

09-26-2000



101471455

RECORDATION FORM COVER SHEET TRADEMARKS ONLY

TO: The Commissioner of Patents and Trademarks: Please record the attached original document(s) or copy(ies).

Submission Type

New 9-12-00

Resubmission (Non-Recordation)
Document ID #

Correction of PTO Error
Reel # Frame #

Corrective Document
Reel # Frame #

Conveyance Type

Assignment License

Security Agreement Nunc Pro Tunc Assignment
Effective Date
Month Day Year

Merger

Change of Name

Other

Conveying Party

Mark if additional names of conveying parties attached

Execution Date
Month Day Year
08/31/2000

Name

Formerly

Individual General Partnership Limited Partnership Corporation Association

Other

Citizenship/State of Incorporation/Organization

Receiving Party

Mark if additional names of receiving parties attached

Name

DBA/AKA/TA

Composed of

Address (line 1)

Address (line 2)

Address (line 3)
City State/Country Zip Code

Individual General Partnership Limited Partnership If document to be recorded is an assignment and the receiving party is not domiciled in the United States, an appointment of a domestic representative should be attached. (Designation must be a separate document from Assignment.)

Corporation Association

Other

Citizenship/State of Incorporation/Organization

09/25/2000 MTHAI1 00000353 1133387
01 FC:481

FOR OFFICE USE ONLY

40.00 OP

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Mail documents to be recorded with required cover sheet(s) information to:
Commissioner of Patents and Trademarks, Box Assignments, Washington, D.C. 20231

TRADEMARK
REEL: 002147 FRAME: 0302

Domestic Representative Name and Address

Enter for the first Receiving Party only.

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

Correspondent Name and Address

Area Code and Telephone Number

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

Pages

Enter the total number of pages of the attached conveyance document including any attachments.

#

Trademark Application Number(s) or Registration Number(s)

Mark if additional numbers attached

Enter either the Trademark Application Number or the Registration Number (DO NOT ENTER BOTH numbers for the same property).

Trademark Application Number(s)

Registration Number(s)

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Number of Properties

Enter the total number of properties involved.

#

Fee Amount

Fee Amount for Properties Listed (37 CFR 3.41):

\$

Method of Payment:

Enclosed

Deposit Account

Deposit Account

(Enter for payment by deposit account or if additional fees can be charged to the account.)

Deposit Account Number:

#

Authorization to charge additional fees:

Yes

No

Statement and Signature

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document. Charges to deposit account are authorized, as indicated herein.

Angela C. Woodbury

Name of Person Signing



Signature

12 September 2000

Date Signed

RECORDATION FORM COVER SHEET
CONTINUATION
TRADEMARKS ONLY

FORM PTO-1618C
Expires 06/30/99
OMB 0651-0027

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

Conveying Party

Enter Additional Conveying Party

Mark if additional names of conveying parties attached

Execution Date
Month Day Year

Name

Formerly

Individual General Partnership Limited Partnership Corporation Association

Other

Citizenship State of Incorporation/Organization

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AGREEMENT CONCERNING TRADEMARKS AND RELATED MATTERS

STATE OF TEXAS §

COUNTY OF TRAVIS §

Night Hawk Restaurants, Inc. ("Original Night Hawk"), a Texas corporation, formerly known as Night Hawk Foods, Inc., Night Hawk Frozen Foods, Inc. ("New Night Hawk"), a Texas corporation, and Frisco Shop, Inc. ("Frisco Shop"), a Texas corporation, hereby contract, agree, stipulate and covenant as follows, in consideration of the payment and the various other undertakings and concessions set forth or referred to herein:

STIPULATIONS

1. Original Night Hawk sold to New Night Hawk on November 15, 1989, the business known as Original Night Hawk's "Frozen Foods Division," such business involving the production and sales of frozen foods and other food products to wholesalers, restaurants, grocers and others. Incident to such sale, Original Night Hawk sold and transferred to New Night Hawk the trade names, trademarks, service marks, logos, recipes and other proprietary rights listed or described on Exhibit "A" attached hereto and made apart hereof, all of which are collectively referred to herein as the Marks. Contemporaneously with such sale and transfer, Original Night Hawk obtained from New Night Hawk an irrevocable, exclusive, perpetual, royalty free license to use the Marks, and to sublicense others to use the Marks, in connection with the conduct of restaurant businesses, all as shown by a certain Sale and License Bank Agreement between Original Night Hawk and New Night Hawk dated November 15, 1989.

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2. Original Night Hawk sold to Frisco Shop on August 1, 1994, a restaurant known as the Frisco Shop or the Night Hawk Frisco Shop, situated as 5819 Burnet Road, in Austin, Travis County, Texas. Incident to such sale, Original Night Hawk granted to Frisco Shop an irrevocable, perpetual, non-exclusive, royalty free sublicense to use the Marks, anywhere in the world, and granted to Frisco Shop an irrevocable, perpetual, non-exclusive, royalty free license to use, anywhere in the world, the rights and interests identified on Exhibit "B" attached hereto and made a part hereof ("Original Night Hawk's Marks"), all as shown by, and as more particularly provided in, a certain Trademark License and Sublicense Agreement between Original Night Hawk and Frisco Shop dated August 1, 1994.

3. Original Night Hawk has ceased operations and intends to terminate its corporate existence by dissolution effective August 31, 2000. In anticipation of such dissolution, the parties hereto desire and intend that Frisco Shop, Inc. acquire ownership of a trademark described herein for use by Frisco Shop in the conduct of restaurant business and that there be no ongoing relationship between and among New Night Hawk, Frisco Shop and Original Night Hawk, or the former shareholder of Original Night Hawk, except as specifically provided herein.

OTHER AGREEMENTS

1. Frisco Shop has paid to Original Night Hawk the sum of Ten Thousand and No/100 Dollars (\$10,000.00) in cash, receipt of which is hereby acknowledged and for which no lien or security interest is retained, either express or implied. Such \$10,000 payment shall be the

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exclusive property of Original Night Hawk and New Night Hawk shall have no right or interest in or to any of such payment.

2. New Night Hawk hereby sells, transfers and assigns to Frisco Shop, and Frisco Shop hereby purchases from New Night Hawk, all of New Night Hawk's right, title and interest in the trademark registered on the Principal Register with the U.S. Patent Office as registration number 1133387 (being one of the Marks), together with all goodwill associated with such trademark, which trademark is more particularly described on Exhibit "C" attached hereto and made a part hereof, and which involves use in connection with restaurant services. **The trademark described on Exhibit "C" is transferred "AS IS" without any warranties expressed or implied.** Other than as provided in the Sale and License Back Agreement, New Night Hawk has not conveyed its rights in the trademark described on Exhibit C to any person or entity. Frisco Shop covenants and agrees that it will not use the trademark described on Exhibit "C" other than in connection with the operation of a restaurant business and it will prohibit any person or entity obtaining rights in such mark from using such mark in any business other than the operation of a restaurant business.

3. Original Night Hawk hereby sells, transfers and assigns to Frisco Shop, and Frisco Shop hereby purchases from Original Night Hawk, all of Original Night Hawk's right, title and interest, if any, in and to the trademark identified on Exhibit "C", together with all of Original Night Hawk's right, title and interest, if any, to the goodwill associated with such trademark.

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TRADEMARK

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4. Original Night Hawk hereby sells, transfers and assigns to Frisco Shop, and Frisco Shop hereby purchases from Original Night Hawk, the Original Night Hawk's Marks described in Exhibit "B", together with all goodwill associated therewith; provided that none of the Marks are included in the foregoing.

5. The Sale and License Bank Agreement between Original Night Hawk and New Night Hawk which is referred to above and the Trademark License and Sublicense Agreement between Original Night Hawk and Frisco Shop which is referred to above, insofar as the same create ongoing contractual rights and obligations between and among the parties, are hereby terminated and rescinded, the effect of such termination and rescission including without limitation the following:

- (a) Original Night Hawk is no longer entitled to use the Marks or to sublicense others to use the Marks;
- (b) Neither Original Night Hawk nor Frisco Shop is entitled to enforce quality controls with regard to the operation of New Night Hawk's business, including New Night Hawk's use of the Marks;
- (c) Neither New Night Hawk nor Original Night Hawk is entitled to enforce quality controls with regard to Frisco Shop's operation of its business;
- (d) No party hereto shall be obligated to give any other party notice of any assignment, sale or transfer of its business, assets, or any portion thereof;
- (e) No party hereto has any duty to any other party hereto to protect any trademarks or proprietary rights owned by such first party against infringement by third parties;
- (f) Frisco Shop, being the owner of the trademark described on Exhibit "C" hereto, is no longer sublicensed to use the Marks; provided, however, that neither New Night Hawk nor Original Night Hawk shall attempt to prevent, restrict or limit (i) Frisco Shop's reference on its menu used in connection with its restaurant

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business to "Top Chop't" or "Top Chop't Steaks," or (ii) Frisco Shop's use in connection with its restaurant business of the recipe or process by which Night Hawk Top Chop't Steaks are produced; and

(g) Except as provided in this Agreement, Frisco Shop is not restricted to use of the trademark described on Exhibit "C" hereto in conjunction with the word "Frisco" or some variation thereof.

6. Original Night Hawk represents and warrants that it has not sublicensed any party other than Frisco Shop to use the Marks.

Notwithstanding anything contained herein, nothing in this Agreement shall affect in any way the conveyance of the Marks and Proprietary Rights (as defined in the Sale and License Back Agreement) to New Night Hawk pursuant to the Sale and License Back Agreement.

7. Except for the trademark described in Exhibit "C", and Frisco Shop's rights under Section 5(f) above, Frisco Shop covenants that it shall not, at any time in the future, use any of the Marks or other rights described on Exhibit "A" and acknowledges that it has no rights to such Marks except for the transfer of the Mark described on Exhibit "C" hereto and Frisco Shop's rights under Section 5(f) above. Frisco Shop covenants that it shall not, at any time in the future, use any of the marks described on Exhibits "B", or "C" hereto, in the conduct of a business which produces or sells (i) frozen foods; or (ii) other food products to wholesalers, restaurants or grocers; or grant to any other party the right to use said marks and other rights in such manner, anywhere in the world.

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8. New Night Hawk covenants that it shall not, at any time in the future, use the Marks in the conduct of a restaurant business or grant to any other party the right to use the Marks in the conduct of a restaurant business, anywhere in the world.

9. Frisco Shop acknowledges and agrees that New Night Hawk owns the rights to the Marks other than the trademark described on Exhibit "C" and that the mark "Top Chop't" is a registered mark of New Night Hawk bearing U.S. Patent Office registration number 1771651.

10. Each party hereto hereby fully, finally and forever releases each other party hereto, as well as such released party's officers, directors, shareholders, owners, agents, employees, representatives and attorneys, from any and all claims, demands, causes of action, costs and fees which are based upon in any manner, or arise in any manner from, events which have occurred to date involving such released party's conduct of its business, or its use of any marks or rights described or referred to on any Exhibit hereto, or its acquisition, sale, or ownership of its business, or its communications with any other party hereto, or the level of quality maintained by it, or any alleged breach of contract between any of the parties, without regard to whether such claim is known or unknown or has been asserted heretofore. Each party represents and warrants to the other party that it is not aware of (i) any claims, demands or causes of action that it has against another party that is not effectively released hereby; or (ii) facts or occurrences that could lead to a claim, demand or cause of action against another party that is not effectively released hereby.

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11. If any party hereto brings suit against an infringer of any mark or other right described on an Exhibit hereto, the other parties hereto shall cooperate fully, at the expense of the party bringing suit, and at the expense of the party bringing suit shall make available copies of records, specimens and the like, specified by the party bringing suit, which are in the possession of another party. Notwithstanding the foregoing, no party other than the party bringing suit shall be obligated to incur any expense or liability in performing its obligations hereunder, and the party bringing suit shall reimburse the other parties for reasonable personnel costs associated with performing their obligations hereunder.

12. Each party hereto covenants that it shall execute any and all such other documents as may reasonably be required in order to give effect to this agreement, including, with limitation, any instruments of transfer or assignment which are required by the U.S. Patent Office to reflect the change in ownership of the trademark identified on Exhibit "C" hereto; provided that no party shall be obligated to bear any expense or incur any liability in connection with such actions.

13. This agreement is binding upon the successors and assigns of the parties, as well as the parties themselves.

14. This agreement may be executed in counterparts, all of which together shall constitute a single original.

15. This written agreement reflects the entire agreement of the parties. There are no verbal agreements between or among the parties.

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EXECUTED effective the 3/ day of August, 2000.

NIGHT HAWK FROZEN FOODS, INC.
a Texas corporation

By: *[Signature]*

Charles H. Hill
(name typed or printed)

Its: President

NIGHT HAWK RESTAURANTS, INC.
a Texas corporation

By: *[Signature]*

Leta Jane Akin Tinstman
(name typed or printed)

Its: President

FRISCO SHOP, INC.
a Texas corporation

By: *[Signature]*

R. Harry Akin
(name typed or printed)

Its: vice president

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EXHIBIT "A"

The term "Marks" shall mean all trademarks, trade names, service marks which Night Hawk Foods, Inc. owns or holds an interest in regardless of whether such marks are registered, including without limitation:

- "Night Hawk" -- U.S. registration # 1460246;
- "The Night Hawk" with stylized hawk design -- U.S. registration # 0351590;
- "The Night Hawk" with hawk design -- U.S. registration # 113387;
- "Night Hawk" -- registered in Taiwan;
- "Night Hawk" -- registered in Japan;
- "Night Hawk's";
- "Chicken Fajita Feast";
- "Beef Fajita Feast";
- "Party Time Patties";
- "Top Chop't";
- "Top Chop't Steaks";
- "Top Chop't Steak Dinner";
- "Steak n' Taters";
- "Steak n' Beans";
- "Steak n' Corn";
- "Taste of Texas Dinner";
- "Texas Sirloin";

But specifically excluding "Frisco" or "The Frisco", "Down South" and the Flying Steer logo.

The term "Proprietary Rights" shall mean all proprietary rights in all recipes, food processing and packaging techniques, and all related "know how", relating to the frozen foods business.

Specifically excluded from the term Proprietary Rights are those Proprietary Rights related to Night Hawk cheese spread and chili.

08/23/00 WED 09:30 [TX/RX NO 6651]

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EXHIBIT "B"

All trade names, trademarks, service marks, logos, recipes, trade secrets and other proprietary rights owned by Original Night Hawk and used in the conduct of a business known as the Frisco Shop or the Night Hawk Frisco Shop at 5819 Burnet Road, in the City of Austin, Travis County, Texas, 78756, in its restaurant business, including without limitation the following:

1. "Down South" or "Down South Hamburger;"
2. Flying Steer logo;
3. Night Hawk chili;
4. Night Hawk enchiladas to the extent that the same does not relate to the frozen food business; and
5. Night Hawk cheese spread.

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