

12-15-1999



101222205

RECORDATION FORM COVER
TRADEMARKS ONLY

MM 11/24/99

TO: The Commissioner of Patents and Trademarks: Please record the attached original document(s) or copy(ies).

Submission Type

- New
- Resubmission (Non-Recordation)
Document ID #
- Correction of PTO Error
Reel # Frame #
- Corrective Document
Reel # Frame #

Conveyance Type

- Assignment License
- Security Agreement Nunc Pro Tunc Assignment
- Merger Change of Name
- Other

Effective Date		
Month	Day	Year
11	12	99

Conveying Party

Mark if additional names of conveying parties attached

Name Execution Date
Month Day Year

Formerly

- Individual General Partnership Limited Partnership Corporation Association
- Other
- Citizenship/State of Incorporation/Organization

Receiving Party

Mark if additional names of receiving parties attached

Name

DBA/AKA/TA

Composed of

Address (line 1)

Address (line 2)

Address (line 3)
City State/Country Zip Code

- Individual General Partnership Limited Partnership Corporation Association
- Corporation Association
- Other
- Citizenship/State of Incorporation/Organization

If document to be recorded is an assignment and the receiving party is not domiciled in the United States, an appointment of a domestic representative should be attached. (Designation must be a separate document from Assignment.)

12/15/1999 TTON11 00000131 75770865

FOR OFFICE USE ONLY

01 FC:481 40.00 DP
02 FC:482 25.00 DP

Domestic Representative Name and Address

Enter for the first Receiving Party only.

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

Correspondent Name and Address

Area Code and Telephone Number

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

Pages

Enter the total number of pages of the attached conveyance document including any attachments.

#

Trademark Application Number(s) or Registration Number(s)

Mark if additional numbers attached

Enter either the Trademark Application Number or the Registration Number (DO NOT ENTER BOTH numbers for the same property).

Trademark Application Number(s)

Registration Number(s)

<input type="text" value="75/770865"/>	<input type="text"/>	<input type="text"/>
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Number of Properties

Enter the total number of properties involved.

#

Fee Amount

Fee Amount for Properties Listed (37 CFR 3.41):

\$

Method of Payment:

Enclosed

Deposit Account

Deposit Account

(Enter for payment by deposit account or if additional fees can be charged to the account.)

Deposit Account Number:

#

Authorization to charge additional fees:

Yes

No

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. Charges to deposit account are authorized, as indicated herein.

Gretchen E. von Dwingelo

Name of Person Signing



Signature

11/24/99

Date Signed

FIRST AMENDMENT TO TRADEMARK SECURITY AGREEMENT

THIS FIRST AMENDMENT TO TRADEMARK SECURITY AGREEMENT (the "Amendment") is executed and delivered as of the 12th day of November, 1999, among New West Eyeworks, Inc., a Delaware corporation ("Grantor"), and Foothill Capital Corporation ("Foothill"), as successor in interest to First Union National Bank ("First Union"), as Administrative Agent.

WITNESSETH:

WHEREAS, Grantor, Bank of America, N.A. (f/k/a Bank of America, FSB) ("Bank of America") and First Union are parties to that certain Credit Agreement dated as of October 8, 1998, as modified and amended by that certain Waiver and Amendment dated as of December 4, 1998, as further modified and amended by that certain Waiver and Amendment dated as of December 21, 1998, as further modified and amended by that certain Waiver and Agreement dated as of February 2, 1999, as further modified and amended by that certain Amendment dated as of March 31, 1999, as further modified and amended by that certain Waiver and Consent dated as of September 21, 1999, as further modified and amended by that certain Forbearance Agreement dated as of October 26, 1999, and as further modified and amended by the Assignment Agreement (as defined below) (said Agreement, as it may hereafter be amended, restated or otherwise modified from time to time, being the "Prior Credit Agreement"); and

WHEREAS, to secure Grantor's obligations under the Prior Credit Agreement, Grantor and First Union have executed and delivered that certain Trademark Security Agreement dated as of October 23, 1998 (the "Trademark Agreement"), a copy of which is attached hereto as Exhibit A; and

WHEREAS, Foothill, Grantor, Bank of America and First Union have entered into that certain Assignment and Acceptance dated as of the 12th day of November, 1999 (the "Assignment Agreement") pursuant to which Foothill (a) purchased all of the Loans (as defined in the Prior Credit Agreement) and assumed all of the Commitments (as defined in the Prior Credit Agreement) of Bank of America and First Union, (b) replaced Bank of America as Documentation Agent (as defined in the Prior Credit Agreement), and (c) replaced First Union as Issuing Bank (as defined in the Prior Credit Agreement) and the Administrative Agent (as defined in the Prior Credit Agreement); and

WHEREAS, in connection with the restructuring of the existing credit facilities Grantor and Foothill have amended and restated the Prior Credit Agreement in its entirety, as set forth in that certain Amended and Restated Credit Agreement of even date herewith (as the same may hereafter be modified, amended, restated or supplemented from time to time, the "Amended and Restated Credit Agreement"); and

WHEREAS, Grantor and Foothill intend that the security interest granted by Grantor pursuant to the Trademark Agreement secure all of the Obligations of the Grantor under the Amended and Restated Credit Agreement;

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor and Foothill hereby agree that capitalized terms used herein and not otherwise defined herein, shall have the meanings ascribed thereto in the Trademark Agreement, and hereby further agree as follows:

1. The Trademark Agreement is hereby modified and amended to the extent necessary to provide that all references to the "Credit Agreement" in the Trademark Agreement, shall be to the Prior Credit Agreement as amended and restated in its entirety by the Amended and Restated Credit Agreement, as further modified, amended, restated or supplemented from time to time.

2. The Trademark Agreement is hereby further modified and amended to the extent necessary to provide that all capitalized terms used therein and not otherwise defined therein shall have the meanings ascribed thereto in the Amended and Restated Credit Agreement.

3. Schedule 1 of the Trademark Agreement is hereby deleted and a new Schedule 1 is attached hereto.

4. Grantor hereby agrees that the security interest granted by the Grantor under the Trademark Agreement is granted to Foothill and such security interest shall remain outstanding and in full force and effect in accordance with the Amended and Restated Credit Agreement and shall continue to secure the Obligations.

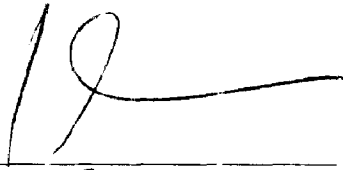
5. Except as specifically modified and amended hereby, the Trademark Agreement shall remain extant and in full force and effect.

[The remainder of this page is intentionally blank.]

IN WITNESS WHEREOF, the undersigned have hereunto set their hands, by and through their duly authorized representatives, as of the day and year first written above.

GRANTOR:

NEW WEST EYEWORKS, a Delaware corporation

By: 
Name: _____
Title: Sr. V. P.

LENDER:

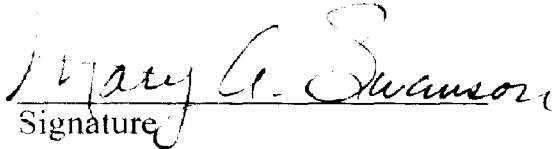
FOOTHILL CAPITAL CORPORATION

By: _____
Name: _____
Title: _____

STATE OF GEORGIA)
) SS
COUNTY OF Gwinnett)

On Nov 23, ¹⁹⁹⁹~~2000~~, before me, MARY Swanson, Notary Public, personally appeared Mitchell Goodman, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.


Signature

[SEAL]

Mary A. Swanson
Notary Public, Gwinnett County, Georgia
My Commission Expires August 5, 2003

STATE OF _____)
) ss
COUNTY OF _____)

On _____, _____, before me, _____, Notary Public, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature

[SEAL]

IN WITNESS WHEREOF, the undersigned have hereunto set their hands, by and through their duly authorized representatives, as of the day and year first written above.

GRANTOR: **NEW WEST EYEWORKS, a Delaware corporation**

By: _____
Name: _____
Title: _____

LENDER: **FOOTHILL CAPITAL CORPORATION**

By: *Todd W. Colpitts*
Name: Todd W. Colpitts
Title: Vice president

STATE OF GEORGIA)
) ss
COUNTY OF _____)

On _____, _____, before me, _____, Notary Public, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature

[SEAL]

ATL/#6rv011.doc

STATE OF Massachusetts)
COUNTY OF Suffolk) ss

On November 23, 1999, before me, Tracy Carbone, Notary Public, personally appeared Fred Colpitts, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.



Signature

My commission expires 7/29/2005

ATL#6rv011.doc

FILING RECEIPT FOR TRADEMARK APPLICATION

Page 01 of 01

Oct 22, 1999

Receipt on the DATE OF FILING of the application for registration and filing fees is acknowledged for the mark identified below. The DATE OF FILING is contingent upon the collection of any payment made by check or draft. Your application will be considered in the order in which it was received and you will be notified as to the examination thereof. Action on the merits should be expected from the Patent and Trademark Office in approximately 06 months from the filing date. When inquiring about this application, include the SERIAL NUMBER, DATE OF FILING, OWNER NAME, and MARK.

CHARLES R MINGLE
NEW WEST EYEWORKS INC
296 GRAYSON HWY
LAWRENCEVILLE GA 30045-5793

ATTORNEY
REFERENCE NUMBER

PLEASE REVIEW THE ACCURACY OF THE FILING RECEIPT DATA.

A request for correction to the filing receipt should be submitted within 30 days to the following address: ASSISTANT COMMISSIONER FOR TRADEMARKS, 2900 CRYSTAL DRIVE, ARLINGTON, VIRGINIA 22202-3513. The correspondence should be marked to the attention of the Office of Trademark Program Control. The Patent and Trademark Office will review the request and make corrections when appropriate.

SERIAL NUMBER: 75/770866
FILING DATE: Aug 9, 1999
REGISTER: Principal
LAW OFFICE: 107
MARK: VAP
MARK TYPE(S): Collective Membership Mark
DRAWING TYPE: Words, letters, or numbers in typed form
FILING BASIS: Sect. 1(b) (Intent to Use)

OWNER: New West Eyeworks, Inc. (DELAWARE, Corporation)
296 Grayson Highway
Lawrenceville, GEORGIA 300455793

FOR: Customer membership discount program for eye examinations, eyeglasses, spectacle lens add-ons, sunglasses, and contact lenses
INT. CLASS: 200

ALL OF THE GOODS/SERVICES IN EACH CLASS ARE LISTED

TRADEMARK SECURITY AGREEMENT

WHEREAS, New West Eyeworks, Inc., a Delaware corporation ("Grantor"), owns the Trademarks and applications for Trademarks listed on Schedule 1 annexed hereto; and

WHEREAS, National Vision Associates, Ltd., a Georgia corporation (the "Borrower") and First Union National Bank, as administrative agent (the "Administrative Agent") are parties to a Credit Agreement dated as of October 8, 1998 (as the same may be amended and in effect from time to time, the "Credit Agreement"), providing for extensions of credit to be made to the Borrower by the Issuing Bank (as defined therein), the Administrative Agent and certain other financial institutions that may from time to time become parties thereto as Banks (as defined in the Credit Agreement); and

WHEREAS, to guaranty the repayment of the Obligations (as defined in the Credit Agreement), Grantor has executed and delivered to the Administrative Agent that certain Subsidiary Guaranty of even date herewith (as it may be amended and in effect from time to time, the "Subsidiary Guaranty"); and

WHEREAS, pursuant to the terms of the Subsidiary Security Agreement dated as of October 23, 1998 (as the same may be amended and in effect from time to time, the "Security Agreement") between Grantor and the Administrative Agent (in such capacity, "Grantee), Grantor has granted to Grantee for the benefit of Banks a security interest in substantially all the assets of Grantor including all right, title and interest of Grantor in, to and under all now owned and hereafter acquired Trademarks (as defined in the Security Agreement), together with the goodwill of the business symbolized by Grantor's Trademarks, and all proceeds thereof, to secure the payment of all Obligations (as defined in the Credit Agreement) and all amounts owing by Grantor under the Subsidiary Guaranty;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor does hereby grant to Grantee a continuing security interest in all of Grantor's right, title and interest in, to and under the following (all of the following items or types of property being herein collectively referred to as the "Trademark Collateral"), whether presently existing or hereafter created or acquired:

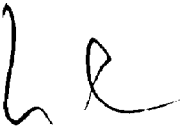
(a) each Trademark and application for Trademark listed on Schedule 1 annexed hereto, together with any reissues, continuations or extensions thereof, and all of the goodwill of the business connected with the use of, and symbolized by, each Trademark; and

(b) all products and proceeds of the foregoing, including, without limitation, any claim by Grantor against third parties for past, present or future (a) infringement or dilution of any Trademark, or (b) injury to the goodwill associated with any Trademark.

The security interest granted hereby is granted in conjunction with the security interests granted to Grantee pursuant to the Security Agreement. Grantor hereby acknowledges and affirms that the rights and remedies of Grantee with respect to the security interest in the Trademark Collateral made and granted hereby are more fully set forth in the Security Agreement, the terms and provisions of which are incorporated by reference herein as if fully set forth herein.

IN WITNESS WHEREOF, Grantor has caused this Trademark Security Agreement to be duly executed by its duly authorized officer as of the 8th day of October, 1998.

FRAME-N-LENS OPTICAL, INC.

By: 
Title: Vice President

Acknowledged:

FIRST UNION NATIONAL BANK,
as the Administrative Agent

By: W. A. Latham
Title: Senior Vice President

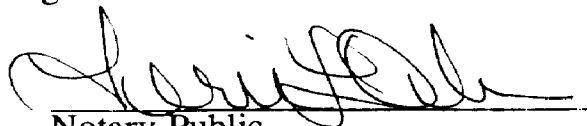
SUBSIDIARY TRADE MARK SECURITY AGREEMENT

TRADEMARK
REEL: 001998 FRAME: 0705

ACKNOWLEDGMENT

STATE OF Georgia)
)
COUNTY OF _____) SS.

On the 8 day of October, 1998 before me personally appeared Mitchell Goodman, to me personally known or proved to me on the basis of satisfactory evidence to be the person described in and who executed the foregoing instrument as Vice President of Frame-n-Lens Optical, Inc. who being by me duly sworn, did depose and say that he/she is Vice President of Frame-n-Lens Optical, Inc., the corporation described in and which executed the foregoing instrument; that the said instrument was signed and sealed on behalf of said corporation by order of its Board of Directors; that he/she signed his/her name thereto by like order; and that he acknowledged said instrument to be the free act and deed of said corporation.


Notary Public

{Seal} Notary Public, DeKalb County, Georgia
My commission expires: My Commission Expires April 7, 2001

ACKNOWLEDGMENT

STATE OF Georgia)
)
COUNTY OF _____) SS.

On the 8 day of October, 1998 before me personally appeared W.A. Luther, to me personally known or proved to me on the basis of satisfactory evidence to be the person described in and who executed the foregoing instrument as Senior Vice President of First Union National Bank who being by me duly sworn, did depose and say that he/she is Senior Vice President of First Union National Bank, the corporation described in and which executed the foregoing instrument; that the said instrument was signed and sealed on behalf of said corporation by order of its Board of Directors; that he/she signed his/her name thereto by like order; and that he/she acknowledged said instrument to be the free act and deed of said corporation.


Notary Public

{Seal} Notary Public, DeKalb County, Georgia
My commission expires: My Commission Expires April 7, 2001

Schedule 1 to Trademark Security Agreement

TRADEMARKS

<u>Trademark</u>	<u>Registration Number</u>	<u>Registration Date</u>
VISTA OPTICAL CENTERS	1,591,819	4/17/90
VISTA OPTICAL CENTERS	1,592,520	4/17/90
LEE OPTICAL	1,857,087	10/04/94
LEE OPTICAL	1,904,165	7/11/95
ALEXIS VISION	2,057,099	4/29/97

TRADEMARK APPLICATIONS

None.