



101987754

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original document or copy thereof.

1. Name(s) of conveying party(ies):

1) JAMES P. COX  
 2) R.W. DUFFY COX *2.1.02*  
 3) \_\_\_\_\_  
 4) \_\_\_\_\_  
 5) \_\_\_\_\_  
 6) \_\_\_\_\_

Additional names of conveying parties attached?  Yes  No

2. Name and address of receiving party:

Name: PASTEURIZED EGGS, L.P.

Internal Address: \_\_\_\_\_

Street Address: SOUTH DOWN SHORES  
1921 PARADE ROAD

City: LACONIA State: NEW HAMPSHIRE

Zip: 03246-9315

Additional names & addresses attached?  Yes  No

3. Nature of conveyance:

Assignment  Merger

Security Agreement  Change of Name

Other \_\_\_\_\_

Execution Dates:

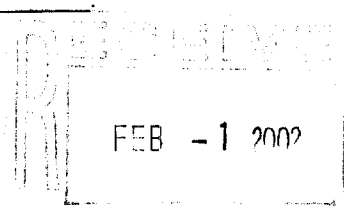
1) JANUARY 2, 1997 4) \_\_\_\_\_  
 2) \_\_\_\_\_ 5) \_\_\_\_\_  
 3) \_\_\_\_\_ 6) \_\_\_\_\_

4. Application number(s) or registration number(s):  
 If this document is being filed together with a new application,  
 the execution date of the application is \_\_\_\_\_

A. Patent Application No(s). \_\_\_\_\_

B. Patent No(s). 5,939,118

Additional numbers attached?  Yes  No



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

Name: DORSEY & WHITNEY LLP

Internal Address: \_\_\_\_\_

SUITE 3400

Street Address: 1420 FIFTH AVENUE

City: SEATTLE State: WA ZIP: 98101

6. Total number of applications and patents involved.....One (1)

7. Total Fee (37 CFR 3.41): .....\$40

Enclosed

Authorized to be charged to deposit account

8. Deposit account number:  
50-1266

02/19/2002 TDIAZ1 00000073 5939118  
 01 FC:581 40.00 GP

DO NOT USE THIS SPACE

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.*

D. WILLIAM TOONE *[Signature]* 6 JAN 02  
 Name of Person Signing Signature Date

Total number of pages including cover sheet, attachments, and document: 15

### AGREEMENT

This Agreement ("Agreement") is entered into between Dr. James P. Cox and R. W. Duffy Cox ("COX"), and Pasteurized Eggs, L.P. and The Davidson Group Shell Egg Corporation (collectively or singularly, as the context may require, "DAVIDSON"), a Delaware corporation, effective as of the second day of January, 1997.

A. WHEREAS, COX through RAMTEK, Inc. had prior agreements with L. John Davidson and DAVIDSON to license, market and sublicense the ThermalPure™ Technology; and

B. WHEREAS, the parties have executed a Settlement Agreement concurrently of even date herewith; and

C. WHEREAS, the parties desire to enter into a new agreement to govern their rights and obligations ~~with respect to the~~ ThermalPure™ Technology

NOW, THEREFORE, ~~the~~ parties have entered into this Agreement, the terms of which are as follows:

1. ThermalPure™ Technology. "ThermalPure™ Technology" means exclusively ~~the~~ novel methods for pasteurizing and the product produced thereby specifically comprised of edible whole fresh chicken shell eggs, of discrete yolk and discrete white portions, as set forth in Schedule A, including the Cox patent applications and patents, items 1, 2 and 3, and the Davidson patent application set forth as item 4, and Schedule B "Trademark(s)". This Technology ~~includes~~ all improvements of the ThermalPure™ Technology defined herein, which have been or may be developed or otherwise obtained by either party including inventions, patents and patent applications filed by either party within the scope of the ThermalPure™ Technology as hereinabove defined, but does not relate to shell eggs wherein the yolk and whites are pre-scrambled inside the shell, to equipment which performs the pasteurization function or the packaging or wrap in which the pasteurized eggs are contained.

*FWDC*  
*JE*  
*JE*

Post-It® Fax Note	7671	Date	10/23	# of Pages	18
To	Bill Toone	From	Flo Cox		
Co./Dept.		Co.			
Phone #		Phone #			
Fax #		Fax #			

**2. ASSIGNMENTS.**

(a) In consideration of the payments and other promises described below, COX hereby agrees subject to the option conditions of §4, to transfer and assign to DAVIDSON all of its respective rights, titles and interests in any of the following which specifically constitutes the ThermalPure™ Technology as defined in §1 above.

- (i) All COX issued patents, whether U.S. or foreign, and all pending U.S. or foreign patent applications as listed in Schedule A, together with any divisions, continuations, continuations-in-part, reexaminations and/or reissues:
- (ii) Any future patents, future patent applications (including without limitation future divisional, continuation, continuation-in-part, reexamination or reissue applications), future improvements, future trade secrets, or future inventions developed, made or applied for prior to the expiration of this Agreement within the scope of ThermalPure™ Technology.
- (iii) Any U.S. and foreign trademarks owned or utilized by COX in Schedule B, together with any associated goodwill.

(b) COX agrees to execute necessary documents with DAVIDSON in procuring patent and trademark protection for ThermalPure™ Technology including presently existing, future improvements or inventions made prior to the expiration of this Agreement.

(c) COX agrees that DAVIDSON, solely at its expense, may use counsel of its choice in prosecuting any patent and trademark applications covered by this Agreement, except that DAVIDSON shall not maintain such counsel over the written objection of COX, which shall not be unreasonably asserted. In addition, COX's counsel, at COX's expense, shall have the right to review and assist DAVIDSON's counsel in the prosecution of said patent and trademark applications and in the conduct of any litigation, provided however, COX's counsel shall not unduly delay or interfere with the prosecution and conduct of such matters by DAVIDSON's counsel.

(d) COX also agrees that it will sign any additional documents provided by DAVIDSON to:

- (i) effectuate the assignments described above, or
- (ii) to assist in obtaining additional patent and trademark protection described above.

(e) DAVIDSON agrees that it will seek all possible patent, trademark and copyright rights accruable from ThermalPure™ Technology excepting:

- (i) those rights which DAVIDSON determines it does not desire to seek protection for shall timely be reassigned six months prior to the last possible filing date to COX in order that it can timely file at its own expense, on its own account and on its own behalf
- (ii) except that by mutual written approval where a trade secret is believed by the parties to be advantageous.

(f) With the exception of expenses which COX specifically agrees to undertake herein, DAVIDSON further agrees that the expenses associated with the foregoing will be paid by DAVIDSON.

3. Duration. This Agreement shall remain in effect for twenty (20) years or until the last ThermalPure™ Technology rights expire, whichever is greater, unless terminated sooner in accordance with the provisions of §10 of this Agreement.

4. Option. COX conveys to DAVIDSON an option to acquire the worldwide rights to the ThermalPure™ Technology as follows.

(a) Initial Option

DAVIDSON agrees to pay COX an initial option payment in the sum of \$112,692.31 on signing of this Agreement, plus additional option payments as follows:

- A payment of \$112,692.31 due on 1/1/97
- A payment of \$112,692.31 due on 4/1/97
- A payment of \$112,692.31 due on 7/1/97
- A payment of \$112,692.31 due on 10/1/97

Handwritten signature and initials, possibly 'AWBC', written in dark ink on the right side of the page.

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(b) First Renewal

Upon the completion of the payments set forth in (a) above, the option may, at DAVIDSON's discretion, be renewed for one year by making the option payments required for this renewal as follows:

- A payment of \$112,692.31 due on 1/1/98
- A payment of \$112,692.31 due on 4/1/98
- A payment of \$112,692.31 due on 7/1/98
- A payment of \$112,692.31 due on 10/1/98

(c) Second Renewal

Upon the completion of the payments set forth in (a) and (b) above, the option may, at DAVIDSON's discretion, be renewed for one year by making the option payments required for this Second Renewal as follows:

- A payment of \$112,692.31 due on 1/1/99
- A payment of \$112,692.31 due on 4/1/99
- A payment of \$112,692.31 due on 7/1/99
- A payment of \$112,692.31 due on 10/1/99

(d) DAVIDSON may propose a basis for accelerating exercise of options due in this section by prepayment thereof and COX agrees to consider such proposal in good faith.

(e) Upon completion of all the payments as set forth in §4 (a-c), the Option shall be fully exercised and the assignments of all substantial patent and trademark rights for ThermalPure™ Technology will become fully vested in DAVIDSON by operation of this Agreement.

5. Royalty. After the option period ending on December 31, 1999, DAVIDSON shall pay Royalty payments to COX on Gross Receipts as <sup>defined</sup> ~~defined~~ in §5(e), which Royalty shall be calculated as follows:

*RWB*  
*[Signature]*

(a) One quarter cent (\$0.0025) per dozen eggs or 2.5% of Gross Receipts, whichever is greater, if Gross Receipts to DAVIDSON per dozen eggs equals 10 cents or more for each dozen eggs; or

(b) One fifth cent (\$0.0020) per dozen eggs or 2.5% of Gross Receipts, whichever is greater, if the Gross Receipts to DAVIDSON per dozen eggs is less than 10 cents.

*[Signature]*  
*RWB*

(c) For purposes of determining whether §5(a) or 5(b) is applicable, Gross Receipts shall be calculated by including the cost of packaging and/or wrap per dozen eggs, but the Royalty is to be paid only on Gross Receipts without packaging or wrap costs being included.


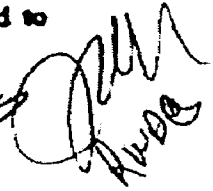
(d) In addition to the royalty calculated under §5 (a-b), a royalty shall be paid to COX by DAVIDSON which shall be calculated at a rate of 5% of all other income received by DAVIDSON from ThermalPure™ Technology limited to legal awards or settlements of patent infringements, sale or licensing to an entity not controlled by DAVIDSON of ThermalPure™ Technology, or the DAVIDSON business less non-recoverable legal and other outside professional fees and expenses expended for obtaining such income, excepting if COX is the third party, in which event no payment shall be due to COX under this provision.

(i) In the event that COX sells or assigns this Agreement to an entity not controlled by COX, then DAVIDSON shall be entitled to 5% of all income received by COX from such sale or assignment, less non-recoverable legal and other outside professional fees and expenses expended for obtaining such income, excepting if DAVIDSON is the third party, in which event no payment shall be due to DAVIDSON under this provision.

(e) For purposes of this Agreement, "GROSS RECEIPTS" means all income received by DAVIDSON from the sale of shell eggs pasteurized by application of ThermalPure™ Technology.

(f) Any royalties due under this section shall be paid within thirty (30) days of the end of each calendar quarter. DAVIDSON will provide a written report with each royalty payment, stating in each report the number, description and aggregate gross receipts and income, clearly setting forth how the royalty was calculated with bona fide copies of particulars thereof.

(g) DAVIDSON will permit its books and records, including license agreements to be examined once a year upon fourteen (14) days notice to DAVIDSON to verify the accuracy of royalty reports. If there is a dispute or a default on a payment, COX shall be entitled to immediate inspection of DAVIDSON's books and records.

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6. Minimum Royalties. Notwithstanding any other provision in §5, DAVIDSON shall pay COX a Minimum Royalty as follows for the fourth and fifth years of this Agreement:

(a) Fourth Year Minimum: If the royalty calculation and payment for the third year derived under §5 (a-b) achieves or exceeds \$450,769.24, then no Minimum Royalty shall apply for the fourth year. If such calculation totals less than \$450,769.24, then the Minimum Royalty payment for the fourth year shall be \$450,769.24, payable quarterly from January 1, 2000, less the actual quarterly Royalty paid under §5 (a-b) during such year.

(b) Fifth Year Minimum: If the royalty calculation and payment for the fourth year derived under §5 (a-b) achieves or exceeds \$450,769.24, then no Minimum Royalty shall apply for the fifth year. If such calculation totals less than \$450,769.24, then the Minimum Payment for the fifth year shall be \$450,759.24, payable quarterly from January 1, 2001, less the actual quarterly Royalty paid under §5 (a-b) during such year.

(c) Sixth Year And Beyond: For the sixth year and beyond, there shall be no Minimum Royalty due.

7. Subordination Of Third Party Agreements. All agreements with third parties concerning the ThermalPure™ Technology, including licenses, sub-licenses and joint ventures and the like, must be strictly subject to and not inconsistent with this Agreement, its terms and conditions.

8. Litigation, Indemnification and Cooperation. The parties agree to cooperate with one another to the extent that their health permits in connection with any litigation or claim brought by or against other parties related to the ThermalPure™ Technology. The parties further agree as follows:

(a) COX shall defend and indemnify DAVIDSON in any litigation brought by third parties specifically challenging COX's rights to assign all substantial rights of ThermalPure™ Technology to DAVIDSON exclusively assigned under this Agreement. DAVIDSON shall give COX prompt notice of any suit or claim for which it seeks indemnification.

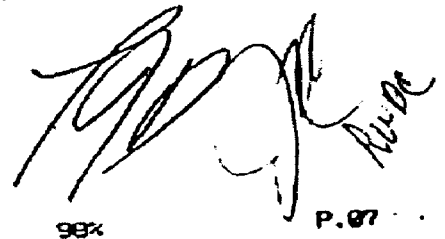
(b) COX shall not be responsible or liable for any ThermalPure™ Technology process, equipment, or improvements made by DAVIDSON under this Agreement. DAVIDSON agrees to indemnify, defend and hold COX harmless from and against all loss, liability, damages, claims, actions and proceedings, including all costs and expenses, resulting from the use and/or operation of the ThermalPure™ Technology.

(c) DAVIDSON shall, at its sole discretion and expense, prosecute any actions for infringement or misappropriation of any of the patents, trademarks or trade secrets covered by this Agreement, and shall, at its sole discretion and expense, defend any action challenging the validity or enforceability of any of the patents, trademarks, or trade secrets covered by this Agreement. DAVIDSON agrees to keep COX's counsel timely informed such that said counsel has reasonable time and opportunity to provide information or insights relevant to such actions.

(d) COX shall have the right, at its own expense, on its own account and to its sole benefit, to prosecute any actions for infringement or misappropriation of any of the patents, trademarks, or trade secrets covered by this Agreement, and shall, at its sole discretion and expense, defend any action challenging the validity or enforceability of any of the patents, trademarks, or trade secrets covered by this Agreement all within six (6) months of statutory limits governing such actions should DAVIDSON determine not to undertake or to abandon such actions.

(e) COX and DAVIDSON agree that either they or their electors will cooperate to prosecute and/or defend any litigation regarding ThermalPure™ Technology. "Cooperation" means that ad rem information and documents that are in the possession of COX, DAVIDSON or available from their agents, representatives, lawyers or assigns shall be made available at the reasonable request and expense of the requesting party. COX agrees to make available to DAVIDSON for copying at COX's premises on or before April 1, 1997 all documents in its possession, and to notify and authorize its former and current counsel to make available for copying at their premises by DAVIDSON all records relating to the ThermalPure™ Technology. The cost of copying to be shared equally by DAVIDSON and COX.

9. Consulting Arrangement.





DAVIDSON may request and COX agrees to provide, as health may permit, consultation to reasonably assist DAVIDSON in the development and marketing of the ThermalPure™ Technology, on terms and conditions agreeable to the parties. It is understood that as part of any arrangement arising therefrom, DAVIDSON will hold COX harmless and indemnify COX from all claims made.

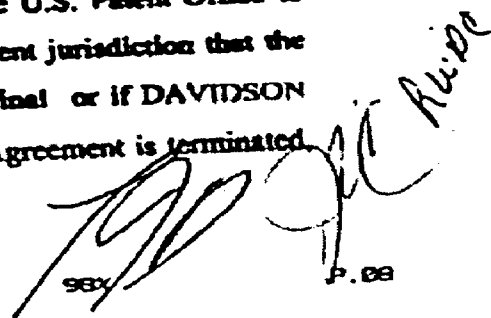
#### 10. Termination.

(a) COX may terminate this Agreement for failure of DAVIDSON to make any of the required payments on time under §4. If COX has given DAVIDSON written notice of DAVIDSON's failure to make such payments or to correct a breach and DAVIDSON has failed to cure such failure within fourteen (14) days after receipt of such notice, COX may thereupon irrevocably terminate this Agreement forthwith. Time is of the essence in interpreting this Agreement.

(b) COX may terminate this Agreement for (i) failure of DAVIDSON to make any of the required payments under §5 and §6. If COX has given DAVIDSON written notice of DAVIDSON's failure to make such payments or to correct a breach and DAVIDSON has failed to cure such failure within thirty (30) days after receipt of such notice, COX may thereupon irrevocably terminate this Agreement forthwith. Time is of the essence in interpreting this Agreement.

(c) The parties agree that upon termination of this Agreement, all ThermalPure™ Technology, as set forth in Schedule A, including all improvements, whether or not patented, and the trademarks in Schedule B, shall be transferred to COX by operation of this Agreement. This includes all technology including but not limited to patent applications, inventions invented by or on behalf of or otherwise obtained by COX or DAVIDSON within the scope of the ThermalPure™ Technology.

(d) The parties agree that if no patents are issued by the U.S. Patent Office to COX or DAVIDSON or there is a determination by a court of competent jurisdiction that the patent(s) are invalid and not enforceable and such judgment becomes final or if DAVIDSON voluntarily transfers all the ThermalPure™ Technology to COX, this Agreement is terminated.



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provided, however, any payments received by COX pursuant to this Agreement prior to such termination are to be kept by COX.

(e) The parties agree that upon termination of the Agreement under §10 (a, b and d) the sole remedy of COX is as set forth in §10 (c).

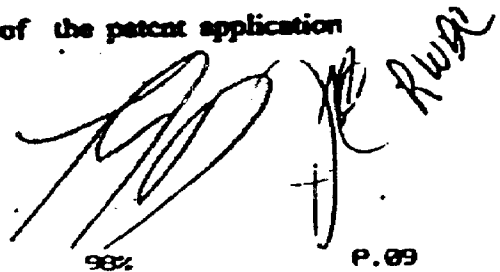
#### 11. Representations and Warranties.

(a) COX represents and warrants:

- (i) That it has full power and authority to enter into this Agreement;
- (ii) That it has good title to each of the patents and patent applications listed in items 1, 2 and 3 in Schedule A, to each of the trademarks and trademark applications listed in Schedule B and to the trade secrets and know-how covered by this Agreement; and
- (iii) That it has no reason to doubt the validity of the patents and patent applications listed in item 1, 2 and 3 of Schedule A or the validity of the trademarks listed in Schedule B.

(b) DAVIDSON represents and warrants:

- (i) PELP is a limited partnership organized under the laws of the state of New Hampshire, and
- (ii) That The Davidson Group Shell Egg Corporation is a corporation duly organized and existing under the laws of the state of Delaware, that it is the corporate general partner of PELP, and
- (iii) That the Davidson Group Shell Egg Corporation has full power and authority to enter into this Agreement on behalf of PELP.
- (iv) That it has good title to the patent application listed in item 4 in Schedule A, to the trade secrets and know-how covered by this Agreement, and
- (v) That it has no reason to doubt the validity of the patent application listed in Schedule A, item 4.

  
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(c) In the event of a breach of one or more of the foregoing representations or warranties, the opposing party may recover any damages reasonably flowing from that breach from the breaching party in addition to exercising any other rights or remedies that the opposing party may be entitled to under this Agreement.

12. Arbitration. Any dispute related to this Agreement or involving interpretation of terms of this Agreement shall be submitted by either party to binding arbitration through JAMS (Judicial Arbitration and Mediation Service) or a similar judicial arbitration service within the jurisdiction and venue required under this Agreement. Each party shall bear its own legal expenses associated with such arbitration unless it is found by the arbitrator that one side for any reason acted in "bad faith", in which case the prevailing party shall be entitled to two times its legal expenses, including attorney's fees, paid by the party that acted in bad faith.

13. Jurisdiction and Venue. The parties agree that any arbitration and/or lawsuit initiated by either party with regard to the provisions of this Agreement or in any way related to this Agreement between the parties their successors or assigns shall be instituted in the State of Illinois with venue set in Cook county, and that the rights of the parties shall be determined under the laws of the State of Illinois.

14. Assignment. All terms, conditions and provisions of this Agreement shall extend to and be binding upon the respective parties, their successors, heirs and assigns.

15. Recitals. The recitals appearing at the beginning of this Agreement are hereby incorporated by reference as if fully set forth herein.

16. Divisibility. If any provision of this Agreement shall be held to be invalid or unenforceable in any respect, such provision shall be carried out and enforced to the extent to which it shall be valid and enforceable, and any such invalidity of unenforceability shall not affect any other provision of this Agreement, all of which shall be fully carried out and enforced as if such invalid or unenforceable provision had not been set forth herein.

17. Final Writing. This Agreement completely expresses the parties' agreement and supersedes any prior agreement or understanding, oral or written, relating to this ~~entire~~ matter.

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This Agreement shall not be amended or modified except by a written agreement executed by the parties hereto. Both parties shall be deemed drafters of this Agreement.

18. Parties' Participation. The parties acknowledge that this Agreement was negotiated by the parties who were advised by their respective counsel.

19. Notices. For the purposes of this Agreement, notice and all other communication provided for in the Agreement shall be in writing and shall be deemed to have been duly given when delivered by United States registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to COX:

Dr. James P Cox  
246 East Bartlett Road  
Lynden, Washington 98264

with a copy to:

Michael O. Warnecke, Esq.  
Mayer, Brown and Platt  
190 La Salle Street  
Chicago, Illinois 60603

If to DAVIDSON:

L. John Davidson  
The Davidson Group Shell Egg Corporation  
South Downs Shores  
1921 Parade Road  
Laconia, New Hampshire 03246-9315

with a copy to:

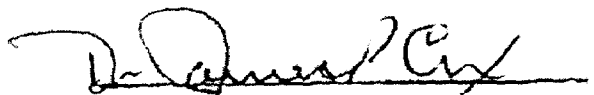

Walter D. Wekstein, Esq.  
Gadsby & Hannah LLP  
125 Summer Street  
Boston, Massachusetts 02110

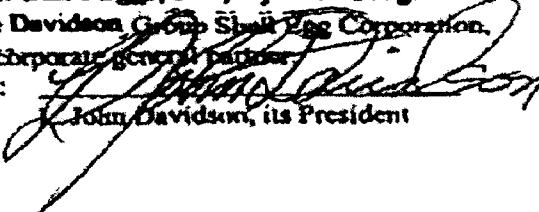
or at such other address as any party may have furnished to the other in writing in accordance herewith, except that notices of change of address shall be effective only upon receipt.

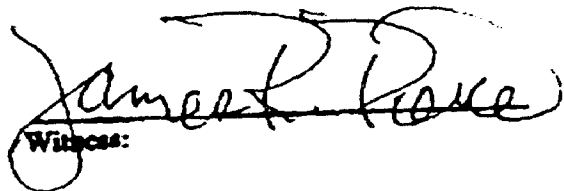
20. No Waiver Remedies. No waiver of any breach or default hereunder shall be considered valid unless in writing and signed by the party giving such waiver, and no such waiver shall be deemed a waiver of any subsequent breach or default of the same or similar nature. No failure on the part of any party to exercise, and no delay in exercising any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

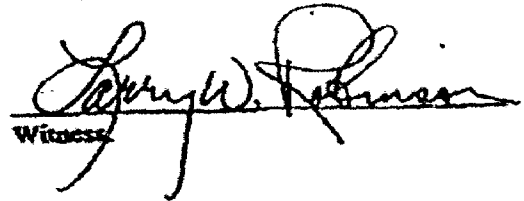
21. Headings and References. The headings in this Agreement are for convenience and reference only and are not intended to define or limit the contents of any provision or section. Unless otherwise expressly stated herein, references to sections shall refer to sections of this Agreement.

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

  
\_\_\_\_\_  
Dr. James P. Cox  
  
\_\_\_\_\_  
R. W. Duffy Cox

Pasteurized Eggs, L.P., by and through  
The Davidson Group Shell Egg Corporation,  
its corporate general manager  
By:   
\_\_\_\_\_  
John Davidson, its President

  
\_\_\_\_\_  
Witness:

  
\_\_\_\_\_  
Witness

## SCHEDULE A

1. U.S. Patent Application No. 07/746,940, entitled HYPERPASTEURIZATION OF FOOD, which issued as U.S. Patent No. 5,431,939 on 11 July 1993; and
2. U.S. Patent Application No. 08/156,273, entitled METHODS OF PROCESSING POULTRY SHELL EGGS, on which a Notice of Allowance issued on 12 July, 1996; and
3. U.S. Patent Application No. 08/691,744, entitled METHODS OF PROCESSING POULTRY SHELL EGGS, filed 8 August 1996, which is a divisional application of 08/156,273; and
4. Patent Application filed by Davidson, U.S. Patent Application No. 06/519,184, filed 25 August 1995.

*JD*  
*John Alward*

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**SCHEDULE B**

- 1. **U.S. Trademark Application No. 74/623,037 for the mark ThermalPure™**  
**(trademark application has been approved by the Trademark Examining Attorney,**  
**and formal Notice of Allowance should be received shortly).**

*TP*  
*JRE* AWA

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