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(Rev. 03/01)
OMB No. 0651-0027 (exp. 5/31/2002)
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U.S. DEPARTMENT OF COMMERCE
U.S. Patent and Trademark Office

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

1. Name of conveying party(ies):

Cherokee Products Company

- ☐ Individual(s)
- ☐ Association
- ☐ General Partnership
- ☐ Limited Partnership
- ☒ Corporation-State
- ☐ Other _____

Additional name(s) of conveying party(ies) attached? ☐ Yes ☐ No

2. Name and address of receiving party(ies)

Name: McCall Farms, Inc.
Internal Address: _____
Street Address: 6615 S. Erby St.
City: Effingham State: SC Zip: 29541

- ☐ Individual(s) citizenship _____
- ☐ Association _____
- ☐ General Partnership _____
- ☐ Limited Partnership _____
- ☒ Corporation-State South Carolina
- ☐ Other _____

If assignee is not domiciled in the United States, a domestic representative designation is attached: ☐ Yes ☐ No
(Designations must be a separate document from assignment)
Additional name(s) & address(es) attached? ☐ Yes ☐ No

3. Nature of conveyance:

- ☒ Assignment
- ☐ Merger
- ☐ Security Agreement
- ☐ Change of Name
- ☐ Other _____

Execution Date: _____

4. Application number(s) or registration number(s):

A. Trademark Application No.(s)

B. Trademark Registration No.(s)
See next page

Additional number(s) attached ☒ Yes ☐ No

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

Name: Robert Nicholson
Internal Address: _____
Street Address: 6615 S. Erby St.
City: Effingham State: SC Zip: 29541

6. Total number of applications and registrations involved: 9

7. Total fee (37 CFR 3.41) ..... $ 240.00

- ☒ Enclosed
- ☐ Authorized to be charged to deposit account

8. Deposit account number: _____

(Attach duplicate copy of this page if paying by deposit account)

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.

Robert Nicholson	Robert S. Nicholson	6/8/01
Name of Person Signing	Signature	Date

Total number of pages including cover sheet, attachments, and document: 18

Mail documents to be recorded with required cover sheet information to:
Commissioner of Patent & Trademarks, Box Assignments
Washington, D.C. 20231

McCall Farms, Inc.

Trademarks purchased from Cherokee Products Company

GA-RED	1,666,858
RAGGEDY RIPE	1,615,036
MISS LIL'S	1,213,372
GEORGIA RED	1,768,311
GARCIA'S (stylized)	562,464
GEORGIA GOLD	789,419
GARCIA'S	650,610
GARCIA'S (stylized)	1,094,646
GARCIA'S	2,137,429

MCCALL FARMS/CHEROKEE PRODUCTS
ASSET PURCHASE AGREEMENT

THIS IS AN ASSET PURCHASE AGREEMENT ("this Agreement") by and between McCall Farms, Inc., a South Carolina corporation ("McCall Farms"), and Cherokee Products Company, a Georgia corporation ("Cherokee Products"), dated as of February 17, 2000, and by which McCall Farms and Cherokee Products, in consideration of the agreements set forth below (the mutuality, adequacy and sufficiency of which are hereby acknowledged), hereby agree as follows to set forth the basis on which McCall Farms will acquire certain assets and assume certain liabilities of Cherokee Products' peaches, pickled peaches, tomatoes, peas, squash and other canned foods or relating to the Garcia business, which includes black beans, garbanzo beans, kidney beans, soup and related food products business (the "Vegetable Business"):

1. **Generally As to Purchase & Sale.**

(a) *Purchase and Sale of Assets; Assumption of Liabilities*. At the Closing (as defined in Section 2):

(i) Purchased Assets. Cherokee Products will sell to McCall Farms, and McCall Farms will purchase from Cherokee Products, Cherokee Products': (A) equipment listed in Exhibit A; (B) trade and brand names listed in Exhibit A; (C) written formulas, recipes and methods relating to the production of the branded products listed in Exhibit A; (D) inventory of the Vegetable Business; and (E) other tangible and intangible assets used in the Vegetable Business listed in Exhibit A (hereinafter referred to collectively as the "Purchased Assets"). Without limiting the foregoing, McCall Farms is not acquiring any of Cherokee Products' assets related to Cherokee Products' pimento, pepper and artichoke business, or any other assets of Cherokee Products other than those listed in Exhibit A.

(ii) Assumed Liabilities. McCall Farms will assume only the uncompleted purchase orders (whether issued by or to Cherokee Products) relating to the Vegetable Business and listed in Exhibit B and no other liabilities whatsoever (the "Assumed Liabilities").

All of Cherokee Products' other liabilities and obligations (whether absolute, contingent, known or unknown, determinable or not determinable or otherwise and including those relating to payables, debt, taxes, current or former officers, directors, shareholders, agents and employees, litigation, products liability as to products it manufactured, and violations of law) ("Excluded Liabilities") are not Assumed Liabilities and will not be assumed by McCall Farms. Cherokee Products agrees to indemnify McCall Farms and hold it harmless against the Excluded Liabilities, as further provided herein.

(b) *Purchase Price*. The "Purchase Price" is:

(i) Fixed Component: Two Million Ten Thousand and No/100 Dollars ($2,010,000) (the "Fixed Component"); plus

(ii) Inventory Component: the sum of the following as of the beginning of the first day following the Closing Date (collectively "Inventory"):

(A) Finished goods inventory of the Vegetable Business,

(B) Inventory which is partially finished which needs labels applied, and to be placed in trays or cartons prior to shipment to customers,

(C) Raw materials, ingredients and packaging goods inventory,

(D) Industrial materials, and

(E) GMA - 40" x 48" warehouse pallets.

The values of: (A) will be at Cherokee Products' 1999 final cost calculations, as shown on Exhibit C; (B) will be the same as (A) except allowances will be given for the unincurred cost applicable to each item of partially finished inventory based on Cherokee Products' standard allowances for labels, cartons, trays, film, labor, etc. as shown on Exhibit C; (C) & (D) will be at cost shown on Exhibit C; and (E) will be $4.50 each, all multiplied by the quantities on hand on the beginning of the first day after the Closing Date, according to Cherokee's automated "perpetual" inventory system and by actual count for those items not routinely maintained on the perpetual inventory system. Any item of Inventory not listed on Exhibit C will be valued at Cherokee Products' cost, based on its latest invoice on file, including any inbound freight or acquisition costs. Final tabulation of quantities and values of Inventory will be based on quantities delivered to McCall Farms pursuant to Section 4(d), or transfers at outside warehouse locations where located.

At Closing, Inventories (A) and (B) described above will not include merchandise on "Hold" or "Bent & Rusty" ("B&R") for purpose of determining the sum of the Inventory values under Cherokee Products' perpetual inventory system; however, those items which are later determined to be merchantable (as defined below) will be shipped to McCall Farms as (A) or (B) Inventory and payment for same will be made under the post closing re-determination provisions of Section 1(b)(iii) below.

Cherokee Products retains for itself, its stockholders and assigns, the right and privilege of liquidating "B&R" merchandise, or other product not meeting the merchantability standards described below, to third parties, for consideration or for no consideration, and McCall Farms acknowledges that this action will not be deemed to be a breach of this Agreement or the noncompetition agreements executed pursuant to Section 2(d), by Cherokee Products or its stockholders.

To the extent that any Inventory purchased by McCall Farms pursuant to this Agreement is not merchantable, then such Inventory may be returned to Cherokee Products and a corresponding adjustment to the purchase price for the non-merchantable Inventory will be made (and Cherokee Products will refund such amount to McCall Farms) based on the price paid by McCall Farms for such Inventory. For purposes of this Agreement, Inventory will be considered not merchantable if it is either finished inventory or brite stack inventory which (1) causes or is likely to cause personal injury or property damage, (2) has a broken or cracked container or lid, or a container or lid which is otherwise damaged, (3) is not properly packaged, labeled or branded, or (4) fails to meet applicable FDA standards not specifically referenced above.

(iii) Payment of Purchase Price. The Fixed Component will be paid at the Closing. Cherokee Products will in good faith estimate the dollar value of the Inventory as of the beginning of the first day following the Closing Date, and that estimate will be paid to Cherokee Products at the Closing. Promptly following the Closing, representatives of McCall Farms and Cherokee Products will work together to determine the actual value of Inventory as of the beginning of the first day following the Closing Date based on the agreed-upon values in Section 1(b)(ii) above, and any necessary adjusting payments will be made by wire transfer of immediately available funds within five days after such determination. If within 60 days after the Closing Date the parties have been unable to agree as to the dollar value of the Inventory, then either party may, no later than the 90th day after the Closing Date, submit the dispute to arbitration in accordance with Section 6(h) hereof. If as of the 90th day after the Closing Date the parties have been unable to reach agreement as to the dollar value of the Inventory but neither party has submitted the matter to arbitration, then the estimated value of the Inventory used for purposes of the Closing shall be deemed to be the final Inventory value.

(c) *Allocation of the Purchase Price*. The Purchase Price will be allocated as set forth in Exhibit D, and McCall Farms and Cherokee Products will take positions consistent with the foregoing on all tax and other returns and reports filed by them.

2. **Closing**. The consummation of the transactions contemplated by this Agreement (the "Closing") will occur immediately following the execution of this Agreement. The day on which the Closing occurs is referred to herein as the "Closing Date." At the Closing (which will consist of the deliveries set forth below, none of which will be deemed to have been delivered unless and until all of them have been delivered) the following will occur:

(a) *Purchase Price*. McCall Farms will deliver to Cherokee Products by wire transfer of immediately available funds for the sum of $2,010,000 plus Cherokee Products' good faith estimate of the value of the Inventory pursuant to Section 1(b)(iii).

(b) *Bill of Sale*. Cherokee Products will deliver to McCall Farms a duly completed and executed bill of sale in the form agreed to by the parties, together with releases of all mortgages, liens and other adverse claims on such property duly executed by the appropriate party.

(c) *Assumption of Liabilities*. McCall Farms will deliver to Cherokee Products a duly completed and executed assumption of liabilities in the form agreed to by the parties.

(d) *Noncompetition Agreements*. Each of Cherokee Products, G. Albert Bloodworth, Jr., George E. Bloodworth III and Jerry J. Bloodworth will execute and deliver to McCall Farms a noncompetition agreement in substantially the form of Exhibit E hereto.

(e) *Sales Tax Exemption Certificates*. McCall Farms will deliver to Cherokee Products (i) a duly completed and executed Certificate of Exemption--Out of State Dealer (Georgia Form ST-4) certifying that the inventory purchased hereunder is purchased for resale and will be immediately transported out of the State of Georgia, (ii) a duly completed and executed Certificate of Exemption--Out of State Delivery (Georgia Form ST-6) certifying that the equipment and other non-inventory tangible personal property purchased hereunder will be delivered by Cherokee Products outside of the State of Georgia, and (iii) such other documents as Cherokee Products may deem necessary to confirm the exemption of the sale of the Purchased Assets from any and all state or local sales or use taxes. If McCall Farms does not provide properly completed and executed sales and use tax exemption certificates or such other documents as Cherokee Products may reasonably request to confirm the exemption of the sale of the purchased assets from Georgia sales and use tax, or if an exemption from any applicable state or local sales or use taxes is otherwise not available, then McCall Farms shall be responsible for, and if requested by Cherokee Products will pay to Cherokee Products, the amount of any such sales or use tax that is required to be collected by Cherokee Products in connection with the transactions contemplated by this Agreement.

The obligations of each party to take the foregoing actions are conditioned upon: (i) the correctness in all material respects of the representations and warranties made by the other party in this Agreement; (ii) the performance by the other party of all of its covenants and agreements in this Agreement that are to be performed at or prior to the Closing; and (iii) the simultaneous closing of the sale of all (or substantially all) of the assets of Cherokee Products' pimento, pepper and artichoke business.

3. **Representations and Warranties**.

(a) *By Cherokee Products*. Cherokee Products hereby represents and warrants to McCall Farms that except as set forth in Exhibit F:

(i) Cherokee Products' Existence: Cherokee Products is a duly incorporated and organized Georgia corporation validly existing and in good standing under Georgia law.

(ii) Power and Authority to Sell: Cherokee Products has the power and authority to execute, deliver and otherwise perform this Agreement and the agreements, instruments and documents to be executed and delivered by it pursuant to this Agreement; and without limiting the foregoing, Cherokee Products' Board of Directors

and shareholders have authorized and approved the execution, delivery and performance of this Agreement and the agreements, instruments and documents to be executed and delivered by it pursuant to this Agreement. This Agreement has been, and each other agreement, instrument and document to be executed and delivered by Cherokee Products pursuant to this Agreement will be, duly executed and delivered by Cherokee Products and constitutes the legal, valid and binding obligation of Cherokee Products, enforceable in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency and other laws and equitable principles affecting creditors' rights generally and the discretion of the courts in granting equitable remedies.

(iii) Execution, Delivery and Performance Permitted Without Violation: The execution, delivery and performance of this Agreement is, and of the agreements, instruments and documents to be executed and delivered by Cherokee Products pursuant to this Agreement will be, in compliance with, and is not (and will not be), assuming the giving of notice or the passage of time or both, in violation of (A) Cherokee Products' articles of incorporation or bylaws, (B) any applicable law to which Cherokee Products or any if its assets is subject or bound, or (C) any contract, commitment, order, ruling or proceeding to which Cherokee Products or any of its asset is a party, subject or bound.

(iv) Taxes: Cherokee Products has no liability with respect to taxes that would affect in any way whatsoever McCall Farms's right, title, and interest in or McCall Farms's right to use or enjoy (free and clear of any lien or restriction, other than permitted liens) any Purchased Asset or any Assumed Liability.

(v) Liens on Purchased Assets: Although the Purchased Assets are subject to liens from Cherokee Products' lenders, the underlying indebtedness will be satisfied by Cherokee Products contemporaneously with the closing and such liens removed. Except for the liens in favor of Cherokee Products' lenders, Cherokee Products owns outright and has good and marketable title and will convey to McCall Farms good and marketable title to all of the Purchased Assets, in each case free and clear of all liens.

(vi) Compliance with Contracts. Cherokee Products is, to the knowledge of its Board of Directors, in compliance with all the contracts to which it is a party or subject and included in the Purchased Assets. Exhibit F lists all such material contracts.

(vii) Compliance with Applicable Laws. Cherokee Products, to the knowledge of its Board of Directors, is in compliance with all applicable law.

(viii) Litigation. There are no outstanding orders of any governmental authority by which Cherokee Products or any of its securities, assets, properties or businesses are bound. There is no action or proceeding pending or, to the knowledge of Cherokee Products, threatened (whether or not the defense thereof or liabilities in respect thereof are covered by insurance) before any governmental authority against or affecting Cherokee Products, the Purchased Assets or the Vegetable Business, nor to the knowledge of Cherokee Products or any facts which are likely to give rise to any such

action or proceeding which, if adversely decided, would materially and adversely affect the Purchased Assets.

(ix) Intellectual Property and Intangibles. Cherokee Products has not received any written notices of, and to the knowledge of Cherokee Products there have been no threats of, third-party claims alleging that Cherokee Products has infringed or misappropriated intellectual property or other rights owned by third-parties through Cherokee Products' use of any trademarks, brand names, recipes or other intellectual property included in the Purchased Assets. To the knowledge of Cherokee Products, Cherokee Products has not, in connection with the use of any of the Purchased Assets, infringed or misappropriated intellectual property or other rights of third-parties through, and is not required to pay royalties or license fees for, Cherokee Products' use of any intellectual property included in the Purchased Assets.

(x) Brokers. All negotiations relative to this agreement and the transactions contemplated hereby have been carried out by Cherokee Products directly with McCall Farms without the intervention of any person on behalf of Cherokee Products in such manner as to give rise to any valid claim by any such person against McCall Farms for a finders fee, brokerage commission or similar payment.

(xi) Ability to Perform. Cherokee Products has the ability to perform all of its obligations hereunder, and to the knowledge of Cherokee Products there is no fact which would prohibit Cherokee Products from doing so. Cherokee Products will remain so able so long as any performance is due by Cherokee Products hereunder, and shall not perform act nor fail to perform any act which would be reasonably likely to cause Cherokee Products to be unable to so perform.

(xii) Full Disclosure. To Cherokee Products' knowledge, none of the representations or warranties contained in this Section 3 (giving full effect to any dollar, time or other limitations specified in, and only with respect to the subject matter contained in, such representations and warranties) is false or misleading in any material respect or omits to state a fact herein or therein necessary to make the statements herein or therein not misleading in any material respect. The foregoing does not impose any obligation to disclose the implications of disclosed facts.

McCall Farms and Cherokee Products each acknowledge and agree that none of the transactions contemplated by this Agreement constitutes a sale of goods under the Uniform Commercial Code (the "UCC") as enacted in any state, and that, except for the representations and warranties specifically provided in this Agreement and the covenant as to the return of non-merchantable Inventory in Section 1(b), ALL PROPERTY CONVEYED PURSUANT TO THIS AGREEMENT IS ON AN "AS IS," "WHERE IS," "WITH ALL FAULTS" BASIS AND WITHOUT ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OPERABILITY, CAPACITY, CONDITION, AND NO REPRESENTATION OR WARRANTY IS MADE (AND CHEROKEE PRODUCTS EXPRESSLY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES) AS TO THE VEGETABLE BUSINESS, FINANCIAL CONDITION, ASSETS, LIABILITIES OR

OBLIGATIONS OF CHEROKEE PRODUCTS. Without limiting the foregoing disclaimer, Cherokee Products accepts no liability for, and McCall Farms will hold Cherokee Products harmless from and against, any injuries to person or property arising out of the use of any machinery or equipment by McCall Farms or its representatives or employees following the Closing Date.

(b) *By McCall Farms*. McCall Farms hereby represents and warrants to Cherokee Products that:

(i) McCall Farms's Existence. McCall Farms is a duly incorporated and organized South Carolina corporation validly existing and in good standing under South Carolina law.

(ii) Power and Authority. McCall Farms has the power and authority to execute, deliver and perform this Agreement and the agreements, instruments and documents to be executed and delivered by it pursuant to this Agreement , and without limiting the foregoing, the Board of Directors of McCall Farms has authorized and approved the execution, delivery and performance of this Agreement. This Agreement has been, and each other agreement, instrument and document to be executed and delivered by McCall Farms pursuant to this Agreement will be, duly executed and delivered by McCall Farms, and each constitutes the legal, valid and binding obligation of McCall Farms, enforceable in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency and other laws and equitable principles affecting creditors' rights generally and the discretion of the courts in granting equitable remedies.

(iii) Execution, Delivery and Performance Permitted Without Violation. The execution, delivery and performance of this Agreement is, and of the agreements, instruments and documents to be executed and delivered by McCall Farms pursuant to this Agreement will be in compliance with, and is not (and will not be), assuming the giving of notice or the passage of time or both, in violation of (A) the articles of incorporation or bylaws of McCall Farms as amended or restated, (B) any applicable law to which McCall Farms or its assets is a party, subject or bound, or (C) any agreement, commitment, order, ruling or proceeding to which McCall Farms or its assets is a party, subject or bound.

(iv) Brokers. All negotiations relative to this agreement and the transactions contemplated hereby have been carried out by Cherokee Products directly with McCall Farms without the intervention of any person on behalf of Cherokee Products in such manner as to give rise to any valid claim by any such person against McCall Farms for a finders fee, brokerage commission or similar payment.

(v) Ability to Perform. McCall Farms has the ability to perform all of its obligations hereunder, and to the knowledge of McCall Farms there is no fact which would prohibit McCall Farms from doing so. McCall Farms will remain so able so long as any performance is due by McCall Farms hereunder, and shall not perform act nor fail to perform any act which would be reasonably likely to cause McCall Farms to be unable to so perform.

4. **Covenants & Agreements**.

(a) *Confidentiality of this Agreement*. The terms and conditions of this Agreement will remain confidential, except with the prior written consent of the parties (which will not be unreasonably withheld or delayed) and except to the extent applicable law or enforcement of its terms requires public disclosure (and then prior written notice of such disclosure will be given to the other so that it may seek a protective order or other protective arrangement permitted by applicable law or other similar or appropriate relief); provided, however, that following the Closing Cherokee Products may notify its suppliers, customers and other persons with which it has business relations of the sale of the Vegetable Business.

(b) *Bulk Sales; State Tax Clearances*. McCall Farms and Cherokee Products each acknowledge and agree: (a) that notices to creditors are not being given under, and no other actions are being taken to comply with, the "Bulk Sales Act" under the Uniform Commercial Code or any similar applicable law as in effect in any state (but without acknowledging that such is required); and (b) that no waivers or clearances are being obtained under, and no other actions are being taken to comply with state laws, if any, providing for tax clearances in connection with transfers of assets (but without acknowledging that such is required). McCall Farms and Cherokee Products waive compliance with such laws, but it is further agreed that, notwithstanding such waiver, Cherokee Products will indemnify, defend and hold McCall Farms harmless from any losses, expenses, liabilities and claims arising from such non-compliance.

(c) *Expenses*. Each party to this Agreement will pay its own expenses and costs incurred in connection with the negotiation and consummation of this Agreement and the transactions contemplated by this Agreement. Notwithstanding the foregoing, to the extent the transactions contemplated by this Agreement are not exempt from sales or use taxes, such taxes and any penalties and interest will be paid by McCall Farms.

(d) *Delivery of Purchased Assets*. Except as otherwise provided in this Section 4(d), the sale of the Purchased Assets shall be F.O.B: McCall Farms' facility in Effingham, South Carolina and, within 60 days after Closing or as soon thereafter as practicable, Cherokee Products shall arrange, at its own expense, for shipment of the Purchased Assets through an independent trucker or common carrier to McCall Farms' facility and for insurance on such shipment through a reputable insurer or through the carrier in an amount that Cherokee Products, in its reasonable discretion, deems necessary to protect the value of such shipment. Notwithstanding the foregoing, the sale of the Inventory shall be F.O.B. shipping point and, immediately after Closing or as soon thereafter as practicable, McCall Farms shall arrange, at its own expense, for removal of the Inventory from Cherokee Products' facilities in Haddock, Georgia, Milledgeville, Georgia, Bradley, Georgia, and Ft. Valley, Georgia, and for shipment of such Inventory out of the State of Georgia. As to Inventory in public warehouses, McCall Farms shall accept delivery based on a written order by Cherokee Products to the public warehouses in which such Inventory is located to transfer such Inventory on their records to McCall Farms, with future storage and handling charges for the account of McCall Farms. The sale of the Peach Bin Boxes and Collapsible Tomato Bin Boxes listed in Exhibit A shall be F.O.B. McCall Farms' facility in Effingham, South Carolina, and Cherokee Products shall arrange for shipment through an independent trucker or common carrier to McCall Farms' facility freight collect.

(e) *Maintenance of Corporate Form and Minimum Asset Value*. Cherokee Products will maintain its corporate existence (and will not dissolve) and will maintain, directly or indirectly, assets having a fair market value of at least $500,000 from the Closing Date through December 31, 2000; provided, however, that for purposes of this Section 4(e) liquid assets (such as cash and marketable securities) shall be treated as having fair market value of $1.00 for each $1.00 of fair market value, and liquid assets (such as real estate) shall be treated as having a fair market value of $.50 for each $1.00 of fair market value. For purposes of this Section 4(e), Cherokee Products may hold assets directly or indirectly through a subsidiary.

(f) *Maintenance of Liability Insurance "Tail Coverage"*. Cherokee Products will maintain products liability insurance following the Closing covering injuries to person and property for a period of no less than applicable statutes of limitations, providing for coverage of not less than $5,000,000 per incident up to a maximum of not less than $5,000,000 in aggregate coverage, with a deductible of $10,000 in the aggregate. Cherokee Products will cause such insurance to remain in effect and to provide for McCall Farms as a secondary loss payee.

5. **Survival & Indemnification**.

(a) *Survival*. The representations, warranties, covenants and agreements made by the parties in this Agreement will survive the Closing.

(b) *Indemnification*.

(i) Generally. Each party will indemnify, defend and hold the other harmless for any Loss (as defined below) incurred or suffered as a result of a breach of a representation, warranty, covenant or agreement set forth in this Agreement. Cherokee Products will indemnify McCall Farms for any Loss relating to an Excluded Liability, and McCall Farms will indemnify Cherokee Products for any liability relating to an Assumed Liability. For purposes of this Agreement "Loss" means any liability, loss, cost, damage or expense, including reasonable attorneys' fees and any taxes of the recipient on indemnification payments made to it, but excluding consequential damages and net of (A) tax benefits, (B) other recoveries and benefits, including insurance recoveries, and (C) the expenses of obtaining such recoveries and benefits from others.

(ii) Non-Salable Product, Slotting and Bill-Back Arrangements. Cherokee Products will indemnify McCall Farms for (A) McCall's cost of replacing non-salable product sold by Cherokee Products on or prior to the Closing Date that is returned by the customer and deductions by customers from payments to McCall Farms where a customer has asserted that product sold by Cherokee Products on or prior to the Closing Date is non-salable, and (B) payments made by McCall for so-called "slotting" arrangements, "bill back" arrangements or other rebates or discounts agreed to by Cherokee Products with retail sellers of its products (such as grocery stores) on or prior to the Closing Date for periods ending on or prior to the Closing Date; provided, however, that Cherokee Products will not be obligated to make indemnification payments pursuant to this Section 5(b)(ii) which in the aggregate exceed $50,000. Any claims for indemnification pursuant to this Section 5(b)(ii) must be accompanied by written documentation that supports such claim to the reasonable satisfaction of Cherokee Products.

(c) *Certain Limitations*. Notwithstanding the foregoing:

(i) Time: No party will be required to indemnify another party pursuant to the foregoing unless the party claiming the right to be indemnified gives notice to the other party of facts which it in good faith thinks constitute a reasonable basis for indemnification pursuant to this Section 5 on a date no later than December 31, 2000.

(ii) Deductible: Neither Cherokee Products nor McCall Farms will be required to indemnify another party with respect to Losses indemnifiable pursuant to Section 5(b)(i) unless and only to the extent that the aggregate amount of the agreed to or adjudicated indemnification claims for such Losses against such party exceed $50,000.

(iii) Cap: Neither Cherokee Products nor McCall Farms will be obligated to make indemnification payments pursuant to Section 5(b)(i) which in the aggregate exceed $500,000 (indemnification payments pursuant to Section 5(b)(ii) being subject to the separate cap stated in such Section); provided, however that the foregoing "cap" on indemnification liability shall be equal to the Purchase Price in the case of any claim by McCall Farms that Cherokee Products did not as of the Closing Date have and convey to McCall Farms good title to the Purchased Assets.

The foregoing limitations do not apply to the indemnification obligations in Section 5(b)(i) as to Excluded Liabilities and Assumed Liabilities, to any representation, warranty, covenant or agreement of a party with respect to tax matters, or with respect to any post-Closing payments required under Section 1(b) in connection with the determination of final Inventory value; and payments related to these items will not be considered in calculating whether Losses exceed $50,000 for purposes of Section 5(c)(ii) or exceed $500,000 for purposes of Section 5(c)(iii).

(d) *Right to Contest*. In addition to the deadline set forth in Subsection (b) above for giving notice of facts constituting a basis for indemnification, the party seeking indemnification (the "indemnified party") will notify the other party (the "indemnifying party") of any claim of the facts constituting a basis for indemnification with reasonable promptness. If such claim is based upon a claim by a person or entity not a party to this Agreement ("Third Party Claim"), then the indemnifying party will have, at its election and with counsel chosen and paid by it, the right to compromise or defend any such matter. Such notice and opportunity will be conditions precedent to any liability of the indemnifying party under this Section 5. Neither party may settle a Third Party Claim or any related action (even if the indemnifying party sought has elected not to defend such action) without the consent of the other party, which consent will not be unreasonably withheld. The party not defending (whether by election or otherwise) a Third Party Claim will have the right at its own expense, to attend, but not otherwise participate in such proceedings involving Third Party Claims.

(e) *Exclusive Remedies*. The remedies provided in this Section 5 constitute the sole and exclusive remedies for recoveries against another party to this Agreement with respect to the representations, warranties, covenants and agreements set forth in this Agreement or in the exhibits, schedules and other attachments to this Agreement or in any agreement, certificate, instrument or other document executed and delivered by a party pursuant to this Agreement. The foregoing will not limit the right of any party to this Agreement to enforce the

performance of this Agreement or of any agreement or other document executed and delivered pursuant to this Agreement.

6. **Miscellaneous.**

(a) *Good Faith Efforts; Further Assurances; Cooperation.* The parties will in good faith undertake to perform their obligations in this Agreement, to satisfy all conditions and to cause the transactions contemplated in this Agreement to be carried out promptly in accordance with the terms of this Agreement. Upon the execution of this Agreement and thereafter, each party will do such things as may be reasonably requested by the other party to this Agreement in order more effectively to consummate or to document the transactions contemplated by this Agreement. The parties will cooperate with each other and their respective counsel, accountants or designees in connection with any steps required to be taken as part of their respective rights and obligations under this Agreement.

(b) *Notices.* Each notice, communication and delivery under this Agreement (i) will be made in writing signed by the party making the same, (ii) will specify the section of this Agreement pursuant to which it is given, (iii) will be given either in person or by a nationally recognized next business day delivery service for next business day delivery, and (iv) if not given in person, will be given to a party at the address set forth below such party's signature (or at such other address as a party may furnish to the other parties to this Agreement pursuant to this subsection). If notice is given pursuant to this subsection of a permitted successor or assign of a party, then notice will also thereafter be given as set forth above to such successor or assign of such party.

(c) *Assignment.* No assignment or transfer by a party of its rights and obligations under this Agreement will be made by merger or other operation of law or otherwise except with the prior written consent of the other party (which may not be unreasonably withheld); provided, however, that (i) Cherokee Products may assign its rights and obligations under this Agreement to its shareholders in connection with its liquidation, and (ii) McCall Farms may assign its rights and obligations under this Agreement to an entity in which McCall Farms owns at least a forty percent interest that is formed for purposes of the acquisition of the Purchased Assets and Assumed Liabilities. This Agreement is binding upon the parties and their successors and assigns and inures to the benefit of the parties and their permitted successors and assigns and, when appropriate to effect the binding nature of this Agreement for the benefit of the other parties, or any other successor or assign.

(d) *Certain Definitions.* For purposes of this Agreement: (whether or not underlined): (i) "applicable law" means each provision of any constitution, statute, law, rule, regulation, decision, order, decree, judgment, release, license, permit, stipulation or other official pronouncement enacted, promulgated or issued by any governmental authority or arbitrator or arbitration panel; (ii) "contract" means any contract of any kind whatsoever, together with all related amendments, modifications, supplements, waivers and consents; (iii) "governmental authority" means any legislative, executive, judicial, quasi-judicial or other public authority, agency, department, bureau, division, unit, court or other public body or person; (iv) "knowledge", "known" and words of similar meaning when used with respect to Cherokee Products mean the actual conscious awareness of the officers of Cherokee Products; (v) "lien"

means any mortgage, deed to secure debt, deed of trust, security interest, lien, pledge, charge, encumbrance or adverse claim of any kind whatsoever, including any other security arrangement of any nature whatsoever, any conditional sale or title retention arrangement, any assignment, deposit arrangement or lease intended as, or having the effect of, security, and the interest of a lessor or lessee under a lease treated as a capitalized lease; (vi) "party", "parties" and variations of such means each or all, as appropriate, of the persons who have executed and delivered this Agreement, each permitted successor or assign of such a party, and when appropriate to effect the binding nature of this Agreement for the benefit of another party, any other successor or assign of such a party; (vii) "person" means any individual, sole proprietorship, partnership, corporation, joint venture, limited liability company, estate, trust, unincorporated organization, association, institution, or other entity or governmental authority; (viii) "taxes" means all taxes, assessments, charges, duties, fees, levies or other governmental charges, including all federal, state local, foreign or other income, profits, unitary, business, franchise, capital stock, real property, personal property, intangible taxes, withholding, FICA, unemployment compensation, disability, transfer, sales, use, excise and other taxes, assessments, charges, duties, fees, or levies of any kind whatsoever (whether or not requiring the filing of returns) and all deficiency assessments, additions to tax, penalties and interest; and (viii) "this Agreement" includes any amendments or other modifications and supplements, and all exhibits, schedules and other attachments, to it.

(e) *Rules of Construction*. For purposes of this Agreement: (i) "including" and any other words or phrases of inclusion will not be construed as terms of limitation, so that references to "included" matters will be regarded as non-exclusive, non-characterizing illustrations; (ii) when "Section," "Subsection," or "Exhibit" is capitalized in this Agreement, such refers to such item of or to this Agreement; (iii) titles and captions of or in this Agreement are inserted only as a matter of convenience and in no way define, limit, extend or describe the scope of this Agreement or the intent of any of its provisions; (iv) whenever the context so requires, the singular includes the plural and the plural includes the singular, and the gender of any pronoun includes the other genders; (v) each exhibit and schedule referred to in this Agreement and each attachment to any of them or this Agreement is hereby incorporated by reference into this Agreement and is made a part of this Agreement as if set out in full in the first place that reference is made to it; and (vi) acknowledging that parties have participated jointly in the negotiation and drafting of this Agreement, if an ambiguity or question of intent or interpretation arises as to any aspect of this Agreement, then it will be construed as if drafted jointly by the parties and no presumption or burden of proof will arise favoring or disfavoring any party by virtue of the authorship of any provision of this Agreement.

(f) *Severability*. Any determination by any court of competent jurisdiction of the invalidity of any provision of this Agreement that is not essential for accomplishing its purposes will not affect the validity of any other provision of this Agreement, which will remain in full force and effect and which will be construed as to be valid under applicable law.

(g) *Controlling Law; Integration; Amendment; Waiver; Remedies Cumulative*. This Agreement is governed by, and will be construed and enforced in accordance with, the laws of the State of Georgia except the laws of that state that would render such choice of laws ineffective. This Agreement and the other agreements and instruments contemplated by this Agreement supersede all prior negotiations, agreements and understandings between the parties

as to its their subject matter, constitute the entire agreement between the parties as to their subject matter (other than that certain confidentiality agreement between the parties dated December 13, 1999) and may not be altered or amended except in writing signed by the parties. The failure of any party at any time or times to require performance of any provision of this Agreement will in no manner affect the right to enforce the same; and no waiver by any party of any provision (or of a breach of any provision) of this Agreement, whether by conduct or otherwise, in any one of more instances will be deemed or construed either as a further or continuing waiver of any such provision or breach or as a waiver of any other provision (or of a breach of any other provision) of this Agreement. Except as provided in Section 5(e), the remedies of a party provided in this Agreement are cumulative and will not exclude any other remedies to which any party may be lawfully entitled under this Agreement or applicable law, and the exercise of a remedy will not be deemed an election excluding any other remedy (any such claim by the other party being hereby waived).

(h) *Arbitration*. If any disputes arise under this Agreement, the parties will first use all reasonable efforts to settle such disputes by negotiation and mutual agreement. If any party believes that any such dispute cannot be amicably settled by negotiation, then the party may submit the dispute to resolution by binding arbitration. Arbitration, if any, held pursuant to this Agreement will be conducted in Columbia, South Carolina by a single arbitrator, in accordance with the Commercial Arbitration Rules of the American Arbitration Association (it being expressly understood and agreed that if any such dispute cannot be resolved by mutual agreement, it is the intention of the parties that such dispute will be resolved by arbitration). Any such arbitrator shall be independent and impartial and shall render a written decision as to the subject dispute. The procedures specified in this Section shall be the sole and exclusive procedures for the resolution of disputes between the parties arising out of or relating to this Agreement; provided, however, that a party may seek a preliminary injunction or other provisional judicial relief, if in its sole judgment such action is necessary to avoid irreparable damage or to preserve the *status quo*. The awarding of costs in connection with any such arbitration shall be in the discretion of the arbitrator.

(i) *Counterparts*. This Agreement may be signed by each party upon a separate copy and in such case one counterpart of this Agreement will consist of enough of such copies to reflect the signatures of each party to this Agreement. This Agreement may be executed in two or more counterparts, each of which will be deemed an original, and it will not be necessary in making proof of this Agreement or its terms to produce or account for more than one of such counterparts.

DULY EXECUTED and delivered by McCall Farms and Cherokee Products on February 17, 2000.

McCall Farms, Inc.	Cherokee Products Company
By: _____	By: _____
Henry Swink, President	G. Albert Bloodworth, Jr., President

* * * * *

as to its their subject matter, constitute the entire agreement between the parties as to their subject matter (other than that certain confidentiality agreement between the parties dated December 13, 1999) and may not be altered or amended except in writing signed by the parties. The failure of any party at any time or times to require performance of any provision of this Agreement will in no manner affect the right to enforce the same; and no waiver by any party of any provision (or of a breach of any provision) of this Agreement, whether by conduct or otherwise, in any one of more instances will be deemed or construed either as a further or continuing waiver of any such provision or breach or as a waiver of any other provision (or of a breach of any other provision) of this Agreement. Except as provided in Section 5(e), the remedies of a party provided in this Agreement are cumulative and will not exclude any other remedies to which any party may be lawfully entitled under this Agreement or applicable law, and the exercise of a remedy will not be deemed an election excluding any other remedy (any such claim by the other party being hereby waived).

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DULY EXECUTED and delivered by McCall Farms and Cherokee Products on February 17, 2000.

McCall Farms, Inc.

By:_____
_____, President

Cherokee Products Company

By:_____
G. Albert Bloodworth, Jr., President

* * * * *

EXHIBIT A TO McCALL/
CHEROKEE PRODUCTS ASSET
PURCHASE AGMNT (§ 1(a)(i))

PURCHASED ASSETS

I. Equipment: See Attachment One

II. Trade and Brand Names:

A. Registered Marks:

Mark	Registration No.
GA-RED	1,666,858
GEORGIA GOLD	789,419
GEORGIA RED	1,768,311
RAGGEDY RIPE	1,615,036
GARCIA'S	2,137,429
MISS LIL'S	1,213,372
GARCIA'S (Stylized)	1,094,646
GARCIA'S	650,610
GARCIA'S (Stylized)	562,464

B. Unregistered Marks:

SOUTHERN STYLE
LOLITA'S

Note: McCall Farms' use of "Osage" for peaches, peas and squash and "Pomona Sunshine" for pickled peaches will be governed by a separate written license agreement between McCall Farms and Moody Dunbar.

III. Formulas, Recipes, Methods: [Not itemized in this Schedule]

IV. Inventory: [Not itemized in this Schedule]

313659.6

V. Other: All of the shares of Garcia Canning Company, Inc., a "shell" entity formed as a Florida corporation to protect the "Garcia" name in Florida.

Note: Some customer-specific data that will be provided to McCall Farms is combined with data relating to a portion of Cherokee Products' business that is being sold to Moody Dunbar, Inc. ("Moody Dunbar"), and both Moody Dunbar and McCall Farms will thus receive information relating to the portion of Cherokee Products' business acquired by the other. McCall Farms will treat the information relating to that portion of Cherokee Products' business acquired by Moody Dunbar as confidential information under APA § 4(a).

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