

TRADEMARK ASSIGNMENT COVER SHEET

Electronic Version v1.1
Stylesheet Version v1.2

ETAS ID: TM492994

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|---|----------------------------------|-----------------------|--|
| SUBMISSION TYPE: | NEW ASSIGNMENT | | |
| NATURE OF CONVEYANCE: | SECURITY INTEREST | | |
| CONVEYING PARTY DATA | | | |
| Name | Formerly | Execution Date | Entity Type |
| IMPERIAL FROZEN FOODS OP CO LLC | | 10/01/2018 | Limited Liability Company: DELAWARE |
| RECEIVING PARTY DATA | | | |
| Name: | ACF FINCO I LP | | |
| Street Address: | 560 White Plains Road, Suite 400 | | |
| City: | Tarrytown | | |
| State/Country: | NEW YORK | | |
| Postal Code: | 10591 | | |
| Entity Type: | Limited Partnership: DELAWARE | | |
| PROPERTY NUMBERS Total: 3 | | | |
| Property Type | Number | Word Mark | |
| Registration Number: | 4841069 | SUNVALE | |
| Registration Number: | 2848655 | TODAY'S HARVEST | |
| Registration Number: | 4037648 | TODAY'S HARVEST | |
| 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: | kansley@stradley.com | | |
| Correspondent Name: | Kareem Ansley | | |
| Address Line 1: | Stradley Ronon | | |
| Address Line 2: | 100 Park Avenue | | |
| Address Line 4: | New York, NEW YORK 10017 | | |
| ATTORNEY DOCKET NUMBER: | 181382-0071 | | |
| NAME OF SUBMITTER: | Kareem Ansley | | |
| SIGNATURE: | /Kareem Ansley/ | | |
| DATE SIGNED: | 10/08/2018 | | |
| Total Attachments: 10 | | | |
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PATENT AND TRADEMARK SECURITY AGREEMENT

This Patent and Trademark Security Agreement (this “**Agreement**”), dated as of October 1, 2018, is made by and between **IMPERIAL FROZEN FOODS OP CO LLC**, a Delaware limited liability company (“**Grantor**”), and **ACF FINCO I LP**, a Delaware limited partnership (“**ACF**”), in its capacity as administrative agent and collateral agent for Lenders (as defined herein) (in such capacity, together with its successors and assigns in such capacity, “**Agent**”).

Recitals

A. Grantor and Imperial Snacks LLC, a North Carolina limited liability company (individually and collectively and jointly and severally, “**Borrower**”), Happy and Healthy Holdco LLC, a Delaware limited liability company, the lenders identified on the signature pages thereof (collectively, “**Lenders**”) and Agent are parties to a Loan and Security Agreement (as amended, modified, supplemented or restated from time to time, the “**Loan Agreement**”) dated as of the date hereof, setting forth the terms on which Lenders may now or hereafter extend credit to or for the account of Borrower.

B. As a condition to extending credit to or for the account of Borrower, Agent and Lenders have required the execution and delivery of this Agreement by Grantor.

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

1. Definitions. All terms used and 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:

“**Patents**” means all of Grantor’s right, title and interest in and to patents or applications for patents, fees or royalties with respect to each, and including without limitation the right to sue for past infringement and damages therefor, and licenses thereunder, all as presently existing or hereafter arising or acquired, including without limitation the patents listed on Exhibit A.

“**Security Interest**” has the meaning set forth in Section 2 hereof.

“**Trademarks**” means all of Grantor’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 B; except in each case for any U.S. intent-to-use trademark application for which a statement of use has not been filed with and duly accepted by the United States Patent and Trademark Office (but only until such statement is accepted by the United States Patent and Trademark Office).

2. Security Interest. Grantor hereby irrevocably pledges and collaterally assigns to, and grants to Agent, for its benefit and for the benefit of Lenders, a security interest (the “**Security Interest**”) with power of sale to the extent permitted by law, in the Patents and in the Trademarks to secure payment of the Obligations. As set forth in the Loan Agreement and the other Loan Documents, the Security Interest is coupled with a security interest in substantially all of the personal property of

Grantor. 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. Grantor represents, warrants and agrees to and with Agent, for its benefit and the benefit of Lenders, as follows:

(a) **Patents.** Exhibit A accurately lists all Patents owned or controlled by Grantor as of the date hereof, or to which Grantor has a right as of the date hereof to have assigned to it, and accurately reflects the existence and status of applications and letters patent pertaining to the Patents as of the date hereof. If after the date hereof, Grantor owns, controls or has a right to have assigned to it any Patents not listed on Exhibit A, or if Exhibit A ceases to accurately reflect the existence and status of applications and letters patent pertaining to the Patents, then Grantor shall, concurrently with the delivery of the quarterly financial statements provided under Section 6.5 of the Loan Agreement, provide written notice to Agent with a replacement Exhibit A, which upon acceptance by Agent shall become part of this Agreement.

(b) **Trademarks.** Exhibit B accurately lists all Trademarks owned or controlled by Grantor 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 B need not list common law marks (i.e., Trademarks for which there are no applications or registrations) which are not material to Grantor's business. If after the date hereof, Grantor owns or controls any Trademarks not listed on Exhibit B (other than common law marks which are not material to Grantor's business), or if Exhibit B ceases to accurately reflect the existence and status of applications and registrations pertaining to the Trademarks, then Grantor shall, concurrently with the delivery of the quarterly financial statements provided under Section 6.5 of the Loan Agreement, provide written notice to Agent with a replacement Exhibit B, which upon acceptance by Lenders shall become part of this Agreement.

(c) **Title.** Grantor has good title to each Patent and each Trademark listed on Exhibits A and B, free and clear of all Liens except Permitted Liens. Grantor (i) will have, at the time Grantor acquires any rights in Patents or Trademarks hereafter arising, good title to each such Patent or Trademark free and clear of all Liens except Permitted Liens, and (ii) will keep all Patents and Trademarks free and clear of all Liens except Permitted Liens.

(d) **No Sale.** Subject to Section 8.3 of the Loan Agreement, Grantor will not assign, transfer, encumber or otherwise dispose of the Patents or Trademarks, or any interest therein, without Lenders' prior written consent.

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

(f) **Maintenance.** Grantor will at its own expense maintain the Patents and the Trademarks to the extent reasonably advisable in its business including, but not limited to, filing all applications to obtain letters patent or trademark registrations and all affidavits, maintenance fees, annuities, and renewals possible with respect to letters patent, trademark registrations and applications therefor. Grantor covenants that it will not abandon nor fail to pay any maintenance fee or annuity due and payable on any Patent or Trademark material to its business (other than at

the end of its applicable statutory term), nor fail to file any required affidavit or renewal in support thereof, without first providing Agent: (i) sufficient written notice, of at least 30 days, to allow Agent and Lenders to timely pay any such maintenance fees or annuities which may become due on any Patents or 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.

(g) **Agent's Right to Take Action.** If Grantor 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 Agent gives Grantor written notice thereof (or, in the case of the agreements contained in subsection (f), immediately upon the occurrence of such failure, without notice or lapse of time), or if Grantor notifies Agent that it intends to abandon a Patent or Trademark material to its business (other than at the end of its applicable statutory term), Agent 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 Grantor (or, at Agent's option, in Agent's or one or more Lenders' own name) and may (but need not) take any and all other actions which Agent may reasonably deem necessary to cure or correct such failure or prevent such intended abandonment.

(h) **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, Grantor shall pay Agent on demand the amount of all moneys expended and all costs and expenses (including reasonable attorneys' fees and disbursements) incurred by Agent in connection with or as a result of Agent's taking action under subsection (g) of this Section 3 or exercising its rights under Section 9 and Section 10 of the Loan Agreement.

(i) **Power of Attorney.** To facilitate Agent taking action under subsection (g) of this Section 3 and exercising its rights under Section 6 hereof, Grantor hereby irrevocably appoints (which appointment is coupled with an interest) Agent, or its delegate, as the attorney-in-fact of Grantor 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 Grantor, any and all instruments, documents, applications, financing statements, and other agreements and writings required to be obtained, executed, delivered or endorsed by Grantor under this Section 3, or, necessary for Agent, upon the occurrence and during the continuation of an Event of Default, to enforce or use the Patents or Trademarks or to grant or issue any exclusive or non-exclusive license under the Patents or Trademarks to any third party, or to sell, assign, transfer, pledge, encumber or otherwise transfer title in or dispose of the Patents or Trademarks to any third party. Grantor 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. Grantor's Use of the Patents and Trademarks. Grantor shall be permitted to control and manage the Patents and Trademarks, including the right to exclude others from making, using or selling items covered by the Patents and 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 has occurred and is continuing.

5. Remedies. Upon the occurrence and during the continuation of an Event of Default, Agent may, at its option, take any or all of the following actions:

(a) Agent may exercise any or all remedies available under the Loan Agreement and the other Loan Documents.

(b) Agent may sell, assign, transfer, pledge, encumber or otherwise dispose of the Patents and Trademarks in accordance with the Loan Agreement.

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

6. Miscellaneous. This Agreement can be waived, modified or amended only as set forth in the Loan Agreement. A waiver signed by Agent 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 Agent's rights or remedies. All rights and remedies of Agent shall be cumulative and may be exercised singularly or concurrently, at Agent'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 Grantor under this Agreement shall be given in the manner and with the effect provided in the Loan Agreement. Agent shall not be obligated to preserve any rights Grantor may have against prior parties, to realize on the Patents and Trademarks at all or in any particular manner or order, or to apply any cash proceeds of Patents and Trademarks in any particular order of application. This Agreement shall be binding upon and inure to the benefit of Grantor, Agent and Lenders and their respective participants, successors and assigns and shall take effect when signed by Grantor and delivered to Agent, and Grantor waives notice of Agent's acceptance hereof. Agent may execute this Agreement if appropriate for the purpose of filing, but the failure of Agent to execute this Agreement shall not affect or impair the validity or effectiveness of this Agreement. This Agreement may be signed in any number of counterpart copies and by the parties hereto on separate counterparts, but all such copies shall constitute one and the same instrument. This Agreement shall be governed by the internal law of the State of New York including Sections 5-1401 and 5-1402 of the New York General Obligations Law applicable to contracts made and performed entirely in such state but without regard to all other principles of conflicts of laws that would result in a governing law other than the law of the State of New York. 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.


7. Intercreditor Agreement. Notwithstanding anything to the contrary stated in this Agreement, the rights of Agent and the Lenders, and the obligations of the Grantor under this Agreement are subject in all respects to the provisions set forth in the Intercreditor Agreement, and the rights of the Term Loan Agent set forth therein. In the event of any conflict between the terms of the Intercreditor Agreement and this Agreement, the terms of the Intercreditor Agreement shall govern and control.

THE PARTIES WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED ON OR PERTAINING TO THIS AGREEMENT.

[Signatures on Next Page]

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

ACF FINCO I LP

By: 
Name: Oleh Szczupak
Title: Vice President

IMPERIAL FROZEN FOODS OP CO LLC

By: _____
Name:
Title:

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

ACF FINCO LLP

By: _____
Name: Oleh Szczupak
Title: Vice President

IMPERIAL FROZEN FOODS OP CO LLC

By:  _____
Name: Craig Higgins
Title: Chief Financial Officer

STATE OF North Carolina)
)
COUNTY OF WAKE)

The foregoing instrument ~~was~~ acknowledged before me this 25 day of September, 2018, by Craig Higgins, the President of Imperial Frozen Foods Op Co LLC, a Delaware limited liability company, on behalf of the Imperial Frozen Foods Op Co LLC limited liability company.



[Signature]
Notary Public

My Commission exp: Dec. 15, 2019

STATE OF _____)
)
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of September, 2018, by Oleh Szczupak, the Vice President of ACF FinCo LLP, on behalf of said entity.

Notary Public

STATE OF _____)
)
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of September, 2018, by _____, the _____ of Imperial Frozen Foods Op Co LLC, a Delaware limited liability company, on behalf of the limited liability company.

Notary Public

STATE OF *New York*)
)
COUNTY OF *Westchester*)

The foregoing instrument was acknowledged before me this ~~2~~ day of September, 2018, by Oleh Szczupak, the Vice President of ACF FinCo I LP, on behalf of said entity.

Eileen O'Neill

Notary Public

EILEEN O'NEILL
Notary Public - State of New York
No. 01096228633
Qualified in Rockland County
My Commission Expires October 12, 2018

EXHIBIT A

PATENTS

None.

EXHIBIT B

UNITED STATES ISSUED TRADEMARKS, SERVICE MARKS

TRADEMARK REGISTRATIONS

| <u>Mark</u> | <u>Serial No. / Registration Number</u> | <u>Registration Date</u> |
|--|---|--------------------------|
| SUNVALE | 86567415 / 4841069 | 10/27/2015 |
|  | 85199833 / 4037648 | 10/11/2011 |
| TODAY'S HARVEST | 76439383 / 2848655 | 06/01/2004 |

TRADEMARK APPLICATIONS

None.

UNREGISTERED MARKS

None.