

04-30-2003



102434699

To the Honorable Commissioner of Patents and Trademarks

original documents or copy thereof.

1. Name of conveying party(ies): 4.78.03 DOG N SUDS RESTAURANTS, INC.

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

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

3. Nature of conveyance: Assignment Merger Security Agreement Change of Name Other Assignment by Default Judgment

Execution Date: 02/11/2003

2. Name and address of receiving party(ies) Name: TK&C's, LLC

Internal Address: 825 Woodmere Drive

Street Address: 825 Woodmere Drive

City: Lafayette State: IN Zip: 47905

- Individual(s) citizenship Association General Partnership Limited Partnership Corporation-State Other Limited Liability Company-Ind.

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) N/A

B. Trademark Registration No.(s) 628,369; 632,429; 632,430; and 2,097,102

Additional number(s) attached Yes No

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

Name: Roberts E. Inveiss

Internal Address: Henderson, Daily, Withrow & DeVoe

Street Address: One Indiana Square

Suite 2600

City: Indianapolis State: IN Zip: 46204

6. Total number of applications and registrations involved: 4

7. Total fee (37 CFR 3.41) \$115.00

- Enclosed Authorized to be charged to deposit account

8. Deposit account number: N/A

DO NOT USE THIS SPACE

9. Signature. Roberts E. Inveiss Name of Person Signing

Signature

Date 4-22-03

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Total number of pages including cover sheet, attachments, and document: 29

OFFICE OF PUBLIC RECORDS 2003 APR 28 AM 2:57 FINANCE SECTION

04/29/2003 DBYRNE

01 FC:8521 02 FC:8522

40.00 OP 75.00 OP

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

**NOTICE OF ACQUISITION OF RIGHTS TO  
REGISTERED TRADEMARKS**

The undersigned, being the sole member of TK&C's, LLC ("TK&C's"), an Indiana limited liability company with its principal office located at 825 Woodmere Drive, Lafayette, Indiana 47905, hereby provides notice to the Commissioner of Patents and Trademarks of TK&C's acquisition of rights to the following trademarks, together with the goodwill symbolized thereby, which trademarks are shown in the records of the U.S. Patent & Trademark Office as being owned by Dog N Suds Restaurants, Inc. ("Dog n Suds"):

<u>Mark</u>	<u>Registration Date</u>	<u>Registration Number</u>
DOG N SUDS	June 5, 1956	628,369
DOG N SUDS (stylized letters)	August 7, 1956	632,429
DOG N SUDS (and Design)	August 7, 1956	632,430
DOG N SUDS (and Design)	September 16, 1997	2,097,102

TK&C's, as successor to First Community Bank & Trust ("First Community"), acquired the rights to the foregoing trademarks, the registrations and the goodwill symbolized thereby pursuant to a certain Default Judgment dated February 11, 2003, which is attached hereto as Exhibit A. TK&C's acquired the rights of First Community pursuant to that certain Assignment dated December 30, 2002, which is attached hereto as Exhibit B. First Community had acquired a security interest in the assets of Dog n Suds pursuant to the Security Agreement and Collateral Assignment attached hereto as Exhibits C and D, respectively.

IN WITNESS WHEREOF, the undersigned has duly executed this Notice on this 17 day of April, 2003.

TK&C's, LLC

By: Carol A. Van Dame  
Carol A. Van Dame, Member

EXHIBIT A

STATE OF INDIANA )  
) SS:  
COUNTY OF JOHNSON )

IN THE JOHNSON SUPERIOR COURT I  
TO THE 2002 TERM

**FILED**

FEB 11 2003

*[Signature]*  
CLERK, JOHNSON SUPERIOR CT #1

TK & C's, LLC, )  
(successor in interest to )  
FIRST COMMUNITY BANK )  
& TRUST) )  
Plaintiff, )

v. )

CAUSE NO. 41D01-0210-PL-39

DOG N SUDS RESTAURANTS )  
INC. and DONALD VAN DAME, )  
Defendants. )

DEFAULT JUDGMENT

This cause having come before the Court on the Verified Application for Default Judgment of the Plaintiff for a default judgment against the Defendant Dog N Suds Restaurants Inc. ("Dog N Suds") and the Court having found that the Summons and Complaint were duly served on Defendant, Dog N Suds; that more than 23 days have passed since the date of such service; that the Defendant Dog N Suds Restaurants Inc. has failed to answer or otherwise defend the Plaintiff's Complaint or to appear herein; that the Plaintiff has complied with all applicable notice and service requirements of Rule 55; and the Court having further found that Defendant Dog N Suds is not in the military service and is not an infant or incompetent; that Plaintiff should recover from Defendant Dog N Suds; and that the following should be made specific findings of fact:

1. On December 30, 2002, the former Plaintiff, First Community Bank & Trust, sold, assigned, transferred, and set over to Plaintiff all its rights and remedies under the loan documents which are the subject of the present action, including but not limited to the following:

- (a) Promissory Note of November 4, 1998
- (b) Promissory Note of July 30, 1999
- (c) Security Agreement of November 4, 1998
- (d) Collateral Assignment of November 4, 1998
- (e) Collateral Assignment of Promissory Note and Security Agreement and Financing Statements of November 4, 1998
- (f) Security Agreement of July 30, 1999

The assignment by First Community Bank & Trust expressly conveyed upon Plaintiff the right to continue the present legal proceeding in the place of First Community Bank & Trust.

2. Dog N Suds has defaulted in its obligations under the Promissory Note of November 4, 1998 and the Promissory Note of July 30, 1999 (the "Promissory Notes") by failing to make payments due thereunder.

3. As a result of the default by Dog N Suds, all sums under the Promissory Notes were declared immediately due and payable. As of December 30, 2002, the amount of principal and interest due and owing from Dog N Suds to Plaintiff's successor in interest was \$335,815.10.

4. Pursuant to the Bank's assignment to Plaintiff, Dog N Suds is therefore indebted to Plaintiff under the Promissory Notes in the amount of \$335,815.10 as of December 30, 2002.

5. By way of the Bank's assignment to Plaintiff of the Security Agreement of November 4, 1998, Plaintiff holds a security interest in all equipment, accounts, all general intangibles, including without limitation all patents, patent applications, trademarks, trademark applications, trade names, trade secrets, goodwill, property rights, proprietary rights, copyrights, registrations, recipes, inventory, licenses, contract rights, and all other chattel items owned or acquired by Dog N Suds.

6. Under the Security Agreement of November 4, 1998, Plaintiff is entitled to take possession of the collateral described therein upon any default of the Promissory Note dated November 4, 1998.

7. By way of the Bank's assignment to Plaintiff of the Collateral Assignment of November 4, 1998, Plaintiff holds a security interest in Dog N Suds':

(a) trademarks, trademark applications, service marks, licenses, labels, symbols, logos and trade names related to Dog N Suds, together with the goodwill symbolized thereby; (b) the proprietary rights, copyrights, and trade secrets for Dog N Suds Root Beer and Diet Root Beer; (c) all recipes, including those for Dog N Suds coney sauce and special sandwich spread; (d) all advertising, all media devices, including operator manuals, and the plates necessary for manufacturing paper goods and uniforms related to Dog N Suds; and (e) all bottling and distribution agreements relating to the bottling and sale of Dog N Suds Root Beer and Diet Root Beer (as the same may be amended pursuant hereto from time to time), including, without limitation, all renewals thereof, all proceeds of infringement suits, the right to sue for past, present, and future infringements and all rights corresponding thereto . . . , and the goodwill of the business to which the Trademarks relate.

8. Under the Collateral Assignment of November 4, 1998, upon any default by Dog N Suds, Plaintiff is entitled to enforce the rights and remedies of a secured party.

9. By way of the Bank's assignment to Plaintiff of the Collateral Assignment of Promissory Note and Security Agreement and Financing Statements dated November 4, 1998, Plaintiff holds a security interest in the Promissory Note, Security Agreement, and Financing

Statements dated November 4, 1994, representing a loan by Dog N Suds to DNS Associates, L.P. (the "DNS Loan Documents").

10. Under the Collateral Assignment of Promissory Note and Security Agreement and Financing Statements dated November 4, 1998, upon any default by Dog N Suds, Plaintiff is entitled to enforce Dog N Suds' rights under the DNS Loan Documents.

11. By way of the Bank's assignment to Plaintiff of the Security Agreement of July 30, 1999, Plaintiff holds a security interest in all inventory, all general intangibles, including but not limited to tax refunds, patent applications, patents, trademarks, trade names, trade secrets, goodwill, copyrights, customer lists, permits and franchises, and the right to use the Dog N Suds name, and all equipment of Dog N Suds.

12. Under the Security Agreement of July 30, 1999, Plaintiff is entitled to repossess the property described therein upon default of the Promissory Note dated July 30, 1999.

13. Plaintiff is entitled to an award of its reasonable attorney fees of \$18,500 in the present matter.

14. Plaintiff is entitled to recover additional interest from December 30, 2002 through January 31, 2003 at the rate of 16%, which totals \$3,583.40.

**ORDERED, ADJUDGED AND DECREED** as follows:

1. Plaintiff TK & C's, LLC is entitled to possession of the following property, plus the proceeds therefrom:

- (a) all equipment, accounts, all general intangibles, including without limitation all patents, patent applications, trademarks, trademark applications, trade names, trade secrets, goodwill, property rights, proprietary rights, copyrights, registrations, recipes, inventory, licenses, contract rights, and all other chattel items owned or acquired by Dog N Suds;
- (b) trademarks, trademark applications, service marks, licenses, labels, symbols, logos and trade names related to Dog N Suds, together with the goodwill symbolized thereby; the proprietary rights, copyrights, and trade secrets for Dog N Suds Root Beer and Diet Root Beer; all recipes, including those for Dog N Suds coney sauce and special sandwich spread; all advertising, all media devices, including operator manuals, and the plates necessary for manufacturing paper goods and uniforms related to Dog N Suds; and all bottling and distribution agreements relating to the bottling and sale of Dog N Suds Root Beer and Diet Root Beer (as the same may be amended pursuant hereto from time to time), including, without limitation, all renewals thereof, all proceeds of infringement suits, the right to sue for past, present,

and future infringements and all rights corresponding thereto . . . , and the goodwill of the business to which the Trademarks relate;

- (c) Promissory Note, Security Agreement, and Financing Statements dated November 4, 1994, representing a loan by Dog N Suds to DNS Associates, L.P.; and
- (d) all inventory, all general intangibles, including but not limited to tax refunds, patent applications, patents, trademarks, trade names, trade secrets, goodwill, copyrights, customer lists, permits and franchises, and the right to use the Dog N Suds name, and all equipment of Dog N Suds.

2. That Plaintiff TK & C's, LLC shall have and recover judgment as a matter of law, of and from Defendant Dog N Suds Restaurants Inc. in the sum of \$357,898.50, together with costs, plus interest at the maximum rate provided by law, all without relief from valuation and appraisal laws.

Dated 2-11, 2003.



\_\_\_\_\_  
Judge, Johnson Superior Court 1

Copies to:  
James R. Schrier  
John E. Bator  
Dog N Suds Restaurants Inc.

**EXHIBIT B**

**ASSIGNMENT**

THIS ASSIGNMENT dated December 30, 2002, is made by and between FIRST COMMUNITY BANK & TRUST, 210 East Harriman, P.O. Box 460, Bargersville, Indiana 46106 (hereinafter referred to as "Bank" or "Assignor"), and TK & C's, LLC, a duly organized and validly existing Indiana limited liability company whose address is 415 Columbia Street, Suite 3000, P.O. Box 280, Lafayette, Indiana 47902 (hereinafter referred to as "TK & C" or "Assignee").

**RECITALS**

WHEREAS, on or about November 4, 1998, Dog N Suds Restaurants, Inc. ("DNSR") executed and delivered to the Bank the following documents:

- A. A Credit Agreement, a true and accurate copy of which is attached hereto as Exhibit A.
- B. A Promissory Note in the amount of \$500,000.00, a true and accurate copy of which is attached hereto as Exhibit B ("November 4, 1998 Promissory Note").
- C. A Security Agreement, a true and accurate copy of which is attached hereto as Exhibit C.
- D. A Collateral Assignment, a true and accurate copy of which is attached hereto as Exhibit D.
- E. A Collateral Assignment of Promissory Note and Security Agreement and Financing Statements, a true and accurate copy of which is attached hereto as Exhibit E.
- F. A Continuing Guaranty from Donald Van Dame to the Bank, a true and accurate copy of which is attached hereto as Exhibit F.
- G. A Commercial Loan Agreement, a true and accurate copy of which is attached hereto as Exhibit G.
- H. A Promissory Note, a true and accurate copy of which is attached hereto as Exhibit H ("July 30, 1999 Promissory Note").
- I. A Security Agreement, a true and accurate copy of which is attached hereto as Exhibit I.
- J. A Guaranty from Donald R. Van Dame to the Bank, a true and accurate copy of which is attached hereto as Exhibit J.
- K. A Loan Modification Agreement, a true and accurate copy of which is attached hereto as Exhibit K.

- L. Financing Statements, a true and accurate copy of which is attached hereto as Exhibit L.

WHEREAS, DNSR has defaulted in their obligations under the November 4, 1998 Promissory Note and the July 30, 1999 Promissory Note by its failure to make payments due thereunder and, as a result of said default, the Bank has heretofore declared all sums immediately due and payable under said Notes.

WHEREAS, on October 4, 2002, the Bank filed a Complaint on Notes and Guaranty and Replevin of Collateral and Motion for Appointment of Receiver against DNSR, and filed a Complaint on the Guaranty Agreements against Donald Van Dame in Johnson Superior Court under Cause Number 41D01-0210-PL-00039, which said lawsuit is currently pending ("Pending Lawsuit").

WHEREAS, the Bank has agreed to sell, assign, transfer and set over to TK & C, its successors and assigns, the attached Notes, Security Agreements, Assignments, Guaranties and all other documents constituting rights of payment in the Bank's security interest in and to the property described in any such documents, and all rights and remedies under the same, including the right to collect all payments and the right, either in the Assignee's own name or in the Bank's name, to take and or continue all such proceedings, legal or otherwise, as the Bank might have taken except for the assignment.

WHEREAS, TK & C has agreed to pay the bank \$300,000.00 to obtain all of the above-referenced rights.

NOW, THEREFORE, in consideration of the payments referenced herein, and other good and valuable consideration, the promises made by each party herein and other terms and conditions contained herein, the parties hereto agree as follows:

1. Recitals. The above recitals are true and correct statements of fact.
2. Definitions. For purposes of this Assignment, the November 4, 1998 Promissory Note and the July 30, 1999 Promissory Note, Exhibits B and H herein, shall be referred to as the "Notes"; the November 4, 1998 Credit Agreement and the December 30, 1999 Loan Modification Agreement, Exhibits A and K herein, shall be referred to as "Loan Agreements"; the November 4, 1998 Security Agreement, the November 4, 1998 Collateral Assignment, the November 4, 1998 Collateral Assignment of Note, Security Agreement and Financing Statement, and the Financing Statements, Exhibits C, D, E and L herein, shall be referred to as "Collateral Security Documents"; and the November 4, 1998 Continuing Guaranty and the July 30, 1999 Guaranty, Exhibits F and G herein, shall be referred to as the "Guaranty Agreements". The Notes, the Loan Agreements, the Collateral Security Documents, and the Guaranty Agreements may collectively be referred to, from time to time, as "Loan Documents."
3. Assignment. The Bank sells, assigns, transfers and sets over to TK & C, and its successors and assigns, all of the Bank's right, title and interest in and to the Notes, the Loan Agreements, the Collateral Security Documents, and the Guaranty Agreements, along with all rights and remedies under the same, including the right to collect all payments due thereunder; the right to



foreclose on or repossess any of the collateral which provides security for any of the Loan Documents; the right to exercise any rights under Indiana's Uniform Commercial Code regarding the property which provides security for any of the Loan Documents; and the right, either in Assignees own behalf or in the Bank's name, to continue the pending legal action, or to initiate such other proceedings, legal or otherwise, as the Bank might have taken except for this Assignment.

4. Payment. On or before December 30, 2002, TK & C shall wire transfer to the account of Bank \$300,000.00 as full consideration for the assignment herein. The amount of the payment made herein shall under no circumstances impair, prohibit or preclude Assignee from collecting additional amounts from DNSR.

5. Representations, Warranties, and Covenants of Assignor. Assignor represents, warrants, and covenants to Assignee as follows:

A. The execution and delivery of this Assignment and performance of the transactions contemplated hereby have been duly authorized by Assignor and will not result in a breach by it or constitute a default by it under any agreement, instrument or order to which it is a party or by which it is bound.

B. This Assignment and all other instruments required hereby to be executed and delivered to Assignor are, or when delivered will be, legal and binding instruments enforceable in accordance with their terms.

C. The Loan Documents are assignable by Assignor to Assignee hereunder.

D. Assignor has complied with all provisions of the Notes, the Loan Agreements, the Collateral Security Documents, and the Guaranty Agreements and has no knowledge that DNSR holds any claims or rights of setoff against Assignor arising out of, connected with or related to any of the Loan Documents.

E. Assignor agrees to promptly furnish DNSR with notice of the assignment hereunder to Assignee and agrees to promptly give Assignee notice of any notice or communication hereafter received by Assignor with respect to the Notes, the Loan Agreements, the Collateral Security Documents, and the Guaranty Agreements.

F. As of December 30, 2002 that amount of principal and interest due and owing the Bank from DNSR is \$335,815.10. DNSR is also obligated to the Bank regarding all costs and expenses incurred by the Bank regarding the Pending Lawsuit.

G. To the best of Assignor's information and belief, each of the Loan Documents are valid, binding and enforceable against DNSR; each of the Loan Documents has been executed and delivered in accordance with the laws of the State of Indiana; and the signatures on each Loan Document are genuine and what they purport to be.

6. Representations, Warranties and Covenants of Assignee. Assignee represents, warrants and covenants to Assignor as follows:

A. Assignee is a limited liability company duly formed and validly existing under the laws of the State of Indiana. Assignee has the requisite power and authority to own and operate its business and to carry on its business as now being conducted.

B. The execution and delivery of this Assignment and performance of the transactions contemplated hereby have been duly authorized by Assignee and will not result in a breach by it or constitute a default by it under any agreement, instrument or order to which it is a party or by which it is bound, and will not be in conflict with or constitute a default under or violation of any provision of its limited liability company agreement.

C. This Assignment and all other instruments required hereby to be executed and delivered to Assignee are, or when delivered will be, legal and binding instruments enforceable in accordance with their terms.

7. Further Instruments and Actions. Assignor hereby agrees to duly execute and deliver to Assignee all such other and further instruments of conveyance, transfer and assignment and to take such action as Assignee may reasonably deem necessary to more effectively convey and transfer to Assignee the Notes, the Loan Agreements, the Collateral Security Documents, and the Guaranty Agreements transferred or intended to be transferred hereby. Assignee agrees to duly execute and deliver to Assignor all such other and further instruments of assumption and take such other action as may reasonably be required by Assignor to effect the full and complete assumption by Assignee of the obligations of Assignor assumed or intended to be assumed hereunder. The Bank will, as soon as practicable after the Effective Time, provide information to Assignee regarding all costs and expenses incurred by the Bank relating to the enforcement of the Bank's rights under the Loan Documents and relating to the Pending Lawsuit.

8. Indemnification. Assignee hereby agrees to indemnify and hold Assignor harmless from and against all actions, claims, demands and expenses, including attorneys' fees, in respect of the obligations assumed hereunder other than any actions, claims, demands and expenses arising from or in connection with any misrepresentation or breach of warranty or covenant by Assignor hereunder. Assignor hereby agrees to indemnify and hold Assignee harmless from and against all actions, claims, damages, and expenses, including attorneys' fees, arising from or in connection with any misrepresentation or breach of warranty or covenant by Assignor hereunder.

9. Complete Agreement. This Assignment contains a complete agreement between the parties hereto with respect to the assignment of the Notes, the Loan Agreements, the Collateral Security Documents, and the Guaranty Agreements, assumption of obligations and other transactions contemplated hereby and supersedes all prior agreements and understanding between the parties hereto with respect thereto.

10. Governing Law. This Assignment shall be construed and enforced in accordance with the laws of the State of Indiana.

11. Titles and Captions. All section titles or captions contained in this Assignment are for convenience only and shall not be deemed part of the context nor effect the interpretation of this Assignment.

12. Entire Agreement and Counterparts. This Assignment contains the entire understanding between and among the parties and supersedes any prior understandings and agreements among them respecting the subject matter of this Assignment. This Assignment may be executed in several counterparts and all so executed shall constitute one agreement, binding on all the parties hereto even though all the parties are not signatories to the original or the same counterpart.

13. Agreement Binding. This Assignment shall be binding upon the heirs, executors, administrators, successors and assigns of the parties hereto.

14. Attorney Fees. In the event a suit or action is brought by any party under this Assignment to enforce any of its terms, or in any appeal therefrom, it is agreed that the prevailing party shall be entitled to reasonable attorney's fees to be fixed by the trial court, and/or appellate court.

15. Pronouns and Plurals. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular, or plural as the identity of the person or persons may require.

16. Presumption. This Assignment or any section thereof shall not be construed against any party due to the fact that said Assignment or any section thereof was drafted by said party.

17. Further Action. The parties hereto shall execute and deliver all documents, provide all information and take or forbear from all such action as may be necessary or appropriate to achieve the purposes of the Assignment.

18. Parties in Interest. Nothing herein shall be construed to be to the benefit of any third party, nor is it intended that any provision shall be for the benefit of any third party.

19. Savings Clause. If any provision of this Assignment, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Assignment, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

20. Amendments. No amendments or additions of this Assignment shall be binding unless in writing and signed by a duly authorized representative of Assignor and Assignee.

21. Effective Time. This Assignment shall become effective as soon as (a) it is executed by all parties and (b) the Bank receives confirmation that the payment to be made by TK&C has been wire transferred to Bank's account ("Effective Time"). In the event that the above execution and payment are not both completed by 2:00 PM on December 30, 2002, then either party may declare this agreement to be null and void.

22. Signatures. Facsimile signatures shall be binding on each party and acceptable by the other party, provided however, each party shall, as soon as possible after the Effective Time, deliver a duly signed hard copy of this Assignment to the other party.

23. Substitution of Parties. As soon as practicable after the Effective Time, the parties shall execute documents and pleadings, in accordance with Indiana Trial Rule 25, which substitute Assignee as the party Plaintiff in the Pending Lawsuit. The parties shall file a Notice of Assignment with the Court which contains only the basic information contained herein and which makes no reference to the amount of consideration Assignee is giving Assignor for this Assignment. Assignor's attorney of record in such Pending lawsuit shall withdraw his representation as soon as an Appearance is filed for Assignee in such Pending Lawsuit. Assignor shall cooperate with Assignee with all actions necessary to make such substitution. Nothing contained herein shall in any respect prohibit or preclude Assignee from exercising all rights and remedies available to Assignor under the Loan Documents, including without limitation, the right to collect default interest, the entire amount of the unpaid balance of principal and interest, attorney fees, costs and expenses as provided by any of the Loan Documents.

24. Confidentiality. Assignor and Assignee hereby agree to treat confidentially all terms and conditions of this Assignment, whether written or oral, which relate to the amount of consideration which Assignee is paying to Assignor ("Confidential Terms"). Assignor also agrees that, prior to giving any of its respective directors, officers, employees, partners, affiliates, agents, advisors, or representatives (the "Representatives") access to any of the Confidential Terms, it shall advise its Representatives of the confidentiality thereof. Assignor agrees that the Confidential Terms will be kept confidential by it and any of its Representatives and, except with the specific prior written consent of Assignee, or as expressly otherwise permitted by the terms hereof, or as required by law or a Court of competent jurisdiction, such Confidential Terms will not be disclosed by Assignor or any of its Representatives.

IN WITNESS WHEREOF, the parties hereto have executed this Assignment to be effective as of DECEMBER 30, 2002.

FIRST COMMUNITY BANK & TRUST

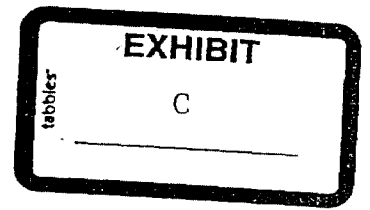
TK & C'S, LLC, an Indiana limited liability  
company

By: Keith Lindauer EVP

By: Carol A. Van Dame

Printed Name: Keith Lindauer  
Title: Executive Vice President

Printed Name: CAROL A. VAN DAME  
Title: PRESIDENT



DOG N SUDS RESTAURANTS, INC.  
4872 Myrtle Lane  
Greenwood, Indiana 46142

SECURITY AGREEMENT

Dog N Suds Restaurants, Inc., a corporation organized and existing under the laws of the State of Indiana ("Borrower") hereby grants to **First Community Bank and Trust Company**, 210 E. Harriman, P.O. Box 460, Bargersville, Indiana 46106 (hereinafter referred to as "the Bank") a security interest in the property described hereinbelow, now owned or to be owned in the future, and all products and proceeds thereof, as follows:

All equipment, accounts, all general intangibles, including without limitation all patents, patent applications, trademarks, trademark applications, tradenames, trade secrets, goodwill, property rights, proprietary rights, copyrights, registrations, recipes, inventory, licenses, contract rights, and all other chattel items now owned or hereafter acquired (hereinafter referred to as the "Collateral"), to secure the payment of that certain indebtedness evidenced by a Promissory Note (hereinafter referred to as the "Note") of even date herewith executed by the Borrower in favor of the Bank in the principal amount of Five Hundred Thousand Dollars (\$500,000.00), and all costs and expenses incurred by the Bank to obtain, preserve, perfect and enforce the security interest granted herein and to maintain, preserve, and collect the property subject to the security interest. Such Note shall be payable in the manner provided therein without relief from valuation or appraisal laws and with attorney's fees.

Borrower warrants that it is or will be, the owner of the Collateral free from any liens, security interests or encumbrances other than the security interest herein granted to the Bank.

Borrower warrants that it has good right to subject the Collateral to the security interest

hereunder, and will defend the Collateral against all adverse claims and demands. No financing statement or other evidence of any other security interest covering any part of the Collateral or any proceeds thereof is on file in any public office.

From time to time, at the Bank's request, Borrower shall provide Bank with schedules describing all accounts and contracts, including addresses, credited or acquired by Borrower and at the Bank's request shall execute and deliver written assignments of contracts and other documents evidencing such accounts and contracts to Bank. Together with each schedule, Borrower shall, if requested by Bank, furnish Bank with copies of Borrower's invoices, books, records, computer data, customer purchase orders or the equivalent, and the Borrower warrants the genuineness thereof.

The occurrence of any of the following shall constitute a default under this Agreement.

a) Nonpayment or nonperformance of any of the obligations of Borrower (hereinafter referred to as the "Obligations") or of any covenant under this Security Agreement, the Credit Agreement, Note or related loan documents.

b) Any warranty, representation or statement made or furnished to the Bank by, or on behalf of, Borrower in connection with this Agreement or to induce the Bank to make any loan, advancement or other extension of credit to Borrower which is untrue or misleading in any material respect as of the date when made or furnished.

c) Any substantial uninsured loss, theft, damage or destruction of the Collateral, or the making of any levy, seizure or attachment against it.

d) The dissolution or termination of existence of Borrower (except a technical dissolution which is cured within 30 days); or the insolvency or business failure of Borrower; or the admission by Borrower in writing of an inability to pay Borrower's debts as they become due;

or the appointment of a receiver or trustee for any part of the property of Borrower; or an assignment for the benefit of Borrower's creditors; or the commencement of any proceeding under any insolvency laws by or against Borrower or against any guarantor or surety for Borrower or any part of the Obligations.

e) The Bank's reasonably deeming any of the Obligations to be insecure for any other reason.

Upon any default, the Bank, at its option and without notice or demand, may declare the Note of Borrower secured hereby immediately to be due and payable and shall have all the remedies of a secured party available under Indiana law, as well as all other applicable rights and remedies allowed by applicable law, regardless of whether such remedies are provided by the law of the jurisdiction where such rights are asserted and such remedies are sought. These remedies include, without limitation, the right to take possession of the Collateral, and for that purpose the Bank may enter upon any premises on which the Collateral or any part of it may be situated and remove it. The Bank may require Borrower to make the Collateral available to the Bank at a place to be designated by the Bank which is reasonably convenient to both parties. Unless the Collateral threatens to decline speedily in value or is of a type customarily sold on a recognized market, the Bank shall give Borrower at least ten (10) days' prior written notice of the time and place of any public sale thereof or of the time after which any private sale or any other intended disposition thereof is to be made. Expenses of retaking, holding, preparing for sale, selling and the like shall include the Bank's reasonable attorneys' fees and legal expenses. All remedies of the Bank shall be cumulative to the full extent allowed by applicable law. The Bank may exercise its rights to the Collateral without resorting to, or regard for, other collateral or other sources of security for any of the Obligations. No delay or omission on the part of the Bank in

the exercise of any right or remedy shall operate as a waiver thereof, and no single or partial exercise by the Bank of any right or remedy shall preclude other remedies or further exercise thereof or of any other right or remedy.

Also upon default, the Bank shall have the right to notify the account and contract debtors obligated on any or all of the Collateral to make payment thereof directly to the Bank and the Bank may take control of all proceeds of any such Collateral, which rights the Bank may exercise at any time. The cost of such collection and enforcement, including attorneys' fees and expenses, shall be borne solely by the Borrower whether the same is incurred by the Bank or the Borrower. Upon demand of the Bank, the Borrower will, upon receipt of all checks, drafts, cash and other remittances in payment on Collateral, deposit the same in a special bank account maintained with the Bank, over which the Bank also has the power of withdrawal.

If any proceeds of inventory covered hereby arises from obligations due to Borrower from any governmental unit or organization, Borrower shall immediately notify the Bank in writing and execute all documents and take all actions demanded by the Bank to ensure recognition by such governmental unit or organization of the rights of the Bank in the Collateral.

This Agreement and the security interest in the Collateral created hereby shall terminate when the Obligations have been fully satisfied and paid in full. No waiver by the Bank of any default shall be effective unless in writing, or operate as a waiver of any other default or of the same default on a further occasion. If there is more than one Borrower, their obligations hereunder shall be joint and several.

Borrower shall pay the Bank on demand any sums advanced on its behalf, including but not limited to, expenses incurred in collecting, insuring, conserving or protecting the Collateral. At its option, the Bank may discharge taxes, liens, security interests and other encumbrances at



any time levied or placed on the Collateral. If Borrower fails to promptly pay said sums, the Bank may do so, adding the amounts paid to the other amounts secured by this Security Agreement. All such sums will be due on demand and will bear interest at the highest rate provided in the Credit Agreement, Note or other instrument evidencing the indebtedness and permitted by law at the time of the advance.

If the Borrower fails to perform any of its duties under this Security Agreement, or any mortgage, credit agreement or other security interest, the Bank may, without notice, perform the duties or cause them to be performed. This authorization includes, but is not limited to, permission to (1) prepare, file and sign the Borrower's name to any necessary reports or accountings; (2) notify any account debtor of the Bank's interest in the Collateral and direct the account debtor to make payments directly to the Bank; (3) place on any chattel paper a note indicating the Bank's interest in Collateral; (4) compromise, settle and handle any suits involving the Collateral; (5) take any action necessary to realize on the Collateral; including performing on any contract or endorsing it in the Borrower's name; or (6) make an entry on Borrower's books and records showing the existence of this Security Agreement. The Bank's right to perform shall not create an obligation to perform and the Bank's failure to perform shall not preclude the Bank from exercising any rights under the law or this Security Agreement.

No Financing Statement (other than any filed by Bank or disclosed above) covering any of the Collateral or proceeds thereof is on file in any public filing office. This Security Agreement, or a copy thereof, or any Financing Statement executed hereunder may be recorded. On request of the Bank, the Borrower will execute one or more Financing Statements in a form satisfactory to the Bank and will pay all costs and expenses of filing the same or of filing this security Agreement in all public filing offices, where filing is deemed by the Bank to be

desirable. The Bank is authorized to file Financing Statements relating to Collateral without Borrower's signature where authorized by law. The Borrower appoints the Bank as its attorney-in-fact to execute such documents necessary to accomplish perfection of the Bank's security interest. The appointment is coupled with an interest and shall be irrevocable as long as any Obligations remain outstanding. The Borrower further agrees to take such other actions as might be requested for the perfection, continuation and assignment, in whole or in part, of the security interests granted herein. If certificates are issued or outstanding as to any of the Collateral, the Borrower will cause the security interests of the Bank to be properly protected, including perfection of notation thereon.

Borrower warrants that the Collateral consisting of contract rights, chattel paper, accounts, or general intangibles is (i) genuine and enforceable in accordance with its terms except as limited by law; (ii) not subject to any defense, set-off, claim or counterclaim of a material nature against Borrower except as to which Borrower has notified the Bank in writing; and (iii) not subject to any other circumstances that would impair the validity, enforceability or amount of such Collateral except as to which the Borrower has notified the Bank in writing. The Borrower shall not amend, modify or supplement any lease, contract or agreement contained in Collateral or waive any provision therein, without prior written consent of the Bank.

Should applicable law confer any rights or impose any duties inconsistent with, or in violation of, any of the provisions of this Security Agreement, the affected provisions of this Agreement shall be considered amended to conform to such law, but all other provisions shall remain in full force and effect without modification. This Security Agreement shall be governed by, and construed in accordance with, the laws of the State of Indiana. The Borrower irrevocably agrees to non-exclusive personal jurisdiction in the State of Indiana.

Borrower shall immediately notify the Bank in writing of any changes of address from that shown in this Agreement. Borrower will do such acts as the Bank reasonably may request to establish and maintain in the Bank a valid security interest in the Collateral, free of all other liens and claims.

The Borrower will at all times keep accurate and complete records covering each item of Collateral, including the proceeds therefrom. The Bank, or any of its agents, shall have the right, at intervals to be determined by the Bank and without hindrance or delay, to inspect, audit, and examine the Collateral and to make extracts from the books, records, journals, orders, receipts, correspondence and other data relating to the Collateral, Borrower's business or any other transaction between the parties hereto. Borrower will at its expense furnish the Bank copies thereof upon request.

Signed and delivered this 4th day of November, 1998.

FIRST COMMUNITY BANK AND TRUST COMPANY  
Keith Lindauer SUP  
BY: Keith Lindauer  
S: Senior Vice-President

DOG N SUDS RESTAURANTS, INC.  
Richard T. Mearns  
BY: Richard T. Mearns  
ITS: President

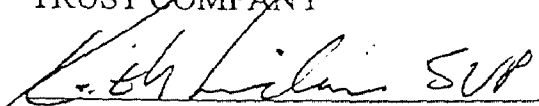
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Signed and delivered this 4<sup>th</sup> day of November, 1998.

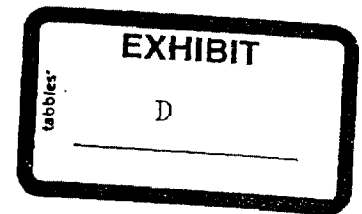
FIRST COMMUNITY BANK AND  
TRUST COMPANY

  
BY: Keith Lindauer  
ITS: Senior Vice-President

DOG N SUDS RESTAURANTS, INC.

  
BY: Richard T. Mdrath  
ITS: President

/cathi/bator/fcb/dogsuds/secagmt



## COLLATERAL ASSIGNMENT

THIS AGREEMENT is made on November 4, 1998 between Dog n Suds Restaurants, Inc., ("Assignor") an Indiana corporation having a mailing address at 4872 Myrtle Lane, Greenwood, Indiana 46142 and First Community Bank & Trust ("Bank"), having an address at 210 East Harriman, P.O. Box 460, Bargersville, Indiana 46106. Assignor has executed and delivered its promissory note (the Note) to the Bank in the aggregate principal amount of \$500,000.00 pursuant to a certain Credit Agreement and Security Agreement of even date herewith between Assignor and the Bank (the "Loan Documents"). In order to induce the Bank to execute and deliver the Loan Documents, Assignor has agreed to assign to Bank certain trademark rights, proprietary rights, advertising and media devices, and bottling and distribution Agreements. This Assignment is being executed contemporaneous with Loan Documents under which the Bank is granted a lien on and security interest in other items of personal property, relating to products sold under the Trademarks (as hereinafter defined), whereby Bank shall have the right to foreclose on the other property in the event of the occurrence of an Event of Default under the Agreement.

Unless otherwise defined herein, capitalized terms shall have the meaning set forth in the Agreement.

NOW, THEREFORE, in consideration of the foregoing, Assignor hereby agrees with Bank as follows:

1. To secure the complete and timely satisfaction of all Liabilities, Assignor hereby grants, assigns, and conveys to Bank the entire right, title, and interest in and to the (a) trademarks, trademark applications, service marks, licenses, labels, symbols, logos and tradenames related to Dog n Suds, together with the goodwill symbolized thereby; (b) the proprietary rights, copyrights, and trade secrets for Dog n Suds Root Beer and Diet Root Beer; (c) all recipes, including those for Dog n Suds coney sauce and special sandwich spread; (d) all advertising, all media devices, including operator manuals, and the plates necessary for manufacturing paper goods and uniforms related to Dog n Suds; and (e) all bottling and distribution agreements related to the bottling and sale of Dog n Suds Root Beer and Diet Root Beer (as the same may be amended pursuant hereto from time to time), including, without limitation, all renewals thereof, all proceeds of infringement suits, the right to sue for past, present, and future infringements and all rights corresponding thereto (all of the foregoing are collectively called the Trademarks and Agreements), and the goodwill of the business to which the Trademarks relate.
2. Assignor hereby covenants, agrees, and warrants that:
  - a. The Trademarks and Agreements are subsisting and have not been

- adjudged invalid or unenforceable;
- b. Each of the Trademarks and Agreements is valid and enforceable;
  - c. No claim has been made that the use of any of the Trademarks or Agreements does or may violate the rights of any Person;
  - d. Assignor is the sole and exclusive owner of the entire and unencumbered right, title, and interest in each of the Trademarks or Agreements, free and clear of any liens, charges, and encumbrances, including, without limitation, pledges, assignments, licenses, registered user agreements, and covenants by Assignor not to sue third persons;
  - e. Assignor has the unqualified right to enter into this Assignment and perform its terms;
  - f. Assignor intends to use proper statutory notice in connection with its use of the Trademarks.
3. Assignor shall not enter into any agreement which is inconsistent with Assignor's obligations under this Assignment, without Bank's prior written consent.
  4. Assignor shall give Bank prompt written notice should it obtain the rights to any new trademarks; regardless of such notice, the terms and conditions of this Assignment shall automatically apply to any and all new trademarks.
  5. Unless and until there shall have occurred an Event of Default, Bank hereby grants to Assignor the exclusive, nontransferable right and license to use the Trademarks and Agreements on and in connection with products sold by Assignor, for Assignor's own benefit and account and for none other. Assignor agrees not to sell or assign its interest in, or grant any sublicense under, the license granted to Assignor herein, without the prior written consent of Bank.
  6. Upon any Event of Default, Assignor's license under the Trademarks and Agreements, shall terminate and the Bank shall have, in addition to all other rights and remedies given to it by this Assignment and the Agreement, those allowed by law and the rights and remedies of a secured party under the Uniform Commercial Code as enacted in any Jurisdiction in which the Trademarks and Agreements may be located and, without limiting the generality of the foregoing, the Bank may immediately, (except as set forth next below) or demand whatsoever to Assignor, all of which Assignor hereby expressly waives, and without advertisement, sell or assign at public or private sale or otherwise realize upon, at Assignor's place of business or elsewhere, all or from time to time any of the Trademarks or Agreements, or any interest which the Assignor may have therein, and after

and after deducting from the proceeds of sale or other disposition all expenses (including all reasonable attorney or broker's fees), shall apply the proceeds to payment of the Liabilities in such order as Bank may determine. Any remainder of the proceeds after payment in full of the Liabilities shall be paid over to the Assignor. Notice of any sale or other disposition of the Trademarks and/or Agreements shall be given to Assignor at least five (5) days before the time of any intended public or private sale or other disposition is to be made, which Assignor hereby agrees shall be reasonable notice of such sale or other disposition. At any such or other disposition, Bank may, to the extent permissible under applicable law, purchase the whole or any part of the Trademarks sold free from any right of redemption on the part of Assignor, which right is hereby waived and released.

7. Any and all fees, costs, and expenses, of whatever kind or nature, including the reasonable attorney fees (both outside counsel and allocated costs of in-house counsel) and legal expenses incurred by Bank in connection with the preparation of this Assignment and all other documents relating hereto and the consummation of this transaction, the filing or recording of any documents (including all taxes in connection therewith) in public offices, the payment or discharge of any taxes, counsel fees, maintenance fees, encumbrances or otherwise protecting, maintaining or preserving the Trademarks and Agreements or in defending or prosecuting any actions or proceedings arising out of or related to the Trademarks and Agreements, shall be borne and paid by Assignor on demand by Bank and until so paid shall be added to the principal amount of the Liabilities and shall bear interest at the rate prescribed in the Assignment.
8. Assignor shall have the duty, through counsel acceptable to Bank, to prosecute diligently any trademark applications of Trademarks pending as of the date of this Assignment or thereafter, to make federal application on registrable but unregistered Trademarks, to file and prosecute opposition and cancellation proceedings and to do any and all acts which are necessary or desirable to preserve and maintain all rights in the Trademarks. Any expenses incurred in connection with the Trademarks shall be borne by Assignor. The Assignor shall not abandon any Trademark without the consent of the Bank, which consent shall not be unreasonably withheld.
9. Assignor shall have the right, with the prior written consent of the Bank, which will not be unreasonably withheld, to bring any opposition proceedings, enforce or protect the Trademarks and Agreements, in which event Bank may, if necessary, be joined as a nominal party to such suit if Bank shall have been satisfied that it is not thereby incurring any risk of liability because of such joinder. Assignor shall promptly, upon demand, reimburse, and indemnify Bank for all damages, costs, and expenses, including attorney fees, incurred by Bank in the fulfillment of the provisions of this paragraph.

10. Assignor hereby irrevocably authorizes and empowers Bank to make, constitute, and appoint any officer or agent of Bank as Bank may select, in its exclusive discretion, as Assignor's true and lawful attorney-in-fact, with the power to endorse Assignor's name on all applications, documents, papers and instruments necessary for Bank to use the Trademarks and Agreements, or to grant or issue any exclusive or nonexclusive license under the Trademarks and Agreements to anyone else, or necessary for Bank to assign, pledge, convey or otherwise transfer title in or dispose of the Trademarks to anyone else. Assignor hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof.
11. If Assignor fails to comply with any of its obligations hereunder, Bank may do so in Assignor's name or in Bank's name, but at Assignor's expense, the Assignor hereby agrees to reimburse Bank in full and for expenses, including reasonable attorney fees, incurred by Bank in protecting, defending, and maintaining the Trademarks, Right and Agreements.
12. This Assignment is irrevocable and shall not terminate unless and until: (a) the Liabilities shall have been fully paid, and (b) no person who shall have made payment on the Liabilities, directly or indirectly, shall commence or have commenced against it as debtor any bankruptcy or insolvency proceeding for a period of 91 days following such payment, or, if longer, any preference period under any applicable state insolvency law plus ten days.
13. No course of dealing between Assignor and Bank, nor any failure to exercise, nor any delay in exercising, on the part of Bank, any right, power, or privilege hereunder, under the Agreement, under any other agreement, document, or instrument between Bank and Assignor, or applicable law, 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.
14. The provisions of this Assignment are severable, and if any clause or provision shall be held invalid and unenforceable in whole or in part in any jurisdiction, then such invalidity or unenforceability shall affect only such clause or provision, or part thereof, in such jurisdiction, and shall not in any other jurisdiction, or any other clause or provision of this Assignment in any jurisdiction.
15. This Assignment is subject to alteration, modification or amendment only by a writing signed by the parties, except as provided in paragraph 6.
16. All rights of Bank under this Assignment shall inure to the benefit of its successors and assigns, and all obligations of Assignor shall bind its successors or assigns.



17. The validity and interpretation of this Assignment and rights and obligation of the parties shall be governed by the laws of Indiana.

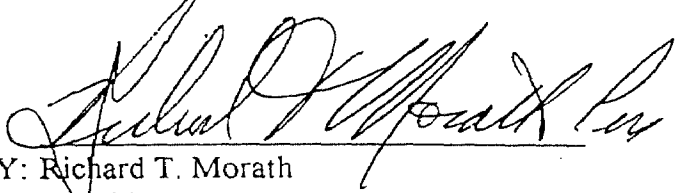
WITNESS, the execution hereof under seal of the day and year first above written.

FIRST COMMUNITY BANK  
& TRUST COMPANY



BY: Keith Lindauer  
ITS: Senior Vice-President

DOG N SUDS RESTAURANTS, INC.



BY: Richard T. Morath  
ITS: President

/s/Keith Lindauer/fcb/dogsuds/collas