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Form PTO-1594 (Rev. 10/02) OMB No. 0651-0027 (exp. 6/30/2005) Tab settings



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U.S. DEPARTMENT OF COMMERCE U.S. Patent and Trademark Office

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies): Earth Fare, Inc.

- Individual(s) Association General Partnership Limited Partnership Corporation-State North Carolina Other

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

3. Nature of conveyance:

- Assignment Merger Security Agreement Change of Name Other

Execution Date: 2/18/04

2. Name and address of receiving party(ies)

Name: Carolina First Bank

Internal Address: 10th Floor

Street Address: 104 South Main Street

City: Greenville State: SC Zip: 29601

- Individual(s) citizenship Association General Partnership Limited Partnership Corporation-State South Carolina 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

OFFICE OF PUBLIC RECORDS 2004 APR - 1 AM 9:36 FINANCE SECTION

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

A. Trademark Application No.(s) 75/711,882 75/983,344 (now Reg. #2,820,584)

B. Trademark Registration No.(s) 2,329,721; 2,460,264; 2,160,095; 2,160,094

Additional number(s) attached Yes No

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

Name: Thomas W. Epting, Esq.

Internal Address:

Street Address: 300 E. McBee Avenue

Suite 500

City: Greenville State: SC Zip: 29601

6. Total number of applications and registrations involved: 6

7. Total fee (37 CFR 3.41): \$ 165.00

- Enclosed Authorized to be charged to deposit account

8. Deposit account number:

12-0760 (for deficiencies or overpayments)

DO NOT USE THIS SPACE

9. Signature.

Thomas W. Epting, Esq. Name of Person Signing

[Signature] Signature

29 MAR 04 Date

Total number of pages including cover sheet, attachments, and document: 6

Mail documents to be recorded with required cover sheet information to: Commissioner of Patent & Trademarks, Box Assignments Washington, D.C. 20231

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01 FC:8521 40.00 OP 02 FC:8522 125.00 OP

TRADEMARK REEL: 002943 FRAME: 0033

SECURITY AGREEMENT

AGREEMENT made this 18th day of February, 2004, by and between CAROLINA FIRST BANK, a South Carolina corporation (the "Secured Party"), and EARTH FARE, INC., a North Carolina corporation (the "Debtor").

WITNESSETH:

WHEREAS, pursuant to the terms of that certain Loan and Security Agreement of even date herewith between Secured Party and Debtor, Secured Party agreed to make certain Credit Facilities available to Debtor (the "Loan Agreement"); and

WHEREAS, the Secured Party desires to obtain security interests in certain trademarks and service marks of Debtor to secure the obligations of the Debtor under the Loan Agreement, including, without limitation, the obligations to repay the Loans (as defined in the Loan Agreement) (collectively, the "Obligations"), and the Debtor is willing to grant said security interests.

NOW, THEREFORE, for and in consideration of the premises and mutual promises contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Grant of Security Interests.** The Debtor hereby grants to the Secured Party a security interest in and first priority lien in the Intellectual Property, as defined in Paragraph 2 hereof, to secure the Obligations.

2. **Collateral.** The property which is the subject of these security interests created by this Agreement (the "Intellectual Property") consists of:

(a) (i) the mark, "THE HEALTHY MARKET AND CAFE," the subject of U.S. Reg. No. 2,329,721; (ii) the mark, "EARTH FARE," the subject of U.S. Reg. No. 2,460,264; (iii) the mark, "EARTH FARE," the subject of U.S. Reg. No. 2,160,095; (iv) the mark, "THE HEALTHY SUPERMARKET," the subject of U.S. Reg. No. 2,160,094; (v) the tomato Design mark, the subject of U.S. Appl. Serial No. 75/983,344; and (vi) the tomato Design

mark, the subject of U.S. Appl. Serial No. 75/711,882, all of the foregoing marks being collectively referred to as the "Marks";

(b) Any and all common law and governmental registrations and applications for registration of the Marks; and

(c) The goodwill of the business symbolized by or associated with the Marks.

3. **Default; Remedies Upon Default.** In the event that Debtor defaults in the performance of its Obligations hereunder or there is an Event of Default under the Loan Agreement, then the Secured Party shall be entitled to any and all remedies available under the Uniform Commercial Code in force in the State of South Carolina as of the date of such default. Due to the unique nature of the Intellectual Property, and in order to preserve its value, the Debtor agrees that the Debtor's agreements, duties and obligations under this Agreement shall be subject to specific enforcement and other appropriate equitable orders and remedies.

4. **Representations and Warranties.** The Debtor represents and warrants to the Secured Party that it will not, prior to the satisfaction of the Loan obligations in full, pledge, hypothecate, assign, sell, license, or otherwise transfer legal title to the Intellectual Property or any interest in such legal title unless required to do so by a court of competent jurisdiction. The Debtor will defend its right, title and interests in and to the Intellectual Property against claims of any third parties. The Debtor shall take any and all such actions (including but not limited to institution and maintenance of suits, proceedings or actions) as are necessary and appropriate to properly maintain (including, but not limited to, making all necessary governmental filings and payment of all necessary governmental fees), protect, preserve, care for and enforce the Intellectual Property; and in the event any infringement or unauthorized or improper use by any third party of the Intellectual Property has been made and/or reasonably established by the Debtor, the Debtor shall promptly notify the Secured Party and shall take action against such infringement or unauthorized or improper use; provided, however, that nothing herein shall be construed to require Debtor to have any duty or obligation under this paragraph 4 or otherwise

for any event, circumstance, fact or occurrence arising from, originating for, occurring or taking place prior to the date hereof.

5. **Filings; Further Assurances.** The Debtor further represents and warrants that it will execute such documents as are necessary or desirable in the opinion of the Secured Party to evidence this grant of security interests on the records of the United States Patent and Trademark Office or such other governmental offices as the Secured Party deems desirable, including, but not limited to, filings under the Uniform Commercial Code; provided, however, the cost and expense of the preparation of such documents and the filing thereof shall be borne by the Debtor.

6. **Power of Attorney.** The Debtor hereby grants to the Secured Party a power of attorney, thereby constituting and appointing the Secured Party (and the Secured Party's designee) its true and lawful attorney-in-law and attorney-in-fact, effective upon the occurrence and during the continuation of an Event of Default, for the purpose of assigning, selling, licensing or otherwise transferring or disposing of all rights, titles and interests of the Debtor in and to the Intellectual Property in accordance with the terms hereof. The foregoing power of attorney is coupled with an interest and is irrevocable until this Agreement shall terminate (which termination shall occur concurrently with the termination of all Loan obligations).

7. **Indulgences Not Waivers.** The Secured Party's failure, at any time or times hereafter, to require strict performance by Debtor of any provision of this Agreement shall not waive, affect, or diminish any right of the Secured Party thereafter to demand strict compliance and performance therewith. Any suspension or waiver by the Secured Party of a default by Debtor under this Agreement shall not suspend, waive, or affect any other default by Debtor under this Agreement, whether the same is prior or subsequent thereto and whether of the same or of a different type. None of the undertakings, agreements, warranties, covenants, and representations of Debtor contained in this Agreement and no default by Debtor under this Agreement shall be deemed to have been suspended or waived by Secured Party, unless such suspension or waiver is by an instrument in writing specifying such suspension or waiver and is

signed by a duly authorized representative of the Secured Party and directed to Debtor, as applicable.

8. **Severability.** Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by 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 Agreement.

9. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Debtor and Secured Party.

10. **Execution in Counterparts.** This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed to be an original, and all of which counterparts taken together shall constitute but one and the same instrument.

11. **Entire Agreement; Amendments.** This Agreement represents the entire agreement of the subject matter hereof and may only be amended in a writing signed by each of the parties hereto.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have duly executed this Security Agreement individually, or by its duly authorized officer, as of the day and year first written above.

WITNESSES:

SECURED PARTY:

CAROLINA FIRST BANK

Paul S. Mills
Paul C. W. D. [unclear]

[Signature]
By: *[Signature]*
Its: *Senior Vice President*

WITNESSES:

DEBTOR:

EARTH FARE, INC.

Paul S. Mills
Paul C. W. D. [unclear]

[Signature]
By: *Gary Jones*
Its: *VP CFO & Secretary*

NORTH
STATE OF ~~SOUTH~~ CAROLINA
COUNTY OF ~~GREENVILLE~~ BUNCOMBE

February 18, 2004

Then personally appeared the above-named Gary Jones and stated that he is the duly authorized VP/CFO/Secr. of Earth Fare, Inc. (the "Corporation"), and acknowledged the foregoing instrument to be his free act and deed, and the free act and deed of said Corporation, before me.

Patricia V. Buarill

Notary Public

My Commission Expires: 07/17/2006

