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FORM PTO-1618A  
Expires 06/30/99  
OMB 0651-0027

05-28-1998

U.S. Department of Commerce  
Patent and Trademark Office  
**TRADEMARK**



100721204

**RECORDATION FORM COVER SHEET  
TRADEMARKS ONLY**

MSCB 5-11-98

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

**Submission Type**

**New**

**Resubmission (Non-Recordation)**  
Document ID # \_\_\_\_\_

**Correction of PTO Error**  
Reel # \_\_\_\_\_ Frame # \_\_\_\_\_

**Corrective Document**  
Reel # \_\_\_\_\_ Frame # \_\_\_\_\_

**Conveyance Type**

**Assignment**  **License**

**Security Agreement**  **Nunc Pro Tunc Assignment**

**Merger** Effective Date  
Month Day Year  
11 24 1992

**Change of Name**

**Other** \_\_\_\_\_

**Conveying Party**

Mark if additional names of conveying parties attached

Name  Execution Date  
Month Day Year  
11 24 1992

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.)

**FOR OFFICE USE ONLY**

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: TRADEMARK

REEL: 1730 FRAME: 0183

**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" value="74177948"/>	<input type="text" value="74177949"/>	<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"/>	<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.*

Michael E. Weddington  February 5, 1998  
Name of Person Signing Signature Date Signed

ORIGINAL

**LICENSE AGREEMENT**

THIS LICENSE AGREEMENT (this "Agreement"), is made as of November 24, 1992, and is by and between Sandhills, Inc., a Delaware corporation with its sole office located at Second Floor, 900 North Market Street, Wilmington, Delaware 19801 ("Licensor"), and The Pantry, Inc., a North Carolina corporation with its corporate headquarters located at 1801 Douglas Drive, Sanford, North Carolina 27331-1410 ("Licensee").

**BACKGROUND**

Licensor is the owner of all right, title and interest in those certain trademarks, trade names and service marks, together with all registrations and applications for registrations therefor, as more particularly identified on Exhibit A which is attached hereto and made a part hereof (the "Marks").

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Licensee operates convenience stores and desires to license the Marks from Licensor.

Those Marks, which are identified as such, are, as of the effective date of this Agreement, registered on the Principal Register of the United States Patent and Trademark Office ("PTO") and the registers of certain states, all as set forth on Exhibit A.

Pursuant to this Agreement, Licensor has agreed to license to Licensee the right to use the Marks in connection with Licensee's business throughout the world and, if applicable, as part of Licensee's corporate name.

**AGREEMENT**

In consideration for the premises set forth above and the terms, conditions and mutual promises contained below, the parties agree as follows:

**Article 1.**

**Grant of License.**

Subject and pursuant to the terms and conditions contained in this Agreement, Licensor grants to Licensee the exclusive right to use the Marks, together with the goodwill of the business symbolized by the Marks, throughout the world in Licensee's corporate name and in connection with Licensee's business.

**Article 2.**  
**Ownership of Marks - No Litigation.**

§2.1 Licensee acknowledges that Licensor is the sole owner of the Marks and agrees never to impugn or challenge, or to assist in any challenge of the validity of any Mark, any registration of any Mark or Licensor's ownership of any Mark.

§2.2 Licensor represents and warrants to Licensee that, to the best of the knowledge of the undersigned officer of Licensor, there is no pending interference, opposition, or cancellation proceeding or litigation, threatened, pending or otherwise, with respect to any Mark, in any legal jurisdiction within the United States or elsewhere in the world.

**Article 3.**  
**Sublicense.**

§3.1 Except as provided in §3.2 and §3.3 of this Agreement, Licensee shall not grant any sublicense of any Mark without the prior written consent of Licensor, which shall not unreasonably be withheld. Any such sublicense shall be granted to a sublicensee ("Sublicensee") on terms and conditions consistent with this Agreement and shall be contained in a written agreement ("Sublicense") which is subject to the written approval of Licensor, which shall not unreasonably be withheld.

§3.2 Notwithstanding anything to the contrary in this Agreement, Licensee may sublicense the right to use the "WORTH" Mark (PTO Registration Number 1,372,925) pursuant to the terms and conditions contained in that certain Private Label Agreement made as of the 27th day of July, 1992 between R.J. Reynolds Tobacco Company, a New Jersey corporation, doing business as Forsyth Tobacco Products ("RJR") and Licensee ("Private Label Agreement"); provided, however, that Licensee shall pay to Licensor (i) \$168,750 within ten (10) days of the effective date of this Agreement, (ii) \$112,500 within five (5) days of each of the first, second, third and fourth anniversaries of the Private Label Agreement, (iii) 75% of the payments due to Licensor pursuant to §12 of the Private Label Agreement within thirty-five (35) days after each twelve month period (as determined under the Private Label Agreement) during which such payments were earned, and (iv) 75% of the payments received by Licensee pursuant to §13 of the Private Label Agreement within five (5) days after received by Licensee.

§3.3 Notwithstanding anything to the contrary in this Agreement, Licensee may sublicense the right to use the Marks pursuant to the terms and conditions of that certain Agreement between Licensee and Charlie Alvin Joyner and wife, Geraldine L. Joyner of Bailey, North Carolina (together, "The Joyners"), dated July 17, 1975 ("Joyner Agreement"); provided, however, that Licensee shall pay to Licensor, on or before January 15 of each year during the term of this Agreement, Seventy-Five Per Cent (75%) of the

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150,000

(15)

75%

(15/1/75)

Royalty (as defined in the Joyner Agreement) due to Licensee under the Joyner Agreement for the calendar year previously ended if such amount exceeds ~~Thirty-Five~~ <sup>Fifty</sup> Thousand Dollars (\$35,000):

\$50,000

§3.4 Licensee shall itself pay and account for all royalties which may accrue by reason of operations of any Sublicensee, including RJR and The Joyners, and shall enforce the terms and conditions of each Sublicense to ensure material compliance therewith by each respective Sublicensee, including RJR and The Joyners.

§3.5 A termination of this Agreement pursuant to Article 11, in whole or in part, shall not terminate any Sublicense and Licensor shall be substituted for Licensee as the sublicensor on each Sublicense upon such the termination of each Sublicense.

**Article 4.**  
**Identification of Marks.**

§4.1 In order to preserve the validity of the Marks and to identify each Mark as a registered trademark, each use of a Mark by Licensee shall include a ® symbol.

§4.2 If and as requested by Licensor in writing, Licensee shall also include with each use of a Mark an asterisked statement which reads:

\* Trademark of Sandhills, Inc.

**Article 5.**  
**Quality Control.**

§5.1 Licensee acknowledges that the Marks symbolize goodwill that has been developed through the provision of high quality services and products under the Marks, and that such services and products have been being provided in compliance with those Quality Control Standards ("Standards") set forth on Exhibit B, attached hereto and made a part hereof.

§5.2 Licensee agrees that all services and products which it provides under the Marks and pursuant to this Agreement ("Services and Products") shall be of such high quality so as to protect and enhance the goodwill currently associated with the Marks.

§5.3 Licensee agrees to provide the Services and Products in compliance with the Standards.

§5.4 Licensee agrees to submit to Licensor a report in the form attached hereto as Exhibit C within ten (10) days of the end of each Fiscal Quarter (as defined in §7.2).

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§5.5 Licensor acknowledges that those services and products which Licensee currently provides in its business of operating convenience stores meet the Standards.

§5.6 Licensee may eliminate or add Services and Products without the approval of Licensor; provided, however, that all such Services and Products provided by Licensee comply with the Standards.

§5.7 The Standards may be modified only upon written consent of Licensee and Licensor.

§5.8 Licensee shall maintain records in sufficient detail to allow Licensor (or its agent) to determine whether Licensee is providing Services and Products in compliance with the Standards. Licensee shall allow Licensor (or its agent) to inspect such records at the business offices of Licensee, or such other place that Licensor, in its reasonable discretion, so determines; provided, however, that such inspections may only occur during regular business hours.

§5.9 Notwithstanding the provisions of §5.8 above, upon twenty four hours' notice, Licensor (or its agent) shall have the right to inspect the equipment and facilities of Licensee wherever Licensee provides Services and Products; provided, however, that Licensor (or its agent) shall not exercise such right more frequently than twice per calendar month.

§

**Article 6.**  
**Advertising.**

Licensee may advertise Services and Products in any manner Licensee deems to be appropriate; provided, however, that such advertising shall comply with all applicable local, state and federal laws.

**Article 7.**  
**Royalties.**

§7.1 Licensee agrees to pay to Licensor royalties ("Royalties") in the amount of Three Per Cent (3%) of Licensee's Royalty Base, as defined in §7.2 below. Unless otherwise agreed to in writing by Licensor and Licensee, the rate of Royalties paid under this Agreement shall be revised annually. At the time of such annual revision, the rate of Royalties for the next succeeding annual period of this Agreement shall be as determined by an independent valuation of the Marks performed by Price Waterhouse, or such other public accounting firm agreed to in writing by Licensee and Licensor.

§7.2 Royalty Base shall mean the gross sales net of discounts of Licensee for each respective fiscal quarter of Licensee and Licensor ("Fiscal Quarter") throughout the term of this Agreement.

§7.3 On or before thirty-five (35) days after the last day of each Fiscal Quarter throughout the term of this Agreement Licensee shall pay to Licensor those Royalties that accrued during such Fiscal Quarter.

§7.4 On or before thirty (30) days after the last day of each Fiscal Quarter Licensee shall deliver to Licensor an itemized statement supporting Licensee's determination of the Royalties for such Fiscal Quarter ("Supporting Statement").

§7.5 Licensor (or Licensor's agent), at Licensor's sole discretion and at Licensor's sole expense, may verify, or cause to be verified, the Supporting Statement by appointing a Certified Public Accountant to audit the books and records of Licensee.

**Article 8.**  
**Protection of Marks.**

§8.1 Licensee shall promptly give notice to Licensor of each infringement of a Mark of which Licensee has notice, either actual or constructive.

§8.2 Upon notification, by Licensee or otherwise, of any possible infringement of Licensee's rights granted under this Agreement, Licensor, at its sole option may take appropriate action at law or in equity to enjoin or restrain such infringement.

§8.3 If Licensor takes no action, or causes no action to be taken on Licensor's behalf, with respect to restraining or enjoining an alleged infringement of a Mark within sixty (60) days of receipt of notice thereof, Licensee, may, for and in the name of Licensor, at Licensee's sole cost, take such action that Licensee deems to be appropriate in order to eliminate such infringement.

§8.4 If Licensee exercises its right pursuant to §8.3 above, Licensor shall:

§8.4.1 cooperate with Licensee to the fullest extent reasonably possible, including allowing Licensee to use Licensor's name in the prosecution of any such litigation and settlement of any such infringement claim; and

§8.4.2 select counsel, subject to the approval of Licensee, such approval which shall not be unreasonably withheld, in connection with such infringement claims or litigation.

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**Article 9.**  
**Indemnification.**

Except to the extent caused by the negligence of Licensor, or the breach of an obligation, covenant, representation or warranty of the Licensor under this Agreement, Licensee shall defend and indemnify Licensor and shall hold Licensor harmless against every liability, claim and loss asserted by any third party against Licensor in connection with the Services and Products provided by Licensee.

**Article 10.**  
**Assignability.**

Neither Licensor nor Licensee may assign any right or duty under this Agreement without the written consent of the other party.

**Article 11.**  
**Default.**

§11.1 In the event of any receivership or bankruptcy of Licensee, Licensor shall have the right to declare Licensee in default of this Agreement and terminate this Agreement without notice.

§11.2 Notwithstanding §11.1 above, if Licensor notifies Licensee in writing that Licensee is in violation of any provision of this Agreement and Licensee does not cure such violation within thirty (30) days of receipt of notice of such violation, Licensor may terminate this Agreement without further notice.

§11.3 In the event that Licensor shall terminate this Agreement pursuant to §11.1 or §11.2 above, Licensee shall immediately cease using the Marks and all rights of Licensee under this Agreement shall cease to have effect.

**Article 12.**  
**Term.**

This Agreement shall have an initial term of ten (10) years, beginning with the effective date hereof, and thereafter shall be automatically renewed for additional terms of two (2) years unless either party hereto notifies the other party in writing on or before ninety (90) days before the expiration of the then current term.

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**Article 13.**  
**Subcontractors.**

§13.1 Licensee may subcontract any part of or all of the Services and Products provided pursuant to this Agreement.

§13.2 In the event that Licensee exercises its right under §13.1 above, Licensee shall be liable for all acts of such subcontractors to the same extent as if Licensee had performed such activities directly.

**Article 14.**  
**Notices.**

Notices provided to be given under this Agreement shall be validly given if delivered personally, by the United States Postal Service postage prepaid, by fax, or by a nationally recognized overnight courier service, as follows:

**TO LICENSOR:**

Sandhills, Inc.  
Second Floor  
900 Market Street  
Wilmington, DE 19801

ATTN: Francis B. Jacobs II, Treasurer

**With a copy to:**

Tucci & Semes  
Suite 603 - 1300 North Market Street  
Wilmington, DE 19801

ATTN: Michael J. Semes, Esq.

**TO LICENSEE:**

The Pantry, Inc.  
1801 Douglas Drive  
Sanford, NC 27331-1410

ATTN: Mark C. King, Chief Financial Officer

**With a copy to:**

Moore & Van Allen  
2200 West Main Street  
Durham, NC 27705-4652

ATTN: James H. Clarke, Esq.

or such other address as the addressee may specify from time to time.

**Article 15.**  
**Miscellaneous.**

§15.1 The parties hereto agree to cooperate with each other to the fullest extent reasonably possible by executing all documents that may from time to time be required to perfect the interest of either party arising under this Agreement and the rights and obligations accruing under this Agreement.

§15.2 This Agreement may not be amended or modified without the written consent of both parties hereto.

§15.3 To the extent not in conflict with federal substantive law, this Agreement shall be governed by Delaware law without respect to the conflicts of law provisions thereof.

§15.4 If any provision of this Agreement shall be held by a court of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not affect the remainder of this Agreement which may be given effect without the invalid or unenforceable provision, and to this end the provisions of this Agreement shall be severable.

§15.5 This Agreement contains the entire understanding of the parties hereto with respect to the subject matter hereof and supersedes all prior understandings and agreements.

§15.6 All section and article headings in this Agreement are for convenience of reference only and do not form part of this Agreement and shall not affect in any way the meaning or interpretation of this Agreement.

§15.7 Each party agrees to pay its respective expenses incurred with the preparation of this Agreement, the carrying out of its terms and the consummation of the transactions contemplated thereby.

§15.8 Licensor agrees not to sell, transfer or assign or grant a lien upon or security interest in the Marks or the goodwill associated with the Marks without the prior written consent of Licensee.

§15.9 Licensor hereby consents to the granting by Licensee of a security interest in Licensee's rights under this Agreement for the Marks to First Union National Bank of North Carolina (the "Bank").

§15.10 Licensor agrees that in the event Licensee defaults under its loan obligations to the Bank, the Bank or any purchaser of the rights of Licensee under this Agreement from the Bank or at a foreclosure sale may succeed to Licensee's rights under this Agreement as Licensee, provided such party assumes all of the obligations of Licensee under this Agreement.

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§15.11 Nothing in this Agreement shall be deemed to be a consent to or agreement that the Bank or any other party may take a security interest in the Marks themselves; the provisions of §15.9 and §15.10 being limited to a consent to a security interest in the rights of Licensee as Licensee under this Agreement.

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IN WITNESS WHEREOF, the undersigned have duly executed this License Agreement as of the 24th day of November 1992.

SANDHILLS, INC.

THE PANTRY, INC.

[SEAL]

[SEAL]

BY: *Peter J. Kanyon*  
Name: *Peter J. Kanyon*  
Title: *PRESIDENT*

BY: *M. L. K...*  
Name: *M. L. K...*  
Title: *V.P. Finance & Admin.*

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EXHIBIT A  
TO  
LICENSE AGREEMENT

Identification of Marks

[SEE ATTACHED IDENTIFICATION OF MARKS]

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**MARKS ASSIGNED BY THE PANTRY  
TO SANDHILLS**

<u>MARK</u>		<u>REGISTRATION NUMBER</u>
The Pantry Building Design		1,675,498
The PANTRY Plus Design		1,557,345
The Pantry, Inc.		1,167,513
BIG CHILL		1,331,174
POWER PERK		1,389,273
CHICKEN N BISCUITS Plus Design		1,433,356
SNACKIN SAMS		1,482,037
BONUS BUCKS		1,503,220
PERKY and Design		1,557,322
HOT SHOT		1,502,247
BIG PERK	Serial#	74/177,948
LIL' PERK		1,696,349
LIL' CHILL	Serial#	74/177,949
WHEN YOU RUN OUT RUN OUT TO THE PANTRY		1,532,395
RAPIDFUEL Plus Design		1,708,871
I'VE BEEN CHICKEN PICKIN' AT THE PANTRY		1,697,823
CONCESSIONS		1,710,557
PANTRY PICKINS		1,694,664
WHEELN DEAL		1,558,533
WORTH Plus Design		1,372,925

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EXHIBIT B  
TO  
LICENSE AGREEMENT

[SEE ATTACHED QUALITY CONTROL STANDARDS]

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EXHIBIT C  
TO  
LICENSE AGREEMENT

[SEE ATTACHED QUALITY CONTROL STANDARDS  
QUARTERLY REPORT FORM]

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