

03-22-2002



Form PTO-1594 (Rev. 03/01) OMB No. 0651-0027 (exp. 5/31/2002) Tab settings

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

102027764

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

1. Name of conveying party(ies): Woodworkers Warehouse, Inc. 3-8-02
Individual(s) Association General Partnership Limited Partnership Corporation-State Other
Additional name(s) of conveying party(ies) attached? Yes No

2. Name and address of receiving party(ies) Name: Bank of America, N.A. Internal Address: Street Address: 335 Madison Avenue City: New York State: NY Zip: 10017
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: 10/29/01

4. Application number(s) or registration number(s): A. Trademark Application No.(s) B. Trademark Registration No.(s) 1,278,735; 1,737,995; 1,778,948; 1,804,596; Additional number(s) attached Yes No 1,815,027

5. Name and address of party to whom correspondence concerning document should be mailed: Name: Jonathan Makarowitz, Esq. Internal Address: Buchanan Ingersoll, P.C. Street Address: 140 Broadway - 35th Floor City: New York State: NY Zip: 10005

6. Total number of applications and registrations involved: 5
7. Total fee (37 CFR 3.41) \$ 140.00 Enclosed Authorized to be charged to deposit account
8. Deposit account number:

DO NOT USE THIS SPACE

9. Signature. Jonathan Makarowitz, Esq. Signature Date 2/26/02 Name of Person Signing

Total number of pages including cover sheet, attachments, and document: 15

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

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TRADEMARK REEL: 002467 FRAME: 0194

SECOND AMENDED AND RESTATED TRADEMARK SECURITY AGREEMENT

THIS AMENDED AND RESTATED TRADEMARK SECURITY AGREEMENT ("Agreement"), dated as of October 29, 2001, is entered into between WOODWORKERS WAREHOUSE, INC. (successor by merger to Trend-Lines, Inc.), a Delaware corporation (the "Debtor"), and Bank of America, N.A., a national banking association, as Agent for itself (in such capacity, the "Agent") and certain other secured parties, in light of the following:

A. Trend-Lines, Inc., Post-Tool, Inc. and Lenders are parties to an Amended and Restated Loan and Security Agreement dated as of February 23, 1999 and amended as of June 9, 2000 (as so amended, the "Existing Agreement").

B. On August 11, 2000 (the "Petition Date"), Trend-Lines, Inc. and Post-Tool, Inc. filed voluntary petitions for relief under the Federal Bankruptcy Code with the United States Bankruptcy Court for the District of Massachusetts, Eastern Division (the "Bankruptcy Court") and on February 27, 2001, the Chapter 11 cases of Trend-Lines, Inc. and Post-Tool, Inc., pursuant to an order of the Bankruptcy Court were substantively consolidated such that Trend-Lines, Inc. is the remaining consolidated entity (such proceeding being administered under Case No. 00-15431-CJK is hereinafter referred to as the "Bankruptcy Case"); and

C. On October 17, 2001, the Bankruptcy Court confirmed the Plan of Reorganization (as hereinafter defined) which provides for the merger of Trend-Lines, Inc. with and into Debtor; and

D. Debtor was formed on October __, 2001 solely for the purpose of merging Trend-Lines, Inc. with and into Debtor (the "Merger") and, prior to the Merger, Debtor had conducted no operations and entered into no agreements other than the agreements related to the Merger; and

E. Pursuant to the Merger Agreement entered into by Trend-Lines, Inc. and Debtor, the Plan of Reorganization, the Confirmation Order and the relevant provisions of Massachusetts and Delaware General Corporation Law, Debtor, as the surviving entity in the Merger, became liable for all debts, duties and obligations under the Existing Agreement; and

F. Pursuant to the Plan of Reorganization and the Confirmation Order, the Agent shall retain its continuing, replacement and additional liens and security interests in the property of Trend-Lines, Inc., Post-Tool, Inc. and the Debtor; and

G. The continuing, replacement and additional liens and security interests of Agent are, pursuant to the Plan of Reorganization and Confirmation Order, automatically deemed perfected on the Effective Date (as defined in the Loan Agreement) without the necessity of the Agent taking possession, filing financing statements, mortgages, leasehold mortgages or other documents; and

H. The Debtor has requested the Lenders to amend further the Existing Agreement and make available to the Debtor a revolving line of credit for loans and letters of credit in an amount not to exceed \$30,000,000 subsequent to the effective date of Debtor's first amended joint reorganization plan, as modified and confirmed by order of the Bankruptcy Court on October 17,

2001, (the "Plan of Reorganization") under the Bankruptcy Case on the terms and conditions set forth herein and, for the purpose of convenience only, to restate in its entirety the Existing Agreement; and

I. Lenders are willing to restate the Existing Agreement and to provide such financing upon the terms and subject to the conditions set forth in the Loan Agreement; and

J. The Agent and Debtor are, contemporaneously herewith, entering into that certain Second Amended and Restated Loan and Security Agreement dated as of the date hereof among the Agent and certain other secured parties and the Debtor (the "Loan Agreement") and other instruments, documents and agreements contemplated thereby or related thereto (collectively, together with the Loan Agreement, the "Loan Documents"); and

K. The Debtor is the owner of certain intellectual property, identified below, in which the Debtor is granting a security interest to the Agent on behalf of itself and certain other secured parties.

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

1. Definitions and Construction.

(a) Definitions. The following terms, as used in this Agreement, have the following meanings:

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

"Collateral" means:

(i) Each of the marks, rights and interests which are capable of identifying the source or designating the origin of goods or services which are presently, or in the future may be, owned, created, or acquired by the Debtor, in whole or in part, and all rights with respect thereto throughout the world, including, without limitation:

(A) all trademarks, service marks, designs, logos, indicia, trade names, corporate names, company names, business names, fictitious business names, trade styles, trade dress, and other words, terms, names, symbols, devices, business identifiers, and any combination thereof;

(B) all rights to renew and extend such rights and, to the extent not otherwise included, all payments under insurance, or any indemnity, warranty, or guaranty payable by reason of loss of damage to or otherwise with respect to Collateral; and

(C) all associated goodwill of the business in which the mark is used;

(ii) All of the Debtor's right, title, and interest in and to the registrations of and applications for marks listed on Schedule A, attached hereto, as the same may be updated hereafter from time to time, together (in each case) with all associated goodwill of the business in which the mark is used;

(iii) All of the Debtor's right to register marks under any state, federal, or foreign trademark law or regulation and to apply for, renew, and extend the registrations and rights thereunder, the right (without obligation) to sue or bring opposition or cancellation proceedings in the name of the Debtor or in the name of the Agent for past, present, future, and anticipated infringements and dilutions of such marks, registrations, and rights and all rights (but not obligations) corresponding thereto in the United States and any foreign country, and the associated goodwill;

(iv) All general intangibles relating to the foregoing; and

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

"Obligations" means all obligations, liabilities, and indebtedness of the Debtor to the Agent, whether direct, indirect, liquidated or contingent, and whether arising under this Agreement, the Loan Agreement, any other of the Loan Documents, or otherwise, including, without limitation, all costs and expenses described in Section 10(i) hereof.

(b) **Construction.** Unless the context of this Agreement clearly requires otherwise, references to the plural include the singular, references to the singular include the plural, and the term "including" is not limiting. The words "hereof," "herein," "hereby," "hereunder," and other similar terms refer to this Agreement as a whole and not to any particular provision of this Agreement. Any initially capitalized terms used but not defined herein shall have the meaning set forth in the Loan Agreement. Any reference herein to any of the Loan Documents includes any and all alterations, amendments, extensions, modifications, renewals, or supplements thereto or thereof, as applicable. Neither this Agreement nor any uncertainty or ambiguity herein shall be construed or resolved against the Agent or the Debtor, whether under any rule of construction or otherwise. On the contrary, this Agreement has been reviewed by the Debtor, the Agent, and their respective counsel and shall be construed and interpreted according to the ordinary meaning of the words used so as to accomplish fairly the purposes and intentions of the Agent and the Debtor.

2. **Grant of Security Interest.** The Debtor hereby grants to the Agent a first-priority security interest in, and conditionally assigns, but does not transfer title to the Agent to, all of the Debtor's right, title, and interest in and to the Collateral to secure the Obligations.

3. **Representations, Warranties and Covenants.** The Debtor hereby represents, warrants, and covenants that:

(a) A true and complete schedule setting forth all federal and state registrations of marks owned by the Debtor, together with a summary description and full information in respect of the filing or issuance thereof and expiration dates, is set forth on Schedule A;

(b) Each of the marks and registrations of marks is valid and enforceable, and the Debtor is not presently aware of any past, present, or prospective claim by any third party that any of the marks is invalid or unenforceable or that the use of any marks violates the rights of any third person, or of any basis for any such claims except as set forth on Schedule A;

(c) Except as set forth on Schedule B attached hereto, the Debtor is the sole and exclusive owner of the entire and unencumbered right, title, and interest in and to each of the marks, and mark registrations, free and clear of any liens, charges, and encumbrances, including, without limitation, pledges, assignments, licenses, shop rights, and covenants by the Debtor not to sue third persons;

(d) The Debtor has used and will continue to use proper statutory notice in connection with its use of each of the registered marks;

(e) The Debtor has used and will continue to use consistent standards of high quality (which may be consistent with the Debtor's past practices) in the sale and delivery of products and services sold or delivered under or in connection with the marks, including, without limitation and to the extent applicable, in the operation and maintenance of its merchandising operations, and will continue to maintain the validity of the marks;

(f) Except for the filing of a financing statement with the Clerk of the Commonwealth of Massachusetts and filings with the United States Patent and Trademark Office necessary to perfect the security interests created hereunder with respect to domestic trademarks, no authorization, approval, or other action by, and no notice to or filing with, any U.S. governmental authority or regulatory body is required either for the grant by the Debtor of the security interest hereunder or for the execution, delivery, or performance of this Agreement by the Debtor or for the perfection of or the exercise by the Agent of its rights hereunder in and to the Collateral in the United States.

4. **After-Acquired Trademark Rights.** If the Debtor shall obtain or create rights to any new marks, the provisions of this Agreement shall automatically apply thereto. The Debtor shall give prompt notice in writing to the Agent with respect to any such new marks, and to the renewal or extension of any registration of a mark. The Debtor shall bear any expenses incurred in connection with future registrations of marks.

5. **Litigation and Proceedings.** The Debtor shall commence and diligently prosecute in its own name, as the real party in interest, for its own benefit, and at its own expense, such suits, administrative proceedings, or other actions for infringement or other damages as are in its reasonable business judgment necessary to protect the Collateral. The Debtor shall provide to the Agent any information with respect thereto requested by the Agent. The Agent shall provide at the Debtor's expense all necessary cooperation in connection with any such suits, proceedings, or actions, including, without limitation, joining as a necessary party provided that the Debtor is not

responsible for the Agent's attorneys' fees if the Agent voluntarily chooses to become a party to any suit. Following the Debtor's becoming aware thereof, the Debtor shall notify the Agent of the institution of, or any adverse determination in, any proceeding in the United States Patent and Trademark Office, or any United States, state, or foreign court regarding the Debtor's claim of ownership in any of the marks, the Debtor's right to apply for the same, or its right to keep and maintain such ownership and rights in the marks.

6. **Power of Attorney.** The Debtor grants the Agent power of attorney, having the full authority, and in the place of, the Debtor and in the name of the Debtor, from time to time following an Event of Default (as defined in Section 8 hereof) and in the Agent's discretion following such an Event of Default and after five days' written notice to the Agent, to take any action and to execute any instrument which the Agent may deem necessary or advisable to accomplish the purposes of this Agreement, including, without limitation:

(a) To endorse the Debtor's name on all applications, documents, papers, and instruments necessary for the Agent to use or maintain the Collateral;

(b) To ask, demand, collect, sue for, recover, impound, receive, and give acquittance and receipts for money due or to become due under or in respect of any of the Collateral;

(c) To file any claims or take any action or institute any proceedings that the Agent may deem necessary or desirable for the collection of any of the Collateral or otherwise to enforce the Agent's rights with respect to any of the Collateral and to assign, pledge, convey, or otherwise transfer title in or dispose of the Collateral to any person.

7. **Right to Inspect.** The Debtor grants to the Agent and its employees and agents the right to visit the Debtor's plants and facilities which manufacture, inspect, or store products sold under any of the trademarks, and to inspect the products and quality control records relating thereto at reasonable times during regular business hours or as otherwise provided in the Loan Agreement.

8. **Event of Default.** Any of the following events shall be an Event of Default:

(a) An Event of Default shall occur as defined in the Loan Agreement;

(b) Any representation or warranty made herein by the Debtor or in any document furnished to the Lender by the Debtor under this Agreement is incorrect in any material respect when made or when reaffirmed and such misrepresentation shall have a material adverse effect on the Debtor's business; and

(c) The Debtor fails to observe or perform any covenant, condition, or agreement to be observed or performed pursuant to the terms hereof.

9. **Specific Remedies.** Upon the occurrence of any Event of Default, the Agent shall have, in addition to other rights given by law or in this Agreement, the Loan Agreement, or in any other Loan Document, all of the rights and remedies with respect to the Collateral of a secured party under the Code, including, without limitation, the following:

(a) The Agent may notify licensees to make royalty payments on license agreements directly to the Agent;

(b) The Agent may sell, license, franchise or assign the Collateral at public or private sale for such amounts, and at such time or times, as the Agent deems advisable, provided that it is done in a commercially reasonable manner. Any requirement of reasonable notice of any disposition of the Collateral shall be satisfied if such notice is sent to the Debtor 10 days prior to such disposition. The Debtor shall be credited with the net proceeds of such sale only when they are actually received by the Agent, and the Debtor shall continue to be liable for any deficiency remaining after the Collateral is sold or collected. If the sale is to be a public sale, the Agent shall also give notice of the time and place by publishing a notice one time at least 10 days before the date of the sale in a newspaper of general circulation in the county in which the sale is to be held; and

(c) To the maximum extent permitted by applicable law, the Agent may be the purchaser of any or all of the Collateral at any public sale and shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any public sale, to use and apply all or any part of the Obligations as a credit on account of the purchase price of any Collateral payable by the Agent at such sale and the Obligations shall be deemed satisfied to the extent of such application.

10. **General Provisions.**

(a) **Effectiveness of This Agreement.** This Agreement shall be binding and deemed effective when executed by the Debtor and accepted and executed by the Agent.

(b) **Cumulative Remedies: No Prior Recourse to Collateral.** The enumeration herein of the Agent's rights and remedies is not intended to be exclusive, provided that it is done in a commercially reasonable manner, and such rights and remedies are in addition to and not by way of limitation of any other rights or remedies that the Agent may have under the Loan Agreement, the Code or other applicable law. The Agent shall have the right, in its sole discretion, to determine which rights and remedies are to be exercised and in which order. The exercise of one right or remedy shall not preclude the exercise of any others, all of which shall be cumulative.

(c) **No Implied Waivers.** No act, failure, or delay by the Agent shall constitute a waiver of any of its rights and remedies. No single or partial waiver by the Agent of any provision of this Agreement or any other Loan Document, or of a breach or default hereunder or thereunder, or of any right or remedy which the Agent may have, shall operate as a waiver of any other provision, breach, default, right, or remedy or of the same provision, breach, default, right, or remedy on a future occasion. No waiver by the Agent shall affect its rights to require strict performance of this Agreement.

(d) **Severability.** If any provision of this Agreement shall be prohibited, or invalid, under applicable law, such provision shall be effective only to such extent, without invalidating the remainder of this Agreement.

(e) Governing Law. This Agreement shall be deemed to have been made in the State of New York and shall be governed by and interpreted in accordance with the laws of such State, except that no doctrine of choice of law shall be used to apply the laws of any other state or jurisdiction.

(f) Consent to Jurisdiction and Venue; Service of Process. The Debtor agrees that, in addition to any other courts that may have jurisdiction under applicable laws or rules, any action or proceeding to enforce or arising out of this Agreement or any of the other Loan Documents to which it is a party may be commenced in the United States District Court for the Southern District of New York, consents and submits in advance to such jurisdiction, and agrees that venue will be proper in such court on any such matter. The Debtor hereby waives personal service of process and agrees that a summons and complaint commencing an action or proceeding in any such courts shall be properly served and shall confer personal jurisdiction if served by registered or certified mail to the Debtor, or as otherwise provided by the laws of the State of New York or the United States. The choice of forum set forth in this section shall not be deemed to preclude the enforcement of any judgment obtained in such forum, or the taking of any action under this Agreement to enforce the same, in any appropriate jurisdiction.

(g) Waiver of Jury Trial, Etc. THE DEBTOR AND THE AGENT EACH HEREBY WAIVES TRIAL BY JURY IN ANY LITIGATION IN ANY COURT WITH RESPECT TO, IN CONNECTION WITH, OR ARISING OUT OF, THIS AGREEMENT, THE OBLIGATIONS, OR THE COLLATERAL, OR ANY INSTRUMENT OR DOCUMENT DELIVERED PURSUANT HERETO. THE DEBTOR AND THE AGENT EACH CONFIRMS THAT THE FOREGOING WAIVERS ARE INFORMED AND FREELY MADE.

(h) Survival of Representations and Warranties. All of the Debtor's representations and warranties contained in this Agreement shall survive the execution, delivery, and acceptance thereof by the parties, notwithstanding any investigation by the Lenders or their agents.

(i) Fees and Expenses. The Debtor shall pay to the Agent on demand all reasonable costs and expenses that the Agent pays or incurs in connection with the enforcement and termination of this Agreement, including, without limitation: (i) reasonable attorneys' and paralegals' fees and disbursements of counsel to the Agent (including, without limitation, the allocated fees and costs of the Agent's in-house counsel and paralegals); (ii) costs and expenses (including, without limitation, reasonable attorneys' and paralegals' fees and disbursements (including, without limitation, the allocated fees and costs of the Agent's in-house counsel and paralegals)) for any amendment, supplement, waiver, consent, or subsequent closing in connection with this Agreement and the transactions contemplated hereby; (iii) costs and expenses of lien searches; (iv) taxes, fees, and other charges for filing this Agreement at the United States Patent and Trademark Office, or for filing financing statements, and continuations, and other actions to perfect, protect, and continue the security interest created hereunder; (v) sums paid or incurred to pay any amount or take any action required of the Debtor under this Agreement that the Debtor fails to pay or take; (vi) after the occurrence of an Event of Default, the costs and expenses of preserving and protecting the Collateral; and (vii) costs and expenses (including, without limitation, reasonable attorneys' and paralegals' fees and disbursements (including, without limitation, the allocated fees and costs of the Agent's in-house counsel and paralegals)) paid or incurred to enforce the security interest created hereunder, sell or

otherwise realize upon the Collateral, and otherwise enforce the provisions of this Agreement, or to defend any claims made or threatened against the Agent arising out of the transactions contemplated hereby (including, without limitation, preparations for the consultations concerning any such matters). The foregoing shall not be construed to limit any other provisions of this Agreement regarding costs and expenses to be paid by the Debtor. The parties agree that reasonable attorneys' and paralegals' fees and costs incurred in enforcing any judgment are recoverable as a separate item in addition to fees and costs incurred in obtaining the judgment and that the recovery of post-judgment reasonable attorneys' and paralegals' fees and costs is intended to survive any judgment and is not to be deemed merged into any judgment.

(j) Notices. Except as otherwise provided herein, all notices, demands and requests that either party is required or elects to give to the other shall be in writing and shall be governed by the provisions of Section 15.11 of the Loan Agreement.

(k) Binding Effect; Assignment. The provisions of this Agreement shall be binding upon and inure to the benefit of the respective representatives, successors and assigns of the parties hereto; provided, however, that no interest herein may be assigned by the Debtor without the prior written consent of the Agent other than to a parent or subsidiary corporation. The rights and benefits of the Agent hereunder shall, if the Agent so agrees, inure to any party acquiring any interest in the Obligations or any part thereof.

(l) Modification. This Agreement is intended by the Debtor and the Agent to be the final, complete, and exclusive expression of the agreement between them respecting the subject matter hereof. This Agreement supersedes any and all prior oral or written agreements relating to the subject matter hereof. No modification, rescission, waiver, release, or amendment of any provision of this Agreement shall be made, except by a written agreement signed by the Debtor and a duly authorized officer of the Agent.

(m) Counterparts. This Agreement may be executed in any number of counterparts and by the Agent and the Debtor in separate counterparts, each of which shall be an original, but all of which shall together constitute one and the same agreement.

(n) Captions. The captions contained in this Agreement are for convenience only, are without substantive meaning, and should not be construed to modify, enlarge or restrict any provision.

(o) Termination By Agent. After termination of the Loan Agreement and when the Agent has received payment and performance in full of all Obligations, the Agent shall execute and deliver to the Debtor a termination or terminations of all of the security interests, in form suitable for filing, granted by the Debtor hereunder.

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

WOODWORKERS WAREHOUSE, INC.

By: Walter Spokowski
Name: Walter Spokowski
Title: President and CEO

BANK OF AMERICA, N.A.

By: _____
Name: William J. Wilson
Title: Vice President

STATE OF Massachusetts)
) ss.:
COUNTY OF Essex)

On the 29th day of October of the year 2001 before me, the undersigned, a Notary Public in and for said State, personally appeared Walter Spokowski, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the person(s) upon behalf of which the individual acted, executed the instrument.

[Signature]
Notary Public
10/29/01

STATE OF _____)
) ss.:
COUNTY OF _____)

On the 29th day of October of the year 2001 before me, the undersigned, a Notary Public in and for said State, personally appeared William J. Wilson, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the person(s) upon behalf of which the individual acted, executed the instrument.

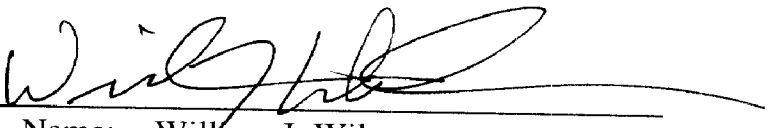
Notary Public

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

WOODWORKERS WAREHOUSE, INC.

By: _____
Name: Walter Spokowski
Title: President and CEO

BANK OF AMERICA, N.A.

By:  _____
Name: William J. Wilson
Title: Vice President

STATE OF _____)
) ss.:
COUNTY OF _____)

On the 29th day of October of the year 2001 before me, the undersigned, a Notary Public in and for said State, personally appeared Walter Spokowski, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the person(s) upon behalf of which the individual acted, executed the instrument.

Notary Public

STATE OF New York)
) ss.:
COUNTY OF New York)

On the 29th day of October of the year 2001 before me, the undersigned, a Notary Public in and for said State, personally appeared William J. Wilson, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the person(s) upon behalf of which the individual acted, executed the instrument.

Girolamo M. Saccone
Notary Public

GIROLAMO M. SACCONI
Notary Public, State of New York
No. 02SA5036939
Qualified in Nassau County
Commission Expires December 12, 2002