

02-22-2000

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To the Honorable Commissioner of Patents and

Original documents or copy thereof.

101272164

1. Name of conveying party(ies):

Harp's Food Stores, Inc.

MAR 2-18-00

- Individual(s)
- General Partnership
- Corporation-State- Arkansas
- Other
- Association
- Limited Partnership

Additional name(s) of conveying party(ies) attached? Yes No

3. Nature of conveyance:

- Assignment
- Security Agreement
- Other
- Merger
- Change of Name
- Amended and Restated Trademark
- Collateral Assignment and Security agreement

Execution Date: 2/16/2000

4. Application number(s) or patent number(s):

A. Trademark Application No.(s)

B. Trademark Registration No(s):

1,823,340
1,262,710
2,077,337

Additional numbers attached? Yes No

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

Terri Branson

Name:

Lewis, Rice & Fingersh, L.C.

Internal Address:

Street Address: 500 N. Broadway, Suite 2000

City: St. Louis State: MO Zip: 63102

6. Total number of applications and registrations involved:

7. Total fee (37 CFR 3.41) \$ 90.00

X Enclosed

Authorized to be charged to deposit account

8. Deposit account number:

(Attach duplicate copy of this page if paying by deposit account)

02/22/2000 DCOATES 00000048 1823340

DO NOT USE THIS SPACE

01 FC:481 40.00 DP
02 FC:482 50.00 DP

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.

Terri Branson

2/17/2000

Name of Person Signing

Signature

Date

Total number of pages comprising cover sheet:

**AMENDED AND RESTATED
TRADEMARK COLLATERAL ASSIGNMENT AND SECURITY AGREEMENT**

This Amended and Restated Trademark Collateral Assignment and Security Agreement (this "Agreement"), dated as of February 16, 2000, is made by and between HARP'S FOOD STORES, INC., an Arkansas corporation, ("Assignor") and BANK OF AMERICA, N.A., formerly NationsBank, N.A., formerly The Boatmen's National Bank of St. Louis, a national banking association, as Administrative Agent for the ratable benefit of itself and each of the other Lenders ("Assignee"), whose address is 800 Market Street, St. Louis, Missouri 63101.

1. Preliminary Statements.

(A) Assignor has executed and delivered this Agreement to Assignee, for the ratable benefit of the Lenders, as a condition of the Loan Agreement, to induce Assignee and the other Lenders to enter into and perform their respective obligations under the Loan Agreement.

(B) All capitalized term used herein and not otherwise defined shall have the meaning given such term in that certain Amended and Restated Loan Agreement, of even date herewith, entered into by and among Assignor, Assignee and the other Lenders (as the same may be amended, restated, replaced or otherwise modified from time to time, the "Loan Agreement"). Capitalized terms used and not otherwise defined in this Agreement or the Loan Agreement have the meanings given to them in the UCC. All definitions, rights and remedies contained in any of the Loan Documents which are incorporated herein by express reference or otherwise shall remain a part hereof notwithstanding that any of said Loan Documents may have been satisfied, terminated or released.

2. General. Unless the context of this Agreement clearly requires otherwise, (i) references to the plural include the singular and vice versa, (ii) references to any Person include such Person's successors and assigns but, if applicable, only if such successors and assigns are permitted by this Agreement, (iii) references to one gender include all genders, (iv) "including" is not limiting, (v) "or" has the inclusive meaning represented by the phrase "and/or", (vi) the words "hereof", "herein", "hereby", "hereunder" and similar terms in this Agreement refer to this Agreement as a whole, including its Exhibits, and not to any particular provision of this Agreement, (vii) the word "Section" or "section" and "Page" or "page" refer to a section or page, respectively, of this Agreement unless it expressly refers to something else, (viii) reference to any agreement, document, or instrument, including this Agreement, any other Loan Document and any agreement, document or instrument defined herein, means such agreement, document, or instrument as it may have been or may be amended, restated, extended, renewed, replaced, or otherwise modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof, and includes all attachments thereto and instruments incorporated therein, if any, and (ix) general and specific references to any Law means such Law as amended, modified, codified or reenacted, in whole or in part, and in effect from time to time. Section captions are for convenience only and do not affect the interpretation or construction of this Agreement.

3. Restatement and not a Novation. This Agreement, together with the other Loan Documents, amends and restates (and Assignor expressly states that it does not constitute an extinguishment or novation of) the Trademark Collateral Assignment and Security Agreement dated as of June 22, 1995 by and between Assignor and Assignee (the "Prior Security Agreement") and the other notes, loan agreement and other loan documents executed in connection therewith (collectively, the "Prior Loan Documents"). This Agreement and the other Loan Documents do not evidence or effect under any circumstances a release or relinquishment of the priority of any or all of the Security Interests of Assignee in any assets of Assignor, or a waiver of Assignor's obligations to Assignee under the Prior Security Agreement and the

other Prior Loan Documents. Assignor expressly agrees that all Security Interests of Assignee remain in full force and effect with the same priority that such Security Interests had under the Prior Security Agreement and the other Prior Loan Documents.

4. Grant of Security Interest in Trademark Collateral. As security for the full, prompt and irrevocable performance of all of the Loan Obligations, Assignor hereby grants, assigns and conveys to Assignee, for the ratable benefit of the Lenders, a security interest in Assignor's entire right, title and interest in and to the Trademark Collateral. As used herein, "Trademark Collateral" means: all of Assignor's right, title and interest in and to all of its now owned or existing and filed or acquired under any common law and hereafter acquired or arising and filed or acquired under any common law, trademarks, service marks, trademark or service mark registrations, trade names, and trademark or service mark applications, including, without limitation, each mark, registration, and application listed on Schedule I attached hereto and made a part hereof (as the same may be amended pursuant hereto from time to time), and (i) renewals thereof, (ii) all income, royalties, damages and payments now and hereafter due and/or payable with respect thereto, including, without limitation, damages and payment for past or future infringements thereof, (iii) the right to sue for past, present and future infringements thereof, (iv) all rights corresponding thereto throughout the world, and (v) together in each case with the good will of Assignor's business connected with the use of each item of Trademark Collateral, and symbolized by, the Trademark Collateral.

5. Representations and Warranties. Assignor represents and warrants as follows:

(A) Assignor is the sole and exclusive owner of the Trademark Collateral free and clear of any Security Interests, charges, claims of infringement upon the rights of third parties and encumbrances, except as otherwise disclosed in **Schedule 5(A)**.

(B) Set forth in **Schedule 5(B)** is a complete and accurate list of all trademarks, trade names, service marks, trademark and service mark registrations, and applications for trademark or service mark registrations owned by Assignor, except trademarks, trade names and service marks which are not filed but as to which Assignor may be entitled to under common law.

(C) Assignor has not granted any license, release, covenant not to sue, or non-assertion assurance to any third person with respect to any part of the Trademark Collateral, except as contemplated in the Loan Agreement or as otherwise disclosed in **Schedule 5(C)**.

(D) The Trademark Collateral is subsisting and has not been adjudged invalid or unenforceable, and, to Assignor's knowledge, each of the items comprising the Trademark Collateral is valid and enforceable.

(E) Assignor has used, and will continue to use for the duration of this Agreement, consistent standards of quality in its sale of products sold under the Trademark Collateral.

6. Further Assurances. (A) Assignor agrees that from time to time, at its expense, it will promptly execute and deliver all further instruments and documents, and take all further action, that may be necessary in order (i) to continue, perfect, amend or protect the assignment and the security interest granted hereby or (ii) to enable Assignee to exercise and enforce its rights and remedies hereunder with respect to any part of the Trademark Collateral. Without limiting the generality of the foregoing, Assignor will execute and file such financing or continuation statements, amendments hereto, and such other instruments or notices as may be necessary or desirable, or as Assignee may reasonably request, in order to perfect and preserve the collateral assignment and Security Interest granted hereby.

(B) Assignor hereby authorizes Assignee to file one or more financing or continuation statements, and amendments thereto (and hereto as to **Schedule 5(B)**), relative to all or any part of the Trademark Collateral, or subsequent additions thereto, without the signature of Assignor where permitted by law. A carbon, photographic or other reproduction of this Agreement or any financing statement covering the Trademark Collateral or any part thereof shall be sufficient as a financing statement where permitted by law.

(C) Assignor agrees that, should it obtain an ownership interest in any trademark, service mark, trade name, trademark or service mark registration, or application for trademark or service mark registration which is not now identified in **Schedule 5(B)**, (i) Assignor shall give prompt written notice thereof to Assignee, (ii) the provisions of Section 4 shall automatically apply to any such mark, registration, or application, and (iii) any such mark, registration, or application, together with the good will of the business connected with the use of the mark and symbolized by it, shall automatically become part of the Trademark Collateral.

(D) With respect to any Trademark Collateral necessary to the conduct of Assignor's business, Assignor agrees to take all necessary steps in any proceeding before the United States Patent and Trademark Office or any similar office or agency in any other country or any political subdivision thereof or in any court to maintain each registered trademark, service mark, and trademark or service mark registration, and to pursue each application for trademark or service mark registration now or hereafter included in the Trademark Collateral, including the filing of applications for renewal, the payment of maintenance fees, and participation in opposition, interference and infringement proceedings. To the extent necessary or desirable to the conduct of its business, Assignor agrees to take corresponding steps with respect to each new or other registered trademark, service mark, trademark or service mark registration to which Assignor is now or later becomes entitled. Notwithstanding anything in this paragraph to the contrary, Assignor shall not be obligated to register the names "Harp's", "Harp's Food Stores" or similar names.

(E) If Assignor becomes aware that any item of the Trademark Collateral is infringed or misappropriated by a third party, Assignor shall promptly notify Assignee and shall promptly take such actions as Assignor shall deem appropriate under the circumstances to protect such Trademark Collateral, and shall, if Assignor deems it necessary, promptly sue for infringement or misappropriation and for recovery of all damages caused by such infringement or misappropriation.

(F) Assignor shall continue to use reasonable and proper statutory notice in connection with its use of each registered trademark or service mark.

7. Inspection of Assignor's Facilities. Assignor hereby grants Assignee and its employees and agents the right to visit Assignor's plants and facilities which manufacture, inspect or store products sold under any of the Trademark Collateral, and to inspect products and quality control records relating thereto at reasonable times during regular business hours. Assignor shall do any and all acts required by Assignee to ensure Assignor's compliance with Section 5(E).

8. Transfers and Other Security Interests. Assignor shall not: (A) sell, assign (by operation of law or otherwise), grant a license in or with respect to, or otherwise dispose of any of the Trademark Collateral, except as permitted by the Loan Agreement;

(B) create or suffer to exist any Security Interest or other charge or encumbrance upon or with respect to any of the Trademark Collateral except as otherwise disclosed in **Schedule 5(A)**, or as otherwise permitted by the Loan Agreement; or

(C) take any other action in connection with any of the Trademark Collateral that would impair the value of the interests or rights thereunder of Assignor.

9. Assignee Appointed Attorney-in-Fact. Assignor hereby irrevocably appoints Assignee as Assignor's attorney-in-fact, which appointment is coupled with an interest, with full authority in Assignor's place, stead and on behalf of Assignor and in Assignor's names or otherwise, from time to time in Assignee's reasonable discretion, to take any action and to execute any instrument that Assignee deems reasonably necessary to accomplish the purposes of this Agreement, including, without limitation, after the occurrence and during the continuance of an Event of Default: (i) to ask, demand, collect, sue for, recover, compromise, receive and give acquittance and receipts for moneys due and to become due under or in respect of any of the Trademark Collateral; (ii) to receive, endorse, and collect any drafts or other instruments, documents and chattel paper, in connection with clause (i) above; and (iii) to file any claims or take any action or institute any proceedings that Assignee may deem necessary for the collection of any of the Trademark Collateral or otherwise to enforce the rights of Assignee with respect to any of the Trademark Collateral.

10. Assignee May Perform. If Assignor fails to perform any of the obligations contained herein, Assignee may perform, or cause performance of, such obligations, and the expenses of Assignee incurred in connection therewith shall be payable by Assignor under Section 13.

11. Assignee's Duties. The powers conferred on Assignee hereunder are solely to protect its interest in the Trademark Collateral and shall not impose any duty upon Assignee to exercise any such powers. Except for the accounting for moneys actually received by it hereunder, Assignee shall have no duty as to any Trademark Collateral, or as to the taking of any necessary steps to preserve rights against other parties or any other rights pertaining to any Trademark Collateral.

12. Remedies. If any Event of Default shall have occurred and be continuing:

(A) Assignee may exercise in respect of the Trademark Collateral, in addition to other rights and remedies provided for herein or otherwise available to Assignee, all the rights and remedies of a secured party on default under the UCC (whether or not the UCC applies to the affected Trademark Collateral) and also may (i) exercise any and all rights and remedies of Assignor under or otherwise in respect of the Trademark Collateral; (ii) require Assignor to, and Assignor hereby agrees that it will at its expense and upon request of Assignee forthwith, assemble all or any part of the documents embodying the Trademark Collateral as directed by Assignee and make them available to Assignee at a place to be designated by Assignee which is reasonably convenient to both Assignee and Assignor, (iii) license, sell or otherwise dispose of the Trademark Collateral or any part thereof, in one or more lots, at public or private sale, at any of Assignee's offices or elsewhere, for cash, credit or other consideration, and upon such other terms as are commercially reasonable. In the event of any sale, assignment, or other disposition of any of the Trademark Collateral, the good will of the business connected with and symbolized by any Trademark Collateral subject to such disposition shall be included, and Assignor shall supply to Assignee or its designee Assignor's know-how and expertise relating to the manufacture and sale of products or the provision of services relating to any Trademark Collateral subject to such disposition, and Assignor's customer lists and other records relating to such Trademark Collateral and to the distribution of such products and services. Assignor agrees that, to the extent notice is required or otherwise given to Assignor of the time and place of any public sale or the time after which any private sale is to be made, ten (10) Business Days shall constitute reasonable notice. Assignee shall not be obligated to make any sale of any Trademark Collateral regardless of notice of sale having been given. Assignee may adjourn any public or private sale therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned.

(B) All payments received by Assignor under or in connection with any of the Trademark Collateral shall be received in trust for the benefit of Assignee, shall be segregated from other funds of Assignor and shall be forthwith paid over to Assignee in the same form as so received (with any necessary endorsement).

(C) All payments made hereunder or in connection with or otherwise in respect of the Trademark Collateral and all cash proceeds received by Assignee in respect of any sale of, collection from, or other realization upon all or any part of the Trademark Collateral shall be distributed to the Lenders for application to the Loan Obligations (after payment of any amounts payable to Assignee pursuant to Section 13) in accordance with the terms of the Loan Agreement.

13. Expenses. Assignor, upon demand, will pay to Assignee the amount of any and all reasonable expenses, including, without limitation, the reasonable fees and actual expenses of its counsel and of any experts and agents, which Assignee may incur in connection with any and all of the following (i) the custody, preservation, use or operation of, or the sale of, collection from, or other realization upon, any of the Trademark Collateral, (ii) the exercise or enforcement of any of Assignee's rights hereunder, or (iii) the failure by Assignor to perform or observe any of the provisions hereof.

14. Amendments, Waivers, Consents. No amendment or waiver of any provision of this Agreement nor consent to any departure by Assignor herefrom shall in any event be effective unless such amendment or waiver shall be in writing and signed by an authorized officer of Assignee and Assignor (except that waivers need only be signed by an authorized officer of Assignee), and then such amendment or waiver shall be effective only in the specific instance and for the specific purpose for which it was given.

15. Notices. Any notice or notification required, permitted or contemplated hereunder shall be given in the manner provided in the Loan Agreement.

16. Miscellaneous. (A) This Agreement shall create a continuing collateral assignment and security interest in the Trademark Collateral and shall (i) remain in full force and effect until full and irrevocable payment and performance of all of the Loan Obligations, termination of the Commitments and expiration of all LCs, (ii) be binding upon Assignor, its successors and assigns, and (iii) inure, together with the rights and remedies of Assignee hereunder, to the benefit of Assignee, its successors, transferees and assigns.

(B) Upon the full and irrevocable payment and performance of all of the Loan Obligations, termination of the Commitments and expiration of all LCs, the Security Interests granted hereby shall terminate and all rights to the Trademark Collateral shall revert to Assignor, subject to any disposition thereof which may have been made by Assignee pursuant hereto. Upon any such termination, Assignee will, at Assignor's expense, execute and deliver to Assignor such documents as Assignor shall reasonably request to evidence such termination and reversion.

(C) If any term or provision of this Agreement is or shall become illegal, invalid or unenforceable in any jurisdiction, all other terms and provisions of this Agreement shall remain legal, valid and enforceable in such jurisdiction and such illegal, invalid or unenforceable provision shall be legal, valid and enforceable in any other jurisdiction.

(D) Assignor hereby waives the right to plead any statute of limitations as a defense to any of the Loan Obligations to the full extent permitted by law.

(E) This Agreement shall be interpreted and the rights and liabilities of the parties hereto determined in accordance with the internal law of the State of Missouri, without reference to the conflicts of law principles thereunder, unless preempted by the federal laws of the United States of America.

(F) The captions in this Agreement are for reference purposes only and shall not relate to or affect in any way the construction or interpretation hereof.

(G) The representations, warranties, covenants and agreements contained herein or in any Schedule attached hereto shall survive the execution hereof.

(H) This Agreement may be executed in any number of counterparts and on separate counterparts, each of which shall be deemed to be an original, but all of which shall be deemed to be one and the same instrument.

(I) This Agreement shall terminate upon full and irrevocable payment and performance of all of the Loan Obligations, termination of the Commitments and expiration of all LCs. At such time, Assignee shall, at the request of Assignor, reassign and redeliver to Assignor all of the Trademark Collateral hereunder which have not been sold, disposed of, distributed, retained or applied by Assignee in accordance with the terms hereof. Such reassignment and redelivery shall be without warranty by or recourse to Assignee, except as to the absence of any prior assignments by Assignee of its interest in the Trademark Collateral, and shall be at the expense of Assignor.

17. Reference to Loan Agreement. Each of the parties hereto agrees that all of the terms of this Agreement are subject to the terms of the Loan Agreement.

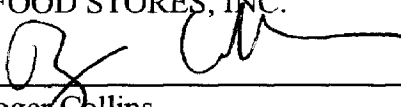
18. Reinstatement. This Agreement shall continue to be effective or be reinstated, as the case may be, if at any time any amount received by any Lender in respect of the Loan Obligations is rescinded or must otherwise be restored or returned by such Lender upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of Assignor or upon the appointment of any intervenor or conservator of, or trustee or similar official for, Assignor, any substantial part of its assets, or otherwise, all as though such payments had not been made.

19. Final Expression. This Agreement, together with the Loan Agreement, the other Loan Documents and any other agreement executed in connection herewith or therewith, is intended by the parties as a final expression of their agreement and is intended as a complete and exclusive statement of the terms and conditions thereof. Acceptance of or acquiescence in a course of performance rendered under this Agreement shall not be relevant to determine the meaning of this Agreement even though the accepting or acquiescing party had knowledge of the nature of the performance and opportunity for objection.

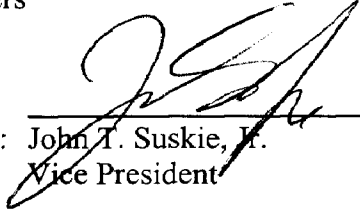
20. Quality Maintenance. Assignor agrees that from and after the occurrence of an Event of Default Assignee shall have the right but no obligation to establish such additional product quality controls as Assignee, in its sole judgment, may deem necessary to assure maintenance of the quality of products sold by Assignor under the Trademark Collateral. Assignor agrees (i) not to sell or assign its interest in, or grant any license under the Trademark Collateral without the prior written consent of Assignee; (ii) to maintain the quality of any and all products in connection with which the Trademark Collateral are used, consistent with the quality of such products as of the date hereof; (iii) not reduce the quality of such products without Assignee's express written consent; and (iv) to provide Assignee, upon request, with a certificate of an officer of Assignor certifying Assignor's compliance with the foregoing.

IN WITNESS WHEREOF, Assignor and Assignee have executed this Agreement as of the date first above written.

HARP'S FOOD STORES, INC.

By: 
Name: Roger Collins
Title: Executive Vice President
and Chief Financial Officer

BANK OF AMERICA, N.A., formerly NationsBank,
N.A., formerly The Boatmen's National Bank of St.
Louis, as Administrative Agent for itself and the other
Lenders

By: 
Name: John T. Suskie, Jr.
Title: Vice President

STATE OF MISSOURI)
) SS.
CITY OF ST. LOUIS)

On this 16th day of February, 2000, before me personally appeared Roger Collins to me personally known, who, being by duly sworn, did say that he is the Executive Vice President and Chief Financial Officer of Harp's Food Stores, Inc., an Arkansas corporation, and that said instrument was signed in behalf of said corporation, by authority of its Board of Directors; and said Roger Collins acknowledged said instrument to be the free act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand in the City and State aforesaid, the day and year first above written.

Terri L. Branson
Notary Public

My Commission Expires:
**Terri L. Branson
Notary Public - Notary Seal
State of Missouri
St. Charles County
My Commission Exp. 03/01/2001**

STATE OF MISSOURI)
) SS.
CITY OF ST. LOUIS)

On this 16th day of February, 2000, before me personally appeared John T. Suskie, Jr., to me personally known, who, being by me duly sworn, did say that he is a Vice President of Bank of America, N.A., and that said instrument was signed in behalf of said association by authority of its Board of Directors; and said John T. Suskie, Jr. acknowledged said instrument to be the free act and deed of said association.

IN TESTIMONY WHEREOF, I have hereunto set my hand in the City and State aforesaid, the day and year first above written.

Terri L. Branson
Notary Public

My Commission Expires:
**Terri L. Branson
Notary Public - Notary Seal
State of Missouri
St. Charles County
My Commission Exp. 03/01/2001**

SCHEDULE 5(A)

None, if nothing listed below.

SCHEDULE 5(B)

ISSUED TRADEMARK REGISTRATIONS - U.S.

<u>TRADEMARK/SERVICE MARK</u>	<u>REG. NO.</u>	<u>REG. DATE</u>
"PRICE CUTTER"	1823340	
"PRICE CUTTER FOOD WAREHOUSE" and design of scissors slashing dollar sign	1,262,710	
"MARTHA HARP'S"	2,077,337	July 8, 1997

ISSUED TRADEMARK REGISTRATIONS - STATE OF OKLAHOMA

<u>TRADEMARK/SERVICE MARK</u>	<u>REG. NO.</u>	<u>REG. DATE</u>
"PRICE CUTTER FOOD WAREHOUSE" and design of scissors slashing dollar sign	24,121	
PRICE CUTTER "Nobody Beats Our Prices...Nobody!"	25080	
"MARTHA HARP'S"	28153	June 13, 1996

ISSUED TRADEMARK REGISTRATIONS - STATE OF ARKANSAS

<u>TRADEMARK/SERVICE MARK</u>	<u>REG. NO.</u>	<u>REG. DATE</u>
"PRICE CUTTER FOOD WAREHOUSE" and design of scissors slashing dollar sign	10-82	
PRICE CUTTER "Nobody Beats Our Prices...Nobody!"	409-92	
"NOBODY BEATS OUR PRICES...NOBODY!"	410-92	
"BAGEL STATION"	203-96	July 12, 1996
"MARTHA HARP'S"	165-96	June 11, 1996

OTHER TRADEMARKS

TRADEMARK/SERVICE MARK

"HARP'S" (not registered)

"DISCOUNT DISTRIBUTORS" (not registered)

SCHEDULE 5(C)

None, if nothing listed below.