

## TRADEMARK ASSIGNMENT COVER SHEET

Electronic Version v1.1  
Stylesheet Version v1.2

ETAS ID: TM322001

<b>SUBMISSION TYPE:</b>	NEW ASSIGNMENT		
<b>NATURE OF CONVEYANCE:</b>	ASSIGNMENT OF AN UNDIVIDED PART OF ASSIGNOR'S INTEREST		
<b>CONVEYING PARTY DATA</b>			
<b>Name</b>	<b>Formerly</b>	<b>Execution Date</b>	<b>Entity Type</b>
Mr. James E. Gauley		09/12/2014	INDIVIDUAL: UNITED STATES
<b>RECEIVING PARTY DATA</b>			
<b>Name:</b>	Apple & Eve, LLC		
<b>Street Address:</b>	2 Sea View Boulevard		
<b>City:</b>	Port Washington		
<b>State/Country:</b>	NEW YORK		
<b>Postal Code:</b>	11050		
<b>Entity Type:</b>	CORPORATION: DELAWARE		
<b>PROPERTY NUMBERS Total: 1</b>			
<b>Property Type</b>	<b>Number</b>	<b>Word Mark</b>	
<b>Registration Number:</b>	2759268	FRUITSMART	
<b>CORRESPONDENCE DATA</b>			
<b>Fax Number:</b>	2125547700		
<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>			
<b>Phone:</b>	212 554 7800		
<b>Email:</b>	trademarks@mosessinger.com		
<b>Correspondent Name:</b>	Elizabeth A. Corradino, Esq.		
<b>Address Line 1:</b>	405 Lexington Avenue		
<b>Address Line 2:</b>	The Chrysler Building		
<b>Address Line 4:</b>	New York, NEW YORK 10174		
<b>ATTORNEY DOCKET NUMBER:</b>	09626-0103		
<b>NAME OF SUBMITTER:</b>	Elizabeth A. Corradino, Esq.		
<b>SIGNATURE:</b>	/Elizabeth A. Corradino/		
<b>DATE SIGNED:</b>	11/03/2014		
<b>Total Attachments: 5</b>			
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TRADEMARK

## ASSIGNMENT AND CONSENT AGREEMENT

This ASSIGNMENT AND CONSENT AGREEMENT ("Agreement") is entered into as of September 12, 2014 the "Effective Date") by and between **Apple & Eve, LLC**, a Delaware corporation, with a principal place of business at 2 Sea View Boulevard, Port Washington, New York 11050 ("A&E") and **James E. Gauley**, an individual residing at 3463 Scoon Road, Sunnyside, Washington 98944 ("Gauley"). Collectively, A&E and Gauley are referred to as the "Parties."

### RECITALS

A. Fruitsmart, LLC, was the original owner of U.S. Trademark Reg. 2,759,268 (the '268 Reg.) for the trademark FRUITSMART for use with concentrated fruit purees in International Class 29 and concentrated fruit juices in International Class 32. On June 30, 2005, Fruitsmart, LLC, merged into Fruitsmart, Inc., and on November 13, 2008, Fruitsmart, Inc., assigned the FRUITSMART trademark and all appurtenant goodwill to James E. Gauley. Gauley then entered into a trademark license agreement with Fruitsmart, Inc., to continue using the FRUITSMART trademark

B. On June 18, 2009, Gauley entered into a Trademark License and Purchase Agreement with A&E the "A&E Agreement"). In the A&E Agreement, Gauley licensed A&E the right to use the FRUITSMART trademark in the retail and food service channels of trade, and Gauley retained all rights in the FRUITSMART trademark for the industrial channel of trade. Gauley further granted to A&E an option to purchase the FRUITSMART trademark with respect to the retail and food service channels of trade. Gauley, at all times, has retained exclusive ownership and control of the FRUITSMART trademark for the industrial channel of trade.

C. A&E exercised its option to purchase the FRUITSMART trademark, and all appurtenant goodwill, for the retail and food service channels of trade, effective October 16, 2013.

D. Gauley agrees to assign the '268 Reg. to A&E, subject to the requirement that A&E amend the goods description in the '268 Reg. to restrict such registration to the retail and food service channels of trade, and subject to the requirement that A&E consents to Gauley's registration and use of the FRUITSMART trademark for identical goods in the industrial channel of trade.

### AGREEMENT

1. Subject to the conditions of 1.1 and 1.2 below, and in accordance with and subject to the terms and conditions of the A&E Agreement, and for good and valuable consideration, the receipt of which is acknowledged, Gauley hereby irrevocably confirms the sale, assignment, and transfer to A&E, effective October 16, 2013, all of Gauley's right, title and interest pursuant to its aforesaid option, in and to the FRUITSMART trademark and the '268 Reg. for the retail and food service channels of trade, irrespective of the date of creation, throughout the world in perpetuity, together with the goodwill of the retail and food service business in connection with which the FRUITSMART trademark is used, and any and all claims for damages by reason of past, present, or future infringement or other unauthorized use of the FRUITSMART trademark, with the right to sue for damages, and collect the same

for A&E's own use and enjoyment and for the use and enjoyment of its respective successors, assigns, or other legal representatives in the retail and food service channels of trade. Not later than September 29, 2014, Gauley will execute and deliver to counsel to A&E, Moses & Singer LLC, 405 Lexington Avenue, New York, New York 10174-1299, attn: David Rabinowitz, the short form assignment of the FRUITSMART trademark attached hereto for filing with the United States Patent and Trademark Office.

1.1 By the later of October 31, 2014 or 45 days after counsel for A&E receives the attached short form assignment executed by Gauley, A&E must apply to the United States Patent and Trademark Office to amend the description of goods in the '268 Reg. to read as follows: "International Class 29: Goods sold to the retail and food service markets, namely concentrated fruit purees. International Class 32: Goods sold to the retail and food service markets, namely concentrated fruit juices." If A&E fails to do so, Gauley's sole remedy therefor shall be to submit such application in A&E's name as A&E's attorney-in-fact. Any failure by A&E to submit such application shall not broaden, narrow or otherwise affect the trademark rights of the Parties confirmed or reserved hereunder.

1.2 A&E consents to Gauley's continuing use and registration of the FRUITSMART trademark with concentrated fruit purees and concentrated fruit juices, and any related or similar goods, in the industrial channel of trade, to wit, the supply of ingredients to industrial manufacturers of beverage and food flavoring products.

2. A&E and Gauley represent, warrant, and agree that with respect to concentrated fruit purees and concentrated fruit juices the retail and food service channels of trade are completely separate and distinct from the industrial channel of trade. In each channel of trade there are entirely separate and distinct groups of consumers and/or buyers, with no overlap and no likelihood of confusion. There are substantive differences between the goods sold by A&E under the FRUITSMART trademark and the goods sold by Gauley under the FRUITSMART trademark. From July 2009 until the present, A&E has used the FRUITSMART trademark in the retail and food service channels of trade, and Gauley has used the FRUITSMART trademark in the industrial channel of trade with no actual confusion of any kind.

3. A&E consents to Gauley's continued exclusive ownership, use and registration of the FRUITSMART trademark in the industrial channel of trade for the following goods:

3.1 In International Class 3: Goods sold to the industrial cosmetic and cosmeceutical market, namely fruit and vegetable seed oils, fruit and vegetable seed powders, fruit and vegetable essences.

3.2 In International Class 5: Goods sold to the industrial nutraceutical and pharmaceutical market, namely fruit and vegetable fibers, fruit and vegetable seed oils, fruit and vegetable seed powders, fruit and vegetable essences, fruit and vegetable ingredients.

3.3 In International Class 29: Goods sold to the industrial market, namely, concentrated and single strength fruit and vegetable purees, fruit and vegetable juices for cooking, dried fruit and vegetable seeds, fruit and vegetable seed oils, fruit and vegetable seed powders, fruit and vegetable fibers.

3.4 In International Class 32: Goods sold to the industrial beverage market,

namely, concentrated and single strength fruit and vegetable juices, blends of concentrated and single strength fruit and vegetable juices, fruit and vegetable seed powders used in the preparation of beverages, fruit and vegetable essences and flavorings.

3.5 In International Class 35: Consulting services regarding fruit and vegetable products for the pharmaceutical industry.

3.6 In International Class 42: Consulting services regarding fruit and vegetable products for the pharmaceutical industry.

3.7 In International Class 44: Consulting services regarding fruit and vegetable products for the nutraceutical industry and the cosmetic and cosmeceutical industry.

4. Gauley will not use the FRUITSMART trademark, or any confusingly similar variant thereof, in connection with concentrated fruit purees and concentrated fruit juices or related goods in the retail and food service markets. A&E will not use the FRUITSMART trademark, or any confusingly similar variant thereof, in connection with concentrated fruit purees or concentrated fruit juices, or in connection with any of the goods or services listed above in sections 3.1 to 3.7 in the industrial market.

5. Each Party agrees not to take any future action to challenge, erode, or otherwise damage or jeopardize the rights of the other Party in the FRUITSMART trademark with respect to that Party's permitted field of use.

6. Each Party agrees to cooperate reasonably with the other party if, in the future, either Party becomes aware of any confusion as to source with respect to the use of the Parties' respective marks that are the subject of this Agreement and to undertake such measures as are reasonably necessary to prevent such confusion from occurring thereafter.

7. In entering into this Agreement, the Parties represent that they have relied upon the advice of counsel of their choice, and such other persons as they may have deemed appropriate, and that the terms of this Agreement are fully understood and voluntarily accepted.

8. Each Party shall bear its own costs and attorneys' fees.

9. In the event of any conflict between the terms of this Agreement and the original A&E Agreement, the terms of the original A&E Agreement shall govern, except that the rights confirmed or granted hereunder shall not be limited or impaired by the original A&E Agreement. The Parties agree that all obligations under the original A&E Agreement to be performed before the date hereof have been performed and discharged and neither Party has any claim for breach of any such obligations.

10. If any term or provision of this Agreement is held to be unenforceable, the remainder of this Agreement shall not be affected.

11. The Parties cannot alter or modify this Agreement except by an instrument in writing executed by each of the Parties.

12. Each Party has cooperated in the drafting and preparation of this Agreement, and, in any construction to be made of this Agreement, there shall be no presumption that the Agreement shall be construed against any Party by reason of its draftsmanship.

13. This Agreement may be executed in several counterparts, each of which shall constitute an original, but all of which together shall constitute one and the same instrument.

14. This Agreement shall be binding upon and inure to the benefit of the Parties, their officers, agents, legal representatives, employees, successors, assigns, subsidiaries, licensees, and all those in active concert or participation with them .

IN WITNESS WHEREOF, each of the Parties has caused this entire Agreement to be executed in duplicate originals by its duly authorized officer or representative.

<b>Apple &amp; Eve, LLC</b>  By: <u>Robert Martati</u> Name: <u>Robert Martati</u> Title: <u>SVP Marketing</u> <u>10/2/14</u>	<b>James E. Gauley</b>  <u>James E. Gauley</u>
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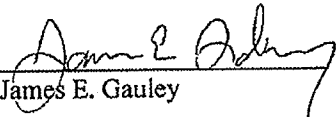
## SHORT-FORM ASSIGNMENT

Reference is made to the Trademark License and Purchase Agreement entered into as of June 18, 2009, by and between James E. Gauley, an individual residing at 3463 Scoon Road, Sunnyside, Washington 98944 ("Gauley"), and Apple & Eve, LLC, a Delaware corporation, with a principal place of business at 2 Sea View Boulevard, Port Washington, New York 11050 ("A&E"), and the Assignment and Consent Agreement between the same parties dated as of September 12, 2014, (the "Agreements") with respect to the trademark FRUITSMART (Reg. No. 2,759,268) (the "Mark").

In accordance with and subject to the terms and conditions of the Agreements, and for good and valuable consideration, the receipt of which is acknowledged, Gauley hereby irrevocably sells, assigns and transfers to A&E all of Gauley's right, title and interest, in and to the Mark, for the retail and food service channels of trade, irrespective of the date of creation, throughout the world in perpetuity, together with the goodwill of the business on connection with which the Mark is used, and any and all claims for damages by reason of past, present, or future infringement or other unauthorized use of the Mark, with the right to sue for damages, and collect the same for A&E's own use and enjoyment and for the use and enjoyment of its respective successors, assigns, or other legal representatives.

In the event of any conflict between the terms of this Short-Form Assignment and the Agreements, the terms of the Agreements shall govern.

IN WITNESS WHEREOF, the undersigned has executed this Short-Form Assignment on the 25<sup>th</sup> day of September, 2014.

  
James E. Gauley