

TRADEMARK ASSIGNMENT COVER SHEET

Electronic Version v1.1
 Stylesheet Version v1.2

ETAS ID: TM485794

SUBMISSION TYPE:		NEW ASSIGNMENT	
NATURE OF CONVEYANCE:		Security Agreement	
CONVEYING PARTY DATA			
Name	Formerly	Execution Date	Entity Type
PRIME FOOD DISTRIBUTOR, INC.		08/02/2018	Corporation: NEW YORK
RECEIVING PARTY DATA			
Name:	INVESTORS BANK		
Street Address:	101 JFK Parkway		
City:	Short Hills		
State/Country:	NEW JERSEY		
Postal Code:	07078		
Entity Type:	State Chartered Savings Bank: NEW JERSEY		
PROPERTY NUMBERS Total: 1			
Property Type	Number	Word Mark	
Registration Number:	4527985	PFD PRIME FOOD DISTRIBUTOR	
CORRESPONDENCE DATA			
Fax Number:			
<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>			
Email:	nancy.wiford@wollerskluer.com		
Correspondent Name:	Nancy Wiford		
Address Line 1:	4900 Easton Commons, Suite 125		
Address Line 4:	Columbus, OHIO 43219		
NAME OF SUBMITTER:	Joseph DeVito, Sr. Vice Pres.		
SIGNATURE:	/Joseph DeVito/		
DATE SIGNED:	08/13/2018		
Total Attachments: 9			
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TRADEMARK COLLATERAL SECURITY AGREEMENT

THIS TRADEMARK COLLATERAL SECURITY AGREEMENT ("Agreement") is made on the 2 day of August, 2018, between PRIME FOOD DISTRIBUTOR, INC. a New York corporation ("Grantor"), and INVESTORS BANK, a New Jersey State-chartered savings bank ("Lender").

BACKGROUND

Pursuant to that certain Revolving Credit, Term Loan and Security Agreement dated as of the date hereof (as amended, restated or otherwise modified, the "Loan Agreement") by and between Grantor and Lender, Lender has agreed to make financial accommodations to or for the benefit of Grantor pursuant to or in connection with the Loan Agreement.

NOW, THEREFORE, in consideration of the premises, Grantor and Lender hereby agree as follows:

1. Defined Terms. All capitalized terms used herein which are not otherwise defined herein shall have the meanings given to them in the Loan Agreement and the following terms shall have the following meanings, unless the context otherwise requires:

"Collateral" shall have the meaning assigned to it in Section 2 of this Security Agreement.

"Licenses" shall mean any trademark license agreements of Grantor as any of its trademarks as the same may from time to time be amended, modified or supplemented.

"Proceeds" shall have the meaning assigned to it under Section 9-102(64) of the Code, and in any event, shall include, but not be limited to, (i) any and all proceeds of any insurance, indemnity, warranty or guarantee payable to Grantor from time to time with respect to any of the Collateral, (ii) any and all payments (in any form whatsoever) made or due and payable to Grantor from time to time in connection with any requisition, confiscation, condemnation, seizure or forfeiture of all or any part of the Collateral by any governmental body, authority, bureau or agency (or any person acting under color of governmental authority), and (iii) any and all other amounts from time to time paid or payable under or in connection with any of the Collateral.

"Trademarks" shall mean the registered trademarks and pending applications shown in the attached Schedule A, and those trademarks which are hereafter adopted or acquired by Grantor, and all right, title and interest therein and thereto, and all registrations, applications, and recordings thereof, including, without limitation, applications, registrations and recordings in the United States Patent and Trademark Office or in any similar office or agency of the United States, any State thereof, or any foreign country, all whether now owned or hereafter acquired by Grantor.

2. Grant of Security Interest. As collateral security for the prompt payment of the Obligations, Grantor hereby grants and conveys to Lender a security interest in and to (a) the entire right, title and interest of Grantor in and to the Trademark, including the registrations and applications appurtenant thereto, listed in Schedule A hereto (as the same may be amended pursuant hereto from time to time), and in and to any and all Trademarks, and registrations and applications appurtenant thereto, hereafter acquired or filed by Grantor, including, without limitation, all renewals thereof, all proceeds of infringement suits, the rights to sue for past, present and future infringements and all rights corresponding thereto and the goodwill of the business to which each of the Trademarks relates and (b) all of Grantor's right, title and interest in, to and under the following:

(i) all Licenses;

(ii) all accounts, contract rights and general intangibles arising under or relating to each and every License (including, without limitation, (A) all moneys due and to become due under any License, (B) any damages arising out of or for breach or default in respect of any such License, (C) all other amounts from time to time paid or payable under or in connection with any such License, and (D) the right of Grantor to terminate any such License or to perform and to exercise all remedies thereunder); and

(iii) to the extent not otherwise included, all Proceeds and products of any or all of the foregoing.

3. Representations and Warranties. Grantor covenants and warrants that:

(i) The Trademark is subsisting and have not been adjudged invalid or unenforceable in whole or in part;

(ii) To the best of Grantor's actual knowledge, the Trademark is valid and enforceable;

(iii) There is no outstanding claim that the use of any of the Trademarks violates the rights of any third person;

(iv) Grantor is the sole and exclusive owner of the entire and unencumbered right, title and interest in and to the Trademark, free and clear of any Liens (including without limitation pledges, assignments, licenses, registered user agreements and covenants by Grantor not to sue third persons);

(v) Grantor has the right to enter into this Agreement and perform its terms; and

(vi) Grantor has used, and will continue to use for the duration of this Agreement, proper statutory notice, where appropriate, in connection with its use of the Trademarks.

4. [Intentionally Omitted].

5. New Trademarks.

If, before the Obligations shall have been irrevocably paid in full, Grantor shall obtain rights to any new Trademarks or become entitled to the benefit of any trademark application or trademark for any reissue, division, continuation, renewal, extension, or continuation in part of any Trademark or any improvement on any Trademark, the provisions of paragraph 2 shall automatically apply thereto and Grantor shall give Lender prompt written notice thereof.

Grantor grants Lender a power-of-attorney, irrevocable so long any Obligations are outstanding, to modify this Agreement by amending Schedule A to include any future trademarks, including trademark registrations or applications appurtenant thereto covered by this Agreement.

6. Covenants. Grantor covenants and agrees with Lender that from and after the date of this Agreement and until the Obligations are fully satisfied:

(i) Further Documentation: Pledge of Instruments. At any time and from time to time, upon the written request of Lender, Grantor will promptly and duly execute and deliver any and all such further instruments and documents and take such further action as Lender may reasonably deem desirable in obtaining the full benefits of this Agreement and of the rights and powers herein granted, including, without limitation, the filing of any financing or continuation statements under the Code with respect to the Liens and security interests granted hereby. Grantor also hereby authorizes Lender to file any such financing or continuation statement to the extent permitted by applicable law. If any amount payable under or in connection with any of the Collateral shall be or become evidenced by any promissory note or other instrument, such note or instrument shall be immediately pledged to Lender hereunder, duly endorsed in a manner satisfactory to Lender.

(ii) Maintenance of Trademarks. Grantor will not do any act, or omit to do any act, whereby the Trademark or any registration or application appurtenant thereto, may become abandoned, invalidated, unenforceable, avoided, avoidable, or will otherwise materially diminish in value (except to the extent such Trademark is no longer useful or necessary for Grantor's business as then conducted), and shall notify Lender immediately if it knows of any reason or has reason to know of any ground under which this result may occur. Grantor shall take appropriate action at its expense to halt the infringement of such Trademarks and shall properly exercise its duty to control the nature and quality of the goods offered by any licensees in connection with the Licenses.

(iii) Indemnification. Grantor assumes all responsibility and liability arising from the use of the Trademark, and Grantor hereby indemnifies and holds Lender harmless from and against any claim, suit, loss, damage or expense (including reasonable attorneys' fees) arising out of Grantor's operations of its business from the use of the Trademarks, except to the extent any of the foregoing is caused by the gross negligence or willful misconduct of the Lender.

(iv) Limitations on Modifications of Licenses. Grantor will not amend, modify, terminate or waive any provision of any License in any manner which might materially adversely affect the value of such License or the Trademark as Collateral (except to the extent such License or Trademark is no longer useful or necessary for Grantor's business as then conducted).

(v) Exercise of Rights. Grantor shall exercise promptly and diligently each and every material right which it may have under each License (other than any right of termination).

7. Lender's Appointment as Attorney-in-Fact.

(a) Grantor hereby irrevocably constitutes and appoints Lender and any officer or agent thereof, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of Grantor and in the name of Grantor or in its own name, from time to time in Lender's reasonable discretion, for the purposes of carrying out the terms of this Agreement, to take any and all appropriate action and to execute any and all documents and instruments which may be necessary or desirable to accomplish the purposes of this Agreement and, without limiting the generality of the foregoing, hereby gives Lender the power and right, on behalf of Grantor, to do the following:

(i) Upon the occurrence and continuance of an Event of Default, to ask, demand, collect, receive and give acquittances and receipts for any and all moneys due and to become due under any License and, in the name of Grantor or its own name or otherwise, to take possession of and endorse and collect any checks, drafts, notes, acceptances or other instruments for the payment of moneys due under any License and to file any claim or to take any other action or proceeding in any court of law

or equity or otherwise deemed appropriate by Lender for the purpose of collecting any and all such moneys due under any License whenever payable;

(ii) To pay or discharge taxes, Liens or other encumbrances levied or placed on or threatened against the Collateral (except for Permitted Encumbrances), to effect any repairs or any insurance called for by the terms of this Agreement and to pay all or any part of the premiums therefor and the costs thereof, all after giving Grantor contemporaneous notice; and

(iii) Upon the occurrence and continuance of an Event of Default, (A) to direct any party liable for any payment under any of the Licenses to make payment of any and all moneys due and to become due thereunder directly to Lender or as Lender shall direct; (B) to receive payment of and receipt for any and all moneys, claims and other amounts due and to become due at any time in respect of or arising out of any Collateral; (C) to commence and prosecute any suits, actions or proceedings at law or in equity in any court of competent jurisdiction to collect the Collateral or any part thereof and to enforce any other right in respect of any Collateral; (D) to defend any suit, action or proceeding brought against Grantor with respect to any Collateral; (E) to settle, compromise, or adjust any suit, action or proceeding described above and, in connection therewith, to give such discharges or releases as Lender may deem appropriate; and (F) generally to sell, transfer, pledge, make any agreement with respect to or otherwise deal with any of the Collateral as fully and completely as though Lender were the absolute owner thereof for all purposes, and to do, at Lender's option all acts and things which Lender deems necessary to protect, preserve or realize upon the Collateral and Lender's security interest therein, in order to effect the intent of this Agreement, all as fully and effectively as Grantor might do.

(b) This power of attorney is a power coupled with an interest and shall be irrevocable. Notwithstanding the foregoing, Grantor further agrees to execute any additional documents which Lender may reasonably require in order to confirm this power of attorney, or which Lender may reasonably deem necessary to enforce any of its rights contained in this Agreement.

(c) The powers conferred on Lender hereunder are solely to protect its interests in the Collateral and shall not impose any duty upon it to exercise any such powers. Lender shall be accountable only for amounts that it actually receives as a result of the exercise of such powers and neither it nor any of its officers, directors, employees or agents shall be responsible to Grantor for any act or failure to act, except for its own gross (not mere) negligence or willful misconduct.

Grantor also authorizes Lender to execute, in connection with the sale provided for in paragraph 10(ii) of this Agreement, any endorsements, assignments or other instruments of conveyance or transfer with respect to the Collateral.

8. [This Section Is Intentionally Left Blank]

9. Performance by Lender of Grantor's Obligations. If Grantor fails to perform or comply with any of its agreements contained herein and Lender, as provided for by the terms of this Agreement, shall itself perform or comply, or otherwise cause performance or compliance, with such agreement, the reasonable expenses of Lender incurred in connection with such performance or compliance shall be payable by Grantor to Lender on demand and shall constitute Obligations secured hereby.

10. Remedies, Rights Upon Event of Default.

If an Event of Default shall occur and be continuing:

(i) All payments received by Grantor under or in connection with any of the Collateral shall be held by Grantor in trust for Lender, shall be segregated from other funds of Grantor and shall forthwith upon receipt by Grantor, be turned over to Lender, in the same form as received by Grantor (duly indorsed by Grantor to Lender, if required); and

(ii) Any and all such payments so received by Lender (whether from Grantor or otherwise) shall be applied by Lender against all or any part of the Obligations as provided for in the Loan Agreement. Any balance of such payments held by Lender and remaining after payment in full of all the Obligations shall be paid over to Grantor or to whomsoever may be lawfully entitled to receive the same.

If any Event of Default shall occur and be continuing, Lender may exercise in addition to all other rights and remedies granted to it in this Agreement and in any other instrument or agreement securing, evidencing or relating to the Obligations, all rights and remedies of a secured party under the Code. Grantor shall remain liable for any deficiency if the proceeds of any sale or disposition of the Collateral are insufficient to pay all amounts to which Lender is entitled. Grantor shall also be liable for the reasonable fees of any attorneys employed by Lender to collect any such deficiency and also as to any reasonable attorney's fees incurred by Lender with respect to the collection of any of the Obligations and the enforcement of any of Lender's respective rights hereunder.

11. Termination. At such time as the Obligations are irrevocably satisfied in full in cash and all commitments to extend credit under the Loan Documents are irrevocably terminated, this Agreement and the Power of Attorney shall automatically terminate and Lender shall (i) release all of the Liens and security interests granted hereunder and (ii) execute and deliver to Grantor all such releases, deeds, assignments and other instruments as may be necessary or proper to re-vest in Grantor full title to the Collateral, subject to any disposition thereof which may have been made by Lender pursuant hereto.

12. Notices. Any notice under or pursuant to this Agreement shall be a signed writing or other authenticated record (within the meaning of Article 9 of the Code). Any notices under or pursuant to this Agreement shall be deemed duly received and effective if delivered in accordance with the Loan Agreement.

13. No Waiver. No course of dealing between Grantor and Lender, nor any failure to exercise, nor any delay in exercising, on the part of Lender, any right, power or privilege hereunder or under the Loan Agreement 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.

14. Cumulative Remedies. All of Lender's rights and remedies with respect to the Collateral, whether established hereby or by the other Loan Documents, or by any other agreements or by law, shall be cumulative and may be exercised singularly or concurrently.

15. Severability. The provisions of this 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 Agreement in any jurisdiction.

16. No Modification Except in Writing. Except as provided in paragraphs 5 and 7, no amendment or waiver of any provision of this Agreement shall be effective unless the same shall be in writing executed by the parties hereto.

17. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of Grantor and Lender, all future holders of the Obligations and their respective successors and assigns, except that Grantor may not assign or transfer any of its rights or obligations under this Agreement without the prior written consent of Lender.

18. Governing Law. This Agreement shall be governed by the laws of the State of New York without giving effect to the conflicts of laws principles thereof.

19. Reproductions. This Agreement and all documents which have been or may be hereinafter furnished by Grantor to the Lender may be reproduced by the Lender by any photographic, photostatic, microfilm, xerographic or similar process, and any such reproduction shall be admissible in evidence as the original itself in any judicial or administrative proceeding (whether or not the original is in existence and whether or not such reproduction was made in the regular course of business).

20. Jurisdiction and Venue. This Agreement and the other Loan Documents shall be governed by and construed in accordance with the laws of the State of New York applied to contracts to be performed wholly within the State of New York. Any judicial proceeding brought by the Lender against the Grantor with respect to any of the Obligations, this Agreement or any other Loan Document or related agreement may be brought in any court of competent jurisdiction in the County of New York, State of New York, United States of America, and, by execution and delivery of this Agreement, the Grantor accepts for itself and in connection with its properties, generally and unconditionally, the non-exclusive jurisdiction of the aforesaid courts in connection with any such judicial proceeding brought by the Lender against the Grantor, and irrevocably agrees to be bound by any judgment rendered thereby in connection with this Agreement. The Grantor hereby waives personal service of any and all process upon it and consents that all such service of process may be made by registered mail (return receipt requested) directed to the Grantor at its address set forth in Section 14.6 of the Loan Agreement and service so made shall be deemed completed five (5) days after the same shall have been so deposited in the mails of the United States of America. Nothing herein shall affect the right to serve process in any manner permitted by law or shall limit the right of the Lender to bring proceedings against the Grantor in the courts of any other jurisdiction. The Grantor waives any objection to jurisdiction and venue of any action instituted hereunder and shall not assert any defense based on lack of jurisdiction or venue or based upon *forum non conveniens*. Any judicial proceeding by the Grantor against the Lender involving, directly or indirectly, any matter or claim in any way arising out of, related to or connected with this Agreement or any related agreement, shall be brought only in a federal or state court located in the County of New York, State of New York.


21. JURY WAIVER. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE GRANTOR AND THE LENDER EACH WAIVE THEIR RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF OR BASED UPON THIS AGREEMENT, THE LOAN DOCUMENTS OR ANY CONTEMPLATED TRANSACTION, INCLUDING CONTRACT, TORT, BREACH OF DUTY AND ALL OTHER CLAIMS. THIS WAIVER IS A MATERIAL INDUCEMENT FOR BOTH PARTIES TO ENTER INTO THIS AGREEMENT. EACH PARTY HAS REVIEWED THIS WAIVER WITH ITS COUNSEL.

22. Headings. Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

23. Counterparts; Facsimile. This Agreement may be executed by the parties hereto in one or more counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one and the same agreement. Any signature delivered by a party by facsimile or other electronic transmission shall be deemed to be an original signature hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement under seal as of the day and year first above written.

PRIME FOOD DISTRIBUTOR, INC.


By: 
Name: Joseph T. Castellana
Title: President

INVESTORS BANK

By: 
Name: Joseph DeVito
Title: Senior Vice President

STATE OF NEW YORK)
)
) ss:
COUNTY OF NASSAU)

On the 2 day of August, 2018, before me personally came Joseph T. Castellana to me known, who being by me duly sworn, did depose and say she is the President of Prime Food Distributor, Inc. the company described in and which executed the foregoing instrument; and that he signed his name thereto by order of the Board of directors of said company.


Notary Public

My Commission Expires:

ALLAN J. MARRUS
Notary Public, State of New York
No. 02MAG000108
Qualified in Nassau County
My Commission Expires Sept. 22, 20 19

[Trademark Collateral Security Agreement]

SCHEDULE A

PFD Logo

Reg No. 4,527,985

Registration Dated May, 13, 2014