

04-13-1999

FORM PTO-1618A
Expires 06/30/99
OMB 0651-0027



U.S. Department of Commerce
Patent and Trademark Offices
TRADEMARK

101007708

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
Effective Date
Month Day Year
- Merger
- Change of Name
- Other

42.99

Conveying Party

Mark if additional names of conveying parties attached

Execution Date

Name

Month Day Year

Formerly

- Individual General Partnership Limited Partnership Corporation Association
- Other
- Citizenship/State of Incorporation/Organization

Receiving Party

Mark if additional names of receiving parties attached

Name

DBA/AKA/TA

Composed of

Address (line 1)

Address (line 2)

Address (line 3)

City

State/Country

Zip Code

- Individual General Partnership Limited Partnership Association
- Corporation
- Other
- Citizenship/State of Incorporation/Organization

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.)

04/07/1999 JSWDAZZ 00000286 1731410

FOR OFFICE USE ONLY

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40.00

Public burden reporting for this collection of information is estimated to average approximately 30 minutes per Cover Sheet to be recorded, including time for reviewing the document and gathering the data needed to complete the Cover Sheet. Send comments regarding this burden estimate to the U.S. Patent and Trademark Office, Chief Information Officer, Washington, D.C. 20231 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction project (0651-0027), Washington, D.C. 20503. See OMB Information Collection Budget Package 0651-0027, Patent and Trademark Assignment Practice. DO NOT SEND REQUESTS TO RECORD ASSIGNMENT DOCUMENTS TO THIS ADDRESS.

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: 1881 FRAME: 0551

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

860-275-8200

Name

Amy Span Wergeles, Esq.

Address (line 1)

Robinson & Cole LLP

Address (line 2)

280 Trumbull Street

Address (line 3)

Hartford, CT 06103-3597

Address (line 4)

Pages

Enter the total number of pages of the attached conveyance document including any attachments.

#

8

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)

1731410		

Number of Properties

Enter the total number of properties involved.

#

1

Fee Amount

Fee Amount for Properties Listed (37 CFR 3.41):

\$

40.00

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:

#

18-1685

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.

Amy Span Wergeles

Name of Person Signing

Amy Span Wergeles (act)
Signature

April 1, 1999


Date Signed

ASSIGNMENT OF TRADEMARKS

KNOW ALL MEN BY THESE PRESENTS, that as of the close of business on the 28th day of June, 1996, Foothill Capital Corporation, a California corporation ("Assignor"), for good and valuable consideration received on behalf of Fieldbrook Farms Ice Cream, Inc., a Delaware corporation ("Assignee"), does hereby sell, convey, transfer, assign and deliver to Assignee all of Assignor's right, title, and interest in and to those trademarks identified in Schedule A attached hereto (collectively, the "Marks") including its registrations, applications and international priority rights therewith, together with the goodwill of the businesses in connection with which the Marks are used and which are symbolized by the Marks, together with the rights of protection to the same throughout the world, including any rights that may result therefrom, including the right to recover for damages and profits for past infringements thereof. Except to the extent set forth in Schedule B attached hereto, such Marks to be held and enjoyed by the Assignee for its own use and for the use of its successors and assigns, to the full end of the term of the registration or other rights of protection that may be granted, as fully and as entirely as the same would have been held and enjoyed by the Assignor had the assignment not been made.

Assignor agrees to execute and deliver at the request of the Assignee, all papers, instruments, and assignments, and to perform any other reasonable acts the Assignee may require in order to vest all of Assignor's right, title, and interest in and to the Marks in the Assignee.

FOOTHILL CAPITAL CORPORATION

By: 
Name: Todd Colp, +RS
Title: Assistant Vice President

SCHEDULE A

List of Trademarks

Trademark Issued	Registration Number	Date
Dunkirk	843,309	1/30/68
Design Only	833,453	8/8/67
Aunt Janet's	1120270	6/12/79
My Favorite	1422149	12/23/86
My Favorite		4/18/86
LaSalle	1867123	12/13/94
Fun Sticks		4/2/93
Dari Farms	1806297	7/24/92
Treat's A'Plenty	1813917	12/28/93
Party Treat	1731410	11/10/92
Private Label	1621470	11/6/90
My Favorite Ice Cream & Design	1423123	12/30/86
Old Fashioned "HAND DIPPIN KIND"	1367956	10/29/85
Pudding Pals	1172495	10/6/81
Party Treat	830,274	6/13/67
Scotch-Pak	843310	1/30/68
Master Piece	842941	1/23/68
Party Parade	939960	8/1/72
Collegeset	688997	9/29/59
Dari Farms	777315	12/30/85
Scotch Pak	779558	12/30/85
Treats-A-Plenty	NA	7/12/78
Slender Pak	NA	NA
Riverside	NA	7/12/78
Master Piece	NA	NA
Dunkirk	NA	5/27/76
Design Only	NA	7/12/78
Control	NA	7/12/78
Big B	NA	7/12/78
Slender Pak	20751	5/23/82
Treats A Plenty	20750	5/23/82
Masterpiece	20747	5/23/82
Dunkirk	20748	5/23/82
Betsy Ross	R22,691	11/14/84
Dari Farms	R9,657	4/18/66
Dari Farms	NA	5/22/81
*Dari Farms	2718	5/10/72
Scotch-Pak	R-27052	5/23/62
Dari Farms	R-23622	4/18/66
Scotch-Pak	152	6/6/66
Dari Farms	154	6/6/66
Masterpiece	593	8/12/68
Slender Pak	605	8/12/68

SCHEDULE B

The use of the mark "My Favorite" has been subject to a suit brought by the Executors of the Estate of Richard Rodgers and Oscar Hammerstein, Williamson Music Company, and Chippell & Co., Inc. A Supplemental Settlement Agreement dated November 20, 1989 in connection with this suit is appended and made a part of this Schedule B.

SUPPLEMENTAL SETTLEMENT AGREEMENT

Agreement made as of the 20 day of November, 1989, between Dorothy F. Rodgers and Lawrence B. Buttanvieler, as executors of the Estate of Richard Rodgers, Dorothy B. Hammerstein, William Hammerstein and Philip Simee, as Executors of the Estate of Oscar Hammerstein II, Williamson Music Company, and Chappell & Co., Inc. (collectively "Plaintiffs"), and Dunkirk Ice Cream Co., Inc. ("Dunkirk").

RECITALS

A. Plaintiffs and Dunkirk entered into a Settlement Agreement to resolve the disputes and the litigation between them (Rodgers v. Dunkirk Ice Cream Co., 86 Civ. 3612) on June 29, 1987 (Exhibit A). That Settlement Agreement provided, inter alia, for Dunkirk's payment to Plaintiffs of \$20,000 under an agreement permitting Dunkirk to use the mark "My Favorite" (the "Trademark Agreement", Exhibit B), and Dunkirk's payment to Plaintiffs of \$15,000 to use a certain "revised 'My Favorite Ice Cream' jingle".

B. Pursuant to that Settlement Agreement, Plaintiffs and Dunkirk entered into a Stipulation of Dismissal and Consent Order, entered by the Court on June 29, 1987 (Exhibit C). Under that Consent Order, Dunkirk was "permanently enjoined from infringing, authorizing the infringement or causing the infringement of copyright in the copyrighted musical composition entitled "MY FAVORITE THINGS."

C. Subsequent to entry of the consent order, plaintiffs brought on a motion for contempt, alleging that Dunkirk had violated the consent order by its use of a commercial recording (reproduced in Exhibit D). Dunkirk denied that it had violated the consent order by such use, and contended that the Settlement Agreement had specifically authorized such use.

D. By Opinion and Order dated July 13, 1969, the District Court (Keenan, J.) determined that the Settlement Agreement should be rescinded on the ground that there had been no meeting of the minds, directed Plaintiffs to return all or some of the money received from Dunkirk under the Settlement Agreement, and directed the parties to attempt to settle the dispute anew.

E. Dunkirk warrants and represents that it has ceased, prior to January 1, 1969, any and all use of the commercial recording (reproduced as Exhibit D) of which plaintiffs complained in the contempt motion.

NOW THEREFORE, in consideration of the mutual promises and agreements contained below, the undersigned agree as follows:

1. The litigation and all pending disputes between Plaintiffs and Dunkirk, including Plaintiffs' claims that Dunkirk infringed its copyright in "MY FAVORITE THINGS" on

Multiple occasions, are received in accordance with the terms of the Settlement Agreement dated June 29, 1987 (Exhibit A), the Trademark Agreement dated June 29, 1987 (Exhibit B), and the Stipulation of Dismissal and Consent order entered by the Court on June 29, 1987 (Exhibit C), with the following changes and additions.

2. Notwithstanding anything contained in the Settlement Agreement, Dunkirk and its successors, licensees, or its assigns shall refrain from using the commercial recording reproduced in Exhibit B, or the music and/or lyrics of "MY FAVORITE THINGS" (or any music or lyrics similar thereto), whether in connection with the manufacture, sale and distribution of ice cream and other food products, or otherwise. Dunkirk recognizes that the injunction embodied in the Consent Order, under which Dunkirk is "permanently enjoined from infringing, authorizing the infringement or causing the infringement of copyright in the copyrighted musical composition entitled "MY FAVORITE THINGS", remains fully in effect, and that any future use by Dunkirk or its successors, licensees, or assigns of either the original commercial recording which was the initial subject of the litigation (reproduced in Exhibit B), or of the commercial recording which was the subject of Plaintiffs' contempt motion (reproduced in Exhibit D), would violate that injunction.

3. If, after the expiration of Dunkirk's license under the Trademark Agreement, Dunkirk exercises the option set forth in paragraph 1 of the Trademark Agreement to renew "on the same terms and conditions for another term of twenty (20) years" its exclusive right to "use and sublicense use of the mark 'My Favorite ...' in connection with the manufacture, sale and distribution of ice cream and other food products throughout the United States," the only payment due plaintiffs for the exercise of that option shall be ten dollars (\$10).

4. Plaintiffs shall retain all moneys received from Dunkirk pursuant to the Settlement Agreement and the Trademark Agreement, notwithstanding the District Court's July 12, 1989 Opinion and Order.

5. The Plaintiffs and Dunkirk shall execute and exchange releases in the form annexed in Exhibit F. These releases do not extend to and shall not prevent the parties from enforcing the representations, warranties, terms and conditions of this Agreement.

6. The Plaintiffs and Dunkirk shall cause their attorneys to execute and deliver, for filing with the United States District Court for the Southern District of New York, a stipulation of Dismissal and Consent Order in the form annexed as Exhibit G.

This Agreement sets forth the entire understanding of the parties with respect to its subject matter, and shall be governed and construed by and under the laws of the State of New York, and may not be altered or amended except in a signed written instrument.

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

DOYNER ICE CREAM CO., INC.

[Signature]
BY:

ESTATE OF RICHARD RODGERS

[Signature]
BY: Emily F. Rodgers, Trustee

ESTATE OF OSCAR
HANDLSTEIN II

[Signature]
BY:

WILLIAMSON MUSIC COMPANY

[Signature]
BY:

CHAFFELL & CO., INC.

[Signature]
BY:

EXECUTION FORM

June 28, 1996

Chemical Bank
2300 Main Place Tower
Buffalo, New York 14202

foothill Capital Corporation
1111 Santa Monica Boulevard
suite 1500
Los Angeles, California 90025-3333

The Chase Manhattan Bank, N.A.
One Chase Square
Rochester, New York 14643

Re: Dunkirk Ice Cream Co., Inc.

Ladies and Gentlemen:

The purpose of this letter is to set forth our understanding regarding the assignment to Fieldbrook Farms Ice Cream, Inc. ("Fieldbrook") of the outstanding loans made by The Chase Manhattan Bank, N.A. (or its predecessor(s)-in-interest) ("Chase") to Dunkirk Ice Cream Co., Inc. ("Dunkirk"), and the sale by Chemical Bank ("Chemical") of certain collateral to Fieldbrook, and other matters regarding the assets of Dunkirk.

Chase has made loans to Dunkirk more fully described and defined in the Loan Agreement dated June 1, 1994 as the "Amended Chase Obligations", evidenced by, among other things, that certain First Note, dated June 7, 1994, issued by Dunkirk to the order of Chase in the original principal amount of \$6,200,000, and that certain Second Note, dated June 7, 1994, issued by Dunkirk to the order of Chase in the original principal amount of \$113,564.57. In connection therewith, (i) Dunkirk granted to Chase a security interest in certain Collateral, as defined in the Security Agreement dated June 1, 1994 consisting generally of Dunkirk's machinery and equipment, accounts, inventory and intangibles, and (ii) County of Chautauqua Industrial Development Agency ("IDA") granted to Chase a security interest in certain Collateral, as defined in the Supplemental Security Agreement dated June 1, 1994, consisting generally of Dunkirk's machinery and equipment.

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Furthermore, William C. Wells executed a Guaranty Agreement, dated as of June 1, 1994, in favor of Chase, whereby he personally guaranteed the Amended Chase Obligations, among other things. As of June 28, 1996, the aggregate outstanding principal balance on the Amended Chase Obligations, together with accrued interest and fees thereon was \$6,583,764.41.

Dunkirk is also obligated to Chase pursuant to certain Unamended Chase Obligations, as defined in the Loan Agreement, which include certain obligations under a 1982 Industrial Development Revenue Bond, a 1985 Industrial Development Revenue Bond and a 1990 Equipment Lease. As of June 28, 1996, the aggregate outstanding principal balance on the Unamended Chase Obligations, together with accrued interest and fees thereon was \$5,334,635.41.

Chemical has made one or more loans to Dunkirk evidenced by that certain Replacement Note, dated May 23, 1994, issued by Dunkirk to the order of Chemical in the original principal amount of \$2,700,000. In connection therewith, Dunkirk granted to Chemical a security interest in certain Collateral, as defined in the Amended and Restated Agreement dated as of May 20, 1994 consisting generally of Dunkirk's personal property, including without limitation, machinery and equipment, accounts, inventory and intangibles. In addition, William C. Wells has executed a Guaranty, dated May 23, 1994, in favor of Chemical, whereby he has personally guaranteed a portion of the Chemical indebtedness. As of June 27, 1996, the aggregate outstanding principal balance on the Chemical indebtedness, together with accrued interest thereon was \$2,085,466.01.

Foothill Capital Corporation ("Foothill") also made loans to Dunkirk evidenced by, among other things, Loan and Security Agreement dated as of May 18, 1994. In connection therewith, Dunkirk granted to Foothill a security interest in certain Collateral, as defined in the Loan and Security Agreement consisting generally of Dunkirk's personal property, including without limitation, machinery and equipment, accounts, inventory and intangibles. In addition, William C. Wells has executed a Continuing Guaranty dated as of May 18, 1994, and a Validity Guaranty dated as of May 18, 1994, in favor of Foothill, whereby he has personally guaranteed a portion of the Foothill indebtedness. As of June 27, 1996, the aggregate outstanding principal balance on the Foothill indebtedness, together with accrued interest thereon was \$2,845,591.33, exclusive of an outstanding letter of credit in the amount of \$60,000.00.

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Foothill Capital Corporation
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Chase, Chemical and Foothill entered into an Intercreditor Agreement dated as of May 18, 1994, which, among other things, set forth the intended relative priorities of each with respect to particular categories of collateral. Pursuant thereto, (i) Chase has a first priority security interest in Equipment Collateral and Real Property and a third priority security interest in Non-Equipment Collateral, (ii) Foothill has a first priority security interest in Non-Equipment Collateral and a third priority on Equipment Collateral, and (iii) Chemical has a second priority interest in Collateral, as all such terms are defined in the Intercreditor Agreement.

Dunkirk has violated certain provisions of its agreements with Chase, Chemical and Foothill, and is in default under such agreements.

Chase has agreed to assign the Amended Chase Obligations and the Unamended Chase Obligations, as well as all related instruments, documents and collateral as security therefor (excluding the rights released as described below), to Fieldbrook upon the terms described in the Assignment of Agreements and Consent to Assignment by and between Fieldbrook and Chase. In consideration of such assignment, Fieldbrook will pay \$6,650,000 in cash and execute an unsecured subordinated note to Chase in the amount of \$1,000,000. Chase will terminate the Guaranty Agreement executed by William C. Wells and release all liens and encumbrances on or pertaining to the warehouse located on South Roberts Road, Dunkirk, New York owned by Edgewood Investments, Inc.

After the assignment from Chase, Fieldstone Farms Realty, Inc. ("Realty"), an affiliate of Fieldbrook, will accept a deed in lieu of foreclosure from Dunkirk in satisfaction of \$3,550,000 of the Amended Chase Obligations, with the balance of the Amended Chase Obligations remaining outstanding. Fieldbrook will take possession of all tangible collateral (other than inventory) and retain it pursuant to New York Uniform Commercial Code Section 9-505 in satisfaction of the remaining obligations from Dunkirk to Chase. Thereafter, Fieldbrook will cancel the mortgages, and Realty subsequently will be merged into Fieldbrook.

Fieldbrook will then purchase the accounts, inventory and intangible collateral of Chemical pursuant to a private sale in accordance with New York Uniform Commercial Code Section 9-504. Chemical will then terminate the Individual Guarantee executed by William C. Wells. Upon completion of the private sale, Fieldbrook

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will enter into a financing with Foothill, which will be secured by security interests and mortgages on all of the assets of Fieldbrook. Foothill, Chemical and Chase acknowledge the commercial reasonableness of the Section 9-505 retention and waive notice and objection. Foothill and Chase acknowledge the commercial reasonableness of the Section 9-504 sale and waive notice and objection. Fieldbrook acknowledges the commercial reasonableness of the private sale by Chemical.

As you know, all of these transactions will be subject to approval of final documentation, which will constitute the entire agreement of each party. This letter and acknowledgements hereto shall be governed by and construed in accordance with the laws of the State of New York.

If the foregoing accurately describes your understanding, please indicate your acceptance of the terms contained herein by signing this letter or a counterpart hereof below and returning the original to me.

FIELDBROOK FARMS ICE CREAM, INC.
BY [Signature]
Name: DAVID S. LUTW
Title: EXECUTIVE VICE PRESIDENT

cc: Mr. William C. Wells, Dunkirk Ice Cream Co., Inc.

ACKNOWLEDGED AND AGREED:

CHEMICAL BANK

BY [Signature]
Name: Dennis J. Dombek
Title: Vice President

FOOTHILL CAPITAL CORPORATION

BY [Signature]
Name: Kevin B...
Title: Authorized Signatory

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Foothill Capital Corporation
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THE CHASE MANHATTAN BANK, N.A.

By James L. Bailey
Name: JAMES L. BAILEY
Title: VICE PRESIDENT

ACKNOWLEDGEMENT

The undersigned, Dunkirk Ice Cream Co., Inc. hereby (i) acknowledges that it has received a copy of the foregoing letter and consents thereto, (ii) acknowledges that the transactions contemplated by the letter are commercially reasonable dispositions, (iii) hereby, irrevocably and unconditionally, waives its right to notice and objection of the dispositions pursuant to Sections 9-504 and 9-505 of the New York Uniform Commercial Code, and (iv) will not do any act or perform any obligation which is not in accordance with the agreements set forth in such letter.

DUNKIRK ICE CREAM CO., INC.

By William C. Wells
Name: WILLIAM C. WELLS
Title: PRESIDENT

ACKNOWLEDGEMENT

The undersigned, William C. Wells, hereby (i) acknowledges that he has received a copy of the foregoing letter and consents thereto, (ii) acknowledges that the transactions contemplated by the letter are commercially reasonable dispositions, (iii) hereby, irrevocably and unconditionally, waives his right to notice and objection of the dispositions pursuant to Sections 9-504 and 9-505 of the New York Uniform Commercial Code, and (iv) will not do any act or perform any obligation which is not in accordance with the agreements set forth in such letter.

William C. Wells
William C. Wells

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INTELLECTUAL PROPERTY SECURITY AGREEMENT

This INTELLECTUAL PROPERTY SECURITY AGREEMENT ("Agreement"), dated June 28, 1996, is entered into between **FIELDBROOK FARMS ICE CREAM, INC.**, a Delaware corporation ("Debtor") and **FOOTHILL CAPITAL CORPORATION**, a California corporation ("Lender"), in light of the following:

A. Debtor and Lender are, contemporaneously herewith, entering into that certain Loan and Security Agreement ("Loan Agreement") and other instruments, documents and agreement contemplated thereby or related thereto (collectively, together with the Loan Agreement the "Loan Documents"); and

B. Debtor is the owner of certain intellectual property, identified below, in which Debtor is granting a security interest to Lender.

NOW THEREFORE, in consideration of the mutual promises, covenants, conditions, representations, and warranties hereinafter set forth and for other good and valuable consideration, the parties hereto mutually agree as follows:

1. DEFINITIONS AND CONSTRUCTION.

1.1 **Definitions.** The following terms, as used in this Agreement, have the following meanings:

"Code" means the New York Uniform Commercial Code, as amended and supplemented from time to time, and any successor statute.

"Collateral" means:

(i) Each of the trademarks and rights and interests which are capable of being protected as trademarks (including trademarks, service marks, designs, logos, indicia, tradenames, corporate names, company names, business names, fictitious business names, trade styles, and other source or business identifiers, and applications pertaining thereto), which are presently, or in the future may be, owned, created, acquired, or used (whether pursuant to a license or otherwise) by Debtor, in whole or in part, and all trademark rights with respect thereto throughout the world, including all proceeds thereof (including license royalties and proceeds of infringement suits), and rights to renew and extend such trademark rights;

(ii) All of Debtor's right to the trademarks and trademark registrations listed on Schedule A, attached hereto, as the same may be updated hereafter from time to time;

(iii) All of Debtor's right, title and interest to register trademark claims under any state or federal trademark law or regulation of any foreign country and to apply for, renew, and extend the trademark registrations and trademark rights, the right (without obligation) to sue or bring opposition or cancellation proceedings in the name of Debtor or in the name of Lender for past, present, and future infringements of the trademarks, registrations, or trademark rights and all rights (but not obligations) corresponding thereto in the United States and any foreign country, and the associated goodwill;

(iv) All general intangibles relating to the foregoing; and

(v) All proceeds of any and all of the foregoing (including, without limitation, license royalties and proceeds of infringement suits) and, to the extent not otherwise included, all payments under insurance, or any indemnity, warranty, or guaranty payable by reason of loss or damage to or otherwise with respect to the Collateral.

"Obligations" means all obligations, liabilities, and indebtedness of Debtor to Lender, whether direct, indirect, liquidated, or contingent, and whether arising under this Agreement, the Loan Agreement, any other of the Loan Documents, or otherwise, including all costs and expenses described in Section 11.8 hereof.

1.2 Construction. Unless the context of this Agreement clearly requires otherwise, references to the plural include the singular, references to the singular include the plural, and the term "including" is not limiting. The words "hereof," "herein," "hereby," "hereunder," and other similar terms refer to this Agreement as a whole and not to any particular provision of this Agreement. Any initially capitalized terms used but not defined herein shall have the meaning set forth in the Loan Agreement. Any reference herein to any of the Loan Documents includes any and all alterations, amendments, extensions, modifications, renewals, or supplements thereto or thereof, as applicable. Neither this Agreement nor any uncertainty or ambiguity herein shall be construed or resolved against Lender or Debtor, whether under any rule of construction or otherwise. On the contrary, this Agreement has been reviewed by Debtor, Lender, and their respective counsel, and shall be construed and interpreted according to the ordinary meaning of the words used so as to fairly accomplish the purposes and intentions of Lender and Debtor.

2. GRANT OF SECURITY INTEREST.

Debtor hereby grants to Lender a first-priority security interest in all of Debtor's right, title, and interest in and to the Collateral to secure the Obligations.

3. REPRESENTATIONS, WARRANTIES AND COVENANTS.

Debtor hereby represents, warrants, and covenants that:

3.1 Trademarks. A true and complete schedule setting forth all federal and state trademark registrations and unregistered trademarks owned or controlled by Debtor or licensed to Debtor, or in which Debtor has an interest together with a summary description and full information in respect of the filing or issuance thereof and expiration dates is set forth on Schedule A;

3.2 Validity; Enforceability. To the best of Debtor's knowledge, each of the trademarks is valid and enforceable, and, except as set forth on Schedule B, Debtor is not presently aware of any past, present, or prospective claim by any third party that any of the patents or trademarks are invalid or unenforceable, or that the use of any patents or trademarks violates the rights of any third person, or of any basis for any such claims;

3.3 Title. To the best of Debtor's knowledge, except to the extent set forth on Schedule B, Debtor is the sole and exclusive user of the entire and unencumbered right, title, and interest in and to each of the trademarks, and trademark registrations, free and clear of any liens, charges, and encumbrances (other than Lender's existing security interests), including pledges, assignments, licenses, shop rights, and covenants by Debtor not to sue third persons;

3.4 Notice. Debtor has used and will continue to use proper statutory notice in connection with its use of each of the patents and trademarks;

3.5 **Quality.** Debtor has used and will continue to use consistent standards of high quality (which may be consistent with Debtor's past practices) in the manufacture, sale, and delivery of products and services sold or delivered under or in connection with the trademarks, including, to the extent applicable, in the operation and maintenance of its merchandising operations, and will continue to maintain the validity of the trademarks;

3.6 **Perfection of Security Interest.** Except for the filing of a financing statement with the Secretary of State of New York and filings with the United States Patent and Trademark Office necessary to perfect Lender's security interests, no authorization, approval, or other action by, and no notice to or filing with, any governmental authority or regulatory is required either for the grant by Debtor of the security interest hereunder or for the execution, delivery, or performance of this Agreement by Debtor or for the perfection of or the exercise by Lender of its rights hereunder to the Collateral in the United States.

4. **AFTER-ACQUIRED TRADEMARK RIGHTS.**

If Debtor shall obtain rights to any new trademarks the provisions of this Agreement shall automatically apply thereto. Debtor shall give prompt notice in writing to Lender with respect to any such new trademarks or renewal or extension of any trademark registration. Debtor shall bear any expenses incurred in connection with future trademark registrations.

5. **LITIGATION AND PROCEEDINGS.**

Debtor shall commence and diligently prosecute in its own name, as the real party in interest, for its own benefit, and its own expense, such suits, administrative proceedings, or other action for infringement or other damages as are in its reasonable business judgment necessary to protect the Collateral. Debtor shall provide to Lender any information with respect thereto requested by Lender. Lender shall provide at Debtor's expense all necessary cooperation in connection with any such suits, proceedings, or action, including, without limitation, joining as a necessary party. Following Debtor's becoming aware thereof, Debtor shall notify Lender of the institution of, or any adverse determination in, any proceeding in the United States Patent and Trademark Office, or any United States, state, or foreign court regarding Debtor's claim of ownership in any of the trademarks, its right to apply for the same, or its right to keep and maintain such trademark rights.

6. **POWER OF ATTORNEY.**

Debtor grants Lender power of attorney, having the full authority, and in the place of Debtor and in the name of Debtor, from time to time following an Event of Default in Lender's discretion, to take any action and to execute any instrument which Lender may deem necessary or advisable to accomplish the purposes of this Agreement, including, without limitation, as may be subject to the provisions of this Agreement: to endorse Debtor's name on all applications, documents, papers, and instruments necessary for Lender to use or maintain the Collateral; to ask, demand, collect, sue for, recover, impound, receive, and give acquittance and receipts for money due or to become due under or in respect of any of the Collateral; to file any claims or take any action or institute any proceedings that Lender may deem necessary or desirable for the collection of any of the Collateral or otherwise to enforce Lender's rights with respect to any of the Collateral and to assign, pledge, convey, or otherwise transfer title in or dispose of the Collateral to any person.

7. RIGHT TO INSPECT.

Debtor grants to Lender and its employees and agents the right to visit Debtor's plants and facilities which manufacture, inspect, or store products sold under any of the patents or trademarks and to inspect the products and quality control records relating thereto at reasonable times during regular business hours.

8. EVENTS OF DEFAULT.

Any of the following events shall be an Event of Default:

8.1 Loan Agreement. An Event of Default shall occur as defined in the Loan Agreement;

8.2 Misrepresentation. Any representation or warranty made herein by Debtor or in any document furnished to Lender by Debtor under this Agreement is incorrect in any material respect when made or when reaffirmed; and

8.3 Breach. Debtor fails to observe or perform any covenant, condition, or agreement to be observed or performed pursuant to the terms hereof which materially and adversely affects Lender.

9. SPECIFIC REMEDIES.

Upon the occurrence of any Event of Default, Lender shall have, in addition to other rights given by law or in this Agreement, the Loan Agreement, or in any other Loan Document, all of the rights and remedies with respect to the Collateral of a secured party under the Code.

9.1 Notification. Lender may notify licensees to make royalty payments on license agreements directly to Lender;

9.2 Sale. Lender may sell or assign the Collateral and associated goodwill at public or private sale for such amounts, and at such time or times as Lender deems advisable. Any requirement of reasonable notice of any disposition of the Collateral shall be satisfied if such notice is sent to Debtor five (5) days prior to such disposition. Debtor shall be credited with the net proceeds of such sale only when they are actually received by Lender, and Debtor shall continue to be liable for any deficiency remaining after the Collateral is sold or collected. If the sale is to be a public sale, Lender shall also give notice of the time and place by publishing a notice one time at least five (5) days before the date of the sale in a newspaper of general circulation in the county in which the sale is to be held. To the maximum extent permitted by applicable law, Lender may be the purchaser of any or all of the Collateral and associated goodwill at any public sale and shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any public sale, to use and apply all or any part of the Obligations as a credit on account of the purchase price of any collateral payable by Lender at such sale.

10. CHOICE OF LAW AND VENUE; JURY TRIAL WAIVER.

THE VALIDITY OF THIS AGREEMENT, ITS CONSTRUCTION, INTERPRETATION, AND ENFORCEMENT, AND THE RIGHTS OF THE PARTIES HERETO WITH RESPECT TO ALL MATTERS ARISING HEREUNDER OR RELATED HERETO SHALL BE DETERMINED UNDER, GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT

GIVING EFFECT TO ITS CONFLICT OF LAWS PRINCIPLES. THE PARTIES AGREE THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS AGREEMENT SHALL BE TRIED AND LITIGATED ONLY IN THE STATE AND FEDERAL COURTS LOCATED IN THE COUNTY OF NEW YORK, STATE OF NEW YORK, OR, AT THE SOLE OPTION OF LENDER, IN ANY OTHER COURT IN WHICH LENDER SHALL INITIATE LEGAL OR EQUITABLE PROCEEDINGS AND WHICH HAS SUBJECT MATTER JURISDICTION OVER THE MATTER IN CONTROVERSY. EACH OF DEBTOR AND LENDER WAIVES, TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, ANY RIGHT EACH MAY HAVE TO ASSERT THE DOCTRINE OF FORUM NON CONVENIENS OR TO OBJECT TO VENUE TO THE EXTENT ANY PROCEEDING IS BROUGHT IN ACCORDANCE WITH THIS SECTION 10. DEBTOR AND LENDER HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF ANY OF THE LOAN DOCUMENTS OR ANY OF THE TRANSACTIONS CONTEMPLATED THEREIN, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW OR STATUTORY CLAIMS. DEBTOR AND LENDER REPRESENT THAT EACH HAS REVIEWED THIS WAIVER AND EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. IN THE EVENT OF LITIGATION, A COPY OF THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

11. GENERAL PROVISIONS.

11.1 **Effectiveness.** This Agreement shall be binding and deemed effective when executed by Debtor and Lender.

11.2 **Successors and Assigns.** This Agreement shall bind and inure to the benefit of the respective successors and assigns of each of the parties; ~~provided, however,~~ that Debtor may not assign this Agreement or any rights or duties hereunder without Lender's prior written consent and any prohibited assignment shall be absolutely void. Lender may assign this Agreement and its rights and duties hereunder and no consent or approval by Debtor is required with any such assignment.

11.3 **Section Headings.** Headings and numbers have been set forth herein for convenience only. Unless the contrary is compelled by the context, everything contained in each section applies equally to this entire Agreement.

11.4 **Interpretation.** Neither this Agreement nor any uncertainty or ambiguity herein shall be construed or resolved against Lender or Debtor, whether under any rule of construction or otherwise. On the contrary, this Agreement has been reviewed by all parties and shall be construed and interpreted according to the ordinary meaning of the words used so as to fairly accomplish the purposes and intentions of all parties hereto.

11.5 **Severability of Provisions.** Each provision of this Agreement shall be severable from every other provision of this Agreement for the purpose of determining the legal enforceability of any specific provision.

11.6 **Amendments in Writing.** This Agreement can only be amended by a writing signed by both Lender and Debtor.

11.7 Counterparts; Telefacsimile Execution. This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, when taken together, shall constitute but one and the same Agreement. Delivery of an executed counterpart of this Agreement by telefacsimile shall be equally as effective as delivery of a manually executed counterpart of this Agreement. Any party delivering an executed counterpart of this Agreement by telefacsimile also shall deliver a manually executed counterpart of this Agreement but the failure to deliver a manually executed counterpart shall not affect the validity, enforceability, and binding effect of this Agreement.

11.8 Fees and Expenses. Debtor shall pay to Lender on demand all costs and expenses that the Lender pays or incurs in connection with the negotiation, preparation, consummation, administration, enforcement, and termination of this Agreement, including: (a) reasonable attorneys' and paralegals' fees and disbursements of counsel to Lender, (b) costs and expenses (including reasonable attorneys' and paralegals' fees and disbursements) for any amendment, supplement, waiver, consent, or subsequent closing in connection with this Agreement and the transactions contemplated hereby, (c) costs and expenses of lien and title searches; (d) taxes, fees, and other charges for filing this Agreement at the United States Patent and Trademark Office, or for filing financing statements, and continuations, and other actions to perfect, protect, and continue the security interest created hereunder, (e) sums paid or incurred to pay any amount or take any action required of Debtor under this Agreement that Debtor fails to pay or take; (f) costs and expenses of preserving and protecting the Collateral; and (g) costs and expenses (including reasonable attorneys' and paralegals' fees and disbursements) paid or incurred to enforce the security interest created hereunder, sell or otherwise realize upon the Collateral, and otherwise enforce the provisions of this Agreement, or to defend any claims made or threatened against the Lender arising out of the transactions contemplated hereby (including preparations for the consultations concerning any such matters). The foregoing shall not be construed to limit any other provisions of this Agreement or the Loan Documents regarding costs and expenses to be paid by Debtor. The parties agree that reasonable attorneys' and paralegals' fees and costs incurred in enforcing any judgment are recoverable as a separate item in addition to fees and costs incurred in obtaining the judgment and that the recovery of such attorneys' and paralegals' fees and costs is intended to survive any judgment, and is not to be deemed merged into any judgment.

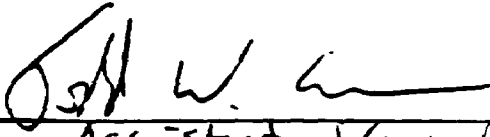
11.9 Notices. Except as otherwise provided herein, all notices, demands, and requests that either party is required or elects to give to the other shall be in writing and shall be governed by the provisions of Section 12 of the Loan Agreement.

11.10 Termination By Lender. After termination of the Loan Agreement and when Lender has received payment and performance, in full, of all Obligations, Lender shall execute and deliver to Debtor a termination of all of the security interests granted by Debtor hereunder.

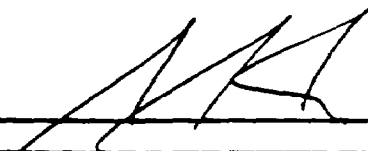
11.11 Integration. This Agreement, together with the other Loan Documents, reflect the entire understanding of the parties with respect to the transactions contemplated hereby and shall not be contradicted or qualified by any other agreement, oral or written, before the date hereof.

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

FOOTHILL CAPITAL CORPORATION,
a California corporation

By: 
Title: Assistant Vice President

FIELDBROOK FARMS ICE CREAM,
INC.,
a Delaware corporation

By: 
Title: James J. Greco,
President and Chief Executive Officer

- List of Trademarks

Trademark Issued	Registration Number	Date
Dunkirk	843,309	
Design Only	833,453	1/30/68
Aunt Janet's	1120270	8/8/67
My Favorite	1422149	6/12/79
My Favorite		12/23/86
LaSalle		4/18/86
Fun Sticks	1867123	12/13/94
Dari Farms		4/2/93
Treat's A'Plenty	1806297	7/24/92
Party Treat	1813917	12/28/93
Private Label	1731410	11/10/92
My Favorite Ice	1621470	11/6/90
Cream & Design		
Old Fashioned "HAND DIPPIN KIND"	1423123	12/30/86
Pudding Pals	1367986	10/29/89
Party Treat	1172498	10/6/81
scotch-Pak	830,274	6/13/67
Master Piece	843310	1/30/68
Party Parade	842941	1/23/68
Collegaset	939960	8/1/72
Dari Farms	688997	9/29/59
scotch Pak	777318	12/30/85
Treats-A-Plenty	779888	12/30/85
Slender Pak	NA	7/12/78
Riverside	NA	NA
Master Piece	NA	7/12/78
Dunkirk	NA	NA
Design Only	NA	5/27/76
Control	NA	7/12/78
Big B	NA	7/12/78
Slender Pak	NA	7/12/78
Treats A Plenty	20751	5/23/82
Masterpiece	20750	5/23/82
Dunkirk	20747	5/23/82
	20748	5/23/82
Betsy Ross	222,691	11/14/84
Dari Farms	29,687	4/18/66
Dari Farms	NA	5/22/81
Dari Farms	2718	5/10/72
Scotch-Pak	R-27052	5/23/62
Dari Farms	R-23622	4/18/66
Scotch-Pak	192	6/6/66
Dari Farms	194	6/6/66
Masterpiece	593	8/12/68
Slender Pak	608	8/12/68

SCHEDULE B

Borrower is aware of the attached, which was appended to the Trademark Security Agreement dated as of May 18, 1994 by and between Foothill and Dunkirk Ice Cream Co., Inc.

Furthermore, the "My Favorite" marks referenced on the attached are being licensed to an independent marketing company wholly independent of Borrower.

The use of the mark "My Favorite" has been subject to a suit brought by the
Executors of the Estate of Richard Rodgers and Oscar Hammerstein, Williamson Music
Company, and Chippell & Co., Inc. Pursuant to a Supplemental Settlement Agreement
dated November 20, 1989 (and appended hereto) Dunkirk Ice Cream retains the right to
use the mark.

Agreement made as of the ^{20th} day of ^{November} September, 1967, between Dorothy F. Rodgers and Lawrence S. Buttanviesser, as Executors of the Estate of Richard Rodgers, Dorothy S. Hammerstein, William Hammerstein and Philip Zimet, as Executors of the Estate of Oscar Hammerstein II, Williamson Music Company, and Chappell & Co., Inc. (collectively "Plaintiffs"), and Dunkirk Ice Cream Co., Inc. ("Dunkirk").

EXCERPTS

A. Plaintiffs and Dunkirk entered into a Settlement Agreement to resolve the disputes and the litigation between them (Rodgers v. Dunkirk Ice Cream Co., 86 Civ. 5612) on June 29, 1967 (Exhibit A). That Settlement Agreement provided, *inter alia*, for Dunkirk's payment to Plaintiffs of \$20,000 under an agreement permitting Dunkirk to use the mark "My Favorite" (the "Trademark Agreement", Exhibit B), and Dunkirk's payment to Plaintiffs of \$15,000 to use a certain "revised 'My Favorite Ice Cream' jingle".

B. Pursuant to that Settlement Agreement, Plaintiffs and Dunkirk entered into a Stipulation of Dismissal and Consent Order, entered by the Court on June 29, 1967 (Exhibit C). Under that Consent Order, Dunkirk was "permanently enjoined from infringing, authorizing the infringement or causing the infringement of copyright in the copyrighted musical composition entitled 'MY FAVORITE THINGS.'"

subscribers to every of the consent order,
plaintiffs brought on a motion for contempt, alleging that
Dunkirk had violated the consent order by its use of a
commercial recording (reproduced in Exhibit D). Dunkirk
denied that it had violated the consent order by such use,
and contended that the Settlement Agreement had specifically
authorized such use.

D. By Opinion and Order dated July 13, 1989, the
District Court (Keehan, J.) determined that the Settlement
Agreement should be rescinded on the ground that there had
been no meeting of the minds, directed Plaintiffs to return
all or some of the money received from Dunkirk under the
Settlement Agreement, and directed the parties to attempt to
settle the dispute anew.

E. Dunkirk warrants and represents that it has
ceased, prior to January 1, 1989, any and all use of the
commercial recording (reproduced as Exhibit D) of which
Plaintiffs complained in the contempt motion.

NOW THEREFORE, in consideration of the mutual
promises and agreements contained below, the undersigned
agree as follows:

1. The litigation and all pending disputes between
Plaintiffs and Dunkirk, including Plaintiffs' claim that
Dunkirk infringed its copyright in "MY FAVORITE THINGS" on

multiple or signs, are resolved in accordance with the terms of the Settlement Agreement dated June 29, 1987 (Exhibit A), the Trademark Agreement dated June 29, 1987 (Exhibit B), and the Stipulation of Dismissal and Consent order entered by the Court on June 29, 1987 (Exhibit C), with the following changes and additions.

2. Notwithstanding anything contained in the Settlement Agreement, Dunkirk and its successors, licensees, or its assigns shall refrain from using the commercial recording reproduced in Exhibit B, or the music and/or lyrics of "MY FAVORITE THINGS" (or any music or lyrics similar thereto), whether in connection with the manufacture, sale and distribution of ice cream and other food products, or otherwise. Dunkirk recognizes that the injunction embodied in the Consent Order, under which Dunkirk is "permanently enjoined from infringing, authorizing the infringement or causing the infringement of copyright in the copyrighted musical composition entitled "MY FAVORITE THINGS", remains fully in effect, and that any future use by Dunkirk or its successors, licensees, or assigns of either the original commercial recording which was the initial subject of the litigation (reproduced in Exhibit B), or of the commercial recording which was the subject of plaintiffs' contempt action (reproduced in Exhibit D), would violate that injunction.

3. If, after the expiration of Dunkirk's license under the Trademark Agreement, Dunkirk exercises the option set forth in paragraph 1 of the Trademark Agreement to renew "on the same terms and conditions for another term of twenty (20) years" its exclusive right to "use and sublicense use of the mark 'My Favorite ...' in connection with the manufacture, sale and distribution of ice cream and other food products throughout the United States," the only payment due Plaintiffs for the exercise of that option shall be ten dollars (\$10).

4. Plaintiffs shall retain all moneys received from Dunkirk pursuant to the Settlement Agreement and the Trademark Agreement, notwithstanding the District Court's July 12, 1969 Opinion and Order.

5. The Plaintiffs and Dunkirk shall execute and exchange releases in the form annexed in Exhibit F. These releases do not extend to and shall not prevent the parties from enforcing the representations, warranties, terms and conditions of this Agreement.

6. The Plaintiffs and Dunkirk shall cause their attorneys to execute and deliver, for filing with the United States District Court for the Southern District of New York, a stipulation of Dismissal and Consent Order in the form annexed as Exhibit G.

This Agreement sets forth the entire understanding of the parties with respect to its subject matter, and shall be governed and construed by and under the laws of the State of New York, and may not be altered or amended except in a signed written instrument.

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

DUNNICE ICE CREAM CO., INC.

[Signature]
By:

ESTATE OF RICHARD RODGERS

[Signature]
By: George P. Rodgers, Trustee

ESTATE OF OSCAR
HANSCHKE II

[Signature]
By:

WILLSONG MUSIC COMPANY

[Signature]
By:

CHAFFEL & CO., INC.

[Signature]
By:

Office of the Secretary of State

I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF AMENDMENT OF "FIELDBROOK FARMS ICE CREAM, INC.", CHANGING ITS NAME FROM "FIELDBROOK FARMS ICE CREAM, INC." TO "FIELDBROOK FARMS, INC.", FILED IN THIS OFFICE ON THE TWENTY-SECOND DAY OF APRIL, A.D. 1998, AT 4 O'CLOCK P.M.



A handwritten signature in cursive script, reading "Edward J. Freel".

Edward J. Freel, Secretary of State

AUTHENTICATION:

DATE: 9041347

04-23-98

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981154099

TRADEMARK
REEL: 1881 FRAME: 0581

CERTIFICATE OF AMENDMENT
TO THE
CERTIFICATE OF INCORPORATION
OF
FIELDBROOK FARMS ICE CREAM, INC.

Fieldbrook Farms Ice Cream, Inc. (the "Corporation"), a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware,

DOES HEREBY CERTIFY:

FIRST: That the Board of Directors of said Corporation, adopted the following resolution proposing and declaring advisable the following amendment to the Certificate of Incorporation of said Corporation.

RESOLVED: That the Certificate of Incorporation of the Corporation be amended by changing the First Article thereof so that, as amended, said Article shall be and read as follows:

"The name of the corporation is Fieldbrook Farms, Inc."

SECOND: That in lieu of a meeting and vote of the sole shareholder, the sole shareholder has given written consent to said amendment in accordance with the provisions of Section 228 of the General Corporation Law of the State of Delaware.

THIRD: That the aforesaid amendment was duly adopted in accordance with the applicable provisions of Sections 228 and 242 of the General Corporation Law of the State of Delaware.

IN WITNESS WHEREOF, Fieldbrook Farms Ice Cream, Inc. has caused this Certificate to be signed by Lawrence P. Coassin, its Secretary, this 22nd of April, 1998.

FIELDBROOK FARMS ICE CREAM, INC.

BY: 

Name: Lawrence P. Coassin
Title: Secretary

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RECORDED: 04/02/1999

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