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Form PTO-1594 (Rev. 03/01) OMB No. 0651-0027 (exp. 5/31/2002) Tab settings



U.S. DEPARTMENT OF COMMERCE U.S. Patent and Trademark Office

101733503

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

1. Name of conveying party(ies): Valley Fresh, Inc. Individual(s) Association General Partnership Limited Partnership Corporation-State of Delaware Other

2. Name and address of receiving party(ies) Name: Fleet National Bank, as Agent Internal Address: Street Address: 100 Federal Street City: Boston State: MA Zip: 02110 Individual(s) citizenship Association General Partnership Limited Partnership Corporation-State Other national banking association

3. Nature of conveyance: Assignment Merger Security Agreement Change of Name Other Notice of Security Interest Execution Date: May 18, 2001

4. Application number(s) or registration number(s): A. Trademark Application No.(s) B. Trademark Registration No.(s) 75/681,210 73/282,846 74/215,435 73/231,515

Additional number(s) attached Yes No

5. Name and address of party to whom correspondence concerning document should be mailed: Name: Sandra Holloway, Paralegal Internal Address: Street Address: Hinckley, Allen & Snyder LLP 1500 Fleet Center City: Providence State: RI Zip: 02903

6. Total number of applications and registrations involved: 4 7. Total fee (37 CFR 3.41): \$ 115 Enclosed Authorized to be charged to deposit account 8. Deposit account number: N/A

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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. Sandra E. Holloway Name of Person Signing Signature Date May 29, 2001

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

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

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TRADEMARK REEL: 002305 FRAME: 0264

NOTICE OF SECURITY INTEREST IN
TRADEMARKS, SERVICE MARKS, PATENTS,
COPYRIGHTS AND APPLICATIONS THEREFOR

This Notice of Security Interest in Trademarks, Service Marks, Patents, Copyrights and Applications therefor is made as of May 18, 2001, by and between VALLEY FRESH, INC., a Delaware corporation with a principal place of business at 680 D Street, Turlock, California 95381 (the "Company") and FLEET NATIONAL BANK, formerly known as Fleet Bank of Massachusetts, N.A., a national banking association organized under the laws of the United States having an office at 100 Federal Street, Boston, Massachusetts 02110, as Agent for itself and each of the other "Lenders" who are now or hereafter become parties to the Loan Agreement referenced in the hereinafter defined Agreement ("Agent"), with reference to the following:

WHEREAS, the Company, James Crean Foods, Inc., Freezer Queen Foods, Inc, and Agent have entered into to that certain Amended and Restated Credit Agreement dated as of January 15, 1997; as amended by that certain Joinder Agreement and Amendment of Amended and Restated Credit Agreement dated as of March 7, 1997; as amended by that certain Second Amendment to Amended and Restated Credit Agreement dated as of October 3, 1997; as further amended by that certain Third Amendment to Amended and Restated Credit Agreement dated as of March 30, 1998; as further amended by that certain Fourth Amendment to Amended and Restated Credit Agreement dated as of August 4, 1998; and as further amended by that certain Fifth Amendment to Amended and Restated Credit Agreement dated as February 1, 1999 (as amended and as same may be further amended from time to time, the "Agreement");

WHEREAS, pursuant to the terms of the Agreement, the Company executed that certain Conditional Trademark Assignment, dated as of November 23, 1994, in favor of Agent, a copy of which is attached hereto as Exhibit A, (the "Assignment") which Assignment was subsequently recorded with the U.S. Patent and Trademark Office on December 19, 1994, in Reel 1264 at Frame 0352;

WHEREAS, in accordance with the terms and conditions of the Assignment, the Company has granted to the Agent a security interest in trademarks, service marks, patents and copyrights and the applications for pending trademarks, service marks, patents and copyrights, whether presently existing or hereafter arising or acquired;

WHEREAS, the Company has (a) adopted, used and is using the trademarks, service marks, patents and copyrights listed on Exhibit B attached hereto and (b) filed applications for the registrations of additional trademarks, service marks, patents and copyrights listed on said Exhibit B, which trademarks, service marks, patents and copyrights or the applications therefor are registered with the United States Patent and Trademark Office; and

NOW, THEREFORE, for valuable consideration and pursuant to the terms and conditions set forth in the Assignment, notice is hereby given that pursuant to the Assignment, the Company has granted to the Agent a security interest in all trademarks, service marks, patents and copyrights and all applications for pending trademarks, service marks, patents and copyrights, including, without limitation, the registered trademarks, service marks, patents, copyrights and applications therefor listed on Exhibit A attached hereto and incorporated herein by reference.

COMPANY:

VALLEY FRESH, INC.,
a Delaware corporation,

By: Eugene G. Carney
Name: _____
Title: Vice President

AGENT:

FLEET NATIONAL BANK,
formerly known as Fleet Bank of Massachusetts, N.A.,
as Agent for itself and certain other Lenders

By: James C. Silva
Name: James C. Silva
Title: Director

STATE/~~COMMONWEALTH~~ OF New York
COUNTY OF ERIE

In Buffalo, New York, on the 18th day of MAY, 2001, before me personally appeared EUGENE G. CARNEY, the Vice President of Valley Fresh, Inc., to me known and known by me to be the party executing the foregoing instrument on behalf of Valley Fresh, Inc., and he/she acknowledged said instrument, by him/her executed to be his/her free act and deed, his/her free act and deed in his/her capacity as aforesaid, and the free act and deed of said Valley Fresh, Inc..

Bernard J. Ryan
Notary Public

Print Name: BERNARD J. RYAN

My Commission Expires: AUGUST 31, 2001

BERNARD J. RYAN
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN ERIE COUNTY
My Commission Expires Aug. 31 2001

THE COMMONWEALTH OF MASSACHUSETTS
COUNTY OF SUFFOLK

In Boston, on this 22^d day of May, 2001, before me personally appeared James C Silva, the Director of Fleet National Bank, to me known and known by me to be the person executing the foregoing instrument and he/she acknowledged said instrument by him/her executed to be his/her free act and deed, his/her free act and deed in his/her capacity as aforesaid and the free act and deed of said Fleet National Bank.



Notary Public
Print Name: _____
My Commission Expires: _____

[SEAL]

KRISTINE R. MILLET
Notary Public
My Commission Expires April 17, 2003

CONDITIONAL TRADEMARK ASSIGNMENT

VALLEY FRESH, INC., a Delaware corporation ("Assignor") with a principal place of business at 680 D Street, Turlock, CA 95381 pursuant to the terms of a Credit Agreement of even date herewith by and between James Crean Foods, Inc., Freezer Queen Foods Inc., Assignor, Fleet Bank of Massachusetts, N.A. and the other Lenders a party thereto (as amended, supplemented or renewed from time to time in accordance with the terms thereof, the "Credit Agreement"), has concurrently granted to Fleet Bank of Massachusetts, N.A., a national banking association organized under the laws of the United States with a principal place of business at 75 State Street, Boston, Massachusetts 02106 ("Assignee") as agent for itself and the other Lenders a party to the Credit Agreement, a security interest in all of its assets to secure, inter alia, the payment and performance of the Obligations (as defined in the Credit Agreement).

To evidence and perfect the rights of Assignee as grantee of a security interest that has attached in certain of said assets as described below, Assignor has executed and delivered to Assignee this Conditional Trademark Assignment. Capitalized terms used herein and not otherwise defined herein shall have the respective meanings set forth in the Credit Agreement.

FOR GOOD AND VALUABLE CONSIDERATION, THE RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED, AND SUBJECT TO THE CONDITIONS SET FORTH HEREIN, Assignor does hereby conditionally assign, sell, transfer and grant unto Assignee all of Assignor's right, title and interest in, to and under the following, whether presently existing or hereafter arising or acquired:

(i) each trademark/servicemark (whether registered or unregistered), and each registration thereof, and each trademark/servicemark registration application (whether federal or state, and whether foreign or domestic) owned by Assignor, including, without limitation, each such trademark, servicemark or trademark/servicemark registration application set forth on Schedule A, attached hereto and incorporated herein by reference;

(ii) all products and proceeds of the foregoing, including, without limitation, any claims or causes of action of Assignor against any third parties for past, present or future infringement of any of the foregoing, with the right to sue and recover the same in the Assignee's own name and for its own use and behoof; and

(iii) the goodwill of Assignor's business symbolized by each of the foregoing;

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(all of the foregoing, individually and collectively, the "Trademarks").

PROVIDED, HOWEVER, THAT ASSIGNOR'S RIGHTS IN THE TRADEMARKS SHALL CONTINUE UNTIL ASSIGNEE SHALL BE ENTITLED TO EXERCISE ITS RIGHTS AND REMEDIES HEREUNDER IN AND WITH RESPECT TO THE TRADEMARKS AND ONLY UPON, SATISFACTION OF THE FOLLOWING CONDITIONS SUBSEQUENT:

(a) The occurrence of an Event of Default (as defined in the Credit Agreement); and

(b) The delivery by Assignee to Assignor in accordance with the Credit Agreement of written notice of its intention to exercise the rights and remedies granted to it hereunder or under the Credit Agreement.

Section 1. Representations and Warranties. Assignor does hereby acknowledge, affirm and represent that:

1.1. the rights and remedies of Assignee with respect to its interest in the Trademarks are more fully set forth in the Credit Agreement, the terms and provisions of which are incorporated by reference herein as if fully set forth herein.

1.2. that nothing in this Assignment shall be in derogation of the rights and remedies of Assignee in and to the Trademarks as set forth in the Credit Agreement and as shall be available at law or in equity.

1.3. Schedule A contains a true and complete record of (a) all registered (state and federal) trademarks and servicemarks in which Assignor has any interest and (b) all applications pending for registration of trademarks and servicemarks in which Assignor has any interest.

1.4. The Trademarks are subsisting and have not been adjudged invalid or unenforceable, in whole or in part.

1.5. To the best knowledge of Assignor, each of the Trademarks is valid and enforceable.

1.6. Assignor is the sole and exclusive owner of the entire and unencumbered right, title and interest in and to each of the Trademarks, free and clear of any liens, charges and encumbrances, including without limitation licenses and covenants by Assignor not to sue third persons, other than those Liens arising under or expressly permitted by the Financing Documents.

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Section 2. Covenants. Assignor covenants that, until all of the Obligations (as defined in the Agreement) shall have been satisfied in full, it will not enter into any agreement (for example, a license agreement) which is inconsistent with Assignor's obligations or Assignee's rights under this Assignment, without the Assignee's prior written consent.

Section 3. Further Assurances. Assignor covenants that if, before the Obligations shall have been satisfied in full, Assignor shall obtain rights to any additional registered trademarks or servicemarks, or become entitled to the benefit of any registration applications for trademarks or servicemarks, the provisions of this Assignment shall automatically apply thereto and Assignor shall give to the Assignee prompt notice thereof in writing and each of the other Lenders. Assignor authorizes the Assignee to modify this Assignment by amending Schedule A to include any future trademarks, servicemarks, or trademark or servicemark applications of which Assignor may acquire an interest.

Section 4. Certain Assignee Rights.

4.1. The Assignor hereby constitutes and appoints the Assignee irrevocably, and with full power of substitution and revocation, the true and lawful attorney, for and in the name, place and stead of the Assignor such appointment being coupled with an interest, to exercise any and all rights and remedies of the Assignor under each of the Trademarks and to perform any of the actions and rights provided by any of the Financing Documents upon the occurrence and during the continuance of any Event of Default. Except as prohibited by applicable law, the Assignor hereby grants unto said attorney full power and authority to do and perform each and every act whatsoever requisite to be done with respect to any of the Trademarks, as fully to all intents and purposes, as the Assignor could do if personally present, hereby ratifying and confirming all that said attorney shall lawfully and reasonably do or cause to be done by virtue hereof; provided, however, that any acts or omissions by the Assignee after an Event of Default shall be at the Assignee's discretion and shall not be or become the basis for any liability of the Assignee.

4.2. Acceptance of this Assignment shall not constitute a satisfaction of all or any part of the Obligations except to the extent of funds actually received and finally applied by the Assignee on account of the same.

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4.3. The rights and powers of the Assignee hereunder shall continue and remain in full force and effect until all Obligations, including any deficiency resulting from exercise of remedies under any of the Financing Documents, are finally paid or satisfied in full. Assignee shall not be liable to Assignor or anyone claiming under or through Assignor by reason of any act or omission by the Assignee hereunder except for acts or omissions constituting gross negligence or willful misconduct by the Assignee.

Section 5. Indemnification.

5.1. The Assignor shall indemnify and hold harmless the Assignee and each of the other Lenders, their affiliates and their respective directors, officers, employees and agents ("Assignee's Indemnified Parties") from and against any and all liability, loss, damage and expense, including reasonable attorneys' fees which any of the Assignee's Indemnified Parties may or shall incur under or in connection with any of the Trademarks or by reason of any actions lawfully taken or omitted by the Assignee's Indemnified Parties, in respect of any of the Trademarks, including without limitation any actions or omissions which the Assignee in its discretion may take to protect its interest in any of the Trademarks and from and against any and all claims and demands whatsoever which may be asserted against any of the Assignee's Indemnified Parties by reason of any of the terms and conditions of any of the Trademarks.

5.2. Nothing contained herein shall obligate or be construed to obligate the Assignee to perform any of the terms, covenants or conditions contained in any of the Trademarks, or to take any action to collect any payments or to impose any obligation on the Assignee relating to any of the Trademarks.

Section 6. Exercise of Remedies. The rights and remedies of the Assignee under this Assignment are cumulative and in addition to any other rights and remedies which the Assignee shall have under or as a result of any of the Obligations and/or Financing Documents and may be exercised as often as the Assignee deems such exercise to be desirable. Failure of the Assignee to avail itself of any of the terms, covenants and conditions of this Assignment for any period of time, or at any time or times, shall not constitute a waiver of any of its rights hereunder.

Section 7. Termination. When all of the Obligations have been finally paid in full and the Lenders are no longer committed to extend any credit pursuant to the Credit Agreement, this Assignment shall cease and terminate, and at the Assignor's written request, accompanied by such certificates, opinions and

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proofs as the Assignee shall reasonably deem necessary, the Trademarks shall revert to the Assignor, and the estate, right, title and interest of the Assignee therein shall cease, determine and become void, and thereupon, on the demand and at the cost and expense of the Assignor, the Assignee shall execute proper instruments, acknowledging satisfaction of and discharging this Assignment; provided however that any indemnifications shall survive.

Section 8. Notices. Any notice, demand, request or other communication given in connection with this assignment shall be deemed sufficient if given in accordance with Section 10.10 of the Credit Agreement and shall be deemed effective in accordance therewith.

Section 9. Miscellaneous.

9.1. This Assignment shall be construed and enforced in accordance with and governed by the laws of the State of New York, without resort to its conflicts of laws.

9.2. No amendment, cancellation or discharge of this Assignment shall be valid unless the Assignee shall have consented thereto in writing.

9.3. In the event there is any conflict between the terms and provisions of any other Financing Documents and the terms and provisions of this Assignment, the terms and provisions of this Assignment shall prevail.

9.4. The terms, covenants, and conditions contained herein shall inure to the benefit of and bind the Assignee and the Assignor and their respective successors and permitted assigns.

IN WITNESS WHEREOF, Assignor has caused the Conditional Trademark Assignment to be duly executed by its duly authorized officer as of December 8, 1994.

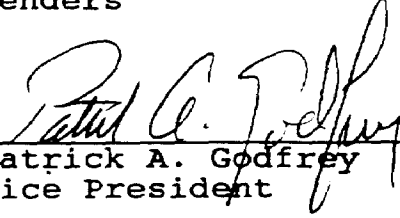
VALLEY FRESH, INC.

Eugene G. Carney
Eugene G. Carney
Vice President and Treasurer

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FLEET BANK OF
MASSACHUSETTS, N.A.
as agent for itself and the other
Lenders



Patrick A. Godfrey
Vice President

TRADEMARK

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CONDITIONAL ASSIGNMENT OF TRADEMARKS

SCHEDULE A

<u>Registration or Serial Number</u>	<u>Trademark/Service mark</u>
Reg. 1,842,461	VALLEY FRESH (and design)
Serial 74-469,063	POLLO RAPIDO
Reg. 1,199,731	VALLEY FRESH (and design)
Reg. 1,151,154	VALLEY FRESH
Reg. 980,458	VALLEY FRESH

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UNITED STATES PATENT AND TRADEMARK
OFFICE

EXHIBIT B

<u>Trademark</u>	<u>Serial Number</u>	<u>Registration Date</u>
POLLO A SU GUSTO	75/681,210	April 17, 2001
VALLEY FRESH	74/215,435	June 28, 1994
VALLEY FRESH	73/282,846	October 21, 1980
VALLEY FRESH	73/231,515	September 17, 1979