

TRADEMARK ASSIGNMENT COVER SHEET

Electronic Version v1.1
Stylesheet Version v1.2

ETAS ID: TM504209

SUBMISSION TYPE:	NEW ASSIGNMENT		
NATURE OF CONVEYANCE:	Security Agreement		
CONVEYING PARTY DATA			
Name	Formerly	Execution Date	Entity Type
Western Beef Retail, Inc.		12/21/2018	Corporation: NEW YORK
RECEIVING PARTY DATA			
Name:	Investors Bank		
Street Address:	101 JFK Parkway		
City:	Short Hills		
State/Country:	NEW JERSEY		
Postal Code:	07078-2716		
Entity Type:	Chartered Bank: UNITED STATES		
PROPERTY NUMBERS Total: 4			
Property Type	Number	Word Mark	
Registration Number:	4608791	EL CAFE DEL INMIGRANTE	
Registration Number:	4608379	WESTERN BEEF	
Registration Number:	4606381	P.S. IT'S HEALTHY	
Registration Number:	4374379	WESTERN BEEF CERTIFIED SINCE 1906	
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@wolterskluwer.com		
Correspondent Name:	Nancy Wiford		
Address Line 1:	4400 Easton Commons		
Address Line 2:	Suite 125		
Address Line 4:	Columbus, OHIO 43219		
NAME OF SUBMITTER:	Joseph DeVito		
SIGNATURE:	/Joseph DeVito/		
DATE SIGNED:	01/03/2019		
Total Attachments: 9			
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source=Western Beef Trademark#page2.tif			
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RECORDATION FORM COVER SHEET TRADEMARKS ONLY

To the Director of the U. S. Patent and Trademark Office: Please record the attached documents or the new address(es) below.

1. Name of conveying party(ies):

Western Beef Retail, Inc.

- Individual(s) Association
 General Partnership Limited Partnership
 Corporation- State: New York
 Other _____

Citizenship (see guidelines) _____

Additional names of conveying parties attached? Yes No

3. Nature of conveyance / Execution Date(s) :

Execution Date(s) December 21, 2018

- Assignment Merger
 Security Agreement Change of Name
 Other _____

2. Name and address of receiving party(ies)

Additional names, addresses, or citizenship attached? Yes No

Name: Investors Bank

Internal

Address: _____

Street Address: 101 JFK Parkway

City: Short Hills

State: New Jersey

Country: USA Zip: 07078-2716

- Association Citizenship _____
 General Partnership Citizenship _____
 Limited Partnership Citizenship _____
 Corporation Citizenship _____

Other: state chartered bank Citizenship USA
If assignee is not domiciled in the United States, a domestic representative designation is attached: Yes No
(Designations must be a separate document from assignment)

4. Application number(s) or registration number(s) and Identification or description of the Trademark.

A. Trademark Application No.(s)

B. Trademark Registration No.(s)

4,608,791; 4,608,379; 4,606,381; 4,374,379

Additional sheet(s) attached? Yes No

C. Identification or Description of Trademark(s) (and Filing Date if Application or Registration Number is unknown):

See Exhibit A to attached Trademark Security Agreement

5. Name & address of party to whom correspondence concerning document should be mailed:

Name: Platzer, Swergold, Levine, Goldberg, Katz & Jaslow

Internal Address: _____

Street Address: 475 Park Avenue South

City: New York

State: New York Zip: 10016

Phone Number: 212-593-3000

Fax Number: 212-593-0353

Email Address: phahn@platzerlaw.com

6. Total number of applications and registrations involved:

4

7. Total fee (37 CFR 2.6(b)(8) & 3.41) \$ _____

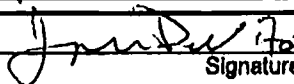
- Authorized to be charged to deposit account
 Enclosed

8. Payment Information:

Deposit Account Number _____

Authorized User Name _____

9. Signature:



Signature

12/21/2018

Date

Joseph DeVito

Name of Person Signing

Total number of pages including cover sheet, attachments, and document:

9

TRADEMARK SECURITY AGREEMENT

This Trademark Security Agreement (the "Agreement"), dated as of December 21, 2018, is made by and between WESTERN BEEF RETAIL, INC., a New York corporation, having a business location at the address set forth below next to its signature (the "Debtor"), and INVESTORS BANK, a New Jersey state chartered bank ("Secured Party"), having a business location at the address set forth below next to its signature.

RECITALS

A. Debtor, together with Foodnation, Inc., a corporation formed under the laws of Delaware and G and P Warehouse, Inc., a corporation formed under the laws of New York (and together with the Debtor, jointly and severally, individually and collectively the "Borrowers") and Secured Party are parties to a Revolving Credit, Term Loan and Security Agreement (as amended, supplemented or restated from time to time, the "Loan Agreement") dated the same date as this Agreement, setting forth the terms on which Secured Party may now or hereafter extend credit to or for the account of the Borrowers.

B. As a condition to extending credit to or for the account of the Borrowers, Secured Party has required the execution and delivery of this Agreement by Debtor.

ACCORDINGLY, in consideration of the mutual covenants contained in the Loan Documents and herein, the parties hereby agree as follows:

1. Definitions. All terms defined in the Recitals hereto or in the Loan Agreement that are not otherwise defined herein shall have the meanings given to them in the Loan Agreement. In addition, the following terms have the meanings set forth below:

"Security Interest" has the meaning given in Section 2.

"Trademarks" means all of Debtor's right, title and interest in and to: (i) trademarks, service marks, collective membership marks, registrations and applications for registration for each, and the respective goodwill associated with each, (ii) licenses, fees or royalties with respect to each, (iii) the right to sue for past, present and future infringement, dilution and damages therefor, and (iv) licenses thereunder, all as presently existing or hereafter arising or acquired, including, without limitation, the marks listed on Exhibit A.

2. Security Interest. Debtor hereby irrevocably pledges and assigns to, and grants Secured Party a security interest (the "Security Interest") with power of sale to the extent permitted by law, in the Trademarks to secure payment of the Obligations. As set forth in the Loan Agreement, the Security Interest is coupled with a security interest in substantially all of the personal property of Debtor. This Agreement grants only the Security Interest herein described, is not intended to and does not affect any present transfer of title of any trademark registration or application and makes no assignment and grants no right to assign or perform any other action with respect to any intent to use trademark application, unless such action is permitted under 15 U.S.C. § 1060.

3. Representations, Warranties and Agreements. Debtor represents, warrants and agrees as follows:

(a) **Existence; Authority.** Debtor is a corporation duly organized, validly existing and in good standing under the laws of its state of organization, and this Agreement has been duly and validly authorized by all necessary corporate or company action on the part of Debtor.

(b) [Intentionally Omitted]

(c) **Trademarks.** Exhibit A accurately lists all Trademarks owned or controlled by Debtor as of the date hereof and accurately reflects the existence and status of Trademarks and all applications and registrations pertaining thereto as of the date hereof; provided, however, that Exhibit A need not list common law marks (i.e., Trademarks for which there are no applications or registrations) which are not material to Debtor's or any Affiliate's business(es). If after the date hereof, Debtor owns or controls any Trademarks not listed on Exhibit B (other than common law marks which are not material to Debtor's or any Affiliate's business(es)), or if Exhibit A ceases to accurately reflect the existence and status of applications and registrations pertaining to the Trademarks, then Debtor shall promptly, but no later than within 45 days, provide written notice to Secured Party with a replacement Exhibit A, which upon acceptance by Secured Party shall become part of this Agreement.

(d) **Affiliates.** As of the date hereof, no Affiliate owns, controls, or has a right to have assigned to it any items that would, if such item were owned by Debtor, constitute Trademarks. If after the date hereof any Affiliate owns, controls, or has a right to have assigned to it any such items, then Debtor shall promptly either: (i) cause such Affiliate to assign all of its rights in such item(s) to Debtor; or (ii) notify Secured Party of such item(s) and cause such Affiliate to execute and deliver to Secured Party a trademark security agreement substantially in the form of this Agreement.

(e) **Title.** Debtor has absolute title to each Trademark listed on Exhibits B, free and clear of all Liens except Permitted Encumbrances. Debtor (i) will have, at the time Debtor acquires any rights in Trademarks hereafter arising, absolute title to each such Trademark free and clear of all Liens except Permitted Encumbrances, and (ii) will keep all Trademarks free and clear of all Liens except Permitted Encumbrances.

(f) **No Sale.** Except as permitted in the Loan Agreement, Debtor will not assign, transfer, encumber or otherwise dispose of the Trademarks, or any interest therein, without Secured Party's prior written consent.

(g) **Defense.** Debtor will at its own expense and using commercially reasonable efforts, protect and defend the Trademarks against all claims or demands of all Persons other than those holding Permitted Encumbrances.

(h) **Maintenance.** Debtor will at its own expense maintain the Trademarks to the extent reasonably advisable in its business including, but not limited to, filing all applications to obtain trademark registrations and all affidavits, maintenance fees, annuities, and renewals possible with respect to trademark registrations and applications therefor. Debtor covenants that

it will not abandon nor fail to pay any maintenance fee or annuity due and payable on any Trademark, nor fail to file any required affidavit or renewal in support thereof, without first providing Secured Party: (i) sufficient written notice, of at least 30 days, to allow Secured Party to timely pay any such maintenance fees or annuities which may become due on any Trademarks, or to file any affidavit or renewal with respect thereto, and (ii) a separate written power of attorney or other authorization to pay such maintenance fees or annuities, or to file such affidavit or renewal, should such be necessary or desirable.

(i) **Secured Party's Right to Take Action.** If Debtor fails to perform or observe any of its covenants or agreements set forth in this Section 3, and if such failure continues for a period of ten (10) calendar days after Secured Party gives Debtor written notice thereof (or, in the case of the agreements contained in subsection (h), immediately upon the occurrence of such failure, without notice or lapse of time), or if Debtor notifies Secured Party that it intends to abandon a Trademark, Secured Party may (but need not) perform or observe such covenant or agreement or take steps to prevent such intended abandonment on behalf and in the name, place and stead of Debtor (or, at Secured Party's option, in Secured Party's own name) and may (but need not) take any and all other actions which Secured Party may reasonably deem necessary to cure or correct such failure or prevent such intended abandonment.

(j) **Costs and Expenses.** Except to the extent that the effect of such payment would be to render any loan or forbearance of money usurious or otherwise illegal under any applicable law, Debtor shall pay Secured Party on demand the amount of all moneys expended and all costs and expenses (including reasonable attorneys' fees and disbursements) incurred by Secured Party in connection with or as a result of Secured Party's taking action under subsection (i) or exercising its rights under Section 6, together with interest thereon from the date expended or incurred by Secured Party at the Default Rate.

(k) **Power of Attorney.** To facilitate Secured Party's taking action under subsection (i) and exercising its rights under Section 6, Debtor hereby irrevocably appoints (which appointment is coupled with an interest) Secured Party, or its delegate, as the attorney in fact of Debtor with the right (but not the duty) from time to time to create, prepare, complete, execute, deliver, endorse or file, in the name and on behalf of Debtor, any and all instruments, documents, applications, financing statements, and other agreements and writings required to be obtained, executed, delivered or endorsed by Debtor under this Section 3, or, necessary for Secured Party, after an Event of Default, to enforce or use the Trademarks or to grant or issue any exclusive or non-exclusive license under the Trademarks to any third party, or to sell, assign, transfer, pledge, encumber or otherwise transfer title in or dispose of the Trademarks to any third party. Debtor hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof. The power of attorney granted herein shall terminate upon the termination of the Loan Agreement as provided therein and the payment and performance of all Obligations.

4. **Debtor's Use of the Trademarks.** Debtor shall be permitted to control and manage the Trademarks, including the right to exclude others from making, using or selling items covered by the Trademarks and any licenses thereunder, in the same manner and with the same effect as if this Agreement had not been entered into, so long as no Event of Default occurs and remains uncured.

5. **Events of Default.** Each of the following occurrences shall constitute an event of default under this Agreement (herein called "Event of Default"): (a) an Event of Default, as defined in the Loan Agreement, shall occur; or (b) Debtor shall fail promptly to observe or perform any covenant or agreement herein binding on it; or (c) any of the representations or warranties contained in Section 3 shall prove to have been incorrect in any material respect when made.

6. **Remedies.** Upon the occurrence of an Event of Default and at any time thereafter, Secured Party may, at its option, take any or all of the following actions:

(a) Secured Party may exercise any or all remedies available under the Loan Agreement.

(b) Secured Party may sell, assign, transfer, pledge, encumber or otherwise dispose of the Trademarks.

(c) Secured Party may enforce the Trademarks and any licenses thereunder, and if Secured Party shall commence any suit for such enforcement, Debtor shall, at the request of Secured Party, do any and all lawful acts and execute any and all proper documents required by Secured Party in aid of such enforcement.

7. **Recording.** Debtor authorizes and requests the United States Patent and Trademark Office to record this Trademark Security Agreement.

8. **Miscellaneous.** This Agreement can be waived, modified, amended, terminated or discharged, and the Security Interest can be released, only explicitly in a writing signed by Secured Party. A waiver signed by Secured Party shall be effective only in the specific instance and for the specific purpose given. Mere delay or failure to act shall not preclude the exercise or enforcement of any of Secured Party's rights or remedies. All rights and remedies of Secured Party shall be cumulative and may be exercised singularly or concurrently, at Secured Party's option, and the exercise or enforcement of any one such right or remedy shall neither be a condition to nor bar the exercise or enforcement of any other. All notices to be given to Debtor under this Agreement shall be given in the manner and with the effect provided in the Loan Agreement. Secured Party shall not be obligated to preserve any rights Debtor may have against prior parties, to realize on the Trademarks at all or in any particular manner or order, or to apply any cash proceeds of Trademarks in any particular order of application. This Agreement shall be binding upon and inure to the benefit of Debtor and Secured Party and their respective participants, successors and assigns and shall take effect when signed by Debtor and delivered to Secured Party, and Debtor waives notice of Secured Party's acceptance hereof. Secured Party may execute this Agreement if appropriate for the purpose of filing, but the failure of Secured Party to execute this Agreement shall not affect or impair the validity or effectiveness of this Agreement. A carbon, photographic or other reproduction of this Agreement or of any financing statement signed by Debtor shall have the same force and effect as the original for all purposes of a financing statement. If any provision or application of this Agreement is held unlawful or unenforceable in any respect, such illegality or unenforceability shall not affect other provisions or applications which can be given effect and this Agreement shall be construed as if the unlawful or unenforceable provision or application had never been contained herein or prescribed hereby. All representations and warranties contained in

this Agreement shall survive the execution, delivery and performance of this Agreement and the creation and payment of the Obligations.


[signature page follows]

IN WITNESS WHEREOF, the parties have executed this Trademark Security Agreement as of the date written above.

47-05 Metropolitan Avenue
Ridgewood, NY 11385

WESTERN BEEF RETAIL, INC.

Attention: Andrew Castellana

By 
Name Andrew Castellana III
Title President

Investors Bank
101 JFK Parkway
Short Hills, New Jersey 07078-2716
Attention: Joseph DeVito, S.V.P.

INVESTORS BANK, a New Jersey state chartered savings bank

By _____
Name _____
Title _____

IN WITNESS WHEREOF, the parties have executed this Trademark Security Agreement as of the date written above.

47-05 Metropolitan Avenue
Ridgewood, NY 11385

WESTERN BEEF RETAIL, INC.

Attention: Andrew Castellana

By _____
Name _____
Title _____

Investors Bank
101 JFK Parkway
Short Hills, New Jersey 07078-2716
Attention: Joseph DeVito, S.V.P.

INVESTORS BANK, a New Jersey state chartered
savings bank


By 
Name JOSEPH DEVITO
Title SVP

EXHIBIT A

UNITED STATES ISSUED TRADEMARKS, SERVICE MARKS
AND COLLECTIVE MEMBERSHIP MARKS

<u>Trademark</u>	<u>REG. #</u>	<u>REG. DATE</u>
Western Beef	4,608,791	9/23/14
Western Beef	4,608,379	7/8/14
Western Beef	4,606,381	9/23/14
Western Beef Certified since 1906	4,374,379	5/14/13