

RESUB.

11-18-2004

Form PTO-1594
(Rev. 10/02)
OMB No. 0651-0027 (exp. 6/30/2005)
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102884153

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):
Bruegger's Enterprises, Inc.

2-11-04

- ☐ Individual(s) ☐ Association
☐ General Partnership ☐ Limited Partnership
☒ Corporation-State DELAWARE
☐ Other _____

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

3. Nature of conveyance:

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

Execution Date: January 30, 2004

2. Name and address of receiving party(ies)

Name: The Peninsula Fund III Limited PARTNERSHIP

Internal
Address: Suite 2050

Street Address: 535 Griswold

City: Detroit State: MI 48226

☐ Individual(s) citizenship

☐ Association

☐ General Partnership

☒ Limited Partnership Delaware

☐ 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

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

A. Trademark Application No.(s) _____

B. Trademark Registration No.(s) 1,792,050

Additional number(s) attached ☒ Yes ☐ No

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

Name: Marc A. Bergsman

Internal Address: Dickinson Wright PLLC

Street Address: 1901 L St., N.W., Suite 800

City: Washington State: DC Zip: 20036

6. Total number of applications and registrations involved: 13

7. Total fee (37 CFR 3.41).....\$ 340.00

☒ Enclosed

☒ Authorized to be charged to deposit account

8. Deposit account number:

04-1061

Charge Doc

DO NOT USE THIS SPACE

9. Signature.

Marc A. Bergsman

Name of Person Signing

Marc A. Bergsman
Signature

February 11, 2004

Date

Total number of pages including cover sheet, attachments, and document: 17

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

02/17/2004 MGETACHE 00000100 1792050

Q1 FC:8521
Q2 FC:8522

40.00 OP
300.00 OP

TRADEMARK
REEL: 003080 FRAME: 0033

Schedule B
Trademarks and Trademark Applications

BRUEGGER'S ENTERPRISES, INC.

U.S. TRADEMARK APPLICATIONS AND REGISTRATIONS

<u>Name</u>	<u>Number</u>	<u>Issue Date</u>
BRUEGGER'S	1792050	9/7/93
BRUEGGER'S	1513741	11/22/88
BRUEGGER'S BAGEL BAKERY FRESH BAGELS	1790827	8/31/93
BRUEGGER'S BAGELS BAKED FRESH	2054479	4/22/97
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<u>Name</u>	<u>Country</u>	<u>Number</u>	<u>Issue Date</u>
WE BAKE THEM IN SMALL BATCHES ALL DAY LONG BECAUSE PEOPLE COME IN SMALL BATCHES ALL DAY LONG	Canada	TMA493263	4/20/1998
TOTALLY COMPLETELY OBSESSED WITH FRESHNESS	Canada	TMA513637	7/29/1999
JAVAHH!	Canada	TMA532013	8/31/2000
THE BEST THING ROUND	Canada	TMA452098	12/22/1995
BRUEGGER'S BAGEL BAKERY FRESH BAGELS &	Canada	TMA431808	8/12/1994

DESIGN			
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BRUEGGER'S	Canada	TMA469640	1/24/1997
BRUEGGER'S	CTM (Europe)	158402	6/25/1998

PATENT, TRADEMARK
AND COPYRIGHT SECURITY AGREEMENT

THIS PATENT, TRADEMARK AND COPYRIGHT SECURITY AGREEMENT (the "Security Agreement") is entered into as of this 30th day of January 2004, by and among BRUEGGER'S ENTERPRISES, INC., a Delaware corporation ("BEI"), BF HOLDING, INC., a Delaware corporation ("BFHI"), and BRUEGGER'S FRANCHISE CORPORATION, a Delaware corporation ("BFC" and together with BEI and BFHI jointly and severally, the "Grantor"), each with its principal place of business at 159 Bank Street, Burlington, Vermont, and THE PENINSULA FUND III LIMITED PARTNERSHIP, a Delaware limited partnership, having a place of business at 535 Griswold Street, Suite 2050, Detroit, Michigan 48226 (the "Purchaser").

WHEREAS, BEI and Purchaser are parties to a certain Note Purchase Agreement dated as of even date herewith (as amended, restated, supplemented or extended from time to time, the "Note Purchase Agreement") and Grantor and Purchaser are parties to a certain Security Agreement dated as of even date herewith which provide: (i) for Purchaser, to purchase a senior subordinated note from BEI, and (ii) for the grant by the Grantor to Purchaser of a security interest in all of the Grantor's assets, including, without limitation, its patents, patent applications, trademarks, trademark applications, goodwill, service marks, trade names, trade styles, copyrights, copyright applications, mask works, trade-secrets information, and other proprietary rights, together with all additions, accessions, accessories, amendments, attachments, modifications, substitutions, and replacements, proceeds and products of any of the foregoing, as set forth in the Note Purchase Agreement and the Other Agreements (capitalized terms used herein and not otherwise defined have the respective meanings given in the Note Purchase Agreement);

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants and agreements contained, and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the Grantor and the Purchaser agree as follows:

1. Security Interest in Patents, Trademarks and Copyrights. To secure the complete and timely satisfaction of all of the "Senior Subordinated Obligations" (as that term is defined in the Note Purchase Agreement) to Purchaser, Grantor hereby grants and conveys to Purchaser a junior security interest with power of sale, to the extent permitted by law, in all of its now owned or existing, and hereafter acquired or arising:

- (a) patents, patent applications, including, without limitation, any invention and improvement to a patent or patent application, including without limitation those patents and patent applications listed in Schedule A (being sometimes referred to individually and/or collectively, the "Patents");
- (b) trademarks, registered trademarks and trademark applications, trade names, trade styles, service marks, registered service marks and service mark applications including, without limitation, the registered trademarks,

trademark applications, registered service marks and service mark applications listed on Schedule B and (i) all renewals thereof, (ii) all accounts receivable, income, royalties, damages and payments now and hereafter due and/or payable with respect thereto, including, without limitation, payments under all licenses entered into in connection therewith and damages and payments for past, present or future infringements and dilutions thereof, and (iii) the right to sue for past, present and future infringements and dilutions thereof, and (iv) all of the Grantor's rights corresponding thereto throughout the world (all of the foregoing registered trademarks, trademark applications, trade names, trade styles, registered service marks and service mark applications, together with the items described in clauses (i)-(iv) in this Section 1(b), being sometimes hereinafter individually and/or collectively referred to as the "Trademarks");

- (c) the goodwill of Grantor's business connected with and symbolized by the Trademarks; and
- (d) copyrights, and copyright applications, including without limitation, those copyrights listed in Schedule C (being sometimes referred to individually and/or collectively as the "Copyrights");

together with all additions, accessions, accessories, amendments, attachments, modifications, substitutions, and replacements, proceeds and products of the foregoing.

All Grantor's obligations hereunder, and all rights of the Purchaser hereunder shall be expressly subject in all respects to the terms of a Senior Subordination Agreement dated as of even date herewith among Banknorth, National Association, Purchaser and BEI, as amended or modified from time to time.

2. Recording of Patents and Trademarks. Grantor represents and warrants that (1) the patents and patent applications listed in Schedule A, and (2) the trademark and trademark applications described in Schedule B, have each been duly recorded in the U.S. Patent and Trademark Office (the "PTO"); and that no other patents, patent applications, trademarks, or trademark applications have been filed or recorded with the PTO in which the Grantor has an interest.

3. Recording of Copyrights. Grantor represents and warrants that the copyright and copyright applications described in Schedule C have been duly recorded in the U.S. Copyright Office, and that no other copyright, and copyright applications have been recorded in the U.S. Copyright Office, in which the Grantor has an interest.

4. Restrictions on Future Agreements. Except for the Patent, Trademark and Copyright Security Agreement executed by Grantor in favor of the Senior Lender dated the date hereof, Grantor will not, without Purchaser's prior written consent, enter into any agreement,

including, without limitation, any license agreement, which is inconsistent with this Agreement, and Grantor further agrees that it will not take any action, and will use reasonable efforts not to knowingly permit any action to be taken by others subject to its control, including licensees, or knowingly fail to take any action, which would in any material respect affect the validity or enforcement of the rights transferred to Purchaser under this Agreement or the rights associated with those Patents, Trademarks and/or Copyrights which are in Grantor's reasonable business judgment, necessary or desirable in the operation of Grantor's business.

5. New Patents, Trademarks and Copyrights. Grantor represents and warrants that the Patents, Trademarks, and Copyrights listed on Schedules A, B, and C, include all of the patents, patent applications, trademark registrations, trademark applications, service marks registrations, service mark applications, registered copyrights and copyright applications, now owned or held by Grantor. If, prior to the termination of this Agreement, Grantor shall (i) create or obtain rights to any new patents, trademarks, trademark registrations, trademark applications, trade names, trade styles, service marks, service marks registrations, or service mark applications, or (ii) become entitled to the benefit of any patent, trademark, trademark registration, trademark application, trade name, trade style, service mark, service mark registration, service mark application, the provisions of Section 1 above shall automatically apply thereto and Grantor shall give Purchaser prompt written notice thereof. Grantor hereby authorizes Purchaser to modify this Agreement by (a) amending Schedules A, B, and/or C, as the case may be, to include any future patents, trademark registrations, trademark applications, service mark registrations, service mark applications, registered copyrights and copyright applications that are Patents, Trademarks or Copyrights under Section 1 above, or under this Section 5 (whether or not any such notice from Grantor has been sent or received), and (b) filing, in addition to and not in substitution for this Agreement, a supplement or addendum to this Agreement containing on Schedule B therein, as the case may be, such registered trademarks, trademark applications, service marks, registered service marks and service mark applications which are Trademarks under Section 1 above or this Section 5 and to take any action Purchaser otherwise deems appropriate to perfect or maintain the rights and interest of Purchaser under this Agreement with respect to such Patents, Trademarks and Copyrights.

6. Intentionally Omitted.

7. Nature and Continuation of Security Interest; Notice to Third Parties. This Security Agreement has the effect of giving third parties notice of the Purchaser's security interest in Grantor's Patents, Trademarks and Copyrights. This Agreement is made for collateral security purposes only. This Agreement shall create a continuing security interest in the Patents, Trademarks and Copyrights and shall remain in full force and effect until the liabilities and Senior Subordinated Obligations of the Grantor to the Purchaser have been paid in full, including all obligations under the Note Purchase Agreement.

8. Right to Inspect; Assignments and Security Interests. Subject to the limitations on such inspections and examinations as set forth in the Note Purchase Agreement, Purchaser shall have the right, at any reasonable time upon prior written request and from time to time, to inspect Grantor's premises and to examine Grantor's books, records and operations relating to the

Patents and the Trademarks, including, without limitation, Grantor's quality control processes; provided, that in conducting such inspections and examinations, Purchaser shall use reasonable efforts not to disturb unnecessarily the conduct of Grantor's ordinary business operations. From and after the occurrence of an event of default, under the Note Purchase Agreement, or any Other Agreements ("Event of Default"), Grantor agrees that Purchaser, or a conservator appointed by Purchaser, shall have the right to take any action to renew or to apply for registration of any Trademarks as Purchaser or said conservator, on its sole judgment, may deem necessary or desirable in connection with the enforcement of Purchaser's rights hereunder. Grantor agrees (i) except in accordance with Grantor's reasonable business judgment, not to sell or assign its respective interests in the Patents, Trademarks and/or Copyrights without the prior written consent of Purchaser and (ii) to maintain the quality of any and all products in connection with which the Trademarks are used, consistent with the quality of said products as of the date hereof.

9. Duties of Grantor. Grantor shall have the duty, to the extent necessary or desirable in the normal conduct of Grantor's business, to (i) prosecute diligently any patent application or trademark application or service mark application that is part of the Trademarks pending as of the date hereof or thereafter until the termination of this Agreement, and (ii) preserve and maintain all of Grantor's rights in the patents, patent applications, trademark applications, service mark applications and trademark and service mark registrations that are part of the Patents and Trademarks as required by the Note Purchase Agreement. Any expenses incurred in connection with the foregoing shall be borne by Grantor. Grantor shall not, without thirty (30) days prior written notice to Purchaser, abandon any trademark or service mark which is the subject of a registered trademark, service mark or application therefor and which, is or shall be necessary or economically desirable in the operation of the Grantor's business. Purchaser shall not have any duty with respect to the Patents, Trademarks and/or Copyrights. Without limiting the generality of the foregoing, Purchaser shall not be under any obligation to take any steps necessary to preserve rights in the Patents, Trademarks and/or Copyrights against any other parties, but may do so at its option during the continuance of an Event of Default, and all expenses incurred in connection therewith shall be for the sole account of Grantor and added to the Senior Subordinated Obligations and liabilities secured hereby, by the Note Purchase Agreement and by any Other Agreements.

10. Purchaser's Right to Sue. Upon the occurrence and during the continuance of any Event of Default, the Purchaser shall have the right to exercise all rights and remedies available at law or in equity. From and after the occurrence and during the continuance of an Event of Default, Purchaser shall have the right, but shall not be obligated, to bring suit or take any other action to enforce the Patents, Trademarks and Copyrights and, if Purchaser shall commence any such suit or take any such action, Grantor shall, at the request of Purchaser, do any and all reasonable lawful acts and execute any and all proper documents reasonably required by Purchaser in aid of such enforcement. Grantor shall, upon demand, promptly reimburse and indemnify Purchaser for all reasonable out-of-pocket costs and expenses incurred by Purchaser in the exercise of its rights under this Section 10 (including, without limitation, all attorneys' fees). If, for any reason whatsoever, Purchaser is not reimbursed with respect to the costs and expenses referred to in the preceding sentence, such costs and expenses shall be added to the Senior Subordinated Obligations secured hereby.

11. Waivers. The Grantor waives to the extent permitted by applicable law presentment, demand, notice, protest, notice of acceptance of this Agreement, notice of any loans made, credit or other extensions granted, collateral received or delivered or any other action taken in reliance hereon and all other demands and notices of any description, except for such demands and notices as are expressly required to be provided to the Grantor under this Agreement or any other document evidencing the Senior Subordinated Obligations or the liabilities under the Note Purchase Agreement and the Other Agreements. With respect to both the Senior Subordinated Obligations and the Collateral, the Grantor assents to any extension or postponement of the time of payment or any other forgiveness or indulgence, to any substitution, exchange or release of Collateral, to the addition or release of any party or person primarily or secondarily liable, to the acceptance of partial payment thereon and the settlement, compromise or adjustment of any thereof, all in such manner and at such time or times as the Purchaser may deem advisable. The Purchaser may exercise its rights with respect to the Collateral without resorting, or regard, to other collateral or sources of reimbursement for Senior Subordinated Obligations. The Purchaser shall not be deemed to have waived any of its rights with respect to the Senior Subordinated Obligations or the Collateral unless such waiver is in writing and signed by the Purchaser. No delay or omission on the part of the Purchaser in exercising any right shall operate as a waiver of such right or any other right. A waiver on any one occasion shall not bar or waive the exercise of any right on any future occasion. All rights and remedies of the Purchaser in the Senior Subordinated Obligations or the Collateral, whether evidenced hereby or by any other instrument or papers, are cumulative and not exclusive of any remedies provided by law or any other agreement, and may be exercised separately or concurrently.

12. Successors and Assigns. This Agreement shall be binding upon the Grantor, its respective successors and permitted assigns, and shall inure to the benefit of and be enforceable by the Purchaser and its successors and assigns. Without limiting the generality of the foregoing sentence, the Purchaser may assign or otherwise transfer any agreement or any note held by it evidencing, securing or otherwise executed in connection with the Senior Subordinated Obligations, or sell participations in any interest therein, to any other person or entity as permitted by the Note Purchase Agreement.

13. General. This Agreement may not be amended or modified except by a writing signed by the Grantor and the Purchaser, nor may the Grantor assign any of its rights hereunder. This Agreement and the terms, covenants and conditions hereof shall be construed in accordance with, and governed by, the laws of the State of Michigan (without giving effect to any conflicts of law provisions contained therein). In the event that any Collateral stands in the name of the Grantor and another or others jointly, as between the Purchaser and the Grantor, the Purchaser may deal with the same for all purposes as if it belonged to or stood in the name of the Grantor alone.

14. WAIVER OF JURY TRIAL; VENUE.

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE GRANTOR AND PURCHASER HEREBY IRREVOCABLY AND EXPRESSLY WAIVE ALL RIGHT TO

A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED UPON CONTRACT, TORT, OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE NOTE PURCHASE AGREEMENT, THE SENIOR SUBORDINATED NOTE OR ANY OF THE OTHER AGREEMENTS OR OTHER DOCUMENTS ENTERED INTO IN CONNECTION THEREWITH OR THE TRANSACTIONS CONTEMPLATED THEREBY OR THE ACTIONS OF PURCHASER IN THE NEGOTIATION, ADMINISTRATION, OR ENFORCEMENT THEREOF.

THE GRANTOR FURTHER AGREES THAT ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THIS AGREEMENT, THE NOTE PURCHASE AGREEMENT, THE SENIOR SUBORDINATED NOTE OR ANY OTHER AGREEMENT OR THE TRANSACTIONS CONTEMPLATED THEREBY MAY BE BROUGHT IN ANY COURT OF THE STATE OF MICHIGAN, OR IN ANY COURT OF THE UNITED STATES OF AMERICA SITTING IN MICHIGAN, AND THE GRANTOR HEREBY SUBMITS TO AND ACCEPTS GENERALLY AND UNCONDITIONALLY THE JURISDICTION OF THOSE COURTS WITH RESPECT TO ITS PERSON AND PROPERTY, AND IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS IN CONNECTION WITH ANY SUCH ACTION OR PROCEEDING BY PERSONAL DELIVERY TO SUCH AGENT OR TO THE GRANTOR OR BY THE MAILING THEREOF BY REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID TO THE GRANTOR AT ITS ADDRESS SET FORTH IN SECTION 12.3 OF THE NOTE PURCHASE AGREEMENT, SUCH SERVICE TO BE EFFECTIVE AS THE EQUIVALENT OF PERSONAL DELIVERY UPON THE DATE OF MAILING AND SUCH SERVICE WILL CONSTITUTE PERSONAL SERVICE. NOTHING IN THIS SECTION 9 SHALL AFFECT THE RIGHT OF PURCHASER TO BRING ANY SUCH ACTION OR PROCEEDING AGAINST THE GRANTOR OR PROPERTY IN THE COURTS OF ANY OTHER JURISDICTION. THE GRANTOR HEREBY IRREVOCABLY WAIVES ANY OBJECTION TO THE LAYING OF VENUE OF ANY SUCH SUIT OR PROCEEDING IN THE ABOVE DESCRIBED COURTS.

15. Joint and Several Senior Subordinated Obligations. Each of the Grantors shall be obligated, directly or as guarantor, for all of the Senior Subordinated Obligations on a joint and several basis, notwithstanding which of them may have directly received the proceeds of the issuance of the Senior Subordinated Note. Each Grantor acknowledges and agrees that, for purposes of the Note Purchase Agreement and the Other Agreements, the Grantor constitutes a single integrated financial enterprise and that each receives a benefit from the availability of credit under the Note Purchase Agreement, and waive any defenses based upon or arising under the laws of suretyship.

[Signature Page Follows]

TRADEMARK
REEL: 003080 FRAME: 0042

ACKNOWLEDGMENT

STATE OF VERMONT
County of Chittenden, SS.

At Burlington, in said County, on this 28 day of January, 2004, personally appeared James J. Greco, Chief Executive Officer and duly authorized agent of BRUEGGER'S ENTERPRISES, INC., and he acknowledged this instrument, by him, sealed and subscribed, to be his free act and deed and the free act and deed of said corporation.

Before me,

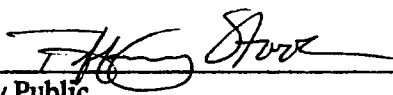


Notary Public
My Commission Expires: 2/10/07

STATE OF VERMONT
County of Chittenden, SS.

At Burlington, in said County, on this 28 day of January, 2004, personally appeared James J. Greco, Chief Executive Officer and duly authorized agent of BF HOLDING, INC., and he acknowledged this instrument, by him, sealed and subscribed, to be his free act and deed and the free act and deed of said corporation.

Before me,

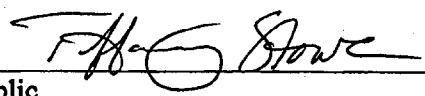


Notary Public
My Commission Expires: 2/10/07

STATE OF VERMONT
County of Chittenden, SS.

At Burlington, in said County, on this 28 day of January, 2004, personally appeared James J. Greco, Chief Executive Officer and duly authorized agent of BRUEGGER'S FRANCHISE CORPORATION, and he acknowledged this instrument, by him, sealed and subscribed, to be his free act and deed and the free act and deed of said corporation.

Before me,



Notary Public
My Commission Expires: 2/10/07

Patent, Trademark and Copyright Security Agt - Bruegger's

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

GRANTOR:

In the Presence of:

BRUEGGER'S ENTERPRISES, INC.

Witness

By: _____
James J. Greco, Chief Executive Officer

BF HOLDING, INC.

Witness

By: _____
James J. Greco, Chief Executive Officer

BRUEGGER'S FRANCHISE CORPORATION

Witness

By: _____
James J. Greco, Chief Executive Officer

PURCHASER:

In the Presence of:

**THE PENINSULA FUND III LIMITED
PARTNERSHIP**

By: Peninsula Capital Partners, L.L.C.
Its: General Partner

Marie H. Godwin
Witness

By: Scott A. Reilly
Its: President and Chief Investment Officer

ACKNOWLEDGMENT

STATE OF MICHIGAN

County of Wayne, SS.

At Detroit, in said County, on this 27th day of January, 2004, personally appeared Scott A. Reilly, President, Chief Investment Officer and duly authorized agent of Peninsula Capital Partners, L.L.C., the general partner of The Peninsula Fund III Limited Partnership, and he acknowledged this instrument, by him, sealed and subscribed, to be his free act and deed and the free act and deed of The Peninsula Fund III Limited Partnership.

Before me,

Elizabeth C. Sherry

Notary Public

My Commission Expires: 12/23/06

ELIZABETH C. SHERRY
Notary Public, Wayne County, MI
My Commission Expires December 23, 2006

Schedule A
Patents and Patent Applications

None.

Schedule C
Copyrights and Copyright Applications

None.

Schedule B
Trademarks and Trademark Applications

BRUEGGER'S ENTERPRISES, INC.

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