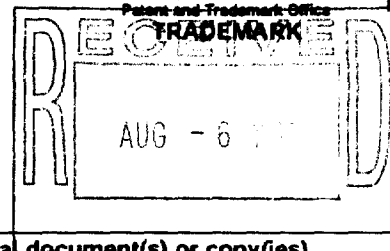


08-11-1999



MTP  
8-6-99



RECORD 101113550

EET

TRADEMARKS ONLY

TO: The Commissioner of Patents and Trademarks: Please record the attached original document(s) or copy(ies).

Submission Type

- New
- Resubmission (Non-Recordation)  
Document ID #
- Correction of PTO Error  
Reel #  Frame #
- Corrective Document  
Reel #  Frame #

Conveyance Type

- Assignment
- License
- Security Agreement
- Nunc Pro Tunc Assignment  
Effective Date  
Month Day Year
- Merger
- Change of Name
- Other

Conveying Party

Mark if additional names of conveying parties attached

Execution Date  
Month Day Year

Name

Formerly

- Individual
- General Partnership
- Limited Partnership
- Corporation
- Association

Other

Citizenship/State of Incorporation/Organization

Receiving Party

Mark if additional names of receiving parties attached

Name

DBA/AKA/TA

Composed of

Address (line 1)

Address (line 2)

Address (line 3)

City

State/Country

Zip Code

- Individual
- General Partnership
- Limited Partnership

- Corporation
- Association

Other

If document to be recorded is an assignment and the receiving party is not domiciled in the United States, an appointment of a domestic representative should be attached. (Designation must be a separate document from Assignment.)

Citizenship/State of Incorporation/Organization

08/10/1999 NTHA11 00000345 2196042

FOR OFFICE USE ONLY

01 FC:481  
02 FC:482

40.00 OP  
25.00 OP

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

Mail documents to be recorded with required cover sheet(s) information to:  
Commissioner of Patents and Trademarks, Box Assignments, Washington, D.C. 20231

TRADEMARK  
REEL: 001941 FRAME: 0647

**Domestic Representative Name and Address**

Enter for the first Receiving Party only.

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

**Correspondent Name and Address**

Area Code and Telephone Number

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

**Pages**

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

#

**Trademark Application Number(s) or Registration Number(s)**

Mark if additional numbers attached

Enter either the Trademark Application Number or the Registration Number (DO NOT ENTER BOTH numbers for the same property).

Trademark Application Number(s)			Registration Number(s)		
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="2196042"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="2196032"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

**Number of Properties**

Enter the total number of properties involved.

#

**Fee Amount**

Fee Amount for Properties Listed (37 CFR 3.41):

\$

Method of Payment: Enclosed  Deposit Account

Deposit Account

(Enter for payment by deposit account or if additional fees can be charged to the account.)

Deposit Account Number: #

Authorization to charge additional fees: Yes  No

**Statement and Signature**

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document. Charges to deposit account are authorized, as indicated herein.

Margaret E. Lehmann  
Name of Person Signing

*Margaret E. Lehmann*  
Signature

August 3, 1999  
Date Signed

## TRADEMARK SECURITY AGREEMENT

This **TRADEMARK SECURITY AGREEMENT** (this "**Agreement**") is dated as of July 29, 1999 and entered into by and between **OCEAN GARDEN PRODUCTS, INC.**, a California corporation (the "**OGP**"), and **BANK OF AMERICA, N.A.** (formerly known as Bank of America National Trust and Savings Association), as Collateral Agent for and representative of (in such capacity herein called "**Collateral Agent**") the financial institutions ("**Banks**") party to the Credit Agreement (as hereinafter defined).

### RECITALS

A. **OGP, Bank of America, N.A.**, as a Bank ("**BofA**") and as Documentation Agent, **Harris Trust and Savings Bank ("Harris"), Cooperatieve Centrale Raiffiesen-Boerenleenbank B.A., "Rabobank Nederland," New York Branch ("Rabobank"), and Union Bank of California, N.A. ("Union")** have entered into a Second Amended and Restated Consolidated Credit Agreement dated as of July 29, 1999 (said agreement, as it may hereafter be amended, supplemented or otherwise modified from time to time, being the "**Credit Agreement**", the terms defined therein and not otherwise defined herein being used herein as therein defined).

B. **OGP** owns and uses in its business, and will in the future adopt and so use, various intangible assets, including trademarks, service marks, designs, logos, indicia, trade names, corporate names, company names, business names, fictitious business names, trade styles and/or other source and/or business identifiers and applications pertaining thereto (collectively, the "**Trademarks**").

C. Collateral Agent desires to become a secured creditor with respect to and, under the circumstances described herein, an assignee of all of the existing and future Trademarks, all registrations that have been or may hereafter be issued or applied for thereon in the United States and any state thereof and in foreign countries (the "**Registrations**"), all common law and other rights in and to the Trademarks in the United States and any state thereof and in foreign countries (the "**Trademark Rights**"), all goodwill of **OGP's** business symbolized by the Trademarks and associated therewith, including without limitation the documents and things described in Section 1.(b) (the "**Associated Goodwill**"), and all proceeds of the Trademarks, the Registrations, the Trademark Rights and the Associated Goodwill, and **OGP** agrees to create a secured and protected interest in the Trademarks, the Registrations, the Trademark Rights, the Associated Goodwill and all the proceeds thereof as provided herein.

D. Upon the occurrence of a Determination Date (as defined in the Intercreditor Agreement; provided, however, that for purposes of this Agreement a Determination Date shall occur immediately with the occurrence of an Event of Default pursuant to § 5.1(b) or (c) of the Credit Agreement) and to permit Collateral Agent to operate **OGP's** business without interruption and to use the Trademarks, Registrations, Trademark Rights and Associated Goodwill in conjunction therewith, **OGP** is willing to grant to Collateral Agent the conditional assignment of **OGP's** entire right, title and interest in and to the Collateral (as hereinafter defined) and to appoint Collateral Agent as **OGP's** attorney-in-law and attorney-in-fact to execute documents and take actions to confirm said assignments.

E. It is a condition precedent to the initial extensions of credit by Banks under the Credit Agreement that OGP shall have granted the security interests and made the conditional assignment and undertaken the obligations contemplated by this Agreement.

## AGREEMENT

**NOW, THEREFORE**, in consideration of one or more Loans and other extensions of credit under the Credit Agreement and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, OGP hereby agrees with Collateral Agent as follows:

1. **Grant of Security**. OGP hereby assigns to Collateral Agent, and hereby grants to Collateral Agent a security interest in, all of OGP's right, title and interest in and to the following, in each case whether now or hereafter existing or in which OGP now has or hereafter acquires an interest and wherever the same may be located (the "**Collateral**"):

(a) each of the Trademarks and rights and interests in Trademarks which are presently, or in the future may be, owned, held (whether pursuant to a license or otherwise) or used by OGP, in whole or in part (including, without limitation, the Trademarks specifically identified in Schedule I annexed hereto, as the same may be amended pursuant hereto from time to time), and including all Trademark Rights with respect thereto and all federal, state and foreign Registrations therefor heretofore or hereafter granted or applied for, the right (but not the obligation) to register claims under any state or federal trademark law or regulation or any trademark law or regulation of any foreign country and to apply for, renew and extend the Trademarks, Registrations and Trademark Rights, the right (but not the obligation) to sue or bring opposition or cancellation proceedings in the name of OGP or in the name of Collateral Agent or otherwise for past, present and future infringements of the Trademarks, Registrations or Trademark Rights and all rights (but not obligations) corresponding thereto in the United States and any foreign country, and the Associated Goodwill; it being understood that the rights and interests included herein shall include, without limitation, all rights and interests pursuant to licensing or other contracts in favor of OGP pertaining to the Trademarks, Registrations or Trademark Rights presently or in the future owned or used by third parties but, in the case of third parties which are not Affiliates of OGP, only to the extent permitted by such licensing or other contracts and, if not so permitted, only with the consent of such third parties;

(b) the following documents and things in OGP's possession, or subject to OGP's right to possession, related to (Y) the production, sale and delivery by OGP, or by any Affiliate, licensee or subcontractor of OGP, of products or services sold or delivered by or under the authority of OGP in connection with the Trademarks, Registrations or Trademark Rights (which products and services shall, for purposes of this Agreement, be deemed to include, without limitation, products and services sold or delivered pursuant to merchandising operations utilizing any Trademarks, Registrations or Trademark Rights) ; or (Z) any retail or other merchandising operations conducted under the name of or in connection with the Trademarks, Registrations or Trademark Rights by OGP or any Affiliate, licensee or subcontractor of OGP:

(i) all lists and ancillary documents that identify and describe any of OGP's customers, or those of its Affiliates, licensees or subcontractors, for products sold and services delivered under or in connection with the Trademarks or Trademark Rights, including without limitation any lists and ancillary documents that contain a customer's name and address, the name and address of any of its warehouses, branches or other places of business, the identity of the Person or Persons having the principal

responsibility on a customer's behalf for ordering products or services of the kind supplied by OGP, or the credit, payment, discount, delivery or other sale terms applicable to such customer, together with information setting forth the total purchases, by brand, product, service, style, size or other criteria, and the patterns of such purchases;

(ii) all product and service specification documents and production and quality control manuals used in the manufacture or delivery of products and services sold or delivered under or in connection with the Trademarks or Trademark Rights;

(iii) all documents which reveal the name and address of any source of supply, and any terms of purchase and delivery, for any and all materials, components and services used in the production of products and services sold or delivered under or in connection with the Trademarks or Trademark Rights; and

(iv) all documents constituting or concerning the then current or proposed advertising and promotion by OGP or its Affiliates, licensees or subcontractors of products and services sold or delivered under or connection with the Trademarks or Trademark Rights including, without limitation, all documents which reveal the media used or to be used and the cost for all such advertising conducted within the described period or planned for such products and services;

(c) all general intangibles relating to the Collateral;

(d) all books, records, ledger cards, files, correspondence, computer programs, tapes, disks and related data processing software that at any time evidence or contain information relating to any of the Collateral or are otherwise necessary or helpful in the collection thereof or realization thereupon; and

(e) all proceeds, products, rents and profits (including without limitation license royalties and proceeds of infringement suits) of or from any and all of the foregoing Collateral and, to the extent not otherwise included, all payments under insurance (whether or not Collateral Agent is the loss payee thereof), or any indemnity, warranty or guaranty, payable by reason of loss or damage to or otherwise with respect to any of the foregoing Collateral. For purposes of this Agreement, the term "**proceeds**" includes whatever is receivable or received when Collateral or proceeds are sold, exchanged, collected or otherwise disposed of, whether such disposition is voluntary or involuntary.

**2. Conditional Assignment.** In addition to, and not by way of limitation of, the granting of a security interest in the Collateral pursuant to Section 1, OGP hereby, effective upon the occurrence of a Determination Date and upon written notice from Collateral Agent, grants, sells, conveys, transfers, assigns and sets over to Collateral Agent, for its benefit and the ratable benefit of Banks, all of OGP's right, title and interest in and to the Collateral, including without limitation OGP's right, title and interest in and to the Trademarks identified in Schedule I annexed hereto, the goodwill of the business symbolized by said Trademarks and all Registrations relating to said Trademarks.

**3. Security for Obligations.** This Agreement secures, and the Collateral is collateral security for, the prompt payment or performance in full when due of the Secured Obligations. The term "**Secured Obligations**" means and includes any and all indebtedness, obligations and secured obligations of any kind of OGP to BofA, and/or UBS, and/or Rabobank

and/or Union, (including without limitation indebtedness under the Credit Agreement and under this Agreement and for interest that, but for the filing of a petition in bankruptcy with respect to OGP, would accrue on any indebtedness) now or hereafter existing (including the payment of amounts that would become due but for the operation of the automatic stay under Section 362(a) of the Bankruptcy Code, 11 U.S.C. §362(a)), arising directly between OGP and BofA, and/or UBS, and/or Rabobank, and/or Union, or acquired outright, conditionally or as collateral security from another by BofA, and/or UBS, and/or Rabobank, and/or Union, absolute or contingent, joint and/or several, secured or unsecured, due or not due, contractual or tortious, liquidated or unliquidated, arising by operation of law or otherwise, direct or indirect, including, but without limiting the generality of the foregoing, indebtedness, obligations or secured obligations to BofA, and/or UBS, and/or Rabobank, and/or Union of OGP as a member of any partnership, syndicate, association or other group, and whether incurred by OGP as principal, surety, indorser, guarantor, accommodation party or otherwise.

**4. OGP Remains Liable.** Anything contained herein to the contrary notwithstanding, (a) OGP shall remain liable under any contracts and agreements included in the Collateral, to the extent set forth therein, to perform all of its duties and obligations thereunder to the same extent as if this Agreement had not been executed, (b) the exercise by Collateral Agent of any of its rights hereunder shall not release OGP from any of its duties or obligations under the contracts and agreements included in the Collateral, and (c) Collateral Agent shall not have any obligation or liability under any contracts and agreements included in the Collateral by reason of this Agreement, nor shall Collateral Agent be obligated to perform any of the obligations or duties of OGP thereunder or to take any action to collect or enforce any claim for payment assigned hereunder.

**5. Representations and Warranties.** OGP represents and warrants as follows:

(a) Description of Collateral. A true and complete list of all Trademarks, Registrations and Trademark Rights owned, held (whether pursuant to a license or otherwise) or used by OGP, in whole or in part, as of the date of this Agreement is set forth in Schedule I annexed hereto.

(b) Validity and Enforceability of Collateral. Each of the Trademarks, Registrations and Trademark Rights is valid, subsisting and enforceable and OGP is not aware of any pending or threatened claim by any third party that any of the Trademarks, Registrations or Trademark Rights is invalid or unenforceable or that the use of any of the Trademarks, Registrations or Trademark Rights violates the rights of any third person or of any basis for any such claim.

(c) Ownership of Collateral. Except for the interests disclosed in Schedule II annexed hereto and the security interest and conditional assignment created by this Agreement, OGP owns the Collateral free and clear of any Lien. Except such as may have been filed in favor of Collateral Agent relating to this Agreement, (i) no effective financing statement or other instrument similar in effect covering all or any part of the Collateral is on file in any filing or recording office and (ii) no effective filing covering all or any part of the Collateral is on file in the United States Patent and Trademark Office.

(d) Office Locations; Other Names. The chief place of business, the chief executive office and the office where OGP keeps its records regarding the Collateral is, and has been for the four month period preceding the date hereof, located at 3585 Corporate Court, San

Diego, California 92123-2495. OGP has not in the past done, and does not now do, business under any other name (including any trade-name or fictitious business name).

(e) Governmental Authorizations. No authorization, approval or other action by, and no notice to or filing with, any governmental authority or regulatory body is required for either (i) the grant by OGP of the security interest and conditional assignment granted hereby, (ii) the execution, delivery or performance of this Agreement by OGP, or (iii) the perfection of or the exercise by Collateral Agent of its rights and remedies hereunder except the recordings and filings referred to in Section 5(f) below.

(f) Perfection. This Agreement, together with the filing of a financing statement describing the Collateral with the Secretary of State of the State of California and the recording of this Agreement with the United States Patent and Trademark Office which have been made, creates a valid perfected and first priority security interest in the Collateral, securing the payment of the Secured Obligations, and all filings and other actions necessary or desirable to perfect and protect such security interest have been duly made or taken.

(g) Other Information. All information heretofore, herein or hereafter supplied to Collateral Agent by or on behalf of OGP with respect to the Collateral is accurate and complete in all respects.

## **6. Further Assurances; New Trademarks, Registrations and Trademark**

### **Rights**

(a) OGP agrees that from time to time, at the expense of OGP, OGP will promptly execute and deliver all further instruments and documents, and take all further action, that may be necessary or desirable, or that Collateral Agent may request, in order to perfect and protect any security interest or conditional assignment granted or purported to be granted hereby or to enable Collateral Agent to exercise and enforce its rights and remedies hereunder with respect to any Collateral. Without limiting the generality of the foregoing, OGP will: (i) at the request of Collateral Agent, mark conspicuously each of its records pertaining to the Collateral with a legend, in form and substance satisfactory to Collateral Agent, indicating that such Collateral is subject to the security interest granted hereby, (ii) execute and file such financing or continuation statements, or amendments thereto, and such other instruments or notices, as may be necessary or desirable, or as Collateral Agent may request, in order to perfect and preserve the security interests granted or purported to be granted hereby, (iii) use its best efforts to obtain any necessary consents of third parties to the grant and perfection of a security interest and assignment to Collateral Agent with respect to any Collateral, (iv) at any reasonable time, upon request by Collateral Agent, exhibit the Collateral to and allow inspection of the Collateral by Collateral Agent, or persons designated by Collateral Agent, and (v) at Collateral Agent's request, appear in and defend any action or proceeding that may affect OGP's title to or Collateral Agent's security interest in all or any part of the Collateral.

(b) OGP hereby authorizes Collateral Agent to file one or more financing or continuation statements, and amendments thereto, relative to all or any part of the Collateral without the signature of OGP. OGP agrees that a carbon, photographic or other reproduction of this Agreement or of a financing statement signed by OGP shall be sufficient as a financing statement and may be filed as a financing statement in any and all jurisdictions.

(c) OGP hereby authorizes Collateral Agent to modify this Agreement without obtaining OGP's approval of or signature to such modification by amending Schedule I annexed

hereto to include reference to any right, title or interest in any existing Trademark, Registration or Trademark Right or any Trademark, Registration or Trademark Right acquired or developed by OGP after the execution hereof or to delete any reference to any right, title or interest in any Trademark, Registration or Trademark Right in which OGP no longer has or claims any right, title or interest.

(d) OGP will furnish to Collateral Agent from time to time statements and schedules further identifying and describing the Collateral and such other reports in connection with the Collateral as Collateral Agent may reasonably request, all in reasonable detail.

(e) If OGP shall obtain rights to any new Trademarks, Registrations or Trademark Rights, the provisions of this Agreement shall automatically apply thereto. OGP shall at least once in each calendar quarter notify Collateral Agent in writing of any rights to any new Trademarks or Trademark Rights acquired by OGP after the date hereof and of any Registrations issued or applications for Registration made after the date hereof. Concurrently with the filing of an application for Registration for any Trademark, OGP shall execute, deliver and record in all places where this Agreement is recorded an appropriate Trademark Collateral Security Agreement and Conditional Assignment, substantially in the form hereof, with appropriate insertions, or an amendment to this Agreement, in form and substance satisfactory to Collateral Agent, pursuant to which OGP shall grant a security interest and conditional assignment to the extent of its interest in such Registration as provided herein to Collateral Agent unless so doing would, in the reasonable judgment of OGP, after due inquiry, result in the grant of a Registration in the name of Collateral Agent, in which event OGP shall give written notice to Collateral Agent as soon as reasonably practicable and the filing shall instead be undertaken as soon as practicable but in no case later than immediately following the grant of the Registration.

**7. Certain Covenants of OGP. OGP shall:**

(a) not use or permit any Collateral to be used unlawfully or in violation of any provision of this Agreement or any applicable statute, regulation or ordinance or any policy of insurance covering the Collateral;

(b) notify Collateral Agent of any change in OGP's name, identity or corporate structure within 15 days of such change;

(c) give Collateral Agent 30 days' prior written notice of any change in OGP's chief place of business or chief executive office or the office where OGP keeps its records regarding the Collateral;

(d) pay promptly when due all property and other taxes, assessments and governmental charges or levies imposed upon, and all claims (including claims for labor, materials and supplies) against, the Collateral, except to the extent the validity thereof is being contested in good faith; provided that OGP shall in any event pay such taxes, assessments, charges, levies or claims not later than five days prior to the date of any proposed sale under any judgement, writ or warrant of attachment entered or filed against OGP or any of the Collateral as a result of the failure to make such payment;

(e) not sell, assign (by operation of law or otherwise) or otherwise dispose of any of the Collateral, except as permitted by the Credit Agreement;



(f) except for the security interest and conditional assignment created by this Agreement, not create or suffer to exist any Lien upon or with respect to any of the Collateral to secure the indebtedness or other obligations of any person;

(g) diligently keep reasonable records respecting the Collateral and at all times keep at least one complete set of its records concerning substantially all of the Trademarks, Registrations and Trademark Rights at its chief executive office or principal place of business;

(h) not permit the inclusion in any contract to which it becomes a party of any provision that could or might in any way impair or prevent the creation of a security interest in, or the assignment of, OGP's rights and interests in any property included within the definitions of any Trademarks, Registrations, Trademark Rights and Associated Goodwill;

(i) take all steps necessary to protect the secrecy of all trade secrets relating to the products and services sold or delivered under or in connection with the Trademarks and Trademark Rights, including without limitation entering into confidentiality agreements with employees and labeling and restricting access to secret information and documents;

(j) use proper statutory notice in connection with its use of each of the Trademarks, Registrations and Trademark Rights;

(k) use consistent standards of high quality (which may be consistent with OGP's past practices) in the manufacture, sale and delivery of products and services sold or delivered under or in connection with the Trademarks, Registrations and Trademark Rights, including, to the extent applicable, in the operation and maintenance of its retail stores and other merchandising operations; and

(l) upon any officer of OGP obtaining knowledge thereof, promptly notify Collateral Agent in writing of any event that may materially and adversely affect the value of the Collateral or any portion thereof, the ability of OGP or Collateral Agent to dispose of the Collateral or any portion thereof, or the rights and remedies of Collateral Agent in relation thereto, including without limitation the levy of any legal process against the Collateral or any portion thereof.

**8. Certain Inspection Rights.** OGP hereby grants to Collateral Agent and its employees, representatives and agents the right to visit OGP's and any of its Affiliate's or subcontractor's plants, facilities and other places of business that are utilized in connection with the manufacture, production, inspection, storage or sale of products and services sold or delivered under any of the Trademarks, Registrations or Trademark Rights (or which were so utilized during the prior six month period), and to inspect the quality control and all other records relating thereto upon reasonable notice to OGP and as often as may be reasonably requested.

**9. Amounts Payable in Respect of the Collateral.** Except as otherwise provided in this Section 9, OGP shall continue to collect, at its own expense, all amounts due or to become due to OGP in respect of the Collateral or any portion thereof. In connection with such collections, OGP may take (and, at Collateral Agent's direction, shall take) such action as OGP or Collateral Agent may deem necessary or advisable to enforce collection of such amounts; provided, however, that Collateral Agent shall have the right at any time, upon the occurrence of a Determination Date and upon written notice to OGP of its intention to do so, to notify the obligors with respect to any such amounts of the existence of the security interest

created, and the conditional assignment effected hereby, and to direct such obligors to make payment of all such amounts directly to Collateral Agent, and, upon such notification and at the expense of OGP, to enforce collection of any such amounts and to adjust, settle or compromise the amount or payment thereof, in the same manner and to the same extent as OGP might have done. After receipt by OGP of the notice from Collateral Agent referred to in the proviso to the preceding sentence, (i) all amounts and proceeds (including checks and other instruments) received by OGP in respect of amounts due to OGP in respect of the Collateral or any portion thereof shall be received in trust for the benefit of Collateral Agent hereunder, shall be segregated from other funds of OGP and shall be forthwith paid over or delivered to Collateral Agent in the same form as so received (with any necessary endorsement) to be held as cash Collateral and applied as provided by Section 17, and (ii) OGP shall not adjust, settle or compromise the amount or payment of any such amount or release wholly or partly any obligor with respect thereto or allow any credit or discount thereon.

#### **10. Trademark Applications and Litigation.**

(a) OGP shall have the duty diligently, through counsel reasonably acceptable to Collateral Agent, to prosecute any trademark application relating to any of the Trademarks specifically identified in Schedule I annexed hereto that is pending as of the date of this Agreement, to make federal application on any existing Trademarks, and to file and prosecute opposition and cancellation proceedings, renew Registrations and do any and all acts which are necessary or desirable to preserve and maintain all rights in all Trademarks, Registrations and Trademark Rights. Any expenses incurred in connection therewith shall be borne solely by OGP. OGP shall not abandon any Trademark, Registration or Trademark Right.

(b) Except as provided in Section 10(d) and notwithstanding Section 2, OGP shall have the right to commence and prosecute in its own name, as real party in interest, for its own benefit and its own expense, such suits, proceedings or other actions for infringement, unfair competition, dilution or other damage as are in its reasonable business judgment necessary to protect the Collateral. Collateral Agent shall provide, at OGP's expense, all reasonable and necessary cooperation in connection with any such suit, proceeding or action including, without limitation, joining as a necessary party.

(c) OGP shall promptly, following its becoming aware thereof, notify Collateral Agent of the institution of, or of any adverse determination in, any proceeding (whether in the United States Patent and Trademark Office or any federal, state, local or foreign court) described in Section 10(a) or 10(b) or regarding OGP's claim of ownership in or right to use any of the Trademarks, Registrations or Trademark Rights, its right to register the same, or its right to keep and maintain such Registration. OGP shall provide to Collateral Agent any information with respect thereto requested by Collateral Agent.

(d) Anything contained herein to the contrary notwithstanding, upon the occurrence of a Determination Date, Collateral Agent shall have the right (but not the obligation) to bring suit, in the name of OGP, Collateral Agent or otherwise, to enforce any Trademark, Registration, Trademark Right, Associated Goodwill and any license thereunder, in which event OGP shall, at the request of Collateral Agent, do any and all lawful acts and execute any and all documents required by Collateral Agent in aid of such enforcement and OGP shall promptly, upon demand, reimburse and indemnify Collateral Agent as provided in Section 18 in connection with the exercise of its rights under this Section 10. To the extent that Collateral Agent shall elect not to bring suit to enforce any Trademark, Registration, Trademark Right, Associated Goodwill or any license thereunder as provided in this Section 10 (d) , OGP agrees

to use all reasonable measures, whether by action, suit, proceeding or otherwise, to prevent the infringement of any of the Trademarks, Registrations, Trademark Rights or Associated Goodwill by others and for that purpose agrees to diligently maintain any action, suit or proceeding against any Person so infringing necessary to prevent such infringement.

**11. Non-Disturbance Agreements, etc.** If and to the extent that OGP is permitted to license the Collateral, Collateral Agent shall enter into a non-disturbance agreement or other similar arrangement, at OGP's request and expense, with OGP and any licensee of any Collateral permitted hereunder in form and substance satisfactory to Collateral Agent pursuant to which (a) Collateral Agent shall agree not to disturb or interfere with such licensee's rights under its license agreement with OGP so long as such licensee is not in default thereunder and (b) such licensee shall acknowledge and agree that the Collateral licensed to it is subject to the security interest and conditional assignment created in favor of Collateral Agent and the other terms of this Agreement.

**12. Reassignment of Collateral.** If (a) a Determination Date shall have occurred and, by reason of cure, waiver, modification, amendment or otherwise, no longer be continuing, (b) no other Determination Date shall have occurred and be continuing, (c) an assignment to Collateral Agent of any rights, title and interests in and to the Collateral shall have been previously made and shall have become absolute and effective pursuant to Section 2, Section 13(f) or Section 16(b), and (d) the Secured obligations shall not have become immediately due and payable, upon the written request of OGP and the written consent of Collateral Agent, Collateral Agent shall promptly execute and deliver to OGP such assignments as may be necessary to reassign to OGP any such rights, title and interests as may have been assigned to Collateral Agent as aforesaid, subject to any disposition thereof that may have been made by Collateral Agent Pursuant hereto; provided, that after giving effect to such reassignment, Collateral Agent's security interest and conditional assignment granted pursuant to Section 1 and Section 2, as well as all other rights and remedies of Collateral Agent granted hereunder, shall continue to be in full force and effect; and provided, further that the rights, title and interests so reassigned shall be free and clear of all Liens other than Liens (if any) encumbering such rights, title and interests at the time of their assignment to Collateral Agent and Liens permitted under the Credit Agreement.

**13. Collateral Agent Appointed Attorney-in-Fact.** OGP hereby irrevocably appoints Collateral Agent as OGP's attorney-in-fact, with full authority in the place and stead of OGP and in the name of OGP, Collateral Agent or otherwise, from time to time in Collateral Agent's discretion upon the occurrence of a Determination Date to take any action and to execute any instrument that Collateral Agent may deem necessary or advisable to accomplish the purposes of this Agreement, including without limitation:

(a) to endorse OGP's name on all applications, documents, papers and instruments necessary for Collateral Agent in the use or maintenance of the Collateral;

(b) to ask for, demand, collect, sue for, recover, compound, receive and give acquittance and receipts for moneys due and to become due under or in respect of any of the Collateral;

(c) to receive, endorse and collect any drafts or other instruments, documents and chattel paper in connection with clause (b) above;

(d) to file any claims or take any action or any proceedings that Collateral Agent may deem necessary or desirable for the collection of any of the Collateral or otherwise to enforce the rights of Collateral Agent with respect to any of the Collateral;

(e) to pay or discharge taxes or Liens (other than Liens permitted under this Agreement or the Credit Agreement levied or placed upon or threatened against the Collateral, the legality or validity thereof and the amounts necessary to discharge the same to be determined by Collateral Agent in its sole discretion, any such payments made by Collateral Agent to become obligations of OGP to Collateral Agent, due and payable immediately without demand; and

(f) upon the occurrence of a Determination Date (i) to execute and deliver any of the assignments or documents requested by Collateral Agent pursuant to Section 16(b), (ii) to grant or issue an exclusive or non-exclusive license to the Collateral or any portion thereof to any Person, and (iii) otherwise generally to sell, transfer, pledge, make any agreement with respect to or otherwise deal with any of the Collateral as fully and completely as though Collateral Agent were the absolute owner thereof for all purposes, and to do, at Collateral Agent's option and OGP's expense, at any time or from time to time, all acts and things that Collateral Agent deems necessary to protect, preserve or realize upon the Collateral and Collateral Agent's security interest therein in order to effect the intent of this Agreement, all as fully and effectively as OGP might do.

**14. Collateral Agent May Perform.** If OGP fails to perform any agreement contained herein, Collateral Agent may itself perform, or cause performance of, such agreement, and the expenses of Collateral Agent incurred in connection therewith shall be payable by OGP under Section 18.

**15. Standard of Care.** The powers conferred on Collateral Agent hereunder are solely to protect its interest in the Collateral and shall not impose any duty upon it to exercise any such powers. Except for the exercise of reasonable care in the custody of any Collateral in its possession and the accounting for moneys actually received by it hereunder, Collateral Agent shall have no duty as to any Collateral or as to the taking of any necessary steps to preserve rights against prior parties or any other rights pertaining to any Collateral. Collateral Agent shall be deemed to have exercised reasonable care in the custody and preservation of Collateral in its possession if such Collateral is accorded treatment substantially equal to that with Collateral Agent accords its own property.

**16. Remedies.** If any Determination Date shall have occurred and be continuing:

(a) Collateral Agent may exercise in respect of the Collateral in addition to all other rights and remedies provided for herein or otherwise available to it, all the rights and remedies of a Collateral Agent on default under the Uniform Commercial Code as in effect in any relevant jurisdiction (the "**Code**" ) (whether or not the Code applies to the affected Collateral), and also may (i) require OGP to, and OGP hereby agrees that it will at its expense and upon request of Collateral Agent forthwith, assemble all or part of the Collateral as directed by Collateral Agent and make it available to Collateral Agent at a place to be designated by Collateral Agent that is reasonably convenient to both parties, (ii) enter onto the property where any Collateral is located and take possession thereof with or without judicial process, (iii) prior to the disposition of the Collateral, store the Collateral or otherwise prepare the Collateral for disposition in any manner to the extent Collateral Agent deems appropriate, (iv) take possession of OGP's premises or place custodians in exclusive control thereof, remain on such premises

and use the same for the purpose of taking any actions described in the preceding clause (iii) and collecting any Secured Obligation, (v) exercise any and all rights and remedies of OGP under or in connection with the contracts related to the Collateral or otherwise in respect of the Collateral, including without limitation any and all rights of OGP to demand or otherwise require payment of any amount under, or performance of any provision of, such contracts, and (vi) without notice except as specified below, sell the Collateral or any part thereof in one or more parcels at public or private sale, at any of Collateral Agent's offices or elsewhere, for cash, on credit or for future delivery, at such time or times and at such price or prices and upon such other terms as Collateral Agent may deem commercially reasonable. Collateral Agent or any Bank may be the purchaser of any or all of the Collateral at any such sale and Collateral Agent, as agent for and representative of Banks (but not any Bank or Banks in its or their respective individual capacities unless the Majority Banks shall otherwise agree in writing) , shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such public sale, to use and apply any of the Secured Obligations as a credit on account of the purchase price for any Collateral payable by Collateral Agent at such sale. Each purchaser at any such sale shall hold the property sold absolutely free from any claim or right on the part of OGP, and OGP hereby waives (to the extent permitted by applicable law) all rights of redemption, stay and/or appraisal which it now has or may at any time in the future have under any rule of law or statute now existing or hereafter enacted. OGP agrees that, to the extent notice of sale shall be required by law, at least ten days' notice to OGP of the time and place of any public sale or the time after which any private sale is to be made shall constitute reasonable notification. Collateral Agent shall not be obligated to make any sale of Collateral regardless of notice of sale having been given. Collateral Agent may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned. OGP hereby waives any claims against Collateral Agent arising by reason of the fact that the price at which any Collateral may have been sold at such a private sale was less than the price which might have been obtained at a public sale, even if Collateral Agent accepts the first offer received and does not offer such Collateral to more than one offeree. If the proceeds of any sale or other disposition of the Collateral are insufficient to pay all the Secured Obligations, OGP shall be liable for the deficiency and the fees of any attorneys employed by Collateral Agent to collect such deficiency.

(b) Upon written demand from Collateral Agent, OGP shall execute and deliver to Collateral Agent an assignment or assignments of the Trademarks, Registrations, Trademark Rights and the Associated Goodwill and such other documents as are necessary or appropriate to carry out the intent and purposes of this Agreement; provided that the failure of OGP to comply with such demand will not impair or affect the validity of the conditional assignment effected by Section 2 or its effectiveness upon notice by Collateral Agent as specified in Section 2. OGP agrees that such an assignment (including without limitation the conditional assignment effected by Section 2) and/or recording shall be applied to reduce the Secured Obligations outstanding only to the extent that Collateral Agent (or any Bank) receives cash proceeds in respect of the sale of, or other realization upon, the Collateral.

(c) within five business days after written notice from Collateral Agent, OGP shall make available to Collateral Agent, to the extent within OGP's power and authority, such personnel in OGP's employ on the date of such Determination Date as Collateral Agent may reasonably designate, by name, title or job responsibility, to permit OGP to continue, directly or indirectly, to produce, advertise and sell the products and services sold or delivered by OGP under or in connection with the Trademarks, Registrations and Trademark Rights, such persons to be available to perform their prior functions on Collateral Agent's behalf and to be

compensated by Collateral Agent at OGP's expense on a per diem, pro-rata basis consistent with the salary and benefit structure applicable to each as of the date of such Determination Date.

**17. Application of Proceeds.** Except as expressly provided elsewhere in this Agreement, all proceeds received by Collateral Agent in respect of any sale of, collection from, or other realization upon all or any part of the Collateral may, in the discretion of Collateral Agent, be held by Collateral Agent as Collateral for, and/or then, or at any other time thereafter, applied in full or in part by Collateral Agent against, the Secured obligations in the following order of priority:

FIRST: To the payment of all costs and expenses of such sale, collection or other realization, including reasonable compensation to Collateral Agent and its agents and counsel, and all other expenses, liabilities and advances made or incurred by Collateral Agent in connection therewith, and all amounts for which Collateral Agent is entitled to indemnification hereunder and all advances made by Collateral Agent hereunder for the account of OGP, and to the payment of all costs and expenses paid or incurred by Collateral Agent in connection with the exercise of any right or remedy hereunder, all in accordance with Section 18;

SECOND: To the payment of all other Secured Obligations ratably in proportion to the outstanding amounts thereof; and

THIRD: To the payment to or upon the order of OGP, or to whosoever may be lawfully entitled to receive the same or as a court of competent jurisdiction may direct, of any surplus then remaining from such proceeds.

**18. Indemnity and Expenses.**

(a) OGP agrees to indemnify Collateral Agent and each Bank from and against any and all claims, losses and liabilities in any way relating to, growing out of or resulting from this Agreement and the transactions contemplated hereby (including, without limitation, enforcement of this Agreement), except to the extent such claims, losses or liabilities result solely from Collateral Agent's or such Bank's gross negligence or willful misconduct as finally determined by a court of competent jurisdiction.

(b) OGP shall pay to Collateral Agent upon demand the amount of any and all costs and expenses, including the reasonable fees and expenses of its counsel and of any experts and agents, that Collateral Agent may incur in connection with (i) the administration of this Agreement (to the extent such costs and expenses exceed the fees paid by OGP to Collateral Agent for administration), (ii) the custody, preservation, use or operation of, or the sale of, collection from, or other realization upon, any of the Collateral, (iii) the exercise or enforcement of any of the rights of Collateral Agent hereunder, or (iv) the failure by OGP to perform or observe any of the provisions hereof.

**19. Continuing Security Interest and Conditional Assignment; Transfer of Loans.** This Agreement shall create a continuing security interest in, and conditional assignment of, the Collateral and shall (a) remain in full force and effect until the payment in full of the Secured Obligations, the cancellation or termination of the Commitments and the cancellation or expiration of all outstanding letters of credit, (b) be binding upon OGP, its successors and assigns, and (c) inure, together with the rights and remedies of Collateral Agent

hereunder, to the benefit of Collateral Agent and its successors, transferees and assigns. Without limiting the generality of the foregoing clause (c) , but subject to the provisions of Section 7.5 of the Credit Agreement, any Bank may assign or otherwise transfer any Loans held by it to any other Person, and such other Person shall thereupon become vested with all the benefits in respect thereof granted to Banks herein or otherwise. Upon the payment in full of all Secured Obligations, the cancellation or termination of the Commitments and the cancellation or expiration of all outstanding letters of credit, the security interest and conditional assignment granted hereby shall terminate and all rights to the Collateral shall revert to OGP. Upon any such termination Collateral Agent will, at OGP's expense, execute and deliver to OGP such documents as OGP shall reasonably request to evidence such termination.

## **20. Collateral Agent as Agent.**

(a) Collateral Agent has been appointed to act as Collateral Agent hereunder by Banks. Collateral Agent shall be obligated, and shall have the right hereunder, to make demands, to give notices, to exercise or refrain from exercising any rights, and to take or refrain from taking any action (including, without limitation, the release or substitution of Collateral), solely in accordance with this Agreement and the Credit Agreement.

(b) Collateral Agent shall at all times be the same Person that is Documentation Agent under the Credit Agreement. Written notice of resignation by Document Agent pursuant to Section 6.10 of the Credit Agreement shall also constitute notice of resignation as Collateral Agent under this Agreement; removal of Documentation Agent pursuant to Section 6.10 of the Credit Agreement shall also constitute removal as Collateral Agent under this Agreement; and appointment of a successor Documentation Agent pursuant to Section 6.10 of the Credit Agreement shall also constitute appointment of a successor Collateral Agent under this Agreement. Upon the acceptance of any appointment as Documentation Agent under Section 6.10 of the Credit Agreement by a successor Documentation Agent, that successor Documentation Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring or removed Collateral Agent under this Agreement, and the retiring or removed Collateral Agent under this Agreement shall promptly (i) transfer to such successor Collateral Agent all sums, securities and other items of Collateral held hereunder, together with all records and other documents necessary or appropriate in connection with the performance of the duties of the successor Collateral Agent under this Agreement, and (ii) execute and deliver to such successor Collateral Agent such amendments to financing statements, and take such other actions, as may be necessary or appropriate in connection with the assignment to such successor Collateral Agent of the security interests created hereunder, whereupon such retiring or removed Collateral Agent shall be discharged from its duties and obligations under this Agreement. After any retiring or removed Collateral Agent's resignation or removal hereunder as Collateral Agent, the provisions of this Agreement shall inure to its benefit as to any actions taken or omitted to be taken by it under this Agreement while it was Collateral Agent hereunder.

**21. Amendments; Etc.** No amendment, modification, termination or waiver of any provision of this Agreement, and no consent to any departure by OGP therefrom, shall in any event be effective unless the same shall be in writing and signed by Collateral Agent and, in the case of any such amendment or modification, by OGP. Any such waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given.

**22. Notices.** Any notice or other communication herein required or permitted to be given shall be in writing and may be personally served, telexed or sent by facsimile or United

States mail or courier service and shall be deemed to have been given when delivered in person or by courier service, upon receipt of facsimile or telex, or three business days after depositing it in the United States mail with postage prepaid and properly addressed. For the purposes hereof, the address of each party hereto shall be as set forth under such party's name on the signature pages hereof or, as to either party, such other address as shall be designated by such party in a written notice delivered to the other party hereto.

**23. Failure to Indulgence Not Waiver; Remedies Cumulative.** No failure or delay on the part of Collateral Agent in the exercise of any power, right or privilege hereunder shall impair such power, right or privilege or be construed to be a waiver of any default or acquiescence therein, nor shall any single or partial exercise of any such power, right or privilege preclude any other or further exercise thereof or of any other power, right or privilege. All rights and remedies existing under this Agreement are cumulative to, and not exclusive of, any rights or remedies otherwise available.

**24. Severability.** In case any provision in or obligation under this Agreement shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

**25. Headings.** Section and subsection headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose or be given any substantive effect.

**26. Governing Law.** This Agreement shall be governed by, and construed in accordance with, the law of the state of California; provided that the Collateral Agent and the Banks shall retain all rights arising under federal law.

**27. Counterparts.** This Agreement may be executed in one or more counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument; signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document.

[Remainder of page intentionally left blank]



IN WITNESS WHEREOF, OGP and Collateral Agent have caused this Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first written above.

**OCEAN GARDEN PRODUCTS, INC.**

By: Frank J. Benancetto

Title: CHIEF FINANCIAL OFFICER

By: Karen S. Davis

Title: BUDGET & FINANCE MANAGER

Address for Notices:

Ocean Garden Products, Inc.  
3585 Corporate Court  
San Diego, California 92123-2495

**BANK OF AMERICA, N.A., as Collateral Agent**

By: Christine Cordi

Title: Vice President

Address for Notices:

Bank of America N.A.  
Agency Management #CA5-701-12-09  
1455 Market Street, 12<sup>th</sup> Floor  
San Francisco, CA 94103

SCHEDULE I  
TO  
TRADEMARK  
SECURITY AGREEMENT

<u>United States Trademark Description</u>	<u>Registration Number</u>	<u>Registration Date</u>
Ocean Shell	2,196,042	10/13/98
Pride of Mexico	2,196032	10/13/98

SCHEDULE II  
TO  
TRADEMARK  
SECURITY AGREEMENT

**NONE**

(80490.02)MEL07/26/99  
#24017

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