

MRD 01-31-06

FORM PTO-1618A  
Expires 06/30/99  
OMB 0651-0027

03-06-2000

U.S. Department of Commerce  
Patent and Trademark Office  
**TRADEMARK**

101282645

**RECORDATION FORM COVER SHEET  
TRADEMARKS ONLY**

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  Effective Date  
Month Day Year
- ☐ Change of Name
- ☐ Other

**Conveying Party**☐ Mark if additional names of conveying parties attachedExecution Date  
Month Day YearName Formerly 

- ☐ Individual ☐ General Partnership ☐ Limited Partnership ☒ Corporation ☐ Association
- ☐ Other

☒ Citizenship/State of Incorporation/Organization **Receiving Party**☐ Mark if additional names of receiving parties attachedName DBA/AKA/TA Composed of Address (line 1) Address (line 2) Address (line 3) 

City

State/Country

Zip Code

- ☐ Individual ☐ General Partnership ☐ Limited Partnership ☐ 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.)
- ☒ Corporation ☐ Association
- ☐ Other

☒ Citizenship/State of Incorporation/Organization 

03/03/2000 BCDATES 00000224 2250044

FOR OFFICE USE ONLY

01 FC:481  
02 FC:48240.00 OP  
25.00 OP

Public burden reporting for this collection of information is estimated to average approximately 30 minutes per Cover Sheet to be recorded, including time for reviewing the document and gathering the data needed to complete the Cover Sheet. Send comments regarding this burden estimate to the U.S. Patent and Trademark Office, Chief Information Officer, Washington, D.C. 20231 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (0651-0027), Washington, D.C. 20503. See OMB Information Collection Budget Package 0651-0027, Patent and Trademark Assignment Practice. DO NOT SEND REQUESTS TO RECORD ASSIGNMENT DOCUMENTS TO THIS ADDRESS.

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

**TRADEMARK**  
**REEL: 002030 FRAME: 0082**

**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

804-697-4133

Name

Waller R. Staples, III, Esquire

Address (line 1)

Christian & Barton, L.L.P.

Address (line 2)

909 East Main Street

Address (line 3)

Suite 1200

Address (line 4)

Richmond, VA 23219

**Pages**

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

#

8

**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)**


2250044		
1626017		

**Number of Properties**

Enter the total number of properties involved.

#

2

**Fee Amount**

Fee Amount for Properties Listed (37 CFR 3.41):

\$

65.00

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.

Waller R. Staples, III, Attorney

Name of Person Signing

Signature

Date Signed

## TRADEMARK ASSIGNMENT

THIS TRADEMARK ASSIGNMENT is made as of January 12, 2000, between **BETRAS PLASTICS, INC.**, a South Carolina corporation (the "Grantor"), and **FOOTHILL CAPITAL CORPORATION**, a California corporation (the "Lender").

### RECITALS

A. The Grantor and the Lender have entered into a Loan and Security Agreement dated as of February 28, 1997 as amended by agreements dated as of February 1, 1999 and July 31, 1999 (as amended, the "Loan Agreement"). Capitalized terms used herein, unless otherwise defined, shall have the meanings assigned to them in the Loan Agreement.

B. Pursuant to a certain Third Amendment to Loan and Security Agreement dated as of the date hereof (the "Third Amendment"), the Lender and the Grantor have amended certain of the terms and conditions of the Loan Agreement.

C. The Lender has required, as a condition to its consent to the Third Amendment, that the Grantor assign and grant to the Lender, as additional security for the payment and performance of the Obligations, a continuing security interest in the Patent Collateral (as defined below).

### AGREEMENT

NOW THEREFORE, in consideration of the premises and, to induce the Lender to make the Revolving Loans under the Loan Agreement, the Grantor agrees with the Lender as follows:

1. **Incorporation by Reference.** The Loan Agreement and the terms and provisions hereof (including, without limitation, the definitions of terms set forth therein) are incorporated herein in their entirety.

2. **Assignment of Trademarks.** As additional security for the payment and performance of the Obligations under the Loan Agreement, the Grantor hereby assigns and transfers to the Lender, and grants to the Lender, a security interest in all of the Grantor's rights, title and interest in:

(a) the federal trademarks, trademark applications and registrations therefor listed on Schedule 1 attached hereto (as the same may be amended pursuant hereto from time to time, the "Trademarks");

(b) all of the goodwill of the Grantor's business connected with the use of, and symbolized by the Trademarks;

(c) all renewals of the Trademarks and all proceeds of, and rights associated with the foregoing, including, without limitation, any license royalties and any claim by the Grantor against third parties for past, present, or future infringement or dilution of any trademark, trademark

registration or trademark license, or for any injury to the goodwill associated with the use of any trademark, or for breach or enforcement of any trademark license.

The items described in subsections (a), (b), and (c) are herein collectively referred to as the "Trademark Collateral".

3. **Representations and Warranties of Grantor.** Grantor represents and warrants that:

(a) The Trademarks are subsisting and have not been adjudged invalid or unenforceable; and the Grantor has no knowledge of any circumstances which would cause any of the Trademarks to be declared invalid if challenged in court;

(b) No claim has been made of which the Grantor is aware that the use of any of the Trademarks does or may violate the rights of any third person;

(c) To the best of the Grantor's knowledge, the Grantor is the sole and exclusive owner of the entire and unencumbered right, title and interest in and to each of the Trademarks, free and clear of any liens, charges and encumbrances, including without limitation, pledges, assignments, licenses, registered user agreements and covenants by the Grantor not to sue third persons;

(d) To the Best of the Grantor's knowledge: (i) each of the Trademarks is valid and enforceable; (ii) there is no existing claim or demand of any person challenging the Grantor's use of the Trademarks or alleging that the Grantor's use thereof infringes the rights of such person; (iii) the Grantor's use of the Trademarks does not infringe on the rights of others; (iv) no person is presently asserting that he has the right to use the Trademarks in connection with the manufacture and sale of the goods listed in the registrations for such Trademarks and there are no outstanding licenses thereof.

(e) The Grantor has the unqualified right to enter into this Assignment and perform its terms; this Assignment creates a valid and enforceable security interest in all of the Grantor's right, title and interest in the Trademark Collateral; and no security agreement, financing statement or other lien or assignment instrument covering any of the Trademark Collateral is on file or of record in any public office.

(f) The Grantor has used, and will continue to use for the duration of this Assignment, proper statutory notice in connection with its use of the Trademarks;

(g) The Grantor has used, and will continue to use for the duration of this Assignment, consistent standards of quality in its manufacture of products sold under the Trademarks; and

(h) The Trademarks listed on Schedule 1 are all of the Trademarks owned by the Grantor.

**4. Covenants of Grantor.** Grantor covenants and agrees that:

(a) the Grantor will not do any act, or omit to do any act, which will or could result in any Trademark becoming dedicated or abandoned;

(b) Until the Grantor's Obligations to the Lender have been fully satisfied, the Grantor will not, without the Lender's prior written consent, enter into any agreement which is inconsistent with the Grantor's obligations under the Assignment or the rights granted to the Grantor hereunder. The Grantor further agrees that it will not take any action, or permit any action to be taken by others subject to its control, including licensees, or fail to take any action, which would affect the validity or enforcement of the rights transferred to the Lender under this Agreement;

(c) The Grantor shall notify the Lender immediately if it learns that any application or registration relating to any Trademark has or may become dedicated or abandoned, or of any adverse determination or development (including, without limitation, the institution of, or any such determination or development in, any proceeding in the United States Patent and Trademark Office or any court) regarding its right to register the name or to keep and maintain the same;

(d) If the Grantor files an application for any trademark registration with the United States Patent and Trademark Office or any similar office or agency in any other country of any political subdivision thereof, it shall promptly inform the Lender, and, upon request of the Lender, execute and deliver any and all agreements, instruments, documents and papers as the Lender may request to evidence the Lender's security interest in such trademark registration, any trademark resulting therefrom and the goodwill and general intangibles of the Grantor relating thereto or represented thereby, and the Grantor hereby appoints the Lender its attorney-in-fact to execute and file all such writings for the foregoing purposes, all acts of such attorney being hereby ratified and confirmed, such power being coupled with an interest and irrevocable until all of the Obligations are paid and performed in full;

(e) The Grantor will take all necessary steps, including, without limitation, those in any proceeding before the United States Patent and Trademark Office or similar office or agency in any other country or any political subdivision thereof, to maintain and pursue each application (and to obtain the relevant registration) and to maintain such registration of the Trademarks including, without limitation, filing of applications for renewal, affidavits of use, affidavits of incontestability and opposition, interference and cancellation proceedings; and

(f) In the event that any of the Trademarks are infringed, misappropriated or diluted by a third party, the Grantor shall notify the Lender promptly after it learns thereof and shall, unless the Grantor shall reasonably determine in its discretion that any such action would be of negligible economic value to the Grantor, promptly sue for infringement, misappropriation or dilution and, if appropriate, recover any and all damages for such infringement, misappropriation or dilution, and take such other actions as the Grantor shall deem appropriate under the circumstances to protect such Trademarks.

5. **Events of Default.** The Events of Default hereunder are the same as those described in the Loan Agreement which are incorporated herein by reference.

6. **Rights of the Lender Upon Default by Grantor.**

(a) In connection with this Assignment, the Lender shall have all of the rights and remedies of an assignee of a trademark under applicable federal and state law, along with all of the rights and remedies under the Loan Assignment and of a secured party provided by the Uniform Commercial Code as enacted in any jurisdiction in which the Trademarks may be located.

(b) Without limiting the generality of subsection 6(a) hereof, the Grantor specifically covenants and agrees that, in order to allow the Lender to exercise its rights and remedies with respect to the Trademarks hereunder, the Lender shall have the right, upon the occurrence and continuation of an Event of Default hereunder (i) to assign any Trademark for such term or terms, on such conditions and in such manner as the Lender in its sole discretion determines, and (ii) generally to sell, transfer, pledge, make an agreement with respect to or otherwise deal with the Trademarks, or any of them, as though the Lender were the absolute owner thereof for all purposes and to do all things necessary or desirable to protect, preserve or realize upon the patents, or any of them, all as fully and effectively as the Assignor might do in the absence of this Assignment. Notice of any sale or other disposition of the Trademarks shall be given to the Grantor at least five (5) days before the time of any intended public or private sale or other disposition of the Trademarks is to be made, which the Grantor hereby agrees shall be reasonable notice of such sale or other disposition. At any such sale or other disposition, any holder of any of the Obligations or the Lender may, to the extent permissible under applicable law, purchase the whole or any part of the Trademarks sold, free from any right of redemption on the part of the Grantor, which right is hereby waived and released.

7. **Right of Access to Plant and Facilities.** The Grantor hereby grants to the Lender and its employees and agents the right to visit the Grantor'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. The Grantor shall do any and all acts reasonably required by the Lender to ensure the Grantor's compliance with subsection 3(g).

8. **Purpose of Assignment.** This Assignment has been executed and delivered by the Grantor for the purpose of registering the security interest in favor of the Lender in the Trademark Collateral with the United States Patent and Trademark Office.

9. **License to Use Trademarks.** Unless and until there shall have occurred and be continuing an Event of Default, the Lender hereby grants to the Grantor the exclusive right and license to use the Trademarks on and in connection with the products sold by the Grantor, for the Grantor's own benefit and account and for none other. Except in connection with activities in the ordinary course of business, the Grantor agrees not to sell or assign its interest in, or grant any sublicense under, the license granted to the Grantor in this section 9, without the prior written consent of the Lender.

Upon the occurrence of an Event of Default and upon notice from the Lender to the Grantor, the license granted herein shall terminate forthwith; provided, however, that if such Event of Default is one for which the Grantor is permitted a certain amount of time to effect a cure pursuant to the Loan Agreement and the Grantor effects a timely cure of such Event of Default, then, without further action on the part of the Lender, the License shall revert with the Grantor.

**10. Further Assurances.** At any time and from time to time, upon the written request of the Lender, and at the sole expense of the Grantor, the Grantor will promptly and duly execute and deliver any and all of other instruments and documents and take such other action as the Lender may reasonable deem necessary or desirable to perfect or protect the Lender's interests hereunder or to allow it to enjoy the full benefits hereof, including but not limited to filings with federal regulatory authorities and the execution and filing of any financing or continuation statement under the Uniform Commercial Code in effect in any jurisdiction.

**11. Rights to Proceeds of Trademark Collateral.** During the term of this Assignment, all proceeds of the Trademarks due and payable to the Grantor, including, but not limited to, royalties and proceeds of infringement suits, shall be paid to the Grantor, provided however, that upon the occurrence of an Event of Default, all royalty payments, proceeds of infringement suits, and other proceeds of the Trademarks received thereafter shall be paid directly to the Lender and shall be applied by the Lender on account of the Obligations. The Lender shall have the right to notify payors to make their payments directly to the Lender upon the occurrence of an Event of Default.

**12. No Waiver; Cumulative Remedies.** The Lender shall not be any act, delay or omission be deemed to have waived any of its rights or remedies hereunder, and no waiver shall be valid unless in writing signed by the Lender, and then only to the extent therein on any one occasion shall not be construed as a bar to any right or remedy which the Lender would otherwise have had on any future occasion. No failure to exercise, no any delay in exercising on the part of the Lender, any right, power or privilege hereunder, shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or future exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein provided are cumulative and are not exclusive of any rights and remedies provided in the Loan Agreement or by applicable law. None of the terms or provisions of this Assignment may be waived, altered, modified or amended except by an instrument in writing duly executed by the Lender.

**13. Termination.** Upon payment in full of all Obligations, this Assignment and the power of attorney granted pursuant to section 15 hereof shall terminate and the Lender shall, at the Grantor's expense, execute and deliver to the Grantor all instruments and other documents as may be necessary or proper to release the lien on and security interest in the Trademark Collateral which has been granted hereunder, subject to any disposition thereof which may have been made by the Lender pursuant hereto.

**14. Fees, Costs and Expenses.** Any and all fees, costs and expenses of whatever kind or nature, including reasonable attorneys' fees and legal expenses incurred by the Lender in connection with the filing or recording of any documents (including all taxes in connection

therewith) in public offices, the payment or discharge of any taxes, counsel fees, maintenance fees, encumbrances or otherwise protecting, maintaining or preserving the Trademarks, or in defending or prosecuting any actions or proceedings arising out of or related to the Trademarks, shall be borne and paid by the Grantor on demand by the Lender and until so paid shall be added to the principal amount of the Obligations and shall bear interest at the highest rate prescribed in the Loan Agreement.

**15. Power of Attorney.** In the event of the occurrence of an Event of Default under the Loan Agreement, the Grantor hereby authorizes and empowers the Lender to make, constitute and appoint any officer or agent of the Lender as the Lender may select, in its exclusive discretion, as the Grantor's true and lawful attorney-in-fact, with the power to endorse the Grantor's name on all applications, documents, papers and instruments necessary for the Lender to use the Trademarks, or to grant or issue any exclusive or non-exclusive license under the Trademarks to anyone else, or necessary for the Lender to assign, pledge, convey or otherwise transfer title in or dispose of the Trademarks to anyone else. The Grantor hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof. This power of attorney shall be irrevocable for the life of this Assignment.

**16. Reimbursement to the Lender.** If the Grantor fails to comply with any of its obligations hereunder, the Lender may do so in the Grantor's name or in the Lender's name, but at the Grantor's expense, and the Grantor hereby agrees to reimburse the Lender in full for all expenses, including reasonable attorney's fees, incurred by the Lender in connection therewith.

**17. Severability.** The provisions of this Assignment are severable, and if any clause or provision shall be held invalid and unenforceable in whole or in part in any jurisdiction, then such invalidity or unenforceability shall affect only such clause or provisions, or part thereof, in such jurisdiction, and shall not in any manner affect such clause or provision in any other jurisdiction, or any other clause or provision of this Assignment in any jurisdiction.

**18. Benefit.** The benefits and burdens of this Assignment shall inure to the benefit of and be binding upon the respective successors and permitted assigns of the parties.

**19. Notices.** All notices required to be given hereunder shall be in writing and shall be deemed to have been duly given if given to the Grantor or the Lender, as the case may be, in the same manner as set forth in the Loan Agreement.

**20. Construction.** This Agreement shall be construed according to the laws and decisions of the United States and, to the extent not inconsistent therewith, the laws of the Commonwealth of Virginia, without regard to its rules with respect to conflicts of laws, and shall be binding upon the undersigned and their successors and assigns.



The parties hereto have each caused this Assignment to be duly executed and delivered by its proper and duly authorized representative as of January 12<sup>th</sup>, 2000.

**BETRAS PLASTICS, INC.**

By: [Signature]  
Joseph Betras, President

**FOOTHILL CAPITAL CORPORATION**

By: [Signature]  
Its: Vice President

STATE OF SOUTH CAROLINA

COUNTY/CITY OF SPARTANBURG

The foregoing instrument was acknowledged before me this 12<sup>th</sup> day of January, 2000, by Joseph Betras, President of Betras Plastics, Inc., a South Carolina corporation, on behalf of the corporation.

My commission expires 04/28/09.

[Signature]  
Notary Public

**COMMONWEALTH OF VIRGINIA**

COUNTY/CITY OF Harrover

The foregoing instrument was acknowledged before me this 17<sup>th</sup> day of January, 2000, by [Signature], Vice President of Foothill Capital Corporation, a California corporation, on behalf of the corporation.

My commission expires Feb. 29, 2000.

[Signature]  
Notary Public

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## **SCHEDULE 1**

### **Marks Registered to Betras Plastics, Inc. in the United States Patent and Trademark Office**

As of December 31, 1999, Trademarks have been issued for the following names. All Trademarks are the property of Betras Plastics, Inc.

BP & Design	Reg. No. 2,250,044
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BIG MOUTH	Reg. No. 1,626,017
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