

**COLLATERAL ASSIGNMENT OF PATENTS,
TRADEMARKS, LICENSES AND COPYRIGHTS**

THIS COLLATERAL ASSIGNMENT OF PATENTS, TRADEMARKS, LICENSES AND COPYRIGHTS is made effective as of November 9, 1999 by **PREMIUM BEVERAGE PACKERS, INC.** ("Assignor") in favor of **SOVEREIGN BANK** ("Assignee").

BACKGROUND

A. Pursuant to that certain Loan and Security Agreement dated of even date herewith, by and among Assignee, Assignor and JMH, Inc. (such Loan and Security Agreement, as hereafter amended, modified or restated, being referred to herein as the "**Loan Agreement**"), Assignee agreed to extend to Premium Beverage Packers, Inc. and JMH, Inc. ("**Borrowers**") certain credit facilities as further described therein.

B. The Loan Agreement provides, *inter alia*, that Assignor will grant to Assignee a security interest in all of Assignor's assets, including, without limitation, its patents, patent rights, patent applications, servicemarks, trademarks, service trademark applications, service trade names, goodwill, copyrights and licenses.

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, Assignor agrees as follows:

1. Incorporation of Loan Agreement. The Loan Agreement and the terms and provisions thereof are hereby incorporated herein in their entirety by this reference thereto. All capitalized terms not otherwise defined herein shall have the meanings set forth in the Loan Agreement. All obligations of Assignor to Assignee, whether now or hereafter owing or existing, including without limitation all obligations hereunder, under the Loan Agreement, the Loan Documents and the Notes, and the payment, performance and discharge of all other obligations or undertakings now or hereafter made by or for the benefit of Assignor to or for the benefit of Assignee, under this Agreement or under any other agreement, promissory note or undertaking now existing or hereafter entered into by Assignor with or to Assignee, including any guaranty or surety obligations of Assignor owed to Assignee, and the undertakings of Assignor to immediately pay to Assignee the amount of any overdraft on any deposit account maintained with Assignee, are sometimes hereinafter referred to collectively as the "**Obligations.**"

2. Collateral Assignment. To secure the complete and timely payment and satisfaction of all Obligations, Assignor hereby collaterally assigns, mortgages, pledges, grants a security interest in, and transfers to Assignee, as and by way of a mortgage and security interest having priority over all other security interests, except those security interests listed on **Schedule 2**, with power of sale, to the extent permitted by law, all of such Assignor's right, title and interest in and to all of its now owned or existing and filed and hereafter acquired or arising and filed:

2.1 patents and patent applications, including, without limitation, the inventions and improvements described and claimed therein, and those patents listed on **Exhibit "A"**, attached hereto and made a part hereof, and (a) the reissues, divisions, continuations, renewals, extensions and continuations-in-part thereof, (b) all income, royalties, damages and payments now and hereafter due and/or payable under and with respect thereto, including, without limitation, damages and payments for past or future infringements thereof, (c) the right to sue for past, present and future infringements thereof, and (d) all rights corresponding thereto throughout the world (all of the foregoing patents and applications, together with the items described in clauses (a)-(d), are sometimes hereinafter individually and/or collectively referred to as the "**Patents**");

2.2 servicemarks, trademarks, servicemark and trademark registrations, trade names and trademark applications, including, without limitation, the servicemarks, trademarks and applications listed on **Exhibit "B"**, attached hereto and made a part hereof, 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, damages and payments for past or future infringements thereof, (c) the right to sue for past, present and future infringements thereof, and (d) all rights corresponding thereto throughout the world (all of the foregoing servicemarks, trademarks, servicemark and trademark registrations, servicemark and trade names and applications together with the items described in clauses (a)-(d), are sometimes hereinafter individually and/or collectively referred to as the "**Trademarks**");

2.3 copyrights, copyright registrations, copyright applications and all computer programs, operating systems, application systems, hardware or software of any nature whatsoever owned by Assignor, whether operational, under development or inactive, including all object codes, source codes, modules, technical manuals, user manuals, operating instructions and procedures, in-put and out-put formats, program listings, narrative descriptions, program flow charts, file layouts, report layouts, screen layouts and other documentation therefor (including internal notes, memoranda, status evaluations, marketing information and write-ups), and all improvements, modifications, enhancements, new releases and revisions thereof, whether in machine-readable form, programming language or any other language or symbols, and whether stored, encoded, recorded or written on disk, tape, film, memory device, paper or other media of any nature; together with all tangible media upon which any of the foregoing are recorded or encoded, including, without limitation, all chips, disks, tapes, film and paper; including, without limitation, the copyrights, copyrights registrations and copyrights applications listed on **Exhibit "C"** attached hereto and made a part hereof, 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, damages and payments for past or future infringements thereof, and (c) the right to sue for past, present and future infringements thereof (all of the foregoing items are sometimes referred to herein collectively as the "**Copyrights**");

2.4 license agreements with any other party, whether Assignor is a licensor or licensee under any such license agreement, including, without limitation, the licenses listed on **Exhibit "D"** attached hereto and made a part hereof, and the right to prepare for sale, sell

and advertise for sale all inventory now or hereafter owned by Assignor and now or hereafter covered by such licenses (all of the foregoing is hereinafter referred to collectively as the "**Licenses**"); and

2.5 the goodwill of Assignor's business connected with and symbolized by the Trademarks.

3. Restrictions on Future Agreements. Assignor agrees that until all Obligations shall have been satisfied in full and the Loan Agreement shall have been terminated, Assignor will not, without Assignee's prior written consent, enter into any agreement (including, without limitation, any license or royalty agreement) which is inconsistent with Assignor's obligations under this Assignment or which is prohibited under the terms of the Loan Agreement, and Assignor further agrees that it will not take any action, or 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 of Assignee under this Assignment.

4. New Patents, Trademarks, Copyrights and Licenses. Assignor represents and warrants that the Patents, Trademarks, Copyrights and Licenses listed on Exhibits "A", "B", "C" and "D", respectively, constitute all of the patents, trademarks, applications, copyrights and licenses now owned by Assignor. If, before all Obligations shall have been satisfied in full and the Loan Agreement shall have been terminated, Assignor shall (i) obtain rights to any new patentable inventions, trademarks, trademark registrations, trade names, copyrights or licenses, or (ii) become entitled to the benefit of any patent or trademark application, trademark, trademark registration, copyright or license renewal, or patent for any reissue, division, continuation, renewal, extension, or continuation-in-part of any Patent or any improvement on any Patent, the provisions of Section 1 above shall automatically apply thereto and Assignor shall give to Assignee prompt written notice thereof. Assignor hereby authorizes Assignee to modify this Assignment by amending Exhibit "A", "B", "C" and/or "D", as applicable, to include any future patents, patent applications, trademarks, trademark registrations, trademark applications, trade names, copyrights and licenses which are Patents, Trademarks, Copyrights or Licenses, as applicable, under Section 2 above or under this Section 4.

5. Royalties; Term. Assignor hereby agrees that the use by Assignee of all Patents, Trademarks, Copyrights and Licenses as described above shall be worldwide and without any liability for royalties or other related charges from Assignee to Assignor. The term of the collateral assignment granted herein shall extend until the earlier of (i) the expiration of each of the respective Patents, Trademarks, Copyrights and Licenses assigned hereunder, or (ii) the date on which all Obligations have been paid in full and the Loan Agreement is terminated.

6. Assignee's Right to Inspect. Subject to Section 15.7 of the Loan Agreement, Assignee shall have the right, at any time and from time to time, to inspect Assignor's premises and to examine Assignor's books, records and operations, including, without limitation, Assignor's quality control processes. Assignor agrees that Assignee, or a conservator appointed by Assignee, shall have the right to establish such additional reasonable product quality controls as Assignee, or

said conservator, in its sole judgment, may deem necessary to assure maintenance of the quality of products sold by Assignor under the Trademarks.

7. **Reassignment.** This Assignment is made for collateral purposes only. Upon payment in full of all Obligations and termination of the Loan Agreement, Assignee shall execute and deliver to Assignor all deeds, assignments and other instruments as may be necessary or proper to re-vest in Assignor full title to the Patents, Trademarks, Copyrights and Licenses, subject to any disposition thereof which may have been made by Assignee pursuant hereto or pursuant to the Loan Agreement.

8. **Duties of Assignor.**

8.1 Assignor agrees (i) not to sell or assign its interest in, or grant any license under, the Patents, Trademarks, Copyrights or Licenses, without the prior written consent of Assignee; (ii) to maintain the quality of any and all products in connection with which the Trademarks and/or the Copyrights are used, consistent with quality of said products as of the date hereof; (iii) not to adversely change the quality of said products without Assignee's express written consent; and (iv) to provide Assignee, upon request, with a certificate of an officer of Assignor certifying Assignor's compliance with the foregoing.

8.2 Assignor shall have the duty (i) to prosecute diligently any patent, trademark and copyright application pending as of the date hereof or thereafter until all Obligations shall have been paid in full and the Loan Agreement is terminated, (ii) to make application on unpatented but patentable inventions and on trademarks and copyrights, as appropriate, and (iii) to preserve and maintain all rights in patent applications and patents of the Patents, in trademark applications, trademarks and trademark registrations of the Trademarks and in copyright applications and copyrights of the Copyrights. Any expenses incurred in connection with such applications shall be borne by Assignor. Except for those applications or Patents, Trademarks or Copyrights which Assignor determines in its reasonably prudent business judgment to be of no material value, Assignor shall not abandon any right to file a patent, trademark or copyright application, or any pending patent, trademark or copyright application, or any Patent, Trademark or Copyright, without the consent of Assignee, which consent shall not be unreasonably withheld.

9. **Assignee's Right to Sue.** Assignee shall have the right, but shall in no way be obligated, to bring suit in its own name to enforce the Licenses, Patents, Copyrights and/or Trademarks, and any licenses thereunder, and, if Assignee shall commence any such suit, Assignor shall, at the request of Assignee, do any and all lawful acts and execute any and all proper documents required by Assignee in aid of such enforcement and Assignor shall promptly, upon demand, reimburse and indemnify Assignee for all costs and expenses incurred by Assignee in the exercise of its rights under this **Section 9.**

10. **Waivers.** No course of dealing between Assignor and Assignee, nor any failure to exercise, nor any delay in exercising, on the part of Assignee, 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.

11. Severability. The provisions of this Assignment are severable, and if any clause or provision shall be 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 Assignment in any jurisdiction.

12. Modification. This Assignment cannot be altered, amended or modified in any way, except as specifically provided in **Section 4** hereof or by a writing signed by the parties hereto.

13. Cumulative Remedies; Power of Attorney; Effect on Loan Agreement. All of Assignee's rights and remedies with respect to the Patents, Trademarks, Copyrights and Licenses, whether established hereby or by the Loan Agreement, or by any other agreements or by law shall be cumulative and may be exercised singularly or concurrently. Assignor hereby authorizes Assignee to make, constitute and appoint any officer or agent of Assignee as Assignee may select, in its sole discretion, as Assignor's true and lawful attorney-in-fact, with power to (i) following an Event of Default and while such Event of Default continues, endorse Assignor's name on all applications, documents, papers and instruments necessary or reasonably desirable for the use by Assignee or its successors or assigns of the Patents, Trademarks, Copyrights and/or Licenses, or (ii) following an Event of Default and while such Event of Default continues, take any other actions with respect to the Patents, Trademarks, Copyrights and/or Licenses as the Assignee reasonably deems in the best interest of the Assignee, (iii) following an Event of Default and while such Event of Default continues, grant or issue any exclusive or non-exclusive license under the Patents or Trademarks to anyone, or (iv) following an Event of Default and while such Event of Default continues, assign, pledge, convey or otherwise transfer title in or dispose of the Patents, Trademarks, Copyrights and/or Licenses to anyone, including Assignee. Assignee may act under such power of attorney to take the actions referenced in **Section 4** hereof. Assignee hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof. This power of attorney shall be irrevocable until all Obligations shall have been paid in full and the Loan Agreement shall have been terminated. Assignor acknowledges and agrees that this Assignment is not intended to limit or restrict in any way the rights and remedies of Assignee under the Loan Agreement but rather is intended to facilitate the exercise of such rights and remedies given it by the terms of this Assignment, 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 the Patents, Trademarks, Copyrights or Licenses may be located.

14. Binding Effect; Benefits. This Assignment shall be binding upon the Assignor and its successors and assigns, and shall inure to the benefit of Assignee, its nominees, successors and assigns.

15. **Governing Law.** This Assignment shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania, without regard to any rules or principles regarding conflicts of laws or any rule or canon of construction which interprets agreements against the draftsman.

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

PREMIUM BEVERAGE PACKERS, INC.

By: 
Jeffrey D. Hettinger, President

(CORPORATE SEAL)

**Exhibit "A" to Collateral Assignment of
Patents, Trademarks, Licenses and Copyrights**

Patents

None

**Exhibit "B" to Collateral Assignment of
Patents, Trademarks, Licenses and Copyrights**

Trademarks

(a) **Federally Registered Trademarks:**

<u>Mark</u>	<u>U.S. Patent and Trademark Registration No.</u>
Top Real Brewed Tea (words only)	RN-2283459
Top Fruit Medley (words only)	RN-2261265
American Classic (words only)	RN-2064154
Clear Choice (words and design)	RN-1959704
Top Tea (words only)	RN-2183177
American Classic (words and design)	RN-1882419
American Classic (words only)	RN-1776022
Top Pop (words only)	RN-1510360
Top Cola (words only)	RN-1297930
Top Pop (stylized letters)	RN-1285484

(b) **Federal Trademark Applications:**

<u>Mark</u>	<u>U.S. Patent and Trademark Serial No.</u>
Old Dutch (words only)	SN-75-492946
Old Dutch (words and design)	SN-75-492947
Top (words only)	SN-74-616753
Top Sport (words only)	SN-74-616761
Slim N' Trim (words only)	SN-74-122211

**Schedule 2 to Collateral Assignment of
Patents, Trademarks, Licenses and Copyrights**

(a) Federally Registered Trademarks

<u>Trademark</u>	<u>Registration No.</u>	<u>Date of Registration</u>	<u>Expiration</u>
SUNNY ISLE	1551198	August 8, 1989	August 8, 2009

(b) New York Registered Trademarks

<u>Trademark</u>	<u>Registration No.</u>	<u>Date of Registration</u>	<u>Expiration</u>
C/C Since 1901 City Club Beverages	R-27192	February 1997	February 2007
CC	R-28568	February 6, 1997	February 6, 2007

(c) Unregistered Trademarks

C/C Since 1901
City Club-True Fruit
Beverages

**Exhibit "C" to Collateral Assignment of
Patents, Trademarks, Licenses and Copyrights**

Copyrights

None

**Exhibit "D" to Collateral Assignment of
Patents, Trademarks, Licenses and Copyrights**

Licenses

None