

RECORDATION FORM COVER SHEET  
**TRADEMARKS ONLY**

10-07-1998



100845297

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original document.

1. Name of conveying party(ies):  
Einstein/Noah Bagel Partners, L.P. (f/k/a Einstein Bros. Bagels, Inc.)

Individual(s)                       Association  
 General Partnership               Limited Partnership  
 Corporation-State                      (Delaware)  
 Other \_\_\_\_\_

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

2. Name and address of receiving party(ies):  
Name: Bank of America National Trust and Savings Association, as Agent *CFR/FINANCE*

Internal Address: \_\_\_\_\_  
Street Address: 231 S. LaSalle St.  
City: Chicago State: IL ZIP: 60697

*9.28.98*

Individual(s) citizenship \_\_\_\_\_  
 Association \_\_\_\_\_  
 General Partnership \_\_\_\_\_  
 Limited Partnership \_\_\_\_\_  
 Corporation-State \_\_\_\_\_  
 Other \_\_\_\_\_

If assignee is not domiciled in the United States, a domestic representative designation is attached:  Yes  No  
(Designations must be a separate document from assignment)  
Additional name(s) & address(es) attached?  Yes  No

3. Nature of conveyance:

Assignment                       Merger  
 Security Agreement               Change of Name  
 Other \_\_\_\_\_

Execution Date: December 5, 1997

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

A. Trademark Application No.(s)  
74/674185                      74/673740  
74/673741                      74/673742

B. Trademark Registration No.(s)  
2,112,621  
2,017,095

Additional numbers attached?  Yes  No

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

Name: Rebecca B. Lederhouse  
Internal Address: \_\_\_\_\_

*10/06/1998 JSHABRAZ 00000164 130206 74674185*

*01 FC:481                      40.00 CH*  
*02 FC:482                      125.00 CH*

Street Address: McDermott, Will & Emery  
227 W. Monroe  
City: Chicago State: IL ZIP: 60606

6. Total number of applications and registrations involved:

7. Total Fee (37 CFR 3.41) ..... \$165.00

Enclosed  
 Authorized to be charged to deposit account

8. Deposit account number: 13-0206

(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.*

Rebecca B. Lederhouse  
Name of Person Signing

Signature

9/23/98  
Date

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

Mail documents to be recorded with required cover sheet information to:

Assistant Commissioner for Trademarks  
Box Assignments  
Arlington, VA 22202

## TRADEMARK SECURITY AGREEMENT

THIS TRADEMARK SECURITY AGREEMENT (this "Agreement") is dated as of December 5, 1997 and is made by Einstein/Noah Bagel Partners, L.P., a Delaware limited partnership ("Grantor"), in favor of and for the benefit of Bank of America National Trust and Savings Association, as Agent (the "Agent").

### RECITALS

WHEREAS, Einstein/Noah Bagel Corp. (f/k/a Einstein Bros. Bagels, Inc.), a Delaware corporation (the "Borrower") has entered into that certain Secured Credit Agreement dated as of May 17, 1996 as amended and restated by that certain Amended and Restated Secured Credit Agreement dated as of November 21, 1997 (said Credit Agreement, as it may hereafter be further amended, supplemented, restated or otherwise modified from time to time, being the "Credit Agreement"; capitalized terms defined therein and not otherwise defined herein being used herein as therein defined) with the Agent and the Co-Agent, the Issuing Lender and the Lenders party thereto, pursuant to which the Lenders have agreed to make Loans and other financial accommodations to the Borrower, subject to the terms and conditions of the Credit Agreement;

WHEREAS, the Grantor will derive substantial direct and indirect benefits from the making of the Loans under the Credit Agreement; and

WHEREAS, to secure the repayment of all amounts under the Credit Agreement and other Loan Documents, Grantor has granted to the Agent for the benefit of the Lenders a valid security interest in and to all of its now existing and hereafter acquired general intangibles, including, without limitation, all of its now existing and hereafter arising trade secrets, patents and patent applications, trademarks and trademark applications, tradenames, and copyrights.

### AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in order to induce the Lenders to make Loans, the parties hereto agree as follows:

1. To secure the payment and performance of all indebtedness and other obligations and liabilities of Borrower and Grantor to the Lenders of every kind and description, whether direct or indirect, absolute or contingent, primary or secondary,

due or to become due, now existing or hereafter arising under or in connection with the Credit Agreement and other Loan Documents, Grantor hereby grants to the Agent for the benefit of the Lenders a valid, enforceable security interest in all of Grantor's rights, titles and interests in the United States (and throughout the world), in and to all of its currently owned or hereafter acquired trademarks, registrations of trademarks and applications for registration, together with the goodwill of the business symbolized by such trademarks, including without limitation, those trademark registrations and applications for trademark registrations on Schedule A attached hereto and made a part hereof, and to all income, royalties, damages and payments now and hereafter due and/or payable under or based on such trademarks, and in and to all rights to sue, collect and retain damages and payments for past and future infringements and violation of the rights thereof (hereinafter all of the foregoing trademarks, registrations of trademarks and applications for trademark registrations are sometimes individually and/or collectively referred to as the "Trademarks").

2. Grantor warrants and represents to and covenants with the Agent that except as disclosed to the Agent and the Banks in a letter dated as of the date of this Agreement:

(a) Grantor is the present owner of the entire right, title and interest in and to the Trademarks that are the subject of registrations on Schedule A, and, to the best of its knowledge, has good and indefeasible title thereto.

(b) Except as otherwise disclosed in writing by Grantor to the Agent, the Trademarks (excluding non-United States Trademarks) are free and clear of all security interests, liens, claims and encumbrances, except those permitted by the Credit Agreement.

(c) Except as otherwise disclosed in writing by Grantor to the Agent, Grantor has not granted any license, rights and privileges in or to the Trademarks to any party, except the Agent.

(d) To the best of Grantor's knowledge, Grantor may use the Trademarks that are the subject of registrations on Schedule A free and clear of the infringement of the rights of others.

(e) Except as otherwise disclosed in writing by Grantor to the Agent, Grantor has no outstanding threats of action and has not commenced and is not about to commence any suit or action against others in connection with the violation or enforcement of the rights of Grantor in the Trademarks.

(f) The Trademarks on Schedule A constitute all of the United States registrations and applications for the Trademarks owned by Grantor.

(g) Grantor has not and will not make any agreement or assignment in conflict with this Agreement.

3. To the best of Grantor's knowledge, the trademark applications have been duly and properly filed, and the trademark registrations filed and issued, and the Trademarks which are the subject of registrations on Schedule A are valid and enforceable.

4. Grantor shall not take any action, nor permit any action to be taken by others subject to Grantor's control, including licensees, or fail to take any action regarding any matter of which the Grantor has knowledge, which would affect the validity and enforcement of the Trademarks, or impair the value of the Trademarks or the goodwill of the business associated therewith, except Grantor may discontinue or abandon the use of the Trademarks in accordance with its reasonable business judgment, if such discontinuance or abandonment is desirable or necessary.

5. Subject to the other provisions of this Agreement, Grantor shall assume and continue, at its own cost and expense, through counsel of its own choice and acceptable to the Agent, full and complete responsibility for the prosecution, issuance, enforcement, maintenance, renewal or any other actions in connection with the Trademarks.

6. Grantor promptly shall notify the Agent, in writing, of any material suit, action or proceeding brought against it relating to, concerned with or affecting the Trademarks or infringement of another trademark, and shall, on written request, deliver to the Agent a copy of all pleadings, papers, orders or decrees theretofore and thereafter filed in any such suit, action or proceeding, and shall keep the Agent fully advised in writing of the progress of any such suit.

7. Grantor shall provide the Agent semi-annually with a listing of all new applications for trademarks (together with a listing of the issuance of registrations on any previous applications). Any which new applications and issued trademark registrations shall be subject to the terms and conditions of the Credit Agreement and this Agreement and come within the term "Trademarks" as set forth herein. Grantor shall, together with the list, provide the Agent, on written request, with duly executed documents in a form acceptable to counsel for the Agent and suitable for recording, which documents grant a valid enforceable security interest to the Agent for the benefit of the Lenders as in Paragraph 1 hereof, and subject to all the terms of this Agreement and the Credit Agreement.

8. Grantor shall provide the Agent, at least annually, with a complete status report of all the Trademarks, and upon written request by the Agent, shall deliver to counsel for the Agent copies of any trademark applications and other non-privileged documents concerned with or related to the adoption, use, prosecution, protection, maintenance, renewal, enforcement or issuance of the Trademarks.

9. In order to protect and continue the goodwill of the business associated with and symbolized by the Trademarks, and to avoid deception to the public as to the nature and quality of the goods on which the Trademarks are employed by Grantor, Grantor shall conduct its business in accordance with the requirements of production, quality and service of the goods in the market as in the past, and shall at all times use its reasonable best efforts to maintain the quality of the goods sold or distributed on which the Trademarks are employed commensurate with at least the same or better quality and past practices of Grantor.

10. The occurrence of either of the following shall constitute an Event of Default under this Agreement: (a) if Grantor shall fail or neglect to perform, keep or observe any material term, provision, condition, covenant, warranty or representation contained in this Agreement which is required to be performed, kept or observed by Grantor, and the same is not cured within 15 Business Days after written notice thereof from the Agent to Grantor; or (b) occurrence of an Event of Default under the Credit Agreement. Grantor hereby appoints and designates the Agent its sole attorney to take any such action after an Event of Default as the Agent deems necessary under the circumstances, and Grantor shall pay all fees and expenses in connection with such action by its attorney so appointed and designated. Upon exercising any of its rights under this Agreement, Agent shall not assign or otherwise transfer any portion of the Trademarks that constitute so called "intent to use" applications for trademarks without assigning such applications as part of the entire business or portion thereof to which such applications pertain as required by 15 U.S.C. § 1060.

11. From and after an Event of Default hereunder and the continuance thereof, the Agent may grant licenses, rights or other privileges in, or otherwise take whatever action with respect to the Trademarks that the Agent deems necessary or appropriate under the circumstances; provided, however, Agent shall, and shall require any licensee to, conduct the business relating to the Trademarks in accordance with the requirements of production, quality and service of the goods in the market as in the past, and shall at all times maintain the quality of the goods sold or distributed on which the Trademarks are employed commensurate with at least the same, or better, quality and past practices of Grantor. In addition, from and after an Event of Default hereunder and during the continuance thereof, the Agent

shall have all of the rights, remedies and benefits of a secured party under applicable law, including without limitation, all of the rights, remedies and benefits of a secured party under the Uniform Commercial Code, whether or not the Uniform Commercial Code is applicable.

12. Should any part or provision of this Agreement be held unenforceable or conflicting with the law of any jurisdiction the validity of the remaining parts or provisions hereof shall not be affected thereby.

13. Grantor agrees, on written request by the Agent, now and during the term of this Agreement to do all such acts as may be reasonably necessary or appropriate in order to carry out the intent and purpose of this Agreement, and to protect the interest of the Lenders in the Trademarks.

14. The term of this Agreement shall correspond to the term of the Credit Agreement and this Agreement shall remain in full force and effect until the Credit Agreement is terminated or cancelled in accordance with the terms thereof.

15. Upon payment in full of all obligations of the Grantor arising under or in connection with the Credit Agreement and other Loan Documents and the termination of each of the Lender's Commitment thereunder, the Agent agrees to release and take such further action as may be necessary or advisable to evidence such release and termination of its security interest set forth herein.

16. It is the intent of the parties that this Agreement grants a security interest in all of Grantor's right, title and interest in and to the Trademarks and is not intended to be, and shall not be deemed to be, an assignment of the Trademarks. The parties agree and acknowledge that the security interest granted herein or on any so-called "intent to use" trademark applications is granted as part of a security interest in the entire business to which any such applications pertain.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

EINSTEIN/NOAH BAGEL PARTNERS, L.P.  
By: EINSTEIN/NOAH BAGEL PARTNERS, INC.

*Paul A. Strasen*

By: Paul A. Strasen  
Title: Vice President

ATTEST:

\_\_\_\_\_  
Secretary

BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION, as Agent

By: *David A. Johanson*  
Title: ~~David A. Johanson~~  
Vice President

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

EINSTEIN/NOAH BAGEL PARTNERS, L.P.  
By: EINSTEIN/NOAH BAGEL PARTNERS, INC.

Paul A. Strasen

By: Paul A. Strasen  
Title: Vice President

ATTEST:

Amy S. Powers  
Secretary

BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION, as Agent

By: \_\_\_\_\_  
Title: \_\_\_\_\_

Trademark Security Agreement



**SCHEDULE A**  
to  
**TRADEMARK SECURITY AGREEMENT**  
from  
**EINSTEIN NOAH BAGEL PARTNERS, L.P.**  
**TRADEMARKS AND/OR SERVICE MARKS**

**TRADEMARK/SERVICE MARK    REGISTRATION NUMBER**

Bagel Boulevard Cafe	2,112,621
Boulevard Bagel Sub	2,017,095

**APPLICATIONS FOR TRADEMARKS AND/OR SERVICE MARKS**

**TRADEMARK/SERVICE MARK    APPLICATION NUMBER**

Raspberry Road	74/674,185
Downtown Grape	74/673,741
Skyline Strawberry	74/673,740
Gooseberry Lane	74/673,742

#352777