

11-22-2006

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

**1. Name of conveying party(ies)**

George K. Todd, Sr.

George K. Todd, Jr.

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

**3. Nature of conveyance/Execution Date(s):**

Execution Date(s) November 2, 2006

☐ Assignment

☐ Merger

☒ Security Agreement

☐ Change of Name

☐ Joint Research Agreement

☐ Government Interest Assignment

☐ Executive Order 9424, Confirmatory License

☐ Other \_\_\_\_\_

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

Name: Florida Capital Bank, N.A.

Internal Address: N/A

Street Address: 10550 Deerwood Park Blvd., Suite 708

City: Jacksonville

State: Florida

Country: United States Zip: 32256

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

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

☐ This document is being filed together with a new application.

A. Patent Application No.(s)

B. Patent No.(s)

5,427,473

5,222,831

5,120,157

Additional numbers attached? ☐ Yes ☒ No

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

Name: William Pishotta

Internal Address: \_\_\_\_\_

Street Address: 10550 Deerwood Park Blvd., Suite 708

City: Jacksonville

State: Florida Zip: 32256

Phone Number: (904) 472-2781

Fax Number: (904) 472-2763

Email Address: wpishotta@flcb.com

**6. Total number of applications and patents involved: 3**

**7. Total fee (37 CFR 1.21(h) & 3.41) \$ 120.00**

☐ Authorized to be charged by credit card

☐ Authorized to be charged to deposit account

☒ Enclosed

☐ None required (government interest not affecting title)

**8. Payment Information**

a. Credit Card Last 4 Numbers \_\_\_\_\_

Expiration Date \_\_\_\_\_

b. Deposit Account Number \_\_\_\_\_

Authorized User Name \_\_\_\_\_

**9. Signature:**

Signature

November 13, 2006

Date

11/21/2006 DBYRNE 00000019 5427473

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Name of Person Signing

Total number of pages including cover sheet, attachments, and documents: 7

Documents to be recorded (including cover sheet) should be faxed to (571) 273-0140, or mailed to:  
Mail Stop Assignment Recordation Services, Director of the USPTO, P.O.Box 1450, Alexandria, V.A. 22313-1450

# INTELLECTUAL PROPERTY SECURITY AGREEMENT

13 THIS INTELLECTUAL PROPERTY SECURITY AGREEMENT (this "Agreement") is made as of the day of November, 2006, by and between **WELCH TENNIS COURTS, INC.** ("Welch") a Florida corporation whose address is 4501 Old US Highway 41, Sun City, Florida 33586, **GEORGE K. TODD, SR.** ("Todd, Sr."), whose address is 2409 Ravines Drive, Ruskin, Florida 33570, and **GEORGE K. TODD, JR.** ("Todd, Jr."), whose address is 2409 Ravines Drive, Ruskin, Florida, 33570, and **FLORIDA CAPITAL BANK, N.A.** ("Lender"), whose address is 10550 Deerwood Park Blvd., Suite 708, Jacksonville, Florida 32256. Welch, Todd, Sr. and Todd, Jr. are each individually referred to herein as a "Grantor" and are collectively referred to herein as the "Grantors").

## RECITALS

*11/13/06*  
*WTH*  
*WTC*  
*ST*  
**A.** Welch Tennis Courts, Inc. (the "Borrower") and the Lender have executed a loan agreement (as amended or restated from time to time, the "Loan Agreement") of even date herewith. The Borrower pursuant to the Loan Agreement, has executed and delivered a promissory note (as amended, extended or renewed from time to time, the "Note") of even date herewith in the original principal amount of \$1,500,000.00 in favor of the Lender.

**B.** The Borrower has also incurred, or may incur, obligations under a Hedge Agreement (as defined herein). For purposes hereof, the term "Hedge Agreement" shall mean each agreement between the Borrower and the Lender, or any affiliate of the Lender, whether now existing or hereafter entered into, that provides for an interest rate or commodity swap, cap, floor, collar, forward foreign exchange transaction, currency swap, cross-currency rate swap, currency option, or any combination of, or option with respect to, these or similar transactions, for the purpose of hedging the Borrower's exposure to fluctuations in interest rates, currency valuations or commodity prices.

**C.** The Grantors have agreed to secure certain obligations in accordance with the terms hereof.

**NOW, THEREFORE,** for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

**1. Grant of Security Interest.** As collateral security for the prompt and complete payment and performance of the Secured Obligations (as hereinafter defined), each Grantor hereby grants to the Lender a continuing and unconditional security interest (the "Security Interest") in, and assigns to the Lender all of Grantor's right, title and interest in and to the following assets:

(a) All patents, patent applications and like protections owned by the Grantors, or any of them including, without limitation, improvements, divisions, continuations, renewals, reissues, extensions and continuations-in-part of the same, including without limitation the following patents (collectively, the "Patents"):

**United States Patent #5,829,537 dated November 3, 1998**

**United States Patent #5,427,473 dated June 27, 1995**

**United States Patent #5,222,831 dated June 29, 1993**

**United States Patent #5,120,157 dated June 9, 1992**

(b) Any and all design rights owned by Grantors now or hereafter existing, and created or acquired by Grantors;

**PATENT**

**REEL: 018606 FRAME: 0785**

(c) Any and all copyright rights, copyright applications, copyright registrations and like protections in each work or authorship and derivative work thereof of Grantors, whether published or unpublished, registered or unregistered, and whether or not the same also constitutes a trade secret, now or hereafter existing, created, acquired or held (collectively, the "Copyrights");

(d) Any and all trade secret rights, including any rights to unpatented inventions, know-how, operating manuals, license rights and agreements, and confidential information owned by Grantor, and any and all intellectual property rights in computer software and computer software products now or hereafter existing, and created, acquired or owned by the Grantor;

(e) Any trademark and service mark rights, slogans, trade dress, and trade names, trade styles, whether registered or not, applications to register and registrations of the same and like protections, and the entire goodwill of the business of each Grantor connected with and symbolized by such trademarks (collectively, the "Trademarks");

(f) All mask works or similar rights available for the protection of semiconductor chips, now owned or hereafter acquired (collectively, the "Mask Works");

(g) Any and all claims for damages by way of past, present and future infringements of any of the rights included above, with the right, but not the obligation, to sue for and collect such damages for said use or infringement of the intellectual property rights identified above;

(h) All licenses or other rights to use any of the Patents, Copyrights, Trademarks or Mask Works and all license fees and royalties arising from such use to the extent permitted by such license or rights;

(i) All amendments, extensions, renewals and extensions of any of the Patents, Copyrights, Trademarks or Mask Works; and

(j) All proceeds and products of the foregoing, including without limitation all payments under insurance or any indemnity or warranty payable in respect of any of the foregoing.

All of the assets described in Items 1(a) through 1(j), inclusive, shall be collectively referred to herein as the "Collateral".

**2. Obligations Secured.** The Security Interest secures payment when due of all Secured Obligations (as defined herein) to the Lender. As used in this Agreement, the term "Secured Obligations" means: (a) all principal, interest, costs, expenses and other amounts now or hereafter due under the Note (including, without limitation, all principal amounts advanced thereunder before, on or after the date hereof); (b) all amounts now or hereafter due under any Hedge Agreement now or hereafter in effect; and (c) all other amounts now or hereafter payable by the Borrower under any of the Loan Documents (as such term is defined in the Loan Agreement).

**3. Authorization and Request.** Each Grantor authorizes and requests that the Register of Copyrights and the Commissioner of Patents and Trademarks record this Agreement, and any amendments thereto, or copies thereof.

**4. Representations and Warranties.** Each Grantor represents and warrants as follows:

(a) The Grantors are the sole owner of the Collateral and all rights, title and interests therein, except for non-exclusive licenses granted by the Grantors to its customers and resellers in the ordinary course of each Grantor's business.

(b) Each Grantor's performance of this Agreement does not conflict with or result in a breach of any material agreement to which Grantor is bound.

(c) To each Grantor's knowledge, each of the issued Patents is valid and enforceable, and no part of the Collateral which had been registered has been judged invalid or unenforceable, in whole or in part, and no claim has been made that any part of the Collateral violates the rights of any third party.

(d) This Agreement creates, and in the case of after-acquired Collateral, this Agreement will create at the time each Grantor first has rights in such after-acquired Collateral, in favor of Lender a valid and perfected first priority security interest and collateral assignment in the Collateral in the United States securing the payment and performance of the obligations evidenced by the Loan Agreement.

(e) To each Grantor's knowledge, except for, and upon, the filing of UCC financing statements, filings with the U.S. Patent and Trademark Office or the U.S. Copyright Office, or other notice filings or notations in appropriate filing offices, if necessary to perfect the security interests created hereunder, no authorization, approval or other action by, and no notice to or filing with, any U.S. governmental authority or U.S. regulatory body is required for the grant by either Grantor of the security interest granted hereby, or for the execution, delivery or performance of this Agreement by either Grantor in the U.S.

(f) All information heretofore or herein supplied to Lender by or on behalf of each Grantor with respect to the Collateral is accurate and complete in all material respects.

**5. Covenants and Agreements.** Each Grantor covenants and agrees as follows:

(a) During the term of this Agreement, no Grantor will transfer or otherwise encumber any interest in the Collateral, except for non-exclusive licenses granted by Grantor to its customers and resellers in the ordinary course of Grantor's business.

(b) Each Grantor shall promptly advise Lender of any written claim received, the institution of any proceeding or any materially adverse determination in United States Patent and Trademark Office, United States Copyright Office any federal, state, local or foreign court or administrative bodies (other than the U.S. Patent and Trademark Office or the U.S. Copyright Office) regarding each Grantor's claim of ownership in or right to use any of the Collateral, its right to register the Collateral, or its right to keep and maintain such registration in full force and effect.

(c) Each Grantor will promptly notify the Lender in writing of any event which may reasonably be expected to materially adversely affect the value of the Pledged Collateral or any portion thereof, the ability of each Grantor or the Lender to dispose of the Collateral or any portion thereof or the rights and remedies of the Lender in relation thereto including, without limitation, a levy or threat of levy or any legal process against the Collateral or any portion thereof.

(d) The Grantors shall at all times diligently: (i) file and prosecute diligently all applications for Patents, Trademarks or Copyrights now or hereafter pending that would be useful or beneficial to the businesses of Pledgor to which any such applications pertain, (ii) detect or infringements of the Collateral, or any portion thereof, and promptly advise Lender in writing of material infringements detected (iii) protect, defend and maintain the validity and enforceability of the Collateral, or any portion thereof, including, without limitation, the prosecution and defense of infringement actions involving the Collateral, and (iv) not allow any Collateral, or any portion thereof, to be abandoned, forfeited or dedicated to the public without the written consent of Lender.

(e) The Grantors shall not enter into any agreement that would materially impair or conflict with any Grantor's obligations hereunder without Lender's prior written consent, which consent shall not be unreasonably withheld.

6. **Further Assurances.** The Grantors shall take such further actions as Lender may reasonably request from time to time to perfect or continue the perfection of Lender's interest in the Collateral and to otherwise carry out the intent and purposes of this agreement, including, without limitation, executing, delivering, and filing of record in the proper offices financing and continuation statements and collateral agreements and filings with the United States Patent and Trademarks Office and the Register of Copyrights.

7. **Lender's Rights; Attorney-in-Fact.** Lender shall have the right, but not the obligation, to take, at the Grantors' sole expense, any actions that any Grantor is required under this Agreement to take but which Grantor fails to take. Each Grantor hereby irrevocably appoints Lender as Grantor's attorney-in-fact, with full authority in the place and stead of Grantor and in the name of Grantor, Lender or otherwise, from time to time in Lender's discretion, upon Grantor's failure or inability to do so, after written request by Lender, to take any action and to execute any instrument which Lender may deem necessary or advisable to accomplish the purposes of this Agreement, including to modify, as appropriate any of the Exhibits attached hereto, to include reference to any right, title or interest in any Collateral acquired by Grantor after the execution hereof or to delete any reference to any right, title or interest in any Collateral in which Grantor no longer has or claims any right, title or interest.

8. **Financing Statements.** The Grantors authorize the Lender to file financing statements and continuation statements and amendments thereto with respect to the Collateral without authentication by the Grantor to the extent permitted by law and each of Grantors consents to and ratifies any filings made by the Lender prior to the date hereof. The Grantors agree not to file any financing statement, amendment or termination statement with respect to the Collateral prior to the payment and satisfaction in full of all Secured Obligations. Each Grantor irrevocably appoints the Lender as the Grantor's attorney-in-fact to execute any such financing statements in the Grantor's name (if the Lender determines that any such execution is required) and to perform all other acts that the Grantor deems appropriate to perfect and to continue perfection of the Security Interest.

9. **Default.**

(a) Each of the following shall constitute an "Event of Default" hereunder: (i) the occurrence of any Event of Default under the Loan Agreement; (ii) failure by the any Grantor or Borrower to perform any of their respective material obligations under this Agreement, the Hedge Agreement or any other agreement between the any Grantor or Borrower and the Lender or by any Grantor or Borrower in favor of the Lender, time being of the essence; (iii) the commencement of any bankruptcy or insolvency proceedings by or against any Grantor or Borrower; (iv) material falsity in any certificate, statement, representation, warranty or audit at any time furnished by or on behalf of any Grantor, Borrower or any endorser or guarantor or any other party liable for payment of all or part of the Secured Obligations, pursuant to or in connection with this Agreement or otherwise to the Lender, including warranties in this Agreement and including any omission to disclose any substantial contingent or liquidated liabilities or any material adverse change in facts disclosed by any certificate, statement, representation, warranty or audit furnished to the Lender; or (v) any attachment or levy against the Collateral or any other occurrence that inhibits the Lender's free access to the Collateral.

(b) Upon the occurrence of an Event of Default, the Lender may exercise such remedies and rights as are available hereunder, under the Loan Agreement or otherwise. This paragraph is not intended to affect or impair any rights of the Lender with respect to any Secured Obligations that may now or hereafter be payable on demand.

(c) Upon the occurrence of any Event of Default, the Lender's rights with respect to the Collateral shall be those of a secured party under the Uniform Commercial Code (the "UCC") as then in effect in any applicable jurisdiction, and any other applicable law in effect from time to time. The Lender shall also have any additional rights granted herein and in any other agreement now or hereafter in effect between any Grantor or Borrower and the Lender. If requested by the

Lender after the occurrence of an Event of Default, and the Grantors will assemble the Collateral and make it available to the Lender at a place to be designated by the Lender.

(d) Lender shall have a non-exclusive, royalty-free license to use the Collateral to the extent reasonably necessary to permit Lender to exercise its rights and remedies hereunder.

(e) The Grantors agree that any notice by the Lender of the sale or disposition of the Collateral or any other intended action hereunder, whether required by the UCC or otherwise, shall constitute reasonable notice to the Grantors if the notice is mailed by regular or certified mail, postage prepaid, at least five (5) days before the action to each Grantor's address as specified in this Agreement or to any other address that any Grantor has specified in writing to the Lender as the address to which notices shall be given to the Grantor.

(f) The Grantors shall pay all costs and expenses incurred by the Lender in enforcing this Agreement, realizing upon any Collateral and collecting any Secured Obligations (including attorneys' fees) whether suit is brought or not and whether incurred in connection with collection, trial, arbitration, appeal or otherwise and, to the extent of any Grantor's liability for repayment of any of the Secured Obligations, shall be liable for any deficiencies in the event the Proceeds of disposition of the Collateral do not satisfy the Secured Obligations in full. Nothing contained herein shall be deemed to require the Lender to proceed against the Collateral or any part thereof before or as a condition to the pursuit of any of its other rights and remedies with respect to the Secured Obligations.

(g) All rights and remedies hereunder and under the UCC shall be cumulative and shall not preclude the exercise of any other remedies otherwise available to the Lender.

**10. Indemnity.** Each Grantor will indemnify, defend and hold harmless Lender and its officers, employees, and agents against: (a) obligations, demands, claims, and liabilities asserted by any other party in connection with the transactions contemplated by this Agreement; and (b) losses or expenses incurred, or paid by Lender from or consequential to transactions between Lender and the Grantors, or any of them. (including reasonable attorneys fees and expenses), except for losses caused by Lender's gross negligence or willful misconduct.

**11. No Waiver.** No delay or omission by the Lender in exercising any right hereunder or with respect to any Secured Obligations shall operate as a waiver of that or any other right, and no single or partial exercise of any right shall preclude the Lender from any other or further exercise of the right or the exercise of any other right or remedy. The Lender may cure any Event of Default by any Grantor in any reasonable manner without waiving the Event of Default so cured and without waiving any other prior or subsequent Event of Default by the Grantors.

**12. Successors and Assigns.** The terms "Lender" and "Grantor" as used in this Agreement include the heirs, personal representatives and successors or assigns of those parties.

**13. Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

**14. Governing Law.** This Agreement shall be governed by, and construed in accordance with, the Florida law and any other law applicable from time to time.

**15. Modifications in Writing.** This Agreement may not be modified or amended nor shall any provision of it be waived except in writing signed by each of the parties hereto.

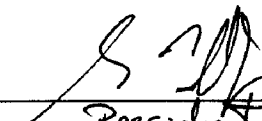
**16. Termination.** This Agreement is a continuing agreement that shall remain in force until the last to occur of: (i) the payment in full of all Secured Obligations if such payment of the Secured Obligations has become final and is not subject to being refunded as a preference or fraudulent transfer under the Bankruptcy Code or other applicable law; and (ii) the termination of the Loan Agreement. Upon

the termination of this Agreement, Lender shall execute and deliver to Grantor and the appropriate registration/recording authorities, all releases, terminations, and other instruments as may be necessary or proper to release the security interest hereunder.

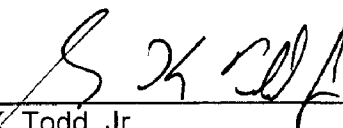
17. **Joint and Several.** The obligations of the Grantors hereunder shall be joint and several.

EXECUTED as of the day and year first written above.

WELCH TENNIS COURTS, INC.

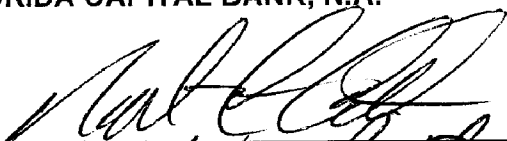
By:   
Its: President

Deceased  
George K. Todd, Sr.

  
George K. Todd, Jr.

LENDER:

FLORIDA CAPITAL BANK, N.A.

By:   
Its: Assistant Vice President