

05-01-2002

OMB No. 0651-0011 (exp. 4/94)



To the Honorable Commis

102074400

ached original documents or copy thereof.

1. Name of conveying party(ies):  
Fairway Foods, Inc  
4567 West 80<sup>th</sup> Street  
Minneapolis, Minnesota 55437

4.19.02

- Individual(s)
- General Partnership
- Corporation-Minnesota
- Other
- Association
- Limited Partnership

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

2. Name and address of receiving party(ies)  
U.S. Bank National Association  
601 Second Avenue South  
Minneapolis, Minnesota 55402-4302

- Individual(s)
- Association National Banking 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

3. Nature of conveyance:

- Assignment
- Security Agreement
- Other Collateral Assignment
- Merger
- Change of Name

Execution Date: March 28, 2002

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

A. Trademark Application No.(s)

B.Trademark Registration No.(s)  
1,060,507 and 1,060,508

Additional numbers attached?  Yes  No

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

Name: Travis L. Bachman

Internal Address: Dorsey & Whitney LLP

Street Address: Suite 1500, 50 South Sixth Street

City: Minneapolis State: MN ZIP: 55402-1498

6. Total Number of applications and registrations involved:..... 2

7. Total fee (37 CFR 3.41)..... \$65.00

Enclosed

Authorized to be charged to deposit account

8. Deposit account number:  
04-1420

(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.

Travis L. Bachman

Name of person Signing

[Signature]  
Signature

April 19, 2002  
Date

Total number of pages comprising cover sheet: 1

OMB No. 0651-0011 (exp. 4/94)

04/30/2002 BYRME 00000050 1060507

Do not detach this portion

01 FC:481  
02 FC:482

40.00 OP  
25.00 OP

ments to be recorded with required cover sheet information to:

**BOX ASSIGNMENT**  
Director - U.S. Patent and Trademark Office  
Washington, D.C. 20231

Public burden reporting for this sample cover sheet is estimated to average about 30 minutes per document to be recorded, including time for reviewing the document and gathering the data needed, and completing and reviewing the sample cover sheet. Send comments regarding this burden estimate to the U.S. Patent and Trademark Office, Office of Information Systems, PK2-1000C, Washington, D.C. 20231, and to the Office of Management and Budget, Paperwork Reduction Project (0651-0011), Washington, D.C. 20503.

**TRADEMARK**  
**REEL: 002495 FRAME: 0213**

**COLLATERAL ASSIGNMENT**  
**(TRADEMARKS OF FAIRWAY FOODS, INC.)**

THIS COLLATERAL ASSIGNMENT (TRADEMARKS) (the "Assignment"), dated as of March 28, 2002, is made and given by FAIRWAY FOODS, INC., a Minnesota corporation (the "Assignor"), to U.S. BANK NATIONAL ASSOCIATION, a national banking association, as Agent (hereinafter called "Assignee") for the Lenders to the Credit Agreement (defined below).

**RECITALS**

A. Holiday Stationstores, Inc., a Minnesota corporation, Holiday Companies, a Minnesota corporation, and Erickson Petroleum Corporation, a Minnesota corporation (collectively, the "Borrowers"), the lenders party thereto (collectively, the "Lenders") and the Assignee have entered into a Fourth Amended and Restated Credit Agreement dated concurrently herewith (as the same may hereafter be amended, supplemented, extended, restated, or otherwise modified from time to time, the "Credit Agreement") pursuant to which the Lenders have agreed to extend certain credit accommodations to the Borrowers under the terms and conditions set forth therein (all terms capitalized and used herein without being defined shall have the meaning given them in the Credit Agreement).

B. To secure all the liabilities and obligations of the Borrowers to the Lenders arising under the Credit Agreement, whether now existing or hereafter arising (the "Liabilities"), the Assignor has pledged and granted to the Assignee a security interest in the property described in a Security Agreement dated concurrently herewith (the "Security Agreement") from Assignor to Assignee which property includes general intangibles, including, without limitation, patents, inventions, trademarks, trade names, copyrights and trade secrets.

C. The Assignor owns the trademarks and trade names set forth in Exhibit A attached hereto, and the trademarks and trade names so listed are registered or application has been made for such registration as noted in Exhibit A in the United States Patent and Trademark Office.

D. It is a condition precedent to the obligation of the Lenders to extend credit accommodations pursuant to the terms of the Credit Agreement that this Assignment be executed and delivered by the Assignor.

E. The Assignor finds it advantageous, desirable and in its best interests to comply with the requirement that it execute and deliver this Assignment to the Assignee.

NOW, THEREFORE, in consideration of the premises and to induce the Lenders to extend credit accommodations under the Credit Agreement, the Assignor agrees for the benefit of the Assignee as follows:

1. The Assignor does hereby assign to the Assignee all of its right, title and interest in and to all of the present trademarks and trade names and the registrations and applications therefor owned by the Assignor (the "Trademarks"), including but not limited to

those registered trademarks and trade names set forth on Exhibit A, and including, without limitation, any and all common law rights in Trademarks owned by the Assignor, any and all foreign trademark or trade name registrations or applications therefor based upon said Trademarks, all proceeds thereof together with the right to recover for past, present and future infringements, all rights corresponding thereto throughout the world and all renewals and extensions thereof, together with the goodwill of the business associated with said Trademarks, said Trademarks to be held and enjoyed by the Assignee for its own use and behalf, and for its legal representatives, successors and assigns, as fully and entirely as the same would have been held by the Assignor had this Assignment not been made. The foregoing assignment shall be effective only upon the occurrence of an "Event of Default" under the Security Agreement and upon written notice by the Assignee to the Assignor of the acceptance by the Assignee of this Assignment; unless and until the acceptance of this Assignment, this Assignment shall have no effect. After the occurrence and continuation an Event of Default under the Security Agreement, the Assignee shall be entitled to transfer the Trademarks pursuant to the Assignment of Trademarks attached hereto as Exhibit B. The Assignor hereby irrevocably authorizes the Assignee to complete the undated Assignment of Trademarks at the time of transfer.

2. The Assignor hereby covenants and warrants that:

(a) except for applications pending, the Trademarks listed on Exhibit A have been duly issued and are registered and subsisting and have not been adjudged invalid or unenforceable in whole or in part;

(b) each of the Trademarks and listed on Exhibit A is valid and enforceable;

(c) no written claim has been made to the Assignor or, to the knowledge of the Assignor, to any other person, that use of any of the Trademarks does or may violate the rights of any third person and no claim has been made by the Assignor that any other person is infringing upon the rights of the Assignor under the Trademarks;

(d) the Assignor will be, until the Liabilities shall have been satisfied in full and the security interest granted by the Security Agreement shall have been terminated, in substantial compliance with statutory notice requirements relating to its use of the Trademarks;

(e) the Assignor is the sole and exclusive owner of the entire and unencumbered right, title and interest in and to each of the Trademarks listed on Exhibit A, free and clear of any liens, charges and encumbrances, including without limitation, licenses and covenants by the Assignor not to sue third persons;

(f) the Trademarks listed on Exhibit A are all of the United States Trademarks Registrations and applications therefor now owned by the Assignor; and

(g) the Assignor will, at any time upon request, communicate to the Assignee, its successors and assigns, any facts relating to the Trademarks or the history thereof as may be known to the Assignor or its officers, employees and agents, and cause such officers, employees and agents to testify as to the same in any infringement or other litigation at the request of the Assignee.

3. The Assignor agrees that, until the rights of the Assignee in the Trademarks are terminated pursuant to Section 6, it will not enter into any agreement that is in conflict with its obligations under this Assignment.

4. If, before the Liabilities shall have been satisfied in full, the Assignor shall obtain rights to any new trademark or trade name, or become entitled to the benefit of any trademark application, registration, trademark or trade name or any renewal or extension of any trademark registration, such shall be included in the definition of "Trademarks" as used in this Assignment (except for purposes of Section 2 hereof), Section 1 hereof shall automatically apply thereto, and the Assignor shall give to the Assignee prompt notice thereof in writing. The Assignor authorizes the Assignee to modify this Assignment by amending Exhibit A to include any future trademark or trade name.

5. The Assignor agrees not to sell, assign or encumber its interest in, or grant any license with respect to, any of the Trademarks, except for the licenses listed on Exhibit C attached hereto and licenses entered into from and after the date of this Assignment in the ordinary course of the Assignor's business.

6. The Assignor agrees that it will authorize, execute and deliver to Assignee all documents requested by Assignee to facilitate the purposes of this Assignment, including, but not limited to, documents required to record Assignee's interest in any appropriate office in any domestic or foreign jurisdiction. At such time as the security interest granted by the Security Agreement shall have been terminated in accordance with its terms, the Assignee shall on demand of the Assignor execute and deliver to the Assignor all termination statements and other instruments as may be necessary or proper to terminate this Assignment and assign to the Assignor all the Assignee's rights in the Trademarks, subject to any disposition thereof which may have been made by the Assignee pursuant hereto or pursuant to the Security Agreement.

7. The Assignor shall have the duty, through counsel reasonably acceptable to the Assignee, (i) to prosecute diligently any pending Trademark application as of the date of this Assignment or thereafter until the security interest granted by the Security Agreement shall have been terminated in accordance with its terms; provided, that the Assignor may abandon any such application upon thirty days' written notice to the Assignee and if the Assignee consents to the abandonment, (ii) to make application on those trademarks and trade names which are unregistered but capable of being registered and which a prudent person would reasonably cause to be registered and (iii) to preserve and maintain all rights in all Trademarks which a prudent person would reasonably preserve and maintain. Any expenses incurred in connection with applications that constitute Trademarks shall be borne by the Assignor. The Assignor shall not abandon any application presently pending that constitutes a Trademark without the written consent of the Assignee.

8. The Assignee shall have the right but shall in no way be obligated to bring suit in its own name to enforce or to defend the Trademarks and any license thereunder if the Assignor has failed to bring such suit in circumstances in which a prudent person would have brought such suit. The Assignor shall at the reasonable request of the Assignee do any and all lawful acts and execute any and all proper documents required by the Assignee in aid of such enforcement or defense (including, without limitation, participation as a plaintiff or defendant in

any proceeding) and, if Assignor has failed to bring such suit in circumstances in which a prudent person would have brought such suit, the Assignor shall promptly, upon demand, reimburse and indemnify the Assignee for all reasonable costs and expenses incurred by the Assignee in the exercise of its rights under this Section.

9. This Assignment shall serve to further evidence the security interest in the Trademarks granted by the Assignor to the Assignee pursuant to the Security Agreement.

10. No course of dealing between the Assignor and the Assignee, failure to exercise, nor any delay in exercising, on the part of the Assignee, with respect to any right, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

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

12. This Assignment is subject to modification only by a writing signed by the parties, except as provided in Section 4 hereof.

13. This Assignment shall inure to the benefit of and be binding upon the respective successors and permitted assigns of the parties.

14. Upon payment in full of all Liabilities and the expiration of any obligation of the Lenders to extend credit accommodations to the Borrowers, this Assignment shall terminate and all rights to the Trademarks shall revert to the Assignor.

15. THIS ASSIGNMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS (WITHOUT GIVING EFFECT TO THE CONFLICTS OF LAW PRINCIPLES THEREOF) OF (I) THE UNITED STATES OF AMERICA AS TO RIGHTS AND INTERESTS HEREUNDER WHICH ARE REGISTERED OR FOR THE REGISTRATION OF WHICH APPLICATION IS PENDING WITH THE UNITED STATES PATENT AND TRADEMARK OFFICE AND (II) THE STATE OF MINNESOTA IN ALL OTHER RESPECTS. WHENEVER POSSIBLE, EACH PROVISION OF THIS ASSIGNMENT AND ANY OTHER STATEMENT, INSTRUMENT OR TRANSACTION CONTEMPLATED HEREBY OR RELATING HERETO SHALL BE INTERPRETED IN SUCH MANNER AS TO BE EFFECTIVE AND VALID UNDER APPLICABLE LAW, BUT IF ANY PROVISION OF THIS ASSIGNMENT OR ANY OTHER STATEMENT, INSTRUMENT OR TRANSACTION CONTEMPLATED HEREBY OR RELATING HERETO SHALL BE HELD TO BE PROHIBITED OR INVALID UNDER APPLICABLE LAW, SUCH PROVISION SHALL BE INEFFECTIVE ONLY TO THE EXTENT OF SUCH PROHIBITION OR INVALIDITY, WITHOUT INVALIDATING THE REMAINDER OF SUCH PROVISION OR THE REMAINING PROVISIONS OF THIS ASSIGNMENT OR ANY OTHER STATEMENT, INSTRUMENT OR TRANSACTION CONTEMPLATED HEREBY OR RELATING HERETO. IN THE EVENT OF ANY CONFLICT WITHIN, BETWEEN OR

AMONG THE PROVISIONS OF THIS ASSIGNMENT, ANY OTHER LOAN DOCUMENT OR ANY OTHER STATEMENT, INSTRUMENT OR TRANSACTION CONTEMPLATED HEREBY OR THEREBY OR RELATING HERETO OR THERETO, THOSE PROVISIONS GIVING THE ASSIGNEE THE GREATER RIGHT SHALL GOVERN.

IN WITNESS WHEREOF, the Assignor has executed this instrument.

FAIRWAY FOODS, INC.

By: 

Title: ASSISTANT SECRETARY

EXHIBIT A  
TO COLLATERAL ASSIGNMENT

**FAIRWAY FOODS, INC.**  
**SCHEDULE OF TRADEMARKS**

[Attached]



# FAIRWAY FOODS, INC. TRADE NAMES AND TRADE STYLES

Mark	Date	Serial #	Reg. #	Goods	Classes	Owner
"FAIRWAY FOODS"				Retail food store services.		Fairway Foods, Inc.
"FAIRWAY FOODS" and "FF" design				Wholesale food distribution services and retail food store services.		Fairway Foods, Inc.
"FAIRWAY FOODS" and design				Wholesale food distribution services and retail food store services.		Fairway Foods, Inc.
"FAIRWAY"	03/01/1977	77,737	1,060,507	Grocery and supermarket services.	42	Fairway Foods, Inc.
"SUPER FAIR"	03/01/1977	73/077,738	1,060,508	Supermarket services.	42	Fairway Foods, Inc.

**ASSIGNMENT OF TRADEMARKS**

This Assignment having an effective date of \_\_\_\_\_, \_\_\_\_\_ is made by and between Fairway Foods, Inc., a Minnesota corporation (hereinafter "Assignor"), and \_\_\_\_\_, a \_\_\_\_\_, located and doing business at \_\_\_\_\_ ("Assignee").

WHEREAS, Assignor has adopted and owns certain trademarks and trade names, including trademarks which are registered in the U.S. Patent and Trademark Office or which are the subject of a pending application in the U.S. Patent and Trademark Office (hereinafter the "Marks") and,

WHEREAS, Assignee is desirous of acquiring the Marks and registration therefor.

NOW THEREFORE, in consideration of and in exchange for good and valuable consideration, the receipt of which is hereby acknowledged, Assignor does hereby sell, assign and transfer unto Assignee, and its successors and assigns, all of its right, title and interest in and to the Marks, and the registrations and applications therefor, and any and all foreign trademark or trade name registrations or applications therefor based upon said Marks, together with that part of the goodwill of the business connected with the use of and symbolized by the Marks, and including Assignor's entire right, title and interest in and to any and all causes of action and rights of recovery for past infringement of the Marks. Assignor hereby covenants that it has full right to convey the entire interest herein assigned, and that it has not executed, and will not execute, any agreements inconsistent herewith. Assignor hereby irrevocably authorizes U.S. Bank National Association, as Agent to date this undated Assignment and otherwise complete this Assignment at the time of transfer.

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, the parties have executed this Assignment as of the dates identified below.

FAIRWAY FOODS, INC.

Date: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

EXHIBIT C  
TO COLLATERAL ASSIGNMENT

**FAIRWAY FOODS, INC.**  
**SCHEDULE OF EXISTING LICENSES**

**None**