

TRADEMARK ASSIGNMENT COVER SHEET

Electronic Version v1.1
Stylesheet Version v1.2

ETAS ID: TM311463

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|---|-------------------------------------|-----------------------|---------------------------------|
| SUBMISSION TYPE: | NEW ASSIGNMENT | | |
| NATURE OF CONVEYANCE: | SECURITY INTEREST | | |
| CONVEYING PARTY DATA | | | |
| Name | Formerly | Execution Date | Entity Type |
| NG Acquisition, LLC | | 07/17/2014 | LIMITED LIABILITY COMPANY: OHIO |
| RECEIVING PARTY DATA | | | |
| Name: | Transportation Alliance Bank Inc. | | |
| Doing Business As: | TAB Bank | | |
| Street Address: | 4185 Harrison Blvd. | | |
| Internal Address: | Suite 200 | | |
| City: | Ogden | | |
| State/Country: | UTAH | | |
| Postal Code: | 84403 | | |
| Entity Type: | Industrial Loan Bank: UTAH | | |
| PROPERTY NUMBERS Total: 2 | | | |
| Property Type | Number | Word Mark | |
| Registration Number: | 4124313 | NUTTY GUYS | |
| Registration Number: | 3977295 | NUTTY GUYS | |
| CORRESPONDENCE DATA | | | |
| Fax Number: | 6023826070 | | |
| <i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent using a fax number, if provided; if that is unsuccessful, it will be sent via US Mail.</i> | | | |
| Phone: | 602-382-6572 | | |
| Email: | krigby@swlaw.com | | |
| Correspondent Name: | Eric Nielsen, Snell & Wilmer L.L.P. | | |
| Address Line 1: | 400 East Van Buren | | |
| Address Line 2: | One Arizona Center | | |
| Address Line 4: | Phoenix, ARIZONA 85004-2202 | | |
| ATTORNEY DOCKET NUMBER: | 63530.00005 | | |
| NAME OF SUBMITTER: | Eric Nielsen | | |
| SIGNATURE: | /Eric Nielsen/ | | |
| DATE SIGNED: | 07/22/2014 | | |
| Total Attachments: 9 | | | |

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PATENT AND TRADEMARK SECURITY AGREEMENT

This Patent and Trademark Security Agreement (this "Agreement"), dated as of July ____, 2014, is made by and between **NG Acquisition, LLC**, an Ohio limited liability company, having a business location at the address set forth below next to its signature ("Borrower"), and **Transportation Alliance Bank Inc. dba TAB Bank**, a Utah industrial loan bank (together with its participants, successors and assigns, "Lender"), having a business location at the address set forth below next to its signature.

Recitals

Pledgor, International Confections Company, LLC, an Ohio limited liability company ("International" and together with Pledgor, "Borrower") and Lender are parties to a Loan and Security Agreement (as amended, modified, supplemented or restated from time to time, the "Loan Agreement") dated October 4, 2013, setting forth the terms on which Lender may now or hereafter extend credit to or for the account of Borrower.

As a condition to extending credit to or for the account of Borrower, Lender has required the execution and delivery of this Agreement by Pledgor.

ACCORDINGLY, in consideration of the mutual covenants contained in the Loan Documents and herein, the parties hereby agree as follows:

1. Definitions. All terms defined in the Recitals hereto or in the Loan Agreement that are not otherwise defined herein shall have the meanings given to them in the Loan Agreement. In addition, the following terms have the meanings set forth below:

"Patents" means all of Pledgor's right, title and interest in and to patents or applications for patents, fees or royalties with respect to each, and including without limitation the right to sue for past infringement and damages therefor, and licenses thereunder, all as presently existing or hereafter arising or acquired, including without limitation the patents listed on **Exhibit A**.

"Security Interest" has the meaning given in Section 2.

"Trademarks" means all of Pledgor's right, title and interest in and to: (i) trademarks, service marks, collective membership marks, registrations and applications for registration for each, and the respective goodwill associated with each, (ii) licenses, fees or royalties with respect to each, (iii) the right to sue for past, present and future infringement, dilution and damages therefor, and (iv) licenses thereunder, all as presently existing or hereafter arising or acquired, including, without limitation, the marks listed on **Exhibit B**.

2. Security Interest. Pledgor hereby irrevocably pledges and assigns to, and grants Lender a security interest (the "Security Interest") with power of sale to the extent permitted by law, in the Patents and in the Trademarks to secure payment of the Obligations. As set forth in the Loan Agreement, the Security Interest is coupled with a security interest in substantially all

of the personal property of Pledgor. This Agreement grants only the Security Interest herein described, is not intended to and does not affect any present transfer of title of any trademark registration or application and makes no assignment and grants no right to assign or perform any other action with respect to any intent to use trademark application, unless such action is permitted under 15 U.S.C. § 1060.

3. Representations, Warranties and Agreements. Pledgor represents, warrants and agrees as follows:

Existence; Authority. Pledgor is a duly organized limited liability company, validly existing under the laws of its state of organization, and this Agreement has been duly authorized by all necessary action on the part of Pledgor.

Patents. **Exhibit A** accurately lists all Patents owned or controlled by Pledgor as of the date hereof, or to which Pledgor has a right as of the date hereof to have assigned to it, and accurately reflects the existence and status of applications and letters patent pertaining to the Patents as of the date hereof. If after the date hereof, Pledgor owns, controls or has a right to have assigned to it any Patents not listed on **Exhibit A**, or if **Exhibit A** ceases to accurately reflect the existence and status of applications and letters patent pertaining to the Patents, then Pledgor shall within 60 days provide written notice to Lender with a replacement **Exhibit A**, which upon acceptance by Lender shall become part of this Agreement.

Trademarks. **Exhibit B** accurately lists all Trademarks owned or controlled by Pledgor as of the date hereof and accurately reflects the existence and status of Trademarks and all applications and registrations pertaining thereto as of the date hereof. If after the date hereof, Pledgor owns or controls any Trademarks not listed on **Exhibit B** (other than common law marks which are not material to Pledgor's or any Affiliate's business(es)), or if **Exhibit B** ceases to accurately reflect the existence and status of applications and registrations pertaining to the Trademarks, then Pledgor shall promptly provide written notice to Lender with a replacement **Exhibit B**, which upon acceptance by Lender shall become part of this Agreement.

Affiliates. As of the date hereof, no Affiliate owns, controls, or has a right to have assigned to it any items that would, if such item were owned by Pledgor, constitute Patents or Trademarks. If after the date hereof any Affiliate owns, controls, or has a right to have assigned to it any such items, then Pledgor shall promptly either: (i) cause such Affiliate to assign all of its rights in such item(s) to Pledgor; or (ii) notify Lender of such item(s) and cause such Affiliate to execute and deliver to Lender a patent and trademark security agreement substantially in the form of this Agreement.

Title. Pledgor has absolute title to each Patent and each Trademark listed on **Exhibits A** and **B**, free and clear of all Liens except Permitted Liens. Pledgor (i) will have, at the time Pledgor acquires any rights in Patents or Trademarks hereafter arising, absolute title to each such Patent or Trademark free and clear of all Liens except Permitted Liens, and (ii) will keep all Patents and Trademarks free and clear of all Liens except Permitted Liens.

No Sale. Except as permitted in the Loan Agreement, Pledgor will not assign, transfer, encumber or otherwise dispose of the Patents or Trademarks, or any interest therein, without Lender's prior written consent.

Defense. Pledgor will at its own expense and using commercially reasonable efforts, protect and defend the Patents and Trademarks against all claims or demands of all Persons other than those holding Permitted Liens.

Maintenance. Pledgor will at its own expense maintain the Patents and the Trademarks to the extent reasonably advisable in its business including, but not limited to, filing all applications to obtain letters patent or trademark registrations and all affidavits, maintenance fees, annuities, and renewals possible with respect to letters patent, trademark registrations and applications therefor. Pledgor covenants that it will not abandon nor fail to pay any maintenance fee or annuity due and payable on any Patent or Trademark, nor fail to file any required affidavit or renewal in support thereof, without first providing Lender: (i) sufficient written notice, of at least 30 days, to allow Lender to timely pay any such maintenance fees or annuities which may become due on any Patents or Trademarks, or to file any affidavit or renewal with respect thereto, and (ii) a separate written power of attorney or other authorization to pay such maintenance fees or annuities, or to file such affidavit or renewal, should such be necessary or desirable.

Lender's Right to Take Action. If Pledgor fails to perform or observe any of its covenants or agreements set forth in this Section 3, or if Pledgor notifies Lender that it intends to abandon a Patent or Trademark, Lender may (but need not) perform or observe such covenant or agreement or take steps to prevent such intended abandonment on behalf and in the name, place and stead of Pledgor (or, at Lender's option, in Lender's own name) and may (but need not) take any and all other actions which Lender may reasonably deem necessary to cure or correct such failure or prevent such intended abandonment.

Costs and Expenses. Except to the extent that the effect of such payment would be to render any loan or forbearance of money usurious or otherwise illegal under any applicable law, Pledgor shall pay Lender on demand the amount of all moneys expended and all costs and expenses (including reasonable attorneys' fees and disbursements) incurred by Lender in connection with or as a result of Lender's taking action under subsection (i) or exercising its rights under Section 6, together with interest thereon from the date expended or incurred by Lender at the Default Rate.

Power of Attorney. To facilitate Lender's taking action under subsection (i) and exercising its rights under Section 6, Pledgor hereby irrevocably appoints (which appointment is coupled with an interest) Lender, or its delegate, as the attorney-in-fact of Pledgor with the right (but not the duty) from time to time to create, prepare, complete, execute, deliver, endorse or file, in the name and on behalf of Pledgor, any and all instruments, documents, applications, financing statements, and other agreements and writings required to be obtained, executed, delivered or endorsed by Pledgor under this Section 3, or, necessary for Lender, after an Event of Default, to enforce or use the Patents or Trademarks or to grant or issue any exclusive or non-exclusive license under the Patents or Trademarks to any third party, or to sell, assign, transfer, pledge, encumber or otherwise transfer title in or dispose of the Patents or Trademarks to any

third party. Pledgor hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof. The power of attorney granted herein shall terminate upon the termination of the Loan Agreement as provided therein and the payment and performance of all Obligations.

4. Pledgor's Use of the Patents and Trademarks. Pledgor shall be permitted to control and manage the Patents and Trademarks, including the right to exclude others from making, using or selling items covered by the Patents and Trademarks and any licenses thereunder, in the same manner and with the same effect as if this Agreement had not been entered into, so long as no Event of Default occurs and remains uncured.

5. Events of Default. Each of the following occurrences shall constitute an event of default under this Agreement (herein called "Event of Default"): (a) an Event of Default, as defined in the Loan Agreement, shall occur; or (b) Pledgor shall fail promptly to observe or perform any covenant or agreement herein binding on it; or (c) any of the representations or warranties contained in Section 3 shall prove to have been incorrect in any material respect when made.

6. Remedies. Upon the occurrence of an Event of Default and at any time thereafter, Lender may, at its option, take any or all of the following actions:

Lender may exercise any or all remedies available under the Loan Agreement.

Lender may sell, assign, transfer, pledge, encumber or otherwise dispose of the Patents and Trademarks.

Lender may enforce the Patents and Trademarks and any licenses thereunder, and if Lender shall commence any suit for such enforcement, Pledgor shall, at the request of Lender, do any and all lawful acts and execute any and all proper documents required by Lender in aid of such enforcement.

7. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Utah (other than conflict laws).

8. Severability of Invalid Provisions. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction only, be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Agreement, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

9. Duplicate Originals; Counterpart Execution. Two or more duplicate originals of this Agreement may be signed by the parties, each duplicate of which shall be an original but all of which together shall constitute one and the same instrument. This Agreement may be executed in several counterparts, without the requirement that all parties sign each counterpart. Each of such counterparts shall be an original, but all counterparts together shall constitute one and the same instrument. The delivery of an executed counterpart of a signature page to this Agreement by telecopier or other electronic means shall be effective as delivery of a manually executed counterpart of this Agreement. Pledgor shall promptly send its original of each counterpart to Lender, but Pledgor's failure to do so shall not affect the validity, enforceability, and binding

effect of this Agreement. Lender may execute this Agreement if appropriate for the purpose of filing, but the failure of Lender to execute this Agreement shall not affect or impair the validity or effectiveness of this Agreement.

10. Jury Trial Waiver. EACH OF PLEDGOR AND LENDER HEREBY IRREVOCABLY WAIVES ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION, PROCEEDING, SUIT, DISPUTE, CONTROVERSY, CLAIM OR COUNTERCLAIM, WHETHER IN CONTRACT OR IN TORT, AT LAW OR IN EQUITY, ARISING OUT OF, BASED ON OR IN ANYWAY RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT.

11. Miscellaneous. This Agreement can be waived, modified, amended, terminated or discharged, and the Security Interest can be released, only explicitly in a writing signed by Lender. A waiver signed by Lender shall be effective only in the specific instance and for the specific purpose given. No course of dealing or delay or failure to assert any Event of Default shall constitute a waiver of that Event of Default or of any prior or subsequent Event of Default. All rights and remedies of Lender are cumulative and not exclusive of any other rights or remedies, and shall be in addition to every other right, power, and remedy that Lender may have, whether specifically granted herein or hereafter existing at law, in equity, or by statute. Any and all such rights and remedies may be exercised from time to time and as often and in such order as Lender may deem expedient in its sole discretion. All notices to be given to Pledgor under this Agreement shall be given in the manner and with the effect provided in the Loan Agreement. Lender shall not be obligated to preserve any rights Pledgor may have against prior parties, to realize on the Patents and Trademarks at all or in any particular manner or order, or to apply any cash proceeds of Patents and Trademarks in any particular order of application. This Agreement shall be binding upon and inure to the benefit of Pledgor and Lender and their respective participants, successors and assigns and shall take effect when signed by Pledgor and delivered to Lender, and Pledgor waives notice of Lender's acceptance hereof. A carbon, photographic or other reproduction of this Agreement or of any financing statement signed by Pledgor shall have the same force and effect as the original for all purposes of a financing statement. All representations and warranties contained in this Agreement shall survive the execution, delivery and performance of this Agreement and the creation and payment of the Obligations. PURSUANT TO UTAH CODE SECTION 25-5-4, PLEDGOR IS NOTIFIED THAT THE LOAN DOCUMENTS ARE A FINAL EXPRESSION OF THE AGREEMENT AMONG LENDER, PLEDGOR AND THE OTHER PARTIES THERETO AND THE LOAN DOCUMENTS MAY NOT BE CONTRADICTED BY EVIDENCE OF ANY ALLEGED ORAL AGREEMENT.

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EXHIBIT A

ISSUED PATENTS

None.

UNITED STATES PATENT APPLICATIONS

None.

FOREIGN ISSUED PATENTS

None.

FOREIGN PATENT APPLICATIONS

None.

EXHIBIT B

**UNITED STATES ISSUED TRADEMARKS, SERVICE MARKS AND COLLECTIVE
MEMBERSHIP MARKS**

Word Mark: NUTTY GUYS AND Mark

Goods and Services, IC 029, US 046 G & S: Pre-packaged and bulk processed, candied and dried foods, namely, dried fruit, nuts, seasoned nuts, candied nuts, processed edible seeds. FIRST USE: 20000101.
FIRST USE IN COMMERCE: 20000101. Mark Drawing Code: (3) DESIGN PLUS WORDS,
LETTERS, AND/OR NUMBERS

Serial Number: 85267158

Filing Date: March 15, 2011

Current Basis: 1A; Original Filing Basis: 1A

Published for Opposition: January 24, 2012

Registration Number: 4124313

Registration Date: April 10, 2012

Owner: (REGISTRANT) Nutty Guys, Inc. CORPORATION UTAH 3338 West 500 South, Ste. A Salt
Lake City UTAH 84104

Word Mark NUTTY GUYS
Goods and Services IC 035, US 100 101 102, G & S: Reseller services, namely, distributorship services in the field of pre-packaged and bulk snack foods, candy, confections, dried fruit, prepared and raw nuts, mixes, granola, edible seeds and snack mixes. FIRST USE: 20030200.
FIRST USE IN COMMERCE: 20030200

Standard Characters Claimed

Mark Drawing Code (4) STANDARD CHARACTER MARK

Serial Number 85160057

Filing Date October 25, 2010

Current Basis 1A

Original Filing Basis 1A

Published for Opposition March 29, 2011

Registration Number 3977295

Registration Date June 14, 2011