

TRADEMARK ASSIGNMENT COVER SHEET

Electronic Version v1.1
Stylesheet Version v1.2

ETAS ID: TM361047

SUBMISSION TYPE:		NEW ASSIGNMENT	
NATURE OF CONVEYANCE:		SECURITY INTEREST	
CONVEYING PARTY DATA			
Name:	Formerly	Execution Date	Entity Type
Wakaya Perfection, LLC		10/26/2015	LIMITED LIABILITY COMPANY, UTAH
RECEIVING PARTY DATA			
Name:	Wakaya Perfection, LP		
Street Address:	480 Hibiscus Street, Suite 642		
City:	West Palm Beach		
State/Country:	FLORIDA		
Postal Code:	33401		
Entity Type:	CORPORATION, DELAWARE LIMITED PARTNERSHIP PMA		
PROPERTY NUMBERS Total: 16			
Property Type	Number	Word Mark	
Registration Number:	4352335	WAKAYA PERFECTION	
Registration Number:	4621461	WAKAYA PERFECTION	
Registration Number:	4348706	WAKAYA PERFECTION	
Registration Number:	4348707	WAKAYA PERFECTION	
Registration Number:	4696755	EAT. DRINK. THRIVE.	
Registration Number:	4501285	EAT. DRINK. THRIVE.	
Registration Number:	4501286	EAT. DRINK. THRIVE.	
Serial Number:	86030338	EAT. DRINK. THRIVE.	
Registration Number:	4501287	GET WELL. STAY WELL. TRAVEL WELL.	
Serial Number:	86594332	IMPORTED FROM WHERE YOU WOULD RATHER BE	
Serial Number:	86594235	IMPORTED FROM WHERE YOU'D RATHER BE	
Serial Number:	86594255	IMPORTED FROM WHERE YOU'D RATHER BE	
Serial Number:	86594278	IMPORTED FROM WHERE YOU'D RATHER BE	
Serial Number:	86030350	REPAIR. NOURISH. PROTECT.	
Registration Number:	4457740	UNIQUELY ORGANIC	
Registration Number:	4371143	UNIQUELY ORGANIC	
CORRESPONDENCE DATA			
Fax Number:	6197445407		

OP \$415.00 4352335

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.

Phone: 6195153207
Email: docketing@procopio.com
Correspondent Name: Lisel M. Ferguson - Procopio et al.
Address Line 1: 525 B Street, Suite 2200
Address Line 4: San Diego, CALIFORNIA 92101

ATTORNEY DOCKET NUMBER:	118528-3
NAME OF SUBMITTER:	Lisel M. Ferguson
SIGNATURE:	/Lisel M. Ferguson/
DATE SIGNED:	11/03/2015

Total Attachments: 7

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source=Security Agreement - Wakaya Perfection, LLC and Wakaya Perfection, LP - executed with Schedule I#page2.tif
source=Security Agreement - Wakaya Perfection, LLC and Wakaya Perfection, LP - executed with Schedule I#page3.tif
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source=Security Agreement - Wakaya Perfection, LLC and Wakaya Perfection, LP - executed with Schedule I#page5.tif
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SECURITY AGREEMENT

THIS SECURITY AGREEMENT (this "*Agreement*"), dated as of the 26th day of October 2015, is made by Wakaya Perfection, LLC, a Utah limited liability company ("*Debtor*"), and Wakaya Perfection, LP, a Delaware limited partnership ("*Secured Party*").

RECITALS

A. Pursuant to that certain Asset Purchase Agreement of even date herewith entered into by and between Debtor and Secured Party (as such agreement is amended, supplemented, or otherwise modified from time to time, the "*Purchase Agreement*"), Debtor has purchased substantially all of the business assets of Secured Party in consideration for the Purchase Price (as defined in the Purchase Agreement).

B. The terms of the Purchase Agreement provide that \$4,500,000.00 of the Purchase Price be paid in installments after the closing of the Purchase Agreement (as described in more detail in the Purchase Agreement, the "*Secured Payments*").

C. To secure Debtor's obligations to pay the Secured Payments, and as required under the terms of the Purchase Agreement, Debtor is executing and delivering this Agreement to Secured Party to grant a security interest in the Collateral (as defined below) in favor of Secured Party.

AGREEMENT

In exchange for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. **Security Interest.** As security for the Secured Obligations described in Section 2 of this Agreement, Debtor hereby grants to Secured Party a security interest in and lien against all of Debtor's right, title, and interest in and to the property described in Section 3 of this Agreement, together with any and all additions thereto and replacements and proceeds thereof (collectively the "*Collateral*").

2. **Secured Obligations.** The security interest hereby granted shall secure the due and punctual payment and performance of the following liabilities, duties and obligations of Debtor (collectively the "*Secured Obligations*"): (a) the payment of the Secured Payments; (b) all duties and obligations of Debtor contained in this Agreement; and (c) all sums that may be expended by Secured Party in the performance of any duty or obligation of Debtor, or to cure any default, under this Agreement.

3. **The Collateral.** The Collateral to which the security interest herein granted pertains is all of the following and all products and proceeds (including insurance proceeds) therefrom, accessions thereto and replacements thereof:

- (i) all accounts;
- (ii) all chattel paper;
- (iii) all documents and books and records;
- (iv) all general intangibles, including, without limitation, all payment intangibles, software, contract rights and the intellectual property set forth on Schedule I attached hereto;
- (v) all goods (including inventory, equipment and fixtures);
- (vi) all instruments;
- (vii) all investment property;
- (viii) all letter of credit rights;
- (ix) all deposit accounts and all other bank accounts and all deposits therein, except for deposit accounts solely dedicated to the payment of payroll expenses or employee benefits, provided that the aggregate amount on deposit in all such deposit accounts does not exceed the aggregate payroll obligations and employee benefit contributions of Debtor for the current pay period;
- (x) all money, cash and cash equivalents; and
- (xi) all commercial tort claims and insurance claims, rights and policies.

4. **Warranties and Representations.** Debtor hereby warrants and represents to Secured Party that:

(a) With respect to the location of Debtor and the Collateral: (i) Debtor's principal office address is 13413 North Alpine Cove Drive, Alpine, Utah 84004, and (ii) records concerning the Collateral are kept at Debtor's address as set forth above and at no other address;

(b) Debtor is the owner of Collateral;

(c) No financing statement covering any of the Collateral has been executed or authorized by Debtor, and the Collateral is free and clear of any liens and other encumbrances, except for Permitted Encumbrances (as defined in the Purchase Agreement) and the security interest granted hereunder in favor of Secured Party; and

(d) This Agreement has been validly executed by Debtor, and the execution and delivery of this Agreement will not violate any agreement to which the Debtor is a party or by which it is bound.

5. **Covenants of Debtor.** Unless and until Secured Party expressly agrees in writing to the contrary:

(a) Debtor hereby authorizes the filing of any financing statements and shall execute and deliver any other documents (properly endorsed, if necessary) reasonably requested by Secured Party for perfection or enforcement of any security interest or lien, give good faith, diligent cooperation to Secured Party, and perform such other acts reasonably requested by Secured Party for perfection and enforcement of any security interest or lien, including, without limitation, obtaining control for purposes of perfection. Secured Party is authorized to file, record, or otherwise utilize such documents as it deems necessary to perfect and/or enforce any security interest or lien granted hereunder. Furthermore, Secured Party shall have the right, but not obligation, to take any action required to be performed by Debtor hereunder upon Debtor's failure to take such action. Debtor appoints Secured Party as Debtor's attorney-in-fact to perform such actions if Debtor fails to do so and shall pay to Secured Party all amounts expended by Secured Party in connection with such actions. All sums expended by Secured Party on Debtor's behalf shall be secured hereby.

(b) Debtor shall not sell or assign, nor permit the sale or assignment of the Collateral outside the ordinary course of Debtor's business without the prior written consent of Secured Party.

(c) Debtor shall defend or cause the defense of the Collateral against the claims and demands of all persons.

(d) Debtor shall maintain the Collateral in good condition, reasonable wear and tear and casualty excepted.

6. **Events of Default.** Debtor shall be in default under this Agreement upon the occurrence of any of the following events or conditions:

(a) The failure by Debtor to make a Secured Payment on the due date applicable to such Secured Payment or within three (3) business days thereafter;

(b) Breach or failure in any material respect of any warranty, representation, covenant or statement of Debtor in this Agreement, the Purchase Agreement, or in any other agreement evidencing, securing, or otherwise related to the Secured Obligations;

(c) The seizure or taking of the Collateral by any governmental or similar authority, or the issuance of a writ, order of attachment or garnishment with respect thereto that is not dismissed or satisfied within thirty days after issuance;

(d) Debtor (i) applies for or consents to the appointment of a receiver, trustee, liquidator or custodian of itself or of all or a substantial part of its property, (ii) is unable, or admits in writing its inability, to pay its debts generally as they mature, (iii) makes a general assignment for the benefit of its creditors, (iv) commences a voluntary case or other proceeding seeking liquidation, adjustment or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or consents to any such

relief or to the appointment of or taking possession of its property by any official in an involuntary case or other proceeding commenced against it, or (vi) takes any action for the purpose of effecting any of the foregoing; or

(e) Proceedings for the appointment of a receiver, trustee, liquidator or custodian of Debtor or of all or a substantial part of its property, or an involuntary case or other proceedings seeking liquidation, reorganization or other relief with respect to Debtor or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect is commenced and an order for relief entered or such proceeding is dismissed or discharged within 60 days of commencement.

7. **Remedies.** All remedies of Secured Party provided for herein are cumulative and shall be in addition to any and all other rights and remedies provided in the Purchase Agreement or by law. The exercise of any rights of Secured Party hereunder shall not in any way constitute a cure or waiver of a default of this Agreement or elsewhere, or invalidate any act done pursuant to any notice of default, or prejudice Secured Party in the exercise of any of its other rights hereunder or elsewhere unless, in the exercise of said rights, Secured Party realizes all of the Secured Payments.

8. **Application of Proceeds.** In connection with any foreclosure or other enforcement or collection activity, the proceeds of all sales and collections in respect of any Collateral and all funds that are part of Collateral that are collected from Debtor shall be applied as follows:

(a) First, to the payment of the costs and expenses of such sales and collections, the reasonable expenses of the Secured Party and the reasonable fees and expenses of its counsel.

(b) Second, any surplus then remaining to the payment of the outstanding Secured Payments.

(c) Third, any surplus then remaininto to the payment of any other Secured Obligations that remain unpaid.

(d) Fourth, any surplus then remaining shall be paid to Debtor, subject, however, to any rights of the holder of any then-existing lien who has duly presented to Secured Party an authenticated demand for proceeds before Secured Party's distribution of the proceeds is completed.

9. **Miscellaneous.**

(a) If any party is required to retain legal counsel in order to enforce this Agreement, with or without the commencement of a formal legal action, such party shall be entitled to recover its attorney fees and costs from the breaching party or parties.

(b) This Agreement shall be binding on the parties and their respective heirs, successors and assigns.

(c) All words used in this Agreement shall be construed to be of such number and gender as the context requires or permits. Unless otherwise defined herein, all terms used herein that are defined in the Delaware Uniform Commercial Code (the "UCC") shall have the respective meanings set forth in the UCC; provided, however, in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection or priority of Secured Party's security interest in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of Delaware, the term "UCC" shall mean the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof relating to such attachment, perfection of priority and for purposes of definitions related to such provisions.

(d) Subject to Section 9(c) above, this Agreement shall be governed by the substantive laws of the State of Delaware, without giving effect to its choice of law provisions.

(e) This Agreement shall not be amended or modified except by written document signed by the party sought to be charged with such amendment or modification.

(f) Any notice, demand, request, consent, approval or other communication required or permitted to be given by any provision of this Agreement or the Purchase Agreement shall be given in accordance with the notice provisions set forth in the Purchase Agreement.

(g) No failure to exercise, delay in exercising or single or partial exercise of any right, power or remedy by any party hereto shall constitute a waiver thereof or shall preclude any other or further exercise of the same or any other right, power or remedy.


(h) The headings and captions contained in this Agreement are for convenience only and shall not be considered in interpreting the provisions hereof.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto have executed this Security Agreement to be effective for all purposes as of the date first written above.

DEBTOR:


WAKAYA PERFECTION, LLC, a Utah limited liability company

By: 

Todd Smith, Manager

SECURED PARTY:


WAKAYA PERFECTION, LP, a Delaware limited partnership

By: 

Name: David Roth
Title: CEO

SCHEDULE I

INTELLECTUAL PROPERTY

<u>Mark</u>	<u>Country</u>	<u>Reg.No.</u>	<u>Date of Registration</u>	<u>Serial No.</u>	<u>Date of Application</u>
WAKAYA PERFECTION	United States	4,352,335	June 18, 2013		
WAKAYA PERFECTION	United States	4,621,461	October 14, 2014		
WAKAYA PERFECTION	United States	4,348,706	June 11, 2013		
	United States	4,348,707	June 11, 2013		
WAKAYA PERFECTION	Australia	1,602,561	August 27, 2014		
WAKAYA PERFECTION	Canada			1,660,821	January 23, 2014
WAKAYA PERFECTION	European Union	011613114	July 24, 2013		
WAKAYA PERFECTION	Hong Kong	302535912	March 1, 2013		
EAT. DRINK. THRIVE.	United States	4,696,755	March 3, 2015		
EAT. DRINK. THRIVE.	United States	4,501,285	March 25, 2014		
EAT. DRINK. THRIVE.	United States	4,501,286	March 25, 2014		
EAT. DRINK. THRIVE.	United States			86/030,338	August 6, 2013
GET WELL. STAY WELL. TRAVEL WELL.	United States	4,501,287	March 25, 2014		
IMPORTED FROM WHERE YOU WOULD RATHER BE	United States			86/594,332	April 10, 2015
IMPORTED FROM WHERE YOU'D RATHER BE	United States			86/594,235	April 10, 2015
IMPORTED FROM WHERE YOU'D RATHER BE	United States			86/594,255	April 10, 2015
IMPORTED FROM WHERE YOU'D RATHER BE	United States			86/594,278	April 10, 2015
REPAIR. NOURISH. PROTECT.	United States			86/030,350	August 6, 2013
UNIQUELY ORGANIC	United States	4,457,740	December 31, 2013		
UNIQUELY ORGANIC	United States	4,371,143	July 23, 2013		