



512

COLLATERAL ASSIGNMENT OF PATENTS AND TRADEMARKS

THIS COLLATERAL ASSIGNMENT OF PATENTS AND TRADEMARKS made as of the 10th day of June, 1988, by FOOD 4 LESS, INC., a Delaware corporation, having an office at 3120 Kansas Avenue, Topeka, Kansas 66611, and UNION BANK, a California banking corporation, having an office at 445 South Figueroa Street, Los Angeles, California 90071 ("Lender"):

W I T N E S S E T H

FACT ONE: LENDER and FALLEY'S, INC., a Kansas corporation ("Borrower") have previously entered into that certain Loan and Security Agreement, dated as of May 22, 1987, (the "Agreement"), pursuant to which Lender has made and is making financial accommodations available to Borrower to be used as provided in the Agreement; and

FACT TWO: Food 4 Less, Inc., a Kansas corporation ("F4L Kansas") previously executed a certain General Continuing Guaranty, dated as of May 22, 1987, respecting the obligations of Borrower to Bank under the Loan Agreement, and as collateral security for such Guaranty, F4L Kansas executed a certain Collateral Assignment of Patents and Trademarks, dated as of May 22, 1987;

FACT THREE: Lender has been informed that F4L Kansas plans to merge with and into FPL Holdings Corporation, a Delaware corporation, with the latter to be the surviving entity of such merger and to change its name to Food 4 Less, Inc., a Delaware corporation ("Food 4 Less").

FACT FOUR: Lender is willing to continue to extend financial accommodations to Borrower under the Agreement, notwithstanding the merger of F4L Kansas into FPL Holdings Corporation and the latter's corporate name change to Food 4 Less, upon the condition that Food 4 Less execute and deliver this Collateral Assignment of Patents and Trademarks, and grant the interest contemplated hereby;

NOW, THEREFORE, in consideration of the promises and the covenants hereinafter contained, and to induce Lender to extend the financial accommodations under the Agreement, it is agreed as follows:

1. DEFINITIONS.

Terms used herein which are defined in the Agreement shall have the meanings assigned to them therein,

TRADE-MARK

REEL 0607 FRAME 029

unless the context otherwise requires or unless otherwise defined herein.

References to this "Assignment" shall mean this Collateral Assignment of Patents and Trademarks, including all amendments, modifications and supplements and any exhibits or schedules to any of the foregoing, and shall refer to the Assignment as the same may be in effect at the time such reference becomes operative.

"Default" shall mean an Event of Default under the Agreement.

"Obligations" shall mean the obligations of Borrower to Lender under the Agreement.

Any accounting term used in this Assignment shall have, unless otherwise specifically provided herein, the meaning customarily given in accordance with generally accepted accounting principles, consistently applied ("GAAP"), and all financial computations hereunder shall be computed, unless otherwise specifically provided herein, in accordance with GAAP. All other undefined terms contained in this Assignment shall, unless the context indicates otherwise, have the meanings provided for by the Uniform Commercial Code (the "Code") as enacted in the applicable jurisdiction to the extent the same are used or defined therein. The words "herein," "hereof" and "hereunder" and other words of a similar import refer to this Assignment as a whole, including the Exhibits hereto, as the same may from time to time be amended or supplemented and not to any particular section, subsection or clause contained in this Assignment.

Wherever from the context it appears appropriate, each term stated in either the singular or plural shall include the singular and plural, and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, feminine or neuter.

## 2. ASSIGNMENT OF INTEREST.

2.1 Patents and Trademarks. To secure the complete and timely satisfaction by Borrower of all Obligations, Food 4 Less hereby grants, assigns and conveys to Lender a first priority security interest in the entire right, title and interest in and to all of its now owned, existing or filed and hereafter acquired, arising or filed:

(a) (i) patents and patent applications, including, without limitation, those listed on Exhibit A hereto and the inventions and improvements described and claimed therein, and patentable inventions, (ii) the reissues,

divisions, continuations, renewals, extensions and continuations-in-part of any of the foregoing, (iii) all income, royalties, damages or payments now and hereafter due and/or payable under any of the foregoing with respect to any of the foregoing, including, without limitation, damages or payments for past or future infringements of any of the foregoing, (iv) the right to sue for past, present and future infringements of any of the foregoing, and (v) all rights corresponding to any of the foregoing throughout the world (collectively, the "Patents"); and

(b) (i) trademarks, trademark registrations, trade names and trademark applications, including, without limitation, those listed on Exhibit B hereto, (ii) all renewals of any of the foregoing, (iii) all income, royalties, damages and payments now or hereafter due and/or payable under any of the foregoing or with respect to any of the foregoing, including without limitation, damages payments for past or future infringements of any of the foregoing, (iv) the right to sue for past, present and future infringements of any of the foregoing, (v) all rights corresponding to any of the foregoing throughout the world to the extent not previously granted to third parties pursuant to the license agreements listed on Exhibit C hereto, and (vi) the goodwill of Food 4 Less' business connected with and symbolized by any of the foregoing (collectively, the "Trademarks").

2.2 Restrictions on Future Agreements. Food 4 Less agrees that until the Obligations shall have been paid in full, it will not, without Lender's prior written consent, enter into any agreement encumbering, transferring or affecting the Patents or Trademarks. Food 4 Less further agrees that it will not take any action, or permit any action to be taken by any affiliate of Food 4 Less or other person subject to Food 4 Less' control, including, without limitation, licensees, or fail to take any action, which would affect the validity or enforcement of the rights transferred to Lender under this Assignment.

2.3 New Patents and Trademarks. Food 4 Less represents and warrants that the Patents and Trademarks listed on Exhibits A and B constitute all of the Patents and Trademarks now owned by Food 4 Less. If, before the Obligations shall have been paid in full, Food 4 Less shall (i) obtain any new Patents or Trademarks or rights thereto, or (ii) become entitled to the benefit of any Patents or Trademarks, Food 4 Less shall give to Lender prompt written notice thereof. Food 4 Less hereby authorizes Lender to modify this Assignment by amending Exhibits A or B, as applicable to include any such Patents or Trademarks.

2.4 Royalties and Terms. Food 4 Less hereby agrees that the assignment by Food 4 Less to Lender of all Patents and Trademarks as described herein shall be with respect to worldwide rights and without any liability for royalties or other related charges from Lender to Food 4 Less. The term of the assignments granted herein shall extend until the earlier of (i) the expiration of each of the respective Patents and Trademarks assigned hereunder, or (ii) the payment in full of the Obligations.

2.5 Reassignment to Food 4 Less. Upon payment in full of the Obligations, Lender shall execute and deliver to Food 4 Less all deeds, assignments and other instruments as may be necessary or proper to re-vest in Food 4 Less all of Lender's rights in the respective Patents and Trademarks, subject to any disposition thereof which may have been made by Lender pursuant hereto.

2.6 Duties of Food 4 Less. Food 4 Less shall (i) prosecute diligently any patent application or trademark application pending as of the date hereof or thereafter until the Obligations shall have been paid in full, (ii) make application on unpatented but patentable inventions and on trademarks, as appropriate, (iii) preserve and maintain all rights in Patents and in Trademarks. Any expenses incurred in connection with such applications shall be borne by Food 4 Less. Food 4 Less shall not abandon any right to file a patent application or trademark application, nor shall Food 4 Less abandon any pending patent application, trademark application, Patent or Trademark without the consent of Lender.

2.7 Lender's Right to Sue. Upon the occurrence of an Event of Default and while the same is continuing, Lender shall have the right, but shall in no way be obligated, to bring suit on behalf of Food 4 Less to enforce the Patents or Trademarks in the event Food 4 Less declines to bring such suit, and, if Lender shall commence any such suit, Food 4 Less shall, at the request of Lender, do any and all lawful acts and execute any and all proper documents required by Lender in aid of such enforcement and Food 4 Less shall promptly pay or, reimburse and indemnify Lender upon demand, for, all costs and expenses incurred by Lender in the exercise of its rights under this Section 2.7.

2.8 Power of Attorney. Food 4 Less hereby makes, constitutes and appoints Lender the true and lawful agent and attorney-in-fact of Food 4 Less, with full right and power to endorse the name of Food 4 Less on any documents relating to the Patents and Trademarks and to do any and all things necessary to take such action in the name and on behalf of Food 4 Less in connection with the security interest granted under this Assignment including, without limitation, the

TRADE-MARK

REEL 0607 INNO32

perfection and protection of such security interest and Lender's rights created hereunder. Food 4 Less agrees that neither Lender nor any of its agents, designees or attorneys-in-fact will be liable for any acts of commission or omission, or for any error of judgment or mistake of fact or law in respect to the exercise of the power of attorney granted under this Section 2.8. The power of attorney granted under this Section 2.8 is coupled with an interest and shall be irrevocable during the term of this Assignment.

### 3. DEFAULT.

3.1 Remedies. Upon and after the occurrence of an Event of Default:

(a) Lender, in its discretion, may:

(i) collect, receive, appropriate and realize upon the Patents and Trademarks or any part thereof;

(ii) exercise any one or more of the rights and remedies accruing to a secured party under the Code of the relevant state or states and any other applicable law upon default by a debtor;

(iii) enter, with or without process of law and without breach of the peace, any premises where the Patents or Trademarks or the books and records of Food 4 Less related thereto are or may be located, and without charge or liability to Lender therefor seize and remove the Patents and Trademarks (and copies of Food 4 Less's books and records in any way relating to the Patents and Trademarks) from said premises and/or remain upon said premises and use the same (together with said books and records) for the purpose of collecting, preparing and disposing of the Patents and Trademarks; or

(iv) sell or otherwise dispose of any of the Patents and Trademarks at public or private sale for cash or credit, provided, however, that Food 4 Less shall be credited with the net proceeds of such sale or disposition only as and when such proceeds are actually received by Lender;

(v) exercise any one or more of the rights and remedies accorded to Lender under the Agreements.

(b) Food 4 Less recognizes that in the event Food 4 Less fails to perform, observe or discharge any of its obligations or liabilities under this Assignment, no remedy of law will provide adequate relief to Lender, and Food 4 Less agrees that Lender shall be entitled to temporary and permanent

TRADE-MARK

REEL 0607 FRAME 33

injunctive relief in any such case without the necessity of proving actual damages.

(c) Any notice required to be given by Lender of a sale, lease, other disposition of the Trademarks or any other intended action by Lender, deposited in the United States mail, postage prepaid and duly addressed to Food 4 Less at its principal place of business specified in Section 4.6 hereof not less than ten (10) days prior to such proposed action, shall constitute commercially reasonable and fair notice to Food 4 Less thereof.

(d) Lender shall have the right at any time and from time to time thereafter, in its discretion, without notice thereof to Food 4 Less to take control, in any manner, of any item of payment for or proceeds of the Patents and Trademarks.

(e) Lender may, if Lender deems it reasonable, postpone or adjourn any sale of the Patents and Trademarks, or any part thereof, from time to time by an announcerunt at the time and place of sale or by announcement at the time and place of such postponed or adjourned sale, without being required to give a new notice of sale. Food 4 Less agrees that Lender has no obligations to preserve its rights against prior parties to the Patents and Trademarks.

(f) All cash proceeds received by Lender in respect of any sale of, collection from, or other realization upon all or any part of the Patents and Trademarks may, in the discretion of Lender, be held by Lender as security for, and/or then or at any time thereafter applied (after payment of any amounts payable to Lender for costs of selling the Patents and Trademarks) in whole or in part by Lender against all or any part of the Obligations in such order as Lender shall elect. Any surplus of such cash or cash proceeds held by Lender and remaining after payment in full of all the Obligations shall be paid over to Food 4 Less or to whomsoever may be lawfully entitled to receive such surplus and any deficiency remaining after application of such cash or cash proceeds to the Obligations shall continue to be an Obligation, for which Food 4 Less remains liable.

3.2 Waivers by Food 4 Less. Except as otherwise provided for in this Assignment, Food 4 Less waives (i) presentment, demand and protest and notice of presentment, dishonor, protest, default, nonpayment, maturity, release, compromise, settlement, extension or renewal of any or all commercial paper, accounts, contract rights, documents, instruments, chattel paper and guaranties at any time held by Lender on which Food 4 Less may in any way be liable and hereby ratifies and confirms whatever Lender may do in this regard,

TRADE-MARK  
FBI 0607 111034

(ii) all rights to notice and a hearing prior to Lender's taking possession or control of, or to Lender's reply, attachment or levy upon, the Patents and Trademarks or any bond or security which might be required by any court prior to allowing Lender to exercise any of Lender's remedies, and (iii) the benefit of all valuation, appraisal and exemption laws. Food 4 Less acknowledges that it has been advised by counsel of its choice with respect to this Assignment and the transactions evidenced by this Assignment.

3.3 Cumulative Remedies. All of Lender's rights and remedies with respect to the Patents and Trademarks, whether established hereby or by any of the other Loan Documents, or by any other agreements or by law shall be cumulative and may be exercised singularly or concurrently. Food 4 Less acknowledges and agrees that this Assignment is not intended to limit or restrict in any way the rights and remedies of Lender under the Loan Documents but rather is intended to facilitate the exercise of such rights and remedies.

#### 4. MISCELLANEOUS

4.1 Waivers. No course of dealing between borrower and Lender or Food 4 Less and Lender, nor any failure to exercise, nor any delay in exercising, on the part of Lender, any right, power or privileges hereunder or under the financing arrangements contemplated by the Agreements shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder or thereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

4.2 Severability. The provisions of this Assignment 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 Assignment in any jurisdiction.

4.3 Modification. This Assignment cannot be altered, amended or modified in any way, except as specifically provided in Section 2.3 hereof or by a writing signed by the parties hereto.

4.4 Binding Effect; Benefits. This Assignment shall be binding upon Food 4 Less and its respective successors and assigns, and shall inure to the benefit of Lender, its successors and assigns.

TRADE-MARK

REEL 0607 FRAME 035



4.5 Governing Law. This Assignment shall be governed by and construed in accordance with the laws of the State of California.

4.6 Notices. Whenever it is provided herein that any notice, demand, request, consent, approval, declaration or other communication shall or may be given to or served upon either of the parties by the other, or whenever either of the parties desires to give or serve upon the other communication with respect to this Assignment, each such notice, demand, request, consent, approval, declaration or other communication shall be in writing and either shall be delivered in person with receipt acknowledged or mailed, postage prepaid, by certified or registered mail, addressed as follows:

(a) If to Lender, at

UNION BANK  
445 South Figueroa Street  
Los Angeles, California 90071  
Attn: Mr. Richard d'Abo

With a copy to

BUCHALTER, NEMER, FIELDS,  
& YOUNGER  
700 South Flower Street, Suite 700  
Los Angeles, California 90017  
Attention: Richard Jay Goldstein, Esq.

(b) If to Food 4 Less, at

FOOD 4 LESS, INC.  
3120 Kansas Avenue  
Topeka, Kansas 66611  
Attention: President

or at such other address as may be substituted by notice given as herein provided. The giving of any notice required hereunder may be waived in writing by the party entitled to receive such notice. Every notice, demand, request, consent, approval, declaration or other communication hereunder shall be deemed to have been duly given or served on the date on which personally delivered, with receipt acknowledged, or five (5) days after the same shall have been deposited in the United States mail. Failure or delay in delivering copies of any notice, demand, request, consent, approval, declaration or other communication to the persons designed above to receive copies shall in no way adversely affect the effectiveness of such notice, demand, request, consent, approval, declaration or other communication.

TRADE-MARK

FBI 0607 IN1036

4.7 Headings. This Section titles, headings and Table of Contents in this Assignment are and shall be without substantive meaning or content of any kind whatsoever and are for convenience of reference only.

IN WITNESS WHEREOF, this Assignment has been executed as of the date first set forth hereinabove.

FOOD 4 LESS, INC.,  
a Delaware Corporation

By [Signature]  
Title: CEO

By [Signature]  
Title: Secretary

UNION BANK,  
a California corporation

By Cary Moore  
Title: Vice President

By [Signature]  
Title: CORPORATE ACCOUNTS MANAGER

TRADE-MARK

REG 0607 1312037

**EXHIBIT A**

**PATENTS**

(None)

REEL 0607 FRAME 038  
TRADE-MARK

EXHIBIT B

TRADEMARKS

<u>Name</u>	<u>Registration Number</u>	<u>Issue Date</u>
Food 4 Less	1,073,408	9/13/77
Food 4 Less	1,179,593	11/24/81
Food 4 Less	1,277,215	5/8/84

TRADE-MARK

EX 0607 EXH039

EXHIBIT C

Prior License Agreements

<u>License</u>	<u>Territory</u>
1. Food 4 Less of Arkansas Inc. (Phillips)	Arkansas and Tennessee
2. Fairway Foods, Inc.	Illinois, Wisconsin, Iowa, North Dakota, South Dakota and portions of Michigan
3. Boogaart Supply, Inc. a Kansas corporation and Scrivener, Inc., Oklahoma corporation (Scrivener)	Nebraska
4. Falley's Inc.	All of the United States
5. L.B. & L. Partnership	Portions of Texas
6. L.B./Bert II Falley	Portions of Texas
7. Fleming Companies, Inc.	All of the United States

TRADE-MARK  
IM 0607 10040

RECORDED  
PATENT & TRADE-MARK OFFICE

JUN 24 1989

*[Handwritten signature]*