

12-23-2002

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See attached original documents or copy thereof.

To the Honorable Commissioner c

1. Name of conveying party(ies):

BIONOVA PRODUCE, INC.
3021 North Grand Avenue
Nogales, AZ 85621

- Individual(s)
- General Partnership
- Corporation-State Arizona
- Other _____
- Association
- Limited Partnership

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

3. Nature of conveyance:

- Assignment
- Security Agreement
- Other _____
- Merger
- Change of Name

Execution Date: December 3, 2002

2. Name and address of receiving party(ies)

Name: Wells Fargo Credit

Internal Address: MAC S4101-076

Street Address: 100 West Washington

City: Phoenix State: AZ ZIP: 85003

- Individual(s) citizenship _____
- Association _____
- General Partnership _____
- Limited Partnership _____
- Corporation-State Minnesota
- Other _____

If assignee is not domiciled in the United States, a domestic representative designation is attached: Yes No

(Designations must be a separate document from Assignment)

Additional name(s) & address(es) attached? Yes No

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

A. Trademark Application No.(s)

United States Applications: 76/307,740; 76/378,586; 76/307,739; 76/307,738 and 78/149,517 Foreign Applications: 535330; 535332; 1,132,039 and 1,132,037

B. Trademark registration No.(s)

1,806,313

Additional numbers attached? Yes No

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

Name: Mary E. Pischner

Internal Address: Gust Rosenfeld P.L.C.

12/23/2002 6TOM11 00000159 76307740

01 FC:8521 40.00 OP
02 FC:8522 225.00 OP

Street Address: 201 East Washington, Suite 800

City: Phoenix State: AZ ZIP: 85004-2327

6. Total number of applications and registrations involved:

10

7. Total fee (37 CFR 3.41).....\$265.00

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number:

(Attach duplicate copy of 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 copy of the original document.

Mary Pischner
Name of Person Signing

Mary Pischner
Signature

12-20-02
Date

Total number of pages comprising cover sheet:

9

PATENT AND TRADEMARK SECURITY AGREEMENT

This Agreement, dated as of December 3, 2002, is made by and between Bionova Produce, Inc., an Arizona corporation having a business location at the address set forth below next to its signature ("Bionova Produce"), and Wells Fargo Credit, Inc., a Minnesota corporation, having a business location at the address set forth below next to its signature (the "Secured Party").

Recitals

Bionova Produce, R.B. Packing of California, Inc., a California corporation and Bionova Produce of Texas, Inc., a Texas corporation (collectively, jointly and severally the "Borrowers") and the Secured Party are parties to a Credit and Security Agreement of even date herewith (as the same may hereafter be amended, supplemented or restated from time to time, the "Credit Agreement") setting forth the terms on which the Secured Party may now or hereafter extend credit to or for the account of Borrowers.

As a condition to extending credit to or for the account of Borrowers, the Secured Party has required the execution and delivery of this Agreement by Bionova Produce.

ACCORDINGLY, in consideration of the mutual covenants contained in the Loan Documents and herein, the parties hereby agree as follows:

1. Definitions. All terms defined in the Recitals hereto or in the Credit Agreement that are not otherwise defined herein shall have the meanings given to them therein. In addition, the following terms have the meanings set forth below:

"Obligations" means each and every debt, liability and obligation of every type and description arising under or in connection with any Loan Document (as defined in the Credit Agreement) which the Borrowers may now or at any time hereafter owe to the Secured Party, whether such debt, liability or obligation now exists or is hereafter created or incurred and whether it is or may be direct or indirect, due or to become due, absolute or contingent, primary or secondary, liquidated or unliquidated, independent, joint, several or joint and several, and including specifically, but not limited to, the Obligations (as defined in the Credit Agreement).

"Patents" means all of Bionova Produce's right, title and interest in and to patents or applications for patents, fees or royalties with respect to each, and including without limitation the right to sue for past infringement and damages therefor, and licenses thereunder, all as presently existing or hereafter arising or acquired, including without limitation the patents listed on Exhibit A.

"Security Interest" has the meaning given in Section 2.

"Trademarks" means all of Bionova Produce's right, title and interest in and to: (i) trademarks, service marks, collective membership marks, registrations and applications for registration for each, and the respective goodwill associated with each, (ii) licenses, fees or royalties with respect to each, (iii) the right to sue for past, present and future infringement, dilution and damages therefor, (iv) and licenses thereunder, all

as presently existing or hereafter arising or acquired, including, without limitation, the marks listed on Exhibit B.

2. Security Interest. Bionova Produce hereby irrevocably pledges and assigns to, and grants the Secured Party a security interest (the "Security Interest"), with power of sale to the extent permitted by law, in the Patents and in the Trademarks to secure payment of the Obligations. As set forth in the Credit Agreement, the Security Interest is coupled with a security interest in substantially all of the personal property of each Borrower.

3. Representations, Warranties and Agreements. Bionova Produce represents, warrants and agrees as follows:

(a) ***Existence; Authority.*** Bionova Produce is a corporation duly organized, validly existing and in good standing under the laws of its state of incorporation, and this Agreement has been duly and validly authorized by all necessary corporate action on the part of Bionova Produce.

(b) ***Patents.*** Exhibit A accurately lists all Patents owned or controlled by Bionova Produce as of the date hereof, or to which Bionova Produce has a right as of the date hereof to have assigned to it, and accurately reflects the existence and status of applications and letters patent pertaining to the Patents as of the date hereof. If after the date hereof, Bionova Produce owns, controls or has a right to have assigned to it any Patents not listed on Exhibit A, or if Exhibit A ceases to accurately reflect the existence and status of applications and letters patent pertaining to the Patents, then Bionova Produce shall within 60 days provide written notice to the Secured Party with a replacement Exhibit A, which upon acceptance by the Secured Party shall become part of this Agreement.

(c) ***Trademarks.*** Exhibit B accurately lists all Trademarks owned or controlled by Bionova Produce as of the date hereof and accurately reflects the existence and status of Trademarks and all applications and registrations pertaining thereto as of the date hereof; provided, however, that Exhibit B need not list common law marks (i.e., Trademarks for which there are no applications or registrations) which are not material to Bionova Produce's or any Affiliate's business(es). If after the date hereof, Bionova Produce owns or controls any Trademarks not listed on Exhibit B (other than common law marks which are not material to Bionova Produce's or any Affiliate's business(es)), or if Exhibit B ceases to accurately reflect the existence and status of applications and registrations pertaining to the Trademarks, then Bionova Produce shall promptly provide written notice to the Secured Party with a replacement Exhibit B, which upon acceptance by the Secured Party shall become part of this Agreement.

(d) ***Affiliates.*** As of the date hereof, no Affiliate owns, controls, or has a right to have assigned to it any items that would, if such item were owned by Bionova Produce, constitute Patents or Trademarks. If after the date hereof any Affiliate owns, controls, or has a right to have assigned to it any such items, then Bionova Produce shall promptly either: (i) cause such Affiliate to assign all of its rights in such item(s) to Bionova Produce; or (ii) notify the Secured Party of such item(s) and cause such Affiliate to execute and deliver to the Secured Party a patent and trademark security agreement substantially in the form of this Agreement.

(e) ***Title.*** Bionova Produce has absolute title to each Patent and each Trademark listed on Exhibits A and B, free and clear of all Liens except Permitted Liens.

Bionova Produce (i) will have, at the time Bionova Produce acquires any rights in Patents or Trademarks hereafter arising, absolute title to each such Patent or Trademark free and clear of all Liens except Permitted Liens, and (ii) will keep all Patents and Trademarks free and clear of all Liens except Permitted Liens.

(f) **No Sale.** Except as permitted in the Credit Agreement, Bionova Produce will not assign, transfer, encumber or otherwise dispose of the Patents or Trademarks, or any interest therein, without the Secured Party's prior written consent.

(g) **Defense.** Bionova Produce will at its own expense and using commercially reasonable efforts, protect and defend the Patents and Trademarks against all claims or demands of all Persons other than those holding Permitted Liens.

(h) **Maintenance.** Bionova Produce will at its own expense maintain the Patents and the Trademarks to the extent reasonably advisable in its business including, but not limited to, filing all applications to obtain letters patent or trademark registrations and all affidavits, maintenance fees, annuities, and renewals possible with respect to letters patent, trademark registrations and applications therefor. Bionova Produce covenants that it will not abandon nor fail to pay any maintenance fee or annuity due and payable on any Patent or Trademark, nor fail to file any required affidavit or renewal in support thereof, without first providing the Secured Party: (i) sufficient written notice, of at least 30 days, to allow the Secured Party to timely pay any such maintenance fees or annuities which may become due on any Patents or Trademarks, or to file any affidavit or renewal with respect thereto, and (ii) a separate written power of attorney or other authorization to pay such maintenance fees or annuities, or to file such affidavit or renewal, should such be necessary or desirable.

(i) **Secured Party's Right to Take Action.** If Bionova Produce fails to perform or observe any of its covenants or agreements set forth in this Section 3, and if such failure continues for a period of ten (10) calendar days after the Secured Party gives Bionova Produce written notice thereof (or, in the case of the agreements contained in subsection (h), immediately upon the occurrence of such failure, without notice or lapse of time), or if Bionova Produce notifies the Secured Party that it intends to abandon a Patent or Trademark, the Secured Party may (but need not) perform or observe such covenant or agreement or take steps to prevent such intended abandonment on behalf and in the name, place and stead of Bionova Produce (or, at the Secured Party's option, in the Secured Party's own name) and may (but need not) take any and all other actions which the Secured Party may reasonably deem necessary to cure or correct such failure or prevent such intended abandonment.

(j) **Costs and Expenses.** Except to the extent that the effect of such payment would be to render any loan or forbearance of money usurious or otherwise illegal under any applicable law, Bionova Produce shall pay the Secured Party on demand the amount of all moneys expended and all costs and expenses (including reasonable attorneys' fees and disbursements) incurred by the Secured Party in connection with or as a result of the Secured Party's taking action under subsection (i) or exercising its rights under Section 6, together with interest thereon from the date expended or incurred by the Secured Party at the Default Rate.

(k) **Power of Attorney.** To facilitate the Secured Party's taking action under subsection (i) and exercising its rights under Section 6, Bionova Produce hereby irrevocably appoints (which appointment is coupled with an interest) the Secured Party, or its

delegate, as the attorney-in-fact of Bionova Produce with the right (but not the duty) from time to time to create, prepare, complete, execute, deliver, endorse or file, in the name and on behalf of Bionova Produce, any and all instruments, documents, applications, financing statements, and other agreements and writings required to be obtained, executed, delivered or endorsed by Bionova Produce under this Section 3, or, necessary for the Secured Party, after an Event of Default, to enforce or use the Patents or Trademarks or to grant or issue any exclusive or non-exclusive license under the Patents or Trademarks to any third party, or to sell, assign, transfer, pledge, encumber or otherwise transfer title in or dispose of the Patents or Trademarks to any third party. Bionova Produce hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof. The power of attorney granted herein shall terminate upon the termination of the Credit Agreement as provided therein and the payment and performance of all Obligations.

4. Bionova Produce's Use of the Patents and Trademarks. Bionova Produce shall be permitted to control and manage the Patents and Trademarks, including the right to exclude others from making, using or selling items covered by the Patents and Trademarks and any licenses thereunder, in the same manner and with the same effect as if this Agreement had not been entered into, so long as no Event of Default occurs and remains uncured.

5. Events of Default. Each of the following occurrences shall constitute an event of default under this Agreement (herein called "Event of Default"): (a) an Event of Default, as defined in the Credit Agreement, shall occur; or (b) Bionova Produce shall fail promptly to observe or perform any covenant or agreement herein binding on it; or (c) any of the representations or warranties contained in Section 3 shall prove to have been incorrect in any material respect when made.

6. Remedies. Upon the occurrence of an Event of Default and at any time thereafter, the Secured Party may, at its option, take any or all of the following actions:

(a) The Secured Party may exercise any or all remedies available under the Credit Agreement.

(b) The Secured Party may sell, assign, transfer, pledge, encumber or otherwise dispose of the Patents and Trademarks.

(c) The Secured Party may enforce the Patents and Trademarks and any licenses thereunder, and if Secured Party shall commence any suit for such enforcement, Bionova Produce shall, at the request of Secured Party, do any and all lawful acts and execute any and all proper documents required by Secured Party in aid of such enforcement.

7. Miscellaneous. This Agreement can be waived, modified, amended, terminated or discharged, and the Security Interest can be released, only explicitly in a writing signed by the Secured Party. A waiver signed by the Secured Party shall be effective only in the specific instance and for the specific purpose given. Mere delay or failure to act shall not preclude the exercise or enforcement of any of the Secured Party's rights or remedies. All rights and remedies of the Secured Party shall be cumulative and may be exercised singularly or concurrently, at the Secured Party's option, and the exercise or enforcement of any one such right or remedy shall neither be a condition to nor bar the exercise or enforcement of any other. All notices to be given to Bionova Produce under this Agreement shall be given in the manner and

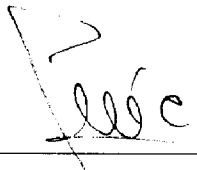
with the effect provided in the Credit Agreement. The Secured Party shall not be obligated to preserve any rights Bionova Produce may have against prior parties, to realize on the Patents and Trademarks at all or in any particular manner or order, or to apply any cash proceeds of Patents and Trademarks in any particular order of application. This Agreement shall be binding upon and inure to the benefit of Bionova Produce and the Secured Party and their respective participants, successors and assigns and shall take effect when signed by Bionova Produce and delivered to the Secured Party, and Bionova Produce waives notice of the Secured Party's acceptance hereof. The Secured Party may execute this Agreement if appropriate for the purpose of filing, but the failure of the Secured Party to execute this Agreement shall not affect or impair the validity or effectiveness of this Agreement. A carbon, photographic or other reproduction of this Agreement or of any financing statement signed by Bionova Produce shall have the same force and effect as the original for all purposes of a financing statement. This Agreement shall be governed by the internal law of Arizona without regard to conflicts of law provisions. If any provision or application of this Agreement is held unlawful or unenforceable in any respect, such illegality or unenforceability shall not affect other provisions or applications which can be given effect and this Agreement shall be construed as if the unlawful or unenforceable provision or application had never been contained herein or prescribed hereby. All representations and warranties contained in this Agreement shall survive the execution, delivery and performance of this Agreement and the creation and payment of the Obligations.

THE PARTIES WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED ON OR PERTAINING TO THIS AGREEMENT.

IN WITNESS WHEREOF, the parties have executed this Patent and Trademark Security Agreement as of the date written above.

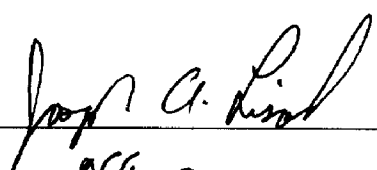
Bionova Produce, Inc.
3021 North Grand Avenue
Nogales, AZ 85621

BIONOVA PRODUCE, INC., an Arizona corporation

By 
Its Vice President & Treasurer

Wells Fargo Credit, Inc.
100 West Washington Street, 7th Floor
MAC S4101-076
Phoenix, AZ 85003

WELLS FARGO CREDIT, INC., a Minnesota corporation

By 
Its Officer

State of Arizona

County of Maricopa

The foregoing instrument was acknowledged before me this 3rd day of December, 2002, by Fernando MENENDEZ, the Vice President & Treasurer of Bionova Produce, Inc., on behalf of the corporation.

(Seal and Expiration Date)



Mary E. Pischner
Notary Public

State of Arizona

County of Maricopa

The foregoing instrument was acknowledged before me this 3rd day of December, 2002 by Joseph A. Lisack, a President of Wells Fargo Credit, Inc., a Minnesota corporation, on behalf of the corporation.

(Seal and Expiration Date)



Mary E. Pischner
Notary Public

EXHIBIT A

UNITED STATES ISSUED PATENTS

Title

Patent Number

Issue Date

NONE

FOREIGN ISSUED PATENTS

Title

Country

Patent Number

Issue Date

NONE

EXHIBIT B

TRADEMARKS, SERVICE MARKS
AND COLLECTIVE MEMBERSHIP MARKS

UNITED STATES REGISTRATIONS

<u>Mark</u>	<u>Registration Number</u>	<u>Registration Date</u>
Master's Touch	1,806,313	November 23, 1993

UNITED STATES APPLICATIONS

<u>Mark</u>	<u>Application Number</u>	<u>Application Date</u>
GoodMorning Papaya (Published)	76/307,740	August 30, 2001
Terra Santa	76/378,586	March 5, 2002
Papaya Sunsation (Published)	76/307,739	August 30, 2001
The Healthy Way of Enjoying Breakfast (Published)	76/307,738	August 30, 2001
Bambino	78/149,517	July 31, 2002

FOREIGN APPLICATIONS

<u>Mark</u>	<u>Application Number</u>	<u>Application Date</u>
GoodMorning Papaya (Mexico)	535330	February 28, 2002
The Healthy Way of Enjoying Breakfast (Mexico)	535332	February 28, 2002
The Healthy Way of Enjoying Breakfast (Canada)	1,132,039	February 27, 2002
GoodMorning Papaya (Canada)	1,132,037	February 27, 2002

COLLECTIVE MEMBERSHIP MARKS

NONE

UNREGISTERED MARKS

<u>Mark</u>	<u>Registration Number</u>	<u>Registration Date</u>
Melody	N/A	N/A

*GUST
ROSENFELD*
ATTORNEYS SINCE 1921 P.L.C.

■ 201 E. WASHINGTON, SUITE 800 ■ PHOENIX, ARIZONA 85004-2327 ■ TELEPHONE 602-257-7422 ■ FACSIMILE 602-254-4878 ■
Reply to the Phoenix Office

Mary E. Pischner
(602) 257-7951
mpischner@gustlaw.com

December 20, 2002

VIA FEDERAL EXPRESS

United States Patent and Trademark Office
Office of Public Records
Attn: Customer Service Counter
1213 Jefferson Davis Highway, 3rd Floor
Arlington, VA 22202

Re: WFCI – Bionova
Our File No. 015235-00017

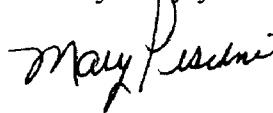
Dear Commissioner:

Enclosed is our check in the amount of \$265.00 for filing fees to file the enclosed Patent and Trademark Security Agreement (the "Security Agreement"). The Security Agreement pledges and assigns the two Trademarks described on Exhibit B attached thereto.

I have enclosed a copy of the Security Agreement, along with a self-addressed envelope. Please return a file-stamped copy of the Security Agreement to me.

Should you have any questions or further requirements, please call me on my direct line (602.257.7951).

Very truly yours,



Mary E. Pischner
Paralegal

mep 465413
Enclosures

PHOENIX TUCSON
WWW.GUSTLAW.COM

RECORDED: 12/23/2002

TRADEMARK
REEL: 002637 FRAME: 0716