

TRADEMARK ASSIGNMENT COVER SHEET

Electronic Version v1.1
Stylesheet Version v1.2

ETAS ID: TM372452

| | | | |
|---|--|------------------------|-------------------------------------|
| SUBMISSION TYPE: | NEW ASSIGNMENT | | |
| NATURE OF CONVEYANCE: | TRADEMARK AND LICENSE SECURITY AGREEMENT | | |
| CONVEYING PARTY DATA | | | |
| Name | Formerly | Execution Date | Entity Type |
| BLUE RIVER PETCARE GROUP, LLC | | 02/05/2016 | LIMITED LIABILITY COMPANY: ILLINOIS |
| RECEIVING PARTY DATA | | | |
| Name: | FIRSTMERIT BANK, N.A., as administrative agent | | |
| Street Address: | 678 Lee St. | | |
| City: | Des Plaines | | |
| State/Country: | ILLINOIS | | |
| Postal Code: | 60016 | | |
| Entity Type: | national association: UNITED STATES | | |
| PROPERTY NUMBERS Total: 2 | | | |
| Property Type | Number | Word Mark | |
| Serial Number: | 86672671 | BLUE RIVER PETCARE | |
| Serial Number: | 86672648 | BRP BLUE RIVER PETCARE | |
| CORRESPONDENCE DATA | | | |
| Fax Number: | 3126095005 | | |
| <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: | 312-609-7897 | | |
| Email: | hmiller@vedderprice.com | | |
| Correspondent Name: | Holly Miller | | |
| Address Line 1: | 222 North LaSalle Street - 24th Floor | | |
| Address Line 4: | Chicago, ILLINOIS 60601 | | |
| ATTORNEY DOCKET NUMBER: | 42752000041 | | |
| NAME OF SUBMITTER: | Holly Miller | | |
| SIGNATURE: | /Holly Miller/ | | |
| DATE SIGNED: | 02/08/2016 | | |
| Total Attachments: 11 | | | |
| source=42752.00.0041 - FirstMerit BRP-Trademark and Security Agreement#page1.tif | | | |
| source=42752.00.0041 - FirstMerit BRP-Trademark and Security Agreement#page2.tif | | | |
| source=42752.00.0041 - FirstMerit BRP-Trademark and Security Agreement#page3.tif | | | |

CH \$65.00 86672671

source=42752.00.0041 - FirstMerit BRP-Trademark and Security Agreement#page4.tif
source=42752.00.0041 - FirstMerit BRP-Trademark and Security Agreement#page5.tif
source=42752.00.0041 - FirstMerit BRP-Trademark and Security Agreement#page6.tif
source=42752.00.0041 - FirstMerit BRP-Trademark and Security Agreement#page7.tif
source=42752.00.0041 - FirstMerit BRP-Trademark and Security Agreement#page8.tif
source=42752.00.0041 - FirstMerit BRP-Trademark and Security Agreement#page9.tif
source=42752.00.0041 - FirstMerit BRP-Trademark and Security Agreement#page10.tif
source=42752.00.0041 - FirstMerit BRP-Trademark and Security Agreement#page11.tif

TRADEMARK AND LICENSE SECURITY AGREEMENT

This TRADEMARK AND LICENSE SECURITY AGREEMENT (this “Agreement”), dated as of February 5, 2016, is by and between BLUE RIVER PETCARE GROUP, LLC (“Grantor”) and FIRSTMERIT BANK, N.A., in its individual capacity, “FirstMerit”) as administrative agent for itself and all other lenders from time to time made party to the Credit Agreement (“Lenders”) (as defined herein) (in such capacity, “Grantee”).

WITNESSETH:

WHEREAS, Grantor and Grantee, among others, are entering into that certain Amended and Restated Credit and Security Agreement, dated as of the date hereof (as amended, restated, supplemented or otherwise modified from time to time, the “Credit Agreement”);

WHEREAS, in order to induce Grantee and the Lenders to enter into the Credit Agreement and to make the loans and other credit accommodations as provided for in the Credit Agreement, Grantor has agreed to pledge the Trademark Collateral (as defined below) to Grantee in accordance herewith, in each case to secure the Obligations (as defined in the Credit Agreement); and

WHEREAS, this Agreement is required by the terms of the Credit Agreement.

NOW, THEREFORE, in consideration of these premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Defined Terms.

(i) Unless otherwise defined herein, capitalized terms used herein which are defined in the Credit Agreement shall have the meanings specified in the Credit Agreement.

(ii) The words “hereof”, “herein”, and “hereunder” and words of like import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement, and Section and schedule references are to this Agreement unless otherwise specified.

(iii) All terms defined in this Agreement in the singular shall have comparable meanings when used in the plural, and vice versa, unless otherwise specified.

(iv) “Default” means the occurrence of any Event of Default, as such term is defined in the Credit Agreement.

(v) “Paid in Full” means, with respect to the Obligations, the indefeasible payment in full in cash of all Obligations and the termination of any commitments to lend under the Credit Agreement.

2. Security Interest in Trademarks. As security for prompt payment in full of all of the Obligations, Grantor hereby grants to Grantee, for its benefit and the benefit of the Lenders, a

first priority security interest, having priority over all other security interests in all of Grantor's now owned or existing and hereafter acquired or arising (collectively, the "Trademark Collateral"):

(i) trademarks, registered trademarks and trademark applications, trademark registrations, trade names, service marks, registered service marks, service mark applications, and service mark registrations (except for "intent-to-use" applications for trademark or service mark registrations for which a statement of use has not been filed), including, without limitation, the registered trademarks, trademark applications, registered service marks and service mark applications and registrations listed on Schedule A, and (a) all renewals thereof, (b) all income, royalties, damages and payments now and hereafter due and/or payable with respect thereto, including, without limitation, payments under all licenses entered into in connection therewith and damages and payments for past or future infringements or dilutions thereof, (c) the right to sue for past, present and future infringements and dilutions thereof, and (d) all of Grantor's rights corresponding thereto throughout the world (all of the foregoing registered trademarks, trademark applications, registered service marks and service mark applications, together with the items described in clauses (a)-(d) in this paragraph 2(i), being sometimes hereinafter individually and/or collectively referred to as the "Trademarks");

(ii) the goodwill of Grantor's business connected with and symbolized by the Trademarks; and

(iii) license agreements with any other party in connection with any Trademarks or such other party's trademarks, registered trademarks, trademark applications, trademark registrations, trade names, service marks, registered service marks, service mark applications and service mark registrations, whether Grantor is a licensor or licensee under any such license agreement, including, but not limited to, the license agreements listed on Schedule B, and the right upon the occurrence and during the continuance of a Default to use the foregoing in connection with the enforcement of Grantee's rights under the Credit Agreement (all of the foregoing being hereinafter referred to collectively as the "Licenses"). Notwithstanding the foregoing provisions of this Section 2, the Licenses shall not include any license agreement which by its terms prohibits (which prohibition is enforceable under applicable law) the grant of the security interest contemplated by this Agreement for so long as such prohibition continues; it being understood that upon request of Grantee, Grantor will in good faith use reasonable efforts to obtain consent for the creation of a security interest in favor of Grantee in Grantor's rights under such license agreement (excluding any license of non-custom computer software).

3. Restrictions on Future Agreements. After the date hereof, Grantor will not, without Grantee's prior written consent, enter into any agreement, including, without limitation, any license agreement, which is inconsistent with this Agreement. Grantor further agrees that it will not take any action, and will not permit any action to be taken by others subject to its control, including licensees, or fail to take any action, which would affect the validity or enforcement of the rights transferred to Grantee, under this Agreement or any other Loan Document or the rights associated with those Trademarks which are necessary or desirable in the operation of Grantor's business.

4. New Trademarks. Grantor represents and warrants that the Trademarks and Licenses listed on Schedules A and B, respectively, include all of the trademark applications and registrations and Licenses to any Trademarks which Licenses are material to the operation of Grantor's business (excluding any license of non-custom computer software) now owned or held by Grantor. If, prior to the termination of this Agreement, Grantor shall (i) obtain rights to any new Trademark or Licenses or (ii) become entitled to the benefit of any new or existing Trademark or License, the provisions of Section 2 shall automatically apply thereto, and Grantor shall give to Grantee prompt written notice thereof. Grantor hereby authorizes Grantee to modify this Agreement by (a) amending Schedules A or B, as the case may be, to include any Trademarks or Licenses which are described under this Section 4, and (b) filing, in addition to and not in substitution for, this Agreement, a short form of this Agreement containing on Schedules A or B thereto, as the case may be, such Trademarks or Licenses, as the case may be, which are described under this Section 4. Notwithstanding the foregoing, Grantor agrees that Grantee's security interest shall extend to all of the collateral listed in Section 2 and this Section 4, regardless of whether Grantee actually amends Schedules A or B, respectively.

5. Royalties. Grantor hereby agrees that the use by Grantee of the Trademarks and Licenses as authorized hereunder shall be coextensive with Grantor's rights thereunder and with respect thereto and without any liability for royalties or other related charges from Grantee to Grantor.

6. Nature and Continuation of Grantee's Security Interest. This Agreement is made for collateral security purposes only. This Agreement shall create a continuing security interest in the Trademarks and the Licenses and shall remain in full force and effect until the Obligations have been Paid in Full and the Credit Agreement terminated, at such time the rights granted to Grantee hereunder shall also terminate.

7. Right to Inspect; Further Assignments and Security Interests. Grantee shall have the right, in accordance with the terms and conditions of the Credit Agreement, to inspect the premises of Grantor and to examine the books, records and operations of Grantor relating to the Trademarks. Grantor agrees not to sell or assign its respective interests in, or grant any license under (other than granting any license in the ordinary course of business), the Trademarks without the prior written consent of Grantee.

8. Duties of Grantor. Grantor shall have the duty to the extent desirable in the conduct of Grantor's business and consistent with Grantor's current business practices or Grantor's reasonable business judgment: (i) to prosecute diligently any trademark applications or registrations or service mark applications or registrations that are part of the Trademarks pending as of the date hereof or thereafter until the termination of this Agreement; (ii) to make applications for trademarks and service marks as Grantor deems appropriate; (iii) to take reasonable steps to preserve and maintain all of Grantor's rights in the trademark and service mark applications and trademark and service mark registrations that are part of the Trademarks and (iv) obtain any consents, waivers or agreements necessary to enable Grantee to exercise its remedies with respect to any and all Trademark Collateral. Any expenses incurred in connection with the foregoing shall be borne by Grantor. Grantor shall not abandon any trademark or service mark which is the subject of a registration or application therefor and which is or shall be, in the Grantor's reasonable business judgment, necessary to the operation of Grantor's

business. Grantor agrees to retain an experienced trademark attorney for the filing and prosecution of all such applications and other proceedings. Grantee and Lenders shall have no duty with respect to the Trademarks and Licenses. Without limiting the generality of the foregoing, Grantee and Lenders shall not be under any obligation to take any steps necessary to preserve rights in the Trademarks or Licenses against any other parties, but may do so at Grantee's option during the continuance of a Default, and all expenses incurred in connection therewith shall be for the sole account of Grantor and added to the Obligations secured thereby.

9. Grantee's Right to Sue; Limited License. From and after the occurrence and during the continuance of a Default, Grantee shall have the right, but shall not be obligated, upon prior written notice to Grantor, to bring suit to enforce the Trademarks and the Licenses, and, if Grantee shall commence any such suit, Grantor shall, at the request of Grantee, do any and all lawful acts and execute any and all proper documents required by Grantee in aid of such enforcement. Grantor shall, upon demand, promptly reimburse and indemnify Grantee for all reasonable attorneys' fees and other costs and expenses incurred by Grantee in the exercise of its rights under this Section 9 (including, without limitation, the allocated cost of in-house counsel). If, for any reason whatsoever, Grantee is not reimbursed with respect to the costs and expenses referred to in the preceding sentence, such costs and expenses shall be added to the Obligations secured hereby. Grantor hereby grants to Grantee a license with respect to all Trademarks and Licenses owned or used by Grantor to the extent necessary to enable Grantee, effective upon the occurrence of any Default, to realize on the Trademarks and Licenses and any successor or assign to enjoy the benefits of the Trademarks and Licenses. This license shall inure to the benefit of Grantee and its successors, assigns and transferees, whether by voluntary conveyance, operation of law, assignment, transfer, foreclosure, deed in lieu of foreclosure or otherwise. Such license is granted free of charge, without requirement that any monetary payment whatsoever including, without limitation, any royalty or license fee, be made to any Grantor or any other Person by Grantee or any other Person.

10. Waivers. No course of dealing between Grantor and Grantee, and no failure to exercise or delay in exercising on the part of Grantee any right, power or privilege hereunder or under the Credit Agreement or other Loan Documents shall operate as a waiver of any of Grantee's rights, powers or privileges. No single or partial exercise of any right, power or privilege hereunder or under the Credit Agreement or other Loan Documents shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

11. Grantee's Exercise of Rights and Remedies Upon Default. Notwithstanding anything set forth herein to the contrary, it is hereby expressly agreed that upon the occurrence and during the continuance of a Default, Grantee may exercise any of the rights and remedies provided in this Agreement or any of the other Loan Documents. Without limiting the generality of the foregoing, Grantor acknowledges and agrees that (i) the Trademarks and Licenses comprise a portion of the Collateral and Grantee shall have the right to exercise its rights under the Credit Agreement with respect to the Trademarks and Licenses to the same extent as with respect to all other items of Collateral described therein, and (ii) from and after the occurrence and during the continuation of a Default, Grantee or its nominee may use the Trademarks and Licenses to assemble, manufacture, sell, prepare for sale or take possession of the Collateral, or for any other purpose in connection with the conduct of Grantor's business. Any proceeds of any of the Trademark Collateral may be applied by the Grantee to the payment of expenses in

connection with the enforcement of Grantee's rights and remedies hereunder and in connection with the Trademark Collateral, including, without limitation, reasonable attorneys' fees and legal expenses, and any balance of such proceeds may be applied by Grantee toward the payment of such of the Obligations, and in such order of application, as Grantee may from time to time elect (and, after all Obligations have been Paid in Full, any excess shall be delivered to Grantor or as a court of competent jurisdiction shall direct).

12. Severability. If any provision hereof is held to be illegal or unenforceable, such provision shall be fully severable, and the remaining provisions hereof shall remain in full force and effect and shall not be affected by such provision's severance. Furthermore, in lieu of any such provision, there shall be added automatically as a part of this Agreement a legal and enforceable provision as similar in terms to the severed provision as may be possible.

13. Modification. This Agreement cannot be altered, amended or modified in any way, except as specifically provided in Sections 2 and 4 hereof or by a writing signed by the parties hereto.

14. Cumulative Remedies; Power of Attorney. All of Grantee's rights and remedies with respect to the Trademarks and the Licenses, whether established hereby, by any other agreements or by law, shall be cumulative and may be exercised singularly or concurrently. Grantor hereby irrevocably appoints Grantee as Grantor's attorney-in-fact, with full authority in the place and stead of Grantor and in the name of Grantor or otherwise to carry out the acts described below. Upon the occurrence and during the continuance of a Default, Grantor hereby authorizes Grantee to, in its sole discretion, (i) endorse Grantor's name on all applications, documents, papers and instruments necessary or desirable for Grantee in the use of the Trademarks and the Licenses, (ii) take any other actions with respect to the Trademarks and the Licenses as Grantee deems is in its best interest, (iii) grant or issue any exclusive or non-exclusive license with respect to the Trademarks to anyone on commercially reasonable terms, and (iv) assign, pledge, convey or otherwise transfer title in or dispose of the Trademarks and the Licenses to anyone on commercially reasonable terms. Grantor hereby ratifies all that such attorney-in-fact shall lawfully do or cause to be done by virtue hereof. This power of attorney is coupled with an interest and shall be irrevocable until this Agreement shall have been terminated pursuant to Section 6 hereof. Grantor acknowledges and agrees that this Agreement is not intended to limit or restrict in any way the rights and remedies of Grantee under the Credit Agreement or other Loan Documents, but rather is intended to facilitate the exercise of such rights and remedies. Grantee shall have, in addition to all other rights and remedies given it by the terms of this Agreement, all rights and remedies allowed by law and the rights and remedies of a secured party under the Uniform Commercial Code as enacted in any jurisdiction in which, respectively, either (x) the Trademarks may be located or deemed located or (y) the Licenses were granted.

15. Binding Effect; Benefits. This Agreement shall be binding upon Grantor and its successors and assigns, and shall inure to the benefit of Grantee, Lenders and their nominees, successors and assigns. The successors and assigns of Grantor shall include, without limitation, a receiver, trustee or debtor-in-possession of or for Grantor; provided, however, that Grantor shall not voluntarily assign its obligations hereunder without the prior written consent of Grantee.

16. **CHOICE OF LAW; WAIVER OF JURY TRIAL; SERVICE OF PROCESS.** THIS AGREEMENT SHALL BE GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS (INCLUDING, WITHOUT LIMITATION, 735 ILCS SECTION 105/5-1 ET SEQ., BUT OTHERWISE WITHOUT REGARD TO THE CONFLICT OF LAWS PROVISIONS) OF THE STATE OF ILLINOIS. EACH PARTY HERETO HEREBY CONSENTS AND SUBMITS TO THE NON-EXCLUSIVE JURISDICTION OF ANY LOCAL, STATE OR FEDERAL COURTS LOCATED WITHIN THE CITY OF CHICAGO, STATE OF ILLINOIS FOR ALL ACTIONS OR PROCEEDINGS IN ANY WAY, MANNER OR RESPECT, ARISING OUT OF OR FROM OR RELATED TO THIS AGREEMENT OR THE TRADEMARK COLLATERAL. GRANTOR HEREBY ALSO SUBMITS TO THE NON-EXCLUSIVE JURISDICTION OF ALL FEDERAL AND STATE COURTS SITTING IN ANY STATE IN WHICH ANY LOAN PARTY OWNS PROPERTY OR OPERATES ITS BUSINESS. GRANTOR HEREBY WAIVES PERSONAL SERVICE OF ANY AND ALL PROCESS AND AGREES THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE UPON GRANTOR BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED, ADDRESSED TO GRANTOR AT THE ADDRESS SET FORTH FOR NOTICE IN THE CREDIT AGREEMENT, AND SERVICE SO MADE SHALL BE COMPLETE TEN (10) DAYS AFTER THE SAME HAS BEEN POSTED. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW. GRANTOR HEREBY WAIVES ANY RIGHT IT MAY HAVE TO TRANSFER OR CHANGE THE VENUE OF ANY LITIGATION BROUGHT AGAINST GRANTOR BY GRANTEE IN ACCORDANCE WITH THIS SECTION. EACH OF THE PARTIES HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT. EACH PARTY HEREBY WAIVES ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING WHICH PERTAINS DIRECTLY OR INDIRECTLY TO THIS AGREEMENT, THE OBLIGATIONS, THE TRADEMARK COLLATERAL OR, ANY ALLEGED TORTIOUS CONDUCT BY ANY PARTY HERETO OR WHICH, IN ANY WAY, DIRECTLY OR INDIRECTLY, ARISES OUT OF OR RELATES TO THE RELATIONSHIP AMONG THE PARTIES HERETO.

17. Notices. Except as otherwise herein provided, any notice or other communication required hereunder shall be in writing (messages sent by e-mail or other electronic transmission (other than by telecopier) shall not constitute a writing, however any signature on a document or other writing that is transmitted by e-mail or telecopier shall constitute a valid signature for purposes hereof), and shall be deemed to have been validly served, given or delivered when received by the recipient if hand delivered, sent by commercial overnight courier or sent by facsimile, or three (3) Business Days after deposit in the United States mail, with proper first-class postage prepaid and addressed to the party at its address and/or facsimile number set forth in the Credit Agreement, or to such other address as either party shall specify to the other in writing from time to time.

18. Section Headings. The Section headings herein are for convenience of reference only, and shall not affect in any way the interpretation of any of the provisions hereof.

19. Execution in Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of this Agreement by telefacsimile shall be equally as effective as delivery of a manually executed counterpart of this Agreement. Any party delivering an executed counterpart of this Agreement by telefacsimile or electronic transmission shall also deliver a manually executed counterpart of this Agreement, but the failure to deliver a manually executed counterpart shall not affect the validity, enforceability, and binding effect of this Agreement.

20. Right of Recordal of Security Interest. Grantee shall have the right, but not the obligation, at the expense of Grantor, to record this Agreement in the United States Patent and Trademark Office and with such other recording authorities deemed reasonable and proper by Grantee, and Grantee shall advise Grantor of such recordals. After all Obligations have been Paid in Full and termination of the Credit Agreement, Grantor shall have the right to effect recordal of such satisfaction or termination at the expense of Grantor in the United States Patent and Trademark Office and with such other recording authorities deemed reasonable and proper by Grantor, and Grantee shall execute all documents deemed reasonable and proper by Grantor in connection therewith. Grantee and Grantor shall cooperate to effect all such recordals hereunder.


[SIGNATURE PAGE FOLLOWS]

Signature Page to Trademark and License Security Agreement

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement on the day and year first above written.

GRANTOR:

BLUE RIVER PETCARE GROUP, LLC,
an Illinois limited liability company

By: 

Daniel H. Blumenthal
Chief Executive Officer

Signature Page to Trademark and License Security Agreement

GRANTEE:

FIRSTMERIT BANK, N.A.

By: 

Frederick Kaufmann
Senior Vice President

SCHEDULE A
to Trademark and License Security Agreement

TRADEMARKS

None.

TRADEMARK APPLICATIONS

| Mark | Application No. | Application Date | Registration No. | Registration Date | Status of Mark | Owner/Applicant |
|------------------------|------------------------|-------------------------|-------------------------|--------------------------|-----------------------|-------------------------------|
| Blue River PetCare | 86672671 | 6/24/2015 | n/a | n/a | Application | Blue River PetCare Group, LLC |
| BRP BLUE RIVER PETCARE | 86672648 | 6/24/2015 | n/a | n/a | Application | Blue River PetCare Group, LLC |

SCHEDULE B
to Trademark and License Security Agreement

LICENSES

None.