

04-16-2003

Form PTO-1594  
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U.S. DEPARTMENT OF COMMERCE  
U.S. Patent and Trademark Office

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies): 4-14-03  
FERTIGATOR, INC..  
 Individual(s)  Association  
 General Partnership  Limited Partnership  
 Corporation-State  
 Other \_\_\_\_\_  
Additional name(s) of conveying party(ies) attached?  Yes  No

2. Name and address of receiving party(ies)  
Name: Founders Bank  
Internal Address: Attn: Dan Berra  
Street Address: 15500 Olive Blvd.  
City: Chesterfield State: MO Zip: 63017  
 Individual(s) citizenship \_\_\_\_\_  
 Association \_\_\_\_\_  
 General Partnership \_\_\_\_\_  
 Limited Partnership \_\_\_\_\_  
 Corporation-State \_\_\_\_\_  
 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

3. Nature of conveyance:  
 Assignment  Merger  
 Security Agreement  Change of Name  
 Other \_\_\_\_\_  
Execution Date: 03/20/2003

4. Application number(s) or registration number(s):  
A. Trademark Application No.(s) \_\_\_\_\_  
B. Trademark Registration No.(s) 2373967 & 2477257  
Additional number(s) attached  Yes  No

5. Name and address of party to whom correspondence concerning document should be mailed:  
Name: Jenkins & Kling, P.C.  
Internal Address: Attn: Kerry C. Feld  
Street Address: 10 S. Brentwood Blvd.,  
Suite 200  
City: St. Louis State: MO Zip: 63105

6. Total number of applications and registrations involved: 2  
7. Total fee (37 CFR 3.41).....\$ 65.00  
 Enclosed  
 Authorized to be charged to deposit account

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

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FINANCE SECTION

DO NOT USE THIS SPACE

9. Signature.  
Kerry C. Feld Name of Person Signing  
Kerry C. Feld Signature  
4/8/03 Date  
Total number of pages including cover sheet, attachments, and document: 6

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01 FC:05:21 40.00 OP  
02 FC:05:22 25.00 OP

Mail documents to be recorded with required cover sheet information to:  
Commissioner of Patent & Trademarks, Box Assignments  
Washington, D.C. 20231

TRADEMARK  
REEL: 002712 FRAME: 0861

## TRADEMARK COLLATERAL ASSIGNMENT

This Agreement is made on the 20<sup>th</sup> day of March, 2003 between **FERTIGATOR, INC.**, a Colorado corporation having a mailing address at 8404 Ponderosa Lane, Parker, CO 80138 ("Assignor") and **FOUNDERS BANK**, a Missouri banking corporation having a mailing address at 15550 Olive Street Road, Chesterfield, MO 63017 ("Lender").

**BACKGROUND.** Assignor is indebted to Lender pursuant to two (2) promissory notes: (i) dated March 20, 2000 in the amount of \$150,000.00; and (ii) dated October 16, 2000 in the amount of \$250,000.00 (collectively "the Obligations"). The Obligations are secured by, among other things, security agreements covering existing and thereafter arising and acquired personal property of Assignor including, without limitation all accounts, inventory, equipment, general intangibles of Assignor and all proceeds thereof, dated March 20, 2000 and October 16, 2000, executed by Assignor in favor of Lender. Assignor has adopted, used and continues to use certain trademarks in its business and has agreed, among other things, to collaterally assign to Lender such trademark rights to secure and continue the Obligations.

**NOW, THEREFORE,** in consideration of the premises, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Assignor hereby agrees with Lender as follows:

1. To secure the complete and timely satisfaction of all Obligations, Assignor hereby grants, assigns and conveys to Lender the entire right, title and interest in and to the following trademarks registered in the United States Patent and Trademark Office, including without limitation 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 corresponding thereto throughout the world and all re-issues, divisions, continuations, renewals, extensions and continuations-in-part thereof (collectively called the "Trademarks"): Trademark Reg. No. 2,373,967, registered August 1, 2000 entitled "Fertigator" and Trademark Reg. No. 2,477,257 registered August 14, 2001, constituting a logo of an alligator surrounding the word "Fertigator." Said collateral assignment shall be coupled with the goodwill and business of Assignor as a going concern symbolized by the Trademarks.

2. Assignor covenants and warrants that:

(a) The Trademarks are subsisting and have not been adjudged invalid or unenforceable, in whole or in part;

(b) To the best of Assignor's knowledge, each of the Trademarks is valid and enforceable and Assignor has notified Lender in writing of all prior art (including public uses and sales) of which it is aware;

(c) Assignor 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 licenses, shop rights and covenants by Assignor not to sue third persons; and

(d) Assignor has the unqualified right to enter into this Agreement and perform its terms and has entered and will enter into written agreements with each of its present and future employees, agents and consultants which will enable it to comply with the covenants herein contained.

Except as specifically set forth above, Assignor does not warrant that the Trademarks might not be declared invalid if challenged in court.

3. Assignor agrees that, until all of the Obligations shall have been satisfied in full, it will not enter into any agreement (for example, a license agreement) which is inconsistent with Assignor's obligations under this Agreement, without Lender's prior written consent.

4. If, before the Obligations shall have been satisfied in full, Assignor shall obtain rights to any trademarks, or become entitled to the benefit of any trademark application or trademark for any reissue, division, continuation, renewal, extension, or continuation-in-part of any Trademark or any modification on any Trademark, the provisions of paragraph 1 hereof shall automatically apply thereto and Assignor shall give to Lender prompt notice thereof in writing hereof.

5. Assignor authorizes Lender to modify this Agreement to include any future trademark and trademark applications which are Trademarks under paragraph 1 or paragraph 4 hereof.

6. Upon and after the occurrence of an Event of Default or default under any of the agreements securing any of the Obligations including, without limitation, a certain forbearance letter agreement of even date herewith between Assignor, Lender and certain third party guarantors of the Obligations, (collectively, an "Event of Default"), Lender shall have the exclusive, non-transferable right and license to make, complete and sell any of its collateral (and finish any collateral in any unfinished condition) to which the Trademarks may or do apply or to which are utilized in the normal course of business of Assignor, and any purchaser from Lender may use, maintain or resell such collateral free from any infringement or other claims relating to the Trademarks. Said right and license shall be deemed granted as of the date of this Agreement and shall be irrevocable (and deemed coupled with an interest) until the Obligations are paid in full or otherwise released in writing by Lender.

7. Upon and after the occurrence of an Event of Default, Lender shall have, in addition to all other rights and remedies given it by this Agreement, 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 Trademarks may be located or used and, without limiting the generality of the foregoing, the Lender may immediately, without demand of performance and without other notice (except as set forth next below) or demand whatsoever to Assignor, all of which are hereby expressly waived,

and without advertisement, sell at public or private sale or otherwise realize upon, in St. Louis, Missouri or elsewhere, the whole or from time to time any interest which the Assignor may have in the Trademarks, and after deducting from the proceeds of sale or other disposition of the part of the Trademarks, or any all expenses (including all reasonable expenses for brokers' fees and legal services), shall apply the residue of such proceeds toward the payment of the Obligations. Any remainder of the proceeds after payment in full of the Obligations shall be paid over to the Assignor. Notice of any sale or other disposition of the Trademarks shall be given to Assignor 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 Assignor 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 Lender may, to the extent permissible under applicable law, purchase the whole or any part of the Trademark sold, free from any right of redemption on the part of Assignor, which right is hereby waived and released.

8. At such time as Assignor shall completely satisfy all of the Obligations, Lender shall execute and deliver to Assignor all deeds, assignments and other instruments as may be necessary or proper to re-vest in Assignor full title to the Trademarks, subject to any disposition thereof which may have been made by Lender pursuant hereto.

9. Any and all fees, costs and expenses, of whatever kind or nature, including the reasonable attorneys' fees and legal expenses, incurred by Lender in connection with the preparation of this Agreement and all other documents relating hereto and the consummation of this transaction, 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, 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 Assignor on demand by Lender and until so paid shall be added to the principal amount of the Obligations and shall bear interest at the highest rate prescribed under the Obligations.

10. Assignor shall have the duty, through counsel acceptable to Lender, to prosecute diligently any trademark application of the Trademarks pending as of the date of this Agreement or thereafter until the Obligations shall have been paid in full to preserve and maintain all rights in trademark applications. Any expenses incurred in connection with such an application shall be borne by Assignor. The Assignor shall not abandon any right to file a trademark application, or any pending trademark application or trademark without the consent of the Lender, which consent shall not be unreasonably withheld.

11. Lender shall have the right but shall in no way be obligated to bring suit in its own name to enforce the Trademarks and any license thereunder, in which event Assignor shall at the request of Lender do any and all lawful acts and execute any and all proper documents required by Lender in aid of such enforcement and Assignor shall promptly, upon demand, reimburse and indemnify Agent for all costs and expenses incurred by Lender in the exercise of its rights under this paragraph 11.

12. No course of dealing between Assignor and Lender, nor any failure to exercise, nor any delay in exercising, on the part of Lender, any right, power or privilege hereunder or under the Loan Agreement 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 thereof or the exercise of any other right, power or privilege.

13. All of Lender's rights and remedies with respect to the Trademarks, whether established hereby or by the Obligations, or by any other agreements or by law shall be cumulative and may be exercised singularly or concurrently.

14. The provisions of this Agreement 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 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.

15. This Agreement is subject to modification only by a writing signed by the parties except as provided in Paragraph 5 hereof.

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

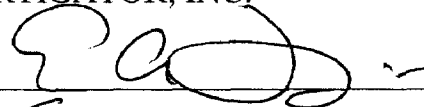
17. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. Said counterparts shall constitute but one and the same instrument and shall be binding upon each of the undersigned individually as fully and completely as if all had signed but one instrument so that the joint and several liability of each of the undersigned hereunder shall be unaffected by the failure of any of the undersigned to execute any or all of the said counterparts.

18. 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 Missouri.

WITNESS the execution hereof under seal as of the day and year first above written.

FERTIGATOR, INC.

By: \_\_\_\_\_



Print Name: \_\_\_\_\_


Edwin A. Lips III

Title: \_\_\_\_\_

CEO

FOUNDERS BANK

By:

  
\_\_\_\_\_

Print Name:

*Danie R. Berre*  
\_\_\_\_\_

Title:

*Senior Vice President*  
\_\_\_\_\_