

TRADEMARK ASSIGNMENT COVER SHEET

Electronic Version v1.1
Stylesheet Version v1.2

ETAS ID: TM319150

SUBMISSION TYPE:	NEW ASSIGNMENT		
NATURE OF CONVEYANCE:	SECURITY INTEREST		
CONVEYING PARTY DATA			
Name	Formerly	Execution Date	Entity Type
Fresh Produce Holdings, LLC		09/26/2014	LIMITED LIABILITY COMPANY: DELAWARE
RECEIVING PARTY DATA			
Name:	Wells Fargo Bank, National Association		
Street Address:	1740 Broadway		
Internal Address:	MAC C7300-210		
City:	Denver		
State/Country:	COLORADO		
Postal Code:	80274		
Entity Type:	National Association: UNITED STATES		
PROPERTY NUMBERS Total: 7			
Property Type	Number	Word Mark	
Registration Number:	3522758	MARY ELLEN	
Registration Number:	3319990	EXTRA FRESH	
Registration Number:	3319989	EXTRA FRESH	
Registration Number:	2997397	FRESH PRODUCE	
Registration Number:	3582957	ME MARY ELLEN	
Registration Number:	1870145	FRESH PRODUCE	
Registration Number:	1875318	FRESH PRODUCE SPORTSWEAR	
CORRESPONDENCE DATA			
Fax Number:	4352143811		
<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:	435-214-3807		
Email:	mjones@markuswilliams.com		
Correspondent Name:	Melinda Jones		
Address Line 1:	2750 Rasmussen Road, Suite H-104		
Address Line 4:	Park City, UTAH 84098		
ATTORNEY DOCKET NUMBER:	10918.577		
NAME OF SUBMITTER:	Melinda Jones		

CH \$190.00 3522758

SIGNATURE:	/mej/
DATE SIGNED:	10/06/2014
Total Attachments: 12 source=Patent and Trademark Security Agreement - Fresh Produce Holdings, Inc#page1.tif source=Patent and Trademark Security Agreement - Fresh Produce Holdings, Inc#page2.tif source=Patent and Trademark Security Agreement - Fresh Produce Holdings, Inc#page3.tif source=Patent and Trademark Security Agreement - Fresh Produce Holdings, Inc#page4.tif source=Patent and Trademark Security Agreement - Fresh Produce Holdings, Inc#page5.tif source=Patent and Trademark Security Agreement - Fresh Produce Holdings, Inc#page6.tif source=Patent and Trademark Security Agreement - Fresh Produce Holdings, Inc#page7.tif source=Patent and Trademark Security Agreement - Fresh Produce Holdings, Inc#page8.tif source=Patent and Trademark Security Agreement - Fresh Produce Holdings, Inc#page9.tif source=Patent and Trademark Security Agreement - Fresh Produce Holdings, Inc#page10.tif source=Patent and Trademark Security Agreement - Fresh Produce Holdings, Inc#page11.tif source=Patent and Trademark Security Agreement - Fresh Produce Holdings, Inc#page12.tif	

PATENT AND TRADEMARK SECURITY AGREEMENT

This Patent and Trademark Security Agreement (this “Agreement”), dated as of September 26, 2014, is made by and between FRESH PRODUCE HOLDINGS, LLC, a Delaware limited liability company having a business location at the address set forth below next to its signature (“Borrower”), and WELLS FARGO BANK, NATIONAL ASSOCIATION (“Lender”), having a business location at the address set forth below next to its signature.

Recitals

A. Borrower, certain of Borrower’s Affiliates and Lender are parties to a Credit and Security Agreement (as amended, supplemented, restated or otherwise modified from time to time, the “Credit Agreement”) dated the same date as this Agreement, setting forth the terms on which Lender may now or hereafter extend credit to or for the account of Borrower and certain of Borrower’s Affiliates.

B. As a condition to extending credit to or for the account of Borrower and certain of Borrower’s Affiliates, Lender has required the execution and delivery of this Agreement by Borrower.

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 Credit Agreement that are not otherwise defined herein shall have the meanings given to them in the Credit Agreement. In addition, the following terms have the meanings set forth below:

“Claim” has the meaning given in Section 8(c).

“Patents” means all of Borrower’s right, title and interest in patents and patent applications, including (a) the patents and patent applications listed on Exhibit A, (b) all continuations, divisionals, continuations-in-part, re-examinations, reissues, and renewals thereof and improvements thereon, (c) all licenses with respect thereto and all income, royalties, damages and payments now and hereafter due or payable under and with respect thereto, including payments under all licenses entered into in connection therewith and damages and payments for past, present, or future infringements thereof, (d) the right to sue for past, present, and future infringements thereof, and (e) all of Borrower’s rights corresponding thereto throughout the world.

“Security Interest” has the meaning given in Section 2.

“Trademarks” means all of Borrower’s right, title and interest in and to trademarks, trade names, registered trademarks, trademark applications, service marks, registered service marks and service mark applications, including (a) the trade names, registered trademarks, trademark applications, registered service marks and service mark applications listed on Exhibit B, (b) all renewals thereof, (c) all licenses with respect thereto and all income, royalties, damages and

payments now and hereafter due or payable under and with respect thereto, including payments under all licenses entered into in connection therewith and damages and payments for past or future infringements or dilutions thereof, (d) the right to sue for past, present and future infringements and dilutions thereof, (e) the goodwill of Borrower's business symbolized by the foregoing or connected therewith, and (f) all of Borrower's rights corresponding thereto throughout the world.

2. Security Interest. Borrower 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 Credit Agreement, the Security Interest is coupled with a security interest in substantially all of the personal property of Borrower. 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. Borrower represents, warrants and agrees as follows:

(a) ***Existence; Authority.*** Borrower is duly organized and existing and in good standing under the laws of the jurisdiction of its organization. The execution, delivery, and performance by Borrower of this Agreement have been duly authorized by all necessary action on the part of Borrower.

(b) ***Patents.*** Exhibit A accurately lists all Patents owned or controlled by Borrower as of the date hereof, or to which Borrower 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, Borrower 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 Borrower 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.

(c) ***Trademarks.*** Exhibit B accurately lists all Trademarks owned or controlled by Borrower 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; provided, however, that Exhibit B need not list common law marks (i.e., Trademarks for which there are no applications or registrations) which are not material to Borrower's or any Affiliate's business(es). If after the date hereof, Borrower owns or controls any Trademarks not listed on Exhibit B (other than common law marks which are not material to Borrower'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 Borrower shall within 60 days provide written notice to Lender

with a replacement Exhibit B, which upon acceptance by Lender shall become part of this Agreement.

(d) **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 Borrower, 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 Borrower shall promptly either: (i) cause such Affiliate to assign all of its rights in such item(s) to Borrower; 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.

(e) **Title; Validity.** Borrower has absolute title to each Patent and each Trademark listed on Exhibits A and B, free and clear of all Liens except Permitted Liens. Borrower (i) will have, at the time Borrower 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. To Borrower's knowledge after reasonable inquiry, all registered Trademarks and issued Patents that are owned by Borrower and necessary in the conduct of its or any of its Affiliates' business are valid, subsisting and enforceable and in compliance with all legal requirements, filings, and payments and other actions that are required to maintain such registered Trademarks and issued Patents in full force and effect.

(f) **No Sale.** Except as permitted under the Credit Agreement, Borrower will not assign, transfer, encumber or otherwise dispose of the Patents or Trademarks, or any interest therein, without Lender's prior written consent.

(g) **Defense.** Except as permitted under the Credit Agreement, Borrower shall have the duty, with respect to the Patents and Trademarks necessary in the conduct of Borrower's or any of its Affiliates' business, to protect and diligently enforce and defend at such Borrower's expense the Patents and Trademarks, including (i) to diligently enforce and defend, including promptly suing for infringement, misappropriation, or dilution and to recover any and all damages for such infringement, misappropriation, or dilution, and filing for opposition, interference, and cancellation against conflicting Intellectual Property rights of any Person, (ii) to prosecute diligently any trademark application or service mark application that is part of the Trademarks pending as of the date hereof or hereafter until the termination of this Agreement, (iii) to prosecute diligently any patent application that is part of the Patents pending as of the date hereof or hereafter until the termination of this Agreement, and (iv) to take all reasonable and necessary action to preserve and maintain all of Borrower's Trademarks and Patents and its rights therein, including paying all maintenance fees and filing of applications for renewal, affidavits of use, and affidavits of noncontestability.

(h) **Maintenance.** Except as permitted under the Credit Agreement, Borrower will at its own expense maintain the Patents and the Trademarks to the extent reasonably advisable in its business including 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. Except as permitted under the Credit Agreement, Borrower 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.

(i) ***Lender's Right to Take Action.*** If Borrower fails to perform or observe any of its covenants or agreements set forth in this Section 3, and if such failure continues for a period of ten (10) calendar days after Lender gives Borrower written notice thereof (or, in the case of the agreements contained in subsection (h), immediately upon the occurrence of such failure, without notice or lapse of time), or if Borrower 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 Borrower (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.

(j) ***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, Borrower shall pay Lender within five days after demand the amount of all moneys expended and all costs and expenses (including Lender Expenses) 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.

(k) ***Power of Attorney.*** To facilitate Lender's taking action under subsection (i) and exercising its rights under Section 6, Borrower hereby irrevocably appoints (which appointment is coupled with an interest) Lender, or its delegate, as the attorney-in-fact of Borrower with full authority (but not the duty) in the place and stead of Borrower, and in the name of Borrower or otherwise, from time to time to create, prepare, complete, execute, deliver, endorse or file, in the name and on behalf of Borrower, any and all instruments, documents, applications, financing statements, and other agreements and writings required to be obtained, executed, delivered or endorsed by Borrower under this Section 3, or necessary for Lender, upon the occurrence of an Event of Default and during the continuation thereof, 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. Borrower 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 Credit Agreement as provided therein and the payment and performance of all Obligations.

4. Borrower's Use of the Patents and Trademarks. Borrower 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 Credit Agreement, shall occur; or (b) Borrower shall fail promptly to observe or perform any covenant or agreement herein binding on it; or (c) any of the representations or warranties contained herein shall prove to have been incorrect in any material respect when made.

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

(a) Lender may exercise any or all remedies available under the Credit Agreement.

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

(c) Lender may enforce the Patents and Trademarks and any licenses thereunder, and if Lender shall commence any suit for such enforcement, Borrower 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. Miscellaneous. No amendment or modification of this Agreement shall be effective unless it has been agreed to by Lender in a writing that specifically states that it is intended to amend or modify this Agreement. No failure by Lender to exercise any right, remedy, or option under this Agreement, or delay by Lender in exercising the same, will operate as a waiver thereof. No waiver by Lender will be effective unless it is in writing, and then only to the extent specifically stated. No waiver by Lender on any occasion shall affect or diminish Lender's rights thereafter to require strict performance by Borrower of any provision of this Agreement. Lender's rights under this Agreement will be cumulative and not exclusive of any other right or remedy that Lender may have. The Security Interest can be released, only explicitly in a writing signed by Lender. All notices to be given to Borrower or Lender under this Agreement shall be given in the manner and with the effect provided in the Credit Agreement. Lender shall not be obligated to preserve any rights Borrower 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 may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, when taken together, shall constitute but one and the same Agreement. Delivery of an executed counterpart of this Agreement by telefacsimile or other electronic method of transmission shall be equally as effective as delivery of an original executed counterpart of this Agreement. Any party delivering an executed counterpart of this Agreement

by telefacsimile or other electronic method of transmission also shall deliver an original executed counterpart of this Agreement but the failure to deliver an original executed counterpart shall not affect the validity, enforceability, and binding effect of this Agreement. This Agreement shall bind and inure to the benefit of the respective successors and assigns of each of the parties; provided, however, that Borrower may not assign this Agreement or any rights or duties hereunder without Lender's prior written consent, which consent may be withheld by Lender in Lender's sole and absolute discretion, and any prohibited assignment shall be absolutely void ab initio. Lender may assign this Agreement in whole or in part and its rights and duties hereunder and no consent or approval by Borrower is required in connection with any such assignment. Each provision of this Agreement shall be severable from every other provision of this Agreement for the purpose of determining the legal enforceability of any specific provision. All representations and warranties made by Borrower in this Agreement shall be considered to have been relied upon by Lender and shall survive the execution and delivery of this Agreement, regardless of any investigation made by Lender or on its behalf and notwithstanding that Lender may have had notice or knowledge of any Event of Default or incorrect representation or warranty. This Agreement shall take effect when signed by Borrower and delivered to Lender, and Borrower waives notice of Lender's acceptance hereof or reliance hereon. 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. A carbon, photographic or other reproduction of this Agreement or of any financing statement signed by Borrower shall have the same force and effect as the original for all purposes of a financing statement.

8. CHOICE OF LAW AND VENUE; JURY TRIAL WAIVER.

(a) THE VALIDITY OF THIS AGREEMENT, THE CONSTRUCTION, INTERPRETATION, AND ENFORCEMENT HEREOF, AND THE RIGHTS OF THE PARTIES HERETO WITH RESPECT TO ALL MATTERS ARISING HEREUNDER OR RELATED HERETO AS WELL AS ALL CLAIMS, CONTROVERSIES OR DISPUTES ARISING UNDER OR RELATED TO THIS AGREEMENT SHALL BE DETERMINED UNDER, GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS AND NOT THE CONFLICTS OF LAW PROVISIONS OF THE STATE OF COLORADO.

(b) THE PARTIES AGREE THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS AGREEMENT MAY BE TRIED AND LITIGATED IN THE STATE AND, TO THE EXTENT PERMITTED BY APPLICABLE LAW, FEDERAL COURTS LOCATED IN THE CITY AND COUNTY OF DENVER, STATE OF COLORADO; PROVIDED, HOWEVER, THAT ANY SUIT SEEKING ENFORCEMENT AGAINST ANY COLLATERAL OR OTHER PROPERTY MAY BE BROUGHT, AT LENDER'S OPTION, IN THE COURTS OF ANY JURISDICTION WHERE LENDER ELECTS TO BRING SUCH ACTION OR WHERE SUCH COLLATERAL OR OTHER PROPERTY MAY BE FOUND. EACH OF BORROWER AND LENDER WAIVES, TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO ASSERT THE DOCTRINE OF FORUM NON

CONVENIENS OR TO OBJECT TO VENUE TO THE EXTENT ANY PROCEEDING IS BROUGHT IN ACCORDANCE WITH THIS SECTION 8(b).

(c) TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EACH OF BORROWER AND LENDER HEREBY WAIVES ITS RESPECTIVE RIGHTS, IF ANY, TO A JURY TRIAL OF ANY CLAIM, CONTROVERSY, DISPUTE OR CAUSE OF ACTION DIRECTLY OR INDIRECTLY BASED UPON OR ARISING OUT OF ANY OF THIS AGREEMENT OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREIN, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW OR STATUTORY CLAIMS (EACH, A "CLAIM"). EACH OF BORROWER AND LENDER REPRESENTS THAT IT HAS REVIEWED THIS WAIVER AND KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. IN THE EVENT OF LITIGATION, A COPY OF THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

(d) NO CLAIM MAY BE MADE BY BORROWER AGAINST LENDER, ANY AFFILIATE OF LENDER OR ANY DIRECTOR, OFFICER, EMPLOYEE, COUNSEL, REPRESENTATIVE, AGENT, OR ATTORNEY-IN-FACT OF ANY OF THEM FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, OR PUNITIVE DAMAGES IN RESPECT OF ANY CLAIM FOR BREACH OF CONTRACT OR ANY OTHER THEORY OF LIABILITY ARISING OUT OF OR RELATED TO THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT, OR ANY ACT, OMISSION, OR EVENT OCCURRING IN CONNECTION HEREWITH, AND BORROWER HEREBY WAIVES, RELEASES, AND AGREES NOT TO SUE UPON ANY CLAIM FOR SUCH DAMAGES, WHETHER OR NOT ACCRUED AND WHETHER OR NOT KNOWN OR SUSPECTED TO EXIST IN ITS FAVOR.

[The remainder of this page intentionally left blank.]

EXHIBIT A

UNITED STATES 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**

REGISTRATIONS

Trademark	Registration Number	Registration Date
MARY ELLEN	3522758	10/21/2008
EXTRA FRESH	3319990	10/23/2007
EXTRA FRESH	3319989	10/23/2007
<i>fresh produce</i>	2997397	09/20/2005
ME MARY ELLEN	3582957	03/03/2009
FRESH PRODUCE	1870145	12/27/1994
	1875318	01/24/1995

APPLICATIONS

NONE

TRADENAMES; REGISTERED SERVICE MARKS; SERVICE MARKS

Fresh Produce (Fresh Produce Holdings, LLC, filed a Statement of Trade Name of a Reporting Entity with the Colorado Secretary of State on September 16, 2014.)