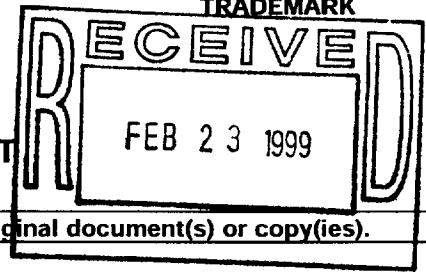


02-24-1999



100970259



2-23-99

RECORDATION FORM COVER SHEET  
TRADEMARKS ONLY

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

Submission Type

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

Conveyance Type

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

Conveying Party

Mark if additional names of conveying parties attached

Execution Date  
Month Day Year  
02-10-1999

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)

- Individual
- General Partnership
- Limited Partnership

Corporation  Association

Other

Citizenship/State of Incorporation/Organization

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

02/23/1999 DNGUYEN 00000332 1760531

FOR OFFICE USE ONLY

65E

01 FC:481 40.00 OP  
02 FC:482 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: 1858 FRAME: 0613

**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="1,760,531"/>	<input type="text" value="1,731,971"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<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.

Jennifer D. LeDoux

Name of Person Signing

*Jennifer D. LeDoux*

Signature

2-22-99

Date Signed

## TRADEMARK SECURITY AGREEMENT

This **TRADEMARK SECURITY AGREEMENT** (this "Agreement") is made this 10th day of February, 1999, between **FLEET CAPITAL CORPORATION**, a Rhode Island corporation having an office at 300 Galleria Parkway, Suite 800, Atlanta, Georgia 30339, in its capacity as collateral agent (together with its successors in such capacity, "Collateral Agent") for itself, the Administrative Agent (as defined herein) and the Lenders (as defined herein), and **BFC ACQUISITION CORPORATION**, a California corporation having an office at 1500 Urban Center Parkway, Suite 520, Birmingham, Alabama 35242 (the "Company").

### RECITALS:

The Company desires to continue to obtain loans from such financial institutions ("Lenders") as are parties from time to time to that certain Amended and Restated Credit Agreement dated the date hereof, by and among the Company, the other borrowers noted therein, Collateral Agent, **WACHOVIA BANK, N.A.**, a national banking association, as administrative agent for the Lenders (together with its successors in such capacity, "Administrative Agent") and Lenders (as at any time amended, the "Credit Agreement").

Lenders are willing to continue to make loans to the Company from time to time, pursuant to the terms of the Credit Agreement, provided the Company executes this Agreement.

The Company has previously, pursuant to the Borrower Security Agreement, granted to Collateral Agent, for the benefit of itself, Administrative Agent and Lenders, a lien upon and security interest in, among other things, the Company's now existing and hereafter acquired inventory, machinery, equipment, equipment formulations, manufacturing procedures, quality control procedures and product specifications relating to products sold under the Trademarks (as defined herein).

NOW, THEREFORE, for Ten Dollars (\$10.00) and other valuable consideration, and in consideration of the premises, the Company hereby agrees with Collateral Agent as follows:

1. All capitalized terms used herein, including those used in the Recitals hereto, unless otherwise defined shall have the meanings ascribed to them in the Credit Agreement.
2. To secure the prompt payment and performance of the Obligations, the Company hereby pledges, assigns and grants to Collateral Agent, for the benefit of itself, Administrative Agent and Lenders, a continuing security interest in and Lien upon all of the following property of the Company, whether now owned or existing or hereafter acquired (collectively, the "Collateral"):

(a) all trademarks, trademark registrations and trade names and all trademark applications that have been filed based on use or for which a verified statement of use has been filed, including, without limitation, each trademark and application listed on Exhibit A attached hereto and made a part hereof (as the same may be amended from time to time), and (i) all renewals thereof, (ii) all income, royalties, damages and payments now or hereafter due or payable with respect thereto, including, without limitation, damages and payments for past or future infringements or dilution thereof or injury to the associated goodwill, (iii) the right to sue for past, present and future infringements or dilution thereof or injury to the associated goodwill, and (iv) all rights corresponding thereto throughout the world (all of the foregoing trademarks, trademark registrations, trade names and applications, together with the items described in clauses (i)-(iv), are hereinafter collectively referred to as the "Trademarks");

(b) the goodwill of the Company's business connected with and symbolized by each Trademark; and

(c) all proceeds and products of the foregoing.

3. The Company represents and warrants to Collateral Agent, Administrative Agent and Lenders that:

(a) Each of the Trademarks is subsisting and has not been adjudged invalid or unenforceable;

(b) Upon filing of this Agreement in the United States Patent and Trademark Office, this Agreement will create a legal and valid perfected lien upon and security interest in the Collateral (other than foreign trademarks), enforceable against the Company and all third Persons in accordance with its terms;

(c) Upon the registering of appropriate Personal Property Security Act filings in Canada, this Agreement will create a legal and valid perfected Lien upon and security interest in the Collateral consisting of Trademarks registered in Canada, enforceable against the Company and all third Persons in accordance with its terms;

(d) No claim has been made that the use of any of the Trademarks does or may violate the rights of any third Person;

(e) The Company has the unqualified right to enter into this Agreement and perform its terms;

(f) Each of the Trademarks is valid and enforceable; and

(g) The Company is the sole and exclusive owner of the entire right, title and interest in and to all of the Collateral, free and clear of any Liens other than Permitted Liens.

4. The Company covenants and agrees with Collateral Agent, Administrative Agent and Lenders that:

(a) The Company will maintain the quality of the products associated with the Trademarks, at a level consistent with or superior to the quality at the time of this Agreement, and will provide Collateral Agent and Administrative Agent, upon request, with a certificate to that effect in the form attached hereto as Exhibit B executed by an officer of the Company;

(b) The Company will not lower the level of quality of the products associated with the Trademarks without Collateral Agent's prior written consent; and

(c) Where applicable, the Company has used, and will continue to use for the duration of this Agreement, proper statutory notice in connection with its use of the Trademarks and has made, and will continue to make, all appropriate filings with the United States Patent and Trademark Office and all applicable foreign government offices to maintain the Trademark registrations in existence, including, without limitation, filing an affidavit of use with the United States Patent and Trademark Office and all applicable foreign government offices for each Trademark as required by Applicable Law to maintain the registration thereof without loss of protection therefor.

5. The Company hereby grants to Collateral Agent, Administrative Agent and Lenders and their respective employees and agents the right upon prior notice to the Company, and subject only to any obligations of confidentiality to which the Company, its employees and agents are then subject with respect thereto, to visit the Company's plants and facilities which manufacture, inspect or store products sold under any of the Trademarks and to inspect the products and quality control records relating thereto at reasonable times during regular business hours. The Company shall do any and all acts required by Collateral Agent, Administrative Agent and Lenders to ensure the Company's compliance with paragraph 4(c) of this Agreement.

6. The Company agrees that, until all of the Obligations have been satisfied in full, it will not enter into any license agreement relating to any of the Trademarks, except non-exclusive licenses to customers of the Company in the regular and ordinary course of the Company's business as presently conducted and for reasonable and customary compensation, and shall not enter into any agreement that is inconsistent with the Company's duties under this Agreement.

7. If, before the Obligations have been satisfied in full, the Company shall obtain rights to any new trademarks, or become entitled to the benefit of any trademark application or trademark or any renewal of any Trademark, the provisions of paragraph 2 hereof shall automatically apply

thereto, and the Company shall give to Collateral Agent and Administrative Agent prompt notice thereof in writing.

8. The Company authorizes Collateral Agent to modify this Agreement by amending Exhibit A to include any future trademarks and trademark applications within the definition of Trademarks under paragraph 2 or paragraph 7 hereof.

9. If an Event of Default shall have occurred and be continuing, Collateral Agent shall have, in addition to all other rights and remedies given it by this Agreement, all rights and remedies under Applicable Law and all rights and remedies of a secured party under the UCC. Without limiting the generality of the foregoing, Collateral Agent may immediately, for its benefit and the benefit of Administrative Agent and Lenders, without demand of performance and without notice (except as described in the next sentence, if required by Applicable Law), or demand whatsoever to the Company, each of which the Company hereby waives, collect directly any payments due the Company in respect of the Collateral, or sell at public or private sale or otherwise realize upon all or from time to time, any of the Collateral. The Company hereby agrees that seven (7) days written notice to the Company of any public or private sale or other disposition of any of the Collateral shall be reasonable notice; provided, however, that no such notice shall be required hereunder if not otherwise required by Applicable Law. At any such sale or disposition, Collateral Agent may, to the extent permitted by Applicable Law, purchase the whole or any part of the Collateral sold, free from any right of redemption on the part of the Company, which right the Company hereby waives and releases. After deducting from the proceeds of such sale or other disposition of the Collateral all costs and expenses incurred by Collateral Agent, Administrative Agent or Lenders in enforcing their respective rights hereunder (including, without limitation, all attorneys' fees), Collateral Agent shall apply the remainder of such proceeds to the payment of the Obligations for its benefit and the benefit of Administrative Agent and Lenders in accordance with the terms of the Credit Agreement. If any deficiency shall arise, the Company and each guarantor of the Obligations shall remain jointly and severally liable to Lenders therefor.

10. The Company hereby makes, constitutes and appoints Collateral Agent and any officer or agent of Collateral Agent as Collateral Agent may select as the Company's true and lawful attorney-in-fact, with full power to do any or all of the following if an Event of Default shall occur and be continuing: to endorse the Company's name on all applications, documents, papers and instruments necessary for Collateral Agent to continue the registration of or to use the Trademarks, or to grant or issue any exclusive or nonexclusive license under the Trademarks to any other Person, or to assign, pledge, convey or otherwise transfer title in or dispose of the Collateral to any other Person. The Company hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof. This power of attorney, being coupled with an interest, shall be irrevocable until all of the Obligations shall have been satisfied in full and the Credit Agreement shall have been terminated.

11. At such time as all of the Obligations shall have been satisfied finally and in full and the Commitments under the Credit Agreement shall have been terminated, Collateral Agent shall

execute and deliver to the Company, without representation, warranty or recourse and at the Company's expense, all releases and other instruments necessary to terminate Collateral Agent's security interest in the Collateral, subject to any disposition thereof which may have been made by Collateral Agent pursuant to the terms of this Agreement, the Credit Agreement or any other Credit Document.

12. Any and all fees, costs and expenses, of whatever kind or nature, (including, without limitation, reasonable attorneys' fees and legal expenses), incurred by Collateral Agent, Administrative Agent or any Lender in connection with the preparation of this Agreement and all other documents relating hereto and the consummation of this transaction, the filing or recording of any documents (including, without limitation, all taxes in connection therewith) in public offices, the payment or discharge of any taxes, counsel fees, maintenance fees, encumbrances or otherwise protecting, maintaining, or preserving the Collateral, or in defending or prosecuting any actions or proceedings arising out of or related to the Collateral, shall be borne and paid by the Company (it being the intent of the Company and Collateral Agent that the Company shall be responsible for the payment of all sums, fees, costs and expenses, including, without limitation, all renewal fees with respect to the Trademarks) or, if paid by Collateral Agent, shall be paid by the Company **on demand** to Collateral Agent and until so paid shall be added to the principal amount of the Obligations and shall bear interest at the rate per annum in effect from time to time under the Credit Agreement.

13. The Company shall use reasonable commercial efforts to detect any infringers of the Trademarks and shall notify Collateral Agent and Administrative Agent in writing of any infringements detected. The Company shall have the duty, through counsel acceptable to Collateral Agent, to prosecute diligently any trademark application of the Trademarks pending as of the date of this Agreement or thereafter until the Obligations shall have been paid in full, to file and prosecute opposition and cancellation proceedings, to file and prosecute lawsuits to enforce the Trademarks and to do any and all acts which are deemed necessary or desirable by Collateral Agent to preserve and maintain all rights in the Trademarks. Any expenses incurred in connection with such applications or proceedings shall be borne by the Company. The Company shall not abandon any pending trademark application that is filed based on use or as to which a verified statement of use has been filed or Trademark without the prior written consent of Collateral Agent.

14. Without limiting the obligations of the Company described in paragraph 13 hereof, after Collateral Agent's receipt of notice from the Company as provided in paragraph 13, or if Collateral Agent reasonably believes the act of any Person constitutes an infringement of any Trademark or a violation of any right of the Company or Collateral Agent therein, or an unlawful or unauthorized use thereof, Collateral Agent shall have the right (but shall not be obligated) to take such steps and institute such suits or proceedings as Collateral Agent shall deem necessary or advisable in its own name, or in the name of the Company or in the names of Collateral Agent and the Company jointly, to enforce the Trademarks and any license thereunder or to protect the rights of the parties thereunder, in which event the Company shall at the request of Collateral Agent do any and all lawful acts (including bringing suit) and execute any and all proper documents required by Collateral Agent to aid such enforcement, and the Company shall promptly, **upon demand**,

reimburse and indemnify Collateral Agent for all costs and expenses incurred in the exercise of Collateral Agent's rights under this paragraph 14. Nothing herein shall be deemed to prohibit the Company from bringing any such suit in its own name at any time that an Event of Default does not exist, if Collateral Agent declines to institute such suit.

15. If the Company fails to comply with any of its obligations hereunder, to the extent permitted by Applicable Law, Collateral Agent may do so in the Company's name or in Collateral Agent's name, but at the Company's expense, and the Company agrees to reimburse Collateral Agent in full for all expenses, (including, without limitation, attorneys' fees and legal expenses), incurred by Collateral Agent, Administrative Agent or any Lender in prosecuting, defending or maintaining the Trademarks or Collateral Agent's interest therein pursuant to this Agreement.

16. No course of dealing between the Company and Collateral Agent, Administrative Agent or any Lender, nor any failure to exercise, nor any delay in exercising, on the part of Collateral Agent, Administrative Agent or any Lender, any right, power or privilege hereunder or under the Credit Agreement shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder or thereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

17. All of Collateral Agent's, Administrative Agent's and each Lender's rights and remedies with respect to the Collateral, whether established by this Agreement, by the Credit Agreement, by any other agreements or by Applicable Law shall be cumulative and may be exercised singularly or concurrently.

18. The provisions of this Agreement are severable, and if any clause or provision shall be held invalid and unenforceable in whole or in part in any jurisdiction, then such invalidity or unenforceability shall affect only such clause or provision, or part thereof, in such jurisdiction, and shall not in any manner affect such clause or provision in any other jurisdiction, or any other clause or provision of this Agreement in any jurisdiction.

19. This Agreement is subject to modification only by a writing signed by the parties, except as provided in paragraph 8 hereof.

20. The benefits and burdens of this Agreement shall inure to the benefit of and be binding upon the successors and assigns of the Collateral Agent, Administrative Agent and of each Lender and upon the successors of the Company. The Company shall not assign its rights or delegate its duties hereunder without the prior written consent of Collateral Agent.

21. Notice of Collateral Agent's acceptance hereof is hereby waived by the Company.

22. THIS AGREEMENT HAS BEEN NEGOTIATED, EXECUTED AND DELIVERED AT AND SHALL BE DEEMED TO HAVE BEEN MADE IN ATLANTA, GEORGIA. THIS

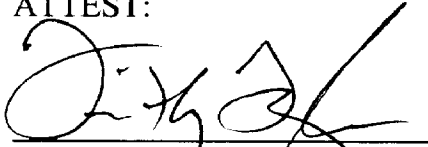


AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF GEORGIA.

**23. THE COMPANY AND COLLATERAL AGENT EACH WAIVES THE RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT, PROCEEDING OR COUNTERCLAIM OF ANY KIND ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE COLLATERAL.**


WITNESS the execution hereof under seal in Atlanta, Georgia, as of the day and year first above written.

ATTEST:

  
\_\_\_\_\_  
Timothy Taylor, Secretary

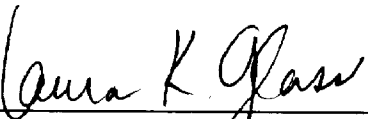
[CORPORATE SEAL]

**BFC ACQUISITION CORPORATION**  
("Company")

By:   
\_\_\_\_\_  
Taylor Pursell, President and Chief  
Executive Officer

Accepted in Atlanta, Georgia:

**FLEET CAPITAL CORPORATION,**  
as Collateral Agent  
("Collateral Agent")

By:   
\_\_\_\_\_  
Name: LAURA K. GLASS  
Title: VICE PRESIDENT

STATE OF GEORGIA       §  
                                  §  
COUNTY OF FULTON     §

BEFORE ME, the undersigned authority, on this day personally appeared Taylor Pursell, President and Chief Executive Officer of BFC Acquisition Corporation, to me known to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated, and as the act and deed of said corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this 10<sup>th</sup> day of February, 1999

Leigh C. Freer  
Notary Public  
My Commission Expires:  
9-28-2002  
[NOTARIAL SEAL]



STATE OF GEORGIA       )  
                                  )  
COUNTY OF FULTON     )

BEFORE ME, the undersigned authority, on this day personally appeared Laura Glass of Fleet Capital Corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated, and as the act and deed of said corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this 10<sup>th</sup> day of February, 1999

Leigh C. Freer  
Notary Public  
My Commission Expires:  
9-28-2002  
[NOTARIAL SEAL]



EXHIBIT A

<u>Trademark</u>	<u>Country of Registration</u>	<u>International Class Covered</u>	<u>Goods or Services Covered</u>	<u>Reg. No.</u>	<u>Date Registered</u>
Drought Buster	United States	1	Plant food, garden fertilizer and soil conditioner for domestic and agricultural use	1,760,531	March 23, 1993
Drought Buster	United States	1	Water absorbing polymers for use in soil	1,731,971	November 10, 1992

EXHIBIT B

CERTIFICATE

The undersigned officer of **BFC ACQUISITION CORPORATION** (the "Company"), DOES HEREBY CERTIFY to (1) **FLEET CAPITAL CORPORATION**, a Rhode Island corporation having an office at 300 Galleria Parkway, Suite 800, Atlanta, Georgia 30339 (together with its successors in such capacity, "Collateral Agent"), as collateral agent for itself, the Administrative Agent (as defined herein) and Lenders (as defined herein), under that certain Amended and Restated Credit Agreement (as at any time amended, the "Credit Agreement") dated February 10, 1999, among such financial institutions ("Lenders") as are parties from time to time thereto, the Company, the other borrowers noted therein, Collateral Agent, and **WACHOVIA BANK, N.A.**, a national banking association, as administrative agent for Lenders (together with its successors in such capacity, "Administrative Agent"), (2) Administrative Agent, and (3) Lenders, that the quality of the products associated with the Trademarks listed on Exhibit A of the Trademark Security Agreement dated February 10, 1999, between the Company and Collateral Agent (as amended from time to time to include future trademarks and trademark applications, the "Agreement"), has been maintained at a level consistent with or superior to the quality of such products at the time of the execution of the Agreement.

IN WITNESS WHEREOF, the undersigned has executed this Certificate, this \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**BFC ACQUISITION CORPORATION**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_