

04-19-2002

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

102061629

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

1. Name of conveying party(ies): The H.T. Hackney Co., Natural Springs Water Group, LLC and others

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

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

- Nature of conveyance: Assignment Merger Security Agreement Change of Name Other

Execution Date: March 20, 2002

2. Name and address of receiving party(ies)

Name: Bank of America, N.A. Internal Address: 600 Peachtree Street, N.E., 5th Floor Street: 600 Peachtree Street, N.E., 5th Floor City: Atlanta State GA Zip 30308

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

If assignee is not domiciled in the United States, a domestic representative designation is attached: Yes No (Designations must be a separate document from assignment) Additional name(s) & address(es) attached? Yes No

4. Application number(s) or registration number(s): A. Trademark Application No.(s) 75/619238 76/274415 76/273929

B. Trademark Registration No.(s) 2109550 2102819 2142141 1931305 1753373

Additional number(s) attached Yes No

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

Name: Jeri N. Sute, Esq. Internal Address: Troutman Sanders LLP Suite 5200 Street Address: 600 Peachtree Street NE City: Atlanta State GA Zip: 30308

6. Total number of applications and registrations involved: 8

7. Total fee (37 CFR 3.41): \$ 215.00 Enclosed Authorized to be charged to deposit account

8. Deposit account number:

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

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.

Jeri N. Sute Signature Date 4/4/02

Total number of pages including cover sheet, attachments, and document: 12

04/18/2002 TDIAZ1 00000146 75619238 40.00 OP 175.00 OP 01 FC:481 02 FC:482

TRADEMARK REEL: 002486 FRAME: 0987

Complete list of Conveying Parties to March 20, 2002
Conditional Assignment and Trademark Security Agreement

- The H.T. Hackney Co.
- Natural Springs Water Group, LLC
- Hackney Petroleum, Inc.
- Volunteer Fabricators, Inc.
- Big Sandy Wholesale Company
- Appalachian Realty Corporation
- Fidelity Properties, Inc.
- Hackey Supply Company
- Hubbell Realty Company
- SAN LLC

CONDITIONAL ASSIGNMENT AND TRADEMARK SECURITY AGREEMENT

THIS CONDITIONAL ASSIGNMENT AND TRADEMARK SECURITY AGREEMENT (this "Agreement") is made as of March 20, 2002, by the Obligors referred to below in favor of the Agent, for the benefit of the Lenders (as such terms are defined below).

WITNESSETH:

WHEREAS, pursuant to that certain Credit Agreement dated as of the date hereof (including all annexes, exhibits and schedules thereto, as from time to time amended, restated, supplemented or otherwise modified, the "Credit Agreement") by and among **The H.T. Hackney Co.** ("Hackney"), **Hackney Petroleum, Inc.** ("Hackney Petroleum"), **Volunteer Fabricators, Inc.** ("Volunteer"), and **Big Sandy Wholesale Company** ("Big Sandy"; Hackney, Hackney Petroleum, Volunteer and Big Sandy are individually referred to as a "Borrower" and collectively referred to as the "Borrowers"), certain subsidiaries of Hackney as guarantors (collectively, the "Guarantors"; the Borrowers and Guarantors are collectively referred to as the "Obligors"), certain financial institutions party thereto (the "Lenders") and **Bank of America, N.A.**, as agent for the Lenders (the "Agent"), the Lenders have agreed to make the Loans and cause the issuance of the Letters of Credit on behalf of the Obligors; and

WHEREAS, capitalized terms used herein without definition shall have the meanings ascribed to such terms in the Credit Agreement; and

WHEREAS, each Obligor will derive substantial benefits, both directly and indirectly, from the Loans; and

WHEREAS, in order to induce the Agent and the Lenders to enter into the Credit Agreement and to make the Loans, each Obligor has agreed to conditionally assign to the Agent, for the benefit of the Lenders, certain trademark rights as described herein.

NOW, THEREFORE, in consideration of the premises, each Obligor hereby agrees with the Agent and the Lenders as follows:

1. Grant of Security Interest.

To secure the complete and timely payment and performance of all Obligations, each Obligor hereby grants to the Agent, for the benefit of the Lenders, a security interest in such Obligor's entire world-wide right, title and interest in and to the trademarks and their respective registrations and applications for registration listed adjacent to the name of such Obligor in **Schedule A** attached hereto and by reference made a part hereof, together with the goodwill of the business symbolized by the trademarks, all licenses relating thereto, and all proceeds thereof (such as, by way of example, license royalties and proceeds of infringement suits), and the right

to sue for past, present and future infringements (all of which trademarks, trademark registrations, applications for registration, goodwill, licenses, proceeds, and other rights are collectively called the "Trademarks").

2. Conditional Grant of Security Interest in Additional Trademarks.

If, before the Obligations shall have been satisfied in full and the Commitments shall have been terminated, any Obligor shall have or obtain ownership of any trademark, including any registration or application therefor, with respect to goods sold in such Obligor's business (the "Goods"), the provisions of Section 1 shall automatically apply thereto, and also to any composite marks or other marks of such Obligor which are confusingly similar to such mark, and such Obligor shall give to the Agent prompt written notice thereof. This Section 2 shall not apply to trademarks which are owned by others and licensed to any Obligor. The Obligors shall perform all acts and execute all documents reasonably requested by the Agent at any time and from time to time to evidence, perfect, maintain, record and enforce the Agent's and the Lenders' security interest in the Trademarks in the United States of America, including, without limitation, any trademarks falling under this Section 2.

3. Modification of Agreement.

Each Obligor authorizes the Agent to modify this Agreement by amending Schedule A to include any additional trademarks, registrations and applications for registration thereof which are Trademarks under Section 1 or Section 2 hereof, and to have this Agreement, as amended, or any other document evidencing the security interest granted therein, recorded in the U.S. Patent and Trademark Office at the expense of the Obligors. Agent shall provide notice to Obligors of any amendment or modification to be effected pursuant to this Section.

4. Remedies Upon Default; Power of Attorney

(a) In addition to the grant of the security interest contained in Sections 1 and 2 hereof, if any Event of Default shall have occurred and be continuing, upon the election of the Agent, all right, title and interest in and to the Trademarks shall be automatically granted, assigned, conveyed and delivered to the Agent or its designee. Each Obligor hereby irrevocably constitutes and appoints the Agent and any officer, agent or employee thereof, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of such Obligor and in the name of such Obligor or the Agent's own name or the name of the Agent's designee, all acts of said attorney being hereby ratified and confirmed, upon the occurrence of an Event of Default: (i) to complete, date, execute and file, or cause to be filed, the Assignment attached hereto as Exhibit A and incorporated hereby by reference (the "Assignment") in the U.S. Patent and Trademark Office and in all other applicable offices, and to execute and deliver any and all documents and instruments which may be necessary or desirable to accomplish the purpose of the Assignment, including, without limitation, the right (but not the obligation) to prosecute applications in the name of any Obligor or the Agent, and to take any

other actions deemed necessary by the Agent to maintain such registrations in effect; (ii) to collect proceeds from the Trademarks (including, by way of example, license royalties and proceeds of infringement suits); (iii) to convey, in any transaction authorized by the Credit Agreement or any other Loan Document, any Goods covered by the registrations applicable to the Trademarks to any purchaser thereof; and (iv) to make payment or to discharge taxes or liens levied or placed upon or threatened against any goods covered by the Trademarks, the legality or validity thereof and the amounts necessary to discharge the same to be determined by the Agent in its sole discretion, and such payments made by the Lenders to become the obligations of the Obligors to the Lenders, due and payable immediately without demand. Such power, being coupled with an interest, is irrevocable.

(b) The Agent shall have, in addition to all other rights and remedies given it by this Agreement, those allowed by law and the rights and remedies of a secured party under the Uniform Commercial Code as enacted in any jurisdiction in which the Trademarks may be enforceable, and, without limiting the generality of the foregoing, the Agent may, if any Event of Default shall have occurred, immediately, without demand or performance and without other notice (except as set forth below) or demand whatsoever to any Obligor, all of which are hereby expressly waived, and without advertisement, sell at public or private sale or otherwise realize upon, the Trademarks, together with the goodwill of the business symbolized by the Trademarks, and after deducting from the proceeds of sale or other disposition of the Trademarks all expenses (including all reasonable expenses for brokers' fees and legal services), shall apply the residue of such proceeds in accordance with the Credit Agreement. Notice of any sale or other disposition of the Trademarks shall be given to Hackney at least ten (10) days before the time of any intended public or private sale or other disposition of the Trademarks is to be made, which each Obligor hereby agrees shall be reasonable notice of such sale or other disposition. At any such sale or other disposition, the Agent may, to the extent permissible under applicable law, purchase the whole or any part of the Trademarks sold, free from any right of redemption on the part of any Obligor, which right is hereby waived and released. Each Obligor hereby agrees to execute any documents reasonably requested by the Agent in connection with any disposition hereunder.

(c) Upon the occurrence of the conditional assignment provided for herein, no Obligor shall have right, title, or interest in or to any of the Trademarks and each Obligor shall cease and desist in the use of the Trademarks and of any colorable imitation thereof, and shall, upon written demand of the Agent, or pursuant to the terms of the Loan Documents, deliver to the Agent all Goods bearing the Trademarks.

5. Termination of Agreement.

At such time as all Letters of Credit have been cancelled, terminated or satisfactorily collateralized and all of the other Obligations (other than indemnification obligations as to which no claim has been asserted) have been paid in full and the Commitments shall have been terminated, the Agent shall execute and deliver to Hackney all deeds, assignments and other instruments as may be necessary or proper to re-vest in the Obligors title to the Trademarks and

the goodwill of the business symbolized by the Trademarks, subject to any disposition thereof which may have been made by the Agent pursuant hereto.

6. Limitation of Liability and Indemnification.

Each Obligor hereby releases the Agent and the Lenders from, and agrees to hold the Agent and the Lenders free and harmless from and against, any claims arising out of any action taken or omitted to be taken with respect to the Trademarks (except to the extent of the Agent's or the Lenders' gross negligence or willful misconduct), and each Obligor agrees to indemnify the Agent and the Lenders from and against any and all claims, demands, suits, losses, damages or other expenses (including reasonable attorneys' fees) arising from or in any way related to the Trademarks and any trademark infringement claim.

7. Waiver and Amendment.

(a) No course of dealing between any Obligor and the Agent, nor any failure to exercise, nor any delay in exercising, on the part of the Agent, any right, power or privilege hereunder shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

(b) This Agreement is subject to modification only by a writing signed by the parties hereto.

8. Cumulative Rights.

All of the Agent's rights and remedies with respect to the Trademarks, whether established hereby or under the other Loan Documents, or by any other agreements or by law, shall be cumulative and may be exercised singularly or concurrently.

9. Severability.

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.

10. Survival.

The benefits and burdens of this Agreement shall inure to the benefit of and be binding upon the respective successors and permitted assigns of the parties hereto.

11. Counterparts.

This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument and any of the parties hereto may execute this Agreement by signing any such counterpart.

12. Choice of Law.

The validity, construction and enforcement of this Agreement and the determination of the rights and duties of the parties hereto shall be governed by, and construed and enforced in accordance with, the internal laws in effect in the State of Georgia.

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed and delivered by its duly authorized officer as of the date first set forth above.

The H.T. Hackney Co.

By: William B Sansom
Name: William B Sansom
Title: President & CEO

Hackney Petroleum, Inc.

By: William B Sansom
Name: William B Sansom
Title: President & CEO

Volunteer Fabricators, Inc.

By: William B Sansom
Name: William B Sansom
Title: President & CEO

Big Sandy Wholesale Company

By: William B Sansom
Name: William B Sansom
Title: President & CEO

Appalachian Realty Corporation

By: William B Sansom
Name: William B Sansom
Title: President & CEO

Fidelity Properties, Inc.

By: William B Sansom
Name: William B Sansom
Title: President & CEO

Hackney Supply Company

By: William B. Sansom
Name: William B. Sansom
Title: President & CEO

Hubbell Realty Company

By: William B. Sansom
Name: William B. Sansom
Title: President & CEO

Natural Springs Water Group, LLC

By: William B. Sansom
Name: William B. Sansom
Title: CEO & Chief Manager

SAN LLC

By: William B. Sansom
Name: William B. Sansom
Title: Chief Manager

SCHEDULE A

Listing of Trademark Registrations and Applications

<u>Registration/Application Number</u>	<u>Mark</u>	<u>Owner</u>
Reg. No. 2,109,550	CAFÉ ALL DAY	The H. T. Hackney Co.
Reg. No. 2,102,819	CAFÉ JAVA (Stylized)	The H. T. Hackney Co.
App. No. 76/274,415	AZTEX	The H. T. Hackney Co.
App. No. 76/273,929	AZTEX FUEL & FOOD CENTERS & Design	The H. T. Hackney Co.
Reg. No. 2,142,141	COLDSBURG ICE BEER & Design	The H. T. Hackney Co.
Reg. No. 1,931,305	HACKNEY	The H. T. Hackney Co.
Reg. No. 1,753,373	Laure' & Design	Natural Springs Water Group, LLC
App. No. 75/619,238	MOUNTAIN FOREST SPRING WATER	Natural Springs Water Group, LLC

EXHIBIT A

Assignment of Trademarks and Goodwill

THIS ASSIGNMENT dated the ___ day of _____, 20___, from _____, a _____ corporation (the "Assignor"), to **Bank of America, N.A.**, as agent for a syndicate of lenders (the "Agent"), recites and provides:

WHEREAS, the Assignor is the owner of certain trademarks and service marks and the registrations and applications to register therefor listed in **Schedule A** hereto (the "Trademarks"); and

WHEREAS, the Assignee desires to obtain all of the Assignor's right, title and interest in all such Trademarks.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Assignor hereby grants, assigns and conveys to the Assignee, as agent for a syndicate of lenders, its successors and assigns, the entire right, title and interest of the Assignor in and to the Trademarks, including without limitation all proceeds thereof (such as, by way of example, license royalties and proceeds of infringement suits), and the right to sue for past, present and future infringements, together with the goodwill of the business symbolized by the Trademarks. The Assignor acknowledges that it has granted the Assignee the right to secure the assets of the Assignor associated with the business symbolized by the Trademarks, under separate agreement.

The Assignor further agrees to execute such further instruments and documents and perform such further acts as the Assignee may deem necessary to secure to the Assignee the rights herein conveyed.

The Assignor warrants and represents that it is the sole owner of the interest conveyed hereunder and that such interest is not the subject of any prior transfer, assignment, lien, mortgage or other transaction which would affect the Assignor's ability to transfer such interest.

The Assignor further agrees to indemnify the Assignee for any breach of the above warranty.

Trademark Security Agreement
Conditional Assignment and
Trademark Security Agreement

TRADEMARK
REEL: 002486 FRAME: 0997

IN WITNESS WHEREOF, the Assignor has executed this Assignment as of the day and year first above written.

By: _____
Name: _____
Title: _____

Trademark Security Agreement
Conditional Assignment and
Trademark Security Agreement