

6.27.01

07-12-2001

Form PTO-1594  
(Rev. 03.01)  
OMB No. 0651-0027 (exp. 5/31/2002)  
Tab settings ⇌ ⇌ ⇌ ▼ ▼

RECO  
TF



J.S. DEPARTMENT OF COMMERCE  
U.S. Patent and Trademark Office

101775155

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

1. Name of conveying party(ies):  
Asher Candy Acquisition Corporation

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

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

2. Name and address of receiving party(ies)  
Name: Finova Capital Corporation  
Internal \_\_\_\_\_  
Address: \_\_\_\_\_

Street Address: 1060 First Ave., Suite 100  
City: King of Prussia State: PA Zip: 19406

Individual(s) citizenship \_\_\_\_\_  
 Association \_\_\_\_\_  
 General Partnership \_\_\_\_\_  
 Limited Partnership \_\_\_\_\_  
 Corporation-State Delaware  
 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 Correction of Registration No.  
 Execution Date: October 31, 1997

4. Application number(s) or registration number(s):  
 A. Trademark Application No.(s) \_\_\_\_\_

B. Trademark Registration No.(s)  
1,975,566

Additional number(s) attached  Yes  No

5. Name and address of party to whom correspondence concerning document should be mailed:  
 Name: Christopher M. Turk, Esquire  
 Internal Address: \_\_\_\_\_  
BLANK ROME COMISKY & McCAULEY LLP  
 \_\_\_\_\_  
 Street Address: One Logan Square  
 \_\_\_\_\_  
 City: Phila. State: PA Zip: 19103

6. Total number of applications and registrations involved: .....

7. Total fee (37 CFR 3.41).....\$ 40.00  
 Enclosed  
 Authorized to be charged to deposit account

8. Deposit account number:  
02-2555  
 (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.*

Christopher M. Turk, Esq.                      Christopher M Turk                      June 28, 2001  
 Name of Person Signing                      Signature                      Date

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

07/11/2001 DBYRNE 00000241 022535 197556  
01 FC:481 40.00 CH

Mail documents to be recorded with required cover sheet information to:  
Commissioner of Patent & Trademarks, Box Assignments  
Washington, D.C. 20231

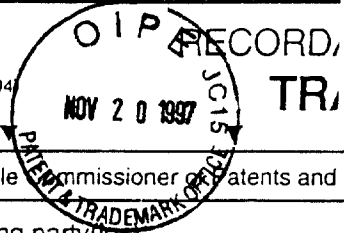
TRADEMARK  
REEL: 002327 FRAME: 0364

Tab settings

12-17-1997



100592304



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

1. Name of conveying party(ies):

Asher Candy Acquisition Corporation

MD 11-20-97

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

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

2. Name and address of receiving party(ies)

Name: Finova Capital Corporation

Internal Address: Same

Street Address: 1060 First Ave., Ste. 100  
King of Prussia State: PA ZIP: 19406

- Individual(s) citizenship
- Association
- General Partnership
- Limited Partnership
- Corporation-State Delaware
- 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
- Security Agreement
- Other
- Merger
- Change of Name

Execution Date: October 31, 1997

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

A. Trademark Application No.(s)

B. Trademark Registration No.(s)

1,856,869                      1,771,711  
1,766,099                      1,975,556

Additional numbers attached?  Yes  No

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

Name: TIMOTHY D. PECSENYE

Internal Address:

Street Address: Blank Rome Comisky &

McCauley One Logan Square

City: Phila. State: PA ZIP: 19103

6. Total number of applications and registrations involved: 4

7. Total fee (37 CFR 3.41).....\$ 160.00

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number:

02-2555

(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.

Timothy D. Pecsénye

Name of Person Signing

Timothy D. Pecsénye  
Signature

11-13-97  
Date

Total number of pages including cover sheet, attachments, and document: 13

00000040 D 02 02 555 1856869  
40.00 CH  
75.00 CH  
11-13-97  
13  
TRADEMARKS  
OFFICE

## TRADEMARK SECURITY AGREEMENT

This Trademark Security Agreement ("Agreement") is made as of the 31<sup>st</sup> day of October 1997, by ASHER CANDY ACQUISITION CORPORATION, a Wyoming corporation ("Borrower"), having a mailing address at 1815 Gilford Avenue, New Hyde Park, NY 11040, and delivered to FINOVA Capital Corporation ("Lender").

### BACKGROUND

A. This Agreement is being executed contemporaneously with that certain Loan and Security Agreement and Schedule to Loan and Security Agreement of even date herewith among Borrower and Lender (collectively, as each may hereafter be supplemented, restated, amended, superseded or replaced from time to time, the "Loan Agreement"), under which Borrower is granting Lender a lien on and security interest in certain assets of Borrower associated with or relating to products leased or sold or services provided under Borrower's trademarks and the goodwill associated therewith, and under which Lender is entitled to foreclose or otherwise deal with such assets, trademarks, servicemarks and tradenames under the terms and conditions set forth therein. Capitalized terms not defined herein shall have the meanings given to such terms in the Loan Agreement.

B. Borrower has adopted, used and is using (or has filed applications for the registration of) the trademarks, servicemarks and tradenames listed on Schedule "A" attached hereto and made part hereof (all such marks or names hereinafter referred to as the "Trademarks").

C. Pursuant to the Loan Agreement, Lender is acquiring a lien on, and security interest in, the Trademarks and the registration thereof, together with all the goodwill of Borrower associated therewith and represented thereby, as security for all of Borrowers' Obligations, and desires to have its security interest in such Trademarks confirmed by a document identifying same and in such form that it may be recorded in the United States Patent and Trademark Office.

NOW THEREFORE, with the foregoing Background hereinafter deemed incorporated by reference and made a part hereof, and in consideration of the premises and mutual promises herein contained, the parties hereto, intending to be legally bound hereby, covenant and agree as follows:

1. In consideration of and pursuant to the terms of the Loan Documents, and for other good, valuable and sufficient consideration, the receipt of which is hereby acknowledged, and to secure Borrowers' Obligations, Borrower grants a lien and security interest to Lender in all of its present and future right, title and interest in and to the Trademarks, together with all the goodwill

of Borrower associated with and represented by the Trademarks, and the registration thereof and the right (but not the obligation) to sue for past, present and future infringements, and the proceeds thereof, including, without limitation, license royalties and proceeds of infringement suits.

2. Borrower hereby covenants and agrees to maintain the Trademarks in full force and effect until all of Borrowers' Obligations are satisfied in full.

3. Borrower represents, warrants and covenants that:

(a) The Trademarks are subsisting and have not been adjudged invalid or unenforceable;

(b) Each of the Trademarks is valid and enforceable;

(c) Borrower is the sole and exclusive owner of the entire and unencumbered right, title and interest in and to each of the Trademarks, and each of the Trademarks is free and clear of any liens, claims, charges and encumbrances, including, without limitation, pledges, assignments, licenses and covenants by Borrower not to sue third persons;

(d) Borrower has the unqualified right, power and authority to enter into this Agreement and perform its terms; and

(e) Borrower has complied with, and will continue for the duration of this Agreement to comply with, the requirements set forth in 15 U.S.C. §1051-1127 and any other applicable statutes, rules and regulations in connection with its use of the Trademarks.

4. Borrower further covenants that:

(a) Until all of Borrowers' Obligations have been satisfied in full, it will not enter into any agreement, including without limitation, license agreements or options, which are inconsistent with Borrower's obligations under this Agreement, except for agency, co-marketing and co-branding agreements.

(b) If Borrower acquires rights to any new trademarks, the provisions of this Agreement shall automatically apply thereto and such trademarks shall be deemed part of the Trademarks. Borrower shall give Lender prompt written notice thereof along with an amended Schedule "A."

5. So long as this Agreement is in effect and so long as Borrower has not received notice from Lender that an Event of Default has occurred and is continuing under the Loan Agreement and that Lender has elected to exercise its rights hereunder, and until Lender accelerates the Obligations of the Borrower under the Loan Agreement, Borrower shall continue to have the exclusive right to use the Trademarks and Lender shall have no right to use the Trademarks or issue any exclusive or non-exclusive license with respect thereto, or assign, pledge or otherwise transfer title in the Trademarks to anyone else.

6. Borrower agrees not to sell, license, grant any option, assign or further encumber its rights and interest in the Trademarks without prior written consent of Lender.

7. If and while an Event of Default exists under the Loan Agreement and Lender is accelerating the Obligations of Borrower under the Loan Agreement, Borrower hereby covenants and agrees that Lender, as the holder of a security interest under the Uniform Commercial Code, as now or hereafter in effect in New Jersey, may take such action permitted under the Loan Documents or permitted by law, in its exclusive discretion, to foreclose upon the Trademarks covered hereby. For such purposes, during an Event of Default under the Loan Agreement and following the acceleration by Lender of Borrower's Obligations under the Loan Agreement, Borrower hereby authorizes and empowers Lender, its successors and assigns, and any officer or agent of Lender as Lender may select, in its exclusive discretion, as Borrower's true and lawful attorney-in-fact, with the power to endorse Borrower's name on all applications, assignments, documents, papers and instruments necessary for Lender to use the Trademarks or to grant or issue any exclusive or non-exclusive license under the Trademarks to anyone else, or necessary for Lender to assign, pledge, convey or otherwise transfer title in or dispose of the Trademarks to anyone else including, without limitation, the power to execute a trademark assignment in the form attached hereto as Exhibit 1. Borrower hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof and in accordance with the terms hereof, except for the gross negligence or wilful misconduct of such attorney. This power of attorney shall be irrevocable for the life of this Agreement, the Loan Documents, and until all Borrowers' Obligations are satisfied in full.

8. This Agreement shall be subject to the terms, provisions, and conditions set forth in the Loan Agreement and may not be modified without the written consent of the party against whom enforcement is being sought.

9. All rights and remedies herein granted to Lender shall be in addition to any rights and remedies granted under the Loan Documents. In the event of an inconsistency between this Agreement and the Loan Agreement, the language of the Loan Agreement shall control.

10. Upon Borrowers' performance of all of the obligations under the Loan Documents and full and unconditional satisfaction of all of Borrowers' Obligations, Lender shall execute and deliver to Borrower all documents reasonably necessary to terminate Lender's security interest in the Trademarks.

11. Any and all reasonable fees, costs and expenses, of whatever kind or nature, including the reasonable attorneys' fees and legal expenses incurred by Lender in connection with the preparation of this Agreement and all other documents relating hereto and the consummation of this transaction, the filing or recording of any documents (including all taxes in connection therewith) in public offices, the payment or discharge of any taxes, reasonable counsel fees, maintenance fees, encumbrances or costs otherwise incurred in protecting, maintaining, preserving the Trademarks, or in defending or prosecuting any actions or proceedings arising out of or related to the Trademarks, or defending, protecting or enforcing Lender's rights hereunder, in each case in accordance with the terms of this Agreement, shall be borne and paid by Borrower on demand by Lender and until so

paid shall be added to the principal amount of Borrowers' Obligations and shall bear interest at the contractual per annum rate prescribed in the Loan Agreement applicable to the Revolving Credit.

12. Subject to the terms of the Loan Agreement, Borrower shall have the duty to prosecute diligently any trademark application with respect to the Trademarks pending as of the date of this Agreement or thereafter, until Borrowers' Obligations shall have been satisfied in full, to preserve and maintain all rights in the Trademarks, and upon reasonable request of Lender, Borrower shall make federal application on registrable but unregistered trademarks belonging to Borrower. Any reasonable expenses incurred in connection with such applications shall be borne by Borrower. The Borrower shall not abandon any Trademark without the prior written consent of the Lender.

13. Borrower shall have the right to bring suit in its own name to enforce the Trademarks, in which event Lender may, if Borrower reasonably deems it necessary, be joined as a nominal party to such suit if Lender shall have been satisfied, in its sole discretion, that it is not thereby incurring any risk of liability because of such joinder. Borrower shall promptly, upon demand, reimburse and indemnify Lender for all damages, reasonable costs and expenses, including attorneys' fees, incurred by Lender in the fulfillment of the provisions of this paragraph.

14. During the existence of an Event of Default under the Loan Agreement, Lender may, without any obligation to do so, complete any obligation of Borrower hereunder, in Borrower's name or in Lender's name, but at Borrower's expense, and Borrower hereby agrees to reimburse Lender in full for all reasonable costs and expenses, including attorneys' fees, incurred by Lender in protecting, defending and maintaining the Trademarks.

15. No course of dealing between Borrower and Lender nor any failure to exercise, nor any delay in exercising, on the part of Lender, any right, power or privilege hereunder, shall operate as a waiver thereof, and all of Lender's rights and remedies with respect to the Trademarks, whether established hereby or by the Loan Documents, or by any other future agreements between Borrower and Lender or by law, shall be cumulative and may be exercised singularly or concurrently.

16. The provisions of this Agreement are severable and the invalidity or unenforceability of any provision herein shall not affect the remaining provisions which shall continue unimpaired and in full force and effect.

17. This Agreement shall inure to the benefit of and be binding upon the respective successors and permitted assigns of the parties.

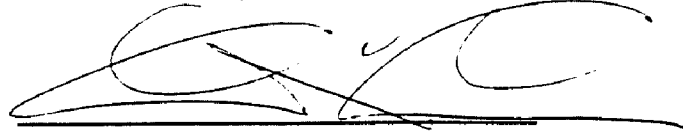
18. This Agreement shall be governed by and construed in conformity with the laws of the State of Arizona without regard to its otherwise applicable principles of conflicts of laws.

19. Borrower and Lender each waives any and all rights it may have to a jury trial in connection with any litigation, proceeding or counterclaim arising with respect to rights and obligations of the parties hereto or under the Loan Documents.

IN WITNESS WHEREOF, the parties hereto have executed this Trademark Security Agreement, under seal, the day and year first above written.

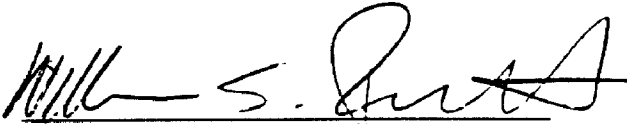
ASHER CANDY ACQUISITION CORPORATION

By:



Leonard Levie, Vice President

By:



William Rosenstandt, Secretary

Approved and Accepted:

FINOVA CAPITAL CORPORATION

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

SCHEDULE "A"

<u>REGISTERED MARK</u>	<u>REG. NO.</u>	<u>DATED</u>
ASHER	1,856,869	October 4, 1994
GOURMET CANES With Design	1,771,711	May 18, 1993
TIGER TAILS	1,766,099	April 30, 1993
ASHER with Design	1,975,566	May 28, 1993



POWER OF ATTORNEY

ASHER CANDY ACQUISITION CORPORATION, a Wyoming corporation, ("Grantor"), hereby authorizes FINOVA CAPITAL CORPORATION, its successors and assigns, and any officer or agent thereof (collectively "Grantee") as Grantor's true and lawful attorney-in-fact, with the power to endorse Grantor's name on all applications, assignments, documents, papers and instruments necessary for Grantee to enforce and effectuate its rights under a certain Trademark Security Agreement between Grantor and Grantee dated the date hereof (as it may hereafter be supplemented, restated, superseded, amended or replaced, the "Trademark Agreement"), including, without limitation, the power to use the Trademarks (as defined in the Trademark Agreement), to grant or issue any exclusive or nonexclusive license under the Trademarks to anyone else, or to assign, pledge, convey or otherwise transfer title in or dispose of the Trademarks, in each case subject to the terms of the Trademark Agreement.

This Power of Attorney is given and any action taken pursuant hereto is intended to be so given or taken pursuant to and subject to the provisions of a certain Loan and Security Agreement and Schedule to Loan and Security Agreement bearing even date herewith among Grantor and Grantee, as each document may be hereinafter supplemented, restated, superseded, amended or replaced.

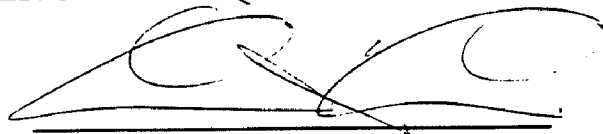
Grantor hereby unconditionally ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof and in accordance with the terms of the Trademark Agreement.

This Power of Attorney shall be irrevocable for the life of the Trademark Agreement.

IN WITNESS WHEREOF, the Grantor has executed this Power of Attorney, under seal, this 31 day of October, 1997.

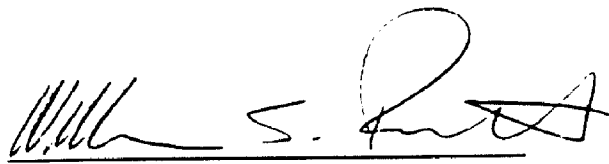
ASHER CANDY ACQUISITION CORPORATION

By:



Leonard Levie, Vice President

By:



William Rosenstandt, Secretary

CORPORATE ACKNOWLEDGEMENT

UNITED STATES OF AMERICA :  
COMMONWEALTH OF PENNSYLVANIA : SS  
COUNTY OF PHILADELPHIA :

On this 3rd of October, 1997, before me personally appeared Leonard Spive and William Rosenblatt to me known and being duly sworn, deposes and says that they are Vice President and Secretary, of Asher Candy Acquisition Corporation, respectively, the Borrower corporation described in the foregoing Agreement; that they know the seal of the corporation; that the seal so affixed to the Agreement is such corporate seal; that they signed the Agreement and affixed the seal of the corporation thereto as such officer pursuant to the authority vested in him by law; that the within Agreement is the voluntary act of such corporation; and they desire the same to be recorded as such.

Elizabeth T. Osborne  
Notary Public

My Commission Expires:

NOTARIAL SEAL  
ELIZABETH T. OSBORNE, Notary Public  
City of Philadelphia, Phila. County  
My Commission Expires Nov. 30, 2000

CORPORATE ACKNOWLEDGEMENT

UNITED STATES OF AMERICA :  
COMMONWEALTH OF PENNSYLVANIA : SS  
COUNTY OF PHILADELPHIA :

On this 3rd of October, 1997, before me personally appeared Leonard Levine and William Lorenstein to me known and being duly sworn, deposes and says that they are Vice President and Secretary, of Asher Candy Acquisition Corporation, respectively, the Borrower corporation described in the foregoing Agreement; that they know the seal of the corporation; that the seal so affixed to the Agreement is such corporate seal; that they signed the Agreement and affixed the seal of the corporation thereto as such officer pursuant to the authority vested in him by law; that the within Agreement is the voluntary act of such corporation; and they desire the same to be recorded as such.

Elizabeth T. Osborne  
Notary Public

My Commission Expires:

NOTARIAL SEAL  
ELIZABETH T. OSBORNE, Notary Public  
City of Philadelphia, Phila. County  
My Commission Expires Nov. 30, 2000

## **EXHIBIT 1.1A**

### **ACCOUNT DEBTORS**

1. Rite Aid/Payless
2. CVS
3. Family Dollar Stores
4. Toys R Us

Additionally, FINOVA, in its sole discretion, may accept any other account debtor for which the Borrower has obtained credit insurance from an insurer in an amount and in terms acceptable to FINOVA.

## **EXHIBIT 1.1B**

### **PERMITTED ENCUMBRANCES**

1. Mendon Leasing Agreement and Schedule "A" #85 Dated November 21, 1995.
2. Crown Lift Trucks Forklift Lease.

## **EXHIBIT 5.16**

### **OPERATING LEASES**

1. 1815 Gilford Avenue, New Hyde Park, NY 11040
2. Currier Systems, 45 Rosenhayn Avenue, Bridgeton, NJ 08302
3. Juldor Transport, 14 Kennedy Blvd., E. Brunswick, NJ 08816
4. Pioneer Warehouse, 275 Griffith Morgan Road, Pennsauken, NJ 08110
5. Eastern America, 1001 New Ford Mill Road, Morrisville, PA 19067
6. Tighe Warehouse, 481 Wildwood Avenue, Woburn, MA 01801
7. Central States Dist., 3401 Lynch Creek Drive, Danville, IL 61832
8. Meritex Logistics, 4834 Mendham Hall, Memphis, TN 38141

## TRADEMARK SECURITY AGREEMENT

This Trademark Security Agreement ("Agreement") is made as of the 31<sup>st</sup> day of October 1997, by ASHER CANDY ACQUISITION CORPORATION, a Wyoming corporation ("Borrower"), having a mailing address at 1815 Gilford Avenue, New Hyde Park, NY 11040, and delivered to FINOVA Capital Corporation ("Lender").

### BACKGROUND

A. This Agreement is being executed contemporaneously with that certain Loan and Security Agreement and Schedule to Loan and Security Agreement of even date herewith among Borrower and Lender (collectively, as each may hereafter be supplemented, restated, amended, superseded or replaced from time to time, the "Loan Agreement"), under which Borrower is granting Lender a lien on and security interest in certain assets of Borrower associated with or relating to products leased or sold or services provided under Borrower's trademarks and the goodwill associated therewith, and under which Lender is entitled to foreclose or otherwise deal with such assets, trademarks, servicemarks and tradenames under the terms and conditions set forth therein. Capitalized terms not defined herein shall have the meanings given to such terms in the Loan Agreement.

B. Borrower has adopted, used and is using (or has filed applications for the registration of) the trademarks, servicemarks and tradenames listed on Schedule "A" attached hereto and made part hereof (all such marks or names hereinafter referred to as the "Trademarks").

C. Pursuant to the Loan Agreement, Lender is acquiring a lien on, and security interest in, the Trademarks and the registration thereof, together with all the goodwill of Borrower associated therewith and represented thereby, as security for all of Borrowers' Obligations, and desires to have its security interest in such Trademarks confirmed by a document identifying same and in such form that it may be recorded in the United States Patent and Trademark Office.

NOW THEREFORE, with the foregoing Background hereinafter deemed incorporated by reference and made a part hereof, and in consideration of the premises and mutual promises herein contained, the parties hereto, intending to be legally bound hereby, covenant and agree as follows:

1. In consideration of and pursuant to the terms of the Loan Documents, and for other good, valuable and sufficient consideration, the receipt of which is hereby acknowledged, and to secure Borrowers' Obligations, Borrower grants a lien and security interest to Lender in all of its present and future right, title and interest in and to the Trademarks, together with all the goodwill

of Borrower associated with and represented by the Trademarks, and the registration thereof and the right (but not the obligation) to sue for past, present and future infringements, and the proceeds thereof, including, without limitation, license royalties and proceeds of infringement suits.

2. Borrower hereby covenants and agrees to maintain the Trademarks in full force and effect until all of Borrowers' Obligations are satisfied in full.

3. Borrower represents, warrants and covenants that:

(a) The Trademarks are subsisting and have not been adjudged invalid or unenforceable;

(b) Each of the Trademarks is valid and enforceable;

(c) Borrower is the sole and exclusive owner of the entire and unencumbered right, title and interest in and to each of the Trademarks, and each of the Trademarks is free and clear of any liens, claims, charges and encumbrances, including, without limitation, pledges, assignments, licenses and covenants by Borrower not to sue third persons;

(d) Borrower has the unqualified right, power and authority to enter into this Agreement and perform its terms; and

(e) Borrower has complied with, and will continue for the duration of this Agreement to comply with, the requirements set forth in 15 U.S.C. §1051-1127 and any other applicable statutes, rules and regulations in connection with its use of the Trademarks.

4. Borrower further covenants that:

(a) Until all of Borrowers' Obligations have been satisfied in full, it will not enter into any agreement, including without limitation, license agreements or options, which are inconsistent with Borrower's obligations under this Agreement, except for agency, co-marketing and co-branding agreements.

(b) If Borrower acquires rights to any new trademarks, the provisions of this Agreement shall automatically apply thereto and such trademarks shall be deemed part of the Trademarks. Borrower shall give Lender prompt written notice thereof along with an amended Schedule "A."

5. So long as this Agreement is in effect and so long as Borrower has not received notice from Lender that an Event of Default has occurred and is continuing under the Loan Agreement and that Lender has elected to exercise its rights hereunder, and until Lender accelerates the Obligations of the Borrower under the Loan Agreement, Borrower shall continue to have the exclusive right to use the Trademarks and Lender shall have no right to use the Trademarks or issue any exclusive or non-exclusive license with respect thereto, or assign, pledge or otherwise transfer title in the Trademarks to anyone else.



6. Borrower agrees not to sell, license, grant any option, assign or further encumber its rights and interest in the Trademarks without prior written consent of Lender.

7. If and while an Event of Default exists under the Loan Agreement and Lender is accelerating the Obligations of Borrower under the Loan Agreement, Borrower hereby covenants and agrees that Lender, as the holder of a security interest under the Uniform Commercial Code, as now or hereafter in effect in New Jersey, may take such action permitted under the Loan Documents or permitted by law, in its exclusive discretion, to foreclose upon the Trademarks covered hereby. For such purposes, during an Event of Default under the Loan Agreement and following the acceleration by Lender of Borrower's Obligations under the Loan Agreement, Borrower hereby authorizes and empowers Lender, its successors and assigns, and any officer or agent of Lender as Lender may select, in its exclusive discretion, as Borrower's true and lawful attorney-in-fact, with the power to endorse Borrower's name on all applications, assignments, documents, papers and instruments necessary for Lender to use the Trademarks or to grant or issue any exclusive or non-exclusive license under the Trademarks to anyone else, or necessary for Lender to assign, pledge, convey or otherwise transfer title in or dispose of the Trademarks to anyone else including, without limitation, the power to execute a trademark assignment in the form attached hereto as Exhibit 1. Borrower hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof and in accordance with the terms hereof, except for the gross negligence or wilful misconduct of such attorney. This power of attorney shall be irrevocable for the life of this Agreement, the Loan Documents, and until all Borrowers' Obligations are satisfied in full.

8. This Agreement shall be subject to the terms, provisions, and conditions set forth in the Loan Agreement and may not be modified without the written consent of the party against whom enforcement is being sought.

9. All rights and remedies herein granted to Lender shall be in addition to any rights and remedies granted under the Loan Documents. In the event of an inconsistency between this Agreement and the Loan Agreement, the language of the Loan Agreement shall control.

10. Upon Borrowers' performance of all of the obligations under the Loan Documents and full and unconditional satisfaction of all of Borrowers' Obligations, Lender shall execute and deliver to Borrower all documents reasonably necessary to terminate Lender's security interest in the Trademarks.

11. Any and all reasonable fees, costs and expenses, of whatever kind or nature, including the reasonable attorneys' fees and legal expenses incurred by Lender in connection with the preparation of this Agreement and all other documents relating hereto and the consummation of this transaction, the filing or recording of any documents (including all taxes in connection therewith) in public offices, the payment or discharge of any taxes, reasonable counsel fees, maintenance fees, encumbrances or costs otherwise incurred in protecting, maintaining, preserving the Trademarks, or in defending or prosecuting any actions or proceedings arising out of or related to the Trademarks, or defending, protecting or enforcing Lender's rights hereunder, in each case in accordance with the terms of this Agreement, shall be borne and paid by Borrower on demand by Lender and until so

paid shall be added to the principal amount of Borrowers' Obligations and shall bear interest at the contractual per annum rate prescribed in the Loan Agreement applicable to the Revolving Credit.

12. Subject to the terms of the Loan Agreement, Borrower shall have the duty to prosecute diligently any trademark application with respect to the Trademarks pending as of the date of this Agreement or thereafter, until Borrowers' Obligations shall have been satisfied in full, to preserve and maintain all rights in the Trademarks, and upon reasonable request of Lender, Borrower shall make federal application on registrable but unregistered trademarks belonging to Borrower. Any reasonable expenses incurred in connection with such applications shall be borne by Borrower. The Borrower shall not abandon any Trademark without the prior written consent of the Lender.

13. Borrower shall have the right to bring suit in its own name to enforce the Trademarks, in which event Lender may, if Borrower reasonably deems it necessary, be joined as a nominal party to such suit if Lender shall have been satisfied, in its sole discretion, that it is not thereby incurring any risk of liability because of such joinder. Borrower shall promptly, upon demand, reimburse and indemnify Lender for all damages, reasonable costs and expenses, including attorneys' fees, incurred by Lender in the fulfillment of the provisions of this paragraph.

14. During the existence of an Event of Default under the Loan Agreement, Lender may, without any obligation to do so, complete any obligation of Borrower hereunder, in Borrower's name or in Lender's name, but at Borrower's expense, and Borrower hereby agrees to reimburse Lender in full for all reasonable costs and expenses, including attorneys' fees, incurred by Lender in protecting, defending and maintaining the Trademarks.

15. No course of dealing between Borrower and Lender nor any failure to exercise, nor any delay in exercising, on the part of Lender, any right, power or privilege hereunder, shall operate as a waiver thereof, and all of Lender's rights and remedies with respect to the Trademarks, whether established hereby or by the Loan Documents, or by any other future agreements between Borrower and Lender or by law, shall be cumulative and may be exercised singularly or concurrently.

16. The provisions of this Agreement are severable and the invalidity or unenforceability of any provision herein shall not affect the remaining provisions which shall continue unimpaired and in full force and effect.

17. This Agreement shall inure to the benefit of and be binding upon the respective successors and permitted assigns of the parties.

18. This Agreement shall be governed by and construed in conformity with the laws of the State of Arizona without regard to its otherwise applicable principles of conflicts of laws.

19. Borrower and Lender each waives any and all rights it may have to a jury trial in connection with any litigation, proceeding or counterclaim arising with respect to rights and obligations of the parties hereto or under the Loan Documents.

IN WITNESS WHEREOF, the parties hereto have executed this Trademark Security Agreement, under seal, the day and year first above written.

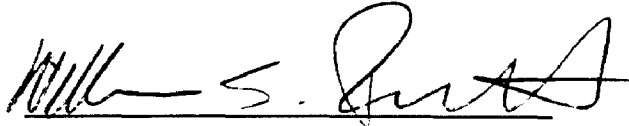
ASHER CANDY ACQUISITION CORPORATION

By:



Leonard Levie, Vice President

By:



William Rosenstandt, Secretary

Approved and Accepted:

FINOVA CAPITAL CORPORATION

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

SCHEDULE "A"

<u>REGISTERED MARK</u>	<u>REG. NO.</u>	<u>DATED</u>
ASHER	1,856,869	October 4, 1994
GOURMET CANES with Design	1,771,711	May 18, 1993
TIGER TAILS	1,766,099	April 30, 1993
ASHER with Design	1,975,556	May 28, 1993

POWER OF ATTORNEY

ASHER CANDY ACQUISITION CORPORATION, a Wyoming corporation, ("Grantor"), hereby authorizes FINOVA CAPITAL CORPORATION, its successors and assigns, and any officer or agent thereof (collectively "Grantee") as Grantor's true and lawful attorney-in-fact, with the power to endorse Grantor's name on all applications, assignments, documents, papers and instruments necessary for Grantee to enforce and effectuate its rights under a certain Trademark Security Agreement between Grantor and Grantee dated the date hereof (as it may hereafter be supplemented, restated, superseded, amended or replaced, the "Trademark Agreement"), including, without limitation, the power to use the Trademarks (as defined in the Trademark Agreement), to grant or issue any exclusive or nonexclusive license under the Trademarks to anyone else, or to assign, pledge, convey or otherwise transfer title in or dispose of the Trademarks, in each case subject to the terms of the Trademark Agreement.

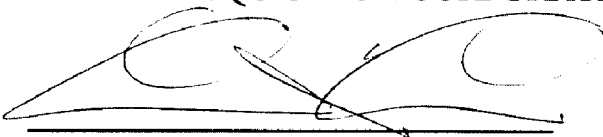
This Power of Attorney is given and any action taken pursuant hereto is intended to be so given or taken pursuant to and subject to the provisions of a certain Loan and Security Agreement and Schedule to Loan and Security Agreement bearing even date herewith among Grantor and Grantee, as each document may be hereinafter supplemented, restated, superseded, amended or replaced.

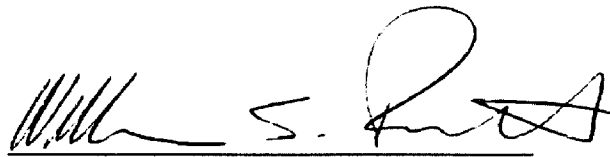
Grantor hereby unconditionally ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof and in accordance with the terms of the Trademark Agreement.

This Power of Attorney shall be irrevocable for the life of the Trademark Agreement.

IN WITNESS WHEREOF, the Grantor has executed this Power of Attorney, under seal, this 31 day of October, 1997.

ASHER CANDY ACQUISITION CORPORATION

By:   
Leonard Levie, Vice President

By:   
William Rosenstandt, Secretary

CORPORATE ACKNOWLEDGEMENT

UNITED STATES OF AMERICA :  
COMMONWEALTH OF PENNSYLVANIA : SS  
COUNTY OF PHILADELPHIA :

On this 31st of October, 1997, before me personally appeared Leonard Levie  
and William Rosenblatt to me known and being duly sworn, deposes and says that they  
are Vice President and Secretary, of Asher Candy Acquisition  
Corporation, respectively, the Borrower corporation described in the foregoing Agreement; that they  
know the seal of the corporation; that the seal so affixed to the Agreement is such corporate seal; that  
they signed the Agreement and affixed the seal of the corporation thereto as such officer pursuant  
to the authority vested in him by law; that the within Agreement is the voluntary act of such  
corporation; and they desire the same to be recorded as such.

Elizabeth T. Osborne  
Notary Public

My Commission Expires:

NOTARIAL SEAL ELIZABETH T. OSBORNE, Notary Public City of Philadelphia, Phila. County My Commission Expires Nov. 30, 2000
--

CORPORATE ACKNOWLEDGEMENT

UNITED STATES OF AMERICA :  
COMMONWEALTH OF PENNSYLVANIA : SS  
COUNTY OF PHILADELPHIA :

On this 3<sup>rd</sup> of October, 1997, before me personally appeared Leonard Levine and William Rosenblatt to me known and being duly sworn, deposes and says that they are Vice President and Secretary, of Asher Candy Acquisition Corporation, respectively, the Borrower corporation described in the foregoing Agreement; that they know the seal of the corporation; that the seal so affixed to the Agreement is such corporate seal; that they signed the Agreement and affixed the seal of the corporation thereto as such officer pursuant to the authority vested in him by law; that the within Agreement is the voluntary act of such corporation; and they desire the same to be recorded as such.

Elizabeth T. Osborne  
Notary Public

My Commission Expires:

NOTARIAL SEAL  
ELIZABETH T. OSBORNE, Notary Public  
City of Philadelphia, Phila. County  
My Commission Expires Nov. 30, 2000

## **EXHIBIT 1.1A**

### **ACCOUNT DEBTORS**

1. Rite Aid/Payless
2. CVS
3. Family Dollar Stores
4. Toys R Us

Additionally, FINOVA, in its sole discretion, may accept any other account debtor for which the Borrower has obtained credit insurance from an insurer in an amount and in terms acceptable to FINOVA.



## **EXHIBIT 1.1B**

### **PERMITTED ENCUMBRANCES**

1. Mendon Leasing Agreement and Schedule "A" #85 Dated November 21, 1995.
2. Crown Lift Trucks Forklift Lease.

## **EXHIBIT 5.16**

### **OPERATING LEASES**

1. 1815 Gilford Avenue, New Hyde Park, NY 11040
2. Currier Systems, 45 Rosenhayn Avenue, Bridgeton, NJ 08302
3. Juldor Transport, 14 Kennedy Blvd., E. Brunswick, NJ 08816
4. Pioneer Warehouse, 275 Griffith Morgan Road, Pennsauken, NJ 08110
5. Eastern America, 1001 New Ford Mill Road, Morrisville, PA 19067
6. Tighe Warehouse, 481 Wildwood Avenue, Woburn, MA 01801
7. Central States Dist., 3401 Lynch Creek Drive, Danville, IL 61832
8. Meritex Logistics, 4834 Mendham Hall, Memphis, TN 38141