

06-06-2002



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U.S. DEPARTMENT OF COMMERCE

Patent and Trademark Office

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102112982

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

1. Name of conveying party(ies):

James A. Mancini
310 Springfield Avenue, Suite 8
Berkeley Heights, New Jersey 07922

6-4-02

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

Name: TREE STAPLE, INC.

Address: 310 Springfield Avenue, Suite 8

Additional names(s) of conveying party(ies) attached? ☐ Yes ☒ No

3. Nature of conveyance:

- ☐ Assignment ☐ Merger
- ☐ Security Agreement ☐ Change of Name
- ☒ Other EXCLUSIVE LICENSE AGREEMENT

Execution Date: FEBRUARY 28, 2002

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

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

If this document is being filed together with a new application, the execution date of the application is:

Patent Application No.

Filing date

B. Patent No.(s)

6,065,243

6,141,903

Additional numbers attached? ☐ Yes ☒ No

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

Name: Kenneth Watov, Esq.

Registration No. 26,042

Address: P.O. BOX 247

06/06/2002 LMUELLER 00000010 6065243

01 FBI:501

80.00 DP

City: Princeton Junction

State/Prov.: NJ

Country: USA

ZIP: 08550

6. Total number of applications and patents involved:

2

7. Total fee (37 CFR 3.41):.....\$ 80.00

- ☒ Enclosed - Any excess or insufficiency should be credited or debited to deposit account
- ☐ Authorized to be charged to deposit account

8. Deposit account number:

23-0510

(Attach duplicate copy of this page if paying by deposit account)

DO NOT USE THIS SPACE

9. Statement and signature.

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

Kenneth Watov

Name of Person Signing

Signature

May 16, 2002

Date

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

19

Mail documents to be recorded with required cover sheet information to:
Commissioner of Patents & Trademarks, Box AssignmentsPATENT
REEL: 012946 FRAME: 0071

AGREEMENT FOR TRADEMARKS AND
EXCLUSIVE LICENSE FOR PATENTS AND TECHNOLOGY

THIS AGREEMENT is entered into on February 6, 2002 ("the date of this Agreement"), by and between James A. Mancini (hereinafter referred to as Mancini), having an office at 310 Springfield Avenue, Suite 8, Berkeley Heights, New Jersey 07922, and Tree Staple, Inc., a New Jersey Corporation, and its subsidiaries (collectively referred to as "Tree Staple"), having an office at 310 Springfield Avenue, Suite 8, Berkeley Heights, New Jersey 07922, and is made with reference to the following recitals:

1. RECITALS

- 1.1 Mancini is owner of all right, title and interest in and to U.S. Patent Nos.6,065,243 and 6,141,903 relating to tree and shrub stabilizing devices (Licensed Products) including but not limited to existing or later filed divisionals, reissues, continuations, continuations-in-part, and improvements thereto ("the Mancini Patents"), and any associated right thereto throughout the world.
- 1.2 Mancini has developed certain technology and know-how relating to tree and shrub stabilizing devices as disclosed in the Mancini Patents ("Mancini Technology") including but not limited to the technology and know-how embodied in such devices.
- 1.3 Mancini is owner of all right, title and interest in and to the trademark 'TREE STAPLE,' and the related pending U. S. Trademark Application No. 76/353486, filed December 31, 2001 for registration on the Principal Register of the U. S. Patent and Trademark Office, relating to tree and shrub stabilizing

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devices, and may develop other trademarks relating to the tree and shrub stabilizing devices.

2. INCORPORATION OF RECITALS

All of the statements contained in the preamble and the recitals of this Agreement are hereby incorporated in this Agreement by this reference.

3. GRANTS

- 3.1 License for Mancini Patents. Mancini hereby exclusively licenses all of its right, title, and interests in and to the Mancini Patents to Tree Staple, including (without limitation) the irrevocable, exclusive, world-wide right to employ the Mancini Patents to design, develop, manufacture, have made, use, and sell Licensed Products. Mancini agrees to execute all further documents necessary to record this license.
- 3.2 License for Mancini Technology. Mancini hereby exclusively licenses all of its right, title, and interests in and to the Mancini Technology to Tree Staple, including (without limitation) the irrevocable, exclusive, worldwide right to employ the Mancini Technology to design, develop, manufacture, have made, use, and sell Licensed Products. Mancini agrees to execute all further documents necessary to record this license.
- 3.3 Right to Sublicense. Tree Staple shall have the exclusive right to sublicense all or part of the Mancini Patents and Mancini Technology, subject to the terms and conditions of this Agreement and within the limits of paragraphs 3.1 and 3.2.

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Tree Staple shall promptly provide Mancini with a copy of all sublicenses when issued, and keep Mancini informed of existing licenses.

4. ASSIGNMENTS

4.1 Mancini agrees upon the execution of this Agreement to immediately thereafter execute an Assignment Agreement to be attached hereto, and incorporated in this Agreement by reference, for his assigning to all right, title, and interest in the United States, and in the World, in and to the trademark "TREE STAPLE" and any applications therefor, including U. S. Trademark Application No. 76/353486 (see paragraph 1.3), together with the goodwill of the business symbolized by the trademark.

4.2 Mancini agrees to assign to Tree Staple any new trademarks he may develop related to any tree and shrub stabilizing devices.

5. PAYMENTS, ROYALTIES AND OTHER CONSIDERATION

5.1 Royalties for Mancini Patents and Technology.

5.1.1 Tree Staple shall pay Mancini a royalty for each Licensed Product sold by Tree Staple, said royalty to be five percent (5%) of the Net Sales (Net Sales being defined as Gross Sales less quantity discounts) after the third (3rd) year of the Agreement, whereby no royalties are payable during the first three (3) years.

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5.1.2 After the fourth (4) year and remaining term of this Agreement the royalty shall be eight percent (8%) of Net Sales of said Licensed Product.

6. SUBLICENSING REVENUES

6.1 Sublicensing Revenues. Tree Stable shall retain all Sublicensing Revenues from sublicensees on the Mancini Patents and Mancini Technology, but the net sales associated therewith shall be subject to the royalty provisions of paragraphs 5.1.1 and 5.1.2.

7. PAYMENT AND ACCOUNTING

7.1 Obligation to Pay. All payments to be made under this Agreement to Mancini shall be paid monthly by Tree Staple to Mancini at the address set forth in Paragraph 14.2 below. Each payment shall be in United States Dollars, less required deduction or withholding of taxes, if any.

7.2 Taxes. The amount of any tax levied on any payment to be made by Tree Staple to Mancini under this Agreement shall be borne and paid for by Mancini.

7.3 Statements. With each monthly payment, Tree Staple must submit to Mancini a Statement of: (a) the number of Licensed Products Sold by Tree Staple and Sublicensees during the applicable period, (b) the "net selling price" of Products sold by Tree Staple and sublicensees; (c) the amount of gross and net

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Sublicensing Revenues received by Tree Staple during the applicable period, (d) a statement of all costs, expenses, fees, offsets, and deductions, and (e) a computation of the net payment and "net selling price".

- 7.4 Inspection. Tree Staple agrees to have each of its Sublicensees keep separate and adequately detailed accounting records of sales of Licensed Products as reasonably required to determine royalties payable under the Sublicenses. Mancini has the right to designate an independent certified public accountant satisfactory to Tree Staple to inspect, audit, and make copies of the relevant accounting records of Tree Staple to verify the accuracy of the amounts paid or payable to Mancini. Information supplied hereunder to such accountant shall be maintained as confidential by such accountant and any disclosure to Mancini shall only be to the extent necessary to explain an inaccuracy in a Statement submitted to Mancini. Mancini must give at least twenty (20) days written notice to Tree Staple before any inspection, and may not inspect more than twice in any twelve (12) month period. All inspections must be during ordinary business hours. If any inspection discloses that the amounts paid by Tree Staple are incorrect in either Mancini's or Tree Staple are incorrect in either Mancini's or Tree Staple' favor, then any amount due to either Party must be paid within thirty (30) days by the other party. If Mancini's inspection demonstrates that the amounts paid by Tree Staple for the period in question are less than ninety-five percent (95%) of the correct amount owing, Tree Staple shall be liable for Mancini's reasonable costs of inspection, plus a ten percent (10%) per annum interest charge on the unpaid costs for any inspection.

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8. REPRESENTATIONS OF Mancini

Mancini represents and warrants that it has the right to enter into this Agreement and to grant the rights granted herein to Tree Staple. Mancini represents and warrants that he is not aware of any third party making any claim of infringement against Mancini with respect to the subject matter of the Mancini Technology or Mancini Patents, that he has no knowledge of prior art or other acts or events that would invalidate the subject Mancini Patents and that he has disclosed to Tree Staple the most relevant art known to Mancini with respect to Mancini Patents which includes all prior art of record before the United States Patent Office during the prosecution of Mancini Patents.

9. ENFORCEMENT OF PATENTS RIGHTS

9.1 Reexamination, Reissues and Prosecution. Mancini shall diligently prosecute and maintain the Mancini Patents, and Tree Staple shall reimburse Mancini for all costs associated therewith during the first three (3) years of this Agreement, and for fifty percent (50%) of such costs in the fourth (4th) year. After the fourth (4th) year of this Agreement, all such costs shall be borne by Mancini. In the event Mancini elects to abandon any patent or patent application licensed hereunder, it shall provide Tree Staple with notice of such intent to abandon at least thirty (30) days prior to such abandonment and Tree Staple shall have the right to prosecute and maintain such patent applications or patents.

9.2 Obligation to Enforce. Tree Staple has the obligation to pursue by action, suit, proceeding, or otherwise infringers of the Patents licensed to Tree Staple if, within one hundred eighty (180) days of each infringer being given notice or

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having knowledge of such infringement, Tree Staple has not been able to arrange for the infringer to accept a sublicense in accordance with the terms and conditions of this Agreement, or to cease infringement provided a reexamination or reissue of the Patents is not pending. Tree Staple shall promptly advise Mancini of all notices of infringement within such one hundred eight (180) days period, and all others that Tree Staple believes are infringers. Mancini shall promptly advise Tree Staple of any information that he has obtained with respect to an infringer. Further, Tree Staple is only required to pursue one patent infringement action, suit, or proceeding at any one time. However, Tree Staple shall notify Mancini of all known infringers that Tree Staple is not pursuing because of a pending action. If there is any disagreement between Mancini and Tree Staple as to whether or not infringement by a third party exists, either Party may submit the issue to arbitration in accordance with Section 12 below. Notwithstanding the foregoing provisions if Tree Staple in good faith and for bona fide reasons elects not to institute proceedings as required then Mancini as his sole remedy for such failure may elect to institute such proceedings.

- 9.3 Costs of Enforcement. All reasonable costs, disbursements, fees and expenses of any such action, suit, or proceeding shall be borne by Tree Staple, whether brought by Tree Staple or Mancini, during the first three (3) years of this Agreement, and for fifty percent (50%) of such costs in the fourth (4th) year. After the fourth (4th) year of this Agreement, all such costs shall be borne by Mancini. If any recovery or payment results from any such action, suit, or proceeding, Tree Staple shall be reimbursed for all reasonable costs, disbursements, and expenses incurred by Tree Staple therein. Thereafter, any remaining amount shall be retained by Tree Staple during the first three (3)

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years of this Agreement, divided equally between Mancini and Tree Staple in the fourth (4th) year, and retained by Mancini after the fourth (4th) year.

- 9.4 Assistance by Mancini. Mancini agrees to assist with respect to any infringement action, suit, or proceeding relating to the enforcement of the Patents including joining in such action if required by law. Mancini will be entitled to receive a reimbursement of any reasonable out-of-pocket expenses incurred by him in rendering such assistance. Mancini will be kept currently advised of the status and activities of all such actions, suits, or proceedings.
- 9.5 Reporting of Expenses. To the extent that Tree Staple pays fees and expenses to maintain, defend, and/or enforce the Patents, it shall report these expenses to Mancini on a semiannual basis.

10. TRANSFER OF Mancini TECHNOLOGY

- 10.1 Mancini shall supply Tree Staple with such technical assistance with respect to Mancini Technology and Licensed Products as shall be reasonably required to manufacture Products. Tree Staple shall in a like manner supply technical assistance to Mancini in connection with Tree Staple Technology licensed pursuant to paragraph 3.2.
- 10.2 Tree Staple will be responsible for the travel expenses and the living expenses of Mancini pursuant to paragraph 10.1.
- 10.3 The transfer of Technology shall include the delivery of a complete collection of all existing documentation relating to Licensed Products including product detail

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and manufacturing drawings, drawings and manuals with respect to manufacturing equipment and tools, test and design data, vendor names, specifications and all other existing documentation relating to Licensed Products and comprising Mancini Technology.

- 10.4 Mancini and Tree Staple shall each promptly disclose to each other improvements in or to Mancini Technology and Mancini Patents developed or acquired by Mancini and Tree Staple during the term of this Agreement, and improvements of Mancini shall be included in Mancini Technology and Mancini Patents.
- 10.5 With respect to improvements in or to Mancini Technology and Mancini Patents required to be disclosed pursuant to Paragraph 10.4 hereof, Mancini and Tree Staple agree to make available to each other, such information and documents as it shall in good faith determine constitute improvements in or to Mancini Technology and Mancini Patents, in each instance promptly after they are developed or first reduced to practice and to make available forthwith for visual observation, through oral explanation or in such manner as may, in its good faith judgment, be appropriate, to such improvements.
- 10.6 Except as specifically provided by this Agreement, Tree Staple and Mancini shall not acquire any right, title or interest in any Technology or Patents of the other Party and each Party shall use such Technology and Patents solely in accordance with its respective rights and licenses hereunder. However, Tree Staple agrees that Mancini shall own or be assigned ownership of all improvements for or to Mancini Technology and Mancini Patents, regardless of whether Mancini conceived solely or jointly any such improvements.

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- 10.7 From and after the effective date of this Agreement and for an indefinite period from the date of expiration or termination of this Agreement, each Party agrees to use its best efforts to control and treat all Technology of the other Party which it receives under this Agreement as secret and proprietary (excluding those exceptions set forth below in Paragraph 10.10) and agrees that it will use its best efforts not to disclose or use such Technology except as provided herein. Each Party hereby agrees to develop and implement such procedures as may be required to prevent the intentional or negligent disclosure to third parties of such Technology and its employees other than as permitted or contemplated by this Agreement, including, but not limited to, requiring its employees, subcontractors, consultants, advisers, suppliers, customers and other third parties having access to such information under this Agreement to enter into a secrecy agreement.
- 10.8 Each Party agrees to use its best efforts to control and treat as secret and proprietary all confidential information each observes during any visitation at a facility of the other Party.
- 10.9 Nothing in this Agreement, however, shall prevent the disclosure by a Party or its employees of Technology which (1) prior to the transmittal thereof to a Party was of general public knowledge; (ii) becomes, subsequent to the time of transmittal to a Party, a matter of general public knowledge otherwise than as a consequence of a breach by a Party of any obligation under this Agreement with respect to such Technology; (iii) is made public by the disclosing Party; (iv) information which was in the possession of one Party in documentary form prior to the time of disclosure thereof to the one Party, and was to acquired, directly or indirectly, from the disclosing Party and is held by the one Party free of any

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obligation of confidence to the disclosing Party and (v) information received in good faith from a third party having the right to disclose it, who, to the best of the receiving Party's knowledge, did not obtain the same from another Party to this Agreement and who imposes no obligation of secrecy on the receiving Party with respect to such information.

11. EFFECTIVE DATE, TERM, AND TERMINATION

11.1 Effective Date. This Agreement shall be effective as of February 6, 2002.

11.2 Term. The term of this Agreement shall run from the effective date of this Agreement for so long as the Mancini Patents licensed to Tree Staple covering the manufacture, sale, or use of Licensed Products have not expired and are valid.

11.3 Option at Default. Either Party, at its option, may terminate this Agreement if the other Party defaults in the performance of any material obligation and if the default has not been remedied within ninety (90) days after written notice to the defaulting Party describing the default. Any such termination shall become final after arbitration, if any, under Section 13 below.

11.4 Termination. In the event of any termination of this Agreement by Mancini under paragraph 11.3 above (held final after arbitration, if any, under Section 13 below) resulting from Tree Staple' failure to make payments under paragraphs 5.1.1 and 5.1.2, Tree Staple shall have no further rights in the

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Mancini Patents, and Tree Staple shall be obligated to assign ownership of any trademark rights, associated with Licensed Products, to Mancini.

11.5 Sublicenses. After any termination of this Agreement by Mancini under paragraphs 11.3 and 11.4 above (held final after arbitration, in any, under Section 13 below), Mancini at his option, may not terminate any or all of the sublicenses with respect to the Mancini Patents licensed hereunder entered into by Tree Staple pursuant to this Agreement unless the Sublicensee is in breach of the sublicense agreement. The provisions with respect to division of Sublicensing Revenues shall remain applicable with respect to licenses existing at termination.

11.6 Issue of Invalidity. If any third party asserts a prior art reference or other act or event that raises a substantial question as to the validity or ownership of a Mancini Patent, then any unpaid payments required under paragraphs 5.1.1 and 5.1.2 with respect to the disputed Patent shall be accrued by Tree Staple but not paid until such time as the validity or ownership of the Patent is upheld. If such Patent is finally held invalid, Tree Staple shall not be obligated to pay to Mancini any such accrued but unpaid amounts. All payments made prior to any such dispute shall be non-returnable.

12. GOVERNING LAW AND FORUM

12.1 Governing Law. This Agreement shall be governed and interpreted in accordance with the law so the State of New Jersey.

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12.2 Consent of Jurisdiction. Tree Staple consents to personal jurisdiction in Princeton, New Jersey with respect to any arbitration between the Parties relating to this Agreement.

12.3 Export Restrictions. Any know-how, technology, or documents to be transferred hereunder shall not be exported except in compliance with the applicable United States governmental regulations.

13. ARBITRATION

13.1 Provision for Arbitration. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, if not otherwise settled by the Parties, shall be finally settled by expedited arbitration in accordance with the Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. The arbitration award shall have the same force and effect as if the award and decision were made and entered by a trial court (e.g., Federal District Court). The arbitration proceedings shall be conducted in Princeton, New Jersey, and shall be carried on by three (3) arbitrators selected as set forth below (unless one of the Parties fails to select an arbitrator, in which event the arbitration shall be carried on by one arbitrator as provided in Paragraph 13.2).

13.2 Commencement. A Party shall commence an arbitration proceedings under this Section by giving written notice to the other Party, which notice shall name an arbitrator and the matters to be arbitrated. The other Party shall respond within thirty (30) days and name an arbitrator. (If such other Party fails to respond or to name an arbitrator within the thirty (30) day period, the arbitration shall

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proceed with only the one arbitrator named by the Party commencing arbitration). The two (2) arbitrators selected shall select a third arbitrator. In the event the two (2) arbitrators cannot agree on the selection of a third arbitrator within thirty (30) days after the selection of the second arbitrator, then either arbitrator may request the American Association to select a third and neutral arbitrator.

13.3 Expenses and Costs. Until a determination hereunder, each Party shall pay the expenses of the arbitrator it names, and the Parties shall share equally in the payment of the expenses of the third arbitrator. In the event arbitration is by one arbitrator, the Parties shall share the payment of the expenses of that arbitrator.

13.4 Rules of Procedure. In the event that the Rules of the American Arbitration Association do not cover a question arising during the arbitration, then the laws of the United States of America and the State of New Jersey pertaining to arbitration shall apply. The arbitrators shall provide for discovery, pursuant to the Federal Rules of Civil Procedure and Federal Rules of Evidence, for a period of one hundred and twenty (120) days following the selection of the neutral arbitrator, with questions relating to such discovery determined by the neutral arbitrator.

14. GENERAL TERMS AND CONDITIONS

14.1 Relationship of the Parties. This Agreement does not constitute a partnership agreement, nor does it create a joint venture or agency relationship between the Parties. Neither Party shall hold itself out contrary to the terms of this

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Paragraph. Neither Party shall be liable for the representations, acts, or omissions of the other Party contrary to the terms of this Agreement.

- 14.2 Notices. Unless otherwise expressly provided for, all notices, requests, demands, consents or other communications required or permitted under this Agreement must be in writing and must be delivered personally or sent by certified or registered mail (postage prepaid and return receipt requested) to the other Party at the address set forth below (or to any other address given by either Party to the other Party in writing):

Mancini:

James A. Mancini
310 Springfield Avenue
Suite 8
Berkeley Heights, New Jersey 07922

Tree Staple:

Tree Staple, Inc.
Attention: James A. Mancini, President
310 Springfield Avenue
Suite 8
Berkeley Heights, New Jersey 07922

In the case of mailing, the effective date of delivery of any notice, demand, or consent shall be considered to be in ten (10) days after proper mailing.

- 14.3 Waiver and Amendment. No waiver, amendment, or modification of this Agreement shall be effective unless in writing and signed by the Party against whom the waiver, amendment, or modification is sought to be enforced. No

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failure or delay by either Party in exercising any right, power, or remedy under this Agreement shall operate as a waiver of the right, power, or remedy. No waiver of any term, condition, or default of this Agreement shall be construed as a waiver of any other term, condition, or default.

- 14.4 Assignment. The respective rights and obligations under this Agreement of either Party, or of either Party's successor (if any), shall be assignable or transferable without the written consent of the other Party in the event of any merger, consolidation, or sale of substantially all of the assets of the assigning Party. This Agreement is binding upon and inures to the benefit of such successors and assigns of the Parties. Any other assignment of this Agreement or the rights hereunder shall be void and of no effect unless consented to in writing by the other Party.
- 14.5 Headings. The section and paragraph headings of this Agreement are intended as a convenience only, and shall not affect the interpretation of its provisions.
- 14.6 Singular and Plural Terms. Where the context of this Agreement requires, singular terms shall be considered plural, and plural terms shall be considered singular.
- 14.7 Severability. If any provision of this Agreement is finally held by a court or arbitration panel of competent jurisdiction to be unlawful, the remaining provisions of this Agreement shall remain in full force and effect.
- 14.8 Entire Agreement. This Agreement, including all attachments (if any), constitutes the complete and final agreement between the Parties, and supersedes

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all prior negotiations and agreements between the Parties concerning its subject matter. The interpretation of this Agreement may not be explained or supplemented by any course of dealing or performance, or by usage of trade.

- 14.9 Execution Required. This Agreement shall not be binding against either Party until it is executed by both Parties.

IN WITNESS WHEREOF, THIS AGREEMENT is made in duplicate and each Party has caused its name to be hereunto subscribed, and each corporate Party has caused its corporate seal to be affixed by its duly authorized officer as to the date indicated above.

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Mancini

Dated: 2/28/02

By: James A. Mancini
James A. Mancini

Tree Staple

Dated: 2/28/02

By: James A. Mancini Pres.
James A. Mancini, President
Tree Staple, Inc,

STATE OF NEW JERSEY

COUNTY OF UNION SS.:

On this 28th day of February, 2002, personally appeared James A. Mancini, to me known and known to me to be the assignor above named, and acknowledged that he executed the foregoing Assignment on behalf of said Assignor and pursuant to authority duly received.

Joseph E. Museck
Notary Public

JOSEPH E. MUSECK
A NOTARY OF N.J.
My Comm. Expires May 24, 2003

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