

07-23-1999

FORM PT-1594 (Rev. 6-93) CAIS No. 0631-0011 (exp. 4/94)

5-3-99

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U.S. DEPARTMENT OF COMMERCE Patent and Trademark Office

Tab settings

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

1. Name of conveying party(ies):

DOWNEAST CONCEPTS, INC. F/K/A CAPE SHORE, INC. CAPE SHORE PAPER PRODUCTS, INC.

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

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

3. Nature of conveyance:

5-3-99

- Assignment Merger Security Agreement Change of Name Other

Execution Date: 04/28/99

2. Name and address of receiving party(ies)

Name: PEOPLES HERITAGE BANK

Internal Address: ONE PORTLAND SQUARE

Street Address: P. O. BOX 9540

City: PORTLAND State: ME ZIP: 04112-954

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

If assignee is not domiciled in the United States... (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) 1,805,894

Additional numbers attached? Yes No

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

Name: BRUCE M. TOMPKINS, ESQ.

Internal Address: TOMPKINS, CLOUGH, HIRSHON & LANGER, P.A. P. O. BOX 15060

Street Address: THREE CANAL PLAZA, 6TH FL. PORTLAND, ME 04112-5060

City: State: ZIP:

6. Total number of applications and registrations involved

1

7. Total fee (37 CFR 3.1).....\$ 40.00

- Enclosed Authorized to be charged to deposit account

8. Deposit account number:

40E

(Attach duplicate copy 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 the original document.

ROGER C. LEVESQUE Name of Person Signing SENIOR VICE PRESIDENT

Signature

08/19/99

Date

Total number of pages including cover sheet, attachments, and documents: 1

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

TRADEMARK REEL: 001918 FRAME: 0433

**PEOPLES HERITAGE BANK  
TRADEMARK SECURITY AGREEMENT**

DOWNEAST CONCEPTS, INC. (the "Debtor"), with a mailing address of 86 Downeast Drive, Yarmouth, Maine 04096 (formerly 42A North Elm Street, PO Box 808, Yarmouth, Maine 04096), for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby grants a present and continuing security interest, to PEOPLES HERITAGE BANK, One Portland Square, Portland, Maine 04112-9540 (the "Bank"), in and to:

Trademarks, Etc. All trade names, trademarks, service names and service marks now owned or hereafter acquired by Debtor, and all goodwill related thereto and all assets connected with the manufacture of the products bearing such names and marks, including, without limitation, the following trademark:

- **"See For Yourself Science"®**, with design, Registration No. 1,805,894

Proceeds. Proceeds of all Collateral, including insurance proceeds, are also covered, although no disposition of collateral (other than sales or leases of inventory and collection of accounts receivable in the ordinary course of business) is thereby authorized.

(all of the foregoing being hereinafter called the "Collateral"), to secure the prompt payment, performance and observance by Debtor of all notes, liabilities, advances, loans, obligations and indebtedness of any and every kind and description, whether heretofore, now or hereafter owing, arising, due or payable by Debtor to Bank, howsoever evidenced, created, incurred, acquired or owing, whether primary or secondary, joint and/or several, direct or indirect, absolute or contingent, or otherwise, and any renewals or extensions thereof and substitutions therefore, including, without limitation, obligations of performance and any undertakings of Debtor to Bank as a guarantor of the indebtedness or performance of others to Bank (all hereinafter referred to herein as the "Obligations").

1. **EVENTS OF DEFAULT, ACCELERATION.**

Subject to any applicable grace or notice and cure period, all of the Obligations of the Debtor to the Bank shall, at the option of the Bank, become due and payable upon the occurrence of any one or more of the following events of default:

- a. Default in the payment or performance of any Obligation of the Debtor, or any obligation of any indorser, guarantor or surety for any Obligation of the Debtor to the Bank; it is specifically agreed that Default by Debtor under the terms of any Note or other debt instrument made and given Debtor to Bank, or any documentation securing or governing any such Note or debt instrument, shall be deemed to be a Default under the terms of every other Note or debt instrument made and given by Debtor to Bank, now existing or hereafter created or arising;
- b. Default in the payment or performance of any obligation of the Debtor to any other institutional holder of any note or other evidence of indebtedness made and given by Debtor, or default under any documentation securing or governing any such note or evidence of indebtedness;

- c. If Debtor fails or neglects to perform, keep or observe any term, provision, condition, covenant, warranty or representation contained in this Agreement or in any other of the Loan Documents which is required to be performed, kept or observed by Debtor, subject to any applicable grace or notice and cure period;
- d. If any representation, statement, report or certificate made or delivered by Debtor, by any indorser, surety or guarantor for the Obligations or by any of Debtor's officers, employees or agents, is not true and correct in any material respect, or if Debtor fails to furnish financial information or permit inspections as provided in this Agreement or in other Loan Documents;
- e. If any attachment, trustee process, lien, execution, levy, injunction, or receivership is issued or made against the Debtor or the Collateral, subject to a thirty (30) day period in which Debtor may secure release or termination of the same, except there shall be no cure period in the case of trustee process;
- f. If Debtor fails to pay any tax on the Collateral when due, subject to Debtor's right to diligently contest any such tax, provided that no tax lien shall be permitted to ripen, or if Debtor fails to maintain any insurance policy the Debtor is required to provide to the Bank;
- g. The entry of a decree or order for relief with respect to the Debtor in an involuntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law or appointing a receiver, liquidator, trustee, custodian (or similar official) of the Debtor, or ordering the winding-up or liquidation of its affairs, subject to a sixty (60) day period in which Debtor may obtain dismissal of any such proceeding, provided, however, that Bank may take all reasonable steps to protect its interests during such period;
- h. The commencement by the Debtor of a voluntary case under the federal bankruptcy laws, as now constituted or hereafter amended, or any other applicable federal or state bankruptcy, insolvency or other similar law, or the consent by Debtor to the appointment of or taking possession by a receiver, liquidator, trustee, custodian (or other similar official) of the Debtor or for any substantial part of its property, or the making by Debtor of any assignment for the benefit of creditors, or the insolvency of the Debtor, or the failure of the Debtor generally to pay its debts as such debts become due, or the taking of action by the Debtor in furtherance of any of the foregoing;
- i. The encumbrance of any part of the Collateral, whether junior or senior to the Bank's security interest (except as permitted hereunder), or the sale of any material portion of the Collateral except as expressly permitted herein;
- j. Uninsured loss or destruction of or substantial damage to any of the Collateral;
- k. Failure of the Debtor or of any Guarantor to provide financial information, reports, or tax returns to Bank in a timely manner, as required herein, or in any commitment letter governing the Obligations secured hereby, or as the same may be reasonably required by Bank, from time to time; or
- l. Such a change in the condition or affairs (financial or otherwise) of the Debtor or of any indorser, guarantor or surety for any Obligations of the Debtor to the Bank, or decline in value of the Collateral as, in the good faith opinion of the Bank, materially

impairs the Bank's security or increases its risk, or if the Bank in good faith otherwise deems itself insecure.

(Any one or more of the foregoing events shall be called a "Default".)

## 2. POWERS UPON DEFAULT.

- a. Remedies. In the event of a Default under this Agreement or any other of the Loan Documents, or at any time thereafter, but subject to any applicable grace or notice and cure period, Bank may, at its option, do any one or more of the following, all of which are authorized by Debtor:
  - i. Declare Debtor's Obligations, whether evidenced by installment notes, demand notes or otherwise, immediately due and payable;
  - ii. Cease advancing money or extending credit to or for the benefit of the Debtor under any of the Loan Documents;
  - iii. Exercise any or all of the rights of a Secured Party under the Uniform Commercial Code and any other applicable law upon default by a Debtor;
  - iv. Set-off against any and all deposits, accounts, certificate of deposit balances, claims, or other sums at any time credited by or due from the Bank to the Debtor or any guarantor, surety or indorser of the Obligations and against all other property of Debtor in the possession of Bank or under its control;
  - v. Enter, with or without process of law, any premises where the Collateral might be, and without charge or liability, take possession of the Collateral and use or store it in said premises, and at the option of the Bank, remain thereon and use the same, together with Debtor's materials, supplies, books and records, for the purpose of operating all or a portion of Debtor's business activities, or liquidating or collecting the Collateral and conducting and preparing for disposition of the Collateral, or remove the same to such place or places as Bank deems convenient;
  - vi. Sell or otherwise dispose of the Collateral (in its then condition or after further manufacturing, processing or preparation thereof, utilizing in connection therewith any of Debtor's assets, without charge or liability to Bank therefor) at public or private sale (which sale Bank may postpone from time to time), all as Bank deems advisable, for cash or credit. Debtor shall be credited with the net proceeds of such sale only when such proceeds are finally collected by Bank and the Debtor shall pay any deficiency on demand. Bank may become the purchaser at any such sale and Bank may, in lieu of actual payment of the purchase price, offset the amount thereof against the Obligations;
  - vii. Use or transfer, without charge or liability to Bank therefor, any of Debtor's labels, trade names, trademarks, patents, licenses, certificates of authority or advertising materials in advertising for sale and selling or other disposition of the Collateral; *and/or*
  - viii. Do or perform any of the actions set forth in this Agreement through its employees, agents or representatives, or through a receiver, which Secured Party shall be entitled to have appointed by any court of competent jurisdiction. The

rights, benefits and duties of any such receiver shall be as specified by the order of appointment but may exclude some or all rights, benefits and duties of the Debtor.

- b. Notice. The Bank shall provide to the Debtor at least seven (7) days' prior written notice of time and place of any public sale or of the time after which any private sale or any other intended disposition is to be made.
- c. Endorsement. The Bank may at any time in its discretion endorse and transfer into its own name or that of its nominee any documents, securities or other property securing the Obligations and receive the income thereon and hold the same as security for Obligations or apply it to the Obligations.
- d. Power-of-Attorney. Debtor hereby gives an irrevocable special power of attorney to the Bank, authorizing the Bank to execute, following Default, an unconditional assignment to Bank of all trade names, trademarks, service names and service marks now owned or hereafter acquired by Debtor, including those specifically identified herein: Bank may create, execute and deliver to any appropriate party, such assignment at any time following Default of Debtor under the Obligations, subject only to any applicable grace or notice and cure period.

All of Bank's aforesaid rights and remedies are cumulative and non-exclusive.

### 3. WAIVERS.

The Debtor waives protest, notice of acceptance of this Agreement, notice of dishonor, notice of loans made, credit extended, collateral received or delivered or other action taken in reliance hereon and all other demands and notices of any description, except as specifically required under the Loan Documentation. With respect both to Obligations and Collateral, the Debtor assents to any extension or postponement of the time of payment or any other indulgence, to any substitution, exchange or release of Collateral, to the addition or release of any party or person primarily or secondarily liable, to the acceptance of partial payments thereon and the settlement, compromising or adjusting thereof, all in such manner and at such time or times as the Bank may deem advisable. The Bank shall not have any duty as to the collection or protection of Collateral or any income thereon, nor as to the preservation of rights against prior parties, nor as to the preservation of any rights pertaining thereto, beyond the safe custody thereof. The Bank may exercise its rights against the Collateral without resorting or regard to other collateral or sources of reimbursement for liability. The Bank shall not be deemed to have waived any of its rights under or against this Agreement, the Obligations, the Collateral, any other of the Loan Documents, or otherwise unless such waiver be in writing and signed by the Bank. Bank's failure to require strict performance of this Agreement or any other of the Loan Documents evidenced, governed or secured hereby or any delay or omission on the part of the Bank in exercising any right or any acceptance of partial or inadequate payment or performance shall not waive, affect or diminish such right or Debtor's duty of compliance and performance therewith. A waiver on any one occasion shall not be construed as a bar to or waiver of any right on any future occasion. All rights and remedies of the Bank on Obligations or Collateral whether evidenced hereby or by any other instrument or papers shall be cumulative and may be exercised singularly or concurrently. Any note which this Agreement may secure

is a separate instrument and may be negotiated, extended or renewed by the Bank without releasing the Debtor, the Collateral or any guarantor or co-maker.

#### GENERAL.

- a. Notice. Any demand upon or notice to the Debtor that the Bank may elect to give shall be effective upon delivery in person or three (3) days following deposit in the United States mails addressed to the Debtor at the address shown at the beginning of this Agreement or, if the Debtor has notified the Bank in writing of a change of address, to the Debtor's last address so notified. Demands or notices addressed to the Debtor's address at which the Bank customarily communicates with the Debtor shall also be effective.
- b. Payments. For purposes of determining the amount of the Obligations, the receipt of any check or any other item of payment by Bank shall not be effective as a payment on account of the Obligations until such check or other item of payment is actually paid in cash or collected. Any statement of account rendered by Bank to Debtor relating to the obligations, including, without limitation, all statements of balances owing, accrued interest, expenses and costs, shall be presumed to be correct and accurate and constitute an account stated unless, within sixty (60) days after receipt thereof by Debtor, Debtor shall deliver to Bank written objection thereto specifying the error or errors, if any, contained in any such statement.
- c. Expenses. The Debtor shall pay to or reimburse the Bank on demand and as a part of the Obligations secured hereby any and all expenses, including, without limitation, reasonable counsel fees and expenses, incurred or paid by the Bank in connection with the preparation, execution, administration, preservation, collection or enforcement of this Agreement, the Collateral, or any other of the Loan Documents; Such expenses to be paid by Debtor include, without limitation, those incurred in any litigation, contest, dispute, suit or proceeding (whether instituted by Bank, Debtor or any other party) to protect, collect, lease, sell, take possession of or liquidate any of the Collateral, to attempt to enforce any security interest of Bank in any of the Collateral, to enforce any rights of Bank against Debtor or against any other person, entity, association, firm or corporation liable for the Obligations or on the Collateral, and those expenses incurred by Bank in defending, settling or satisfying any claim, action or demand asserted by any receiver, trustee, creditor's committee, debtor-in-possession in any bankruptcy or reorganization case, any assignee or assignee for the benefit of creditors, creditor, stockholder, or by any other person or entity, whether in connection with the Borrower, the Obligations or any documents, transaction or Collateral related thereto, or on any alleged theory of preference, fraudulent conveyance, subordination, usury, ultra vires, invalidity, interference, control, misrepresentation, conspiracy, or similar theory, or otherwise. At its option, and without limitation, the Bank may discharge taxes, liens, security interests or other encumbrances at any time levied against or placed on the Collateral, pay any premiums on any insurance to be carried by Debtor, or provide for the maintenance and preservation of the Collateral and add the expense thereof to the Obligations secured hereby, all to bear interest at the highest annual rate applicable to any of the Obligations.

- d. **Successors and Assigns.** Whenever in this Agreement there is reference made to any of the parties hereto, such reference shall be deemed to include, wherever applicable, a reference to the successors and assigns of such party. The provisions of this Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of Debtor and Bank.
- e. **Survival of Representations.** All representations and warranties of Debtor, and all terms, provisions, conditions and agreements to be performed by Debtor contained herein, and in any of the other Loan Documents shall be true and satisfied at the time of the execution of this Agreement, and shall survive the closing hereof and the execution and delivery of this Agreement.
- f. **Governing Law; Severability.** This Agreement has been delivered by Debtor to Bank for Bank's acceptance or rejection at the place listed at the commencement of this Agreement and shall be construed in all respects in accordance with, and governed by, the laws of the State of Maine. Wherever possible each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.
- g. **Modification.** This Agreement may not be altered or amended except by an agreement in writing.
- h. **Application of Payments.** Debtor irrevocably waives the right to direct the application of any and all payments at any time or times hereafter received by Bank from Debtor, and Debtor does hereby irrevocably agree that Bank shall have the continuing exclusive right to apply and reapply any and all payments received at any time or times hereafter against the Obligations hereunder in such manner as Bank may deem advisable.
- i. **Invalidated Payment.** Debtor agrees that to the extent that Debtor makes a payment or payments to Bank, which payment or payments, or any part thereof, are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to Debtor, its estate, trustee, receiver or any other party under any bankruptcy law, state or federal law, common law or equitable cause, then to the extent of such payment or repayment, the liability or part thereof which has been paid, reduced or satisfied by the amount so repaid shall be reinstated and included within the Obligations as of the date such initial payment, reduction or satisfaction occurred.
- j. **Submission to Jurisdiction.** Debtor submits to the jurisdiction of any state or federal court located within the State of Maine, and Debtor hereby waives personal service of any and all process upon Debtor, and consents that all such service of process be made by registered mail directed to Debtor at the address stated at the commencement of this Agreement and service so made shall be deemed to be completed five (5) days after the same shall have been mailed to Debtor's address.
- k. **Section Titles.** The section titles contained in this Agreement are for convenience only and shall not affect the construction or meaning of this Agreement.

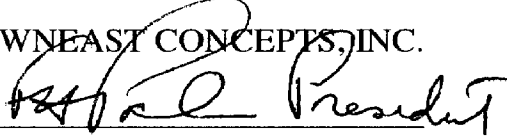
- l. Financing Statement. A photocopy or other reproduction of this Agreement or of any financing statement executed in conjunction with this Agreement and filed to perfect a security interest in the Collateral may be used as a financing statement.
- m. Sealed Instrument. This Agreement shall take effect as a sealed instrument.

IN WITNESS WHEREOF, this Agreement has been duly executed on April 28, 1999.

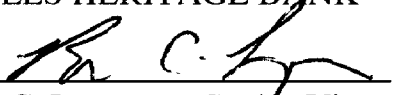
WITNESS:



DOWNEAST CONCEPTS, INC.

By:   
Frederick H. Palmer, President

PEOPLES HERITAGE BANK

By:   
Roger C. Levesque, Senior Vice  
President

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