

TRADEMARK ASSIGNMENT COVER SHEET

Electronic Version v1.1
Stylesheet Version v1.2

ETAS ID: TM396671

SUBMISSION TYPE:	NEW ASSIGNMENT		
NATURE OF CONVEYANCE:	TRADEMARK AND LICENSE SECURITY AGREEMENT		
CONVEYING PARTY DATA			
Name	Formerly	Execution Date	Entity Type
NIEMANN FOODS, INC.		08/26/2016	Corporation: ILLINOIS
RECEIVING PARTY DATA			
Name:	BMO HARRIS BANK N.A.		
Street Address:	111 West Monroe Street		
City:	Chicago		
State/Country:	ILLINOIS		
Postal Code:	60603		
Entity Type:	National Banking Association: UNITED STATES		
PROPERTY NUMBERS Total: 4			
Property Type	Number	Word Mark	
Registration Number:	3923020	SPOON RIVER	
Registration Number:	4660406	HARVEST MARKET	
Registration Number:	4738800	SWEET BERRY FARMS	
Registration Number:	4919558	HAYMAKERS	
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:	312-609-7943		
Email:	skowalski@vedderprice.com		
Correspondent Name:	Sylvia Kowalski		
Address Line 1:	222 North LaSalle Street - 24th Floor		
Address Line 4:	Chicago, ILLINOIS 60601		
ATTORNEY DOCKET NUMBER:	40870.00.0209 - Hancock		
NAME OF SUBMITTER:	Sylvia Kowalski		
SIGNATURE:	/Sylvia Kowalski/		
DATE SIGNED:	08/29/2016		
Total Attachments: 13			
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TRADEMARK AND LICENSE SECURITY AGREEMENT

TRADEMARK AND LICENSE SECURITY AGREEMENT (“*Agreement*”) dated as of August 26, 2016, made by **NIEMANN FOODS, INC.**, an Illinois corporation, having its chief executive office at 1501 N. 12th St., Quincy, IL 62301 (“*Grantor*”), in favor of **BMO HARRIS BANK N.A.**, a national association (“*Lender*”).

W I T N E S S E T H:

WHEREAS, Lender and Grantor have entered into that certain Credit and Security Agreement of even date herewith (as the same may hereafter be amended or otherwise modified from time to time, the “*Credit Agreement*”), pursuant to which Lender has, subject to certain conditions precedent, agreed to make loans, advances and other financial accommodations (collectively, the “*Loans*”) to Grantor; and

WHEREAS, Lender has required as a condition, among others, to the making of the Loans to Grantor, in order to secure the prompt and complete payment, observance and performance of all of Grantor’s Obligations under the Credit Agreement and the other Loan Documents, that each Grantor execute and deliver this Agreement to Lender;

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

1. Defined Terms.

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

(b) 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.

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

2. Security Interest in Trademarks. To secure the complete and timely payment, performance and satisfaction of all of the Obligations, Grantor hereby grants to Lender, and its successors and permitted assigns, a security interest in (subject only to Permitted Liens), with power of sale to the extent permitted by applicable law, all of such Grantor’s now owned or existing and filed and hereafter acquired or arising and filed:

(i) United States trademarks, registered trademarks and trademark applications, trade names, service marks, registered service marks and service mark applications including, without limitation, the United States registered trademarks, trademark applications, registered service marks and service applications listed on

Schedule A (such United States registered trademarks, trademark registrations, registered service marks and service applications being referred to collectively as the “**Registered Marks**”) 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 such Grantor’s rights corresponding thereto in the United States (the Registered Marks, 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 such 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 and trademark applications, trade names, service marks, registered service marks and service mark applications, whether such Grantor is a licensor or licensee under any such license agreement, including but not limited to, the license agreements listed on Schedule B (all of the foregoing being hereinafter referred to collectively as the “**Licenses**”). Notwithstanding the foregoing provisions of this Section 2 and any license agreement listed on Schedule B, the Licenses shall not include any license agreement which by its terms prohibits the grant of the security interest contemplated by this Agreement without the consent of the other party to such License or any License agreement which shall be in Default upon Grantor granting any such security interest.

3. Restrictions on Future Agreements. Grantor will not, without Lender’s prior written consent, enter into any agreement, including, without limitation, any license agreement, to the extent such a license agreement is inconsistent with the Credit Agreement, and Grantor further agrees that it will not take any action, and will use its best efforts not to permit any action to be taken by others subject to its control, including licensees, or fail to take any action, which would in any material respect affect the validity or enforcement of the rights provided to Lender under this Agreement or the rights associated with those Trademarks which are reasonably necessary in, or material to, the operation of Grantor’s business.

4. New Trademarks. Grantor represents and warrants that the Registered Marks and Licenses listed on Schedules A and B with respect to Grantor, respectively, are all of the United States federally-registered trademarks, trademark registrations and trademark applications and all exclusive license agreements in connection therewith now owned or held by Grantor in the United States that are material to the operation of Grantor’s business. If, prior to the Payment in Full of the Obligations, Grantor shall (i) obtain rights to any new United States trademarks, trademark registrations, trademark applications, trade names, service marks, service mark registration, service mark applications or license agreements in connection therewith that are material to the operation of Grantor’s business or (ii) become entitled to the benefit of any United States trademark, trademark registration, trademark application, trade name, service mark, service mark registration or service mark application that is material to the operation of Grantor’s business, the provisions of Section 2 shall automatically apply thereto and, with

respect to any Registered Marks, Grantor shall give to Lender prompt written notice thereof. Grantor hereby authorizes Lender to modify this Agreement by (i) amending Schedules A or B, as the case may be, to include any such future United States trademarks, trademark registrations, trademark applications, trade names, service marks, service mark applications and license agreements in connection therewith that are material to Grantor's business and are Trademarks or Licenses under Section 2, or under this Section 4, and (ii) filing, in addition to and not in substitution for, this Agreement, a duplicate original of this Agreement containing on Schedules A or B thereto, as the case may be, such material United States trademarks, trademark applications, trade names, service marks, service mark applications and license agreements in connection with United States trademarks, registered trademarks, trademark applications, service marks, registered service marks, service mark applications and trade names which are material to Grantor's business and are Registered Marks or Licenses under Section 2 or this Section 4.

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

6. Nature and Continuation of Lender's Security Interest. This Agreement is made for collateral security purposes only. This Agreement shall create a continuing security interest in the Trademarks and Licenses and shall remain in full force and effect until the Payment in Full of the Obligations. At such time the rights granted to Lender hereunder shall automatically and without further action terminate and Lender shall deliver to Grantor, at the expense of Lender, such documents and instruments as may be reasonably requested by Grantor to evidence such termination.

7. Right to Inspect; Further Assignments and Security Interests. Subject to the Credit Agreement, Lender shall have the right, from time to time, subject to reasonable notice and during normal business hours (except, in each case, when a Default or Event of Default exists), to inspect Grantor's premises and to examine Grantor's books, records and operations relating to the Trademarks, including, without limitation, Grantor's quality control processes; provided, that in conducting such inspections and examinations, Lender shall use its best efforts not to disturb the conduct of Grantor's ordinary business operations. From and after the occurrence of an Event of Default in consequence of which Lender has declared the Obligations to be due and payable, and subject to the terms of the Credit Agreement, Grantor agrees that Lender or a conservator appointed by Lender, shall have the right to establish such reasonable additional product quality controls as Lender or such conservator, in its reasonable judgment may deem necessary to assure maintenance of the quality of products sold by Grantor under the Trademarks. Grantor agrees (i) not to sell or assign its interest in, or grant any license outside of the Ordinary Course of Business under, the Trademarks without the prior written consent of Lender, (ii) to maintain the quality of any and all products in connection with which the Trademarks are used, substantially consistent with the quality of said products as of the date hereof, and (iii) not to change the quality of such products in any material respect without the prior written consent of Lender.

8. Duties of Grantor. Grantor shall have the duty, to the extent desirable in the reasonable business judgment of Grantor and consistent with the terms of the Credit Agreement,

(i) to prosecute diligently any trademark applications or service mark applications material to the business of Grantor that are part of the Registered Marks 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, and (iii) to take reasonable steps to preserve and maintain all of Grantor's rights in the trademark applications, service mark applications and trademark and service mark registrations that are part of the Registered Marks and are material to the business of Grantor. Any expenses incurred in connection with the foregoing shall be borne by Grantor. Except to the extent desirable in the reasonable business judgment of Grantor or as otherwise would not be material to Grantor's business and, in any case, consistent with the terms of the Credit Agreement, Grantor shall not abandon any Trademark which is necessary or economically desirable in any material respect in the operation of Grantor's business. Lender shall not have any duty with respect to the Trademarks. Without limiting the generality of the foregoing, Lender shall not be under any obligation to take any steps necessary to preserve rights in the Trademarks and Licenses against any other parties, but may do so at its option during the continuance of an Event of Default, and all reasonable expenses incurred in connection therewith shall be for the sole account of Grantor and added to the Obligations secured hereby.

9. Lender's Right to Sue. From and after the occurrence and during the continuance of an Event of Default in consequence of which Lender has declared the Obligations to be due and payable, and subject to the terms of the Credit Agreement, Lender shall have the right but shall not be obligated, to bring suit to enforce the Trademarks and the Licenses and, if Lender shall commence any such suit, Grantor shall, at the request of Lender, do any and all lawful acts and execute any and all proper documents reasonably required by Lender in aid of such enforcement. Grantor shall, upon demand, promptly reimburse and indemnify Lender for all reasonable documented out-of-pocket expenses of Lender incurred by Lender in the exercise of its rights under this Section 9 to the extent provided and otherwise in accordance with Section 10.04 of the Credit Agreement. If, for any reason whatsoever, Lender is not reimbursed with respect to the costs and expenses referred to in the preceding sentence, then upon written notice to the Grantor, such costs and expenses shall be added to the Obligations secured hereby.

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

11. Lender's Exercise of Rights and Remedies upon Default. Except as set forth herein to the contrary, it is hereby expressly agreed that upon the occurrence and during the continuance of an Event of Default, Lender may exercise any of the rights and remedies provided in this Agreement, the Credit Agreement, or any other agreement executed in connection therewith. Without limiting the generality of the foregoing, Grantor acknowledges and agrees that (i) the Trademarks and Licenses comprise a portion of the Collateral and Lender 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, (ii) from and after the occurrence and during the continuance of an Event of Default, Lender or its nominee may use the Trademarks and Licenses to complete the manufacture of, assemble,

package, distribute, prepare for sale and sell the Inventory, or otherwise in connection with the conduct of Grantor's business, and (iii) the right upon the occurrence and during the continuance of an Event of Default, the right to use the Licenses in connection with the enforcement of Lenders' rights under the Credit Agreement.

12. 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.

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 Lender'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 Lender as Grantor's attorney-in-fact, with full authority in the place and stead of Grantor and in the name of Grantor or otherwise exercisable during an Event of Default to carry out the acts described below. Subject to the terms of the Credit Agreement, upon the occurrence and during the continuance of an Event of Default and the giving by Lender of written notice to Grantor of Lender's intention to enforce its rights and claims against Grantor, Grantor hereby authorizes Lender to, in its sole discretion (i) endorse Grantor's name on all applications, documents, papers and instruments necessary or desirable for Lender in the use of the Trademarks and the Licenses, (ii) take any other actions with respect to the Trademarks and the Licenses as Lender deems is in its best interest, (iii) grant or issue any exclusive or nonexclusive license under the Trademarks to anyone on commercially reasonable terms, and (iv) assign, pledge, convey or otherwise transfer title in or dispose of the Trademarks to anyone on commercially reasonable terms. Lender shall take no action pursuant to subsection (i), (ii), (iii) or (iv) of this Section 14 without taking like action with respect to the entire goodwill of Grantor's business connected with the use of, and symbolized by, such Trademarks, 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. Grantor acknowledges and agrees that this Agreement is not intended to limit or restrict in any way the rights and remedies of Lender under the Credit Agreement, but rather is intended to facilitate the exercise of such rights and remedies. Lender 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 UCC as enacted in any jurisdiction in which the Trademarks may be located or deemed located.

15. Binding Effect: Benefits. This Agreement shall be binding upon Grantor and its respective successors and assigns, and shall inure to the benefit of Lender and its and their nominees, successors and permitted assigns. Grantor's successors and assigns 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 Lender.

16. Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws (as distinguished from the conflicts of law provisions) and decisions of the State of Illinois.

17. Notices. All notices or other communications hereunder shall be given in the manner and to the addresses set forth in the Credit Agreement.

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 electronic transmission shall be effective as delivery of a manually executed counterpart of this Agreement.

(Signature Page Follows.)

(Signature Page to Trademark Security Agreement)

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

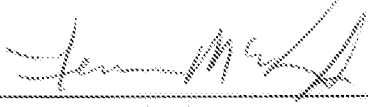
NIEMANN FOODS, INC., an Illinois corporation

By: _____
Name: Christopher J. Niemann
Title: Executive Vice President and Chief
Financial Officer

(Signature Page to Trademark Security Agreement)

Accepted and agreed to as of this 26th day of
August, 2016.

BMO HARRIS BANK N.A., as Lender

By:  _____

Name: Terrence McKenna

Title: Vice President

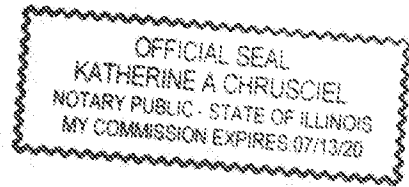
STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

The foregoing Trademark and License Security Agreement was executed and acknowledged before me this 26th day of August, 2016, by Terrence McKenna personally known to me to be Vice President of BMO Harris Bank N.A., a national association, on behalf of such association.

(SEAL)

Katherine A. Chrusciel
Notary Public

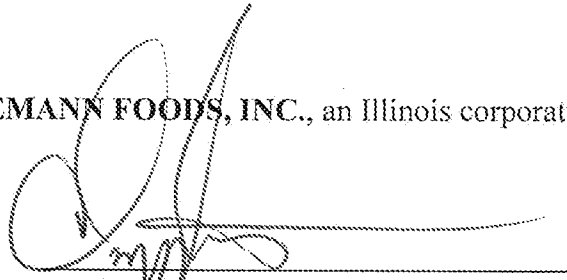
My commission expires: 7/13/20



(Signature Page to Trademark Security Agreement)

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

NIEMANN FOODS, INC., an Illinois corporation

A handwritten signature in black ink, appearing to read 'C. Niemann', is written over a horizontal line. The signature is stylized with a large loop at the beginning and a long horizontal stroke extending to the right.

By:

Name: Christopher J. Niemann

Title: Executive Vice President and Chief

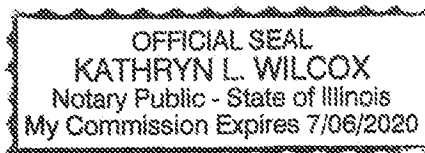
Financial Officer

STATE OF ILLINOIS)
) SS
COUNTY OF ADAMS)

The foregoing Trademark and License Security Agreement was executed and acknowledged before me this 20th day of August, 2016, by Christopher J. Niemann personally known to me to be the Executive Vice President and Chief Financial Officer of Niemann Foods, Inc., an Illinois corporation, on behalf of such corporation.

(SEAL)

Kathryn L. Wilcox
Notary Public



My commission expires: 7/6/2020

SCHEDULE A
TRADEMARKS

Mark	Status	Serial No.	App File Date	Reg. No.	Reg. Date	Owner
SPOON RIVER	Active	85080682	July 8, 2010	3,923,020	Feb. 22, 2011	Niemann Foods, Inc.
HARVEST MARKET	Active	85937799	May 21, 2013	4,660,406	Dec. 23, 2014	Niemann Foods, Inc.
SWEET BERRY FARMS	Active	86409914	Sept. 30, 2014	4,738,800	May 19, 2015	Niemann Foods, Inc.
HAYMAKERS	Active	86625390	May 11, 2015	4,919,558	March 15, 2016	Niemann Foods, Inc.

SCHEDULE B

LICENSES

1. Licensor: Supervalu, Inc. – Trademark name: County Market;
2. Licensor: Moran Foods, LLC – Trademark name: Save-A-Lot;
3. Licensor: PSP Franchising, LLC – Trademark name: Pet Supplies Plus;
4. Licensor: Ace Hardware Corporation – Trademark name: Ace Hardware;
5. Licensor: Doctor's Associates, Inc. – Trademark name: Subway; and
6. Licensor: Tomato Brothers, Inc. – Trademark name: Garcia's.