

**TRADEMARK ASSIGNMENT**

Electronic Version v1.1  
 Stylesheet Version v1.1

|                         |                |
|-------------------------|----------------|
| <b>SUBMISSION TYPE:</b> | NEW ASSIGNMENT |
|-------------------------|----------------|

|                              |  |
|------------------------------|--|
| <b>NATURE OF CONVEYANCE:</b> | Trademark Collateral Security and Pledge Agreement |
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|                             |                 |                       |                    |
|-----------------------------|-----------------|-----------------------|--------------------|
| <b>CONVEYING PARTY DATA</b> |                 |                       |                    |
| <b>Name</b>                 | <b>Formerly</b> | <b>Execution Date</b> | <b>Entity Type</b> |
| Harmony Foods Corporation   |                 | 02/06/2004            | CORPORATION:       |

|                             |                                |
|-----------------------------|--------------------------------|
| <b>RECEIVING PARTY DATA</b> |                                |
| <b>Name:</b>                | PNC Bank, National Association |
| <b>Street Address:</b>      | One South Wacker Drive         |
| <b>Internal Address:</b>    | Suite 2980                     |
| <b>City:</b>                | Chicago                        |
| <b>State/Country:</b>       | ILLINOIS                       |
| <b>Postal Code:</b>         | 60606                          |
| <b>Entity Type:</b>         | National Banking Association:  |

**PROPERTY NUMBERS Total: 28**

| Property Type        | Number  | Word Mark           |
|----------------------|---------|---------------------|
| Registration Number: | 2243834 | BOLD BEANS          |
| Registration Number: | 1323525 | CARABEE             |
| Registration Number: | 2504186 | GUMMYPALOOZA        |
| Registration Number: | 2665022 | HARMONY             |
| Registration Number: | 1397028 | HARMONY             |
| Registration Number: | 1129023 | HARMONY             |
| Registration Number: | 1129027 | HARMONY             |
| Registration Number: | 2682629 | HARMONY             |
| Registration Number: | 1129029 | HARMONY             |
| Registration Number: | 1479848 | HARMONY             |
| Registration Number: | 1509482 | HARMONY             |
| Registration Number: | 1957128 | HARMONY SNACKS      |
| Registration Number: | 2263260 | PARKER'S PRIDE      |
| Registration Number: | 1353146 | PASTAMORE PARTY MIX |

**CH \$715.00 2243834**

|                      |          |                     |
|----------------------|----------|---------------------|
| Registration Number: | 2637983  | PLANET HARMONY      |
| Registration Number: | 2633781  | PLANET HARMONY      |
| Registration Number: | 2507347  | PLANET HARMONY      |
| Registration Number: | 1526930  | SNACK ISLAND        |
| Registration Number: | 2505318  |                     |
| Registration Number: | 2309375  |                     |
| Registration Number: | 2494953  |                     |
| Registration Number: | 2309374  |                     |
| Registration Number: | 2485960  |                     |
| Serial Number:       | 76057136 | SELECT-A-MIX        |
| Serial Number:       | 76057137 | SELECT-A-MIX        |
| Serial Number:       | 76350065 | HARMONY SNACKS      |
| Serial Number:       | 78130544 | HARMONY XTREME      |
| Serial Number:       | 75783987 | PLANET HARMONY PLUS |

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|                         |               |
|-------------------------|---------------|
| ATTORNEY DOCKET NUMBER: | 304206-000010 |
| NAME OF SUBMITTER:      | Laura Janson  |

Total Attachments: 20  
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**TRADEMARK COLLATERAL  
SECURITY AND PLEDGE AGREEMENT**

**DATED as of February 6, 2004**

**between**

**HARMONY FOODS CORPORATION  
(BORROWER)**

**and**

**PNC BANK, NATIONAL ASSOCIATION  
(AS LENDER AND AS AGENT)**

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**TRADEMARK COLLATERAL  
SECURITY AND PLEDGE AGREEMENT**

**TRADEMARK COLLATERAL SECURITY AND PLEDGE AGREEMENT** ("Trademark Agreement") dated as of February 6, 2004, between **HARMONY FOODS CORPORATION**, a Delaware corporation having its principal place of business at 2200 Delaware Avenue, Santa Cruz, California 95060 (the "**Grantor**"), and **PNC BANK, NATIONAL ASSOCIATION**, having an office at One South Wacker Drive, Suite 2980, Chicago, Illinois 60606 (the "**Grantee**"), its successors and assigns, as agent for itself and on behalf of the Lenders as may exist from time to time under the Loan Agreement (as defined below).

**WHEREAS**, the Grantor, the Grantee and the Lenders are parties to a Revolving Credit, Term Loan and Security Agreement, dated as of February 6, 2004 (as amended and in effect from time to time, the "**Loan Agreement**"), among the Grantor, the other Borrowers named therein, the Grantee and the Lenders.

**WHEREAS**, it is a condition precedent to the Lenders making any loans or otherwise extending credit to the Grantor under the Loan Agreement that the Grantor execute and deliver to the Grantee a trademark agreement in substantially the form hereof;

**WHEREAS**, pursuant to the Loan Agreement, the Grantor has granted to the Grantee a security interest in certain of the Grantor's personal property and other assets, including without limitation the trademarks, service marks, trademark and service mark registrations, and trademark and service mark registration applications listed on Schedule A attached hereto, all to secure the payment and performance of the Obligations (as defined in the Loan Agreement); and

**WHEREAS**, this Trademark Collateral Security and Pledge Agreement is supplemental to the provisions contained in the Loan Agreement;

**NOW, THEREFORE**, in consideration of the premises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

**I. DEFINITIONS**

Capitalized terms used herein and not otherwise defined herein shall have the respective meanings provided therefor in the Loan Agreement. In addition, the following terms shall have the meanings set forth in this §1 or elsewhere in this Trademark Agreement referred to below:

**Associated Goodwill.** All goodwill of the Grantor and its business, products and services appurtenant to, associated with or symbolized by the Trademarks and the use thereof.

**Pledged Trademarks.** All of the Grantor's right, title and interest in and to all of the Trademarks, the Trademark Registrations, the Trademark License Rights, the Trademark Rights, the Associated Goodwill, the Related Assets, and all accessions to, substitutions for, replacements of, and all products and proceeds of any and all of the foregoing.

**PTO.** The United States Patent and Trademark Office.

**Related Assets.** All assets, rights and interests of the Grantor that uniquely reflect or embody the Associated Goodwill, including the following:

(a) all patents, inventions, copyrights, trade secrets, confidential information, formulae, methods or processes, compounds, recipes, know-how, methods and operating systems, drawings, descriptions, formulations, manufacturing and production and delivery procedures, quality control procedures, product and service specifications, catalogs, price lists, and advertising materials, relating to the manufacture, production, delivery, provision and sale of goods or services under or in association with any of the Trademarks; and

(b) the following documents and things in the possession or under the control of the Grantor, or subject to its demand for possession or control, related to the production, delivery, provision and sale by the Grantor, or any affiliate, franchisee, licensee or contractor, of products or services sold by or under the authority of the Grantor in connection with the Trademarks or Trademark Rights, whether prior to, on or subsequent to the date hereof:

(i) all lists, contracts, ancillary documents and other information that identify, describe or provide information with respect to any customers, dealers or distributors of the Grantor, its affiliates or licensees or contractors, for products or services sold under or in connection with the Trademarks or Trademark Rights, including all lists and documents containing information regarding each customer's, dealer's or distributor's name and address, credit, payment, discount, delivery and other sale terms, and history, pattern and total of purchases by brand, product, style, size and quantity;

(ii) all agreements, product and service specification documents and operating, production and quality control manuals relating to or used in the design, manufacture, production, delivery, provision and sale of products or services under or in connection with the Trademarks or Trademark Rights;

(iii) all documents and agreements relating to the identity and locations of all sources of supply, all terms of purchase and delivery, for all materials, components, raw materials and other supplies and services used in the manufacture, production, provision, delivery and sale of products or services under or in connection with the Trademarks or Trademark Rights; and



(iv) all agreements and documents constituting or concerning the present or future, current or proposed advertising and promotion by the Grantor (or any of its affiliates, franchisees, licensees or contractors) of products or services sold under or in connection with the Trademarks or Trademark Rights.

**Trademark Agreement.** This Trademark Collateral Security and Pledge Agreement, as amended and in effect from time to time.

**Trademark License Rights.** Any and all past, present or future rights and interests of the Grantor pursuant to any and all past, present and future licensing agreements in favor of the Grantor, or to which the Grantor is a party, pertaining to any Trademarks, Trademark Registrations, or Trademark Rights owned or used by third parties in the past, present or future, including the right (but not the obligation) in the name of the Grantor to enforce, and sue and recover for, any breach or violation of any such agreement to which the Grantor is a party.

**Trademark Registrations.** All past, present or future federal, state, local and foreign registrations of the Trademarks, all past, present and future applications for any such registrations (and any such registrations thereof upon approval of such applications), together with the right (but not the obligation) to apply for such registrations (and prosecute such applications) in the name of the Grantor, and to take any and all actions necessary or appropriate to maintain such registrations in effect and renew and extend such registrations.

**Trademark Rights.** Any and all past, present or future rights in, to and associated with the Trademarks throughout the world, whether arising under federal law, state law, common law, foreign law or otherwise, including the following: all such rights arising out of or associated with the Trademark Registrations; the right (but not the obligation) to register claims under any state, federal or foreign trademark law or regulation; the right (but not the obligation) to sue or bring opposition or cancellation proceedings in the name of the Grantor for any and all past, present and future infringements or dilution of or any other damages or injury to the Trademarks, the Trademark Rights, or the Associated Goodwill, and the rights to damages or profits due or accrued arising out of or in connection with any such past, present or future infringement, dilution, damage or injury; and the Trademark License Rights.

**Trademarks.** All of the trademarks, service marks, designs, logos, indicia, trade names, corporate names, company names, business names, fictitious business names, trade styles, elements of package or trade dress, and other source and product or service identifiers, used or associated with or appurtenant to the products, services and businesses of the Grantor, that (i) are set forth on Schedule A hereto, or (ii) have been adopted, acquired, owned, held or used by the Grantor or are now owned, held or used by the Grantor, in the Grantor's business, or with the Grantor's products and services, or in which the Grantor has any right, title or interest, or (iii) are in the future adopted, acquired, owned, held and used by the Grantor in the Grantor's business or with the Grantor's products and services, or in which the Grantor in the future acquires any right, title or interest.

**Use.** With respect to any Trademark, all uses of such Trademark by, for or in connection with the Grantor or its business or for the direct or indirect benefit of the Grantor or its business,

including all such uses by the Grantor itself, by any of the affiliates of the Grantor, or by any licensee or contractor of the Grantor.

Unless otherwise provided herein, the rules of interpretation set forth in the Loan Agreement shall be applicable to this Trademark Agreement.

## **II. GRANT OF SECURITY INTEREST**

### **2.1 Security Interest.**

As collateral security for the payment and performance in full of all of the Obligations, the Grantor hereby unconditionally grants to the Grantee a continuing security interest in and valid lien on the Pledged Trademarks, and pledges and mortgages (but does not transfer title to) the Pledged Trademarks to the Grantee.

Notwithstanding the foregoing, no security interest is granted in any of the Pledged Trademarks, including, without limitation, any intent to use trademark applications, to the extent that any valid and enforceable law or regulation applicable to such Pledged Trademarks prohibits the creation of a security interest or would otherwise result in a loss of rights from the creation of such a security interest therein.

### **2.2 Conditional Assignment.**

In addition to, and not by way of limitation of, the grant, pledge and mortgage of the Pledged Trademarks provided in §2.1, the Grantor grants, assigns, transfers, conveys and sets over to the Grantee the Grantor's entire right, title and interest in and to the Pledged Trademarks; provided that such grant, assignment, transfer and conveyance shall be and become of force and effect only (i) upon or after the occurrence and during the continuance of an Event of Default and (ii) either (A) upon the written demand of the Grantee at any time during such continuance or (B) immediately and automatically (without notice or action of any kind by the Grantee) upon an Event of Default for which acceleration of the Loans is automatic under the Loan Agreement or upon the sale or other disposition of or foreclosure upon the Collateral relating to the Pledged Trademarks and the Associated Goodwill pursuant to the Loan Agreement and applicable law (including the transfer or other disposition of the Collateral relating to the Pledged Trademarks and the Associated Goodwill by the Grantor to the Grantee or its nominee in lieu of foreclosure).

### **2.3 Supplemental to Loan Agreement.**

Pursuant to the terms and conditions of the Loan Agreement the Grantor has granted to the Grantee a continuing security interest in and lien on the Collateral (including the Pledged Trademarks). The Loan Agreement, and all rights and interests of the Grantee in and to the Collateral (including the Pledged Trademarks) thereunder, are hereby ratified and confirmed in all respects. In no event shall this Trademark Agreement, the grant, assignment, transfer and conveyance of a security interest in the Pledged Trademarks hereunder, or the recordation of this Trademark Agreement (or any document hereunder) with the PTO, adversely affect or impair, in any way or to any extent, the Loan Agreement, the security interest of the Grantee in the Collateral (including the Pledged Trademarks) pursuant to the Loan Agreement and this

Trademark Agreement, the attachment and perfection of such security interest under the UCC (including the security interest in the Pledged Trademarks), or any present or future rights and interests of the Grantee in and to the Collateral under or in connection with the Loan Agreement, this Trademark Agreement or the UCC. Any and all rights and interests of the Grantee in and to the Pledged Trademarks (and any and all obligations of the Grantor with respect to the Pledged Trademarks) provided herein, or arising hereunder or in connection herewith, shall only supplement and be cumulative and in addition to the rights and interests of the Grantee (and the obligations of the Grantor) in, to or with respect to the Collateral (including the Pledged Trademarks) provided in or arising under or in connection with the Loan Agreement and shall not be in derogation thereof.

### **III. REPRESENTATIONS, WARRANTIES AND COVENANTS**

The Grantor represents, warrants and covenants that: (i) Schedule A sets forth a true and complete list of all Trademark Registrations now owned or licensed by the Grantor; (ii) except as set forth on Schedule 5.9 of the Loan Agreement, the Trademarks and Trademark Registrations owned by Grantor are subsisting and have not been adjudged invalid or unenforceable, in whole or in part, and there is no litigation or proceeding pending concerning the validity or enforceability of the Trademarks or Trademark Registrations owned by Grantor; (iii) to the best of the Grantor's knowledge, each of the Trademarks and Trademark Registrations is valid and enforceable; (iv) to the best of the Grantor's knowledge, there is no infringement by others of the Trademarks, Trademark Registrations or Trademark Rights owned by Grantor; (v) except as set forth on Schedule 5.9 of the Loan Agreement, no claim has been made that the use of any of the Trademarks does or may violate the rights of any third person, and to the best of the Grantor's knowledge, there is no infringement by the Grantor of the trademark rights of others; (vi) except as set forth on Schedule 5.9 of the Loan Agreement, the Grantor is the sole and exclusive owner of the entire and unencumbered right, title and interest in and to each of the Trademarks (other than ownership and other rights reserved by third party owners with respect to Trademarks that the Grantor is licensed to use), free and clear of any liens, charges, encumbrances and adverse claims, including pledges, assignments, licenses, registered user agreements and covenants by the Grantor not to sue third persons, other than the security interest created by the Loan Agreement and this Trademark Agreement and other than Permitted Encumbrances; (vii) the Grantor has the unqualified right to enter into this Trademark Agreement and to perform its terms and has entered and/or will, in the exercise of its reasonable business judgment, enter into written agreements with each of its present and future employees, agents, consultants, licensors and licensees that will enable them to comply with the covenants herein contained; (viii) the Grantor has used, and will continue to use, proper statutory and other appropriate proprietary notices in connection with its use of the Trademarks which are useful or necessary in its business in order to maintain the value of such Trademarks and Grantor's rights therein; (ix) the Grantor has used, and will continue to use for the duration of this Trademark Agreement, consistent standards of quality in its manufacture and provision of products and services sold or provided under the Trademarks; (x) this Trademark Agreement, together with the Loan Agreement, will create in favor of the Grantee a valid and perfected first priority security interest in the Pledged Trademarks upon making the filings referred to in clause (xi) of this §III; and (xi) except for the filing of financing statements with the Secretary of State for the State of Illinois under the UCC and the recording of this Trademark Agreement with the PTO, no authorization, approval or

other action by, and no notice to or filing with, any governmental or regulatory authority, agency or office is required either (A) for the grant by the Grantor or the effectiveness of the security interest granted hereby or for the execution, delivery and performance of this Trademark Agreement by the Grantor, or (B) for the perfection of or the exercise by the Grantee of any of its rights and remedies hereunder.

#### **IV. INSPECTION RIGHTS**

The Grantor hereby grants to the Grantee and its employees and agents the right to visit the Grantor's plants and facilities that manufacture, inspect or store products sold under any of the Trademarks, and to inspect the products and quality control records relating thereto in accordance with the provisions of Section 4.10 of the Loan Agreement.

#### **V. NO TRANSFER OR INCONSISTENT AGREEMENTS**

Without the Grantee's prior written consent, the Grantor will not (i) mortgage, pledge, assign, encumber, grant a security interest in, transfer, license or alienate any of the Pledged Trademarks, or (ii) enter into any agreement (for example, a license agreement) that is inconsistent with the Grantor's obligations under this Trademark Agreement or the Loan Agreement, except for Permitted Dispositions, as defined in the Loan Agreement.

#### **VI. AFTER-ACQUIRED TRADEMARKS, ETC.**

##### **6.1 After-Acquired Trademarks.**

If, before the Obligations shall have been finally paid and satisfied in full, the Grantor shall obtain any right, title or interest in or to any other or new Trademarks, Trademark Registrations or Trademark Rights, the provisions of this Trademark Agreement shall automatically apply thereto and at the request of Grantee, the Grantor shall promptly provide to the Grantee notice thereof in writing and execute and deliver to the Grantee such documents or instruments as the Grantee may reasonably request further to implement, preserve or evidence the Grantee's interest therein.

##### **6.2 Amendment to Schedule.**

The Grantor authorizes the Grantee to modify this Trademark Agreement, without the necessity of the Grantor's further approval or signature, by amending Exhibit A hereto to include any future or other Trademarks, Trademark Registrations or Trademark Rights under §II or §VI. Grantee will provide Grantor with ten Business Days prior written notice of any such amendment.

#### **VII. TRADEMARK PROSECUTION**

##### **7.1 Grantor Responsible.**

The Grantor shall assume full and complete responsibility for the prosecution, defense, enforcement or any other necessary or desirable actions in connection with the Pledged

Trademarks, and shall hold the Grantee harmless from any and all costs, damages, liabilities and expenses that may be incurred by the Grantee in connection with the Grantee's interest in the Pledged Trademarks or any other action or failure to act in connection with this Trademark Agreement or the transactions contemplated hereby. In respect of such responsibility, the Grantor shall retain trademark counsel acceptable to the Grantee.

7.2 **Grantor's Duties, etc.**

The Grantor shall have the right and the duty in accordance with its reasonable business judgment, through trademark counsel acceptable to the Grantee, to prosecute diligently any trademark registration applications of the Trademarks pending as of the date of this Trademark Agreement or thereafter, to preserve and maintain all rights in the Trademarks and Trademark Registrations, including the filing of appropriate renewal applications and other instruments to maintain in effect the Trademark Registrations and the payment when due of all registration renewal fees and other fees, taxes and other expenses that shall be incurred or that shall accrue with respect to any of the Trademarks or Trademark Registrations. Any expenses incurred in connection with such applications and actions shall be borne by the Grantor. Except in connection with Permitted Dispositions, the Grantor shall not abandon any filed trademark registration application, or any Trademark Registration or Trademark, without the consent of the Grantee, which consent shall not be unreasonably withheld.

7.3 **Grantor's Enforcement Rights.**

The Grantor shall have the right and the duty in accordance with its reasonable business judgment to bring suit or other action in the Grantor's own name to maintain and enforce the Trademarks, the Trademark Registrations and the Trademark Rights. The Grantor may require the Grantee to join in such suit or action as necessary to assure the Grantor's ability to bring and maintain any such suit or action in any proper forum if (but only if) the Grantee is completely satisfied that such joinder will not subject the Grantee to any risk of liability. The Grantor shall promptly, upon demand, reimburse and indemnify the Grantee for all damages, costs and expenses, including legal fees, incurred by the Grantee pursuant to this §7.3.

7.4 **Protection of Trademarks, etc.**

In general, the Grantor shall take any and all such actions (including institution and maintenance of suits, proceedings or actions) as may be necessary or appropriate to properly maintain, protect, preserve, care for and enforce the Pledged Trademarks which are useful or necessary in its business. The Grantor shall not take or fail to take any action, nor permit any action to be taken or not taken by others under its control, that would adversely affect the validity, grant or enforcement of the Pledged Trademarks which are useful or necessary in its business.

7.5 **Notification by Grantor.**

Promptly upon obtaining knowledge thereof, the Grantor will notify the Grantee in writing of the institution of, or any final adverse determination in, any proceeding in the PTO or

any similar office or agency of the United States or any foreign country, or any court, regarding the validity of any of the Trademarks or Trademark Registrations or the Grantor's rights, title or interests in and to the Pledged Trademarks, and of any event that does or reasonably could materially adversely affect the value of any of the Pledged Trademarks, the ability of the Grantor to dispose of any of the Pledged Trademarks or the rights and remedies of the Grantee in relation thereto (including but not limited to the levy of any legal process against any of the Pledged Trademarks).

### **VIII. REMEDIES**

Upon the occurrence and during the continuance of an Event of Default, the Grantee shall have, in addition to all other rights and remedies given it by this Trademark Agreement (including, without limitation, those set forth in §2.2), and the Loan Agreement, those allowed by law and the rights and remedies of a secured party under the UCC as in effect in the State of Illinois, and, without limiting the generality of the foregoing, the Grantee may immediately, without demand of performance and without other notice (except as set forth next below) or demand whatsoever to the Grantor, all of which are hereby expressly waived, sell or license at public or private sale or otherwise realize upon the whole or from time to time any part of the Pledged Trademarks, or any interest that the Grantor may have therein, and after deducting from the proceeds of sale or other disposition of the Pledged Trademarks all expenses incurred by the Grantee in attempting to enforce this Trademark Agreement (including all reasonable expenses for broker's fees and legal services), shall apply the residue of such proceeds toward the payment of the Obligations as set forth in or by reference in the Loan Agreement. Notice of any sale, license or other disposition of the Pledged Trademarks shall be given to the Grantor at least ten (10) days before the time that any intended public sale or other public disposition of the Pledged Trademarks is to be made or after which any private sale or other private disposition of the Pledged Trademarks may be made, which the Grantor hereby agrees shall be reasonable notice of such public or private sale or other disposition. At any such sale or other disposition, the Grantee may, to the extent permitted under applicable law, purchase or license the whole or any part of the Pledged Trademarks or interests therein sold, licensed or otherwise disposed of.

### **IX. COLLATERAL PROTECTION**

If the Grantor shall fail to do any act that it has covenanted to do hereunder, or if any representation or warranty given hereunder of the Grantor shall be breached, the Grantee, in its own name or that of the Grantor (in the sole discretion of the Grantee), may (but shall not be obligated to) do such act or remedy such breach (or cause such act to be done or such breach to be remedied), and the Grantor agrees promptly to reimburse the Grantee for any cost or expense incurred by the Grantee in so doing.

### **X. POWER OF ATTORNEY**

If any Event of Default shall have occurred and be continuing, the Grantor does hereby make, constitute and appoint the Grantee (and any officer or agent of the Grantee as the Grantee may select in its exclusive discretion) as the Grantor's true and lawful attorney-in-fact, with full power of substitution and with the power to endorse the Grantor's name on all applications,

documents, papers and instruments necessary for the Grantee to use the Pledged Trademarks, or to grant or issue any exclusive or nonexclusive license of any of the Pledged Trademarks to any third person, or to take any and all actions necessary for the Grantee to assign, pledge, convey or otherwise transfer title in or dispose of any of the Pledged Trademarks or any interest of the Grantor therein to any third person, and, in general, to execute and deliver any instruments or documents and do all other acts that the Grantor is obligated to execute and do hereunder. The Grantor hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof and releases the Grantee from any claims, liabilities, causes of action or demands arising out of or in connection with any action taken or omitted to be taken by the Grantee under this power of attorney (except for the Grantee's gross negligence or willful misconduct). This power of attorney is coupled with an interest and shall be irrevocable for the duration of this Trademark Agreement.

### **XI. FURTHER ASSURANCES**

The Grantor shall, at any time and from time to time, and at its expense, make, execute, acknowledge and deliver, and file and record as necessary or appropriate with governmental or regulatory authorities, agencies or offices, such agreements, assignments, documents and instruments, and do such other and further acts and things (including, without limitation, obtaining consents of third parties), as the Grantee may reasonably request or as may be necessary or appropriate in order to implement and effect fully the intentions, purposes and provisions of this Trademark Agreement, or to assure and confirm to the Grantee the grant, perfection and priority of the Grantee's security interest in the Pledged Trademarks in accordance with the Loan Agreement and the Other Documents to which Grantor is a party and subject to the provisions of applicable law.

### **XII. TERMINATION**

At such time as all of the Obligations have been finally paid and satisfied in full, this Trademark Agreement shall terminate and the Grantee shall, upon the written request and at the expense of the Grantor, execute and deliver to the Grantor all deeds, assignments and other instruments as may be necessary or proper to release all of Grantee's rights in and to the Pledged Trademarks previously granted, assigned, transferred and conveyed to the Grantee by the Grantor pursuant to this Trademark Agreement and the Loan Agreement, as fully as if this Trademark Agreement and the Loan Agreement had not been made, subject to any disposition of all or any part thereof that may have been made by the Grantee pursuant hereto or the Loan Agreement.

### **XIII. COURSE OF DEALING**

No course of dealing between the Grantor and the Grantee, nor any failure to exercise, nor any delay in exercising, on the part of either party, any right, power or privilege hereunder or under the Loan Agreement or any other agreement 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.

**XIV. EXPENSES**

Any and all fees, costs and expenses, of whatever kind or nature, including the reasonable attorneys' fees and expenses incurred by the Grantee in connection with the preparation of this Trademark Agreement and all other documents relating hereto, the consummation of the transactions contemplated hereby or the enforcement hereof, the filing or recording of any documents (including all taxes in connection therewith) in public offices, the payment or discharge of any taxes, counsel fees, maintenance or renewal fees, encumbrances, or otherwise protecting, maintaining or preserving the Pledged Trademarks, or in defending or prosecuting any actions or proceedings arising out of or related to the Pledged Trademarks, shall be borne and paid by the Grantor.

**XV. OVERDUE AMOUNTS**

Until paid, all amounts due and payable by the Grantor hereunder shall be a debt secured by the Pledged Trademarks and other Collateral and shall bear, whether before or after judgment, interest at the rate of interest for overdue principal set forth in the Loan Agreement.

**XVI. NO ASSUMPTION OF LIABILITY; INDEMNIFICATION**

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, THE GRANTEE ASSUMES NO LIABILITIES OF THE GRANTOR WITH RESPECT TO ANY CLAIM OR CLAIMS REGARDING THE GRANTOR'S OWNERSHIP OR PURPORTED OWNERSHIP OF, OR RIGHTS OR PURPORTED RIGHTS ARISING FROM, ANY OF THE PLEDGED TRADEMARKS OR ANY USE, LICENSE OR SUBLICENSE THEREOF, WHETHER ARISING OUT OF ANY PAST, CURRENT OR FUTURE EVENT, CIRCUMSTANCE, ACT OR OMISSION OR OTHERWISE. ALL OF SUCH LIABILITIES SHALL BE EXCLUSIVELY THE RESPONSIBILITY OF THE GRANTOR, AND THE GRANTOR SHALL INDEMNIFY THE GRANTEE FOR ANY AND ALL COSTS, EXPENSES, DAMAGES AND CLAIMS, INCLUDING LEGAL FEES, INCURRED BY THE GRANTEE WITH RESPECT TO SUCH LIABILITIES.

**XVII. NOTICES**

All notices and other communications made or required to be given pursuant to this Trademark Agreement shall be in writing and shall be delivered in accordance with Section 16.6 of the Loan Agreement, addressed as follows:

- (a) If to Grantee: PNC Bank, National Association  
One South Wacker Drive  
Suite 2980  
Chicago, Illinois 60606  
Attention: Peter Zimmerer  
Telephone: (312) 338-5662  
Telecopier: (312) 338-5618



with a copy to: Piper Rudnick LLP  
203 North LaSalle Street  
Chicago, Illinois 60601-1293  
Attention: William L. Rawson, Esq.  
Telephone: (312) 368-7075  
Telecopier: (312) 630-5347

(b) If to Grantor: Harmony Foods Corporation  
c/o Golden Stream Quality Foods, Inc.  
11899 Exit Five Parkway  
Fishers, Indiana 46038  
Attention: George Pappas  
Telephone: (317) 567-2700  
Telecopier: (317) 567-3588

with a copy to: Swander Pace Capital  
345 California Street, Suite 2550  
San Francisco, California 94104  
Attention: C. Morris Stout  
Telephone: (415) 477-8500  
Telecopier: (415) 477-8510

and a copy to: Kirkland & Ellis  
333 Bush Street  
San Francisco, California 94104  
Attention: Patrick Lawler, Esq.  
Telephone: (415) 439-1400  
Telecopier: (415) 439-1300

Any such notice or demand shall be effective as and when provided in Section 16.6 of the Loan Agreement.

#### **XVIII. AMENDMENT AND WAIVER**

This Trademark Agreement is subject to modification only by a writing signed by the Grantee and the Grantor, except as provided in §6.2. The Grantee shall not be deemed to have waived any right hereunder unless such waiver shall be in writing and signed by the Grantee. A waiver on any one occasion shall not be construed as a bar to or waiver of any right on any future occasion.

#### **XIX. GOVERNING LAW; CONSENT TO JURISDICTION**

**THIS TRADEMARK AGREEMENT IS INTENDED TO TAKE EFFECT AS A SEALED INSTRUMENT AND SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF ILLINOIS.** The Grantor agrees that any suit for the enforcement of this Trademark Agreement may be brought in the courts of

the State of Illinois or any federal court sitting therein and consents to the non-exclusive jurisdiction of such court and to service of process in any such suit being made upon the Grantor by mail at the address specified in §17. The Grantor hereby waives any objection that it may now or hereafter have to the venue of any such suit or any such court or that such suit is brought in an inconvenient court.

## **XX. WAIVER OF JURY TRIAL**

**THE GRANTOR WAIVES ITS RIGHT TO A JURY TRIAL WITH RESPECT TO ANY ACTION OR CLAIM ARISING OUT OF ANY DISPUTE IN CONNECTION WITH THIS TRADEMARK AGREEMENT, ANY RIGHTS OR OBLIGATIONS HEREUNDER OR THE PERFORMANCE OF ANY SUCH RIGHTS OR OBLIGATIONS.** Except as prohibited by law, the Grantor waives any right which it may have to claim or recover in any litigation referred to in the preceding sentence any special, exemplary, punitive or consequential damages or any damages other than, or in addition to, actual damages. The Grantor (i) certifies that neither the Grantee nor any representative, agent or attorney of the Grantee has represented, expressly or otherwise, that the Grantee would not, in the event of litigation, seek to enforce the foregoing waivers, and (ii) acknowledges that, in entering into the Loan Agreement the Grantee is relying upon, among other things, the waivers and certifications contained in this §XX.

## **XXI. MISCELLANEOUS**

The headings of each section of this Trademark Agreement are for convenience only and shall not define or limit the provisions thereof. This Trademark Agreement and all rights and obligations hereunder shall be binding upon the Grantor and its respective successors and assigns, and shall inure to the benefit of the Grantee and its successors and assigns. In the event of any irreconcilable conflict between the provisions of this Trademark Agreement and the Loan Agreement, the provisions of the Loan Agreement shall control. If any term of this Trademark Agreement shall be held to be invalid, illegal or unenforceable, the validity of all other terms hereof shall in no way be affected thereby, and this Trademark Agreement shall be construed and be enforceable as if such invalid, illegal or unenforceable term had not been included herein. The Grantor acknowledges receipt of a copy of this Trademark Agreement.

**IN WITNESS WHEREOF**, this Trademark Agreement has been executed as of the day and year first above written.

**HARMONY FOODS CORPORATION**,  
a Delaware corporation

By: 

Name: Dennis Barrow  
Title: Chief Financial Officer

**CERTIFICATE OF ACKNOWLEDGMENT**

STATE OF ILLINOIS     )  
  ) ss.  
COUNTY OF COOK     )

Before me, the undersigned, a Notary Public in and for the county aforesaid, on this 6th day of February, 2004, personally appeared Dennis Barrow to me known personally, and who, being by me duly sworn, deposes and says that he is the Chief Financial Officer of Harmony Foods Corporation, a Delaware corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and said Harmony Foods Corporation acknowledged said instrument to be the free act and deed of said corporation.

*Ruth A. Cordes*

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

\*\*\*\*\*  
"OFFICIAL SEAL"  
RUTH A. CORDES  
Notary Public, State of Illinois  
My Commission Expires 7/31/05  
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**SCHEDULE A**

**HARMONY FOODS CORPORATION**

**REGISTERED TRADEMARKS**

| <b>MARK</b>                      | <b>JURISDICTION</b> | <b>SERIAL NUMBER</b> | <b>REGISTRATION NUMBER</b> | <b>REGISTRATION DATE</b> |
|----------------------------------|---------------------|----------------------|----------------------------|--------------------------|
| BOLD BEANS                       | US                  | 75/381,445           | 2,243,834                  | 5/4/1999                 |
| CAMEO Design                     | California          | CA3000049675         | 44,088                     | 9/2/1964                 |
| CARABEE                          | US                  | 73/335,031           | 1,323,525                  | 3/5/1985                 |
| GUMMYPALOOZA                     | US                  | 76/171,053           | 2,504,186                  | 11/6/2001                |
| HARMONY                          | US                  | 75/843,038           | 2,665,022                  | 12/24/2002               |
| HARMONY                          | US                  | 73/548,914           | 1,397,028                  | 6/10/1986                |
| HARMONY                          | US                  | 73/184,473           | 1,129,023                  | 1/8/1980                 |
| HARMONY                          | US                  | 73/184,468           | 1,129,027                  | 1/8/1980                 |
| HARMONY                          | US                  | 76/275,043           | 2,682,629                  | 2/4/2003                 |
| HARMONY                          | US                  | 73/184,469           | 1,129,029                  | 1/8/1980                 |
| HARMONY (& Design)               | US                  | 73/666,810           | 1,479,848                  | 3/8/1988                 |
| HARMONY (Stylized)               | US                  | 73/715,332           | 1,509,482                  | 10/18/1988               |
| HARMONY SNACKS                   | US                  | 74/539,368           | 1,957,128                  | 2/20/1996                |
| PARKER'S PRIDE                   | US                  | 75/546,041           | 2,263,260                  | 7/20/1999                |
| PASTAMORE PARTY MIX              | US                  | 73/511,349           | 1,353,146                  | 8/6/1985                 |
| PLANET HARMONY                   | US                  | 75/867,009           | 2,637,983                  | 10/22/2002               |
| PLANET HARMONY                   | US                  | 75/546,041           | 2,633,781                  | 10/15/2002               |
| PLANET HARMONY                   | US                  | 75/381,446           | 2,507,347                  | 11/13/2001               |
| SNACK ISLAND                     | US                  | 73/692,382           | 1,526,930                  | 2/28/1989                |
| "SMILING GLOBE DESIGN" trademark | US                  | 75/826,006           | 2,505,318                  | 11/6/2001                |
| "Smiling Globe Design"           | US                  | 75/650,351           | 2,309,375                  | 1/18/2000                |
| "Walking Globe Design"           | US                  | 75/826,007           | 2,494,953                  | 10/2/2001                |
| "Walking Globe Design"           | US                  | 75/650,350           | 2,309,374                  | 1/18/2000                |
| "Walking Globe Design"           | US                  | 75/779,773           | 2,485,960                  | 9/4/2001                 |
| "Smiling Globe Design"           | Mexico              |                      | 675,918                    | 10/27/2000               |
| "Smiling Globe Design"           | Mexico              |                      | 668,733                    | 8/28/2000                |

| MARK                   | JURISDICTION | SERIAL NUMBER | REGISTRATION NUMBER | REGISTRATION DATE |
|------------------------|--------------|---------------|---------------------|-------------------|
| "Smiling Globe Design" | Mexico       |               | 667,828             | 8/16/2000         |
| "Walking Globe Design" | Mexico       |               | 675,895             | 10/27/2000        |
| "Walking Globe Design" | Mexico       |               | 675,894             | 10/27/2000        |
| BOLD BEANS             | Mexico       |               | 685,026             | 1/31/2001         |
| PLANET HARMONY         | Mexico       |               | 713,093             | 8/30/2001         |
| PLANET HARMONY         | Mexico       |               | 713,092             | 8/30/2001         |
| "Walking Globe Design" | Mexico       |               | 661,320             | 6/27/2000         |

**PENDING APPLICATIONS**<sup>1</sup>

| MARK                                     | JURISDICTION | SERIAL NO. | FILING DATE |
|--|--------------|------------|-------------|
| SELECT-A-MIX                             | US           | 76/057,136 | 5/25/2000   |
| SELECT-A-MIX                             | US           | 76/057,137 | 5/25/2000   |
| HARMONY SNACKS                           | US           | 76/350,065 | 12/19/2001  |
| HARMONY XTREME                           | US           | 78/130,544 | 5/22/2002   |
| PLANET HARMONY PLUS (Stylized Lettering) | US           | 75/783,987 | 8/25/1999   |
| HARMONY                                  | Mexico       | 419,574    | 4/5/2000    |
| HARMONY                                  | Mexico       | 419,575    | 4/5/2000    |
| HARMONY                                  | Mexico       | 419,576    | 4/5/2000    |

**PATENTS**

| PATENT  | JURISDICTION | ISSUE DATE | PATENT NUMBER |
|---|--------------|------------|---------------|
| "Food Container With A Hinged Cover" (Utility Patent) | US           | 5/17/88    | 4,744,487     |

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<sup>1</sup> Pursuant to Section 2.1, no security interest is granted on any of the above applications that are intent-to-use applications, to the extent that any valid and enforceable law or regulation applicable to such Pledged Trademarks prohibits the creation of a security interest or would otherwise result in the loss of rights from the creation of a security interest therein.