

10-26-2001



101887668

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



Change of Name



Other

Effective Date  
Month Day Year

09/28/2001

Conveying Party



Mark if additional names of conveying parties attached

Execution Date  
Month Day Year

09/28/2001

Name Village Farms, L.P.

Formerly



Individual



General Partnership



Limited Partnership



Corporation



Association



Other



Citizenship/State of Incorporation/Organization

Delaware

Receiving Party



Mark if additional names of receiving parties attached

Name CoBank, ACB

DBA/AKA/TA

Composed of

Address (line 1)

5500 South Quebec Street

Address (line 2)

Address (line 3)

Greenwood Village

Colorado, U.S.A.

80111



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 Federally Chartered Instrumentality of the United States



Citizenship/State of Incorporation/Organization

U.S.A.

FOR OFFICE USE ONLY

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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: 002389 FRAME: 0464

**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 303-473-2726

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.

#

13

**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)**

75/528,441

2,070,143

1,881,123

2,184,289

2,422,551

1,866,189

1,704,348

**Number of Properties**

Enter the total number of properties involved.

#

7

**Fee Amount**

Fee Amount for Properties Listed (37 CFR 3.41):

\$

190.00

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:

#

08-2623

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.

Kristine M. Miller

Name of Person Signing

Signature

Date Signed

10-12-2001

# TRADEMARK SECURITY AGREEMENT

This Trademark Security Agreement ("**Security Agreement**") dated as of September 28, 2001, is executed by and between VILLAGE FARMS, L.P., a Delaware limited partnership, ("**Debtor**"), whose mailing address is 17 Christopher Way, Eatontown, New Jersey 07724, and COBANK, ACB ("**Secured Party**"), whose mailing address is 5500 South Quebec Street, Greenwood Village, Colorado 80111.

## RECITALS

A. Secured Party and Debtor have entered into that certain Second Consolidated, Amended and Restated Loan Agreement of even date herewith (as further amended, modified, supplemented, restated or replaced from time to time, the "**Loan Agreement**") pursuant to which Secured Party has agreed to modify the terms and conditions applicable to Debtor's outstanding indebtedness to Secured Party.

B. As of the date hereof, (a) EcoScience Produce Systems Corporation, a Delaware corporation ("**EcoScience Produce**"), has merged into EcoScience Corporation, a Delaware corporation ("**EcoScience**"), with EcoScience as the surviving entity of such merger ("**EcoScience Produce Merger**"), in accordance with the laws of the State of Delaware, and (b) EcoScience has merged into Agro Power Development, Inc., a Delaware corporation ("**APD**"), with APD as the surviving entity of such merger (the "**EcoScience Merger**").

C. As of the date hereof, APD has assigned to Debtor (a) all of APD's trademarks and other intellectual property assets, including, without limitation, the personal property described on Exhibit A attached hereto and incorporated herein by this reference, and (b) all of the trademarks and other intellectual property assets of EcoScience Produce and EcoScience acquired by APD as a result of the EcoScience Produce Merger and the EcoScience Merger, including the personal property described on Exhibit B attached hereto and incorporated herein by this reference.

D. The provisions of the Loan Agreement require that Debtor execute this Security Agreement and any other document or agreement necessary in order for Debtor to grant to Secured Party a lien and security interest in all of its assets and properties, both real and personal, tangible or intangible, whether now owned or hereafter acquired, including those assets and properties acquired by APD as a result of the EcoScience Produce Merger and the EcoScience Merger and assigned from APD to Debtor, as security for the performance of its obligations under the Loan Agreement and the other Loan Documents.

## AGREEMENTS

In consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Debtor and Secured Party agree as follows:

1. **Definitions.** Capitalized terms used, but not defined, herein shall have the meaning given to such terms in the Loan Agreement, if defined therein.

2. **Grant of Security Interest.** Debtor, for consideration and to secure the Secured Obligations (as defined below) hereby grants to Secured Party a first lien and security interest in the following personal property of Debtor, whether now owned or hereafter acquired ("**Collateral**"):

(a) All present and future trademarks, tradenames and service marks and federal, state and foreign trademark, tradename and service mark registrations and applications belonging to Debtor and/or any logos now or hereafter used by Debtor, including, but not limited to, the personal property described on Exhibit A attached hereto and incorporated herein by this reference;

(b) All present and future trademarks, tradenames and service marks and federal, state and foreign trademark, tradename and service mark registrations and applications previously belonging to EcoScience Produce or EcoScience and/or any logos previously used by EcoScience Produce or EcoScience, which have been acquired by APD as a result of the EcoScience Produce Merger and the EcoScience Merger and assigned from APD to Debtor, including, but not limited to, the personal property described on Exhibit B attached hereto and incorporated herein by this reference;

(c) All present and future elements of package or trade dress now or hereafter belonging to Debtor pertaining to Debtor's trademarks, tradenames and service marks and federal, state and foreign trademark, tradename and service mark registrations and applications, including, without limitation, those set forth on Exhibit A and Exhibit B hereto;

(d) All present and future goodwill now or hereafter belonging to Debtor and connected with or symbolized by Debtor's present and future trademarks, tradenames, service marks, trademark registrations, trade registrations, service mark registrations, trademark applications, tradename applications, service mark applications, package and trade dress, including, without limitation, those set forth on Exhibit A and Exhibit B hereto;

(e) All present and future licenses now or hereafter belonging to Debtor and pertaining to foregoing trademarks, tradenames, service marks,

trademark registrations, tradename registrations, service mark registrations, trademark applications, tradename applications, service mark applications, package and trade dress;

(f) All proceeds and products of and books and records pertaining to the foregoing personal property.

3. **Obligations Secured by Collateral.** The Collateral shall secure the payment and performance of all of Debtor's indebtedness, liabilities and obligations to Secured Party arising under the Loan Agreement (collectively "**Secured Obligations**").

4. **Representations and Warranties.** Debtor hereby represents and warrants that:

(a) The EcoScience Produce Merger has been duly and fully consummated in accordance with the laws of the State of Delaware, and CoBank has received a certified copy of all filings made with the Delaware Secretary of State in order to effect such merger;

(b) The EcoScience Merger has been duly and fully consummated in accordance with the laws of the State of Delaware, and CoBank has received a certified copy of all filings made with the Delaware Secretary of State in order to effect such merger;

(c) All of (i) APD's trademarks and other intellectual property assets, including, without limitation, the personal property described on Exhibit A attached hereto, and (ii) the trademarks and other intellectual property assets of EcoScience Produce and EcoScience acquired by APD as a result of the EcoScience Produce Merger and the EcoScience Merger, including the personal property described on Exhibit B attached hereto, have been duly and properly assigned from APD to Debtor and all necessary assignments have been duly and properly filed with the U.S. Patent and Trademark Office and any foreign jurisdictions in order to evidence the transfer of ownership of (i) and (ii) above from APD to Debtor.

(d) Debtor is the owner of the Collateral free and clear of all security interests, liens, charges, encumbrances, setoffs, defenses and counterclaims of whatsoever kind or nature, except for the Permitted Encumbrances (defined below);

(e) Except for the security interests, liens and encumbrances permitted under the Loan Agreement (collectively, the "**Permitted Encumbrances**"), Debtor, or any prior owner of the Collateral, has not made, and Debtor shall not make, any assignment, license, pledge,

mortgage, hypothecation or transfer of the Collateral or the proceeds thereof with the prior written consent of Secured Party;

(f) This Security Agreement does not contravene any statute, ordinance, administrative rule, contract, or other agreement binding on Debtor, where such contravention would have a material adverse effect on Debtor's financial condition, business, operations or assets; and

(g) There are no legal actions or administrative proceedings pending or threatened before any court or administrative agency involving the Collateral that, if determined adversely to Debtor, would result in a material obligation or liability of Debtor.

5. **Use and Ownership Prior to Default.** Debtor shall use the Collateral only in the ordinary course of its business. Debtor shall defend its title to the Collateral free and clear of all liens, charges, encumbrances, setoffs, defenses and counterclaims of every kind and nature (except for the Permitted Encumbrances) against all present and future contradictory claims which are reasonably likely to have a material adverse effect on the value of the Collateral and shall not assign, license, sell, transfer or otherwise encumber the Collateral except as permitted under the Loan Agreement without the prior written consent of Secured Party. Debtor shall take any reasonable action needed to maintain the value of the Collateral in a timely manner. The Secured Party is hereby appointed as Debtor's agent to take any reasonable action necessary to maintain the value of the Collateral, including, but not limited to, filing affidavits of continued use and renewing the trademarks and service marks contained in the Collateral upon the occurrence of an Event of Default or the failure of Debtor to take such action. Debtor shall reimburse Secured Party for all sums expended to maintain the Collateral together with interest thereon at the Default Interest Rate (as defined in the Loan Agreement). Notwithstanding the foregoing, Secured Party shall not be required to maintain the Collateral and does not assume any other obligation or liability pertaining to the Collateral.

6. **Events of Default.** Debtor shall be in default under this Security Agreement upon the occurrence of an "Event of Default" under the Loan Agreement.

7. **Rights and Remedies on Default.** Upon the occurrence of an Event of Default, unless such Event of Default has been waived in writing by Secured Party, Secured Party shall be entitled to exercise one or more of the following remedies without presentment, dishonor, notice or demand of any kind (all of which are hereby waived by Debtor):

(a) to declare the Secured Obligations immediately due and payable in full;

(b) to notify the licensees of any of the Collateral of Secured Party's security interest and/or instruct such persons or entities to pay directly to Secured Party any moneys owed to Debtor under any license agreement;

(c) to enter the premises of Debtor or any third party and take possession of any property evidencing, consisting of, or containing the Collateral;

(d) to require Debtor to deliver and make available to Secured Party any property evidencing, consisting of, or containing the Collateral at a place reasonably convenient to Debtor and Secured Party;

(e) to foreclose on the Collateral; and

(f) to exercise all other rights available to Secured Party under the Loan Agreement or any other Loan Document, in any other present or future document, instrument or agreement between Debtor and Secured Party, or applicable law.

The Secured Party's rights are cumulative and may be exercised together, separately, and in any order.

Without limiting any of Debtor's obligations or Secured Party's rights under this Security Agreement, the Loan Agreement or any of the other Loan Documents, Debtor shall provide Secured Party, upon Secured Party's request from time to time, with updated versions of Exhibit A and Exhibit B to this Security Agreement which describe all of the Collateral that is applied for and/or registered with the U.S. Patent and Trademark Office or in any foreign jurisdiction. In addition, Debtor shall provide Secured Party, upon Secured Party's request from time to time, with absolute assignments of the Collateral ("**Assignments**"). Such Assignments shall be in the form and substance acceptable to Secured Party in its reasonable discretion and shall be executed in blank. Debtor hereby appoints Secured Party as its attorney-in-fact to insert the name and address of the assignee and any other information required by the U.S. Patent and Trademark Office in the Assignments and to execute any other documents for filing with the U.S. Patent and Trademark Office required to evidence the transfer of ownership of the Collateral described on Exhibit A and Exhibit B hereto and to file such Assignments and other documents with that governmental authority, but only after the occurrence of an Event of Default (unless such Event of Default has been waived in writing by Secured Party) and the foreclosure of Secured Party's security interest in the Collateral under applicable law. This power of attorney is coupled with an interest and is irrevocable in nature.

8. **Indemnity.** The Secured Party shall not be deemed to have assumed or be responsible for the performance of any of Debtor's obligations with respect to the Collateral under any circumstances. Debtor shall immediately provide Secured Party with written notice of and indemnify and hold Secured Party harmless from all claims, damages, liabilities (including attorneys' fees and legal expenses), causes of action, actions, suits and other legal proceedings (collectively "**Claims**") pertaining to its business operations or the Collateral.

9. **Further Assurances.** Debtor shall take all actions and execute and file all documents necessary or reasonably requested by Secured Party to carry out the intent and purposes of this Security Agreement. Without limiting the foregoing, Debtor shall execute and file such financing statements and other documents in any location that Secured Party may deem necessary or appropriate to perfect and preserve Secured Party's security interest in the Collateral (other than any filings that need to be made in foreign jurisdictions) and appoints Secured Party as Debtor's attorney-in-fact to execute and file the aforementioned documents, and, further Debtor authorizes Secured Party to file financing statements without Debtor's signature where permitted by law; provided, however, that in no event shall Secured Party file the Assignments with the United States Patent and Trademark Office until after the conclusion of the foreclosure proceedings with respect to the Collateral after the occurrence of an Event of Default (unless such Event of Default has been waived in writing by Secured Party). This power of attorney is coupled with an interest and irrevocable in nature.

10. **Termination.** This Security Agreement and the security interest of Secured Party in the Collateral shall terminate upon (a) the full indefeasible payment and satisfaction of the Secured Obligations, and (b) upon Secured Party having no further obligation under the Loan Agreement to make any extension of credit to Debtor. Upon any such termination, Secured Party shall return to Debtor or destroy all executed Assignments that have not previously been filed with the U.S. Patent and Trademark Office in accordance with Section 7 hereof.

11. **Modification and Waiver.** No provision of this Security Agreement may be waived or modified except in a writing signed by the parties hereto. The Secured Party may perform any of Debtor's obligations or delay or fail to exercise any of its rights under this Security Agreement without causing a waiver of those obligations or rights. A waiver on one occasion shall not constitute a waiver on any other occasion. Debtor's obligations under this Security Agreement shall not be affected if Secured Party amends, compromises, exchanges, fails to exercise, impairs or releases any of the obligations belonging to any Debtor or third party or any of its rights against any Debtor, third party or collateral.

12. **Successors and Assigns.** This Security Agreement shall be binding upon and inure to the benefit of Debtor and Secured Party and their respective



successors and assigns, except that Debtor may not assign or transfer its rights or obligations hereunder without the prior written consent of Secured Party.

13. **Construction.** This Security Agreement shall be governed by and construed in accordance with the laws of the State of Colorado, without regard to principles of conflict of laws.

14. **Headings.** The several captions to different sections of this Security Agreement are inserted for convenience only and shall be ignored in interpreting the provisions hereof.

**[Signatures follow on next page]**

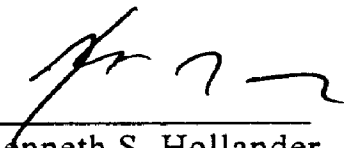
This Security Agreement is executed as of the date first above written.

**DEBTOR:**

VILLAGE FARMS, L.P.

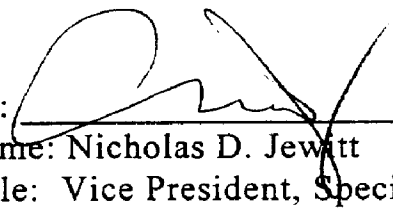
By: Village Farms of Delaware, L.L.C., its  
General Partner

By: Agro Power Development, Inc., its  
Managing Member

By:   
Name: Kenneth S. Hollander  
Title: Chief Financial Officer

**SECURED PARTY:**

COBANK, ACB

By:   
Name: Nicholas D. Jewitt  
Title: Vice President, Special Assets

2761772\_7.DOC

STATE OF NEW JERSEY )  
 ) ss.  
COUNTY OF MONMOUTH )

The foregoing instrument was acknowledged before me by \_\_\_\_\_ as the \_\_\_\_\_ of Agro Power Development, Inc., the Managing Member of Village Farms of Delaware, L.L.C., who is the General Partner of Village Farms, L.P., a Delaware limited partnership, on this 10 day of JULY, 2001.

WITNESS MY HAND AND OFFICIAL SEAL.

*Diane M. Gencarelli*  
Notary Public

My commission expires **DIANE M. GENCARELLI**  
**NOTARY PUBLIC OF NEW JERSEY**  
**Commission Expires 1/22/2006**

STATE OF Colorado )  
 ) ss.  
COUNTY OF Arapahoe )

The foregoing instrument was acknowledged before me by Nicholas D. Jewitt as the Vice President, Special Assets of CoBank, ACB on this 25<sup>th</sup> day of September, 2001.

WITNESS MY HAND AND OFFICIAL SEAL.

*Gronne Aufender*  
Notary Public

My commission expires: 02/22/04

**EXHIBIT A**  
**TO TRADEMARK SECURITY AGREEMENT**

**U.S. Registrations**

Trademark, Service mark or Tradenam Registration No.	Trademark, Service mark or Tradenam	Date Registered
1,704,348	VILLAGE FARMS	July, 28, 1992
2,422,551	BABY BEEFS	January 23, 2001

**U.S. Applications**

Trademark, Service mark or Tradenam Application Serial No.	Trademark, Service mark or Tradenam	Date Application Filed
75/528,441	HOME CHOICE	July 29, 1998

**EXHIBIT B**  
**TO TRADEMARK SECURITY AGREEMENT**

**Australia Registrations**

Trademark, Service mark or Tradenname Registration No.	Trademark, Service mark or Tradenname	Date Registered
B230,208	PACRITE	July 1, 1990
253,293	PACRITE	July 1, 1990
B253,294	PACRITE	July 1, 1990
253,295	PACRITE	July 1, 1990

**Canada Registrations**

Trademark, Service mark or Tradenname Registration No.	Trademark, Service mark or Tradenname	Date Registered
TMA 449,018	ECOSCIENCE & Design	October 20, 1995
TMA 450,061	ECOSCIENCE & Design	November 17, 1995

**France Registrations**

Trademark, Service mark or Tradenname Registration No.	Trademark, Service mark or Tradenname	Date Registered
93,480,864	ECOSCIENCE & Design	August 16, 1993
93,481,305	ECOSCIENCE & Design	August 24, 1993

### Germany Registrations

Trademark, Service mark or Tradename Registration No.	Trademark, Service mark or Tradename	Date Registered
2,071,606	ECOSCIENCE & Design	July 15, 1994
2,909,465	ECOSCIENCE & Design	July 27, 1995

### Great Britain Registrations

Trademark, Service mark or Tradename Registration No.	Trademark, Service mark or Tradename	Date Registered
B1,545,481	ECOSCIENCE & Design	August 19, 2000

### Japan Registrations

Trademark, Service mark or Tradename Registration No.	Trademark, Service mark or Tradename	Date Registered
3,166,878	ECOSCIENCE & Design	June 28, 1996

### Korea Registrations

Trademark, Service mark or Tradename Registration No.	Trademark, Service mark or Tradename	Date Registered
304,608	ECOSCIENCE & Design	December 26, 1994
312,236	ECOSCIENCE & Design	April 26, 1995
346,267	ECOSCIENCE & Design	September 2, 1996

### Mexico Registrations

Trademark, Service mark or Tradenam Registration No.	Trademark, Service mark or Tradenam	Date Registered
176,388	ECOSCIENCE & Design	August 25, 1993
176,387	ECOSCIENCE & Design	August 25, 1993

### Morocco Registrations

Trademark, Service mark or Tradenam Registration No.	Trademark, Service mark or Tradenam	Date Registered
36,387	PACRITE	June 25, 1985
36,388	SEALBRITE	June 25, 1985
36,386	CITRASHINE	June 25, 1985

### U.S. Registrations

Trademark, Service mark or Tradenam Registration No.	Trademark, Service mark or Tradenam	Date Registered
2,070,143	BIO-BLAST	June 10, 1997
2,184,289	BIO-SAVE	August 25, 1998
1,866,189	ECOSCIENCE & Design	December 6, 1994
1,881,123	HORIZONTAL TRANSFER	February 28, 1995