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01-08-1999

U.S. Department of Commerce  
Patent and Trademark Office

RECORDATION FOR  
TRADEMARK



100937825

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

1. Name of conveying party(ies):

Name: Glencoe Foods Inc.

- Individual(s)
- General Partnership
- Corporation-State (California)
- Other

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

2. Name and Address of receiving party(ies)

Name: Finova Capital Corporation

Address: 15 West Century Road  
Paramus, New Jersey 07653

- 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: December 22, 1998

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

A. Trademark Application No.(s)

75/465,626	75/484,466
75/484,551	75/466,119

B. Trademark Registration No.(s)

Additional numbers attached?  Yes  No

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

Baila H. Celedonia  
Cowan, Liebowitz & Latman, P.C.  
1133 Avenue of the Americas  
New York, NY 10036-6799

6. Total number of applications and registrations involved: 4

7. Total fee (37 CFR 3.41)..... \$ 145.00

- Enclosed
- Any deficiency is authorized to be charged to Deposit Account No. 03-3415.

8. Deposit Account No. 03-3415

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

Refund Refs  
01/07/1999 TTON11 0000073955

CHECK Refund Totals: \$30.00

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.

Baila H. Celedonia

Signature

Date

*Baila H. Celedonia* 12/31/98

Total number of pages including cover sheet, attachments, and document: 11

Mail to: Commissioner of Patents & Trademarks, Box Assignments, Washington, D.C. 20231

BHC/CXC/22480/03/339808.1

TRADEMARK  
REEL: 1837 FRAME: 0295

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76.00 OP  
01 FC:401  
02 FC:402

COLLATERAL ASSIGNMENT AND SECURITY AGREEMENT

COLLATERAL ASSIGNMENT AND SECURITY AGREEMENT, made this 22nd day of December, 1998, by and between GLENCOE FOODS INC., a California corporation, having an office at 609 Mission Street, San Francisco, California 94105 (the "Debtor"); and FINOVA CAPITAL CORPORATION, a Delaware corporation, having an office at 15 West Century Road, Paramus, New Jersey 07653 ("FINOVA");

W I T N E S S E T H :

WHEREAS, the Debtor and FINOVA intend to enter into Equipment Lease No. C0803001 (together with all master lease schedules now or hereafter entered into between the Debtor and FINOVA in connection therewith, collectively referred to as the "Lease"), pursuant to which FINOVA will lease to the Debtor certain equipment described in the Lease ("Equipment"); and

WHEREAS, the Debtor is party to that certain exclusive license agreement with The New Covent Garden Soup Company Limited ("NCGS") dated March 24, 1998, as modified by that certain letter of variation entered into by the Debtor, NCGS and Soups USA Limited ("SUSA") in February, 1998, the amendment agreement dated March 24, 1998 between NCGS, SUSA and the Debtor, the letter agreement dated July 27, 1998 between NCGS, SUSA and the Debtor, and the letter agreement dated November 2, 1998 among NCGS, the Debtor and FINOVA (and as may be further amended from time to time, collectively, the "Contract") which, inter alia, grants to Debtor an exclusive license to use the trademarks listed on Schedule A (the "Trademarks") and United States of America Patent Number 5330775 (the "Patent"); and

WHEREAS, in order to induce FINOVA to execute the Lease and to lease the Equipment to the Debtor, the Debtor has agreed to execute and deliver this Agreement;

NOW, THEREFORE, in consideration of the foregoing premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Subject to the provisions of paragraph 5 hereof, to secure the due payment and performance by the Debtor of all indebtedness, liabilities and obligations, now existing or hereafter arising, of the Debtor to FINOVA, including without limitation, all now existing or hereafter arising indebtedness, liabilities and obligations of the Debtor to FINOVA under the Lease (collectively, the "Obligations"), the Debtor hereby grants to FINOVA a lien on and security interest in and assigns and

transfers to FINOVA as collateral security for the Obligations, all of the Debtor's right, title and interest in and to the following (collectively, the "Collateral"):

- (i) the Contract, including, without limitation, all of the Debtor's rights, powers, privileges, authorizations and benefits thereunder and/or in connection therewith; and
- (ii) all income, royalties, damages, payments and other amounts now or hereafter due or payable with respect to the Trademarks and the Patent and any sublicense thereof, including, without limitation, any damages and payments for past or future infringements of any rights in the Contract, including, but not limited to the Trademarks and the Patent, or any sublicenses with respect thereto, and the right of the Debtor to terminate any such sublicense or to perform and to exercise all remedies thereunder.

2. This Agreement is executed only as security for the Obligations, and therefore, the execution and delivery of this Agreement shall not subject FINOVA to, or in any way affect or modify, the liability of the Debtor under the Contract, it being understood and agreed that notwithstanding this Agreement or any subsequent agreement, all of the obligations of the Debtor to each and every other party under the Contract shall be and remain enforceable by such other party, its successors and assigns, against, but only against, the Debtor or persons other than FINOVA and its successors and assigns.

3. To protect the security afforded by this Agreement, the Debtor agrees as follows:

(a) The Debtor will comply with, perform and discharge each and every obligation, covenant, condition, duty and agreement which the Contract provides are to be performed by the Debtor;

(b) At the Debtor's sole cost and expense, the Debtor will appear in and defend any action or proceeding arising under, growing out of or in any manner connected with the obligations, covenants, conditions, duties, agreements or liabilities of the Debtor under the Contract;

(c) Should the Debtor fail to make any payment, do any act or refrain from any act which this Agreement requires the Debtor to make, do or refrain from, respectively, then FINOVA may, but shall have no obligation to (and shall not thereby release the Debtor from any obligation hereunder), make, do or prevent the same in such manner and to such extent as FINOVA may

deem necessary or advisable to protect the security provided hereby, which rights of FINOVA shall specifically include, without limiting FINOVA's general powers herein granted, the right to appear in and defend any action or proceeding purporting to affect the security hereof and the rights or powers of FINOVA hereunder; and in exercising any such powers, FINOVA may pay necessary or advisable costs and expenses, employ counsel and incur and pay reasonable attorneys' fees, and the Debtor will reimburse FINOVA for such costs, expenses and fees.

4. Subject to the provisions of paragraph 2, the Debtor does hereby constitute FINOVA the true and lawful attorney, irrevocably, with full power (in the name of the Debtor, or otherwise), to ask, require, demand, receive, compound and give acquittance for each and every payment due or to become due, or any such payment or payments, under or arising out of the Contract to which the Debtor is or may become entitled, to enforce compliance with each or any other party with each or any term or provision of the Contract, to endorse each and every check or other instrument or order in connection therewith, or any one or more of them, and to file any claim or claims, take any action or actions or institute any proceeding or proceedings which FINOVA may deem to be necessary or advisable.

5. Upon the full discharge and satisfaction of each and every one of the Obligations, this Agreement and all rights herein granted and assigned to FINOVA shall terminate, and all estate, right, title and interest of FINOVA in and to the Contract and the other Collateral shall revert to the Debtor.

6. The Debtor will, from time to time, do and perform any other act or acts and will execute, acknowledge, deliver and file, register, record and deposit (and will refile, reregister, rerecord and redeposit whenever required) any and all further instruments required by law or requested by FINOVA in order to confirm, or further assure, the interests of FINOVA hereunder.

7. The Debtor shall cause a copy of each and every notice or communication received from any one or more of the other parties to the Contract, which notice or communication shall notify the Debtor of any default, event of default, breach or other violation on the part of the Debtor under the Contract, to be promptly delivered to FINOVA in the manner and at the place provided for in the Lease for the giving of notices and communications thereunder.

8. Upon the occurrence of any event of default as described in the Lease and at any time thereafter, in addition to all other rights and remedies of FINOVA, whether provided under law, this Agreement, the Lease or otherwise, all Obligations shall, at FINOVA's option become immediately due and payable and FINOVA shall have, without otherwise limiting FINOVA's other rights and

remedies, the following rights and remedies which may be exercised without notice to, or consent by, the Debtor, except as such notice or consent is expressly provided for hereunder:

(a) FINOVA may require that the Debtor make no use of the Trademarks or the Patent for any purpose whatsoever. FINOVA may make use of the Trademarks or Patent for the sale of goods, or rendering of services in connection with enforcing any other security interest granted to FINOVA by the Debtor.

(b) Subject to the terms of the Contract, FINOVA may grant such sublicense or sublicenses relating to the Collateral for such term or terms, on such conditions, and in such manner, as FINOVA shall in its sole discretion deem appropriate.

(c) Subject to the terms of the Contract, FINOVA may use, assign, sell, or otherwise dispose of the Collateral or any part thereof, either with or without special conditions or stipulations, except that FINOVA agrees to provide the Debtor with ten (10) days prior written notice of any proposed disposition of the Collateral. FINOVA shall have the power to buy the Collateral or any part thereof, and FINOVA shall also have the power to execute assurances and perform all other acts which FINOVA may, in FINOVA's sole discretion, deem appropriate or proper to complete such assignment, sale or disposition. In any such event, the Debtor shall be liable for any deficiency.

(d) FINOVA may apply the proceeds actually received from any such sublicense, assignment, sale or other disposition of Collateral, first to the reasonable costs and expenses thereof, including, without limitation, reasonable attorneys' fees and all legal, travel and other expenses which may be incurred by FINOVA. Thereafter, FINOVA may apply any remaining proceeds to such of the Obligations in such order as FINOVA may in its sole discretion determine. The Debtor shall remain liable to FINOVA for any expenses or obligations remaining unpaid after the application of such proceeds, and the Debtor will pay FINOVA on demand any such unpaid amount, together with interest at the rate after default set forth in the Lease.

(e) In the event that any such license, assignment, sale or disposition of the Collateral (or any part thereof) is made after the occurrence of an event of default as described in the Lease, the Debtor shall supply to FINOVA or FINOVA's designee the Debtor's knowledge and expertise relating to the manufacture and sale of the products and services bearing the Trademarks or to which the Patent relates and the Debtor's customer lists and other records relating to the Trademarks and the Patent and the distribution of the products produced in connection therewith.

9. So long as no event of default shall have occurred under the Lease and the Debtor shall not be in default of any of

its obligations, agreements or duties hereunder, FINOVA will not exercise or enforce, or seek to exercise or enforce, or avail itself of, any of the rights, powers, privileges, authorizations or benefits assigned and transferred to FINOVA by the Debtor, under, pursuant to or by this Agreement.

10. (a) No course of dealing between the Debtor and FINOVA, nor any failure to exercise, nor any delay in exercising, on the part of FINOVA, any right, power or privilege hereunder or under the Lease shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder or thereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

(b) The rights and remedies herein provided, and provided in the Lease and in all other agreements, documents and instruments executed in connection therewith, are cumulative and are in addition to, and not exclusive of, any rights or remedies provided by law, including, without limitation, the rights and remedies of a secured party under the Uniform Commercial Code.

11. (a) The Debtor shall at any time and from time to time upon the written request of FINOVA, execute and deliver such further agreements, instruments and documents and do such further acts and things as FINOVA may reasonably request in order to effect the purposes of this Agreement.

(b) This Agreement may not be modified, altered or amended, except by an agreement in writing signed by the Debtor and FINOVA. The Debtor may not sell, assign or transfer this Agreement, or any portion thereof, including, without limitation, the Debtor's rights, title, interests, remedies, powers, and/or duties hereunder or thereunder. The Debtor hereby consents to FINOVA's sale, assignment, transfer or other disposition at any time or times hereafter, of this Agreement, of any portion hereof, including, without limitation, FINOVA's rights, title, interests, remedies, powers, and/or duties hereunder.

(c) FINOVA's failure, at any time or times hereafter, to require strict performance by the Debtor of any provision of this Agreement shall not waive, affect or diminish any right of FINOVA thereafter to demand strict compliance and performance therewith.

(d) This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Debtor and FINOVA.

(e) THIS AGREEMENT SHALL BE DEEMED TO HAVE BEEN DELIVERED AT AND SHALL BE INTERPRETED, AND THE RIGHTS AND LIABILITIES OF THE PARTIES HERETO DETERMINED, IN ACCORDANCE WITH THE LAWS OF THE STATE OF ARIZONA.

(f) THE DEBTOR IRREVOCABLY CONSENTS THAT ANY LEGAL ACTION OR PROCEEDING AGAINST IT UNDER, ARISING OUT OF OR IN ANY MANNER RELATING TO THIS AGREEMENT MAY BE BROUGHT IN ANY STATE COURT OF THE STATE OF ARIZONA LOCATED IN MARICOPA COUNTY OR THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA. THE DEBTOR, BY THE EXECUTION AND DELIVERY OF THIS AGREEMENT, EXPRESSLY AND IRREVOCABLY CONSENTS AND SUBMITS TO THE PERSONAL JURISDICTION OF ANY OF SUCH COURTS IN ANY SUCH ACTION OR PROCEEDING. THE DEBTOR FURTHER AGREES THAT ANY LEGAL ACTION OR PROCEEDING THE DEBTOR MAY BRING, ARISING OUT OF OR IN ANY MANNER RELATING TO THIS AGREEMENT, SHALL ONLY BE BROUGHT IN ANY COURT OF THE STATE OF ARIZONA LOCATED IN MARICOPA COUNTY OR IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA. THE DEBTOR ALSO IRREVOCABLY CONSENTS TO THE SERVICE OF ANY COMPLAINT, SUMMONS, NOTICE OR OTHER PROCESS RELATING TO SUCH ACTION OR PROCEEDING BY DELIVERY THEREOF TO IT IN THE MANNER PROVIDED FOR NOTICES IN THIS AGREEMENT. THE DEBTOR HEREBY EXPRESSLY AND IRREVOCABLY WAIVES ANY CLAIM OR DEFENSE IN ANY SUCH ACTION OR PROCEEDING BASED ON ANY ALLEGED LACK OF PERSONAL JURISDICTION, IMPROPER VENUE OR FORUM NON CONVENIENS OR ANY SIMILAR BASIS. THE DEBTOR SHALL NOT BE ENTITLED IN ANY SUCH ACTION OR PROCEEDING TO ASSERT ANY DEFENSE GIVEN OR ALLOWED UNDER THE LAWS OF ANY STATE OTHER THAN THE STATE OF ARIZONA UNLESS SUCH DEFENSE IS ALSO GIVEN OR ALLOWED BY THE LAWS OF THE STATE OF ARIZONA. NOTHING IN THIS AGREEMENT SHALL AFFECT OR IMPAIR IN ANY MANNER OR TO ANY EXTENT THE RIGHT OF FINOVA TO COMMENCE LEGAL PROCEEDINGS OR OTHERWISE PROCEED AGAINST THE DEBTOR IN ANY JURISDICTION OR TO SERVE PROCESS IN ANY MANNER PERMITTED BY LAW.

(g) THE DEBTOR HEREBY WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY AGREEMENT, INSTRUMENT OR DOCUMENT EXECUTED AND DELIVERED IN CONNECTION HERewith OR THEREWITH.

(h) Any notice required hereunder shall be in writing, and shall be deemed to have been validly served if delivered in the manner provided in the Lease.

(i) This Agreement, the Lease and the other agreements, instruments and documents executed in connection herewith or therewith are the complete agreement of the parties with respect to the subject matter hereof.


(j) To the extent that FINOVA seeks to enforce any of its rights and remedies under this Agreement, the Debtor agrees that such enforcement shall not be a bar to any other claim or action by FINOVA to enforce its rights under the Lease or any other agreement, instrument or document between FINOVA and the Debtor, including, but not limited to, an action for a writ of replevin or order of seizure with respect to any Equipment which is the subject of the Lease. The Debtor expressly waives the application of state or federal principles of law or equity which

may prohibit the institution of more than one action between the parties arising out of the same facts, including, but not limited to, the doctrine of election of remedies, and California's "One Action Rule."

IN WITNESS WHEREOF, this Agreement has been duly executed as of the day and year specified at the beginning hereof.

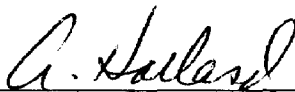
DEBTOR:

LENCOE FOODS INC.

By:   
Name: ALASTAIR M. DOEWARD  
Title: PRESIDENT

LENDER:

FINOVA CAPITAL CORPORATION

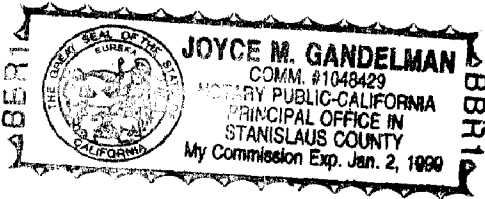
By:   
Name: A. HOLLAND  
Title: Director, Cont. Admin.



ACKNOWLEDGMENT

STATE OF )  
 ) ss.:  
COUNTY OF )

On this 9<sup>th</sup> day of December, 1998, before me personally came Alastair M Dorward, to me known, who being by me duly sworn, did depose and say that he resides at 9 Edith St. San Francisco, CA, that he is the President of Glencoe Foods Inc., the corporation described in and which executed the foregoing instrument, and that he signed his name thereto by order of the board of directors of said corporation.



Joyce M. Gandelman  
Notary Public

STATE OF New Jersey )  
 ) ss.:  
COUNTY OF Bergen )

On this 14<sup>th</sup> day of December, 1998, before me personally came Anthony Holland, to me known, who being by me duly sworn, did depose and say that he resides at 115 W. Cortez Rd. Paroness NJ, that he is the Director, Cont Admn. of FINOVA Capital Corporation, the corporation described in and which executed the foregoing instrument, and that he signed his name thereto by order of the board of directors of said corporation.

Laura A. Keating  
Notary Public · **LAURA A. KEATING**  
Notary Public of New Jersey  
Commission Expires 10/6/2002

EXHIBIT A

Trademarks

<u>Mark</u>	<u>Class</u>	<u>Serial Number</u>	<u>Filing Date</u>
COVENT GARDEN	29	75/465,626	April 10, 1998
COVENT GARDEN FARMERS' MARKET and Design	29	75/484,466	May 13, 1998
COVENT GARDEN FARMERS' MARKET and Design	29	75/484,551	May 13, 1998
NEW COVENT GARDEN SOUP CO.	29	75/466,119	April 10, 1998

COVENT GARDEN SOUP

NEW COVENT GARDEN

The logo and carton strip device attached

The trademarks which have been, are or will be used from time to time on the Products (as defined in the Contract) and/or which have or are to become the subject of applications of registration pursuant to sub-clause 4.1 of the Contract