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FORM PTO-159E

(Rev. 6-83)

OMB No. 0651-0011 (exp. 6-98)

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TRADEMARKS ONLY

U.S. DEPARTMENT OF COMMERCE
Patent and Trademark Office

Tab settings 000

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

1. Name of conveying party(ies):

FIRST COLONY COFFEE AND TEA COMPANY

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

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

3. Nature of conveyance:

- Assignment
- Security Agreement
- Other
- Merger
- Change of Name

Execution Date: 11-17-98

2. Name and address of receiving party(ies)

Name: THE CIT GROUP / CREDIT FINANCE, INC.

Internal Address: Two First Union Center

Street Address: 301 South Tryon Street

City: Charlotte State: NC ZIP: 28202

- 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

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

A. Trademark Application No.(s)

B. Trademark Registration No.(s)

See attached listing

Additional numbers attached? Yes No

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

Name: Sharon Miller

Return To **NAME**

National Corporate Research, LTD.

225 W. 34th St., Suite 910

New York, N.Y. 10122

(800) 221-0102 (212) 947-7200 **cas**

City: New York State: NY ZIP: 10036

6. Total number of applications and registrations involved:

33

7. Total fee (37 CFR 3.41).....\$ 840⁰⁰

- Enclosed
- Authorized to be charged to deposit account

B. Deposit account number:

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

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01 FC:481 40.00 OP
02 FC:482 800.00 OP

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.

Sharon Miller

Name of Person Signing

Sharon Miller 11-25-98

Signature

Date

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

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

Print Name & Sign

Please calculate

**SCHEDULE A TO GRANT OF SECURITY INTEREST IN
TRADEMARKS AND LICENSES**

between

FIRST COLONY COFFEE AND TEA COMPANY

and

THE CIT GROUP/CREDIT FINANCE, INC.

**TRADEMARKS REGISTERED IN THE USA-
UNLESS OTHERWISE INDICATED**

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CAFÉ SOMBRERO (typed)	1,522,811	1/31/89
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CHRISTMAS CAROUSEL	2,022,992	12/17/96
CHRISTMAS CHEER	1,933,520	5/21/96

**GRANT OF SECURITY INTEREST IN
TRADEMARKS AND LICENSES**

THIS GRANT OF SECURITY INTEREST IN TRADEMARKS AND LICENSES (this "Agreement") is made as of this ___ day of November, 1998, by First Colony Coffee and Tea Company, a Delaware corporation, with its principal place of business at 204 W. 22nd Street, Norfolk, Virginia 23517 (herein the "Company"), and The CIT Group/Credit Finance, Inc., a Delaware corporation, with offices at 301 South Tryon Street, Two First Union Center, Charlotte, North Carolina 28202 (herein "CIT").

WITNESSETH:

WHEREAS, the Company and CIT are parties to a certain Financing Agreement of even date herewith, as the same may be amended from time to time (herein the "Financing Agreement"), which Financing Agreement provides (i) for CIT to make certain loans, advances and extensions of credit, all to or for the account of the Company and (ii) for the grant by the Company to CIT of a security interest in certain of the Company's assets, including, without limitation, its trademarks, trademark applications and/or registrations, tradenames, goodwill and licenses, all as more fully set forth therein;

NOW THEREFORE, in consideration of the premises set forth herein and for other good and valuable consideration, receipt and sufficiency of which is hereby acknowledged, the Company agrees as follows:

1. **Definitions.** Capitalized terms used herein and defined in the Financing Agreement shall have the meanings set forth therein unless otherwise specifically defined herein.
2. **Grant of Security Interest.** To secure the payment of the Obligations, the Company hereby grants to CIT a security interest, effective immediately, in all of the Company's right, title and interest in and to all of the following described property, whether now owned or hereafter acquired (collectively herein the "Intellectual Property Collateral"):
 - (i) Trademarks, trademark registrations and/or applications and tradenames and service marks, including, without limitation, the trademarks, trademark registrations and applications, tradenames and service marks, if any, listed on Schedule A attached hereto and made a part hereof, and any and all reissues and/or renewals thereof, and all income, royalties, damages and payments now and hereafter due and/or payable in connection therewith including, without limitation, damages and payments for past or future infringements thereof (all of the foregoing are sometimes hereinafter individually and/or collectively referred to as the "Trademark Collateral");
 - (ii) Any license agreement in which the Company is or becomes licensed to use any trademarks owned by a third party including, without limitation, the licenses, if any,

listed on Schedule C attached hereto and made a part hereof (all of the foregoing are sometimes referred to herein individually and/or collectively as the "License Collateral"), but only to the extent that the Company is permitted to grant to CIT a security interest in such licenses under the agreements relating thereto;

- (iii) The goodwill of the Company's business connected with and symbolized by the Intellectual Property Collateral; and
- (iv) All cash and non-cash proceeds of the foregoing.

3. CIT's Rights. Upon the occurrence of any Event of Default hereunder, CIT shall have all the rights and remedies of a secured party under the Uniform Commercial Code and any other applicable state or federal laws. CIT will give the Company reasonable notice of the time and place of any public sale of the Intellectual Property Collateral or the time after which any private sale of the Intellectual Property Collateral or any other intended disposition thereof is to be made. Unless otherwise provided by law, the requirement of reasonable notice shall be met if such notice is mailed, postage prepaid to the address of the Company set forth above at least ten (10) days before the date of such sale or disposition. In addition to the foregoing and all other rights and remedies of CIT upon the occurrence of any Event of Default hereunder, CIT shall thereupon have the immediate right to transfer to itself or to sell, assign and transfer to any other person all right, title and interest in and to all or any part of the Intellectual Property Collateral. A formal irrevocable power of attorney (in the form annexed hereto) is being executed and delivered by the Company to CIT concurrently with this Agreement to enable such rights to be carried out. The Company agrees that, in the event CIT exercises its rights hereunder and/or pursuant to said power of attorney in accordance with its terms, after written notification of such exercise from CIT to the Company, the Company shall never thereafter, without the prior written authorization of the owner or owners of such Intellectual Property Collateral, use any of such Intellectual Property Collateral. The condition of the foregoing provision is such that unless and until there occurs an Event of Default under this Agreement, the Company shall continue to own and use the Intellectual Property Collateral in the normal course of its business and to enjoy the benefits, royalties and profits therefrom provided, however, that from and after the occurrence of an Event of Default and the exercise by CIT of the rights provided by this Agreement, such rights shall be revoked and the right of the Company to enjoy the uses, benefits, royalties and profits of said Intellectual Property Collateral will wholly cease, whereupon CIT or its transferee(s) shall be entitled to all of the Company's right, title and interest in and to the Intellectual Property Collateral hereby so assigned. This Agreement will not operate to place upon CIT any duty or responsibility to maintain the Intellectual Property Collateral.

4. Fees. The Company will pay all filing fees with respect to the security interest created hereby which CIT may deem necessary or advisable in order to perfect and maintain the perfection of its security interest in the Intellectual Property Collateral.

5. Representations and Warranties. The Company represents and warrants to CIT that: (a) the Company lawfully possesses and owns the Intellectual Property Collateral; (b) except for the security interest granted hereby and Permitted Encumbrances (as defined in the Financing Agreement), the Intellectual Property Collateral will be kept free from all liens, security interests, claims and encumbrances whatsoever; (c) the Company has not made or given any prior assignment, transfer or security interest in the Intellectual Property Collateral or any of the proceeds thereof; (d) the Intellectual Property Collateral is and will continue to be, in all respects, in full force and effect; and (e) there are no known infringements of the Intellectual Property Collateral.
6. Application of Proceeds. The proceeds of any sale, transfer or disposition of the Intellectual Property Collateral shall be applied first to all costs and expenses, including, but not limited to, reasonable attorneys' fees and expenses and court costs, incurred by CIT in connection with such sale and the exercise of CIT's rights and remedies hereunder and under the Financing Agreement; next, such proceeds shall be applied to the payment, in whole or in part, of the Obligations due CIT in such order as CIT may elect; and the balance, if any, shall be paid to the Company or as a court of competent jurisdiction may direct.
7. Defense of Claims. The Company will defend at its own cost and expense any action, claim or proceeding affecting the Intellectual Property Collateral or the interest of CIT therein. The Company agrees to reimburse CIT for all costs and expenses incurred by CIT in defending any such action, claim or proceeding.
8. Rights Cumulative. This Agreement shall be in addition to the Financing Agreement and shall not be deemed to affect, modify or limit the Financing Agreement or any rights that CIT has under the Financing Agreement. The Company agrees to execute and deliver to CIT (at the Company's expense) any further documentation or papers necessary to carry out the intent or purpose of this Agreement including, but not limited to, financing statements under the Uniform Commercial Code.
9. Construction and Invalidity. Any provisions hereof contrary to, prohibited by or invalid under any laws or regulations shall be inapplicable and deemed omitted herefrom, but shall not invalidate the remaining provisions hereof.
10. **CHOICE OF LAW.** THE COMPANY AGREES THAT THE VALIDITY, INTERPRETATION AND ENFORCEMENT OF THIS AGREEMENT AND ALL RIGHTS HEREUNDER SHALL BE GOVERNED BY THE LAWS OF THE STATE OF ILLINOIS. THIS AGREEMENT TOGETHER WITH THE FINANCING AGREEMENT CONSTITUTES THE ENTIRE AGREEMENT OF THE COMPANY AND CIT WITH RESPECT TO THE INTELLECTUAL PROPERTY COLLATERAL, CAN ONLY BE CHANGED OR MODIFIED IN WRITING AND SHALL BIND AND BENEFIT THE COMPANY, CIT AND THEIR RESPECTIVE SUCCESSORS AND ASSIGNS. THE COMPANY AND CIT EACH HEREBY

EXPRESSLY WAIVES ANY RIGHT OF TRIAL BY JURY ON ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING HEREUNDER.

11. Events of Default. Any of the following shall constitute an Event of Default under this Agreement: **(a)** the Company shall fail to perform or observe any agreement, covenant or condition required under this Agreement; **(b)** any warranty or representation made by Company in this Agreement shall be or becomes false or misleading in any material respect; or **(c)** any Event of Default shall occur under the Financing Agreement which is not waived by CIT in accordance with the terms thereof.
12. Notices. The Company covenants and agrees that, with respect to the Intellectual Property Collateral, it will give CIT written notice in the manner provided in the Financing Agreement of **(a)** any claim by a third party that the Company has infringed on the rights of a third party, **(b)** any suspected infringement by a third party on the rights of the Company; or **(c)** any Intellectual Property Collateral created, arising or acquired by the Company after the date hereof.
13. Further Assurances. The Company will take any such action as CIT may reasonably require to further confirm and protect CIT's rights under this Agreement in the Intellectual Property Collateral. In furtherance thereof, the Company hereby grants to CIT a power of attorney coupled with an interest which shall be irrevocable during the term of this Agreement to execute any documentation or take any action in the Company's behalf required to effectuate the terms, provisions and conditions of this Agreement.
14. Termination. This Agreement shall terminate upon termination of the Financing Agreement and full, final and indefeasible payment of all Obligations of the Company thereunder. Upon the Company's request, CIT shall within a reasonable time after any such termination execute and deliver to the Company (at the Company's expense) such documents and instruments as are reasonably necessary to evidence such termination and release of the security interest granted herein on any applicable public record.

[THE REMAINDER OF THIS PAGE HAS BEEN LEFT BLANK INTENTIONALLY]

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

FIRST COLONY COFFEE AND TEA
COMPANY

By: Thomas J. Proctor
Title: Vice Pres.

Agreed to and accepted this 23rd
day of November, 1998:

THE CIT GROUP/CREDIT FINANCE, INC.

By: David W. Meam
Title: Vice President

IRREVOCABLE POWER OF ATTORNEY

FIRST COLONY COFFEE AND TEA COMPANY, a Delaware corporation with offices at 204 W. 22nd Street, Norfolk, Virginia 23517, (hereinafter referred to as the "Company"), hereby grants to The CIT Group/Credit Finance, Inc., a Delaware corporation, with offices at 301 South Tryon Street, Two First Union Center, Charlotte, North Carolina 28202 (hereinafter referred to as "CIT"), the exclusive Irrevocable Power of Attorney to transfer to CIT or to any designee of CIT all Intellectual Property Collateral listed on the Schedules attached to the Grant of Security Interest in Trademarks and Licenses dated as of the date hereof between the Company and CIT (the "Agreement"), including, without limitation, all trademarks, trademark applications and/or registrations, and licenses together with the goodwill of the business connected with or symbolized by such Intellectual Property Collateral and the Company's entire inventory of labels and decals bearing any trademarks not affixed to its products, and the right to operate and control, sell, assign, and transfer the business under those trademarks under the following terms and conditions:

1. The Power of Attorney granted hereunder shall be effective as of the date hereof and shall last for as long as any now existing or hereafter arising indebtedness, liabilities or obligations of the Company to CIT are outstanding under the Financing Agreement referred to in the Agreement;
2. The Power of Attorney granted herein shall be irrevocable throughout the duration of its life as specified in Paragraph 1 hereinabove;
3. The Power of Attorney granted herein shall only be exercisable by CIT after the occurrence of an Event of Default under the Agreement; and
4. CIT shall give the Company ten (10) days prior written notice of the exercise of the powers granted hereby, and the waiver by CIT of any particular Event of Default under the Agreement shall have no force or effect unless made in accordance with the Financing Agreement described therein. Even then, such waiver shall not constitute or be considered a waiver of any other Event of Default then existing or thereafter arising whether similar or not.

IN WITNESS WHEREOF, the Company has caused this Power of Attorney to be executed as of the ____ day of November, 1998.

FIRST COLONY COFFEE AND TEA
COMPANY

By: *Tom Brockington*
Title: *Vice Pres*

STATE OF NORTH CAROLINA)

)

COUNTY OF MECKLENBURG)

November _____, 1998, before me, the undersigned, a notary public in and for said State, personally appeared Thomas J. Bradberry known to me to be the Vice President of First Colony Coffee and Tea Company, the corporation that executed the foregoing instrument and power of attorney, and acknowledged to me that (s)he executed such instrument and power of attorney on behalf of such corporation pursuant to authority granted by the board of directors of such corporation, as its free act and deed for the uses and purposes therein set forth.

WITNESS my hand and official seal.

Nancy M. Watson
Notary Public

Commission Expires: June 23, 2001

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