

05-08-2001

FORM PTO-1594

(Rev. 6-93)

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HEET
VLYU.S. DEPARTMENT OF COMMERCE
Patent and Trademark Office

OMB No. 0651-0011 (exp. 4/94)

Atty Docket No. 34450.174963

To the Assistant Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):



Name and address of receiving party(ies)

Name: AFI Acquisition Corp.

Allied Foods, Inc.

04-19-2001

U.S. Patent & TMO/TM Mail Receipt #01

Internal Address:

- ☐ Individuals(s) ☐ Association
☐ General Partnership ☐ Limited Partnership
☒ Corporation-State of Georgia
☐ Other

Street Address: 1450 Hills Place, N.W.

City: Atlanta

State: GA Zip: 30318

Additional names(s) of conveying party(ies) attached ☐ Yes ☒ No

- ☐ Individual(s) citizenship
☐ Association
☐ General Partnership
☐ Limited Partnership
☒ Corporation-State of Delaware
☐ Other

3. Nature of conveyance:

4-19-01

- ☐ Assignment ☐ Merger
☐ Security Agreement ☐ Change of Name
☒ Other **Asset Purchase Agreement**

If assignee is not domiciled in the United States, a domestic representative designation is attached: ☐ Yes ☐ No N/A

Execution Date: December 30, 1993

Additional names(s) & address(es) attached? ☐ Yes ☒ No

4. Application numbers(s) or patent numbers(s):

A. Trademark Application No.(s)

B. Trademark Registration No.(s)

793,720; 1,853,766; 702,658; 303,903

Refund Ref:
05/08/2001 GTON11 0000104899

CHECK Refund Total: \$10.00

Additional numbers attached? ☐ Yes ☒ No

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

Name: Joan L. Dillon

Internal Address: Kilpatrick Stockton LLP

Suite 2800

Street Address: 1100 Peachtree Street

City: Atlanta State: GA Zip: 30309

6. Total number of applications and registrations involved: 4

7. Total fee (37 CFR 3.41).....\$ 125.00

☒ Enclosed☐ Authorized to be charged to deposit account

The Commissioner is authorized to charge any deficiency in the required fee or credit any over payment to Deposit Account No. 11-0860.

8. Deposit account number:

115E

DO NOT USE THIS SPACE

9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Joan L. Dillon

Name of Person Signing

Signature

Date

4.17.01

05/08/2001 GTON11 00000028 793720

Total number of pages including cover sheet, attachments, and document: 37

01 FC:481

40.00 OP

02 FC:482

75.00 OP

ASSET PURCHASE AGREEMENT
By and Between
ALLIED FOODS, INC., as Seller
and
AFI ACQUISITION CORP., as Purchaser

Dated as of December 30, 1993

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Schedules

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Additional Consents Required
Certain Litigation

ASSET PURCHASE AGREEMENT

THIS AGREEMENT is made as of this 30th day of December, 1993 by and between AFI Acquisition Corp., a Delaware corporation (the "Purchaser"), and Allied Foods, Inc., a Georgia corporation (the "Seller").

W I T N E S S E T H:

WHEREAS, Purchaser desires to purchase from Seller and Seller desires to sell, transfer, assign, convey and deliver to Purchaser substantially all of the assets used in Seller's business of manufacturing and distributing canned pet foods (the "Subject Business") and assume those liabilities listed and described in Section 3.1 hereof as the same are unpaid and outstanding as of the Closing (as defined in Article IV), all upon the terms and conditions as hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual benefits to be derived, and the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Purchaser and Seller agree as follows:

ARTICLE I

Purchase and Sale of Assets

1.1 Assets to be Transferred. Subject to the terms and conditions of this Agreement, at the Closing (as defined in Article IV) Seller will sell, transfer, assign, convey and deliver to Purchaser, and Purchaser will purchase from Seller all of the assets owned by the Seller and used in connection with the Subject Business, including those assets, rights and properties described below, but in each case excluding those assets described in Section 1.2 (hereinafter collectively referred to as the "Purchased Assets"):

(a) Leasehold Interests. All of Seller's rights, title and interest in and to the real property leases (and any deposits with respect thereto) of the Seller with respect to the Subject Business identified in Schedule 1.1(a) attached hereto and made a part hereof.

(b) Real Property. The parcels of real property presently owned by Seller and used in the operation of the Subject Business and described in Schedule 1.1(b) attached hereto and made a part hereof, together with all of the Seller's right, title and interest in and to the improvements, fixtures, structures and buildings located thereon (the "Real Property").

(c) Machinery, Equipment, Etc. All machinery, equipment, furniture and other tangible and intangible personal property owned by Seller, located at the several facilities of the

Subject Business and used in the Subject Business and identified in Schedule 1.1(c) attached hereto and made a part hereof, together with all rights in or to the machinery, equipment, furniture and other tangible property leased by Seller, located at the several facilities of the Subject Business and used in the Subject Business or held for use exclusively in the Subject Business and identified as leased property in Schedule 1.1(c) attached hereto and made a part hereof, with such changes in such leased and owned equipment as may have occurred between the date hereof and the close of business on the Closing Date in the ordinary course of business.

(d) Inventories. (i) All inventories of raw materials and work in process owned by Seller at the commencement of business on the Closing Date at facilities of the Seller for use by Seller in the manufacture and sale of products of the Subject Business (the "Products"); (ii) all inventories of such raw materials in transit to such facilities at the commencement of business on the Closing Date and ordered by Seller for its own account for use in the manufacture and sale of Products; and (iii) all finished goods inventories of the Products owned by Seller at the commencement of business on the Closing Date and located at the facilities of Seller or, as disclosed in Schedule 1.1(d) attached hereto and made a part hereof, at customer facilities under consignment arrangements.

(e) Patents, Trade Names, Trademarks, and Know-How. All patents, patent applications, inventions, registered and unregistered trademarks, trademark applications, service marks, trade names (including the Seller's corporate name, "Allied Foods, Inc."), copyrights, trade secrets, trade formulae, processes, know-how, proprietary and confidential information, specifications, compositions, manufacturing methods, operating data, applications methods, testing methods, computer programs, blueprints, drawings, designs, information and documents (including log books or copies of applicable portions thereof) relating to research and development (whether or not completed) owned by or licensed to Seller at the close of business on the Closing Date and used in the Subject Business and the manufacture and sale of the Products or held for use in the manufacture and sale of the Products, as more fully listed and described in Schedule 1.1(e) and/or 5.10 attached hereto and made a part hereof.

(f) Contracts and Leases. All rights, title and interest of Seller in, to and under, the contracts in effect on the Closing Date involving and relating to the Subject Business, including, without limitation, those identified on Schedule 5.10, and the open purchase orders and the open sales orders of Seller relating to the Subject Business, in all events with such changes therein as may have occurred between the date hereof and the Closing Date in the ordinary course of business.

(g) Commercial Data. All books, records and files of Seller which relate exclusively to the Subject Business and to the Products, including market and price studies, market analysis surveys, marketing and business plans which relate to the Products and customer files and records.

(h) Prepaids and Other Assets. All prepaid expenses, if any, of the Subject Business described in Schedule 1.1(h) attached hereto and made a part hereof.

(i) Customer Orders. All unfilled customer orders of the Subject Business and files and records relating thereof.

(j) Franchises, Licenses and Permits. All rights of Seller under the franchises, licenses and permits relating to the Subject Business described in Schedule 1.1(j) hereto, to the extent transferable with or without consent of any third party or governmental agency or entity.

(k) Accounts Receivable. All accounts receivable of Seller outstanding at the close of business on the Closing Date arising out of the sale of Products ("Accounts Receivable").

PURCHASER ACKNOWLEDGES AND AGREES (i) THAT IT IS FULLY FAMILIAR WITH AND HAS HAD ACCESS TO SUCH INFORMATION ABOUT THE PURCHASED ASSETS AS IT HAS REQUESTED AND (ii) THAT ALL OF THE PURCHASED ASSETS SOLD HEREUNDER ARE SOLD TO PURCHASER "AS IS" AND "WHERE IS" WITHOUT ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR INTENDED USE OR OTHERWISE AND WITHOUT ANY EXCEPTION OR OBJECTION WITH RESPECT TO THE CONDITION OF SUCH ASSETS.

1.2 Excluded Assets. The parties to this Agreement expressly acknowledge and agree that there shall be excluded from the assets, rights and properties to be transferred to the Purchaser hereunder the assets, rights and properties described below (hereinafter collectively referred to as the "Excluded Assets"):

(a) All cash and cash equivalents of the Subject Business;

(b) Any books, records or files that do not relate exclusively to the Purchased Assets or the Subject Business; provided, however, that, following the Closing, upon reasonable notice, Seller shall provide Purchaser with access, during normal business hours, to those books, records or files which are among the Excluded Assets but which relate (even if not exclusively) to the Purchased Assets or the Subject Business.

(c) Seller's corporate minute books and tax records, and working papers relating thereto;

(d) Any claim, right or interest of Seller in or to any refund for federal, state or local income or other taxes of any nature whatsoever relating to periods prior to the close of business on the Closing Date;

(e) That certain Condominium Parcel known as Apartment 472, Phase 4, of Mainsail, a Condominium, recorded in Condominium Plat Book 2, Page 29A, of the Public Records of Walton County, Florida (the "Condominium").

ARTICLE II

Purchase Price, Payment and Allocation

2.1 Purchase Price. The purchase price to be paid by Purchaser for the Purchased Assets shall be ~~TEN-MILLION-TWO-~~ HUNDRED-TWENTY-ONE-THOUSAND-SIX-HUNDRED-FIFTY-TWO DOLLARS AND 00/100s (\$ 10,221,652).

2.2 Payment. Upon the terms and subject to the conditions set forth in this Agreement, the Purchaser, at the Closing, shall pay to Westinghouse Electric Corporation ("WEC") at the direction of Seller the Purchase Price, in cash in immediately available funds by wire transfer, to the account of WEC designated by Seller in writing.

2.3 Allocation of Purchase Price. The parties hereto acknowledge and agree that the transactions contemplated hereunder must be reported in accordance with Section 1060 of the Internal Revenue Code of 1986, as amended (the "Code"). The parties hereto agree to report the transactions contemplated hereunder for all purposes in accordance with the Purchase Price allocation described on Schedule 2.3 annexed hereto or as agreed to by the parties within ninety (90) days of the date hereof. All the parties hereto agree to share information and to cooperate to the extent necessary to permit the transactions to be properly, timely, and consistently reported in accordance with Section 1060 of the Code and the regulations promulgated thereunder.

2.4 Transfer Taxes. In addition to the payment of the Purchase Price, Purchaser shall pay all sales and transfer taxes, if any, imposed upon the sale and transfer of the Purchased Assets provided herein. Purchaser shall obtain and furnish to Seller all required resale or other exemption certificates with respect to the Purchased Assets hereunder.

ARTICLE III

Assumption and Retention of Liabilities

3.1 Assumed Liabilities. In addition to the payment of the Purchase Price, on and effective as of the Closing Date, the Purchaser shall by written instrument assume and thereafter shall

fully and timely pay, perform and discharge, those debts, obligations, commitments and liabilities of the Seller (the "Assumed Liabilities"), listed and described as follows:

(a) those debts, obligations, commitments and liabilities of the Seller listed on Schedule 3 attached hereto, when due in accordance with their terms, to the extent that the same remain unpaid and outstanding as of the Closing Date (as hereinafter defined). Those Assumed Liabilities listed on Schedule 3 attached hereto are derived from the Seller's unaudited balance sheet as of October 30, 1993.

(b) any and all liabilities of Seller in respect of the Subject Business under contracts, leases, agreements, permits and other binding arrangements which are assigned by Seller to Purchaser at Closing as set forth in Section 1.1 hereof and with respect to which Purchaser shall succeed to the rights of the Seller hereunder to the extent the same remain unperformed on the Closing Date;

(c) any and all liabilities under any warranties relating to the Products sold on or after the Closing Date; and

(d) any and all other liabilities, obligations and commitments, and debts of or demands made upon Seller, of whatever kind whatsoever, including accounts payable, which accrue or are payable after the Closing Date and relate to the operation of the Subject Business or the use of the Purchased Assets from and after the Closing Date.

3.2 Retained Liabilities. Any and all debts, obligations, commitments and liabilities of the Seller which are not expressly set forth and described in Section 3.1 hereof shall be retained by the Seller and are hereafter referred to herein as "Retained Liabilities". The Seller's Retained Liabilities shall include, without limitation, the following:

(a) any and all liabilities under warranties relating to the Products sold prior to the Closing Date;

(b) any and all liabilities arising with respect to or relating to the Condominium or any other Retained Asset; and

(c) any and all liabilities arising out of employment, severance or other such contracts with management of Seller; and

(d) any and all liabilities, including legal fees and expenses, arising out of or relating to any claim or cause of action asserted by any stockholder of the Seller, Hal F. Niebanck, Southland Capital Corporation or William Becker, including without limitation, those claims and causes of action pending against the Seller in William G. Becker and Southland Capital Corporation v. Westinghouse Electric Corporation and Allied Foods, Inc., in the Superior Court of Fulton County, Georgia.

ARTICLE IV

Closing of Purchase and Sale

Closing of the purchase and sale provided for herein (the "Closing") shall take place at the offices of Troutman, Sanders located at 600 Peachtree Street, Atlanta, Georgia on or before December 30, 1993 (the "Closing Date") or at such other time and place as the parties shall mutually agree upon.

ARTICLE V

Representations and Warranties of the Seller

The Seller represents and warrants to the Purchaser the following (both as of the Closing Date and as of the date hereof):

5.1 Due Incorporation and Qualification. The Seller is a corporation duly organized, validly existing and in good standing under the laws of its state of incorporation, and has the corporate power and lawful authority to carry on its business as now being conducted, and to own or lease and operate its properties and assets as now owned, leased or operated by it. The Seller is duly qualified or otherwise authorized as a foreign corporation in those states listed on Schedule 5.1(a) annexed hereto to transact business, and is in good standing, in each such jurisdiction. To the best knowledge and belief of the Seller, the Seller is not required to be licensed or qualified as a foreign corporation in any other jurisdiction except where a failure to be so qualified would have a material adverse effect upon the Subject Business of the Seller. Seller has no subsidiaries and does not own any securities issued by any other business organization or governmental authority except as set forth on Schedule 5.1(b) annexed hereto. Seller does not own or have any direct or indirect interest in or control over any corporation, partnership, joint venture or entity of any kind.

5.2 Authorization. The Seller has full corporate power and authority under its articles of incorporation and bylaws, and the Board of Directors of Seller and WEC, as the sole shareholder of the Seller has taken all necessary action to authorize the Seller to execute and deliver this Agreement and each agreement, document and instrument executed and delivered by Seller pursuant to this Agreement and to consummate the transactions contemplated hereby, and assuming due authorization, execution and delivery of this Agreement by the Purchaser, this Agreement and each agreement, document and instrument executed and delivered by Seller pursuant to this Agreement constitutes the valid and binding obligation of the Seller enforceable in accordance with its terms, except that such enforcement may be subject to bankruptcy, insolvency, reorganization, moratorium or other similar laws now or hereafter

in effect relating to creditors' rights generally and the remedy of specific performance and other forms of equitable relief may be subject to equitable defenses and to the discretion of the court before which any proceeding therefor may be brought.

5.3 Authority of the Seller. Except as set forth in Schedule 5.3 annexed hereto, to the best knowledge and belief of the Seller, no consent, authorization or approval of, or declaration, filing or registration with, any governmental, administrative or regulatory body, or any consent, authorization or approval of any other third party, is necessary in order to enable the Seller to enter into and perform its obligations under this Agreement and to consummate the transactions contemplated hereby, and, to the best knowledge and belief of the Seller, neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby will:

(a) be in violation of the articles of incorporation or bylaws of the Seller or constitute a breach of any evidence of indebtedness or agreement relating to the Subject Business to which the Seller is a party;

(b) cause a default under any mortgage or deed of trust or other lien, charge or encumbrance to which any Purchased Asset is subject or under any contract relating to the Subject Business to which the Seller is a party, or permit the termination of any such contract by another person;

(c) result in the creation or imposition of any security interest, lien, charge or other encumbrance upon any Purchased Assets under any agreement or commitment to which the Seller is bound;

(d) accelerate, or constitute an event entitling, or which would, on notice or lapse of time or both, entitle, the holder of any indebtedness of the Seller to accelerate the maturity of any such indebtedness;

(e) conflict with or result in the breach of any writ, injunction or decree of any court or governmental instrumentality; or

(f) violate any statute, law or regulation of any jurisdiction as such statute, law or regulation relates to the properties of the Subject Business.

5.4 Financial Statements. Seller has heretofore furnished the Purchaser with the audited consolidated balance sheet of Seller dated June 26, 1993 (the "Balance Sheet Date"), together with the audited statement of earnings, stockholders' equity and cash flow of Seller for the six-month period ending June 30, 1993 (collectively, the "Financial Statements"). Copies of the Financial Statements are annexed hereto as Schedule 5.4. Except as otherwise indicated in the Financial Statements, to the best

knowledge and belief of Seller, the Financial Statements have been prepared utilizing generally accepted accounting principles.

5.5 Absence of Undisclosed Liabilities. All liabilities of the Seller with respect to the Subject Business and the Purchased Assets (whether accrued, absolute, contingent or otherwise and whether due or to become due) are set forth or adequately reserved against in the Financial Statements in accordance with generally accepted accounting principles, except for liabilities set forth on Schedule 5.5 annexed hereto and for liabilities incurred since the Balance Sheet Date in the ordinary course or business as theretofore conducted.

5.6 Title to Properties; Encumbrances. Except as reflected in the Financial Statements, and except for assets and properties which have been sold or otherwise disposed of in the ordinary course of business, the Seller has good, valid and marketable title (except for leasehold interests, rights pursuant to easements, licenses and other interests of third parties specifically set forth on any schedule annexed hereto) to all its material tangible and intangible personal properties and assets, which are included among the Purchased Assets, including all tangible and intangible personal properties and assets, which are included among the Purchased Assets, reflected in the Financial Statements and all other tangible and intangible personal properties and assets, which are included among the Purchased Assets, purchased by the Seller since the Balance Sheet Date, in each case subject to no encumbrance, lien, charge or other restriction of any kind or character, except for (i) liens reflected in the Financial Statements, (ii) liens consisting of zoning or planning restrictions, easements, permits and other restrictions or limitations on the use of real or tangible or intangible personal property which do not materially detract from the value of such property or materially impair the use of such property in the operation of the Subject Business, (iii) liens for current taxes, assessments or governmental charges or levies on property not yet due and delinquent and (iv) liens, encumbrances and easements under the contracts and agreements which are included among the Purchased Assets and which are specifically identified on any schedule annexed hereto (liens of the type described in clause (i), (ii), (iii) and (iv) above are hereinafter sometimes referred to as "Permitted Liens"), and (v) the liens or other encumbrances set forth on Schedule 5.6 annexed hereto.

5.7 Inventory. Except as and to the extent reflected or reserved against on the Financial Statements, to the best knowledge and belief of the Seller, the inventory shown on the Financial Statements or thereafter acquired (the "Inventory") consists of products saleable in the ordinary course of business as presently conducted by the Seller. To the best knowledge and belief of the Seller, except as set forth in the following sentence, the amounts at which the Inventory is carried on the Financial Statements fairly represent the cost (or market value if

lower) thereof as determined in accordance with generally accepted accounting principles. Notwithstanding the preceding sentence, the amount at which the "Salvage Inventory" is carried on the Financial Statements is overstated by approximately \$25,000.

5.8 Compliance with Laws. Except as set forth on Schedules 5.4, 5.5, 5.8 or 5.9, to the Seller's best knowledge and belief, with respect to the Subject Business, (i) Seller has received no notice from any governmental authority that it is in violation of applicable laws and regulations, and (ii) Seller has not received any notification of past violations of such laws or regulations that could reasonably be expected to result in future material claims against it. To the best knowledge and belief of the Seller, set forth on Schedule 5.8 annexed hereto is a list of all of the Seller's licenses, permits, orders and approvals of any federal, state or local governmental or regulatory bodies that are material to or necessary for the conduct of the Subject Business (collectively "Permits"). To the best knowledge and belief of the Seller, all Permits are in full force and effect and no proceeding is pending or threatened to revoke or limit any Permit.

5.9 Litigation. Except as set forth on Schedule 5.8 or 5.9, there are no actions, suits or claims, or legal, administrative or arbitral proceedings or investigations pending or, to the best knowledge and belief of the Seller, threatened against or involving the Seller or any of its properties or assets with respect to the Subject Business. To the best knowledge and belief of the Seller, none of the actions, suits, claims, proceedings or investigations set forth on Schedule 5.8 or 5.9, individually or in the aggregate, can reasonably be expected to have a material adverse effect on the Subject Business.

5.10 Contracts and Other Agreements. Schedule 5.10 annexed hereto contains a complete and accurate list of all of the following contracts and other agreements with respect to the Subject Business to which the Seller is a party or by or to which it or its assets or properties are bound or subject;

(i) contracts and other agreements with any current or former officer, director, or employee not cancelable without penalty on notice of thirty (30) days or less;

(ii) contracts and other agreements with material suppliers of products sold or leased by Seller in the normal course of the Subject Business;

(iii) contracts and other agreements relating to the borrowing of money including any indenture, mortgage, promissory note, loan agreement, or guaranty; and

(iv) any other contract or other agreement which the Seller reasonably believes is material to the Subject Business (other than those reflected on any of the other schedules to this Agreement). There have been delivered or made available to the

Purchaser true and complete copies of all of the contracts and other agreements set forth on Schedule 5.10 or on any other schedule annexed hereto. To the best knowledge and belief of the Seller, all of such contracts and other agreements are valid and binding upon the Seller in accordance with their terms, and the Seller is not in material default under any such contracts.

5.11 Real Estate.

(a) Schedule 1.1(b) attached hereto contains an accurate and complete list of all real property owned in whole or in part by the Seller and includes the name of the record title holder thereof and a list of all indebtedness secured by a lien, mortgage or deed of trust thereon. Except as set forth in Schedule 1.1(b), the Seller has good and marketable title in fee simple to all the real property owned by it, free and clear of all encumbrances, liens, charges or other restrictions of any kind or character, except for Permitted Liens (as defined in Section 5.6). Except as set forth in Schedule 1.1(b), none of the buildings, structures or appurtenances (or any equipment therein) located on such real property, nor the operation or maintenance thereof, violates in any material respect any restrictive covenant or encroaches on any property owned by others. Except as set forth in Schedule 1.1(b), no condemnation proceeding is pending or, to the best knowledge and belief of the Seller is threatened, which would preclude or impair in any material respect the use of such property by the Seller for the purpose for which it is currently used.

(b) Schedule 1.1(a) and 1.1(b) annexed hereto set forth a list and summary description of all leases, subleases, easements, agreements or other agreement under which the Seller is the lessor or lessee of, or uses or occupies or allows the use or occupancy of, any real property (the "Leases and Easements"). All of the Leases and Easements, true and complete copies of which have been delivered or made available to the Purchaser, are in effect and, to the best knowledge and belief of the Seller, the Seller is not in material default under or with respect to any of the Leases or Easements nor has the Seller received or sent any notice of any default under or with respect to any of the same. To the best knowledge and belief of the Seller, no other party to any of the Leases or Easements is in material default under or with respect to any of the same.

5.12 Accounts and Notes Receivable. To the best knowledge and belief of the Seller, all accounts receivable reflected on the Financial Statements, and all accounts receivable arising subsequent to the Balance Sheet Date and prior to the Closing Date, have arisen, or will have arisen at the Closing Date, in the ordinary course of business of the Seller and represent, or will represent, valid obligations due to the Seller and subject to no setoff and counterclaim. Seller has no account or loans receivable from any person, firm or corporation which is

affiliated with Seller or from any director, officer or employee of Seller.

5.13 Intellectual Property. Schedule 1.1(e) annexed hereto sets forth a list of all patents, trademarks, service marks and trade names (collectively, "Intellectual Property") that relate to the Subject Business. Except as set forth on Schedules 1.1(e) or 5.6, to the best knowledge and belief of the Seller, all Intellectual Property is owned outright by Seller, free and clear of any lien or encumbrance and except as so set forth, there exist no obligations with respect to any Intellectual Property requiring the Seller to make any payment in respect of its use or otherwise. Except as set forth on Schedule 1.1(e), to the best knowledge and belief of the Seller, the Seller has no notice of any patent, trademark, service mark or trade name of any other person that infringes upon, or is infringed upon by, any of the property set forth on Schedule 1.1(e) or notice of any claim of any other person relating to any of the property set forth on Schedule 1.1(e) or any process or confidential information of the Seller. Seller's rights in all of such Intellectual Property are freely transferable.

5.14 Broker's or Finder's Fees. No agent, broker, person or firm acting on behalf of the Seller or WEC is, or will be, entitled to any commission or broker's or finder's fees from any of the parties hereto, or from any person controlling, controlled by or under common control with any of the parties hereto, in connection with any of the transactions contemplated herein.

5.15 Employee Benefit Plans.

(a) Schedule 5.15 lists all employee benefit plans, as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), and all bonus, stock option, stock purchase, incentive, deferred compensation, supplemental retirement, severance and other similar fringe or employee benefit plans, programs or arrangements, and any employment or compensation agreements, written or otherwise, currently or heretofore maintained, contributed to or entered into by the Seller for the benefit or, relating to, or with any employee of the Seller employed in the Subject Business (the "Employee Plans"). None of the Employee Plans is a multi-employer plan, as defined in Section 4001(a)(3) of ERISA (a "Multi-employer Plan"). There has been no "prohibited transaction", as such term is defined in Section 406 of ERISA and Section 4975 of the Code, with respect to any Employee Plan. No Employee Plan has breached any requirement prescribed by any applicable statute, order, or governmental rule or regulation currently in effect with respect thereto, nor has the Seller failed to perform any obligations required to be performed by it under, nor is it in default under or in violation of, nor has it knowledge of any default or violation by any other party of the Employee Plans which would result in liability to the Purchaser. Each Employee Plan intended to qualify under Section 401(a) of the Code does so qualify, and

each trust created thereunder intended to be exempt from tax under the provisions of Section 501(a) of the Code is so exempt; a determination letter from the Internal Revenue Service (the "IRS") that each such plan is so qualified and each such trust is so exempt has been applied for and the Seller is aware of no reason why each such favorable determination letter should not be issued; and there exists no fact which would adversely affect the qualified status of any such plan or which would eliminate or partially eliminate the tax treatment accorded to the employers, employees or the corpus of any such plan under the Code. The Seller has not incurred and does not reasonably expect to incur (i) any liability to the Pension Benefit Guaranty Corporation (other than a liability for premiums pursuant to Section 4007 of ERISA) with respect to any employee plan subject to Title IV of ERISA or (ii) any withdrawal liability with respect to any Multi-employer Plan. All contributions required to be made to any Employee Plan have been made, and all appropriate accruals of contributions, disbursements and expenses have been made with respect to such Employee Plans. With respect to each Employee Plan which is covered by Title IV of ERISA, the market value of assets of such plan as of the date hereof exceeds the actuarial present value of benefits accrued under such plan as of the date hereof, determined in accordance with the actuarial assumptions set forth in the most recent actuarial valuation report of such plan.

(b) The Seller has delivered to the Purchaser true and complete copies of all Employee Plans listed in Schedule 5.15 and of all agreements, including trust agreements and other funding instruments, such as insurance contracts, embodying such plans. With respect to each employee benefit plan, as defined in Section 3(3) of ERISA, listed in Schedule 5.15, true and complete copies of the (i) last filed Form 5500 and all applicable schedules thereto; (ii) summary plan description and all modifications thereto communicated to employees; and (iii) most recent annual and periodic accounting of related plan assets, if any, have been delivered to the Purchaser and are correct in all material respects. With respect to each employee pension benefit plan, as defined in Section 3(2) of ERISA, listed on Schedule 5.15, true and complete copies of the (i) most recent determination letter, if any, issued by the IRS and the application therefor; and (ii) most recent annual actuarial valuation report, if any, have been delivered to the Purchaser and are correct in all material respects.

5.16 Labor Matters. Except as set forth in Schedule 5.16, with respect to the Subject Business, the Seller is currently in compliance in all material respects with all applicable laws, rules and regulations relating to the employment of labor, including those related to wages, hours, collective registrations, and authorizations.

5.17 Tax Returns. Seller and WEC, as appropriate, has timely filed (including extensions) with the appropriate governmental

authorities, all tax and other returns required to be filed by it and such returns are true and complete and all taxes due have been paid. The Seller and WEC, as appropriate, will timely file (including extensions) with appropriate governmental authorities, all tax and other returns which shall be required to be filed by it after the Closing Date and such returns shall be true and complete and all taxes due shall be paid by the Seller.

5.18 Capital Stock of Seller. The authorized capital stock of Seller consists of 1,500,000 shares of Common Stock \$.001 per value per share, of which 760,000 shares are duly and validly issued, outstanding, fully paid and non-assessable, and all of such are validly issued and outstanding shares are owned beneficially and of record by WEC. There are no outstanding options, warrants, rights, commitments, pre-emptive rights or agreements of any kind for the issuance or sale of, or outstanding securities convertible into, any additional shares of capital stock of any class of Seller.

5.19 Insurance. All insurance policies and arrangements of Seller are set forth on Schedule 5.19 annexed hereto. Said insurance policies and arrangements are in full force and effect, all premiums with respect thereto are currently paid, and Seller is in compliance in all material respects with the terms thereof.

5.20 Environmental Matters. Seller has provided to Purchaser copies of all documents, records and information available to Seller concerning any environmental or health and safety matter relevant to Seller, whether generated by Seller or others, including, without limitation, environmental audits, environmental risk assessments, site assessments, documentation regarding off-site disposal, spill control plans, and reports, correspondence, permits, licenses, approvals, consents, and other authorizations related to environmental or health and safety matters issued by any governmental agency.

ARTICLE VI

Representations and Warranties of the Purchaser

The Purchaser represents and warrants to the Seller the following (both as of the Closing Date and as of the date hereof):

6.1 Due Incorporation and Qualification. The Purchaser is a corporation duly organized, validly existing and in good standing under the laws of its state of incorporation, and has the corporate power and lawful authority to carry on its business as now being conducted and to own or lease its properties and assets as now owned, leased or operated by it. The Purchaser is duly qualified or otherwise authorized as a foreign corporation to transact business and is in good standing in each jurisdiction in which, to the best knowledge and belief of the Purchaser, a

failure to be so qualified would have a material adverse effect on the business of the Purchaser.

6.2 Authorization. The Purchaser has full corporate power and authority under its articles of incorporation and bylaws and, the Board of Directors of Purchaser has taken all necessary corporate action to authorize the Purchaser to execute and deliver this Agreement and to consummate the transactions contemplated hereby and assuming due authorization, execution and delivery of this Agreement by the Seller, this Agreement constitutes the valid and binding obligation of the Purchaser enforceable in accordance with its terms except that such enforcement may be subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws now or hereafter in effect relating to creditors' rights generally and the remedy of specific performance and other forms of equitable relief may be subject to equitable defenses and to the discretion of the court before which any proceeding therefor may be brought.

6.3 Non-Contravention. Neither the execution and delivery of this Agreement or the other agreements contemplated hereby nor the consummation of the transactions contemplated hereby does or will violate, conflict with, result in a breach of any provision of, constitute a default under, result in the termination of or permit any third party to terminate (with or without notice, lapse of time or pursuant to any legal or equitable principle) or accelerate the performance required on the part of the Purchaser by the terms of, or accelerate the maturity of or require the prepayment of any indebtedness of the Purchaser under, any judgment, order, decree or agreement or instrument to or by which the Purchaser or any of its assets is subject or bound.

6.4 Authority of the Purchaser. Except as set forth on Schedule 6.4, no consent, authorization or approval of, or declaration, filing or registration with, any governmental, administrative or regulatory body, or any consent, authorization or approval of any other third party, is necessary in connection with the Purchaser's purchase of the Purchased Assets contemplated hereby or the consummation of the other transactions contemplated hereby.

6.5 Litigation. Except as set forth on Schedule 6.5, there are no claims, actions, suits, proceedings or investigations pending or, to the best knowledge and belief of the Purchaser, threatened by or against the Purchaser with respect to the transactions contemplated hereby, at law or in equity or before or by any federal, state, municipal, foreign or other governmental department, commission, board, agency, instrumentality or authority nor does the Purchaser know or have any reason to know of any basis for any such claim, action, suit, proceeding or investigation except with respect to those claims, actions, suits, proceedings or investigations which would not have a material adverse effect on the Purchaser.

6.6 Broker's or Finder's Fees. No agent, broker, person or firm acting on behalf of Purchaser is, or will be, entitled to any commission or broker's or finder's fees from any of the parties hereto, or from any person controlling, controlled by or under common control with any of the parties hereto, in connection with any of the transactions contemplated herein.

6.7 Available Information. Purchaser has been given adequate opportunity to review and has, independently and without reliance on Seller, its officers, agents, directors, shareholders or employees (other than the representations and warranties of Seller contained herein), evaluated the terms of the transactions contemplated by this Agreement, including financial information and other data relating to the Seller, has made its own analysis of the Seller, and the business thereof, all as it has deemed necessary, prudent or advisable in order to enable it to make its own determination and decision to enter into this Agreement and acquire the Purchased Assets in accordance with the terms hereof; it is entering into this Agreement relying entirely upon such independent evaluation and without reliance upon any oral or written representations of any kind or nature by Seller (other than the representations and warranties contained in this Agreement), or its officers, agents, directors, shareholders or employees with respect to the Seller, or the current or projected financial condition of the Seller.

6.8 Financing. Concurrently with its execution and delivery of this Agreement, Purchaser has received a letter from Creditansalt-Bankverein, committing it to provide a credit facility to Purchaser sufficient to permit at least \$6.5 million to be drawn upon at the Closing Date in partial payment of the Purchase Price, subject to such terms and conditions as are acceptable to Purchaser and WEC, which terms shall be set forth therein; (the financing contemplated by the foregoing, being herein referred to as the "Purchaser Credit Facility"). True and complete copies of all documentation received to date in connection with the Purchaser Credit Facility have been delivered to Seller, and Purchaser shall promptly deliver to Seller true and complete copies of all documentation relating to the Purchaser Credit Facility as such documentation is received by it after the date hereof.

ARTICLE VII

Covenants

7.1 Conduct of Business. Between the date hereof and the Closing Date, Seller shall use its best efforts to conduct the Subject Business in the ordinary course and in such a manner so that the representations and warranties contained in Article V shall continue to be true and correct in all material respects on and as of the Closing Date as if made on and as of the Closing Date. Without limiting the generality of the foregoing, with

respect to the Subject Business and the assets used therein Seller shall use its best efforts to refrain from:

(i) incurring any liability or obligation of any nature (whether accrued, absolute, contingent or otherwise), except in the ordinary course of business;

(ii) permitting any of its assets to be subjected to any mortgage, pledge, lien, security interest, encumbrances, restriction or charge of any kind, except in the ordinary course of business;

(iii) selling, transferring or otherwise disposing of any assets except in the ordinary course of business;

(iv) making any capital expenditure or commitment therefor, except in the ordinary course of business and except for the acquisition of two used Von Gaul case stackers contemplated by Section 2.1 hereof and the boiler contemplated by Section 7.6;

(v) increasing its indebtedness for borrowed money, except current borrowings in the ordinary course of business, or making any loan to any person and except for amounts borrowed, if any, to finance the acquisition of two used Von Gaul case stackers as contemplated by Section 2.1 hereof;

(vi) writing off as uncollectible any accounts receivable, except write-offs in the ordinary course of business charged to applicable reserves, none of which individually or in the aggregate shall be material to the Seller;

(vii) granting any increase in the rate of wages, salaries, bonuses or other remuneration of any executive employee or other employees, except in the ordinary course of business;

(viii) canceling or waiving any claims or rights of substantial value;

(ix) making any change in any method of accounting or auditing practice;

(x) paying any dividend or making any extraordinary distribution except in the ordinary course of business;

(xi) otherwise conducting the Subject Business or entering into any transaction with respect thereto, except in the usual and ordinary manner and in the ordinary course of its business; or

(xii) agreeing, whether or not in writing, to do any of the foregoing.

The Seller represents and warrants to Purchaser that it has not taken any action prohibited in clauses (i) through (xi) above between the Balance Sheet Date and the date hereof.

7.2 Preservation of Business. The Seller shall (consistent with the Seller's normal business practices) preserve the Subject Business, and maintain the present suppliers and customers of the Subject Business.

7.3 Notice of Events. The Seller shall promptly notify the Purchaser of (i) any event, condition or circumstance occurring from the date hereof through the Closing Date and known to the Seller that would constitute a violation or breach of this Agreement, or (ii) any event, occurrence, transaction or other item known to the Seller which would have been required to have been disclosed on any schedule or statement delivered hereunder, had such event, occurrence, transaction or item existed on the date hereof, other than items arising in the ordinary course of business which would not render any representation or warranty of the Seller materially misleading.

7.4 Examinations and Inspections.

(a) Prior to the Closing Date, the Purchaser shall be entitled, through its employees and representatives, including, without limitation, the Purchaser's accountants and legal counsel, to make such inspection of the assets, properties, business and operations of the Subject Business, and such examination of the books, records and financial condition of the Subject Business as the Purchaser reasonably desires. Any such inspection and examination shall be conducted at reasonable times and under reasonable circumstances which do not disrupt the business, properties or assets of the Subject Business and with respect to inspections and examinations relating to the Subject Business and involving the property and assets of third parties, subject to the consent of such third parties and consistent with their policies. In order that the Purchaser may have full opportunity to make such business, accounting and legal review, examination or inspection as it may reasonably desire of the Subject Business, the Seller shall furnish the representatives of the Purchaser during such period with all such information and copies of such documents concerning the affairs of the Seller with respect to the Subject Business as such representatives may reasonably request and cause its officers, employees, agents, accountants and attorneys to cooperate with such representatives in connection with such review and examination.

(b) Purchaser agrees with respect to any information or documents obtained from the Seller concerning its assets, properties, customers, policies, finances, costs, sales, revenues, rights, obligations, liabilities, strategies, business and operations ("Confidential Information"), that, unless and until the transactions contemplated by this Agreement shall have been

consummated, (i) such information is confidential and/or proprietary to Seller and is entitled to and shall receive treatment as such by Purchaser (except to the extent that any such information is readily ascertainable from public or published information, or trade sources), and (ii) Purchaser will, and will cause all of its employees, representatives, agents and advisors who have access to any Confidential Information to, hold in confidence and not disclose or use (except in respect of the transactions contemplated by this Agreement) any such Confidential Information. The Purchaser and the Seller shall also each comply with the restrictions on publicity set forth in Section 12.5 of this Agreement. If the transactions contemplated by this Agreement are not closed all documents and other materials obtained by the Purchaser from the Seller shall be returned.

7.5 Third Party Consents. The Seller agrees to use reasonable efforts to obtain, prior to the Closing Date, such consents and approvals as may be required from parties to material contracts or other agreements with the Seller in order to prevent the Seller or the Purchaser from suffering a material adverse effect as a result of the execution and delivery of this Agreement by the Seller or the consummation of the transactions contemplated by this Agreement. The Purchaser agrees to provide to the Seller such assistance and information as may be required to obtain the consents and approvals referred to above. Notwithstanding anything in this Agreement to the contrary, this Agreement shall not constitute an agreement by the Seller to assign, or the Purchaser to assume and agree to pay, perform or otherwise discharge, any material contracts or other agreements included in the Purchased Assets if an attempted assignment or assumption thereof without the consent of a third person thereto would constitute a breach thereof unless and until such consent is obtained.

7.6 Properties. The Seller shall maintain all of its properties used in the operation of the Subject Business in customary repair, order and condition, reasonable wear and tear excepted, and, except as provided in the next sentence, will maintain insurance upon all such properties, in such amounts and of such kinds as are comparable to that in effect on the date hereof. Notwithstanding the preceding sentence, the Seller received from its property and casualty insurance carrier notice of cancellation of the Seller's boiler explosion coverage effective as of January 1, 1994. The Seller intends to replace its existing boiler on or about January 3, 1994, and has obtained a commitment for boiler explosion insurance coverage effective as of the installation of the new boiler.

7.7 Books and Records. The Seller shall maintain its books, accounts and records in connection with the Subject Business in the usual manner on a basis consistent with the prior years.

7.8. Material Contracts. The Seller shall refrain from amending, modifying or consenting to the termination of any

material contract or other material agreements to be transferred to the Purchaser or waive any of the Seller's material rights with respect thereto.

7.9 Satisfaction of Conditions. Without limiting the generality or effect of any provision of Articles VIII and IX hereof, prior to the Closing, each of the parties hereto will use reasonable efforts with due diligence and in good faith to satisfy promptly all conditions required hereby to be satisfied by such party in order to expedite the consummation of the transactions contemplated hereby. Without limiting the generality of the foregoing, Purchaser shall use its best efforts to obtain a credit facility in an aggregate amount sufficient to permit at least \$6.5 million to be drawn upon at the Closing Date, in partial payment of the Purchase Price, subject to such terms and conditions as are acceptable to Purchaser and WEC. In the event that any portion of such financing becomes unavailable, regardless of the reason therefor, Purchaser will use commercially reasonable efforts to obtain alternative financing on substantially comparable or more favorable terms from other sources. Purchaser shall use its best efforts to satisfy at or prior to the Closing Date all requirements of the definitive agreements relating to the Purchaser Credit Facility which are conditions to drawing down any partial payment of the Purchase Price under the Purchaser Credit Facility.

ARTICLE VIII

Conditions Precedent to Obligation of Purchaser to Close

The obligation of the Purchaser to enter into and complete the Closing is subject to the fulfillment on or prior to the Closing Date of the following conditions, any one or more of which may be waived by Purchaser only in writing:

8.1 Representations and Covenants. The representations and warranties of the Seller contained in this Agreement shall be true and correct in all material respects on and as of the Closing Date with the same force and effect as though made on and as of the Closing Date. The Seller shall have materially performed and complied with all covenants and agreements (including, without limitation, those contained in Article VII) required by this Agreement to be performed or complied with by the Seller on or prior to the Closing Date.

8.2 Litigation. No action, suit or proceeding (other than the civil lawsuit pending in the Superior Court of Fulton County, Georgia, and styled William G. Becker and Southland Capital Corporation v. Westinghouse Electric Corporation and Allied Foods Corporation, Civil Action File No. E-23300) shall have been instituted before any court or governmental or regulatory body, or instituted or threatened by any governmental or regulatory body,

to restrain or prevent the carrying out of the transactions contemplated by this Agreement or to seek damages in connection with such transactions, that has or could reasonably be expected to have, in the opinion of the attorneys of the Purchaser, a materially adverse effect on the assets, properties, business, operations or financial condition of the Seller.

8.3 No Material Adverse Change. Prior to the Closing Date, there shall be no material adverse change in the assets or liabilities, the business or financial condition of the Subject Business as a result of any fire, explosion, accident, casualty, flood, riot, storm, act of God or other public force. For purposes of this Section 8.3 a material adverse change shall not include any loss or liability suffered by the Seller for which adequate insurance exists or any loss or liability suffered by the Seller which is adequately covered by reserves set forth in the Financial Statements.

8.4 Good Standing Certificates, Etc. Seller shall have delivered all such certificates, documents or instruments with respect to Seller's corporate existence and authority as Purchaser's counsel may have reasonably requested prior to the Closing Date.

8.5 Consents. The Seller shall have obtained and delivered to the Purchaser such consents as the Purchaser may have reasonably requested that the Seller obtain in accordance with Section 7.5 hereof, except where the failure to so obtain could not reasonably be expected to have a material adverse effect on the business of the Company.

8.6 Resolutions. There shall have been delivered to the Purchaser a copy of the resolutions duly adopted by the Board of Directors and Stockholders of the Seller, certified accurate by an executive officer of the Seller as of the Closing Date, authorizing and approving the execution and delivery by the Seller of this Agreement, and the consummation by the Seller of the transactions contemplated hereby.

8.7 Governmental Permits and Approvals. All permits and approvals from any governmental or regulatory body required for the lawful consummation of the Closing shall have been obtained.

8.8 Officer's Certificate. There shall have been delivered to the Purchaser a certificate of an executive officer of the Seller dated the Closing Date certifying that the representations and warranties of the Seller contained herein are true and correct on and as of the Closing Date.

8.9 Instruments of Transfer. The Seller shall have executed and delivered to the Purchaser limited warranty deeds, lease assignments, bills of sale, consents and/or waivers, and certificates of title dated the Closing Date, transferring to the Purchaser all of the Seller's right, title, and interest in and to

the Purchased Assets without representation or warranty by or recourse against the Seller.

8.10 Opinion of Counsel to the Seller. The Purchaser shall have received an opinion of counsel to the Seller reasonably satisfactory to the Purchaser, dated the Closing Date, in form and substance reasonably satisfactory to the Purchaser, substantially to the effect set forth in Exhibit "A" hereto.

8.11 Credit Facility. Creditanstalt, or such other lender with whom WEC and Seller has had recent discussions with respect to refinancing the Seller, provide a credit facility, upon terms and conditions acceptable to WEC and Purchaser, sufficient to permit at least \$6.5 million to be drawn upon on the Closing Date to be applied to partially fund the Purchase Price.

8.12 Change of Corporate Name. Seller shall have changed its name "Allied Foods, Inc." amending its corporate charter.

ARTICLE IX

Conditions Precedent to Obligation of Seller to Close

The obligation of the Seller to enter into and complete the Closing is subject to the fulfillment on or prior to the Closing Date of the following conditions, any one or more of which may be waived by the Seller only in writing:

9.1 Representations and Warranties. The representations and warranties of the Purchaser contained in this Agreement shall be true and correct in all material respects on and as of the Closing Date with the same force and effect as though made on and as of the Closing Date. The Purchaser shall have materially performed and complied with all covenants and agreements (including, without limitation, those contained in Article VII) required by this Agreement to be performed or complied with by the Purchaser on or prior to the Closing Date.

9.2 Litigation. No action, suit or proceeding shall have been instituted before any court or governmental or regulatory body, or instituted or threatened by any governmental or regulatory body, to restrain or prevent the carrying out of the transactions contemplated hereby, or to seek damages in connection with such transactions, that has or could reasonably be expected to have, in the opinion of the attorneys of the Seller, a materially adverse effect on the assets, properties, business, operations or financial condition of the Purchaser.

9.3 Governmental Permits and Approvals. All permits and approvals from any governmental body required for the lawful consummation of the Closing shall have been obtained.

9.4 Resolutions. There shall have been delivered to the Seller a copy of the resolutions duly adopted by the Board of Directors of the Purchaser, certified accurate by an executive officer of the Purchaser as of the Closing Date, authorizing and approving the execution and delivery by the Purchaser of this Agreement, and the consummation by the Purchaser of the transactions contemplated hereby.

9.5 Good Standing Certificates, Etc. Purchaser shall have delivered all such certified resolutions, certificates, documents or instruments with respect to Purchaser's corporate existence and authority as Seller's counsel may have reasonably requested prior to the Closing Date.

9.6 Consents. The Seller shall have obtained such consents of third parties as Seller may deem necessary to consummate the transaction contemplated herein, such consents to include releases of any and all obligations of Seller or its affiliates to third parties under any contracts or agreements between Seller and such third parties.

9.7 Officer's Certificate. There shall have been delivered to the Seller a certificate of an executive officer of the Purchaser dated the Closing Date certifying that the representations and warranties of the Purchaser contained herein are true and correct on and as of the Closing Date.

9.8 Assumption Agreement. The Purchaser shall have executed and delivered to the Seller an assumption agreement pursuant to which the Purchaser assumes those obligations relating to the Subject Business contemplated in Article III.

9.9 Opinion of Counsel to the Purchaser. The Seller shall have received an opinion of counsel to the Purchaser reasonably satisfactory to the Seller, dated the Closing Date, in form and substance reasonably satisfactory to counsel for the Seller substantially to the effect set forth in Exhibit B hereto.

ARTICLE X

Survival of Representations and Warranties; Indemnification

10.1 Survival of Representations and Warranties. Except as provided below, the representations and warranties contained in this Agreement shall not survive the Closing. The representations and warranties of the Purchaser and Seller, as appropriate, set forth in Sections 5.2, 5.3, 5.6, 5.17, 6.2 and 6.3 (each a "Surviving Representation") shall survive the Closing for periods coterminous with any applicable statute of limitations. The right of the Indemnitee (as defined in Section 10.4(a)) to commence an action against the Indemnitor (as defined in Section 10.4(a)) for indemnification for breach of a Surviving Representation, shall

terminate upon the expiration of the Surviving Representation the breach of which gives rise to the claim. Without limiting the generality of the foregoing, and except for the right to seek indemnification as provided in this Agreement, upon consummation of the transactions contemplated herein at the Closing, Purchaser and Seller shall each be deemed to have waived and released any and all claims, demands, rights of action, causes of action and choses in action each such party may have had or claimed to have had, arising out of or in connection with the breach of any representation, warranty or covenant contained in this Agreement or in any schedule, certificate, instrument or other document delivered in connection with this Agreement, including, without limitation, any claim that Purchaser or Seller, as the case may be, was induced by any misstatement or omission to enter into this Agreement or consummate the transactions contemplated hereby.

10.2 Seller's Indemnity Agreement. Subject to closing the transactions contemplated herein and to the provisions of Sections 10.4 and 10.5 hereof, the Seller shall defend, at its own expense, and shall indemnify and hold harmless the Purchaser and its successors and assigns from and against:

(a) any and all damages, liabilities, obligations and/or losses of Purchaser, or claims or causes of action against Purchaser or the Purchased Assets, of whatever kind or nature, contingent or otherwise, known or unknown (collectively a "Loss of Purchaser") which involves any claims against the Purchaser arising out of or relating to any Retained Liability;

(b) any loss of Purchaser resulting from any breach of a Surviving Representation on the part of Seller; and

(c) all actions, suits, proceedings, demands, assessments, judgments, costs and expenses, including reasonable fees and disbursements of counsel, incident to any of the foregoing. Notwithstanding the foregoing, the Seller shall have no liability under this Section 10.2 with respect to any Loss of Purchaser until, and only to the extent, the aggregate amount of such Loss of Purchaser for which indemnification has been granted under this Section 10.2 exceeds \$25,000.00. The Seller's maximum aggregate liability under this Section 10.2 shall be an amount equal to the Purchase Price.

10.3 Purchaser's Indemnity Agreement. Subject to closing the transactions contemplated herein and to the provisions of Sections 10.4 and 10.5 hereof, the Purchaser shall defend, at its own expense, and shall indemnify and hold harmless the Seller and its successors and assigns from and against:

(a) any and all damages, liabilities, obligations and/or losses of Seller, or claims or causes of action against Seller, of whatever kind or nature, contingent or otherwise, known or unknown (collectively a "Loss of Seller") which involves any Assumed Liability or any claims or liabilities with respect to the

operations of the Subject Business after the Closing Date or the use of the Purchased Assets after the Closing Date, except and to the extent a Loss of Seller relates to any Retained Liability;

(b) any Loss of Seller resulting from any breach of any Surviving Representation on the part of the Purchaser; and

(c) all actions, suits, proceeding, demands, assessments, judgments, costs and expenses, including reasonable fees and disbursements of counsel, incident to any of the foregoing. Notwithstanding the foregoing, the Purchaser shall have no liability under this Section 10.3 with respect to any Loss of Seller until, and only to the extent, the aggregate amount of such Loss of Seller for which indemnification has been granted under this Section 10.3 exceeds \$25,000.00.

10.4 Indemnification Procedure.

(a) Upon obtaining knowledge thereof, the party to be indemnified hereunder (the "Indemnatee") shall promptly notify the indemnifying party hereunder (the "Indemnitor") in writing of any damage, claim, loss, liability or expense which the Indemnatee has determined has given or could give rise to a claim for which indemnification rights are granted hereunder (such written notice referred to as the "Notice of Claim"). The Notice of Claim shall specify, in all reasonable detail, the nature and estimated amount of any such claim giving rise to a right of indemnification.

(b) With respect to any claim or demand set forth in a Notice of Claim relating to a third party claim the Indemnitor may defend, in good faith and at its expense, any such claim or demand, and the Indemnatee, at its expense, shall have the right to participate in the defense of any such third party claim. So long as the Indemnitor is defending, in good faith, any such third party claim, the Indemnatee shall not settle or compromise such third party claim. The Indemnatee shall make available to the Indemnitor or its representatives all records or other materials reasonably required by them for use in contesting any third party claim and shall cooperate fully with the Indemnitor in the defense of all such claims. If the Indemnitor does not elect to defend such third party claim or if the Indemnitor does not provide the Indemnatee with the reasonable assurances that the Indemnatee will satisfy the third party claim, the Indemnatee may, at its option, elect to defend any such third party claim, at the Indemnitor's expense.

10.5 Adjustment of Liability. In the event an Indemnitor is required to make any payment under this Article X in respect of any damages, liability, obligation, loss, claim, or other amount indemnified hereunder, such Indemnitor shall pay the Indemnatee an amount (i) which is net of any insurance proceeds actually received with respect thereto by the Indemnatee and (ii) which, after deduction of all federal, state, and local taxes, if any, required to be paid by such Indemnatee in respect of the receipt

or accrual thereof (after giving credit for the discounted net present value of any reduction in taxes of such Indemnatee by reason of deductions, credits or allowances recognized by such Indemnatee in respect of the payment or accrual of the damages, liability, obligation, loss, claim, or other amount indemnified against), shall be equal to the amount of such damages, liability, obligation, loss, claim or other amount with respect to which payment is made. The net present value of any such reduction in taxes shall be determined by discounting the amount of such reduction in taxes semi-annually from the date such tax saving is recognized or reasonably expected to be recognized to the date of payment of the applicable indemnity by such Indemnitor applying a discount factor equal to the interest rate on the federal income tax deficiencies in effect at the time of such adjustment. For purposes of determining the amount of any taxes required to be paid and any tax savings recognized or reasonably expected to be recognized by such Indemnatee hereunder, it shall be assumed that such Indemnatee is subject to tax in each applicable taxing jurisdiction at the highest applicable marginal rate then in effect in such jurisdiction.

ARTICLE XI

Termination of Agreement

11.1 Termination. This Agreement may be terminated prior to the Closing as follows:

(a) at the election of the Seller, if any one of the conditions to the obligations of the Seller to close has not been fulfilled as of the Closing Date, or if the Purchaser has materially breached any representation, warranty, covenant, or agreement contained in this Agreement or in any document or other papers delivered pursuant to this Agreement;

(b) at the election of the Purchaser, if any one or more of the conditions to its obligations to close has not been fulfilled as of the Closing Date, or if the Seller has materially breached any representation, warranty, covenant or agreement contained in this Agreement or in any document or other papers delivered pursuant to this Agreement;

(c) at the election of the Seller or the Purchaser, if any legal proceeding is commenced or threatened by any governmental regulatory body or other person directed against the consummation of the Closing or any other transaction contemplated under this Agreement and either the Seller or the Purchaser, as the case may be, reasonably and in good faith deem it impractical or inadvisable to proceed in view of such legal proceeding or threat thereof;

(d) at any time on or prior to the Closing Date, by mutual written consent of the parties hereto; or

(e) at any time prior to December 30, 1993, at the election of the Seller or the Purchaser, without liability to the other party.

11.2 Post-Termination Obligations. If this Agreement is terminated pursuant to Section 11.1, this Agreement shall become void and of no further force and effect, except for the provisions of Section 7.4 (relating to the obligation of the Purchaser to keep certain information confidential), Section 12.4 (relating to publicity), Section 12.6 (relating to expenses), and Section 12.7 (relating to indemnification of brokerage commissions) and none of the parties hereto shall have any liability in respect of such termination except that any party shall be liable to the extent that failure to satisfy the conditions of Article II, VII, VIII or IX results from the intentional or willful violation of the representations, warranties, covenants or agreements of such party under this Agreement.

11.3 Exclusivity of Remedy. Except as provided in Section 11.2, prior to Closing if the Purchaser discovers, or should have discovered through reasonable diligence, that any one or more of the conditions to its obligations to close has not been fulfilled as of the Closing Date, or that the Seller has materially breached any representation, warranty, covenant or agreement contained in this Agreement or in any document or other instrument delivered pursuant to this Agreement, then the Purchaser's sole and exclusive remedy shall be termination of this Agreement pursuant to Section 11.1 hereof.

ARTICLE XII

Miscellaneous

12.1 Entire Agreement. This Agreement (including the Schedules and Exhibits) constitutes the sole understanding of the parties with respect to the subject matter hereof and terminates the Letter of Intent dated December 9, 1993; provided, however, that this provision is not intended to supersede any other written agreement between the parties executed contemporaneously with or after this Agreement. No amendment, modification or alteration of the terms or provisions of this Agreement shall be binding unless the same shall be in writing and duly executed by the parties hereto.

12.2 Exclusivity of Representations and Warranties. The representations and warranties of the Seller and of the Purchaser, respectively, contained herein, are exclusive and in lieu of any other representations and warranties, express or implied, in connection with the transaction contemplated herein.

12.3 Schedules. For purposes of determining the accuracy or veracity of the representations and warranties set forth in this

Agreement, each schedule annexed to this Agreement shall be deemed to include the disclosures set forth in every other schedule annexed to this Agreement.

12.4 Knowledge. Where any representation or warranty contained in this Agreement is qualified by a reference to the "knowledge" of Seller or the "best knowledge and belief" of Seller or similar knowledge qualifications, such reference shall refer to actual subjective knowledge of the executive officers of the Seller, and shall not include any knowledge which might be imputed to the Seller or its executive officers for any reason. Such qualifying phrases shall not indicate that the Seller or its executive officers have made an independent investigation of the matters subject to such qualification.

12.5 Publicity. Except as otherwise required by law, prior to Closing, none of the parties hereto shall issue any press release or make any other public statement, in each case relating to or in connection with or arising out of this Agreement or the matters contained herein, without obtaining the prior written approval of all parties hereto as to the contents and manner of presentation and publication thereof.

12.6 Gender. All pronouns and any variations thereof refer to the masculine, feminine or neuter, singular or plural, as the identity of the person or persons may require.

12.7 Expenses. Except as otherwise specifically provided herein, the Purchaser and the Seller shall pay their own respective expenses, including the fees and disbursements of their respective counsel in connection with the negotiation, preparation and execution of this Agreement and the consummation of the transactions contemplated hereby.

12.8 Brokerage Commissions and Finder's Fees. Each of the parties has represented and warranted to the other that it has not hired, retained or dealt with any broker or finder in connection with the transactions contemplated by this Agreement, and each party hereby covenants and agrees that it will defend, indemnify and hold the other party harmless from and against any and all claims for finder's fees or brokerage or other commissions which may at any time be asserted against such other party founded upon a claim which is inconsistent with said representation and warranty of the indemnifying party, together with any and all losses, damages, costs and expenses (including reasonable attorneys' fees) relating to such claims or arising therefrom or incurred by the indemnified party in connection with the enforcement of this Section 12.7.

12.9 Waivers and Consents. All waivers and consents given hereunder shall be in writing. No waiver by any party hereto of any breach or anticipated breach of any provision hereof by any other party shall be deemed a waiver of any other contemporaneous,

preceding or succeeding breach or anticipated breach, whether or not similar, on the part of the same or any other party.

12.10 Notices. All notices and other communications hereunder shall be in writing and shall be deemed to have been given only if and when (i) personally delivered or (ii) three (3) business days after mailing, postage prepaid, by certified mail or (iii) when delivered (and receipted for) by an overnight delivery service, addressed in each case as follows:

(a) If to Seller to:

Allied Foods, Inc.

1450 Hills Place, N.W.
Atlanta, GA 30318
Attn: H.F. Neibanck

with a copy in like manner to:

King & Spalding
191 Peachtree Street
Atlanta, GA 30303
Attn: Russell B. Richards

(b) If to the Purchaser to:

AFI Acquisition Corp.
c/o Orion Partners, L.P.
100 Federal Street, 29th Floor
Boston, MA 02110-1819
Attn: Steven A. Kandarian

with a copy in like manner to:

Hutchins, Wheeler & Dittmar
A Professional Corporation
101 Federal Street
Boston, MA 02110
Attn: Paul J. Hartnett, Jr.

The Seller, on the one hand, and the Purchaser, on the other, may change the address(es) for the giving of notices and communications to it, and/or copies thereof, by written notice the other party in conformity with the foregoing.

12.11 Rights of Third Parties. All conditions of the obligations of the parties hereto, and all undertakings herewith are solely and exclusively for the benefit of the parties and their successors and assigns, and no other person or entities shall have standing to require satisfaction of such condition to enforce such undertakings in accordance with their terms, be entitled to assume that any party hereto will refuse to consummate

the purchase and sale contemplated hereby in the absence of strict compliance with any or all thereof, and no other person or entity shall, under any circumstances, be beneficiary of such conditions or undertakings, any or all which may be freely waived in whole or in part, by mutual consent of the parties hereto at any time, if in their sole discretion they deem it desirable to do so.

12.12 Compliance with Bulk Transfer Laws. Purchaser and Seller agree to waive compliance with any applicable bulk transfer laws.

12.13 Headings. The table of contents and article and section herein are for convenience of reference only, do not constitute a part of this Agreement, and shall not be deemed to limit or affect any of the provisions hereof.

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized representatives to execute this Agreement under seal as of the date first above written.

Attest:

Robert J. Byrne
Name: Robert J. Byrne
Title: Treasurer

[CORPORATE SEAL]

Attest:

Paul H. Korman
Name: Paul H. Korman
Title: Secretary

[CORPORATE SEAL]

WCC23/

"PURCHASER"

AFI ACQUISITION CORP.

By: *Steven A. Kandarjian*
Name: Steven A. Kandarjian
Title: President

"SELLER"

ALLIED FOODS, INC.

By: *Paul H. Korman*
Name: Paul H. Korman
Title: President

Intellectual Property of Seller

1. Corporate Name - Allied Foods, Inc.
2. HENNY PEN - Trademark Reg. No. 793,720
3. TWIN PET - Trademark Reg. No. 1,853,755
4. KITTY - Trademark Reg. No. 702,658
5. VICTORY (Stylized) - Trademark Reg. No. 303,903