall prosecute diligently applications for the Patents, Trademarks and Copyrights now or hereafter pending and make application on unpatented but patentable inventions and registrable but unregistered Trademarks and Copyrights, that, in each case, in the Grantor's reasonable judgment would be materially beneficial to the business of the Grantor or the Co-Borrowers in the ordinary course as presently, and as now contemplated will be, conducted, file and prosecute opposition and cancellation proceedings and perform all acts necessary to preserve and maintain all rights in the Collateral, unless as to any Patent, Trademark or Copyright, in the reasonable judgment of the Grantor, such Patent, Trademark or Copyright has become immaterial or obsolete to such business of the Grantor or the Co-Borrowers. Any expenses incurred in connection with such actions shall be borne by the Grantor or Co-Borrowers.

(f) The Grantor shall not abandon any right to file any material patent application, trademark application, service mark application, copyright application, Patent, Trademark or Copyright for itself or the Co-Borrower's without the prior written consent of the Bank.

Section 7. **Supplements; Further Assurances.** The Grantor (i) agrees it will join with the Bank in executing and, at the Grantor's own expense, file and re-file, or permit the Bank to file and re-file, such financing statements, continuation statements and other instruments and documents (including without limitation this Agreement) in such offices (including without limitation the United States Patent and Trademark Office and the United States Copyright Office) as the Bank may reasonably deem necessary or appropriate in order to perfect and preserve the rights and interests granted to the Bank hereunder and (ii) hereby authorizes the Bank to file and re-file such instruments and documents and any other instruments or documents related thereto without the signature of the Grantor or Co-Borrowers where permitted by law and (iii) agrees to do such further acts and things, and to execute and deliver to the Bank such additional instruments and documents, as the Bank may reasonably require to carry into effect the purposes of this Agreement or to better assure and confirm unto the Bank its rights, powers and remedies hereunder. All of the foregoing are to be at the sole cost of the Grantor and Co-Borrowers. Any reasonable costs of the foregoing incurred by the Bank shall be payable by the Grantor and Co-Borrowers upon demand, together with interest thereon from the date of incurrence until so paid, and shall constitute additional Secured Obligations.

Section 8. **Agent May Perform.** If the Grantor fails to perform any agreement contained herein after receipt of a written request to do so from the Bank, the Bank may itself (upon ten (10) days' prior written notice to the Grantor unless the Bank in good faith determines that immediate payment or performance is reasonably necessary to protect or preserve the Collateral), but shall not be obligated to, perform, or cause performance of, such agreement, and the reasonable expenses of the Bank, including the reasonable fees and expenses of its counsel, so incurred in connection therewith shall be payable by the Grantor.

Section 9. **Remedies.** Upon the occurrence and during the continuation of any Event of Default, the Bank shall have, in addition to all other rights provided herein, in the Loan Documents, in the Loan and Security Agreement or by law, the rights and remedies of a secured party under the Uniform Commercial Code, and further the Bank may, with ten (10) day's prior notice to Grantor or Co-Borrowers and without demand and without advertisement, hearing or process of law, all of which the Grantor hereby waives, at any time or times, sell and deliver any or all of the Collateral at public or private sale, for cash, upon credit or otherwise, at such prices and upon such terms as the Bank deems advisable, in its sole discretion. At any public sale, or, to the extent permitted by applicable law, at any private sale, made pursuant to this Section 9, the Bank may bid for or purchase, free from any right of redemption, stay or appraisal and all rights of marshalling or otherwise on the part of the Grantor or Co-Borrowers (all said rights being also hereby waived and released by the Grantor to the fullest extent permitted by law), the Collateral and any other security for the Secured Obligations, and may make payment on account thereof by using any claim then due and payable to the Bank from the Grantor as a credit against the purchase price, and the Bank may, upon compliance with the terms of sale, hold, retain and dispose of such property without further accountability to the Grantor or Co-Borrowers therefore. In addition to all other sums due to the Bank hereunder, the Grantor shall pay the Bank all reasonable costs and expenses incurred by the Bank, including reasonable attorneys' fees and court costs, in obtaining, liquidating or enforcing payment of the Collateral or the Secured Obligations or in the prosecution or defense of any action or proceeding by or against the Bank, the Grantor or the Co-Borrowers concerning any matter arising out of or connected with this Agreement or the Collateral or the Secured Obligations.

Without in any way limiting the foregoing, upon the occurrence and during the continuation of any Event of Default, the Bank may to the full extent permitted by applicable law, with ten (10) days' prior notice to the Grantor and Co-Borrowers, and without advertisement, hearing or process of law of any kind, all of which the Grantor hereby waives, (i) exercise any and all rights as beneficial and legal owner of the Collateral, including without limitation any and all consensual rights and powers with respect to the Collateral and (ii) sell or assign or grant a license to use, or cause to be sold or assigned or a license granted to use, any or all of the Collateral or any part hereof, in each case free of all rights and claims of the Grantor or the Co-Borrowers therein and thereto, but subject to any existing licenses in the Collateral permitted under the terms of this Agreement. In that connection, the Bank shall have the right to cause any or all of the Collateral to be transferred of record into the name of the Bank or its nominee as well as the right to impose (i) such limitations and restrictions on the sale or assignment of the Collateral as the Bank may deem to be necessary or appropriate to comply with any law, rule or regulation, whether federal, state or local, having applicability to the sale or assignment and (ii) requirements for any necessary governmental approvals.

Failure by the Bank to exercise any right, remedy or option under this Agreement or any other agreement between the Grantor and/or the Co-Borrowers, and the Bank or provided by law, or delay by the Bank in exercising the same, shall not operate as a waiver; no waiver shall be effective unless it is in writing, signed by the party against whom such waiver is sought to be enforced and then only to the extent specifically stated. Neither the Bank nor any party acting as attorney for the Bank shall be liable hereunder for any acts or omissions or for any error of judgment or mistake of fact or law other than their gross negligence or willful misconduct.

The rights and remedies of the Bank under this Agreement shall be cumulative and not exclusive of any other right or remedy which the Bank may have.

The Bank shall have and be entitled to exercise all rights, remedies and powers hereunder, together with such powers as are reasonably incidental thereto under the Loan and Security Agreement, as the Bank may elect from time to time.

Section 10. **Power of Attorney.** The Grantor hereby irrevocably appoints the Bank, its nominee, or any other person whom the Bank may designate as the Grantor's and Co-Borrower's attorney-in-fact, with full authority in the place and stead of the Grantor and in the name of the Grantor, the Bank or otherwise, upon the occurrence and during the continuation of any Event of Default, or if the Grantor or the Co-Borrowers fail to perform any agreement contained herein within ten (10) days after the Bank's written request, then to the extent necessary to enable the Bank to perform such agreement itself, from time to time in the Bank's discretion, to take any action and to execute any instrument which the Bank may deem necessary or advisable to accomplish the purposes of this Agreement, including without limitation to record an assignment of the Trademarks and Trademark Licenses, if any, to the Bank with the United States Patent and Trademark Office, to prosecute diligently any Patent, Trademark or Copyright or any application for Patents, Trademarks or Copyrights pending as of the date of this Agreement or thereafter until the Obligations shall have been indefeasibly paid in full, to make application on unpatented but patentable inventions and registrable but unregistered Trademarks or Copyrights, to file and prosecute opposition and cancellation proceedings, to do all other acts necessary or desirable to preserve all rights in Collateral and otherwise to file any claims or take any action or institute any proceedings which the Bank may deem necessary or desirable to accomplish the purpose of this Agreement. The Grantor hereby ratifies and approves all acts of any such attorney and the Grantor and the Co-Borrowers agree that neither the Bank nor any such attorneys will be liable for any acts or omissions nor for any error of judgment or mistake of fact or law other than their gross negligence or willful misconduct. The foregoing power of attorney, being coupled with an interest, is irrevocable until the Obligations have been indefeasibly paid and satisfied.

Section 11. **Application of Proceeds.** The proceeds of any sale of Collateral pursuant to this Agreement or otherwise, and any Collateral consisting of cash, shall be applied after receipt by the Bank as set forth in Section 20 of the Security Agreement.

Section 12. **Miscellaneous.**

(a) The Grantor hereby indemnifies the Bank for any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, reasonable costs, reasonable expenses or disbursements (including reasonable attorneys' fees) of any kind and nature whatsoever which may be imposed on, incurred by or asserted against the Bank, in any way relating to or arising out of, directly or indirectly, (i) the manufacture, use or sale or other disposition of products or processes utilizing or embodying any Collateral (in the case of inventory, solely to the extent manufactured by or on behalf of the Grantor) or (ii) any transactions contemplated hereby or any enforcement of the terms hereof, including, but not limited to, any action of, or failure to act by, the Bank in connection with this Agreement;

provided, however, that the Grantor or the Co-Borrowers shall not be liable for any of the foregoing to the extent they arise from the gross negligence or willful misconduct of the Bank.

(b) All communications hereunder shall be in writing and shall be given to the relevant party, and shall be deemed to have been made when given to the relevant party, in accordance with the Loan and Security Agreement.

(c) In the event that any provision hereof shall be deemed to be invalid by reason of the operation of any law or by reason of the interpretation placed thereon by any court, this Agreement shall be construed as not containing such provision, but only as to such jurisdictions where such law or interpretation is operative, and the invalidity of such provision shall not affect the validity of any remaining provisions hereof, and any and all other provisions hereof which are otherwise lawful and valid shall remain in full force and effect.

(d) This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, except as required by mandatory provisions of law and except to the extent that the validity or perfection of the security interest hereunder, or remedies hereunder, in respect of any particular Collateral are governed by the laws of a jurisdiction other than the Commonwealth of Massachusetts. The headings in this instrument are for convenience of reference only and shall not limit or otherwise affect the meaning of any provision hereof.

(e) This Agreement may be executed in any number of counterparts and by different parties hereto on separate counterpart signature pages, each constituting an original, but all together one and the same instrument.

(f) Whenever in this Agreement any of the parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such party, and all covenants, promises and agreements by or on behalf of the Bank that are contained in this Agreement shall bind and inure to the benefit of its respective successors and assigns. The Grantor and the Co-Borrowers may not assign or transfer any of their respective rights or obligations hereunder without the prior written consent of the Bank.

(g) THE GRANTOR WAIVES FOR ITSELF AND FOR THE CO-BORROWERS (A) THE RIGHT TO NOTICE AND PRIOR COURT HEARING OR COURT ORDER UNDER THE MASSACHUSETTS GENERAL STATUTES AS AMENDED OR UNDER ANY OTHER STATE OR FEDERAL LAW WITH RESPECT TO ANY AND ALL PREJUDGMENT REMEDIES THE BANK MAY EMPLOY TO ENFORCE ITS RIGHTS AND REMEDIES HEREUNDER AND UNDER THE OTHER LOAN DOCUMENTS AND (B) ITS RIGHTS TO REQUEST THAT THE BANK POST A BOND, WITH OR WITHOUT SURETY, TO PROTECT THE GRANTOR AND THE CO-BORROWERS AGAINST DAMAGES THAT MAY BE CAUSED BY ANY PREJUDGMENT REMEDY SOUGHT OR OBTAINED BY THE BANK AND (C) ANY OBJECTIONS TO ANY PREJUDGMENT REMEDY OBTAINED BY THE BANK. THE GRANTOR ACKNOWLEDGES FOR ITSELF AND FOR THE CO-BORROWERS AND RESERVES THE RIGHT TO NOTICE AND A HEARING SUBSEQUENT TO THE ISSUANCE OF SUCH A WRIT FOR PREJUDGMENT REMEDY AND THE BANK ACKNOWLEDGES THE GRANTOR'S AND THE CO-

BORROWERS' RIGHT TO SUCH A HEARING SUBSEQUENT TO THE ISSUANCE OF SAID WRIT.


(h) EACH OF THE PARTIES, INCLUDING THE GRANTOR ON BEHALF OF THE CO-BORROWERS, HERETO HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ITS RIGHT TO A JURY TRIAL WITH RESPECT TO ANY LITIGATION, ACTION OR CLAIM ARISING OUT OF ANY DISPUTE IN CONNECTION WITH THIS AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS, ANY RIGHTS OR OBLIGATIONS HEREUNDER OR THEREUNDER OR THE PERFORMANCE OF SUCH RIGHTS AND OBLIGATIONS OR ANY COURSE OF CONDUCT, COURSE OF DEALINGS, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY, INCLUDING ANY COURSE OF CONDUCT, COURSE OF DEALINGS, STATEMENTS OR ACTIONS OF THE BANK RELATING TO THE ADMINISTRATION OF THE LOANS OR ENFORCEMENT OF THE LOAN DOCUMENTS AND AGREES THAT IT WILL NOT SEEK TO CONSOLIDATE ANY SUCH ACTION WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED. THE GRANTOR AGREES THAT THE TERMS HEREOF SHALL SUPERSEDE AND REPLACE ANY PRIOR AGREEMENT RELATED TO ARBITRATION OF DISPUTES BETWEEN THE PARTIES CONTAINED IN ANY LOAN DOCUMENT OR ANY OTHER DOCUMENT OR AGREEMENT HERETOFORE EXECUTED IN CONNECTION WITH, RELATED TO OR BEING REPLACED, SUPPLEMENTED, EXTENDED OR MODIFIED BY THIS AGREEMENT. Except as prohibited by law, the Grantor waives for itself and for the Co-Borrowers any right which it or they may have to claim or recover in any litigation referred to in the preceding sentence any special, exemplary, punitive or consequential damages or any damages other than, or in addition to, actual damages. The Grantor (a) certifies that neither the Bank nor any representative, agent or attorney of the Bank has represented, expressly or otherwise, that Bank would not, in the event of litigation, seek to enforce the foregoing waivers or other waivers contained in this Agreement and (b) acknowledges that, in entering into the Loan and Security Agreement and the other Loan Documents to which the Bank is relying upon, among other things, the waivers and certifications contained in this §12.

**[signatures on following pages]**

IN WITNESS WHEREOF, the Grantor has caused this Agreement to be duly executed as of the date first above written.

**GRANTOR:**


J. P. LICKS HOMEMADE ICE CREAM COMPANY,  
INC.

By:   
Name: Vincent Petryk  
Title: President

Accepted and agreed to by the Bank as of the date first above written.

**AGENT:**

ROCKLAND TRUST COMPANY,

By:   
Name: Michael F. Lindberg  
Its: First Vice President



**SCHEDULE A-1**

**TO INTELLECTUAL PROPERTY SECURITY AGREEMENT**

**Patent Numbers  
And Pending Patent Application Numbers**

None

**SCHEDULE A-2**  
**TO INTELLECTUAL PROPERTY SECURITY AGREEMENT**

**Patent Licenses**

None

**SCHEDULE B-1**  
**TO INTELLECTUAL PROPERTY SECURITY AGREEMENT**

**Registered Trademarks**  
**And Trademark Applications**

See Attached



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**Word Mark** J.P. LICKS HOMEMADE ICE CREAM CAFE

**Goods and Services** IC 043. US 100 101. G & S: Carry-out and eat in restaurant services featuring ice cream, frozen yogurt, warm and cold beverages and baked goods. FIRST USE: 19811231. FIRST USE IN COMMERCE: 20040630

**Mark Drawing Code** (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS

**Design Search Code**  
 03.07.01 - Cattle; Oxen, cows, calves, bulls; Steers  
 03.07.03 - Heads of oxen, cows, calves, bulls  
 03.07.26 - Costumed bovines, deer, antelopes, goats, sheep, pigs cows, bulls, buffalo, moose  
 08.09.01 - Ice cream, sherbet and frozen yogurt in cones; Sundae  
 17.03.02 - Bracelets; Chains, jewelry; Chokers (jewelry); Dog tags (military identification); Necklaces; Tags, identification (metal)  
 26.03.21 - Ovals that are completely or partially shaded  
 26.17.13 - Letters or words underlined and/or overlined by one or more strokes or lines; Overlined words or letters; Underlined words or letters

**Trademark Search Facility Classification Code** ANI-MAMM Mammalia; accurate depiction of warm-blooded animals except for human beings  
 ART-17.03 Jewelry  
 LETS-2 JP Two letters or combinations of multiples of two letters  
 SHAPES-MISC Miscellaneous shaped designs  
 SHAPES-OVALS Oval figures or designs including incomplete ovals and one or more ovals

**Serial Number** 77036424

**Filing Date** November 3, 2006

**Current Basis** 1A

**Original Filing**

**Basis** A  
**Published for Opposition** June 12, 2007  
**Registration Number** 284604  
**Registration Date** August 28, 2007  
**Owner** REGISTRANT) J.P. Licks Homemade Ice Cream Company, Inc. CORPORATION  
MASSACHUSETTS 659 Centre Street Boston MASSACHUSETTS 0213 )  
**Attorney of Record** Heidi A. Schiller  
**Prior Registrations** 158134  
**Disclaimer** NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "HOMEMADE ICE CREAM CAFE"  
APART FROM THE MARK AS SHOWN  
**Description of Mark** The stippling is a feature of the mark.  
**Type of Mark** SERVICE MARK  
**Register** PRINCIPAL  
**Other Data** The name(s), portrait(s), and/or signature(s) shown in the mark does not identify a particular living individual.  
**Live/Dead Indicator** LIVE

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TARR Status	ASSIGN Status	TDR	TTAB Status
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# J.P. LICKS

Word Mark	J.P. LICKS
Goods and Services	IC 043, US 100 101, G & S: Carry-out and eat in restaurant services featuring ice cream, frozen yogurt, warm and cold beverages and baked goods. FIRST USE: 19810731. FIRST USE IN COMMERCE: 20040630
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	78754173
Filing Date	November 15, 2005
Current Basis	1A
Original Filing Basis	1A
Published for Opposition	August 1, 2006
Registration Number	3158134
Registration Date	October 17, 2006
Owner	(REGISTRANT) J.P. Licks Homemade Ice Cream Company, Inc. CORPORATION MASSACHUSETTS 659 Centre Street Boston MASSACHUSETTS 02130
Attorney of Record	Heidi A. Schiller
Type of Mark	SERVICE MARK

Register PRINCIPAL  
Affidavit Text SECT 15. SECT 8 (6-YR).  
Other Data The name J.P. LICKS does not identify a living individual.  
Live/Dead Indicator LIVE

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**SCHEDULE B-2**  
**TO INTELLECTUAL PROPERTY SECURITY AGREEMENT**

**Trademark Licenses**

See Attached



**SCHEDULE C-1**  
**TO INTELLECTUAL PROPERTY SECURITY AGREEMENT**

**Registered Copyrights and Copyright Applications**

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None

**SCHEDULE C-2**  
**TO INTELLECTUAL PROPERTY SECURITY AGREEMENT**

**Copyright Licenses**

None