



F

02-16-2001

Docket No.:

7136/3

02-12-2001



101614408

U.S. Patent & TMO/TM Mail Rcpt Dt. #57

Honorable Commissioner of Patents

attached original documents or copy thereof.

1. Name of conveying party(ies):  
**Internatinal Food Concepts, Inc.**

Individual(s)                       Association  
 General Partnership               Limited Partnership  
 Corporation-State **Delaware**  
 Other \_\_\_\_\_

Additional names(s) of conveying party(ies)       Yes  No

3. Nature of conveyance: **2-12-01**

Assignment                               Merger  
 Security Agreement                       Change of Name  
 Other \_\_\_\_\_

Execution Date: **January 29, 2001**

2. Name and address of receiving party(ies):

Name: **Summit Business Capital Corp.**

Internal Address: **750 Walnut Avenue**

Street Address: \_\_\_\_\_

City: **Cranford**                      State: **NJ**      ZIP: **07016**

Individual(s) citizenship \_\_\_\_\_  
 Association \_\_\_\_\_  
 General Partnership \_\_\_\_\_  
 Limited Partnership \_\_\_\_\_  
 Corporation-State **New York**  
 Other \_\_\_\_\_

If assignee is not domiciled in the United States, a domestic designation is                       Yes       N  
(Designations must be a separate document from  
Additional name(s) & address(es)                       Yes       N

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

A. Trademark Application No.(s)	B. Trademark Registration No.(s)		
75/688,272      75/446,859	2,216,622	1,457,650	1,310,737
	1,959,772	1,424,145	1,236,621
	1,934,639	1,408,120	1,135,860

Additional numbers                       Yes       No

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

Name: **Laurence Smith, Esq.**

Internal Address: **Wolff & Samson, PA**

**5 Becker Farm Road**

Street Address: \_\_\_\_\_

City: **Roseland**                      State: **NJ**      ZIP: **07068**

6. Total number of applications and registrations involved:..... **15**

7. Total fee (37 CFR 3.41):.....\$ **\$390.00**

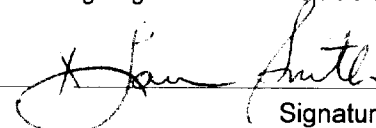
Enclosed  
 Authorized to be charged to deposit account

8. Deposit account number: \_\_\_\_\_

DO NOT USE THIS SPACE

**390E**

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.*

**Laurence Smith, Esq.**                                            **2/8/01**  
Name of Person Signing                      Signature                      Date

Total number of pages including cover sheet, attachments, and

**8**

TRADEMARK

REEL: 002237 FRAME: 0473

Rider to Addendum to Trademark Recordation Cover Sheet:

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

B. Registration Numbers (continued):

1,182,350

1,145,880

777,114

655,313

## TRADEMARK SECURITY AGREEMENT

THIS TRADEMARK SECURITY AGREEMENT (this "Agreement") is dated as of January 29, 2001, by and between INTERNATIONAL FOOD CONCEPTS, INC., a Delaware corporation, with its principal place of business located at 51 Pacific Avenue, Jersey City, New Jersey 07304 (the "Assignor"), and SUMMIT BUSINESS CAPITAL CORP., having an address at 750 Walnut Avenue, Cranford, New Jersey 07016 (the "Assignee").

### WITNESSETH:

WHEREAS, concurrently herewith the Assignor, certain of its affiliates (collectively, the "Borrowers") and the Assignee are entering into a Loan and Security Agreement (the "Loan Agreement"), pursuant to which, among other things, the Assignee has agreed, subject to the terms and conditions contained therein, to make advances to the Borrowers in an aggregate principal amount not to exceed \$4,500,000 (the "Loan"); and

WHEREAS, the Assignor owns certain Trademarks listed on Schedule A hereto; and

WHEREAS, the Assignor desires to mortgage, pledge and grant to the Assignee a security interest in all of its right, title and interest in, to and under the Collateral (as hereinafter defined), including the property listed on the attached Schedule A, together with any renewal or extension thereof, and all proceeds thereof, to secure the payment of all principal, interest and other amounts under the Loan and all other Obligations (as defined in the Loan Agreement); and

WHEREAS, in order to induce the Assignee to enter into the Loan Agreement and make the Loan thereunder, the Assignor has agreed to execute and deliver this Agreement;

NOW THEREFORE, in consideration of the premises and of the mutual covenants of the parties hereto and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, it is hereby agreed as follows:

1. Definitions. Capitalized terms used herein without definition shall have the meanings ascribed to them in the Loan Agreement.

2. Assignment of Marks. To secure the complete and timely payment and satisfaction of all of the Obligations, the Assignor hereby grants, assigns and conveys to the Assignee a security interest in and to all trademark applications, trademarks (whether registered, unregistered or for which any application to register has been filed), service mark applications, service marks (whether registered, unregistered or for which any application to register has been filed) and tradenames of the Assignor, including, but not limited to, the marks listed in Schedule A hereto (as the same may be amended pursuant hereto from time to time), including, without limitation, all renewals thereof and all proceeds thereof (such as, by way of example, license royalties and proceeds of infringement suits), the right to sue for past, present and future infringements, all rights owned by the Assignor corresponding thereto throughout the world (all of the foregoing are collectively called the "Marks"), together with the goodwill of the business symbolized by each Mark and the registrations (if any) thereof.

3. Warranties and Representations. The Assignor hereby covenants and warrants that: (a) the Assignor is the sole and exclusive owner of the entire right, title and interest in the Marks, free and clear of any liens, pledges, assignments or other encumbrances, other than a lien in favor of The Chase Manhattan Bank on those Marks designated with an asterisk on Schedule A (which lien shall be terminated within 30 days of the date of this Agreement); (b) the Assignor has the unqualified right to enter into this Agreement and perform its terms; (c) the Marks are subsisting and have not, to the Assignor's knowledge, been adjudged invalid or unenforceable; (d) the Marks are valid and enforceable; (e) the Assignor has not received notice of any claim that the use of the Marks does or may violate the rights of any third person; and (f) the Assignor has used, and, subject to the provisions of Section 8 below, will continue to use for the duration of this Agreement, consistent standards of quality in its manufacture of products and delivery of services sold or provided under the Marks. The Assignor shall, in any event, indemnify and hold the Assignee harmless from all losses, damages, reasonable out-of-pocket costs and expenses, including legal costs and counsel fees, incurred by the Assignee as the direct or indirect result of any action, claim or demand, whether or not groundless, alleging that the Marks infringe any trademarks held by third parties.

4. Right To Inspect. The Assignor hereby grants to the Assignee and its employees and agents the right, upon reasonable prior notice, to visit the Assignor's plants and facilities where products sold or services provided under the Marks are manufactured, inspected, stored, or provided, and to inspect and review the products and quality control records relating thereto during normal business hours. The Assignor shall do any and all acts reasonably required by the Assignee to ensure the Assignor's compliance with Section 3(f) above.

5. Right to Benefits. If, before the Obligations shall have been satisfied in full, the Assignor shall become entitled to the benefit of any additional trademark or service mark registration, or any renewal or affidavit of any Mark, the provisions of Section 3 hereof shall automatically apply thereto, and the Assignor shall give the Assignee prompt written notice thereof.

6. Future Marks. The Assignor authorizes the Assignee to modify this Agreement by amending Schedule A to include any future trademarks, service marks or tradenames which are Marks under Section 2 or Section 5 hereof.

7. Default. The term "Default", as used herein, shall mean: (a) any Event of Default under the Loan Agreement; (b) if any representation or warranty made by the Assignor herein proves to be false or inaccurate in any material respect at the time when made; or (c) any violation by the Assignor of any material obligation, agreement, or covenant contained in this Agreement which is not waived or cured and remedied within thirty (30) calendar days after notice thereof to the Assignor.

8. Assignor's Right to Use Marks. Unless a Default shall occur and be continuing, the Assignor shall retain the legal and equitable title to the Marks and shall have the right to use the Marks in the ordinary course of its business but shall not be permitted to sell, assign, transfer or otherwise encumber the Marks or any part thereof; provided, however, that nothing herein contained shall prohibit the Assignor from failing to renew or otherwise abandoning any item included within the Marks if, in the Assignor's good judgment, the retention of such item is not material to the proper

conduct of its business, provided, however, that the Assignor shall give the Assignee ten (10) days' prior written notice of any abandonment or failure to renew of any item included within the Marks.

9. Assignee's Rights as Secured Party. If a Default shall have occurred and be continuing, the Assignee shall have, in addition to all other rights and remedies given it by this Agreement and the other Loan Documents, those allowed by law and the rights and remedies of a secured party under the Uniform Commercial Code as enacted in any jurisdiction in which the Marks may be located and, without limiting the generality of the foregoing, the Assignee may immediately, without demand of performance and without advertisement, sell at public or private sale or otherwise realize upon, in New Jersey or elsewhere, the whole or from time to time any part of the Marks and the goodwill associated therewith, or any interest which the Assignor has therein, and after deducting from the proceeds of said sale or other disposition of the Marks all expenses (including all reasonable expenses for brokers' fees and legal services), shall apply the residue of such proceeds to the payment of the Obligations. Notice of any sale or other disposition of the Marks shall be given to the Assignor at least ten (10) calendar days before the time of any intended public or private sale or other disposition of the Marks is to be made, which the Assignor hereby agrees shall be reasonable notice of such sale or other disposition. At any such sale or other disposition, the Assignee may, to the extent permissible under applicable law, purchase the whole or any part of the Marks sold, free from any right of redemption on the part of the Assignor, which right is hereby waived and released.

10. Power of Attorney. If a Default shall have occurred and be continuing, the Assignor hereby authorizes and empowers the Assignee to make, constitute and appoint any officer or agent of the Assignee as the Assignee may select in its reasonable discretion, as the Assignor's true and lawful attorney-in-fact, with the power to endorse the Assignor's name on all applications, documents, papers and instruments necessary for the Assignee to use the Marks, or to grant or issue any exclusive or non-exclusive license under the Marks to any third person, or necessary for the Assignee to assign, pledge, convey or otherwise transfer title in or dispose of the Marks and the goodwill associated therewith, to any third person. The Assignor hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof, except for any actions constituting gross negligence or willful misconduct. This power of attorney shall be irrevocable for the life of this Agreement and coupled with an interest.

11. Termination. At such time as the Assignor shall completely satisfy all of the Obligations and the Assignee shall have no further obligation to extend credit under the Loan Agreement, the Assignee shall execute and deliver to the Assignor all deeds, assignments and other instruments as may be necessary or proper to re-vest in the Assignor the full unencumbered title to the Marks and the goodwill associated therewith, subject to any disposition thereof which may have been made by the Assignee pursuant hereto.

12. Fees and Expenses of Assignee. If a Default shall have occurred and be continuing, any and all fees, costs and expenses, of whatever kind or nature, including reasonable attorneys' fees and legal expenses, incurred by the Assignee in connection with the payment or discharge of any taxes, counsel fees, maintenance fees, encumbrances or otherwise protecting, maintaining or preserving the Marks, or in defending or prosecuting any actions or proceedings arising out of or related to the Marks, shall be borne and paid by the Assignor on demand by the Assignee, and until

so paid shall be added to the principal amount of the Obligations and shall bear interest at a rate equal to 400 basis points in excess of the Base Rate.

13. Protection of Marks. Subject only to the first proviso in Section 8 hereof, the Assignor shall take all actions reasonably necessary to protect and defend the Marks and shall institute such proceedings to enforce the Marks as it, in its reasonable business judgment, deems appropriate. The Assignee shall, upon the reasonable request of the Assignor, do any and all lawful acts and execute all proper documents in aid of such protection, defense and enforcement, and the Assignor shall promptly, upon demand, reimburse and indemnify the Assignee for all costs and expenses incurred by the Assignee in connection therewith.

If a Default shall have occurred and be continuing, the Assignee shall have the right, but shall in no way be obligated, to bring suit in its own name to enforce the Marks, in which event the Assignor shall at the request of the Assignee do any and all lawful acts and execute any and all proper documents required by the Assignee in aid of such enforcement, and the Assignor shall promptly, upon demand, reimburse and indemnify the Assignee for all costs and expenses incurred by the Assignee in the exercise of its rights under this Section 13.

14. No Waiver. No course of dealing between the Assignor and the Assignee nor any failure to exercise, nor any delay in exercising, on the part of the Assignee, any right, power or privilege hereunder or under any of the other Loan Documents 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 or the exercise of any other right, power or privilege.

15. Severability. The provisions of this Agreement are severable, and if any clause or provision shall be held invalid or unenforceable in whole or in part in any jurisdiction, then such invalidity or unenforceability shall affect only such clause or provision, 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 Agreement in any jurisdiction.

16. Manufacture and Sale. The parties understand and agree that the collateral security assignment of the Marks as provided for in this Agreement, together with other collateral provided to the Assignee pursuant to the Loan Agreement and the other Loan Documents, will permit the Assignee, upon the happening of a Default, to make use of all rights to the Marks and the goodwill associated therewith, all of which will permit the Assignee to manufacture and sell the products for which the use of the Marks is associated and maintain substantially the same product specifications and quality as maintained by the Assignor.

17. Amendment. This Agreement is subject to modification only by a writing signed by the parties, except as provided in Section 5 hereof.

18. Successors and Assigns. The benefits and burdens of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties.


18. Governing Law. The validity and interpretation of this Agreement and the rights and obligations of the parties shall be governed by the laws of the State of New Jersey.

19. Judicial Proceedings. EACH PARTY TO THIS AGREEMENT AGREES THAT ANY SUIT, ACTION, OR PROCEEDING, WHETHER CLAIM OR COUNTERCLAIM, BROUGHT OR INSTITUTED BY ANY PARTY HERETO OR ANY SUCCESSOR OR ASSIGN OF ANY PARTY, ON OR WITH RESPECT TO THIS AGREEMENT OR THE DEALINGS OF THE PARTIES WITH RESPECT HERETO, SHALL BE TRIED ONLY BY A COURT AND NOT BY A JURY. EACH PARTY HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY SUCH SUIT, ACTION OR PROCEEDING. FURTHER, THE ASSIGNOR WAIVES ANY RIGHT IT MAY HAVE TO CLAIM OR RECOVER, IN ANY SUCH SUIT, ACTION OR PROCEEDING, ANY SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES OR ANY DAMAGES OTHER THAN, OR IN ADDITION TO, ACTUAL DAMAGES. THE ASSIGNOR ACKNOWLEDGES AND AGREES THAT THIS SECTION IS A SPECIFIC AND MATERIAL ASPECT OF THIS AGREEMENT.

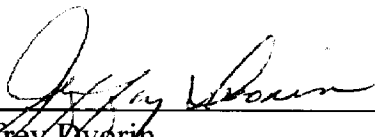
20. Counterparts. This Agreement may be executed in any number of duplicate originals or counterparts, each of such duplicate originals or counterparts shall be deemed to be an original and all taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, and intending to be legally bound hereby, the parties hereto have executed this Agreement the day and year first above written.

INTERNATIONAL FOOD CONCEPTS, INC.

By:   
\_\_\_\_\_  
Zvi Weinreb  
President


SUMMIT BUSINESS CAPITAL CORP.

By:   
\_\_\_\_\_  
Jeffrey Dvorin  
Vice President

ACKNOWLEDGMENTS

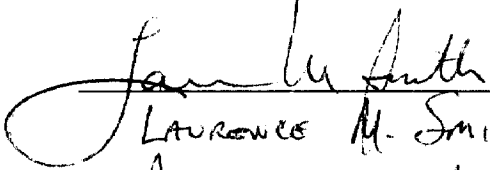
STATE OF NEW JERSEY )  
 ) ss.:  
COUNTY OF ESSEX )

BE IT REMEMBERED, that on this 29th day of January, 2001, before me personally came Zvi Weinreb, to me known, who, being by me duly sworn, did depose and say that he is the President of INTERNATIONAL FOOD CONCEPTS, INC., the corporation described in and which executed the foregoing instrument; and that he being by me duly sworn, acknowledged he signed his name thereto by order of the Board of Directors of said corporation for the uses and purposes expressed therein.

  
\_\_\_\_\_  
Jeffrey H. Schechter,  
Attorney at Law  
State of New Jersey

STATE OF NEW JERSEY )  
 ) ss.:  
COUNTY OF ESSEX )

On the 29th day of January, 2001, before me personally came Jeffrey Dvorin, to me known, who, being by me duly sworn, did depose and say that he is the Vice President of SUMMIT BUSINESS CAPITAL CORP., the corporation described in and which executed the foregoing instrument; and that he being by me duly sworn, acknowledged that he signed his name thereto by order of the Board of Directors of said corporation for the uses and purposes expressed therein.

  
\_\_\_\_\_  
LAURENCE M. SMITH  
ATTORNEY AT LAW  
STATE OF New Jersey



**LIST OF LIVE TRADEMARKS OWNED BY INTERNATIONAL FOOD CONCEPTS, INC.****REGISTRATIONS**

<u>MARK</u>	<u>REG. NUMBER</u>	<u>REG. DATE</u>
LELOLAI	2,216,622	January 5, 1999
VITARROZ	1,959,772	March 5, 1996
VITARROZ	1,934,639	November 14, 1995
DOUBLE LUCKY	1,457,650 *	September 15, 1987
DOUBLE LUCKY	1,424,145 *	January 6, 1987
CRISTALIN	1,408,120 *	September 9, 1986
MR. DESTROYER	1,310,737 *	December 25, 1984
ALINA	1,236,621 *	May 3, 1983
VITARICE	1,135,860 *	May 20, 1980
COOK-UP	1,182,350 *	December 15, 1981
DOUBLE LUCKY	1,145,880 *	January 13, 1981
VITARROZ	777,114 *	September 15, 1964
VITARROZ	655,313 *	December 3, 1957

**APPLICATIONS**

<u>MARK</u>	<u>SERIAL NUMBER</u>
VITARROZ REAL CHOICE	75/688,272
VITARROZ CERVEZA REAL	75/446,859

\* Indicates security interest to Chase Manhattan.



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02-12-2001

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #57 THE UNITED STATES PATENT AND TRADEMARK OFFICE

Box: TTAB  
Assistant Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, VA 22202

Re: Our File: 7136/3  
Applicant: Summit Business Capital Corp.  
Serial Nos.: 75/688,272; 75/446,859  
Reg. Nos.: 2,216,622; 1,959,772; 1,934,639; 1,457,650; 1,424,145;  
1,408,120; 1,310,737; 1,236,621; 1,135,860; 1,182,350;  
1,145,880; 777,114; 655,313

Sir:

Enclosed for filing in the United States Patent and Trademark Office is the following:

1. Trademark Security Agreement
2. Recordation Form Cover Sheet
5. Transmittal Sheet.
6. Postcard receipt.

CONDITIONAL PETITION

If any extension of time is required for the submission of the above-identified items, Applicant requests that this be considered a petition therefor. Please charge any additional charges or any other charges relating to this matter to the deposit account of the writer, **Account No. 06-2143**. A duplicate copy of this letter is enclosed.

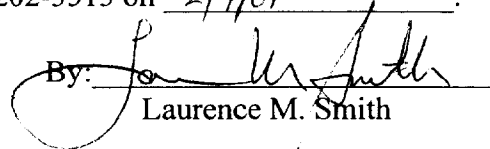
Respectfully submitted,

Laurence M. Smith  
Wolff & Samson  
5 Becker Farm Road  
Roseland, NJ 07068-1776  
Tel: (973) 533-6585  
Fax: (973) 436-4485

2/8/01  
Date

enc.

I hereby certify that this correspondence is being deposited with the United States Postal Service, First Class Mail, postage prepaid, to the Assistant Commissioner For Trademarks, Box TTAB - No Fee, 2900 Crystal Drive, Arlington, VA 22202-3513 on 2/9/01.

By:   
Laurence M. Smith

704259.01