

08-08-2003

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Form PTO-1594 (Rev. 10/02) OMB No. 0651-0027 (exp. 6/30/2005) Tab settings



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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):

SWISS FARM STORES ACQUISITION LLC

- Individual(s) Association General Partnership Limited Partnership Corporation-State Other [X] [MC]

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

3. Nature of conveyance:

- Assignment Merger Security Agreement [X] Change of Name Other

Execution Date: July 31, 2003

2. Name and address of receiving party(ies)

Name: COMMERCE BANK/PENNSYLVANIA, N.A.

Internal Address:

Street Address: 2005 Market Street

City: Philadelphia State: PA Zip: 19103

- Individual(s) citizenship Association General Partnership Limited Partnership Corporation-State Other [X] National Banking Association

If assignee is not domiciled in the United States, a domestic representative designation is attached: [] Yes [] No [X] N/A (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) 78/275,892 and 78/275,896

B. Trademark Registration No.(s)

Additional number(s) attached [] Yes [X] No

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

Name: Marilyn E. Green

Internal Address:

Obermayer Rebmann Maxwell & Hippel LLP

Street Address: 1617 John F. Kennedy Boulevard

19th Floor

City: Philadelphia State: PA Zip: 19103

6. Total number of applications and registrations involved:

2

7. Total fee (37 CFR 3.41): \$ 65.00

- [X] Enclosed [X] Authorized to be charged to deposit account

8. Deposit account number:

Please charge our deposit account no. 50-1401 if additional amount required

DO NOT USE THIS SPACE

9. Signature.

Marilyn E. Green Name of Person Signing

[Signature] Signature

August 6, 2003 Date

Total number of pages including cover sheet, attachments, and document: 13

08/08/2003 6TON11 00000049 78275892

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

01 FC:0521 40.00 DP 02 FC:0522 25.00 DP

**PATENTS, TRADEMARKS, LICENSES
AND COPYRIGHTS SECURITY AGREEMENT**

THIS PATENTS, TRADEMARKS, LICENSES AND COPYRIGHTS SECURITY AGREEMENT (this "**Security Agreement**") made this 21st day of July, 2003 by and between SWISS FARM STORES ACQUISITION LLC ("**Assignor**") and COMMERCE BANK/PENNSYLVANIA, N.A. ("**Assignee**"). Capitalized terms used herein shall have the meaning specified herein or, if not defined herein, as specified in the Loan Agreement.

WITNESSETH THAT:

WHEREAS, Pursuant to that certain Loan Agreement dated of even date herewith by and between Assignee and Assignor, (such Loan Agreement, as heretofore or hereafter amended, modified or restated, being referred to herein as the "**Loan Agreement**"), the Assignee agreed to extend to Assignor the credit facilities described therein.

WHEREAS, The Loan Agreement provides, *inter alia*, that Assignor will grant to Assignee a security interest in all of Assignor's personal property, including, among other things, Assignor's Patents, Trademarks, Licenses and Copyrights (as such terms are defined below); and

WHEREAS, Assignor desires to execute this Security Agreement to satisfy the condition described in the preceding paragraph.

NOW THEREFORE, in consideration of the premises set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee hereby agree as follows:

1. Incorporation of Loan Agreement. The Loan Agreement and the terms and provisions thereof are hereby incorporated herein in their entirety by this reference thereto. All capitalized terms not otherwise defined herein shall have the meanings set forth in the Loan Agreement.

2. Security Interest.

(a) To secure the complete and timely payment and satisfaction of all obligations of Assignor to Assignee under the Loan Agreement (the "**Obligations**"), Assignor hereby collaterally assigns, mortgages and pledges to Assignee and grants to Assignee a security interest in, with power of sale, to the extent permitted by law, all of such Assignor's right, title and interest in and to all of the following, whether now owned or existing and filed or hereafter acquired or arising and filed (collectively with the items named in Section 2(b) below, the "**Collateral**"):

(i) patents and patent applications, including, without limitation, the inventions and improvements described and claimed therein, and those patents listed on Exhibit "A", attached hereto and made a part hereof, and (a) the reissues, divisions, continuations, renewals, extensions and continuations-in-part thereof, (b) all income, royalties, damages and payments now and hereafter due and/or payable under and with respect thereto, including,

without limitation, damages and payments for past or future infringements thereof, (c) the right to sue for past, present and future infringements thereof, and (d) all rights corresponding thereto throughout the world (all of the foregoing patents and applications, together with the items described in clauses (a) through (d), are sometimes hereinafter individually and/or collectively referred to as the "**Patents**");

(ii) copyrights, copyright registrations, copyright applications and all computer programs, operating systems, application systems, hardware or software of any nature whatsoever owned by Assignor, whether operational, under development or inactive, including all object codes, source codes, modules, technical manuals, user manuals, operating instructions and procedures, in-put and out-put formats, program listings, narrative descriptions, program flow charts, file layouts, report layouts, screen layouts and other documentation therefor (including internal notes, memoranda, status evaluations, marketing information and write-ups), and all improvements, modifications, enhancements, new releases and revisions thereof, whether in machine-readable form, programming language or any other language or symbols, and whether stored, encoded, recorded or written on disk, tape, film, memory device, paper or other media of any nature; together with all tangible media upon which any of the foregoing are recorded or encoded, including, without limitation, all chips, disks, tapes, film and paper; including, without limitation, the copyrights, copyrights registrations and copyrights applications listed on Exhibit "B" attached hereto and made a part hereof, and (a) all renewals thereof, (b) all income, royalties, damages and payments now and hereafter due and/or payable with respect thereto, including, without limitation, damages and payments for past or future infringements thereof, and (c) the right to sue for past, present and future infringements thereof (all of the foregoing items are sometimes referred to herein collectively as the "**Copyrights**"); and

(iii) license agreements regarding Patents, Copyrights and Trademarks with any other party, whether Assignor is a licensor or licensee under any such license agreement, including, without limitation, the licenses listed on Exhibit "C" attached hereto and made a part hereof, and the right to prepare for sale, sell and advertise for sale all inventory now or hereafter owned by Assignor and now or hereafter covered by such licenses (all of the foregoing is hereinafter referred to collectively as the "**Licenses**").

(b) To secure the complete and timely payment and satisfaction of all Obligations, Assignor hereby mortgages and pledges to Assignee and grants to Assignee a security interest in, as and by way of a first security interest having priority over all other security interests, with power of sale, to the extent permitted by law, all of such Assignor's right, title and interest in and to all of the following, whether now owned or existing and filed or hereafter acquired or arising and filed:

(i) service marks, trademarks, service mark and trademark registrations, tradenames, trademark applications, and all goodwill attendant thereto, including, without limitation, the service marks, trademarks and applications listed on Exhibit "D", attached hereto and made a part hereof, and (a) all renewals thereof, (b) all income, royalties, damages and payments now and hereafter due and/or payable with respect thereto, including without limitation, damages and payments for past or future infringements thereof, (c) the right to sue for past, present and future infringements thereof, and (d) all rights corresponding thereto throughout

the world (all of the foregoing service marks, trademarks, service mark and trademark registrations, service mark and tradenames and applications together with the items described in clauses (a) through (d), are sometimes hereinafter individually and/or collectively referred to as the "**Trademarks**").

3. Restrictions on Future Agreements. Assignor agrees that until all Obligations shall have been satisfied in full and the Loan Agreement shall have been terminated, Assignor will not, without Assignee's prior written consent, enter into any agreement (including, without limitation, any license or royalty agreement except for licenses of Trademarks in the ordinary course of Assignor's business consistent with past practice) which is inconsistent with Assignor's obligations under this Security Agreement or which is prohibited under the terms of the Loan Agreement, and Assignor 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 adversely affect the validity or enforcement of the rights of Assignee under this Security Agreement.

4. New Patents, Trademarks, Copyrights and Licenses. Assignor represents and warrants that the Patents, Trademarks, Copyrights and Licenses listed on Exhibits "A", "B", "C" and "D", respectively, constitute all of the Patents, Trademarks, Copyrights and Licenses now owned by Assignor. If, before all Obligations shall have been satisfied in full and the Loan Agreement shall have been terminated, Assignor shall (i) obtain rights to any new Patents, Trademarks, Copyrights or Licenses, or (ii) become entitled to the benefit of any new Patents, Trademarks, Copyrights or Licenses, the provisions of Section 2 above shall automatically apply thereto and Assignor shall give to Assignee written notice thereof promptly after Assignor knows or should have known of such rights and/or benefits. Assignor hereby authorizes Assignee to modify this Security Agreement by amending Exhibit "A", "B", "C" and/or "D", as applicable, to include any future Patents, Trademarks, Copyrights and Licenses in which Assignor obtains an interest. Assignor hereby agrees to provide to Assignee such other assignment or other documentation as Assignee may reasonably request to record Assignee's lien on such future Patents, Trademarks, Copyrights or Licenses.

5. Royalties; Term. Assignor hereby agrees that the use by Assignee of all Patents, Trademarks, Copyrights and Licenses as described herein shall be worldwide and without any liability for royalties or other related charges from Assignee to Assignor. The term of the security interest granted herein shall extend until the earliest of (i) the expiration of each of the respective Patents, Trademarks, Copyrights and Licenses assigned hereunder, or (ii) the date on which all Obligations have been paid in full and the Loan Agreement is terminated.

6. Assignee's Right to Inspect. Assignee shall have the right, at any reasonable time and from time to time, to inspect Assignor's premises and to examine Assignor's books, records and operations. Assignor agrees that Assignee, or a conservator appointed by Assignee, shall have the right to establish such reasonable product quality controls as Assignee, or said conservator, in its sole judgment, may deem necessary to assure maintenance of the quality of products sold by Assignor under the Trademarks. Assignor agrees (i) not to sell or assign its interest in, or grant any license under (except as expressly permitted under Section 3 above), the Patents, Trademarks, Copyrights or Licenses, without the prior written consent of Assignee; (ii) to

reasonably maintain the quality of any and all products in connection with which the Trademarks and/or the Copyrights are used, consistent with quality of said products as of the date hereof; (iii) not to adversely change the quality of said products without Assignee's express written consent; and (iv) to provide Assignee, upon reasonable request, with a certificate of an officer of Assignor certifying Assignor's compliance with the foregoing.

7. Reassignment. This Security Agreement is made for collateral purposes only. Upon payment in full of all Obligations and termination of the Loan Agreement, Assignee shall execute and deliver to Assignor a termination of Assignee's security interest granted herein and all deeds, assignments and other instruments as may be necessary or proper to re-vest in Assignor full title to the Patents, Trademarks, Copyrights and Licenses, subject to any disposition thereof which may have been made by Assignee under the terms hereof or under the terms of the Loan Agreement.

8. Duties of Assignor. Assignor shall have the duty (i) to prosecute diligently any patent, trademark and copyright application pending as of the date hereof or thereafter until all Obligations shall have been paid in full and the Loan Agreement is terminated, (ii) to make application on unpatented but patentable inventions and on trademarks and copyrights, as appropriate, and (iii) to preserve and maintain all rights in patent applications and patents of the Patents, in trademark applications, trademarks and trademark registrations of the Trademarks and in copyright applications and copyrights of the Copyrights, to the extent the failure to do so would materially adversely affect Assignor's business operations. Any expenses incurred in connection with such applications shall be borne by Assignor. Assignor shall not abandon any right to file a patent, trademark or copyright application, or any pending patent, trademark or copyright application, or any Patent, Trademark, Copyright or License, to the extent the failure to do so would materially adversely affect Assignor's business operations without the prior consent of Assignee.

9. Event of Default. Upon the occurrence of an Event of Default which has not been waived in writing by Assignee, Assignee may, without further notice to or consent of Assignor, immediately record all assignments previously executed and delivered to Assignee by Assignor and/or execute and record with all applicable offices (including, without limitation, the U.S. Patent and Trademark Office) an absolute assignment to Assignee by Assignor of all rights, title and interest of Assignor in and to the Patents, Trademarks, Copyrights and Licenses and other Collateral. Assignor hereby authorizes and agrees that Assignee may, through the power of attorney granted in Section 14 hereof, upon the occurrence of an Event of Default which has not been waived in writing by Assignee, irrevocably execute and deliver in Assignor's name any and all such assignments and agreements and to take any and all other actions in Assignor's name as Assignee shall deem reasonable or appropriate to transfer and convey all right, title and interest of Assignor in and to the Patents, Trademarks, Copyrights and Licenses to Assignee or any other person or entity selected by Assignee. In addition, upon the occurrence of an Event of Default which has not been waived in writing by Assignee, Assignee shall have all other rights and remedies at law or equity (including, without limitation, under the Uniform Commercial Code).

10. Assignee's Right to Sue. Assignee shall have the right, but shall in no way be obligated, to bring suit in its own name to enforce the Licenses, Patents, Copyrights and/or

Trademarks, and any licenses thereunder and, if Assignee shall commence any such suit, Assignor shall, at the request of Assignee, do any and all lawful acts and execute any and all proper documents required by Assignee in aid of such enforcement and Assignor shall promptly, upon demand, reimburse and indemnify Assignee for all reasonable costs and expenses incurred by Assignee in the exercise of its rights under this Section 10.

11. Waivers. No course of dealing between Assignor and Assignee, nor any failure to exercise, nor any delay in exercising, on the part of Assignee, 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.

12. Severability. The provisions of this Security Agreement are severable, and if any clause or provision shall be 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 Security Agreement in any jurisdiction.

13. Modification. This Security Agreement cannot be altered, amended or modified in any way, except as specifically provided in Section 4 hereof or by a writing signed by the parties hereto.

14. Cumulative Remedies; Power of Attorney; Effect on Loan Agreement. All of Assignee's rights and remedies with respect to the Patents, Trademarks, Copyrights and Licenses, whether established hereby or by the Loan Agreement, or by any other Loan Documents or by law shall be cumulative and may be exercised singularly or concurrently. Assignor hereby authorizes Assignee to make, constitute and appoint any officer or agent of Assignee as Assignee may select, in its sole discretion, as Assignor's true and lawful attorney-in-fact, with power to, (i) endorse Assignor's name on all applications, documents, papers and instruments necessary or reasonably desirable for the Assignee to protect, evidence, perfect or enforce its security interest in the Patents, Trademarks, Copyrights and/or Licenses, (ii) take any other actions with respect to the Patents, Trademarks, Copyrights and/or Licenses as the Assignee reasonably deems in the best interest of the Assignee (except as otherwise provided in clauses (iii) and (iv) below), (iii) following the occurrence of an Event of Default which has not been waived in writing by Assignee, grant or issue any exclusive or non-exclusive License under the Patents or Trademarks to anyone, or (iv) following the occurrence of an Event of Default which has not been waived in writing by Assignee, assign, pledge, convey or otherwise transfer title in or dispose of the Patents, Trademarks, Copyrights and/or Licenses to anyone, including Assignee. Assignee may act under such power of attorney to take the actions referenced in Section 4 hereof. Assignee hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof. This power of attorney shall be irrevocable until all Obligations shall have been paid in full and the Loan Agreement shall have been terminated. Assignor acknowledges and agrees that this Security Agreement is not intended to limit or restrict in any way the rights and remedies of Assignee under the Loan Agreement or other Loan Documents but rather is intended to facilitate the exercise of such rights and remedies given it by the terms of this Security Agreement, all rights and remedies allowed by law and the rights and remedies of a secured party under the

Uniform Commercial Code as enacted in the Commonwealth of Pennsylvania or the Uniform Commercial Code enacted in any other jurisdiction to which the Patents, Trademarks, Copyrights or Licenses may be subject.

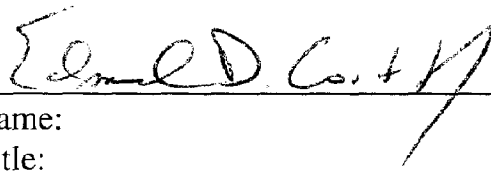
15. Binding Effect; Benefits. This Security Agreement shall be binding upon the Assignor and its successors and assigns, and shall inure to the benefit of Assignee, its nominees, successors and assigns.

16. Governing Law. This Security Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania, without reference to conflicts-of-law principles.

17. Authorization. Assignor authorizes Assignee from time to time to file appropriate financing statements (on Form UCC-1 or other appropriate form) under the Uniform Commercial Code and UCC continuation statements and amendments from time to time, covering all Collateral hereunder for which the filing of such financing statements is required to perfect the applicable security interest (with the form of such financing statements to be satisfactory to the Assignee), to be filed in the relevant filing offices so that at all times the Assignee has a security interest in all Patents, Trademarks, Copyrights and/or Licenses and other Collateral which is perfected by the filing of such financing statements (in each case to the maximum extent perfection by filing may be obtained under the laws of the relevant states, including, without limitation, the Uniform Commercial Code).

IN WITNESS WHEREOF, the parties hereto have caused this Security Agreement to be executed as of the day and year first above written.

SWISS FARM STORES ACQUISITION LLC

By: 
Name:
Title:

COMMERCE BANK/PENNSYLVANIA, N.A.

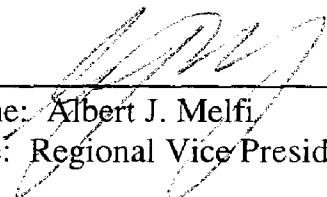
By: 
Name: Albert J. Melfi
Title: Regional Vice President

EXHIBIT "A"

TO

**ASSIGNMENT OF PATENT, TRADEMARK,
COPYRIGHT AND LICENSES AGREEMENT**

Patents

Title

Patent No.

Expiration Date

None

EXHIBIT "B"

TO

**ASSIGNMENT OF PATENT, TRADEMARK,
COPYRIGHT AND LICENSES AGREEMENT**

Copyrights

No registered copyrights

EXHIBIT "C"

TO

**ASSIGNMENT OF PATENT, TRADEMARK,
COPYRIGHT AND LICENSES AGREEMENT**

Licenses

**Software License Agreement between the Assignor (as assignee to Alpine Farm, Inc.) and
CAP Automation, dated July , 2003**

EXHIBIT "D"

TO

**ASSIGNMENT OF PATENT, TRADEMARK,
COPYRIGHT AND LICENSES AGREEMENT**

Trademarks

MARK **REG. NO./APP. NO.** **REG./ APP. DT.**

PENDING TRADEMARKS:

<u>Mark</u>	<u>Serial Number</u>	<u>Date Filed</u>
Swiss Pass*	78 / 275,896	
Swiss Farm Stores*	78 / 275,892	

*Intent-to-Use Application submitted for these marks.