

09-29-2003

Docket No.:

06497-754

Tab settings



102561417

attached original documents or copy thereof.

1. Name of conveying party(ies):

Good Earth Corporation
831 Almar Avenue
Santa Cruz, CA 95060

- Individual(s)
- General Partnership
- Corporation-State California
- Other

Additional names(s) of conveying party(ies) Yes No

3. Nature of conveyance:

- Assignment
- Security Agreement
- Other
- Association
- Limited Partnership
- Merger
- Change of Name

Execution Date: August 29, 2003

2. Name and address of receiving party(ies):

Name: Comerica Bank

Internal Address:

Street Address: 333 West Santa Clara Street

City: San Jose State: CA ZIP: 95133

- Individual(s) citizenship
- Association
- General Partnership
- Limited Partnership
- Corporation-State
- Other a Michigan banking corporation

If assignee is not domiciled in the United States, a domestic designation is Yes N
(Designations must be a separate document from Additional name(s) & address(es) Yes N

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

A. Trademark Application No.(s)

76/217070 76/460252
76/217065 76/100537
76/217064

Additional numbers

B. Trademark Registration No.(s)

See Schedule A attached

Yes No

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

Name: Charlotte C. Carberry, Paralegal

Internal Address:

Street Address: c/o Manatt, Phelps & Phillips

1001 Page Mill Road, Building 2

City: Palo Alto State: CA ZIP: 94304

6. Total number of applications and registrations involved:.....

35

7. Total fee (37 CFR 3.41):.....\$ 890.00

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number:

50-1847

09/29/2003 ECDOPER 00000052 501847 76217070

DO NOT USE THIS SPACE

01 FC:8521 40.00 BA
02 FC:8522 850.00 BA

9. 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.

Francis X. Ferrer, Esq.

Name of Person Signing

Signature

September 24, 2003

Date

Total number of pages including cover sheet, attachments, and

15

TRADEMARK

Schedule A
to
Recordation Form Cover Sheet
Conveying Security Interest Dated 08/29/2003 from the Good Earth Corporation
to
Comerica Bank
Page 1

REGISTRATION NO.	REGISTRATION DATE	REGISTERED OWNER	MARK
943,714 Class Nos. 29,30,31,32 and 33	09/26/72	Good Earth Corporation	Good Earth
975,145	12/18/73	Good Earth Corporation	Good Earth
1,627,516	12/11/90	Good Earth Corporation	The Good Earth Restaurant and Bakery Design
1,632,485	01/22/91	Good Earth Corporation	Fruit Design
1,114,999	03/13/79	Good Earth Corporation	The Good Earth
1,238,249	05/17/83	Good Earth Corporation	Good Earth
1,255,466	10/25/83	Good Earth Corporation	Fruit Design
1,321,440	02/19/85	Good Earth Corporation	The Good Earth Express
1,913,376	8/22/95	Good Earth Corporation	Good Earth
1,914,950	8/29/95	Good Earth Corporation	Good Earth
2,031,412	1/21/97	Good Earth Corporation	Planet Burger
2,083,345	7/29/97	Good Earth Corporation	Ginseng Sportice
2,088,846	8/19/97	Good Earth Corporation	Good Earth and Island Ice
2,147,911	3/31/98	Good Earth Corporation	Good Earth China Collection
2,152,887	4/21/98	Good Earth Corporation	Ginseng Sporthot
2,165,571	6/19/98	Good Earth Corporation	Good Earth Green
2,169,277	6/30/98	Good Earth Corporation	Good Earth China Black

Schedule A
to
Recordation Form Cover Sheet
Page 2

2,172,586	7/14/98	Good Earth Corporation	Good Earth Ginseng
2,172,587	7/14/98	Good Earth Corporation	Good Earth Jasmine
2,172,944	7/14/98	Good Earth Corporation	Good Earth China Collection
2,174,672	7/21/98	Good Earth Corporation	Panax Ginseng Extract
2,174,647	7/21/98	Good Earth Corporation	Ice Lantern
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2,201,535	11/3/98	Good Earth Corporation	From The Fields of Five Continents
2,244,805	5/11/99	Good Earth Corporation	Good Earth
2,291,798	11/16/99	Good Earth Corporation	Good Earth
2,316,637	2/8/00	Good Earth Corporation	Good Earth Products
2,441,177	4/3/01	Good Earth Corporation	Good Earth
2,563,918	4/23/02	Good Earth Corporation	Good Earth

TRADEMARK SECURITY AGREEMENT

This **TRADEMARK SECURITY AGREEMENT** (this "**Agreement**") is dated as of August 29, 2003, by **GOOD EARTH CORPORATION**, a California corporation (the "**Pledgor**"), and **COMERICA BANK**, a Michigan banking corporation (the "**Bank**").

RECITALS

WHEREAS, FMALI HERB, INC., a California corporation ("**Borrower**"), has entered into that certain Amended and Restated Loan Agreement (Secured) dated the date hereof with Bank (the "**Loan Agreement**") whereby Bank will extend certain financial accommodations to Borrower; and

WHEREAS, Bank has declined to extend the financial accommodations to Borrower unless and until Pledgor grants to Bank a security interest in the trademarks of Pledgor pursuant to the terms of this Agreement; and

WHEREAS, Pledgor represents that it now possesses the sole and complete ownership rights to its assets to be secured by this Agreement and that it has not granted a security interest or otherwise pledged, mortgaged, transferred, assigned licensed any part of its rights in said assets to any party other than Bank, except as set forth herein.

AGREEMENT

NOW THEREFORE, in consideration of the premises set forth in this Agreement, and for other good and valuable consideration, receipt of which is hereby acknowledged, Bank and Pledgor agree as follows:

1 **Definitions; Interpretation.**

1.1 **Certain Defined Terms.** As used in this Agreement, the following terms shall have the following meanings:

"Bank Expenses" means (a) all costs and expenses (including, without limitation, taxes and insurance premiums) required to be paid by Pledgor under this Agreement that are paid or advanced by Bank; (b) filing, recording, publication, and search fees paid or incurred by Bank in connection with Bank's transactions with Pledgor or Borrower; (c) costs and expenses incurred by Bank to correct any default or enforce any provision of this Agreement or in gaining possession of, maintaining, handling, preserving, storing, shipping, selling, and preparing for sale and/or advertising to sell the Collateral, whether or not a sale is consummated; (d) costs and expenses of suit incurred by Bank in enforcing or defending this Agreement or any portion thereof; and (e) Bank's reasonable attorney

fees and expenses incurred (before or after execution of this Agreement) in advising Bank with respect to, or in structuring, drafting, reviewing, negotiating, amending, terminating, enforcing, defending, or otherwise concerning, this Agreement or any portion thereof, irrespective of whether suit is brought.

“**Collateral**” has the meaning set forth in Section 2.1.

“**Licenses**” shall mean the License agreements attached as Schedule B, plus any license agreements entered into after the date of this Agreement.

“**Obligations**” means (a) the performance of all obligations of Pledgor under this Agreement; (b) all extensions, renewals, modifications, amendments, and refinancings of any of the foregoing; (c) all Bank Expenses; (d) all loans, advances, indebtedness, and other obligations owed by Borrower to Bank of every description whether now existing or hereafter arising (including those owed by Borrower to others and acquired by Bank by purchase, assignment, or otherwise), including but not limited to Borrower’s obligations arising under the Loan Agreement whether or not for the payment of money, whether or not evidenced by any note or other instrument, whether direct or indirect, absolute or contingent, due or to become due, joint or several, primary or secondary, liquidated or unliquidated, secured or unsecured, original or renewed or extended, whether arising before, during or after the commencement of any insolvency proceeding in which Borrower is a debtor, any obligations arising pursuant to any letter of credit transactions and any other financial accommodations, obligations to perform or forbear from performing acts, and all overdrafts on accounts (as such term is defined in Section 4104 of the UCC) maintained with Bank.

“**PTO**” means the United States Patent and Trademark Office.

“**UCC**” means the Uniform Commercial Code as in effect in the State of California, as amended from time to time.

1.1 **Terms Defined in UCC.** Where applicable in the context of this Agreement and except as otherwise defined herein, terms used in this Agreement shall have the meanings assigned to them in the UCC.

1.2 **Construction.** In this Agreement, the following rules of construction and interpretation shall be applicable: (a) no reference to “proceeds” in this Agreement authorizes any sale, transfer, or other disposition of any Collateral by Pledgor; (b) “includes” and “including” are not limiting; (c) “or” is not exclusive; and (d) “all” includes “any” and “any” includes “all.”

2.1 **Grant of Security Interest.** As security for the payment and performance of the Obligations, Pledgor hereby grants to Bank a security interest in, and a mortgage upon, all of Pledgor's right, title and interest in, to and under the following property, in each case whether now or hereafter existing or arising or in which Borrowers now have or hereafter own, acquire or develop an interest and wherever located (collectively, the "**Collateral**"):

2.1.1 all state (including common law), federal and foreign trademarks, service marks and trade names (including such marks, names and applications as described in Schedule A), and applications for registration of such trademarks, service marks and trade names (but excluding any application to register any trademark, service mark or other mark prior to the filing under applicable law of a verified statement of use (or the equivalent) for such trademark, service mark or other mark to the extent the creation of a security interest therein or the grant of a mortgage thereon would void or invalidate such trademark, service mark or other mark), all licenses relating to any of the foregoing;

2.1.2 all income and royalties with respect to any licenses (including such marks, names and applications as described in Schedule A), whether registered or unregistered and wherever registered, all rights to sue for past, present or future infringement or unconsented use thereof, all rights arising therefrom and pertaining thereto and all reissues, extensions and renewals thereof;

2.1.3 the entire goodwill of or associated with the businesses now or hereafter conducted by Pledgor connected with and symbolized by any of the aforementioned properties and assets;

2.1.4 all general intangibles and all intangible intellectual or other similar property of Pledgor of any kind or nature, associated with or arising out of any of the aforementioned properties and assets and not otherwise described above; and

2.1.5 all proceeds of any and all of the foregoing Collateral (including license royalties, rights to payment, accounts receivable and proceeds of infringement suits) and, to the extent not otherwise included, all payments under insurance (whether or not Bank is the loss payee thereof) or any indemnity, warranty or guaranty payable by reason of loss or damage to or otherwise with respect to the foregoing Collateral.

2.2 **Continuing Security Interest.** Pledgor agrees that this Agreement shall create a continuing security interest in the Collateral which shall remain in effect until terminated in accordance with Section 17.

2.3 **Licenses.** Bank acknowledges the existence of the Licenses granted by Pledgor as set forth on Schedule B hereto. Nothing in this Agreement shall be deemed to invalidate the Licenses.

2.3.1 **Licensing.** Nothing herein shall be deemed to prevent Pledgor from licensing the Collateral after the date of this Agreement.

2.3.2 **Assignment.** So long as the Obligations are indefeasibly paid in full, Pledgor may sell, assign, transfer, or otherwise dispose of, any of its now owned or hereafter acquired Collateral.

3 **Events of Default.** The failure by Pledgor to perform any of the terms or conditions of this Agreement shall constitute a default. Upon the occurrence of such a default, or an Event of Default (as defined in the Loan Agreement) under Section 12.1 or Section 12.2 of the Loan Agreement, then Bank may, by notice to Pledgor, take any action as may be deemed to be necessary with respect to the Collateral, including but not limited to (a) the assignment of all Collateral to Bank; or (b) the collection of royalties (if any) from the Licensees. Bank agrees that should it seek to foreclose upon the Collateral that its sole remedy with regard to the Licenses will be the right to collect the royalties (if any) from the Licensees and that any sale, transfer or assignment of the Collateral will not terminate or otherwise alter the ongoing effect to the Licensees pursuant to the terms of the Licenses. Upon an Event of Default (as defined in the Loan Agreement) other than under Section 12.1 or Section 12.2, then upon expiration of the applicable cure period, if any, Bank may exercise its rights as provided herein.

3.1 **Remedies.** Upon the occurrence of any Event of Default (as defined in the Loan Agreement) or a default under this Agreement, Bank shall have the right to exercise any and all other rights and remedies provided for herein, under the UCC and at law or equity. The enumeration of the foregoing rights and remedies is not intended to be exhaustive and the exercise of any rights or remedy shall not preclude the exercise of any other right or remedies provided for herein or otherwise provided by law, all of which shall be cumulative and not alternative.

4 **Representations and Warranties.** Pledgor represents and warrants to Bank that:

4.1 **Trademarks.** A true and correct list of all of the existing Collateral consisting of U.S. trademarks, trademark registrations or applications owned by Pledgor, in whole or in part, is set forth in Schedule A.

5 **Further Acts.** On a continuing basis, Pledgor shall make, execute, acknowledge and deliver, and file and record in the proper filing and recording places, all such instruments and documents, and take all such action as may be necessary or advisable or may be requested by Bank to carry out the intent and purposes of this Agreement, or for assuring, confirming or protecting the grant or

perfection of the security interest granted or purported to be granted hereby, to ensure Pledgor's compliance with this Agreement or to enable Bank to exercise and enforce its rights and remedies hereunder with respect to the Collateral, including any documents for filing with the PTO or any applicable state office. Bank may record this Agreement, an abstract thereof, or any other document describing Bank's interest in the Collateral with the PTO, at the expense of Pledgor. In addition, Pledgor authorizes Bank to file financing statements describing the Collateral in any UCC filing office deemed appropriate by Bank. If the Pledgor shall at any time hold or acquire a commercial tort claim arising with respect to the Collateral, the Pledgor shall immediately notify Bank in a writing signed by the Pledgor of the brief details thereof and grant to the Bank in such writing a security interest therein and in the proceeds thereof, all upon the terms of this Agreement, with such writing to be in form and substance satisfactory to the Bank.

6 ***Authorization to Supplement.*** Pledgor agrees to deliver updated copies of Schedule A and Schedule B to Bank at the end of any quarter in which any Pledgor registers or otherwise adopts or acquires any Trademark not listed on Schedule A hereto or enters into any Trademark license not listed on Schedule B hereto, and duly and promptly to execute and deliver, or have duly and promptly executed and delivered, at the cost and expense of the Pledgor, such further instruments or documents (in form and substance satisfactory to Bank), and promptly perform, or cause to be promptly performed, any and all acts, in all cases, as may be necessary, proper or advisable from time to time, in the reasonable judgment of Bank, to carry out the provisions and purposes of this Agreement, and to provide, perfect and preserve the Liens of Bank in the Collateral (or any portion thereof). Without limiting Pledgor's obligations under this Section 5, Pledgor authorizes Bank to modify this Agreement by amending Schedule A to include any such new trademark rights. Notwithstanding the foregoing, no failure to so modify this Agreement or amend Schedule A or Schedule B shall in any way affect, invalidate or detract from Bank's continuing security interest in all Collateral, whether or not listed on Schedule A or Schedule B.

7 ***Notices.*** All notices, requests and other communications to any party hereunder shall be in writing (including bank wire, telex, facsimile or similar writing) and shall be given to such party: (a) in the case of Pledgor at: 831 Almar Avenue, Santa Cruz, CA 95060, Attn: Ben R. Zaricor, President FAX: (831) 429-5173; (b) in the case of Bank, at 333 West Santa Clara Street, San Jose, CA 95113, Attn: Joan S. Clark, Assistant Vice President, Fax: (408) 556-5395; or (c) in the case of any party, at such other address, facsimile number or telex number as such party may hereafter specify for the purpose by notice. Each such notice, request or other communication shall be effective (i) if given by telex, when transmitted to the telex number referred to in this Section and the appropriate answerback is received; (ii) if given by facsimile, when transmitted to the facsimile number referred to in this Section and confirmation of receipt is received; (iii) if given by mail, when deposited

in the mails with first class postage prepaid, addressed as aforesaid; or (iv) if given by any other means, when delivered at the address referred to in this Section.

8 ***Binding Effect.*** This Agreement shall be binding upon, inure to the benefit of and be enforceable by Pledgor, Bank and their respective successors and assigns. Pledgor may not assign, transfer, hypothecate or otherwise convey its rights, benefits, obligations or duties hereunder without the prior written consent of Bank.

9 ***Governing Law.*** This Agreement shall be governed by, and construed in accordance with, the law of the State of California, except as required by mandatory provisions of law or to the extent the validity, perfection or priority of the security interests hereunder, or the remedies hereunder, in respect of any Collateral are governed by the law of a jurisdiction other than the State of California.

10 ***Severability of Provisions.*** In the event any one or more of the provisions contained in this Agreement is held to be invalid, illegal or unenforceable in any respect, then such provision shall be ineffective only to the extent of such prohibition or invalidity, and the validity, legality, and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

11 ***Amendments.*** Neither this Agreement nor any provisions hereof may be changed, waived, discharged or terminated, nor may any consent to the departure from the terms hereof be given, orally (even if supported by new consideration), but only by an instrument in writing signed by all parties to this Agreement. Any waiver or consent so given shall be effective only in the specific instance and for the specific purpose for which given.

12 ***Entire Agreement.*** This Agreement, together with the Schedules embodies the entire agreement and understanding among and between the parties hereto, and supersedes all prior or contemporaneous agreements and understandings between said parties, verbal or written, express or implied, relating to the subject matter hereof. No promises of any kind have been made by Bank or any third party to induce Pledgor to execute this Agreement. No course of dealing, course of performance or trade usage, and no parol evidence of any nature, shall be used to supplement or modify any terms of this Agreement.

13 ***Waiver.*** No failure to exercise and no delay in exercising any right, power, or remedy hereunder shall impair any right, power, or remedy which Bank may have, nor shall any such delay be construed to be a waiver of any of such rights, powers, or remedies, or any acquiescence in any breach or default hereunder; nor shall any waiver by Bank of any breach or default by Pledgor hereunder be deemed a waiver of any default or breach subsequently occurring. All rights and remedies granted to Bank hereunder shall remain in full force and effect notwithstanding any single or partial exercise of, or any discontinuance of action begun to enforce, any such right or remedy. The rights and remedies specified herein are cumulative and not exclusive of each other or of any rights or remedies which Bank would otherwise

have. Any waiver, permit, consent or approval by Bank of any breach or default hereunder must be in writing and shall be effective only to the extent set forth in such writing and only as to that specific instance.

14 ***Suretyship Waivers.*** Pledgor hereby waives (a) all of Pledgor's rights of subrogation, reimbursement, indemnification, and contribution and any other rights and defenses that are or may become available to Pledgor by reason of Sections 2787 to 2855, inclusive of the California Civil Code; (b) any rights or defenses Pledgor may have in respect of its obligations as a guarantor or other surety by reason of any election of remedies by Bank; (c) any rights or defenses Pledgor may have because the Obligations are secured by real property or an estate for years. These rights or defenses include, but are not limited to, any rights or defenses that are based upon, directly or indirectly, the application of Section 580a, 580b, 580d, or 726 of the Code of Civil Procedure to the Obligations; (d) all rights and defenses arising out of an election of remedies by Bank even though that election of remedies, such as a nonjudicial foreclosure with respect to security for a guaranteed obligation, has destroyed Pledgor's rights of subrogation and reimbursement against Borrower by the operation of Section 580d of the Code of Civil Procedure or otherwise; and (e) all rights and defenses that Pledgor may have because the Obligations are secured by real property. This means, among other things: (i) Bank may collect from Pledgor without first foreclosing on any real or personal property collateral pledged by Borrower; (ii) if Bank forecloses on any real property collateral pledged by Borrower: (1) The amount of the Obligations may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price; and (2) Bank may collect from Pledgor even if Bank foreclosing on the real property collateral, has destroyed any right Pledgor may have to collect from Borrower. This is an unconditional and irrevocable waiver of any rights and defenses Pledgor may have because Borrower's debt is secured by real property. These rights and defenses include, but are not limited to, any rights or defenses based upon Section 580a, 580b, 580d, or 726 of the Code of Civil Procedure.

15 ***Interpretation.*** This Agreement and all agreements relating to the subject matter hereof are the product of negotiation and preparation by and among each party and its respective attorneys, and shall be construed accordingly. The parties waive the provisions of California Civil Code §1654.

16 ***Counterparts.*** This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if all signatures were upon the same instrument. Delivery of an executed counterpart of the signature page to this Agreement by telefacsimile shall be effective as delivery of a manually executed counterpart of this Agreement, and any party delivering such an executed counterpart of the signature page to this Agreement by telefacsimile to any other party shall thereafter also promptly deliver a manually executed counterpart of this Agreement to such other party; *provided; however*, that the failure to deliver

such manually executed counterpart shall not affect the validity, enforceability, or binding effect of this Agreement.

17 **Termination.** Upon payment and performance in full of all Obligations, the security interests created by this Agreement shall terminate and Bank (at Pledgor's expense) shall promptly execute and deliver to Pledgor such documents and instruments reasonably requested by Pledgor as shall be necessary to evidence termination of all such security interests given by Pledgor to Bank hereunder, including cancellation of this Agreement by written notice from Bank to the PTO.

[signature page follows]

18 ***No Inconsistent Requirements.*** Pledgor acknowledges that this Agreement and the other documents, agreements and instruments entered into or executed in connection herewith may contain covenants and other terms and provisions variously stated regarding the same or similar matters, and Pledgor agrees that all such covenants, terms and provisions are cumulative and all shall be performed and satisfied in accordance with their respective terms.

GOOD EARTH CORPORATION

A handwritten signature in black ink, appearing to read "B. R. Zaricor", is written over a horizontal line.

By: Benjamin R. Zaricor
Its: President

SCHEDULE A
to the Trademark Security Agreement

U.S. Trademarks of Pledgors

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2,441,177	4/3/01	Good Earth Corporation	Good Earth
2,563,918	4/23/02	Good Earth Corporation	Good Earth

Pending U.S. Trademark Applications of Pledgors

SERIAL NO.	FILED	REGISTERED OWNER	MARK
76/217070	2/28/01	Good Earth Corporation	Good Earth
76/217065	2/28/01	Good Earth Corporation	Good Earth
76/217064	2/28/01	Good Earth Corporation	Fog Kist
76/460252	10/16/02	Good Earth Corporation	Good Earth
76/100537	8/2/00	Good Earth Corporation	White Cross Design

SCHEDULE B

LICENSES

To Be Provided by Borrower

- ① Kilani Elno,
Pasadena and Northridge Ca.
- ② Hale Fletcher
Goleta, Ca.
- ③ Mike Rami
Studio City, Ca.
- ④ Parasole Restaurants, Elva.
Minneapolis, Minn.
- ⑤ Smali Herb, Elno.
Santa Cruz, Ca.

Louise Venezia