

TRADEMARK ASSIGNMENT COVER SHEET

Electronic Version v1.1
Stylesheet Version v1.2

ETAS ID: TM382268

SUBMISSION TYPE:	NEW ASSIGNMENT		
NATURE OF CONVEYANCE:	SECURITY INTEREST		
CONVEYING PARTY DATA			
Name	Formerly	Execution Date	Entity Type
Berner Food & Beverage, LLC		04/22/2016	Limited Liability Company: DELAWARE
RECEIVING PARTY DATA			
Name:	The Privatebank and Trust Company		
Street Address:	120 South LaSalle Street		
City:	Chicago		
State/Country:	ILLINOIS		
Postal Code:	60603		
Entity Type:	State Chartered Bank: ILLINOIS		
PROPERTY NUMBERS Total: 5			
Property Type	Number	Word Mark	
Registration Number:	3797155	B BERNER FOOD & BEVERAGE	
Registration Number:	3804342	B	
Registration Number:	2563336	PARTY CHEESE	
Registration Number:	2790069	SNACKIN CHEESE	
Registration Number:	2334921	PARTY CHEESE PASTEURIZED PROCESS CHEESE	
CORRESPONDENCE DATA			
Fax Number:	2029068669		
<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:	202.906.8618		
Email:	ipmail@dykema.com		
Correspondent Name:	Eric T. Fingerhut		
Address Line 1:	1300 I St., NW, Suite 300 West		
Address Line 4:	Washington, D.C. 20005		
ATTORNEY DOCKET NUMBER:	104085-0225		
NAME OF SUBMITTER:	Eric T. Fingerhut		
SIGNATURE:	/eric t. fingerhut/		
DATE SIGNED:	04/28/2016		

CH \$140.00 3797155

Total Attachments: 8

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AMENDED AND RESTATED
TRADEMARK SECURITY AGREEMENT

THIS AMENDED AND RESTATED TRADEMARK SECURITY AGREEMENT (this “**Security Agreement**”) made as of the 22nd day of April, 2016, by BERNER FOOD & BEVERAGE, LLC, a Delaware limited liability company, as successor by merger to Berner Food & Beverage, Inc., an Illinois corporation (“**Borrower**”), in favor of THE PRIVATEBANK AND TRUST COMPANY, its permitted successors and assigns, as Administrative Agent for the Lenders (as defined below) (the “**Administrative Agent**”).

W I T N E S S E T H

WHEREAS, pursuant to that certain Loan and Security Agreement dated as of April 10, 2012 by and between Pledgor and The PrivateBank and Trust Company (“**PrivateBank**”) (as heretofore amended, restated, modified or supplemented, the “**Existing Loan Agreement**”), Borrower entered into that certain Trademark Security Agreement dated as of April 10, 2012 by and between Pledgor and PrivateBank (as heretofore amended, restated, modified or supplemented, the “**Existing Security Agreement**”);

WHEREAS, concurrently herewith, Borrower, Administrative Agent and the financial institutions which are or may become parties thereto (collectively, with the PrivateBank, “**Lenders**”), are entering into that certain Amended and Restated Loan and Security Agreement dated as of even date herewith (as amended, restated, modified or supplemented and in effect from time to time, the “**Business Loan Agreement**”; all capitalized terms used in this Security Agreement and not otherwise defined herein are used with the meanings given such terms in the Business Loan Agreement);

WHEREAS, in connection with the Business Loan Agreement, Borrower and Administrative Agent are entering into that certain Construction Loan Agreement dated as of even date herewith (as amended, restated, modified or supplemented and in effect from time to time, the “**Construction Loan Agreement**” and together with the Business Loan Agreement, collectively, the “**Loan Agreements**” and each a “**Loan Agreement**”), which Loan Agreements together amend and restate the Existing Loan Agreement in its entirety;

WHEREAS, the Loan Agreements and the Loan Documents (collectively, the “**Financing Agreements**”) provide (i) for Administrative Agent and Lenders to, from time to time, extend credit to or for the account of Borrower and (ii) for the grant by Borrower to Administrative Agent for the benefit of itself and Lenders of a security interest in certain of Borrower’s assets, including, without limitation, its trademarks and trademark applications;

WHEREAS, Administrative Agent and Lenders have required that Borrower execute and deliver this Security Agreement to Administrative Agent for the benefit of itself and Lenders and as a condition to the extension and/or continued extension of credit by Lenders; and

WHEREAS, the extension and/or continued extension of credit, as aforesaid, by Lenders is necessary and desirable to the conduct and operation of the business of Borrower and will inure to the financial benefit of Borrower;

NOW, THEREFORE, in consideration of the premises set forth herein and for other good and valuable consideration, receipt and sufficiency of which are hereby acknowledged, Borrower agrees as follows:

1. Incorporation of Financing Agreements. All terms capitalized but not otherwise defined herein shall have the same meanings herein as in the Business Loan Agreement.

2. Grant and Reaffirmation of Grant of Security Interests. To secure the complete and timely payment and satisfaction of the Obligations (as defined in the Business Loan Agreement), Borrower hereby grants to Administrative Agent for the benefit of itself and Lenders, and hereby reaffirms its prior grant pursuant to the Financing Agreements of, a continuing security interest in Borrower's entire right, title and interest in and to all of its now owned or existing and hereafter acquired or arising trademarks, trade names, corporate names, company names, business names, fictitious business names, trade styles, service marks, logos, other business identifiers, prints and labels on which any of the foregoing have appeared or appear, all registrations and recordings thereof, and all applications (other than "intent to use" applications until a verified statement of use is filed with respect to such applications) in connection therewith, including, without limitation, the trademark registrations and applications listed on Schedule A attached hereto and made a part hereof and the trademarks, and renewals thereof, and all income, royalties, damages and payments now or hereafter due and/or payable under or with respect to any of the foregoing, including, without limitation, damages and payments for past, present and future infringements of any of the foregoing and the right to sue for past, present and future infringements of any of the foregoing (all of the foregoing are sometimes hereinafter individually and/or collectively referred to as the "**Trademarks**"); all rights corresponding to any of the foregoing throughout the world and the goodwill of the Borrower's business connected with the use of and symbolized by the Trademarks.

3. Warranties and Representations. Borrower warrants and represents to Administrative Agent that:

(i) No Trademark has been adjudged invalid or unenforceable by a court of competent jurisdiction nor has any such Trademark been cancelled, in whole or in part and each such Trademark is presently subsisting;

(ii) To the knowledge of Borrower, Borrower is the sole and exclusive owner of the entire and unencumbered right, title and interest in and to each Trademark, free and clear of any liens (other than Permitted Liens), charges and encumbrances, including without limitation, shop rights and covenants by Borrower not to sue third persons;

(iii) Borrower has no notice of any suits or actions commenced or threatened with reference to any Trademark; and

(iv) Borrower has the unqualified right to execute and deliver this Security Agreement and perform its terms.

4. Restrictions on Future Agreements. Except as otherwise set forth herein or as permitted by the Business Loan Agreement, Borrower agrees that until Borrower's Obligations shall have been satisfied in full and the Financing Agreements shall have been terminated, Borrower shall not, without the prior written consent of Administrative Agent, such consent not to be unreasonably withheld, sell or assign its interest in any Trademark or enter into any other agreement with respect to

any Trademark which would affect the validity or enforcement of the rights transferred to Administrative Agent under this Security Agreement.

5. New Trademarks. Borrower represents and warrants that, based on a diligent investigation by Borrower, the Trademarks listed on Schedule A constitute all of the federally registered Trademarks, and federal applications for registration of Trademarks (other than “intent to use” applications until a verified statement of use is filed with respect to such applications) now owned by Borrower. If, before Borrower’s Obligations shall have been satisfied in full or before the Financing Agreements have been terminated, Borrower shall (i) become aware of any existing Trademarks of which Borrower has not previously informed Administrative Agent, (ii) become entitled to the benefit of any Trademarks, which benefit is not in existence on the date hereof, or (iii) take any action to register (or re-register) or revive, renew, resuscitate or otherwise claim rights in or protect any abandoned, lapsed or dead trademark, the provisions of this Security Agreement above shall automatically apply thereto and Borrower shall give to Administrative Agent prompt written notice thereof. Borrower hereby authorizes Administrative Agent to modify this Security Agreement by amending Schedule A to include any such Trademarks. In addition, if any of the foregoing events under this Section 5 occurs with respect to any Subsidiary of Borrower, Borrower shall give to Administrative Agent prompt written notice thereof.

6. Term. The term of this Security Agreement shall extend until the payment in full of Borrower’s Obligations and the termination of the Financing Agreements. Borrower agrees that upon the occurrence and during the continuance of an Event of Default, the use by Administrative Agent of all Trademarks shall be without any liability for royalties or other related charges from Administrative Agent to Borrower.

7. Product Quality. Borrower agrees to maintain the quality of any and all products in connection with which the Trademarks are used, consistent with commercially reasonable business practices. Upon the occurrence of an Event of Default, Borrower agrees that Administrative Agent, or a conservator appointed by Administrative Agent, shall have the right to establish such additional product quality controls as Administrative Agent, or said conservator, in its reasonable judgment, may deem necessary to assure maintenance of the quality of products sold by Borrower under the Trademarks.

8. Release of Security Agreement. This Security Agreement is made for collateral purposes only. Upon payment in full of Borrower’s Obligations and termination of the Financing Agreements, Administrative Agent shall take such actions as may be necessary or proper to terminate the security interests created hereby and pursuant to the Financing Agreements

9. Expenses. All expenses incurred in connection with the performance of any of the agreements set forth herein shall be borne by Borrower. All fees, costs and expenses, of whatever kind or nature, including reasonable attorneys’ fees and legal expenses, incurred by Administrative Agent in connection with the filing or recording of any documents (including all taxes in connection therewith) in public offices, the payment or discharge of any taxes, reasonable counsel fees, maintenance fees, encumbrances or otherwise in protecting, maintaining or preserving the Trademarks or in defending or prosecuting any actions or proceedings arising out of or related to the Trademarks shall be borne by and paid by Borrower and until paid shall constitute Obligations.

10. Duties of Borrower. Borrower shall have the duty (i) to file and prosecute diligently, as commercially reasonable, any trademark applications pending as of the date hereof or hereafter

until Borrower's Obligations shall have been paid in full and the Financing Agreements have been terminated, (ii) to preserve and maintain all rights in the Trademarks, as commercially reasonable and (iii) to ensure that the Trademarks are and remain enforceable, as commercially reasonable. Any expenses incurred in connection with Borrower's Obligations under this Section 10 shall be borne by Borrower.

11. Administrative Agent's Right to Sue. After the occurrence and during the continuance of an Event of Default, Administrative Agent shall have the right, but shall in no way be obligated, to bring suit in its own name to enforce the Trademarks and, if Administrative Agent shall commence any such suit, Borrower shall, at the request of Administrative Agent, do any and all lawful acts and execute any and all proper documents required by Administrative Agent in aid of such enforcement and Borrower shall promptly, upon demand, reimburse and indemnify Administrative Agent for all costs and expenses incurred by Administrative Agent in the exercise of its rights under this Section 11.

12. Waivers. No course of dealing between Borrower and Administrative Agent, nor any failure to exercise, nor any delay in exercising, on the part of Administrative Agent, any right, power or privilege hereunder or under the Financing Agreements shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder or thereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

13. Severability. The provisions of this Security Agreement are severable, and if any clause or provision shall be held invalid and unenforceable in whole or in part in any jurisdiction, then such invalidity or unenforceability shall affect only such clause or provision, or part thereof, in such jurisdiction, and shall not in any manner affect such clause or provision in any other jurisdiction, or any other clause or provision of this Security Agreement in any jurisdiction.

14. Modification. This Security Agreement cannot be altered, amended or modified in any way, except as specifically provided in Section 5 hereof or by a writing signed by the parties hereto.

15. Cumulative Remedies; Power of Attorney; Effect on Financing Agreements. All of Administrative Agent's and Lenders' rights and remedies with respect to the Trademarks, whether established hereby or by the Financing Agreements, or by any other agreements or by law shall be cumulative and may be exercised singularly or concurrently. Borrower hereby authorizes Administrative Agent upon the occurrence and during the continuance of an Event of Default, to make, constitute and appoint any officer or agent of Administrative Agent as Administrative Agent may select, in its sole discretion, as Borrower's true and lawful attorney-in-fact, with power to (i) endorse Borrower's name on all applications, documents, papers and instruments necessary or desirable for Administrative Agent in the use of the Trademarks or (ii) take any other actions with respect to the Trademarks as Administrative Agent deems to be in the best interest of Administrative Agent, or (iii) grant or issue any exclusive or non-exclusive license under the Trademarks to anyone, or (iv) assign, pledge, convey or otherwise transfer title in or dispose of the Trademarks to anyone. Borrower hereby ratifies all that such attorney-in-fact shall lawfully do or cause to be done by virtue hereof. This power of attorney shall be irrevocable until Borrower's Obligations shall have been paid in full and the Financing Agreements have been terminated. Borrower acknowledges and agrees that this Security Agreement is not intended to limit or restrict in any way the rights and remedies of Administrative Agent or Lenders under the Financing Agreements but rather is intended to facilitate the exercise of such rights and remedies. Administrative Agent and Lenders shall have, in addition to

all other rights and remedies given it by the terms of this Security Agreement and the Financing Agreements, all rights and remedies allowed by law and the rights and remedies of a secured party under the Uniform Commercial Code as enacted in Illinois.

16. Binding Effect; Benefits. This Security Agreement shall be binding upon Borrower and its respective successors and assigns, and shall inure to the benefit of Administrative Agent and Lenders, and their respective permitted successors, nominees and assigns.

17. Governing Law. This Security Agreement shall be governed by and construed in accordance with the laws of the State of Illinois and applicable federal law.

18. Headings. Paragraph headings used herein are for convenience only and shall not modify the provisions which they precede.

19. Further Assurances. Borrower agrees to execute and deliver such further agreements, instruments and documents, and to perform such further acts, as Administrative Agent shall reasonably request from time to time in order to carry out the purpose of this Security Agreement and agreements set forth herein.

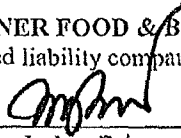
20. Survival of Representations. All representations and warranties of Borrower contained in this Security Agreement shall survive the execution and delivery of this Security Agreement and shall be remade on the date of each borrowing under the Financing Agreements.

21. Amendment and Restatement. This Security Agreement amends and restates the Existing Security Agreement in its entirety effective as of the date hereof.

[Remainder of page intentionally left blank; signature page follows]

IN WITNESS WHEREOF, Borrower has duly executed this Amended and Restated Trademark Security Agreement as of the date first written above.

BERNER FOOD & BEVERAGE, LLC, a Delaware limited liability company

By: 
Name: Joshua Britt
Title: Chief Financial Officer

Agreed and Accepted
As of the Date First Written Above

THE PRIVATEBANK AND TRUST COMPANY,
as Administrative Agent

By: _____
Name: Jennifer Kempton
Title: Managing Director

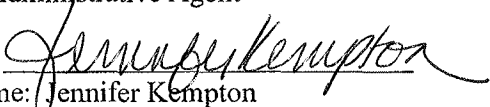
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As of the Date First Written Above

THE PRIVATEBANK AND TRUST COMPANY,
as Administrative Agent

By: 
Name: Jennifer Kempton
Title: Managing Director

SCHEDULE A

TRADEMARK REGISTRATIONS

<u>Trademark Description</u>	<u>U.S. Serial/Registration No.</u>	<u>Filing Date</u>	<u>Registration Date</u>
B BERNER FOOD & BEVERAGE	77698433 / 3797155	March 25, 2009	June 1, 2010
B STYLIZED	77697924 / 3804342	March 24, 2009	June 15, 2010
PARTY CHEESE	76142975 / 2563336	October 6, 2000	April 23, 2002
SNAKIN CHEESE	76024690 / 2790069	April 13, 2000	December 9, 2003
PARTY CHEESE PASTEURIZED PROCESS CHEESE SAUCE MADE WITH REAL CHEESE	75575530 / 2334921	October 20, 1998	March 28, 2000

TRADEMARK APPLICATIONS

<u>Trademark Application Description</u>	<u>U.S. Application No.</u>	<u>Date Applied</u>
None.		