

09-25-2001



SHEET

101854274

To the Commissioner of Patents
Please record the attached original documents or copy thereof.

ATTN.: BOX ASSIGNMENT

1. Name of conveying parties:

Industrial Insulations, Incorporated
(a California corporation)

09/19/01

Additional name(s) & address(es) attached? No

Additional name(s) of conveying party(ies) attached? No

2. Name and address of receiving party:

Name: Bay View Financial Corporation
(a California corporation)

SEP 19 2001

Address: 16130 Ventura Blvd., Suite 300
Encino, California 91436

Additional name(s) & address(es) attached?
Yes No

3. Nature of conveyance:

Assignment Merger
 Security Agreement Change of Name
 Other _____

Execution Date: December 8, 2000

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

A. Patent Application No.(s)

B. Patent No.(s)

5,105,970 5,143,245

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

Name: Margaret A. Delacruz
Legal Assistant

Address: Morgan, Lewis & Bockius LLP
Attn.: TMSU
1800 M Street, N.W.

City: Washington State: DC Zip: 20036

6. Total number of applications and patents involved: 2

7. Total fee (37 C.F.R §3.41): \$80.00

Enclosed
Authorized to be charged to deposit account 13-4520
 Debit insufficiency or credit over payment to Deposit Account No. 13-4520

8. Deposit account number: 13-4520
Attach duplicate of page if paying by deposit account

9. Statement and Signature

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Margaret A. Delacruz
Name of Person Signing

Signature

September 19, 2001
Date

Total number of pages including cover sheet, attachments and documents: 12

09/24/2001 TDIAZ1 00000025 5105970

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PATENT AND TRADEMARK SECURITY AGREEMENT

This PATENT AND TRADEMARK SECURITY AGREEMENT ("Agreement"), dated as of December 8, 2000, is entered into between **INDUSTRIAL INSULATIONS, INCORPORATED**, a California corporation ("Grantor"), which has a mailing address at 1011 Walnut Avenue, Pomona, California 91766, and **BAY VIEW FINANCIAL CORPORATION** ("Bay View"), which has a mailing address at 16130 Ventura Blvd., Suite 300, Encino, California 91436.

RECITALS

A. Grantor and Bay View are, contemporaneously herewith, entering into that certain Loan and Security Agreement ("Loan Agreement") and other instruments, documents and agreements contemplated thereby or related thereto (collectively, together with the Loan Agreement, the "Loan Documents"); and

B. Grantor is the owner of certain intellectual property, identified below, in which Grantor is granting a security interest to Bay View.

NOW THEREFORE, in consideration of the mutual promises, covenants, conditions, representations, and warranties hereinafter set forth and for other good and valuable consideration, the parties hereto mutually agree as follows:

1. DEFINITIONS AND CONSTRUCTION.

1.1 **Definitions.** The following terms, as used in this Agreement, have the following meanings:

"Code" means the California Uniform Commercial Code, as amended and supplemented from time to time, and any successor statute.

"Collateral" means all of the following, whether now owned or hereafter acquired:

(i) Each of the trademarks and rights and interest which are capable of being protected as trademarks (including trademarks, service marks, designs, logos, indicia, tradenames, corporate names, company names, business names, fictitious business names, trade styles, and other source or business identifiers, and applications pertaining thereto), which are presently, or in the future may be, owned, created, acquired, or used (whether pursuant to a license or otherwise) by Grantor, in whole or in part, and all trademark rights with respect thereto throughout the world, including all proceeds thereof (including license royalties and proceeds of infringement suits), and rights to renew and extend such trademarks and trademark rights;

(ii) Each of the patents and patent applications which are presently, or in the future may be, owned, issued, acquired, or used (whether pursuant to a license or otherwise) by Grantor, in whole or in part, and all patent rights with respect thereto throughout the world, including all proceeds thereof (including license royalties and

proceeds of infringement suits), foreign filing rights, and rights to extend such patents and patent rights;

(iii) All of Grantor's right to the trademarks and trademark registrations listed on Exhibit A attached hereto, as the same may be updated hereafter from time to time;

(iv) All of Grantor's right, title, and interest, in and to the patents and patent applications listed on Exhibit B attached hereto, as the same may be updated hereafter from time to time;

(v) All of Grantor's right, title and interest to register trademark claims under any state or federal trademark law or regulation of any foreign country and to apply for, renew, and extend the trademark registrations and trademark rights, the right (without obligation) to sue or bring opposition or cancellation proceedings in the name of Grantor or in the name of Bay View for past, present, and future infringements of the trademarks, registrations, or trademark rights and all rights (but not obligations) corresponding thereto in the United States and any foreign country;

(vi) All of Grantor's right, title, and interest in all patentable inventions, and to file applications for patent under federal patent law or regulation of any foreign country, and to request reexamination and/or reissue of the patents, the right (without obligation) to sue or bring interference proceedings in the name of Grantor or in the name of Bay View for past, present, and future infringements of the patents, and all rights (but not obligations) corresponding thereto in the United States and any foreign country;

(vii) the entire goodwill of or associated with the businesses now or hereafter conducted by Grantor connected with and symbolized by any of the aforementioned properties and assets;

(viii) All general intangibles relating to the foregoing and all other intangible intellectual or other similar property of the Grantor of any kind or nature, associated with or arising out of any of the aforementioned properties and assets and not otherwise described above; and

(ix) All products and proceeds of any and all of the foregoing (including, without limitation, license royalties and proceeds of infringement suits) and, to the extent not otherwise included, all payments under insurance, or any indemnity, warranty, or guaranty payable by reason of loss or damage to or otherwise with respect to the Collateral.

"Obligations" means all obligations, liabilities, and indebtedness of Grantor to Bay View, whether direct, indirect, liquidated, or contingent, and whether arising under this Agreement, the Loan Agreement, any other of the Loan Documents, or otherwise, including all costs and expenses described in Section 9.8 hereof.

1.2 Construction. Unless the context of this Agreement clearly requires otherwise, references to the plural include the singular, references to the singular include the plural, and the term "including" is not limiting. The words "hereof," "herein," "hereby," "hereunder," and other

similar terms refer to this Agreement as a whole and not to any particular provision of this Agreement. Any initially capitalized terms used but not defined herein shall have the meaning set forth in the Loan Agreement. Any reference herein to any of the Loan Documents includes any and all alterations, amendments, extensions, modifications, renewals, or supplements thereto or thereof, as applicable. Neither this Agreement nor any uncertainty or ambiguity herein shall be construed or resolved against Bay View or Grantor, whether under any rule of construction or otherwise. On the contrary, this Agreement has been reviewed by Grantor, Bay View, and their respective counsel, and shall be construed and interpreted according to the ordinary meaning of the words used so as to fairly accomplish the purposes and intentions of Bay View and Grantor. Headings have been set forth herein for convenience only, and shall not be used in the construction of this Agreement.

2. GRANT OF SECURITY INTEREST.

To secure the complete and timely payment and performance of all Obligations, and without limiting any other security interest Grantor has granted to Bay View, Grantor hereby grants, assigns, and conveys to Bay View a security interest in Grantor's entire right, title, and interest in and to the Collateral.

3. REPRESENTATIONS, WARRANTIES AND COVENANTS.

Grantor hereby represents, warrants, and covenants that:

3.1 Trademarks; Patents. A true and complete schedule setting forth all federal and state trademark registrations owned or controlled by Grantor or licensed to Grantor, together with a summary description and full information in respect of the filing or issuance thereof and expiration dates is set forth on Exhibit A; and a true and complete schedule setting forth all patent and patent applications owned or controlled by Grantor or licensed to Grantor, together with a summary description and full information in respect of the filing or issuance thereof and expiration dates is set forth on Exhibit B.

3.2 Validity; Enforceability. Each of the patents and trademarks is valid and enforceable, and Grantor is not presently aware of any past, present, or prospective claim by any third party that any of the patents or trademarks are invalid or unenforceable, or that the use of any patents or trademarks violates the rights of any third person, or of any basis for any such claims.

3.3 Title. Grantor is the sole and exclusive owner of the entire and unencumbered right, title, and interest in and to each of the patents, patent applications, trademarks, and trademark registrations, free and clear of any liens, charges, and encumbrances, including pledges, assignments, licenses, shop rights, and covenants by Grantor not to sue third persons.

3.4 Notice. Grantor has used and will continue to use proper statutory notice in connection with its use of each of the patents and trademarks.

3.5 Quality. Grantor has used and will continue to use consistent standards of high quality (which may be consistent with Grantor's past practices) in the manufacture, sale, and delivery of products and services sold or delivered under or in connection with the trademarks,

including, to the extent applicable, in the operation and maintenance of its merchandising operations, and will continue to maintain the validity of the trademarks.

3.6 Perfection of Security Interest. Except for the filing of financing statements in the appropriate governmental offices and filings with the United States Patent and Trademark Office necessary to perfect the security interests created hereunder, no authorization, approval, or other action by, and no notice to or filing with, any governmental authority or regulatory body is required either for the grant by Grantor of the security interest hereunder or for the execution, delivery, or performance of this Agreement by Grantor or for the perfection of or the exercise by Bay View of its rights hereunder to the Collateral in the United States.

4. AFTER-ACQUIRED PATENT OR TRADEMARK RIGHTS.

If Grantor shall obtain rights to any new trademarks, any new patentable inventions or become entitled to the benefit of any patent application or patent or any reissue, division, or continuation of any patent, the provisions of this Agreement shall automatically apply thereto. Grantor shall give prompt notice in writing to Bay View with respect to any such new trademarks or patents, or renewal or extension of any trademark registration or patent. Grantor shall bear any expenses incurred in connection with future patent applications or trademark registrations. Without limiting Grantor's obligation under this Section 4, Grantor authorizes Bay View to modify this Agreement by amending Exhibits A or B to include any such new patent or trademark rights. Notwithstanding the foregoing, no failure to so modify this Agreement or amend Exhibits A or B shall in any way affect, invalidate or detract from Bay View's continuing security interest in all Collateral, whether or not listed on Exhibits A or B.

5. LITIGATION AND PROCEEDINGS.

Grantor shall commence and diligently prosecute in its own name, as the real party in interest, for its own benefit, and its own expense, such suits, administrative proceedings, or other action for infringement or other damages as are in its reasonable business judgment necessary to protect the Collateral. Grantor shall provide to Bay View any information with respect thereto requested by Bay View. Bay View shall provide at Grantor's expense all necessary cooperation in connection with any such suits, proceedings, or action, including, without limitation, joining as a necessary party. Following Grantor's becoming aware thereof, Grantor shall notify Bay View of the institution of, or any adverse determination in, any proceeding in the United States Patent and Trademark Office, or any United States, state, or foreign court regarding Grantor's claim of ownership in any of the patents or trademarks, its right to apply for the same, or its right to keep and maintain such patent or trademark rights.

6. POWER OF ATTORNEY.

Grantor hereby appoints Bay View as Grantor's true and lawful attorney, with full power of substitution, to do any or all of the following, in the name, place and stead of Grantor: (a) file this Agreement (or an abstract hereof) or any other document describing Bay View's interest in the Collateral with the United States Patent and Trademark Office; (b) execute any modification of this Agreement pursuant to Section 4 of this Agreement; (c) take any action and execute any instrument which Bay View may deem necessary or advisable to accomplish the purposes of this Agreement; and (d) following the occurrence and during the continuation of an Event of Default

(as defined in the Loan Agreement), (i) endorse Grantor's name on all applications, documents, papers and instruments necessary for Bay View to use or maintain the Collateral; (ii) ask, demand, collect, sue for, recover, impound, receive, and give acquittance and receipts for money due or to become due under or in respect of any of the Collateral; (iii) file any claims or take any action or institute any proceedings that Bay View may deem necessary or desirable for the collection of any of the Collateral or otherwise enforce Bay View's rights with respect to any of the Collateral, and (iv) assign, pledge, convey, or otherwise transfer title in or dispose of the Collateral to any person.

7. RIGHT TO INSPECT.

Grantor grants to Bay View and its employees and agents the right to visit Grantor's plants and facilities which manufacture, inspect, or store products sold under any of the patents or trademarks, and to inspect the products and quality control records relating thereto at reasonable times during regular business hours.

8. SPECIFIC REMEDIES.

Upon the occurrence and during the continuation of any Event of Default (as defined in the Loan Agreement), Bay View shall have, in addition to other rights given by law or in this Agreement, the Loan Agreement, or in any other Loan Document, all of the rights and remedies with respect to the Collateral of a secured party under the Code, including the following:

8.1 Notification. Bay View may notify licensees to make royalty payments on license agreements directly to Bay View;

8.2 Sale. Bay View may sell or assign the Collateral and associated goodwill at public or private sale for such amounts, and at such time or times as Bay View deems reasonably advisable. Any requirement of reasonable notice of any disposition of the Collateral shall be satisfied if such notice is sent to Grantor seven (7) days prior to such disposition. Grantor shall be credited with the net proceeds of such sale only when they are actually received by Bay View, and Grantor shall continue to be liable for any deficiency remaining after the Collateral is sold or collected. If the sale is to be a public sale, Bay View shall also give notice of the time and place by publishing a notice one time at least seven (7) days before the date of the sale in a newspaper of general circulation in the county in which the sale is to be held. To the maximum extent permitted by applicable law, Bay View may be the purchaser of any or all of the Collateral and associated goodwill at any public sale and shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any public sale, to use and apply all or any part of the Obligations as a credit on account of the purchase price of any collateral payable by Bay View at such sale.

9. GENERAL PROVISIONS.

9.1 Effectiveness. This Agreement shall be binding and deemed effective when executed by Grantor and Bay View.

9.2 Notices. Except to the extent otherwise provided herein, all notices, demands, and requests that either party is required or elects to give to the other shall be in writing and shall be governed by the notice provisions of the Loan Agreement.

9.3 No Waiver. No course of dealing between Grantor and Bay View, nor any failure to exercise nor any delay in exercising, on the part of Bay View, any right, power, or privilege under this Agreement or under the Loan Agreement or any other agreement, shall operate as a waiver. No single or partial exercise of any right, power, or privilege under this Agreement or under the Loan Agreement or any other agreement by Bay View shall preclude any other or further exercise of such right, power, or privilege or the exercise of any other right, power, or privilege by Bay View.

9.4 Rights Are Cumulative. All of Bay View's rights and remedies with respect to the Collateral whether established by this Agreement, the Loan Agreement, or any other documents or agreements, or by law shall be cumulative and may be exercised concurrently or in any order.

9.5 Successors. The benefits and burdens of this Agreement shall inure to the benefit of and be binding upon the respective successors and permitted assigns of the parties; provided that Grantor may not transfer any of the Collateral or any rights hereunder, without the prior written consent of Bay View, except as specifically permitted hereby.

9.6 Severability. The provisions of this Agreement are severable. If any provision of this Agreement is held invalid or unenforceable in whole or in part in any jurisdiction, then such invalidity or unenforceability shall affect only such provision, or part thereof, in such jurisdiction, and shall not in any manner affect such provision or part thereof in any other jurisdiction, or any other provision of this Agreement in any jurisdiction.

9.7 Entire Agreement. This Agreement is subject to modification only by a writing signed by the parties, except as provided in Section 4 of this Agreement. To the extent that any provision of this Agreement conflicts with any provision of the Loan Agreement, the provision giving Bay View greater rights or remedies shall govern, it being understood that the purpose of this Agreement is to add to, and not detract from, the rights granted to Bay View under the Loan Agreement. This Agreement, the Loan Agreement, and the documents relating thereto comprise the entire agreement of the parties with respect to the matters addressed in this Agreement.

9.8 Fees and Expenses. Grantor shall pay to Bay View on demand all costs and expenses that Bay View pays or incurs in connection with the negotiation, preparation, consummation, administration, enforcement, and termination of this Agreement, including: (a) reasonable attorneys' and paralegals' fees and disbursements of counsel to Bay View; (b) costs and expenses (including reasonable attorneys' and paralegals' fees and disbursements) for any amendment, supplement, waiver, consent, or subsequent closing in connection with this Agreement and the transactions contemplated hereby; (c) costs and expenses of lien and title searches; (d) taxes, fees, and other charges for filing this Agreement at the United States Patent and Trademark Office, or for filing financing statements, and continuations, and other actions to perfect, protect, and continue the security interest created hereunder; (e) sums paid or incurred to pay any amount or take any action required of Grantor under this Agreement that Grantor fails to pay or take; (f) costs and expenses of preserving and protecting the Collateral; and (g) costs and expenses (including reasonable attorneys' and paralegals' fees and disbursements) paid or incurred to enforce the security interest created hereunder, sell or otherwise realize upon the Collateral, and otherwise enforce the provisions of this Agreement, or to defend any claims made or threatened against the Bay View arising out of the transactions contemplated hereby (including

preparations for the consultations concerning any such matters). The foregoing shall not be construed to limit any other provisions of this Agreement or the Loan Documents regarding costs and expenses to be paid by Grantor. The parties agree that reasonable attorneys' and paralegals' fees and costs incurred in enforcing any judgment are recoverable as a separate item in addition to fees and costs incurred in obtaining the judgment and that the recovery of such attorneys' and paralegals' fees and costs is intended to survive any judgment, and is not to be deemed merged into any judgment.

9.9 Indemnity. Grantor shall protect, defend, indemnify, and hold harmless Bay View and Bay View's assigns from all liabilities, losses, and costs (including without limitation reasonable attorneys' fees) incurred or imposed on Bay View relating to the matters in this Agreement, other than liabilities, losses, and costs resulting from Bay View's own gross negligence or willful misconduct.

9.10 Further Assurances: At Bay View's request, Grantor shall execute and deliver to Bay View any further instruments or documentation, and perform any acts, that may be reasonably necessary or appropriate to implement this Agreement, the Loan Agreement or any other agreement, and the documents relating thereto, including without limitation any instrument or documentation reasonably necessary or appropriate to create, maintain, perfect, or effectuate Bay View's security interests in the Collateral.

9.11 Release. At such time as Grantor shall completely satisfy all of the Obligations and the Loan Agreement shall be terminated, Bay View shall execute and deliver to Grantor all assignments and other instruments as may be reasonably necessary or proper to terminate Bay View's security interest in the Collateral, subject to any disposition of the Collateral which may have been made by Bay View pursuant to this Agreement. For the purpose of this Agreement, the Obligations shall be deemed to continue if Grantor enters into any bankruptcy or similar proceeding at a time when any amount paid to Bay View could be ordered to be repaid as a preference or pursuant to a similar theory, and shall continue until it is finally determined that no such repayment can be ordered.

9.12 Governing Law. The validity and interpretation of this Agreement and the rights and obligations of the parties shall be governed by the laws of the State of California, excluding its conflict of law rules to the extent such rules would apply the law of another jurisdiction, and the United States. Grantor (i) agrees that all actions and proceedings relating directly or indirectly to this Agreement shall, at Bay View's option, be litigated in courts located within California, and that the exclusive venue therefor shall be Los Angeles County; (ii) consents to the jurisdiction and venue of any such court and consents to service of process in any such action or proceeding by personal delivery or any other method permitted by law; and (iii) waives any and all rights Grantor may have to object to the jurisdiction of any such court, or to transfer or change the venue of any such action or proceeding.

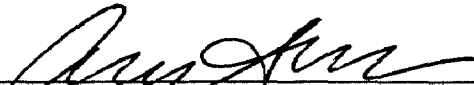
9.13 Waiver of Right to Jury Trial. BAY VIEW AND GRANTOR EACH HEREBY WAIVE THE RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, ARISING OUT OF, OR IN ANY WAY RELATING TO: (I) THIS AGREEMENT; OR (II) ANY OTHER PRESENT OR FUTURE INSTRUMENT OR AGREEMENT BETWEEN BAY VIEW AND GRANTOR; OR (III) ANY CONDUCT, ACTS OR OMISSIONS OF BAY VIEW OR GRANTOR OR ANY OF THEIR

DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, ATTORNEYS OR ANY OTHER PERSONS AFFILIATED WITH BAY VIEW OR GRANTOR; IN EACH OF THE FOREGOING CASES, WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first written above.

BAY VIEW FINANCIAL CORPORATION

INDUSTRIAL INSULATIONS,
INCORPORATED

By 
Title VICE PRESIDENT

By 
Title PRESIDENT

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of SAN BERNARDINO

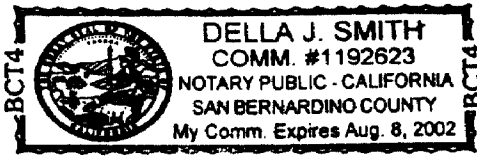
} ss.

On 12-8-2000, before me, DELLA J SMITH NOTARY PUBLIC
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared ARKSARDAROV and Terry M. Grill
Name(s) of Signer(s)

- personally known to me
- proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.



Place Notary Seal Above

WITNESS my hand and official seal.

Della J Smith
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: agreement + PATENT, TRADEMARK

Document Date: 12-8-00 Number of Pages: 10 of 9

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

- Individual S
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

Signer Is Representing: _____

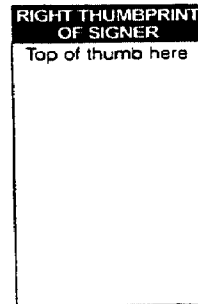


Exhibit "A"

REGISTERED TRADEMARKS

<u>Trademark</u>	<u>Registration Date</u>	<u>Registration No.</u>
"Coolguard"	3/26/1991	1,639,095

PENDING TRADEMARKS

Exhibit "B"

PATENTS

<u>Patent Description/Title</u>	<u>Issue Date</u>	<u>Patent No.</u>	<u>Name of Inventor</u>
Freight Container Insulating System and Method	April 21, 1992	5,105,970	Thomas G. Malone and William E. Mensch
Leak-Proof Insulating System for Freight Containers	September 1, 1992	5,143,245	Thomas G. Malone

PATENT APPLICATIONS

Description Filing Date Serial No. Name of Inventor