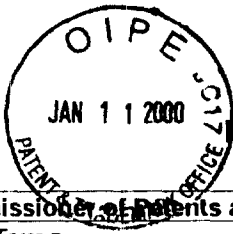


02-03-2000

Department of Commerce
Trademark Office
DEMARK



101261399

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

Conveying Party

Mark if additional names of conveying parties attached

Execution Date
Month Day Year

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 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.)
- Corporation Association
- Other

Citizenship/State of Incorporation/Organization

02/02/2000 DNGUYEN 00000136 75299282

FOR OFFICE USE ONLY

01 FC:481 40.00 DP
02 FC:482 325.00 DP

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: 002016 FRAME: 0102

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="75/299,282"/>	<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" value="1,943,178"/>	<input type="text" value="2,167,718"/>	<input type="text" value="1,883,811"/>
<input type="text" value="1,929,015"/>	<input type="text" value="1,854,765"/>	<input type="text" value="1,883,775"/>
<input type="text" value="1,850,126"/>	<input type="text" value="2,203,705"/>	<input type="text" value="1,871,456"/>

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.

Christopher E. Kondracki

10 January 2000

Name of Person Signing

Signature

Date Signed

**RECORDATION FORM COVER SHEET
CONTINUATION
TRADEMARKS ONLY**

FORM PTO-1618C
Expires 08/30/99
OMB 0851-0027

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

Conveying Party
Enter Additional Conveying Party

Mark if additional names of conveying parties attached

Execution Date
Month Day Year

Name

Formerly

Individual General Partnership Limited Partnership Corporation Association

Other

Citizenship State of Incorporation/Organization

Receiving Party

Enter Additional 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)

City

State/Country

Zip Code

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 the Assignment.)

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"/>
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2,184,131	2,165,954	2,180,991
530,550	<input type="text"/>	<input type="text"/>
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December 21, 1999

THIS AGREEMENT is made between

Back Bay Capital Funding, LLC, (the "**Lender**") a Delaware limited liability company with offices at 40 Broad Street Boston, Massachusetts 02109

and

Harry's Farmers Market, Inc. (hereinafter, the "**Borrower**"), a Georgia corporation with its principal executive offices at 1180 Upper Hembree Road, Roswell, Georgia 30076

in consideration of the mutual covenants contained herein and benefits to be derived herefrom,

WITNESSETH:

1. **BACKGROUND:** The Lender and the Borrower have entered in a certain Loan and Security Agreement dated as of December 2, 1999 (as such agreement may be modified, supplemented, amended or restated from time to time, hereinafter, the "**Loan Agreement**") pursuant to which a credit facility has been established in favor of the Borrower and under which the Borrower's Liabilities are to be secured by certain of the Borrower's assets, including all Marks as defined below. (Terms used herein which are defined in the Loan Agreement are used as so defined).

2. **GRANT OF SECURITY INTEREST:** To secure the Liabilities, the Borrower hereby creates a security interest in favor of the Lender, with power of sale (which power of sale shall be exercisable only during the existence of an Event of Default) in and to the following and all proceeds thereof (collectively, the "**TM Collateral**"):

(a) All of the Borrower's now owned or existing or hereafter acquired or arising trademarks, trademark applications, service marks, registered service marks and service mark applications including, without limitation, those listed on **EXHIBIT A** annexed hereto and made a part hereof, together with any goodwill connected with and symbolized by any such trademarks, trademark applications, service marks, registered service marks, and service mark applications.

(b) All renewals of any of the foregoing.

(c) All income, royalties, damages and payments now and hereafter due and/or payable under and with respect to any of the foregoing, including, without limitation, payments under all licenses entered into in connection therewith and damages and payments for past or future infringements or dilutions thereof.

(d) The right to sue for past, present and future infringements and dilutions of any of the foregoing.

(e) All of Borrower's rights corresponding to any of the foregoing throughout the world.

3. **PROTECTION OF MARKS BY BORROWER:** The Borrower shall undertake the following with respect to each items respectively described in Sections 2(a) and 2(b) (collectively, the "**Marks**");

(a) Pay all renewal fees and other fees and costs associated with maintaining the Marks and with the processing of the Marks unless the Borrower in the exercise of its discretion determines that maintaining a Mark is not material to its business.

(b) At the Borrower's sole cost, expense, and risk, pursue the prompt, diligent, processing of each Application for Registration which is the subject of the security interest created herein and not abandon or delay any such efforts unless the Borrower in the exercise of its discretion determines that maintaining a Mark is not material to its business.

(c) At the Borrower's sole cost, expense, and risk, take any and all action which Borrower deems desirable to protect the Marks, including, without limitation, but subject to Borrower's discretion, the prosecution and defense of infringement actions.

4. **BORROWER'S REPRESENTATIONS AND WARRANTIES:** The Borrower represents and warrants that:

(a) **EXHIBIT A** includes all of the registered trademarks, Federal trademark applications, registered service marks and Federal service mark applications now owned by the Borrower.

(b) All TM Collateral is and shall remain, free and clear of all liens, Encumbrances, or security interests to any Person other than to the Lender.

(c) The Borrower shall give the Lender written notice (with reasonable detail) within Fifteen (15) days following the occurrence of any of the following:

(i) The Borrower's obtaining rights to, and filing applications for registration of, any new trademarks, or service marks, or otherwise acquires ownership of any newly registered trademarks, registered service marks, trademark applications, or service mark applications, (other than the Borrower's right to sell products containing the trademarks of others

in the ordinary course of Borrower's business).

(ii) The Borrower's becoming entitled to the benefit of any registered trademarks, trademark applications, trademark licenses, trademark license renewals, registered service marks, service mark applications, service mark licenses or service mark license renewals whether as licensee or licensor (other than Borrower's right to sell products containing the trademarks of others in the ordinary course of Borrower's business).

(iii) The Borrower's entering into any new trademark license agreement or service mark license agreement.

5 AGREEMENT APPLIES TO FUTURE MARKS:

(a) The provisions of this Security Agreement shall automatically apply to any such additional property or rights described in 4(c), above, all of which shall be deemed to be and treated as "Marks" within the meaning of this TM Security Agreement.

(b) The Borrower hereby authorizes the Lender to take all such action to protect the Lender's interest in and concerning any future registered trademarks, trademark applications, registered service marks and service mark applications, written notice of which is so given, *provided, however*, the Lender's taking of such action shall not be a condition to the creation or perfection of the security interest created hereby.

6. BORROWER'S RIGHTS TO ENFORCE MARKS: Prior to the Lender's giving of notice to the Borrower during the existence of an Event of Default, the Borrower shall have the exclusive right to sue for past, present and future infringement of the Marks including the right to seek injunctions and/or money damages, in an effort by Borrower to protect the Marks against encroachment by third parties, *provided, however*.

(a) The Borrower first provides the Lender with written notice of the Borrower's intention to so sue for enforcement of any Mark.

(b) Any money damages (other than reimbursement of costs) awarded or received by the Borrower on account of such suit (or the threat of such suit) shall constitute TM Collateral.

(c) During the continuation of any Event of Default, the Lender, by notice to the Borrower may be terminate or limit the Borrower's rights under this Section 6.

7. LENDER'S ACTIONS TO PROTECT MARKS: In the event of

(a) the Borrower's failure, within Seven (7) days of written notice from the Lender, to cure any failure by the Borrower to perform any of the Borrower's obligations set forth in Section 3; and/or

(b) the occurrence of any Event of Default,

the Lender, acting in its own name or in that of the Borrower, may (but shall not be required to) act in the Borrower's place and stead and/or in the Lenders' own right in connection therewith.

8. RIGHTS UPON DEFAULT: Upon the occurrence of any Event of Default, the Lender may exercise all rights and remedies of a secured party upon default under the Uniform Commercial Code as adopted in Massachusetts (Massachusetts General Laws, Chapter 106), with respect to the Marks, in addition to which the Lender may sell, license, assign, transfer, or otherwise dispose of the Marks. Any person may conclusively rely upon an affidavit of an officer of the Lender that an Event of Default has occurred and that the Lender is authorized to exercise such rights and remedies.

9. LENDER AS ATTORNEY IN FACT:

(a) The Borrower hereby irrevocably constitutes and designates the Lender as and for the Borrower's attorney in fact, effective following the occurrence of any Event of Default:

(i) To exercise any of the rights and powers referenced in Sections 3 and 5(b).

(ii) To execute all such instruments, documents, and papers as the Lender determines to be appropriate in connection with the exercise of such rights and remedies and to cause the sale, license, assignment, transfer, or other disposition of the Marks.

(b) The within grant of a power of attorney, being coupled with an interest, shall be irrevocable until this Agreement is terminated by a duly authorized officer of the Lender.

(c) The Lender shall not be obligated to do any of the acts or to exercise any of the powers authorized by Section 9(a) herein, but if the Lender elects to do any such act or to exercise any of such powers, it shall not be accountable for more than it actually receives as a result of such exercise of power, and shall not be responsible to the Borrower for any act or omission to act except for any act or omission to act as to which there is a final determination made in a judicial proceeding (in which proceeding the Lender has had an opportunity to be heard) which determination includes a specific finding that the subject act or omission to act had been grossly negligent or in actual bad faith.

10. LENDER'S RIGHTS:

(a) Any use by the Lender of the Marks, as authorized hereunder in connection with the exercise of the Lender's rights and remedies under this Agreement and under the Loan Agreement shall be coextensive with the Borrower's rights thereunder and with respect thereto and without any liability for royalties or other related charges.

(b) None of this Agreement, the Loan Agreement, or any act, omission, or

circumstance taken or arising hereunder may be construed as directly or indirectly conveying to the Lender any rights in and to the Marks, which rights are effective except following the occurrence of any Event of Default.

11. **INTENT:** It is intended that this Agreement supplement the Loan Agreement. All provisions of the Loan Agreement shall apply to the Marks. The Lender shall have the same rights, remedies, powers, privileges and discretions, with respect to the security interests created in the TM Collateral as in all other Collateral. In the event of a conflict between this Agreement and the Loan Agreement, the terms of this Agreement shall control with respect to the TM Collateral and the Loan Agreement with respect to all other Collateral.

12. **CHOICE OF LAWS:** It is intended that this Agreement take effect as a sealed instrument and that all rights and obligations hereunder, including matters of construction, validity, and performance, shall be governed by the laws of The Commonwealth of Massachusetts.

IN WITNESS WHEREOF, the Borrower and the Lender respectively have caused this Agreement to be executed by their respective duly authorized officers as of the date first above written.

HARRY'S FARMERS MARKET, INC.
(The "Borrower")

By *John D. Branch*
Name *S. Vice President ECFD*
Title *John D. Branch*

BACK BAY CAPITAL FUNDING, LLC
(The "Lender")

By _____
Name *Michael L. Pizette*
Title **MICHAEL L. PIZETTE**
Managing Director

THE State OF Georgia
COUNTY OF Fulton, SS

Then personally appeared before me John D Branch who acknowledged that such person is the duly authorized officer of Harry's Farmers Market, Inc. and that such person had executed the foregoing instrument on its behalf.

Witness my hand and seal this 21 day of December

Barbara N Womer

, Notary Public

My Commission Expires:

Notary Public, Fulton County, Georgia
My Commission Expires February 18, 2001

THE Commonwealth OF Massachusetts
COUNTY OF Suffolk

Then personally appeared before me Michael L. Pizette, who acknowledged that such person is the duly authorized Man. Director of Back Bay Capital Funding, LLC and that such person executed the foregoing instrument on its behalf.

Witness my hand and seal this 17th day of January

Gwan M. Inuelson

, Notary Public

My Commission Expires:

10/15/2004

EXHIBIT A

Borrower's now owned or existing or hereafter acquired or arising registered service marks and Federal service mark applications, registered trademarks, and Federal trade mark applications:

Trademark/Service Mark Registrations

<u>TRADEMARK</u>	<u>REGISTRATION NUMBER</u>	<u>REGISTRATION DATE</u>
Bear Dance & Design	1943178	12/19/95
Coral River Orchard	2167718	06/23/98
Grainger County (Stylized)	1883811	03/14/95
Harry's (Stylized)	1929015	10/24/95
Harry's Farmers Market (Stylized)	1854765	09/20/94
Harry's Old Fashioned Layer Cakes and Design	1883775	03/14/95
Harry's In A Hurry & Design	1850126	08/16/94
Harry's in a Hurry	2203705	11/17/98
Marthasville Creamery and Design	1871456	01/03/95
Marthasville Farm Fresh and Good & Design	2184131	08/25/98
Spill-Da-Beans	2165954	06/16/98
The Pie to Die For	2180991	08/11/98
Harry's in a Hurry	530,550 (CTM)	10/23/99
Chipitos	T-12,443 (GA)	02/05/93
Chipitos and Design	T-12,444 (GA)	02/05/93
Chipitos Jalapeno Tortilla Chips	T-12,439 (GA)	02/05/93
Chipitos Nacho Cheese Tortilla Chips	T-12,438 (GA)	02/05/93
Chipitos Restaurant Style White Tortilla Chips	T-12,441 (GA)	02/05/93
Chipitos Restaurant Style White Tortilla Chips and Design	T-12,442 (GA)	02/05/93
Chipitos Tortilla Chips	T-12,440 (GA)	02/05/93
Grainger County Home Grown Tomatoes	T-12,162 (GA)	10/09/92
Harry's Farmers Market	T-9603 (GA)	10/06/89
Harry's Farmers Market and Design	T-9602 (GA)	10/06/89
Harry's Farmers Market	S-9819 (GA)	01/12/90
Harry's Farmers Market and Design	S-9820 (GA)	01/12/90
Hungry In A Hurry Meals	T-10,945 (GA)	07/11/91
Hungry In A Hurry Meals	S-10,946 (GA)	07/11/91
Lion Forest Supermarket	S-15,415 (GA)	02/02/96

Trademark Applications

<u>MARK</u>	<u>SERIAL NUMBER</u>	<u>FILING DATE</u>
Harry's Farmers Market	75-299282	05/28/97

532914.2

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RECORDED: 01/11/2000

**TRADEMARK
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