

03-06-2002

ET

Docket No.:



Y

02-25-2002

102003031

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

1. Name of conveying party(ies):

Tri Valley Growers

- Individual(s)
- General Partnership
- Corporation-State
- Other Non-Profit Agricultural Cooperative

Additional names(s) of conveying party(ies)  Yes  No

2. Name and address of receiving party(ies):

Name: Red Gold, Inc.

Internal Address: \_\_\_\_\_

Street Address: P.O. Box 83

City: Elwood State: IN ZIP: 46036

- Individual(s) citizenship \_\_\_\_\_
- Association \_\_\_\_\_
- General Partnership \_\_\_\_\_
- Limited Partnership \_\_\_\_\_
- Corporation-State Indiana
- Other \_\_\_\_\_

If assignee is not domiciled in the United States, a domestic designation is  Yes  N  
(Designations must be a separate document from Additional name(s) & address(es)  Yes  N

3. Nature of conveyance:

- Assignment  Merger
- Security Agreement  Change of Name
- Other \_\_\_\_\_

Execution Date: May 11, 2001

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

A. Trademark Application No.(s)

B. Trademark Registration No.(s)

See Attached Schedule

Additional numbers  Yes  No

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

Name: Jeffrey O. Davidson

Internal Address: Baker & Daniels

Suite 800

Street Address: 111 E. Wayne Street

City: Fort Wayne State: IN ZIP: 46802

6. Total number of applications and registrations involved:.....

15

7. Total fee (37 CFR 3.41):.....\$ \$390.00

- Enclosed Ck. No. 102940
- Authorized to be charged to deposit account

8. Deposit account number:

02-0385 Baker & Daniels (any additional fees)

DO NOT USE THIS SPACE

03/05/2002 6TDM11 00000148 1733340

01 FC:481  
02 FC:482

40.00 OP  
350.00 OP

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.

Jeffrey O. Davidson

Name of Person Signing

Signature

February 22, 2002

Date

3

Total number of pages including cover sheet, attachments, and

TRADEMARK

**SCHEDULE**

**TRADEMARK REGISTRATIONS — UNITED STATES OF AMERICA**

<u>MARK</u>	<u>U.S. REG. NO.</u>	<u>GOODS</u>
CONTENTO	1,733,340	Canned Tomato Puree (Class 29); Ketchup (Class 30)
CORINA	2,364,398	Tomato Paste, Tomato Puree, Peeled Tomatoes (Class 29); Tomato Sauce, Tomato Ketchup (Class 30); Vegetable Juice (Class 32)
CORINA and Design	840,581	Canned Vegetables, Canned Tomato Paste, Canned Tomato Puree, and Canned Tomato Sauce (Class 29)
GARDEN VALLEY	1,744,685	Ketchup (Class 30); Canned Round Tomatoes and Canned Pear-shaped Tomatoes (Class 29)
IL MIGLIORE and Design	802,463	Tomato Puree; Canned Tomatoes; Tomato Catsup (Class 29)
REDPACK (Stylized)	1,456,695	Tomato Ketchup and Food Sauces, Except Cranberry Sauce and Apple Sauce (Class 30); Canned Vegetables and Tomato Puree (Class 29)
SACRAMENTO	1,843,114	Tomato and Vegetable Juices (Class 32)
SACRAMENTO	2000160	Canned Fruits and Canned Vegetables (Class 29); Fruit Juices and Nectars (Class 32)
SUPREMO	1,225,231	Pizza Sauce (Class 30)
TERESA (Stylized)	646,882	Canned Tomatoes, Tomato Puree, Tomato Paste, and Canned Fruit (Class 29)
TERESA SUPREME (Stylized)	1,391,733	Canned Pizza Sauce (Class 30); Canned Tomatoes (Class 29)

**SCHEDULE (CONT'D)**

<u>MARK</u>	<u>U.S. REG. NO.</u>	<u>GOODS</u>
TOMATO GARDEN	1,973,451	Canned Food Products, Namely Pasta Sauce (Class 30)
TUTTOROSSO	710,028	Canned Tomatoes, Canned Tomato Paste, and Canned Tomato Puree (Class 29)
TUTTOROSSO	1,968,127	Pizza Sauce (Class 30)
VERONA	707,879	Tomato Puree and Tomato Paste (Class 29)

**Bill of Sale and Assignment  
(Intellectual Property)**

THIS BILL OF SALE is executed as of May 11, 2001, by Tri Valley Growers, a California nonprofit agricultural cooperative and Debtor and Debtor-in-Possession under Case No. 00-44089-J-11 in the United States Bankruptcy Court for the Northern District of California, Oakland Division ("Grantor"), in favor of Red Gold, Inc., an Indiana corporation ("Grantee").

FOR VALUE RECEIVED, receipt of which is hereby acknowledged, Grantor does hereby grant, bargain, sell, convey, assign, transfer and set over unto Grantee, absolutely and not as security, all of Grantor's right, title and interest in and to the following, whether now existing or hereafter arising, acquired or created:

a. All of the "Intellectual Property" described in that certain Asset Purchase Agreement (the "Asset Purchase Agreement") dated March 26, 2001, by and between the Grantee and the Grantor;

b. All goodwill of Grantor's business symbolized by, incorporated in or associated with the Intellectual Property and all customer lists and other records of Grantor relating to the distribution of products or provision of services bearing or covered by the Intellectual Property;

c. All claims by Grantor against any individual, corporation, partnership, association, trust, government or political subdivision or agent or instrumentality thereof, or other entity or organization for past, present or future infringement of the Intellectual Property; and

d. All premium refunds and insurance proceeds payable pursuant to insurance on the Intellectual Property, and all rights to payment with respect to any cause of action affecting or relating to such Intellectual Property.

PROVIDED, HOWEVER, that to the extent Grantor is using product specifications or recipes that are trade secrets in both its Branded Tomato Business and outside of its Branded Tomato Business as of the date hereof, Grantor and its successors and assigns may continue to use such product specifications and recipes in the future.

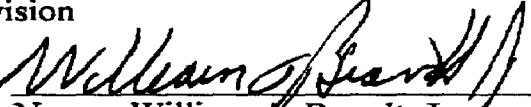
SUBJECT TO provisions to the contrary contained in the Asset Purchase Agreement, the Grantor will cause to be promptly and duly taken, executed, acknowledged or delivered all such further acts, conveyances, documents and assurances as the Grantee may from time to time reasonably request in order to carry out more effectively the intent and purposes of this Bill of Sale.

IN WITNESS WHEREOF, Grantor has executed this Bill of Sale and Assignment as of the day and year first above written.

GRANTOR:

TRI VALLEY GROWERS

a California nonprofit agricultural cooperative and Debtor and Debtor-in-Possession under Case No. 00-44089-J-11 in the United States Bankruptcy Court for the Northern District of California, Oakland Division

By: 

Name: William K. Brandt, Jr.

Its: Responsible Individual

## ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this "Agreement") is dated as of March 26, 2001 by and between TRI VALLEY GROWERS, a California nonprofit agricultural cooperative association and Debtor and Debtor-in-Possession ("Seller") under Case No. 00-44089-J-11 in the United States Bankruptcy Court for the Northern District of California, Oakland Division, and RED GOLD INC., an Indiana corporation ("Buyer").

### RECITALS

WHEREAS, among other things, Seller is engaged in the business of the production and supply of branded processed tomato products throughout the United States (the "Business");

WHEREAS, Seller has designated a portion of the Business as the "Branded Tomato Business" for the sole purpose of marketing each of such portions of the Business for sale; and

WHEREAS, by motion filed on December 26, 2000 Seller sought approval for the sale, inter alia, of the Branded Tomato Business; and

WHEREAS, on January 17, 2001 an auction was held for the purchase of the Branded Tomato Business; and

WHEREAS, Buyer was a bidder at the auction on January 17, 2001; and

WHEREAS, Buyer was not the successful bidder at the auction; and

WHEREAS, the transaction with the successful bidder did not close; and

WHEREAS, Buyer has expressed a continued interest in the purchase of the Branded Tomato Business"; and

WHEREAS, time is of the essence for this transaction. It is imperative that Red Gold, Inc. begin contracting the paste requirements of 48,000,000 pounds of California tomato paste and sufficient canned tomato inventory to fulfill the 2002 requirements of the Red Pack and Sacramento Tomato Business. The April 10, 2001 Approval Order date is critical to the contracting of the tomato needs and the integration of the business.

WHEREAS, Seller desires to sell and Buyer desires to purchase all of the intellectual property rights of the Branded Tomato Business and certain tomato inventory of Seller's Branded Tomato Business on the terms and subject to the conditions of this Agreement

NOW, THEREFORE, in consideration of the foregoing recitals and of the mutual covenants and conditions contained herein, the parties hereby agree as follows:

#### 1. Definitions.

1.1 Definitions. As used in this Agreement, the following terms shall have the following meanings:

"Accounts Receivable" means all accounts, notes and other receivables in favor of Seller existing on the Closing Date, together with all collateral security therefor.

"Affiliate" means with respect to any Person, a Person directly or indirectly controlling or controlled by or under common control with such Person.

"Approval Order" has the meaning set forth in Section 14.1.

"Assets" means all of the items described in Section 2.1 hereof.

"Assumed Contracts" has the meaning set forth in Section 2.1(d).

"Bankruptcy Code" means the United States Bankruptcy Code, 11 U.S.C. §101 *et seq.*, as amended from time to time.

"Bankruptcy Court" means United States Bankruptcy Court for the Northern District of California, Oakland Division.

"Branded Tomato Business" has the meaning set forth in the second "Whereas" clause.

"Business" has the meaning set forth in the first "Whereas" clause.

"Case" means Case No. 00-44089-J-11 in the Bankruptcy Court.

"Closing" means the consummation of the transactions contemplated hereby.

"Closing Date" means the date of the Closing.

"CoBank" means CoBank, ACB, a corporation organized and existing under the laws of the United States of America.

"CoBank Stock" means all stock, participation certificates, patronage surplus or other equity interests in CoBank held by Seller.

"Code" means the Internal Revenue Code of 1986, as amended from time to time.

"DIP Financing" means the agreements and other documents approved by the DIP Financing Order.

"DIP Financing Order" means the "Final Order (A) Approving Postpetition Financing, (B) Granting Security Interests and Superpriority Administrative Expense Treatment, (C) Modifying Automatic Stay, (D) Authorizing Use of Cash Collateral, and (E) Granting of Replacement Liens, and Other Relief" entered by the Bankruptcy Court on July 28, 2000, including all exhibits thereto, as amended by the "Stipulated Order Amending the Final Order (A) Approving Postpetition Financing, (B) Granting Security Interests and Superpriority

Administrative Expense Treatment, (C) Modifying Automatic Stay, (D) Authorizing Use of Cash Collateral, and (E) Granting of Replacement Liens, and Other Relief" entered by the Bankruptcy Court on September 5, 2000, including all exhibits thereto.

"DIP Lenders" means, collectively, those financial institutions described as the "Postpetition Lenders" in paragraph G of the DIP Financing Order.

"Disclosure Schedule" means the disclosure schedule attached to this Agreement.

"Employees" means all employees who are employed by Seller in the Branded Tomato Business as of the date of this Agreement. - 3/26/01

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended from time to time.

"Excluded Assets" has the meaning set forth in Section 2.2.

"Excluded Liabilities" has the meaning set forth in Section 3.2.

"Facilities" has the meaning set forth in Section 2.2(a).

"GAAP" means generally accepted accounting principles of the United States as set forth by the Financial Accounting Standards Board.

"Good and Saleable" has the meaning set forth in Section 2.1(a).

"Governmental Authorizations" means the notifications, permits, authorizations, consents, rulings or approvals of any Governmental Entity which are a condition to the lawful consummation of the transactions contemplated hereby.

"Governmental Entity" means any court, or any federal, state, municipal or other governmental authority, department, commission, board, agency or other subdivision or instrumentality (domestic or foreign).

"Intellectual Property" has the meaning set forth in Section 2.1(b).

"Inventory" has the meaning set forth in Section 2.1(a).

"Lien" means any mortgage, pledge, lien, security interest, option, covenant, condition, restriction, encumbrance, charge or other third-party claim of any kind.

"Officer's Certificate" means a certificate executed on behalf of a corporation, company, association or partnership by any of the chief executive officer, president, chief financial officer or corporate secretary of the corporation, company or association, or by the general partner of the partnership.



**"Overall Transaction"** means the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby.

**"Person"** means an individual, corporation, partnership, association, trust, government or political subdivision or agent or instrumentality thereof, or other entity or organization.

**"Prepetition Revolver Lenders"** means, collectively, those financial institutions described as the "Prepetition Lenders" in paragraph D of the DIP Financing Order.

**"Purchase Consideration"** has the meaning set forth in Section 4.1.

**"Required Consent"** means a consent to an agreement, contract and other instrument binding upon Seller requiring a consent as a result of the Overall Transaction or any part thereof, except such as would not, individually or in the aggregate, have a material adverse effect on the Branded Tomato Business or the Assets if not received by the Closing Date.

**"Sale Motion"** has the meaning set forth in Section 14.1.

**"Taxes"** means (i) all taxes, however denominated, including any interest, penalties or other additions to tax that may become payable in respect thereof, imposed by any Governmental Entity for which Buyer could become liable as successor to or transferee of the Branded Tomato Business or the Assets or which could become a charge against or lien on any of the Assets, which taxes shall include, without limiting the generality of the foregoing, all sales and use taxes, ad valorem taxes, excise taxes, business license taxes, occupation taxes, real and personal property taxes, stamp taxes, environmental taxes, real property gains taxes, transfer taxes, payroll and employee withholding taxes, unemployment insurance contributions, social security taxes, and other governmental charges, and other obligations of the same or of a similar nature to any of the foregoing, which are required to be paid, withheld or collected, or (ii) any liability for amounts referred to in clause (i) as a result of any obligations to indemnify another person.

1.2 Generally. The terms defined in Section 1.1 include the plural as well as the singular and the singular as well as the plural. Except as otherwise indicated, all the agreements or instruments herein defined mean such agreements or instruments as the same may from time to time be supplemented or amended or the terms thereof waived or modified to the extent permitted by, and in accordance with, the terms hereof thereof. References in a document to statutes, sections or regulations are to be construed as including all statutory or regulatory provisions consolidating, amending, replacing, succeeding or supplementing the statute, section or regulation referred to; the words "including," "includes" and "include" are deemed to be followed by the words "without limitation" or "but not limited to" or words of similar import; references in a document to articles, sections (or subdivisions of sections), exhibits, annexes or schedules are to those of such document unless otherwise indicated; and references to a Person includes such Person's successors and permitted assigns.

**"Production Agreement"** means an agreement between Buyer and Seller for post-Closing production at Plant J, in form and substance acceptable to both parties, and as required by Section 8.1.

"Transition Service Agreement" means an agreement between Buyer and Seller regarding implementation and transition issues including, but not limited to, the receipt of customer orders, customer invoicing, treatment of post-Closing adjustments by Seller's customers, the establishment of voice and data communications with Plant J, and warehousing issues, and as required by Section 8.1.

## 2. Purchase and Sale of Assets.

2.1 Generally. On the terms and subject to the conditions of this Agreement (including, but not limited to, Section 2.2), Seller agrees to sell, transfer, convey and deliver to Buyer, and Buyer agrees to purchase from Seller, on and as of the Closing Date (as defined in Section 4), all of the following Assets:

(a) Inventory. All inventory (including raw materials, work in process and finished goods) of Seller related to the Branded Tomato Business and all packaging materials and supplies of Seller related to the Branded Tomato Business, including, but not limited to, those items listed in and at the cost set forth in Schedules 1.1(a), 1.1(b) and 1.1(c) pursuant to the procedures set forth in Section 4.3(b), provided that such inventory must be Good and Saleable (as such terms are defined in Schedule 1.1(a)) (the "Inventory");

(b) Intellectual Property. All interests of Seller in any copyrights, patents, trademarks, trade names, logos, domain names, trade secrets, inventions, know how, other confidential information and other intellectual property of the Branded Tomato Business (together with pending applications) described on Schedule 2.1(b), and all UPC codes related thereto (the "Intellectual Property"), together with all associated goodwill (but excluding, in any event, the "Glorietta" trademark, which is being licensed rather than sold outright to Buyer); provided that, with respect to trade secrets and know how used by Seller both in its Branded Tomato Business and outside the Branded Tomato Business, Seller and its successors and assigns may continue to use such trade secrets and know how in the future.

(c) Warranty Rights. All rights of Seller, claims, credits, causes of action or rights of set-off against third parties relating to the Assets, including, without limitation, unliquidated rights under any warranty or guarantee by any manufacturer, supplier or other transferor of any of the Assets, but specifically excluding any Accounts Receivable;

(d) Assumed Contracts. All rights of Seller under the Assumed Contracts described on Schedule 2.1(d) and all security deposits and other security related to the Assumed Contracts;

(e) Permits, etc. All rights of Seller under any legally transferable franchises, approvals, permits, licenses, orders, registrations, certificates, variances, and similar rights obtained from governments and governmental agencies, to the extent any such permits apply to the Branded Tomato Business (but excluding, in any event, any permits relating to the operation of Seller's Plant J facility);

(f) Records. All books, records, files and papers of Seller's Branded Tomato Business, whether in hard copy or electronic format, including, without limitation, sales records, purchase records, customer lists, supplier lists, advertising and promotional materials, production records and other records (but excluding, in any event, any operating records relating to Seller's Plant J facility; provided, however, that Buyer shall have reasonable access to the operating records at the Plant J facility during the term of any Production Agreement between the parties relating thereto); provided, however, that Seller may make and retain copies of any records transferred to Buyer; and

(g) Other Intangibles. All goodwill and general intangibles of Seller, excluding all emission credits and all litigation and choses in action against parties other than Buyer, together with the right to represent to third parties that Buyer is the successor to the Branded Tomato Business.

Except as hereinafter specifically provided, Seller will transfer the Assets to Buyer in accordance with this Agreement free and clear of all liens, security interests or encumbrances.

2.2 Excluded Assets. Buyer and Seller agree that the following property and assets of Seller are excluded from the Assets (the "Excluded Assets"):

(a) Real Estate/Facilities. All processing, warehousing and distribution facilities owned by Seller, including any real property owned by Seller or any buildings, structures, installations, fixtures and other improvements situate thereon and all easements, rights of way and other rights, interests and appurtenances of Seller therein or thereunto pertaining;

(b) Equipment. All machinery, equipment, office equipment, tools, motor vehicles, spare parts, accessories, furniture, and other miscellaneous tangible personal property owned by Seller as of the date of this Agreement;

(c) Cash. Cash;

(d) Accounts Receivable. The Accounts Receivable;

(e) Securities. All securities owned by Seller and the CoBank Stock;

(f) Deposits, etc. Except as provided in Section 2.1(h), all rights of Seller under any deposits, prepayments, refunds, rights of recovery, rights of set off and rights of recoupment (including any such items relating to the payment of taxes);

(g) Bankruptcy Recoveries. All claims, actions, causes of action or proceeds thereof arising out of or relating to the assertion by Seller or its successors of any claims arising under Sections 544, 547, 548, 549, 550, 551 or 553(b) of the Bankruptcy Code;

(h) Certain Causes of Action. Insurance proceeds, claims and causes of action (i) with respect to or arising in connection with any contract which is not an Assumed Contract (ii) not with respect to or arising in connection with any Asset or (iii) set forth in the Disclosure Schedule;

(i) Cooperative Assets. Subject to Section 12.3, the cooperative charter, qualifications to conduct business as a foreign cooperative, arrangements with registered agents relating to foreign qualifications, taxpayer and other identification numbers, general ledgers, tax returns, seals, minute books, stock transfer books and similar documents of Seller relating to the organization, maintenance and existence of Seller as a California nonprofit agricultural cooperative association; and

(j) Rights Under This Agreement, etc. Any of the rights of Seller under this Agreement or any other agreement between Seller and Buyer entered into on or after the date of this Agreement in accordance with the terms hereof.

### 3. Assumption of Liabilities.

3.1 Assumed Liabilities. From time to time and at any time on or before the Closing, Buyer may give Seller written notice of each executory contract or unexpired lease of Seller that Buyer desires Seller to assume and assign to Buyer (a "Designated Contract"). Promptly, and in any case within 5 Business Days, after receiving any such notice, Seller shall file and serve a motion for, and use all reasonable efforts to obtain, an order of the Bankruptcy Court in a form acceptable to Buyer which pursuant to Bankruptcy Code §365 approves the assumption of such Designated Contract by Seller and the assignment of such Designated Contract to Buyer, subject to applicable cures, if any. Buyer agrees to provide any adequate assurance of future performance required by, and to pay any monetary cures ordered by, the Bankruptcy Court in connection with such assumption and assignment, which adequate assurance and cure payments shall be in addition to the Purchase Consideration. Seller and Buyer shall amend Schedule 2.1(d) to identify therein each such Designated Contract that is so assumed and assigned (an "Assumed Contract").

3.2 Excluded Liabilities. Except for those liabilities expressly assumed by Buyer pursuant to Section 3.1 or as provided in the Transition Services Agreement attached hereto as Schedule 3.2 (the "Transition Agreement"), Buyer shall not assume and does not intend to be liable for any of the debts, contracts, agreements, commitments, obligations and other liabilities of any nature whatsoever of Seller, whether known or unknown, accrued or not accrued, fixed or contingent (collectively, the "Excluded Liabilities"), including without limitation, the following:

(a) Employee benefit obligations and employment and labor obligations of Seller including, without limitation, any obligations Seller may have as a result of any collective bargaining agreement between Seller and any union or other employer or labor representative, as well as any employment contracts, express or implied, Seller may have with any Employee;

(b) Any liability for breaches by Seller at any time of any lease, document, instrument, contract or purchase order other than an Assumed Contract, any liability for payments or amounts due at any time under any lease, document, instrument, contract or purchase order other than an Assumed Contract or any cures and carrying costs under Section 3.1 hereof;

(c) Subject to Section 6.1, any liability or obligation for Taxes attributable to or imposed upon Seller, or attributable to or imposed upon the Assets for any period (or portion thereof) through the Closing Date, including, without limitation, any Taxes attributable to or arising from the transactions contemplated by this Agreement;

(d) Any liability or obligation for or in respect of any loan, other indebtedness for money borrowed, or account payable of Seller;

(e) Any liability or obligation arising as a result of any legal or equitable action or judicial or administrative proceeding initiated at any time, to the extent relating to any action or omission on or prior to the Closing Date by or on behalf of Seller, including, without limitation, any liability for infringement of intellectual property rights, breach of product warranty, injury or death caused by products, or violations of federal or state securities or other laws;

(f) Any liability arising out of any violations by Seller of federal or state laws, regulations and rules and common law governing employee and labor relations, including, without limitation, Title VII, the National Labor Relations Act and the California Fair Employment and Housing Act, all as amended;

(g) Any liability or obligation of Seller arising out of (i) any "employee benefit plan" (as such term is defined by ERISA) or other employee benefit plan, program or arrangement related to the Business or (ii) any collective bargaining agreement between Seller and any union or other employee representative;

(h) Any liability or obligation for making payments of any kind in respect of payroll taxes for Employees of Seller or to Employees of Seller (including as a result of the sale of Assets or as a result of the termination of employment by Seller of employees) or other claims arising out of the terms and conditions of employment with Seller, or for vacation or severance pay or otherwise;

(i) Any liability of Seller incurred in connection with the making or performance of this Agreement and the transactions contemplated hereby;

(j) Any liability of Seller arising out of the violation of or failure to comply with the Worker Adjustment and Retraining Notification Act;

(k) Any liability of Seller arising out of the violation of or failure to comply with any Environmental Law applicable to any aspect of the Business; or

(l) Any costs or expenses of Seller incurred in connection with shutting down, deinstalling and removing equipment not purchased by Buyer, and the costs associated with all contracts and agreements other than Assumed Contracts.

#### 4. Purchase Consideration.

4.1 Generally. The total purchase price to be paid to Seller for the Assets (hereinafter referred to as the "Purchase Consideration") shall be equal to the sum of (a) \$1,000,000 plus (b)

the value of the Inventory determined in the manner set forth in Schedules 1.1(a), 1.1(b) and 1.1(c) and Section 4.2 below.

4.2 Physical Count of Inventory. A physical count and audit of Inventory will be conducted jointly by Buyer (and/or its accountants and other agents) and Seller on such dates prior to Closing as mutually agreed by Buyer and Seller, using methods acceptable to Buyer (the "Physical Count"). Prior to Closing, Buyer shall conduct lot testing and such other testing as it deems prudent to assure that the Inventory is Good and Saleable. Buyer and Seller will agree as to the count, quality and value of the inventory pursuant to Schedules 1.1(a), 1.1(b) and 1.1(c).

4.3 Physical Inventory, Tabulation and Valuation of Certain Acquired Assets. The Purchase Consideration shall be payable as follows:

(a) Deposit. Upon execution of this Agreement, Buyer shall have deposited the sum of \$750,000 (the "Deposit") with Seller. The Deposit shall become nonrefundable upon any termination of the transaction contemplated by this Agreement prior to Closing by reason of Buyer's default (a "Buyer Default Termination"). From and after the entry of the Approval Order, the Deposit (and any interest accrued thereon) shall become non-refundable and be credited and applied toward payment of the Purchase Consideration, as described below. In the event the Deposit becomes non-refundable by reason of a Buyer Default Termination, Seller shall be entitled to retain the same for its own account. If the transactions contemplated herein terminate by reason of (A) Seller's default, or (B) the failure of the parties to enter into the Transition Service Agreement and the Production Agreement at least 24 hours prior to the date set for the Sale Hearing, Seller shall return to Buyer the Deposit (and any interest accrued thereon).

(b) Inventory. Following the entry of the Approval Order, Buyer will purchase and Seller will ship to Buyer the Inventory in such quantities as may be agreed by the parties from time to time. Buyer will pay for such Inventory concurrent with shipment an amount equal to the aggregate purchase price per case set forth on Schedules 1.1(a), 1.1(b) and 1.1(c), by wire transfer upon receipt (with the appropriate credit for the Deposit and any interest thereon) (the "Inventory Purchase Consideration"). If this Agreement is terminated prior to Closing or if the Closing does not occur by May 23, 2001, Seller will immediately purchase from and Buyer will ship to Seller all of the Inventory shipped to Buyer up to that point, and Seller will repay to Buyer the aggregate Inventory Purchase Consideration paid to that point, by wire transfer. If such termination or failure to close is due to a Buyer Default Termination, the repayment from Seller shall be less the actual cost to re-ship the Inventory, together with actual handling and restocking costs. If such termination or failure to close is due to any other reason, the repayment from Seller shall not be subject to any deductions for shipping, handling, or restocking. The parties agree to use reasonable best efforts to complete the shipment of Inventory as promptly as practicable, but in any event all shipments will be completed by May 23, 2001. With respect to inventory shipped to and received by Buyer prior to the Closing, all amounts paid by Buyer for such inventory shall be credited to the total Purchase Consideration and such pre-shipped inventory shall be treated as Inventory for all purposes of this Agreement.

*This is  
wrong date  
we agreed  
to June 30*

(c) Other Assets. At the Closing, Buyer shall pay to Seller the sum of five hundred thousand dollars (\$500,000) toward the Purchase Consideration of the Assets (other than any portion attributable to the Inventory, which shall be paid upon shipment as described above) (the "Closing Payment"). At such time as the shipments of Inventory are materially complete, the remaining five hundred thousand dollars (\$500,000) of the Purchase Consideration (the "Post Closing Payment") shall be paid to Seller.

4.4 Allocation of Purchase Consideration. The value of the Purchase Consideration shall be allocated among the Assets as provided in Schedule 4.4 for purposes of complying with the requirements of Section 1060 of the Code and the regulations thereunder. Buyer and Seller agree to each prepare and file on a timely basis with the Internal Revenue Service (and applicable state tax authorities) substantially identical and supplemental Internal Revenue Service Forms 8594 (and corresponding state tax forms) consistent with Buyer's allocation of the Purchase Consideration. If any tax authority challenges such allocation, the party receiving notice of such challenge shall give the other prompt written notice thereof and the parties shall cooperate in order to preserve the effectiveness of such allocation.

5. Closing. Subject to the terms and conditions of this Agreement, the Closing shall take place at the offices of Seller in San Ramon, California, on May 23, 2001, or such other date as Buyer and Seller may mutually agree (the "Closing Date").

5.1 Actions at Closing. At the Closing, Buyer and Seller shall take such actions and execute and deliver such agreements, bills of sale, and other instruments and documents as necessary or appropriate to effect the transactions contemplated by this Agreement in accordance with its terms, including without limitation the following:

(a) Buyer shall pay to Seller, by wire transfer, the Closing Payment as set forth in Section 4.3(c).

(b) Each party shall deliver to the other executed versions of the Transition Agreement and of the Trademark License Agreement (relating to the "Glorietta" trademark) in substantially the form attached hereto as Schedule 5.1(b).

(c) Seller shall deliver to Buyer a general Bill of Sale substantially in the form attached as Schedule 5.1(c)-1, with respect to each item of Intellectual Property, and, with respect to all other personal property other than each Assumed Contract and item of Intellectual Property, a Bill of Sale substantially in the form attached as Schedule 5.1(c)-2 (the "Transfer Documents"), in each case duly executed by Seller and in the aggregate assigning to Buyer all of Seller's right, title and interest in and to the Assets.

5.2 Post-Closing Actions. Subsequent to the Closing Date, Seller shall from time to time execute and deliver, upon the request of Buyer, all such other and further materials and documents and instruments of conveyance, transfer or assignment as may reasonably be requested by Buyer to effect, record or verify the transfer to and vesting in Buyer of Seller's right, title and interest in and to the Assets, free and clear of all Liens in accordance with the terms of

this Agreement. Buyer shall pay or reimburse Seller for Seller's reasonable out-of-pocket expenses incurred in connection with Seller's action except to the extent provided otherwise in the Transition Agreement.

## 6. Taxes, Fees, Prorations and Other Expenses.

6.1 Taxes and Fees. Prior to the Closing, Seller and Buyer shall work together to compute anticipated sales, transfer or similar taxes or governmental charges, if any. Seller and Buyer shall be equally responsible for and pay all such taxes and charges to the extent that the tax liability is directly related to transaction contemplated within this Agreement.

6.2 Prorations, Etc. On the Closing Date, rents under assumed contracts that are leases and other similar obligations to third parties (except for cures for prepetition arrearages, which shall be paid by Buyer) shall be prorated between Seller and Buyer, except as provided in the Transition Agreement.

6.3 Expenses. Each party shall pay all of the costs and expenses incurred by it in negotiating and preparing this Agreement (and all other agreements, certificates, instruments and documents executed in connection herewith), in performing its obligations under this Agreement and otherwise consummating the transactions contemplated by this Agreement, including without limitation its attorneys' fees and accountants' fees, except as provided in Section 14.3. 7.

Loss, Destruction, Condemnation or Damage to Assets. If, between the date of this Agreement and the Closing Date, tangible Assets (other than Inventory) are lost, destroyed, or condemned or suffer any material damage, then, at the option of Buyer, either (a) the Purchase Consideration shall be reduced by the excess of (i) the fair market value of such Assets prior to such loss, destruction, condemnation or damage, over (ii) the salvage value, if any, of such Assets following such loss, destruction, condemnation or damage (the "Loss in Value"), or (b) no adjustment to the Purchase Consideration shall be made and Seller shall, on the Closing Date, assign to Buyer all insurance and/or condemnation proceeds payable to Seller on account of such loss, destruction, condemnation or damage pursuant to an assignment in form and substance satisfactory to Buyer and pay to Buyer the amount of any deductible under any such insurance or (c) if the Loss in Value is greater than \$5,000,000, Buyer may terminate this Agreement.

## 8. Conditions to Closing.

8.1 Conditions to Obligation of Buyer to Close. The obligation of Buyer to effect the Closing is subject to the satisfaction prior to or at the Closing of each of the following conditions, any of which may be waived by Buyer in its sole discretion:

(a) Representations and Warranties. The representations and warranties of Seller contained in this Agreement shall be true and correct in all material respects on the Closing Date, as if made on the Closing Date and as if not limited to the knowledge of Seller or its senior management.

(b) Observance and Performance. Seller shall have observed and performed in all material respects all covenants and agreements required by this Agreement to be observed or



performed by Seller on or prior to the Closing Date and shall have taken each action to be taken by it on the Closing Date pursuant to this Agreement.

(c) Officer's Certificate. Seller shall have delivered to Buyer an Officer's Certificate of Seller, dated the Closing Date, to the effects set forth in paragraphs (a) and (b) above.

(d) Notices. Seller shall have made all filings and registrations with all Governmental Entities to be made by Seller in connection with the Overall Transaction or any part thereof, including, without limitation, the Governmental Authorizations.

(e) Regulatory Approvals. Buyer shall have received all authorizations, consents, rulings and approvals of Governmental Entities required in connection with the Overall Transaction or any part thereof, including, without limitation, the Governmental Authorization, and any applicable waiting period (or any extension thereof) thereunder. If a proceeding or review process by a Governmental Entity is pending in which a decision is expected, Buyer shall not be required to consummate the transactions contemplated by this Agreement until such decision is reached or rendered, notwithstanding Buyer's legal ability to consummate the transactions contemplated by this Agreement prior to such decision being reached or rendered.

(f) No Legal Actions. No preliminary or permanent injunction or other order or ruling shall have been issued by any Governmental Entity, nor shall any statute, rule, regulation or executive order be promulgated or enacted by any Governmental Entity which prevents the consummation of any of the transactions contemplated by this Agreement. No suit, action, claim, proceeding or investigation before any Governmental Entity, except an appeal from or a motion to sent aside the Approval Order, shall have been commenced and be pending against any of the parties, or any of their respective Affiliates, associates, officers or directors, seeking to prevent transactions contemplated by this Agreement, including, without limitation, the sale of the Assets, or asserting that the sale of the Assets would be illegal or create liability for damages or which may have a material adverse effect on the Branded Tomato Business or the Assets.

(g) Documents. Buyer shall have received such bills of sale, assignments and other documents of transfer reasonably required to transfer the Assets to Buyer consistent with the terms of this Agreement. This Agreement, the exhibits and schedules attached hereto, and any other instruments of conveyance and transfer and all other documents to be delivered by Seller at the Closing and all actions of Seller required by this Agreement and the exhibit agreements, or incidental thereto, and all related matters, shall be in form and substance reasonably satisfactory to Buyer and Buyer's counsel and shall be in full force and effect.

(h) Transition and Production Agreements. Prior to the hearing date on the Sale Motion, Buyer and Seller shall have come to agreement as to the terms of mutually satisfactory Transition Service and Production Agreements relating to Plant J.

(i) Approval Order. The Bankruptcy Court shall have entered the Approval Order in Accordance with Section 14, and the Approval Order shall not have been stayed as of the Closing Date.

**8.2 Conditions to Obligation of Seller to Close.** The obligation of Seller to effect the Closing is subject to the satisfaction prior to or at the Closing of each of the following conditions, any of which may be waived by Seller in its sole discretion:

(a) Representations and Warranties. The representations and warranties of Buyer contained in this Agreement shall be true and correct in all material respects on the Closing Date, as if made on the Closing Date.

(b) Observance and Performance. Buyer shall have observed and performed in all material respects all covenants and agreements required by this Agreement to be observed or performed by Buyer on or prior to the Closing Date.

(c) Officer's Certificate. Buyer shall have delivered to Seller an Officer's Certificate of Buyer, dated the Closing Date, to the effects set forth in paragraphs (a) and (b) above.

(d) Notices. Buyer shall have made all filings and registrations with all Governmental Entities to be made by Buyer in connection with the Overall Transaction or any part thereof, including, without limitation, the Governmental Authorizations.

(e) Regulatory Approvals. Seller shall have received all authorizations, consents, rulings and approvals of Governmental Entities required in connection with the Overall Transaction or any part thereof, including, without limitation, the Governmental Authorization, and any applicable waiting period (or any extension thereof) thereunder.

(f) No Legal Actions. No preliminary or permanent injunction or other order or ruling shall have been issued by any Governmental Entity, nor shall any statute, rule, regulation or executive order be promulgated or enacted by any Governmental Entity which prevents the consummation of any of the transactions contemplated by this Agreement. No suit, action, claim, proceeding or investigation before any Governmental Entity except an appeal from or a motion to set aside the Approval Order shall have been commenced and be pending against any of the parties, or any of their respective Affiliates, associates, officers or directors, seeking to prevent transactions contemplated by this Agreement, including, without limitation, the sale of the Assets.

(g) Approval Order. The Bankruptcy Court shall have entered the Approval Order in Accordance with Section 14, and the Approval Order shall not have been stayed as of the Closing Date.

**9. Representations and Warranties of Seller.** Seller hereby represents and warrants to Buyer that, to the actual knowledge of Seller's senior management after due inquiry, and except as set forth in the Disclosure Schedule:

9.1 Cooperative Organization. Etc. Seller is a nonprofit agricultural cooperative association duly organized and validly existing, is in good standing under the laws of the State of California, and, subject to the applicable provisions of bankruptcy law, has the cooperative power and authority to own its properties and carry on its business as now being conducted. True

and correct copies of the Articles of Incorporation and Bylaws of Seller in effect as of the date of this Agreement have been provided to Buyer. Seller is duly qualified to do business and is in good standing under the laws of each jurisdiction in which such qualification is required.

**9.2 No Violation.** Except as otherwise required or permitted by applicable bankruptcy law, neither the execution, delivery and performance of this Agreement and all of the other agreements and instruments to be executed and delivered pursuant hereto, nor the consummation of the transactions contemplated hereby or thereby, will, with or without the passage of time or the delivery of notice or both, (a) conflict with, violate or result in any breach of the terms, conditions or provisions of the Articles of Incorporation or Bylaws of Seller, (b) conflict with or result in a violation or breach of, or constitute a default or require consent of any Person (or give rise to any right of termination, cancellation or acceleration) under, any of the terms, conditions or provisions of any contract, notice, bond, mortgage, indenture, license, franchise, permit, agreement, lease or other instrument or obligation to which Seller is a party or by which Seller or any of the Assets may be bound, (c) violate any statute, ordinance or law or any rule, regulation, order, writ, injunction or decree of any Governmental Entity applicable to Seller or by which any properties or assets of Seller may be bound, or (d) result in any cancellation of, or obligation to repay, any grant, loan or other financial assistance received by Seller from any Governmental Entity.

**9.3 Consents and Approvals of Governmental Entities.** Other than the Governmental Authorizations listed in the Disclosure Schedule, there is no requirement applicable to Seller to make any filing, declaration or registration with, or to obtain any permit, authorization, consent or approval of, any Governmental Entity as a condition to the lawful consummation by Seller of the transactions contemplated by this Agreement and the other agreements and instruments to be executed and delivered by Seller pursuant hereto or the consummation by Seller of the Overall Transaction. No "bulk sales" legislation applies to the transactions contemplated by this Agreement.

**9.4 Cooperative Authority.** The execution and delivery by Seller of this Agreement and the consummation of the transactions contemplated hereby, have been duly authorized by all necessary cooperative action of Seller.

**9.5 Binding Effect.** Subject to the applicable provisions of bankruptcy law, this Agreement and all other instruments required hereby to be executed and delivered by Seller are, or when delivered will be, legal, valid and binding obligations of Seller, enforceable in accordance with their respective terms.

**9.6 Title to Property.** Seller has good title to all personal property included in the Assets, which by operation of the Approval Order shall be free and clear of all Liens.

**9.7 Brokers and Finders.** Other than Goldsmith, Agio, Helms & Lynner, Ltd., Seller has not retained or engaged any broker, finder or other financial intermediary in connection with the transaction contemplated by this Agreement. Buyer has no obligation to Goldsmith, Agio, Helms & Lynner, Ltd. for any payment of any fee or for anything else in connection with the Overall Transaction.

9.8 Consents. The Disclosure Schedule sets forth each agreement, contract or other instrument binding upon Seller requiring a consent as a result of the Overall Transaction or any part thereof, except such as would not, individually or in the aggregate, have a material adverse effect on the Branded Tomato Business or the Assets if not received by the Closing Date.

9.9 Absence of Certain Changes. Since June 30, 2000, Seller has conducted the Branded Tomato Business in the ordinary course consistent with the limitations imposed on Seller by applicable bankruptcy law and under the limited financing provided to Seller by the DIP Lenders. Without limiting the foregoing, Seller:

(a) has not created, incurred or assumed (i) any borrowings under capital leases, or (ii) any obligation which in any material way affect the Branded Tomato Business, the Assets or Buyer's ability to conduct the Branded Tomato Business in substantially the same manner and condition as conducted by Seller on the date of this Agreement;

(b) has maintained insurance coverage in amounts adequate to cover the reasonably anticipated risks of the business conducted with the Assets;

(c) has not engaged in any special promotion which promotes the sale of Inventory with highly discounted terms;

(d) has not entered into any agreements or commitments relating to the business conducted with the Assets, except on commercially reasonable terms in the ordinary course of business;

(e) except as otherwise required or permitted by applicable bankruptcy law, has complied in all material respects with all laws and regulations applicable to the Business;

(f) has not changed or announced any material change to the products or services sold by the Business except with Buyer's written consent or at Buyer's request;

(g) has not expanded the use of the Assets within the organization of Seller;

(h) has not commenced a lawsuit related to or involving the Assets other than (i) for the routine collection of bills; or (ii) for a breach of this Agreement;

(i) has not assigned, sold or otherwise conveyed to any third party, any of its Accounts Receivable except for the granting of the Liens authorized by the DIP Financing Order and the sale of the Stockton Property; or

(j) made any agreement to do any of the foregoing.

#### 9.10 Assets Generally.

(a) The Assets are only such properties, other than those assets specifically excluded in Section 2.2 hereof, currently used by Seller in operating the Branded Tomato Business and necessary for Buyer to operate the Branded Tomato Business after the Closing Date in the

manner in which Seller has operated the Branded Tomato Business prior to and through the Closing Date. Other than the Required Consents and the Governmental Approvals listed on the Disclosure Schedule, no licenses or other consents from, or payments to, any other Person are or will be necessary for Buyer to operate the Business and use the Assets in the manner in which Seller has operated the same.

(b) Seller holds good and marketable title, license to or leasehold interest in all of the Assets and has the complete and unrestricted power and, subject to the requirements of applicable bankruptcy law, the unqualified right to sell, assign and deliver the Assets to Buyer. Upon consummation of the transactions contemplated by this Agreement, Buyer will acquire good and marketable title, license or leasehold interest to the Assets free and clear of any Liens and there exists no restriction on the use or transfer of the Assets, except as may be contained in an Assumed Contract. No Person other than Seller has any right or interest in the Assets, including the right to grant interests in the Assets to third parties.

(c) Except as provided in this Agreement or contained in an Assumed Contract, no restrictions will exist on Buyer's right to sell, resell, license or sublicense any of the Assets or engage in the Branded Tomato Business, nor will any such restrictions be imposed on Buyer as a consequence of the transactions contemplated by this Agreement or by any agreement referenced in this Agreement.

#### 9.13 Intellectual Property.

(a) Schedule 2.1(b) contains a complete list of all copyrights, patents, trademarks, trade names, logos and domain names for the Branded Tomato Business, other than the "Glorietta" trademark, which is being licensed rather than sold to Buyer.

(b) Except as set forth in the Disclosure Schedule:

(ii) The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby (including without limitation the continued conduct by Buyer after the Closing Date of the Branded Tomato Business as presently conducted by Seller and the incorporation of any Intellectual Property in any product of Buyer or an affiliate of Buyer) will not breach, violate or conflict with any instrument or agreement governing any intellectual property necessary or required for, or used in, the conduct of the Branded Tomato Business as presently conducted and will not cause the forfeiture or termination or give rise to a right of forfeiture or termination of any such Intellectual Property or in any material way impair the right of Buyer or any of its affiliates to use, sell, license or dispose of, or to bring any action for the infringement of, any such Intellectual Property or portion thereof;

(iii) Neither the development, manufacture, marketing, license, sale or use of any product or Intellectual Property currently licensed, used or sold by Seller or currently under development or for which an application has been filed violates or will violate any license or agreement to which Seller is a party or infringes or will infringe any copyright, patent, trademark, service mark, trade secret or other intellectual property or other proprietary right of any other party.

(iv) All registered trademarks, service marks, domain names, patents and copyrights listed on Schedule 2.1(b) are valid and subsisting.

(v) There is no pending or threatened claim or litigation contesting the validity, ownership or right to use, sell, license or dispose of any of the Intellectual Property necessary or required for, or used in, the conduct of the Branded Tomato Business of Seller as presently conducted nor is there any basis for any such claim, nor has Seller received any notice asserting that any Intellectual Property or the proposed use, sale, license or disposition thereof conflicts or will conflict with the rights of any other party, nor is there any basis for any such assertion.

(vi) There is no unauthorized use, infringement or misappropriation on the part of any third party of the Intellectual Property.

#### 9.12 Supply Agreements: Assumed Contracts.

(a) Seller has provided to Buyer access to a true and complete copy of all of all material agreements or other arrangements pursuant to which Seller is obligated to supply products, perform services or otherwise engage in the conduct of the Branded Tomato Business (such agreements, as supplemented below, are referred to collectively as the "Supply Agreements").

(b) Except as set forth in the Disclosure Schedule, Seller has not entered into any agreement under which Seller is restricted from selling, licensing or otherwise distributing any products or services to any class of customers, in any geographic area, during any period of time or in any segment of the market.

(c) Except for the terms and conditions of the Assumed Contracts, after the Closing, Buyer will not be prevented by any act of Seller from changing prices charged to existing or future customers of any products or services.

(d) Except as set forth in the Disclosure Schedule, Seller has not granted any third party the right to supply any products or services of the Branded Tomato Business to any other third party. No material agreement for supply of the products or services by Seller obligates Seller, and no material agreement would obligate Buyer after the Closing Date, to provide any material change in specification of such products or services or to provide new products or services. Except as set forth in the Disclosure Schedule, no material agreement pursuant to which Seller has licensed the use of any products to any third party obligates Seller to provide any change in specification in the performance of such products or to provide new products or services.

9.13 Warranties and Indemnities. The Disclosure Schedule sets forth a summary of all warranties and indemnities, express or implied, relating to products sold or services rendered by Seller in the Branded Tomato Business, and no warranty or indemnity has been given by Seller which is not listed on the Disclosure Schedule or which differs therefrom in any material respect. Seller is in compliance with all warranties described in the Disclosure Schedule. The Disclosure Schedule also indicates all warranty and indemnity claims currently pending against Seller.

9.14 Inventory. All of the Inventory has been segregated from Seller's other inventory and made available for inspection by Buyer.

9.15 Licenses and Permits. Seller holds all consents, approvals, registrations, certifications, authorizations, permits and licenses of, and has made all filings with, or notifications to, all Governmental Entities pursuant to applicable requirements of all federal, state, local and foreign laws, ordinances, governmental rules or regulations applicable to the Branded Tomato Business, including, but not limited to, all such laws, ordinances, governmental rules or regulations relating to registration of the products of the Branded Tomato Business (at their current level of development and use) and certification of the facilities of the Branded Tomato Business. Except as set forth in the Disclosure Schedule, the Branded Tomato Business is in compliance with all federal, state, local and foreign laws, ordinances, governmental rules and regulations relating to the products manufactured by the Branded Tomato Business or otherwise related to the Branded Tomato Business, and Seller has no reason to believe that any consents, approvals, authorizations, registrations, certifications, permits, filings or notifications that it has received or made to operate the Branded Tomato Business are invalid or have been or are being suspended, canceled, revoked or questioned. There is no investigation or inquiry to which Seller is a party or pending or threatened relating to the Branded Tomato Business and its compliance with applicable foreign, state, local or foreign laws, ordinances, governmental rules or regulations.

9.16 Employee Benefit and Compensation Plans. Buyer will assume no liability with respect to, or on account of, any employee benefit plan of Seller or any predecessor employer of any Employee, including, but not limited to, liabilities Seller may have to such Employees under all employee benefit schemes, incentive compensation plans, bonus plans, pension and retirement plans, vacation, profit-sharing plans (including any profit-sharing plan with a cash-or-deferred arrangement) share purchase and option plans, savings and similar plans, medical, dental, travel, accident, life, disability and other insurance and other plans or arrangements, whether written or oral and whether "qualified" or "non-qualified," or to any Employee as a result of termination of employment by Seller as contemplated by this Agreement.

9.17 Taxes. There are no Liens for Taxes on any of the Assets. Seller has complied with all record keeping and tax reporting obligations relating to income and employment taxes due with respect to compensation paid to employees or independent contractors providing services to the Branded Tomato Business. Seller is not a "foreign person" within the meaning of Section 1445(f)(3) of the Code.

9.18 Compliance with Law. The operation of the Branded Tomato Business has been conducted in all material respects in accordance with all applicable laws, regulations and other requirements of Governmental Entities having jurisdiction over the same.

9.19 Material Contracts. Except as set forth in the Disclosure Schedule and except for any defaults that are automatically triggered by Seller's bankruptcy filing: each license and each contract which is material to the Branded Tomato Business ("Material Contract") is a legal, valid and binding agreement, and, none of the Material Contracts is in default by its terms or has been canceled by the other party; and Seller is not in receipt of any claim of default under any such

agreement. Seller has furnished Buyer with access to true and complete copies of all such agreements together with all amendments, waivers or other changes thereto.

9.20 Product Liability. Except as set forth in the Disclosure Schedule, there are no claims, actions, suits, inquiries, proceedings or investigations pending by or against Seller, relating to any products of the Branded Tomato Business and containing allegations that such products are defective or were improperly designed or manufactured or improperly labeled or otherwise improperly described for use.

9.21 Litigation; Other Claims.

(a) Except as set forth in the Disclosure Schedule, there are no claims, actions, suits, inquiries, proceedings, or investigations against Seller, or any of its officers, directors or shareholders, relating to the Branded Tomato Business, the Assets or Seller's Employees which are currently pending or threatened, at law or in equity or before or by any Governmental Entity, and which challenges or seeks to prevent, enjoin, alter or materially delay any of the transactions contemplated hereby, nor is Seller aware of any basis for such claims, actions, suits, inquiries, proceedings, or investigations; and no Governmental Entity has at any time challenged or questioned the legal right of Seller to manufacture, offer or sell any of its products or services in the present manner or style thereof.

(b) Except as set forth in the Disclosure Schedule, there are no grievance or arbitration proceedings pending or threatened, and there are no actual or threatened strikes or work stoppages with respect to the Branded Tomato Business, the Assets or Seller's Employees, nor is Seller aware of any basis for such proceedings or events.

9.22 Defaults. Except as set forth in the Disclosure Schedule, Seller is not in default under or with respect to any order, writ, injunction or decree of any court or any Governmental Entity.

9.23 Schedules. The descriptions of the Assets in the Schedules hereto and in the Disclosure Schedule are complete and accurate in all material respects and describe the assets in the possession of, or used by Seller in connection with the Branded Tomato Business. Such Assets constitutes all of the tangible and intangible property necessary for the conduct by Seller of the Branded Tomato Business.

9.24 Full Disclosure. Except as set forth in this Agreement, including, without limitation, the Disclosure Schedule, Seller is not aware of any facts pertaining to the Assets which affect the Branded Tomato Business or the Assets in a materially adverse manner or which will in the future affect the Branded Tomato Business or the Assets in a materially adverse manner. Neither this Agreement nor any other agreement, exhibit, schedule or officer's certificate being entered into or delivered pursuant to this Agreement contains any untrue statement of a material fact or omits to state any material fact necessary in order to make the statements contained in such document not misleading.



9.25 Insurance. The Disclosure Schedule lists all insurance policies and fidelity bonds covering the Assets. Except as set forth in the Disclosure Schedule, there is no claim by Seller pending under any of such policies or bonds as to which coverage has been questioned, denied or disputed by the underwriters of such policies and bonds. All premiums due and payable under all such policies and bonds have been paid and Seller is otherwise in material compliance with the terms of such policies and bonds (or other policies and bonds providing substantially similar insurance coverage). There is no threatened termination of, or material premium increase with respect to, any of such policies.

9.26 Other. No representation or warranty by Seller in this Agreement, the Disclosure Schedules to this Agreement, or any other document provided to Buyer in connections with its due diligence contains or will contain, as of the date of Closing, any untrue statement of a material fact, or omits to state a material fact, necessary to make the statements herein and therein not misleading.

Buyer acknowledges and agrees that the representations and warranties contained in Sections 9.1 through 9.26 shall constitute conditions to Closing only, and shall not survive, nor form the basis for any action or liability after, the Closing Date.

10. Representations and Warranties of Buyer. Buyer hereby represents and warrants to Seller that, except as set forth in the Disclosure Schedule:

10.1 Corporate Organization, Etc. Buyer is an Indiana corporation in existence under the laws of the State of Indiana and has the corporate power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby.

10.2 Conflicting Agreements, Governmental Consents. The execution and delivery by Buyer of this Agreement and the other agreements, documents and instruments contemplated hereby, the consummation of the transactions contemplated hereby or thereby, and the performance or observance by Buyer of any of the terms or conditions hereof or thereof, will not (a) result in a breach or violation of the terms or conditions of, or constitute a default under, the Articles of Incorporation or Bylaws of Buyer, any award of any arbitrator, or any indenture, contract or agreement (including any agreement with stockholders), instrument, order, judgment, decree, statute, law, rule or regulation to which Buyer is subject, or (b) require any filing or registration with, or any consent or approval of, any federal, state or local governmental agency or authority, except for the Governmental Authorizations.

10.3 Corporate Authority. The execution and delivery by Buyer of this Agreement and the other agreements, documents and instruments contemplated hereby, and the consummation of transactions contemplated hereby or thereby, have been duly authorized by all necessary corporate action. This Agreement and all other documents and instruments required hereby to be executed and delivered by Buyer are, or when delivered will be, legal, valid and binding obligations of Buyer, enforceable in accordance with their respective terms.

10.4 Brokers and Finders. Buyer has not retained any broker, finder or other financial intermediary in connection with the transactions contemplated by this Agreement.

Seller acknowledges and agrees that the representations and warranties contained in Sections 10.1 through 10.4 shall constitute conditions to Closing only, and shall not survive, nor form the basis for any action or liability after, the Closing Date.

**11. "As Is" Transaction.** BUYER HEREBY ACKNOWLEDGES AND AGREES THAT, EXCEPT AS SPECIFICALLY SET FORTH HEREIN, SELLER MAKES NO REPRESENTATIONS OR WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO ANY MATTER RELATING TO THE ASSETS, INCLUDING, WITHOUT LIMITATION, INCOME TO BE DERIVED OR EXPENSES TO BE INCURRED IN CONNECTION WITH THE ASSETS, THE PHYSICAL CONDITION OF ANY PERSONAL PROPERTY COMPRISING A PART OF THE ASSETS OR WHICH IS THE SUBJECT OF ANY OTHER CONTRACT TO BE ASSUMED BY BUYER AT THE CLOSING, THE ENVIRONMENTAL CONDITION OR OTHER MATTER RELATING TO THE PHYSICAL CONDITION OF ANY REAL PROPERTY OR IMPROVEMENTS COMPRISING A PART OF THE ASSETS, THE ZONING OF ANY SUCH REAL PROPERTY OR IMPROVEMENTS, THE VALUE OF THE ASSETS (OR ANY PORTION THEREOF), THE TRANSFERABILITY OF ASSETS, THE TERMS, AMOUNT, VALIDITY, COLLECTIBILITY OR ENFORCEABILITY OF ANY ASSUMED LIABILITIES OR OTHER CONTRACT, THE TITLE OF THE ASSETS (OR ANY PORTION THEREOF), THE MERCHANTABILITY OR FITNESS OF THE ASSETS OR ANY OTHER PORTION OF THE ASSETS FOR ANY PARTICULAR PURPOSE, OR ANY OTHER MATTER OR THING RELATING TO THE ASSETS OR ANY PORTION THEREOF. WITHOUT IN ANY WAY LIMITING THE FOREGOING, SELLER HEREBY DISCLAIMS ANY WARRANTY (EXPRESS OR IMPLIED) OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE AS TO ANY PORTION OF THE ASSETS. BUYER FURTHER ACKNOWLEDGES THAT BUYER HAS CONDUCTED AN INDEPENDENT INSPECTION AND INVESTIGATION OF THE PHYSICAL CONDITION OF ALL PORTIONS THE ASSETS AND ALL SUCH OTHER MATTERS RELATING TO OR AFFECTING THE ASSETS AS BUYER DEEMED NECESSARY OR APPROPRIATE AND THAT IN PROCEEDING WITH ITS ACQUISITION OF THE ASSETS, BUYER IS DOING SO BASED SOLELY UPON SUCH INDEPENDENT INSPECTIONS AND INVESTIGATIONS AND THE REPRESENTATIONS AND WARRANTIES OF SELLER SPECIFICALLY SET FORTH HEREIN. ACCORDINGLY, BUYER WILL ACCEPT THE PROPERTY AT THE CLOSING "AS IS, WHERE IS," AND "WITH ALL FAULTS."

**12. Covenants of Seller and Buyer.**

**12.1 Cooperation.** Upon the terms and subject to the conditions contained herein, Buyer and Seller each agree, both before and after the Closing, to use all reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary, proper or advisable to consummate and make effective the Overall Transaction, including, without limitation agreeing on the final forms of the Exhibits and Schedules to this Agreement and attaching the same to this Agreement at least five (5) days prior to the Closing Date, (ii) to execute any documents, instruments or conveyances of any kind which may be reasonably necessary or advisable to carry out any part of the Overall Transaction, and (iii) to cooperate with the other in connection with the foregoing.

**12.2 Notification of Certain Matters.** From the date hereof through the Closing, Seller shall give prompt notice to Buyer, and Buyer shall give prompt notice to Seller, of (a) the occurrence, or failure to occur, of any event which occurrence or failure would be likely to cause any representation or warranty contained in this Agreement, or in any exhibit or schedule hereto, to be untrue or inaccurate in any material respect, (b) any material failure of Seller, on the one hand, and Buyer on the other, to comply with or satisfy any covenant, condition or agreement to be complied with or satisfied by it under this Agreement, or any exhibit or schedule hereto or thereto, and each party shall use all reasonable efforts to remedy the same and (c) any event which will result, or has a reasonable prospect of resulting, in the failure to satisfy any of the conditions specified in Section 8.

**12.3 Access to Information.**

(a) Prior to the Closing, Seller will permit Buyer to make a full and complete investigation of the Assets and to receive from Seller all information of Seller relating to the Assets or reasonably related to Seller's conduct of the Branded Tomato Business. Without limiting this right, Seller will give to Buyer and its accountants, legal counsel and other representatives full access, during ordinary business hours, at a mutually agreeable location arranged in advance, to all of the books, records, files, documents, properties and contracts of Seller relating to the Assets or reasonably related to Seller's conduct of the Branded Tomato Business and allow Buyer and any such representatives to make copies thereof, all of which shall be made available in an organized fashion and so as to facilitate an orderly review. This paragraph (a) shall not affect or be deemed to modify any representation or warranty contained herein or the conditions to the obligations of the parties to consummate the transaction contemplated in this Agreement. Seller shall maintain and make available the information and records specified in this paragraph (a) in the ordinary course of Seller's business and document retention policies, as if the transactions contemplated by this Agreement had not occurred.

(b) At all times following the Closing, each party shall provide the other party (at such other party's expense) with such reasonable assistance, including the provision of available relevant records or other information and reasonable access to and cooperation of any employees, as may be reasonably requested by either of them in connection with the preparation of any financial statement or tax return, any audit or examination by any taxing authority, or any judicial or administrative proceeding relating to liability for Taxes.

(c) Subsequent to the Closing, Buyer will permit Seller and its accountants, legal counsel and other representatives access, during ordinary business hours, at a mutually agreeable location arranged in advance, to the books, records, files and papers described in Section 2.1(f) and delivered by Seller to Buyer pursuant to this Agreement and allow Seller and any such representatives to make copies thereof. Seller shall pay or reimburse Buyer for Buyer's reasonable out-of-pocket expenses incurred in connection with such access and copies except to the extent provided in the Transition Agreement.

**12.4 Third Party Consents.** Seller and Buyer shall use commercially reasonable efforts to obtain, within the applicable time periods required, all Governmental Authorizations, Required Consents, waivers, permits, consents and approvals and to effect all registrations, filings and

notices with or to third parties which are necessary to consummate the Transaction contemplated in this Agreement and to preserve all rights of, and benefits to, the Buyer in the Assets.

**12.5 Conduct of Branded Tomato Business.** From the date of this Agreement through the Closing Date, Seller will conduct the Branded Tomato Business in its ordinary and usual course, consistent with the limitations imposed on Seller by applicable bankruptcy law and under the limited financing provided to Seller by the DIP Lenders, and will use all reasonable efforts consistent with such limitations to preserve intact all rights, privileges, franchises and other authority of the Branded Tomato Business, to retain the employees, and to maintain favorable relationships with licensors, licensees, suppliers, contractors, distributors, customers, and others having relationships with the Branded Tomato Business. Seller shall promptly notify Buyer of any material event or occurrence or emergency not in the ordinary course of business, and any material event involving the Branded Tomato Business or the Assets. Without limiting the generality of the foregoing, and except as approved in writing by Buyer in advance, from the date of this Agreement through the Closing, Seller:

(a) shall not create, incur or assume (i) any borrowings under capital leases, or (ii) any obligation which would in any material way affect the Branded Tomato Business, the Assets or Buyer's ability to conduct the Branded Tomato Business in substantially the same manner and condition as conducted by Seller on the date of this Agreement;

(b) shall maintain insurance coverage in amounts adequate to cover the reasonably anticipated risks of the Branded Tomato Business conducted with the Assets;

(c) shall not acquire or agree to acquire by merging or consolidating with, or by purchasing any assets or equity securities of, or by any other manner, any business or any corporation, partnership, association or other business organization or division thereof, or otherwise acquire or agree to acquire any assets which are material, individually or in the aggregate, to the Branded Tomato Business;

(d) shall not sell, dispose of or encumber any of the Assets or license any Assets to any Person except for the sale of Inventory in the ordinary course of business;

(e) shall not engage in any special promotion which promotes the sale of Inventory with highly discounted terms that are outside its ordinary course of business;

(f) shall not enter into any material agreements or commitments relating to the Branded Tomato Business, except on commercially reasonable terms in the ordinary course of business;

(g) shall comply in all material respects with all laws and regulations applicable to the Branded Tomato Business;

(h) except for the sale of Inventory in the ordinary course of business, shall not enter into any agreement with any third party for the distribution of any of the Assets;

(i) shall not make any material change or announce any material change to the products or services sold by the Branded Tomato Business, except with Buyer's written consent or at Buyer's request;

(j) shall not materially expand the use of the Assets within the organization of Seller;

(k) shall not commence a lawsuit related to or involving the Assets other than (a) for the routine collection of bills; (b) for injunctive relief on the grounds that Seller has suffered immediate and irreparable harm not compensable in money damages, provided that Seller has obtained the prior written consent of Buyer, such consent not to be unreasonably withheld; or (c) for a breach of this Agreement; and

(l) except as authorized by the DIP Financing Order or any adequate protection order, shall not assign, sell or otherwise convey to any third party, without obtaining Buyer's prior written consent, any of its accounts receivable prior to the Closing Date.

(m) shall maintain minimum inventory levels for items produced at Plant J at the same quantities as of the 2-28-01 physical inventory. Red Gold will direct the production scheduling of Inventory subsequent to the Approval Order until closing. Inventory levels built in excess of the 2-28-01 levels, approved by Buyer, will be purchased at 100% of the Sellers cost as defined in Schedule 1.1(b).

**12.6 Tax Returns.** Seller shall, to the extent that failure to do so could adversely affect the Branded Tomato Business or the Assets following Closing, (a) file all returns and reports relating to Taxes pertaining to the Branded Tomato Business or the Assets, and such returns and reports shall be true, correct and complete and shall be subject to the review and consent of Buyer which consent shall not be unreasonably withheld, and (b) be responsible for and pay when due any and all such Taxes.

**12.7 Post-Closing Access to Information.** If, after the Closing Date, in order properly to operate the Branded Tomato Business or prepare documents or reports required to be filed with governmental authorities or Buyer's financial statements, it is necessary that Buyer obtain additional information within Seller's possession relating to the Assets or the Branded Tomato Business, Seller will furnish or cause its representatives to furnish such information to Buyer. Such information shall include, without limitation, all agreements between Seller and any Person relating to the Branded Tomato Business. Buyer shall pay or reimburse Seller for Seller's reasonable out-of-pocket expenses incurred in connection with providing such information except to the extent provided in the Transition Agreement.

**12.8 Post-Closing Cooperation.** Seller agrees that, if reasonably requested by Buyer, it will cooperate with Buyer, at Buyer's expense, in enforcing the terms of any agreements between Seller and any third party involving the Branded Tomato Business, including without limitation terms relating to confidentiality and the protection of rights in the Intellectual Property. Buyer shall pay or reimburse Seller for Seller's reasonable out-of-pocket expenses incurred in connection with such cooperation except to the extent provided in the Transition Agreement. In

the event that Buyer is unable to enforce its rights in the Intellectual Property against a third party as a result of a rule or law barring enforcement of such rights by a transferee of such rights, Seller agrees to reasonably cooperate with Buyer by assigning to Buyer such rights as may be required by Buyer to enforce its rights in the Intellectual Property in its own name. If such assignment still does not permit Buyer to enforce its rights in the Intellectual Property rights against the third party, Seller agrees to initiate proceedings against such third party in Seller's name, provided that Buyer shall be entitled to participate in such proceedings and provided further that Buyer shall be responsible for the expenses of such proceedings except to the extent provided in the Transition Agreement.

12.9 Public Announcements. Except for filings made with the Bankruptcy Court in connection with Seller's bankruptcy, on and prior to the Closing Date, Buyer and Seller shall advise and confer with each other prior to the issuance of any reports, statements or releases concerning this Agreement (including the exhibits and schedules hereto) and the transactions contemplated herein. Neither Buyer nor Seller will make any public disclosure prior to the Closing or with respect to the Closing unless both parties agree on the text and timing of such public disclosure; provided, however, that nothing contained herein shall prevent either party at any time from furnishing any information to any Governmental Entity.

12.10 Post-Closing Actions. Subsequent to the Closing Date, Seller shall, from time to time, execute and deliver, at no out-of-pocket expense to Seller except to the extent provided in the Transition Agreement, upon the request of Buyer, all such other and further materials and documents and instruments of conveyance, transfer or assignment as may reasonably be requested by Buyer to effect, record or verify the transfer to, and vesting in Buyer, of Seller's right, title and interest in and to the Assets, free and clear of all Liens, in accordance with the terms of this Agreement.

12.11 Permits. Seller will, at no out-of-pocket expense to Seller, assist Buyer in obtaining any licenses, permits or authorizations required for carrying on the Branded Tomato Business but which are not transferable.

12.12 Customer reimbursements. Prior to Closing, Seller shall notify all customers of the Branded Tomato Business of the pending sale to Buyer and shall inform such customers of the procedure for honoring any valid and authorized deductions or reimbursements owed by Seller to the customer, specifically including instructions for making any such claim against Seller and the timing and manner of receiving payments from Seller.

13. Employee Matters. Buyer does not currently intend to retain the services of any Employee of Seller; however, Seller authorizes Buyer to enter into discussions with any of Seller's Employees during the Transition Period described in the Transition Agreement, regarding employment with Buyer at the expiration of the Transition Period, subject, however, to the following limitations: (1) Buyer is authorized to enter into discussions only with Employees associated primarily with the Branded Tomato Business; and (2) such discussions may take place only after the closing of the pending sales of assets of Seller to Signature Fruit Company LLC and Del Monte Corporation.

#### 14. Bankruptcy Court Approvals and Sale Procedures.

**14.1 Sale Motion.** As soon as possible following execution of this Agreement, Seller will make a motion ("Sale Motion") for an order of the Bankruptcy Court in a form acceptable to Buyer ("Approval Order") which (a) approves the sale of the Assets to Buyer on the terms and conditions set forth in this Agreement and authorizes Seller to proceed with this transaction, (b) includes a specific finding that Buyer has purchased the Assets in good faith and (c) provides that the sale of the Assets to Buyer shall be free and clear of all liens, claims, interests and encumbrances whatsoever

**14.2 Obligations Contingent on Timely Entry of Approval Order.** Following the filing of the Sale Motion, Seller shall use all reasonable efforts to obtain the Approval Order as promptly as reasonably possible. Both Buyer's and Seller's obligations to consummate the transactions contemplated in this Agreement are expressly conditioned upon the Bankruptcy Court's entry of the Approval Order. If (a) the Bankruptcy Court refuses to issue the Approval Order, (b) a third party purchaser of the Assets or any material portion thereof is approved by the Bankruptcy Court, or (c) the Approval Order is for any reason not entered on or before April 11, 2001, then Buyer shall have the option to terminate this Agreement upon notice to Seller, 30, 2001, this Agreement automatically shall terminate if the Approval Order is, for any reason, not entered on or before April 13, 2001, and Seller and Buyer shall be relieved of any further liability or obligation hereunder. Upon timely entry of the Approval Order (such entry date being referred to herein as the "Entry Date"), the condition set forth in this Section 14.1 shall be deemed satisfied; provided, however, that should the Closing be delayed beyond May 23, 2001 on account of the Approval Order having been stayed, Buyer may, in its sole discretion, deem the condition not satisfied and shall be excused from any further obligations hereunder.

**14.3 Bidding Procedures.** In the Sale Motion or in a separate motion filed prior to or contemporaneously with the Sale Motion, Seller also shall request and shall use reasonable good faith efforts to obtain from the Bankruptcy Court an order approving the following bidding procedures (the "Bidding Procedures"):

(a) **Breakup Fees.** Buyer will be entitled to receive from the Seller a payment in the amount of the lesser of \$300,000 or twice the actual (properly documented) fees and costs expended by Buyer, in cash or other immediately available good funds in the event that Buyer is not approved by the Bankruptcy Court as the purchaser of the Assets and the Assets (or any material portion thereof) are thereafter sold to any third party for consideration in excess of the Purchase Consideration and other consideration provided for herein notwithstanding the Buyer's willingness and ability to consummate the transactions contemplated by this Agreement, which payment shall be made to the Buyer concurrently with the consummation of such third party sale;

(b) **Submission of Bids.** For any offer for the Assets from a party other than Buyer to be considered at the hearing on the Sale Motion, such offer must be in writing and must be delivered to Seller and Buyer no later than twenty four (24) hours prior to such hearing, together with evidence satisfactory to Seller of such third party's financial ability to perform its obligations under such offer;

(c) **Bid Requirements.** No prospective purchaser will be permitted to bid at the hearing on the Sale Motion unless (i) such party has been deemed "financially qualified" by Seller; (ii) such prospective purchaser offers to purchase the Assets for consideration which is at least \$500,000 greater than the total consideration set forth in this Agreement (including all cash and non-cash consideration and assumed liabilities); and (iii) is otherwise on terms at least as favorable to Seller as those set forth in this Agreement. After any initial overbid that satisfies the foregoing, all further overbids must be in increments of at least \$100,000. Should overbidding take place at the hearing on the Sale Motion, Buyer shall have the right, but not the obligation, to participate in the overbidding and to have its overbid approved at such hearing. Should an overbidder be approved at such hearing, no less than three business days following the entry of the order approving such sale, Buyer shall deliver to such approved overbidder all financial data, documents and other writings provided to Buyer by Seller in connection with the transactions contemplated in this Agreement.

## 15. Termination.

15.1 Termination. This Agreement may be terminated at any time prior to Closing:

(a) Mutual Consent. By mutual written consent of Buyer and Seller;

(b) Delayed Closing. By Buyer or Seller if the Closing shall not have occurred on or before May 23, 2001; *provided however*, that this provision shall not be available to Buyer if Seller has the right to terminate this Agreement under paragraph (d) of this Section 15.1, and this provision shall not be available to Seller if Buyer has the right to terminate this Agreement under paragraph (c) of this Section 15.1;

(c) By Buyer. By Buyer if there is a breach of any material representation or warranty of Seller set forth herein or any covenant or agreement to be complied with or performed by Seller pursuant to the terms of this Agreement or the failure of a condition set forth in Section 8.1 to be satisfied (and such condition is not waived in writing by Buyer) on or prior to the Closing Date, or the occurrence of any event which results or would result in the failure of a condition set forth in Section 8.1 to be satisfied on or prior to the Closing Date, provided that Buyer may not terminate this Agreement prior to the Closing if Seller has not had an adequate opportunity to cure such failure (provided that such cure can be completed prior to May 23, 2001);

(d) By Seller. By Seller if there is a breach of any material representation or warranty of Buyer set forth herein or of any covenant or agreement to be complied with or performed by Buyer pursuant to the terms of this Agreement or the failure of a condition set forth in Section 8.2 to be satisfied (and such condition is not waived in writing by Seller) on or prior to the Closing Date, or the occurrence of any event which results or would result in the failure of a condition set forth in Section 8.2 to be satisfied on or prior to the Closing Date; provide that, Seller may not terminate this Agreement prior to the Closing Date if Buyer has not had an adequate opportunity to cure such failure (provided that such cure can be completed prior to May 23, 2001); or



(e) Government Action. By Buyer or Seller if any court of competent jurisdiction in the United States or other United States governmental body shall have issued an order, decree or ruling or taken any other action restraining, enjoining or otherwise prohibiting the consummation of the transactions contemplated by this Agreement and such order, decree, ruling or other action shall have become final and non-appealable.

15.2 In the Event of Termination. In the event of termination of this Agreement: (a) each party will redeliver all documents, work papers and other materials of the other party relating to the transactions contemplated hereby, whether so obtained before or after the execution hereof, to the party furnishing the same and (b) no party hereto shall have any liability to any other party to this Agreement, except as stated in this Section 15.2, except for any breach of this Agreement occurring prior to the proper termination of this Agreement.

## 16. Miscellaneous.

16.1 Notices. All notices given pursuant to this Agreement shall be in writing and shall be delivered by hand or sent by United States registered mail, postage prepaid, addressed as follows (or to another address or person as a party may specify on notice to the other):

To Seller: William A. Brandt, Jr.  
Three First National Plaza  
Suite 2300  
Chicago, IL 60602-4205  
Facsimile: (312) 263-1180

With copies to: Dorsey & Whitney LLP  
Pillsbury Center South  
220 South Sixth Street  
Minneapolis, MN 55402  
Attn: Robert G. Hensley, Esq.  
Facsimile: (612) 340-8738

and

Pachulski, Stang, Ziehl, Young & Jones, P.C.  
Three Embarcadero Center, Suite 1020  
San Francisco, California 94111  
Attn: William P. Weintraub, Esq.  
Facsimile: (415) 263-7010

To Buyer: Red Gold Inc.  
P.O. Box 83  
Elwood, IN 46036-0083  
Attn: Brian Reichart  
Facsimile: (765) 557-3602

With a copy to: Beckman Lawson L.P.

800 Standard Federal Plaza  
Fort Wayne, IN 46801-0800  
Attn: Robert Nicholson  
Facsimile: (219) 420-1013

16.2 Assignment. This Agreement may not be assigned by either party hereto without the prior written consent of the other, except that Buyer may assign to an Affiliate set up for the purpose of consummating the transactions contemplated by this Agreement. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their successors and permitted assigns, and no person, firm or corporation other than the parties, their successors and permitted assigns, shall acquire or have any rights under or by virtue of this Agreement.

16.3 Covenant of Further Assurances. From time to time after the Closing, at the request of Buyer and without further consideration, Seller will, at no out-of-pocket expense to Seller, execute and deliver such other instruments of transfer and take such other actions as Buyer may reasonably require to transfer the Assets to, and vest title of the Assets in, Buyer, and to put Buyer in possession of the Assets. In the event that it shall be necessary for Seller to qualify to do business as a foreign corporation in any state after the Closing in order for Buyer to enforce any material claim, Seller shall so qualify promptly upon written request of Buyer.

16.4 Public Announcement. Any and all public announcements of any kind or nature whatsoever concerning the transactions contemplated hereby made before, on or after the Closing Date shall require the prior written approval of Buyer and Seller.

16.5 Amendment and Waiver. Any provision of this Agreement may be amended or waived only by a writing signed by the party against which enforcement of the amendment or waiver is sought.

16.6 Choice of Law Jurisdiction. This Agreement shall be construed and interpreted in accordance with the laws of the State of California as though all acts and omissions related to this Agreement occurred in the State of California. **BUYER AND SELLER AGREE THAT THE BANKRUPTCY COURT SHALL HAVE EXCLUSIVE JURISDICTION OVER ALL DISPUTES AND OTHER MATTERS RELATING TO (i) THE INTERPRETATION AND ENFORCEMENT OF THIS AGREEMENT OR ANY ANCILLARY DOCUMENT EXECUTED PURSUANT HERETO; AND/OR (ii) THE ASSETS AND/OR ASSUMED LIABILITIES, AND BUYER EXPRESSLY CONSENTS TO AND AGREES NOT TO CONTEST SUCH EXCLUSIVE JURISDICTION.**

16.7 Attorneys' Fees. In the event that either party hereto brings an action or other proceeding to enforce or interpret the terms and provisions of this Agreement, the prevailing party in that action or proceeding shall be entitled to have and recover from the non-prevailing party all such fees, costs and expenses (including, without limitation, all court costs and reasonable attorneys' fees) as the prevailing party may suffer or incur in the pursuit or defense of such action or proceeding.

16.8 Good Faith. All parties hereto agree to do all acts and execute all documents required to carry out the terms of this Agreement and to act in good faith with respect to the terms and conditions contained herein before and after Closing.

16.9 Construction. In the interpretation and construction of this Agreement, the parties acknowledge that the terms hereof reflect extensive negotiations between the parties and that this Agreement shall not be deemed, for the purpose of construction and interpretation, drafted by either party hereto.

16.10 Time is of the Essence. Time is of the essence in this Agreement, and all of the terms, covenants and conditions hereof.

16.11 Limited Recourse. Buyer acknowledges that William A. Brandt, Jr. ("WB") is entering into this Agreement solely in his capacity as representative of Seller's bankruptcy estate (and not in his individual or any other capacity) and that in the event of Seller's or WB's default hereunder or under any document or instrument executed in furtherance of the transaction contemplated herein, WB shall have no personal liability other than for his gross negligence or willful misconduct, it being expressly understood that, subject in all events to any limitations on damages set forth above, Buyer's recourse in any such event shall be limited solely to the assets of Seller's bankruptcy estate.

16.12 Severability. The provisions of this Agreement shall, where possible, be interpreted so as to sustain their legality and enforceability, and for that purpose the provisions of this Agreement shall be read as if they cover only the specific situation to which they are being applied. The invalidity or unenforceability of any provision of this Agreement in a specific situation shall not affect the validity or enforceability of that provision in other situations or of other provisions of this Agreement.

16.13 Counterparts. This Agreement may be executed in counterparts, each of which shall be considered an original.

16.14 Captions. All captions and headings contained in this Agreement are for convenience of reference only and shall not be construed to limit or extend the terms or conditions of this Agreement.

16.15 No Third-Party Beneficiaries. The provisions of this Agreement are for the benefit only of the parties hereto, and no third party may seek to enforce, or benefit from, these provisions. The parties specifically disavow any desire or intention to create any third party beneficiary hereunder, and specifically declare that no person or entity, except for the parties and their successors, shall have any right hereunder nor any right of enforcement hereof.

16.16 Representation of Counsel: Mutual Negotiation. Each party has had the opportunity to be represented by counsel of its choice in negotiating this Agreement. This Agreement shall therefore be deemed to have been negotiated and prepared at the joint request, direction, and construction of the parties, at arm's-length, with the advice and participation of counsel, and will be interpreted in accordance with its terms without favor to any party. The

parties' respective counsel may not be disqualified from representing their clients in indemnification or other disputes arising out of this transaction by virtue of such counsel's prior representation of the other party in an unrelated matter.

**17. Entire Agreement.** This Agreement, including the exhibits and schedules attached to this Agreement, constitutes the entire agreement and understanding between Seller and Buyer with respect to the sale and purchase of the Assets and the other transactions contemplated by this Agreement. All prior representations, understandings and agreements between the parties with respect to the purchase and sale of the Assets and the other transactions contemplated by this Agreement are superseded by the terms of this Agreement.

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Received: 3/26/1 2:26PM;  
MAR-26-2001 17:40

D GOLD

-> PSZY; Page 2

P.02

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed and delivered by their duly authorized officers as of the date and year first above written.

SELLER:

TRI VALLEY GROWERS

By: \_\_\_\_\_

Name: William A. Brandt, Jr.

Its: Responsible Natural Person

BUYER:

RED GOLD INC.

By:  \_\_\_\_\_

Name: BRIAN REICHART

Its: President C. E. O.

-31-  
:33:

TOTAL P.02

Schedules

Schedule 1.1(a) Inventory Definitions  
Schedule 1.1(b) Brite Stock and Labeled Tomato Inventory  
Schedule 1.1(c) Tomato Paste Inventory  
Schedule 2.1(b) Intellectual Property  
Schedule 2.1(d) Assumed Contracts.  
Schedule 3.2 Transition Agreement  
Schedule 4.4 Allocation of Purchase Consideration  
Schedule 5.1(b) Trademark License Agreement  
Schedule 5.1(c)-1 Bill of Sale for Intellectual Property  
Schedule 5.1(c)-2 Bill of Sale for Other Personal Property  
Disclosure Schedule

**Schedule 1.1 (a)****Inventory Definitions**

1. Costs. Buyer and Seller agree that the purchase value per case (price per case, or price per pound as applicable) set forth on this Schedule 1.1(a) and Schedules 1.1(b) and 1.1(c) is all inclusive and no additional charges, levies, fees, or additional amounts will be incurred by Buyer unless expressly agreed to in writing by Buyer. The purchase value per case set forth on this Schedule 1.1(a) includes, but is not limited to:

- (1) the costs of raw materials utilized or consumed in connection with the product;
- (2) expenditures for direct labor;
- (3) direct and indirect expenditures for warehousing and logistics including pallets;
- (4) expenditures for indirect production costs incident to and necessary for the production of the item;
- (5) indirect production costs including management fees, taxes, insurance, and other overhead costs; and,
- (6) all handling, storage, and labor costs associated with locating, loading, and moving the Inventory within the Seller's warehouses, factories, facilities, or occupied spaces and for locating, loading, or the moving the Inventory onto Buyer's trucks.

2. Good and Saleable. Buyer and Seller agree that in order for the Inventory to be deemed Good and Saleable for which the Buyer must pay the value per case as set forth on this Schedule 1.1(a), the Inventory must:

- (1) not be damaged (dented, rusted, opened, leaking, or torn labels or casing);
- (2) not have been packed prior to 1999; and
- (3) be legal to be sold in the market for which it is intended and, if labeled, not mislabeled or misbranded; and
- (4) meet or exceed all applicable industry standards regarding quality and taste.

3. Purchase Value. Costs defined in Section 1 above of this Schedule 1.1(a) are summarized on Schedule 1.1(b) and Schedule 1.1(c). The purchase price will be equal to 74.0% of such costs, and is also shown on Schedules 1.1(a), 1.1(b) and 1.1(c).

**Schedule 1.1(b)**

**Brite Stock and Labeled Tomato Inventory**

(to be provided)

The quantities shown above will be adjusted to the Physical Count as described in Section 4.2.  
Further adjustments will be made to reflect actual inventory as of the date of Closing.



**Schedule 1.1(c)**

**Tomato Paste Inventory**

(to be provided)

The quantities shown above will be adjusted to the Physical Count as described in Section 4.2.  
Further adjustments will be made to reflect actual inventory as of the date of Closing.

**Schedule 2.1(b)**

**Intellectual Property**

Registered Copyrights

None

Unregistered Copyrights

Advertising Materials  
Manuals  
Product Labels

Issued Patents, Patent Applications, and Inventions

None

Registered Trademarks and Logos

See attached

Common Law Trademarks and Logos

Old World Style

Trade Names

Redwood Foods

Domain Names

See attached

Trade Secrets and Know How

Product specifications and recipes identified as Branded Tomato Business proprietary  
Product specifications and recipes identified as TVG proprietary

Technical information and process technology including the process for neutralizing caustic  
during fresh pack production

UPC Codes

See attached

## Attachment to Schedule 2.1(b)

## Trademarks

Docket Number	Country	Trademark	Class	Application Number	Filing Date	Registration Number	Registration Date	Status
15420	BeneLux	SACRAMENTO	029 030 032	76499	23-Dec-1993	542360	01-Sep-1994	Registered
16901	Canada	REDPACK		277415	21-Aug-1963	145349	20-May-1966	Registered
16073	Fed. Republic of Germany	SACRAMENTO and Design	029 031 032			938448	21-Dec-1973	Registered
15992	Israel	SACRAMENTO	032	101540	29-Oct-1995	101540	06-Jan-1998	Registered
15525	Japan	CORINA	032	2049570	27-Apr-1990	2559750	30-Jul-1993	Registered
15526	Japan	CORINA	031	249569	27-Apr-1990	2479407	30-Nov-1992	Registered
15527	Japan	REDPACK	032	245777	20-Apr-1990	2505242	26-Feb-1993	Registered
15528	Japan	REDPACK	031	245776	20-Apr-1990	2670978	31-May-1994	Registered
15524	Japan	TUTTIROSSO	032	1149180	28-Dec-1983	2434751	31-Jul-1992	Registered
15653	Switzerland	SACRAMENTO and Design	029 032			271619	10-Jun-1974	Registered
15377	United States of America	CONTENTO	029 030	195130	16-Aug-91	1733340	17-Nov-92	Registered
15970	United States of America	CORINA	029 030 032	757732758	21-Jun-99	2364398	04-Jul-00	Registered
15675	United States of America	CORINA and Design	029	253929	06-Sep-66	840581	12-Dec-67	Registered
15696	United States of America	GARDEN VALLEY	029 030	195172	16-Aug-91	1744685	05-Jan-93	Registered
15710	United States of America	IL MIGLIORE and Design	029	175022	14-Aug-63	802463	18-Jan-66	Registered
15814	United States of America	REDPACK (Stylized)	029 030	642938	04-Feb-87	1456695	08-Sep-87	Registered
17265.DO	United States of America	REDPACKTOMATOES .COM			04-Jan-00		04-Jan-00	Registered
15908	United States of America	SACRAMENTO	032	74377406	08-Apr-93	1843114	05-Jul-94	Registered
15909	United States of America	SACRAMENTO	029 032	377432	08-Apr-93	2000160	10-Sep-96	Registered

17269.DO M	United States of America	SACRAMENTOJUICE. COM							22-Aug-00	Registered
15929	United States of America	SUPREMO	030	308125	30-Apr-81	1225231			25-Jan-83	Registered
16013	United States of America	TERESA (Stylized)	029	008210	14-May-56	646882			11-Jun-57	Registered
16014	United States of America	TERESA SUPREME (Stylized)	029 030	527686	19-Mar-85	1391733			29-Apr-86	Registered
16016	United States of America	TOMATO GARDEN	030	570635	07-Sep-94	1973451			07-May-96	Registered
16302	United States of America	TUTTOROSSO	029	087582	18-Dec-59	710028			17-Jan-61	Registered
16303	United States of America	TUTTOROSSO	030	634469	13-Feb-95	1968127			16-Apr-96	Registered
17267.DO M	United States of America	TUTTOROSSO.COM			04-Jan-00				04-Jan-00	Registered
16306	United States of America	VERONA	029	092927	15-Mar-60	707879			29-Nov-60	Registered

Attachment to Schedule 2.1(b)

UPC Codes

sap_description	product_name	product_code	product_group_code	product_group_name	fg_suffix_description	finished_good_case_style
GLORIETTA TOMATO JUICE 48/5.5oz	TOM JUICE	83	TP	TOMATO PRODUCTS	GGIHNDEL	TP Two Tier
REDPACK TOMATO PASTE FCY HB 12/6oz	TOM JUICE	83	TP	TOMATO PRODUCTS	SWEDEN	TP Two Tier
SACRAMENTO TOM JC LITHO FR CONC 24/6z	TOM PASTE	85	TP	TOMATO PRODUCTS	COSTCO	TP One Tier
REDPACK TOMATO PASTE FCY HB 48/6oz	MQF TOMATO	78	TP	TOMATO PRODUCTS		Full Fiber
SACRAMENTO TOMATO JCE SACTO LITHO 48/6oz	TOM PASTE	85	TP	TOMATO PRODUCTS	500080	Full Fiber
SACRAMENTO TOMATO JCE SACTO LITHO 48/6oz	W.C. MQFTOM	77	TP	TOMATO PRODUCTS		TP Two Tier
REDPACK TOMATO PASTE FANCY HB 48/6oz	W.C. MQFTOM	77	TP	TOMATO PRODUCTS	JTTRINT	TP Two Tier
REDPACK TOMATO PASTE FANCY HB 48/6oz	TOM PASTE	85	TP	TOMATO PRODUCTS		TP Two Tier
CORINA RED TOMATO PASTE FANCY FS 48/6oz	TOM PASTE	85	TP	TOMATO PRODUCTS	5559	TP Two Tier
CORINA RED TOMATO PASTE FANCY FS 48/6oz	TOM PASTE	85	TP	TOMATO PRODUCTS	500080	TP Two Tier
SACRAMENTO BLOODY MARY LITHO FR CNC48/6z	TOM PASTE	85	TP	TOMATO PRODUCTS		TP Two Tier
SACRAMENTO BLOODY MARY LITHO FR CNC48/6z	MQF TOMATO	78	TP	TOMATO PRODUCTS		Full Fiber
SACRAMENTO TOM JC LITHO FR CONC 48/6z	MQF TOMATO	78	TP	TOMATO PRODUCTS	500080	Full Fiber
SACRAMENTO TOMATO JCE SACTO LITHO 48/6oz	W.C. MQFTOM	77	TP	TOMATO PRODUCTS		Full Fiber
SACRAMENTO TOM JC LITHO FR CONC 48/6z	W.C. MQFTOM	77	TP	TOMATO PRODUCTS	HI-CONE	Full Fiber
REDPACK TOM SAUCE FCY NS FR CONC 48/8oz	MQF TOMATO	78	TP	TOMATO PRODUCTS		TP Two Tier
REDPACK TOMATO SAUCE FCY FR CONC 48/8oz	MQF TOMATO	78	TP	TOMATO PRODUCTS		Full Fiber
REDPACK TOM SAUCE FCY FR CONC 48/8oz	MQF TOMATO	78	TP	TOMATO PRODUCTS	WAKEFERN	Full Fiber
CORINA RED TOMATO SAUCE FANCY 48/8oz	TOM SAUCE	87	TP	TOMATO PRODUCTS		Full Fiber
CORINA RED TOMATO SAUCE FCY FROM 48/8oz	W.C. MQFTOM	77	TP	TOMATO PRODUCTS		Full Fiber
CORINA RED TOMATO SAUCE FCY FROM 48/8oz	W.C. MQFTOM	77	TP	TOMATO PRODUCTS	500080	Full Fiber
REDPACK TOM PASTE FCY FS HB 24/12oz	TOM PASTE	85	TP	TOMATO PRODUCTS		Full Fiber
CORINA RED TOMATO PASTE FCY HB 24/12oz	TOM PASTE	85	TP	TOMATO PRODUCTS		Full Fiber

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REEL: 002453 FRAME: 0616

RED PACK TOMATO SAUCE EZO 12/15oz	W.C. MQFTOM	77	TP	TOMATO PRODUCTS	5559	TP One Tier
REDPACK TOMS DICED XSTD JC 12/14.5oz	TOMATOES	80	TM	TOMATOES		TP One Tier
REDPACK TOMS DICED XSTD JC 12/14.5oz	TOMATOES	80	TM	TOMATOES	5559	TP One Tier
REDPACK TOMS DICED XSTD GARLIC 12/14.5z	TOMATOES	80	TM	TOMATOES		TP One Tier
REDPACK TOMS DCD XSTD FIRE RST 12/14.5z	TOMATOES	80	TM	TOMATOES		TP One Tier
REDPACK TOMS DICED XSTD ITAL 12/14.5z	TOMATOES	80	TM	TOMATOES		TP One Tier
REDPACK TOM PUREE 1.05 FR CONC 24/15oz	MQF TOMATO	78	TP	TOMATO PRODUCTS		Full Fiber
REDPACK TOMATO SAUCE FCY FR CONC 24/15oz	MQF TOMATO	78	TP	TOMATO PRODUCTS		Full Fiber
TUTTOROSSO GRN TOM PUR1.038 FR CNC24/15z	MQF TOMATO	78	TP	TOMATO PRODUCTS		Full Fiber
TUTTOROSSO GRN TOM SCE FR CONC 24/15oz	MQF TOMATO	78	TP	TOMATO PRODUCTS		Full Fiber
TUTTOROSSO GRN TOM CRSH BAS FRCNC 24/15z	MQF TOMATO	78	TP	TOMATO PRODUCTS		Full Fiber
CORINA RED TOM FCY SCE FR CONC 24/15oz	MQF TOMATO	78	TP	TOMATO PRODUCTS		Full Fiber
REDPACK TOM SAUCE FCY FR CONC 24/15oz	W.C. MQFTOM	77	TP	TOMATO PRODUCTS		TP Two Tier
REDPACK TOMS WH PLD XSTD PUREE 24/14.5oz	TOMATOES	80	TM	TOMATOES		TP Two Tier
REDPACK TOMS DICED XSTD JC 24/14.5oz	TOMATOES	80	TM	TOMATOES		TP Two Tier
REDPACK TOMATOES CRUSHED HVY PUR 24/15oz	TOMATO	81	TM	TOMATOES		TP Two Tier
REDPACK TOMS STEWED ITAL JC 24/14.5oz	TOMATOES	80	TM	TOMATOES		TP Two Tier
CORINA RED TOM SCE FCY FR CONC 24/15z	W.C. MQFTOM	77	TP	TOMATO PRODUCTS		TP Two Tier
REDPACK TOMS STEWED ITAL JC 24/14.5oz	TOMATOES	80	TM	TOMATOES	COSTCO	TP One Tier
REDPACK TOMS WH PLD XSTD PUREE 06/28oz	TOMATOES	80	TM	TOMATOES	COSTCO	TP One Tier
TUTTOROSSO GRN TOMS CRSH BAS FRCNC 6/28z	MQF TOMATO	78	TP	TOMATO PRODUCTS	BJ CLUB	TP One Tier
REDPACK TOM PUREE 1.05 FR CONC 12/29oz	MQF TOMATO	78	TP	TOMATO PRODUCTS		TP One Tier
REDPACK TOM SCE RP FCY FR CONC 12/29oz	MQF TOMATO	78	TP	TOMATO PRODUCTS		TP One Tier
REDPACK TOM SCE RP FCY FR CONC 12/29oz	MQF TOMATO	78	TP	TOMATO PRODUCTS	10372	TP One Tier
REDPACK TOMS WH PLD XSTD PUREE 12/28oz	TOMATOES	80	TM	TOMATOES		TP One Tier
REDPACK TOMS WH PLD XSTD JC 12/28oz	TOMATOES	80	TM	TOMATOES		TP One Tier
REDPACK TOMS CRUSHED HY PUREE 12/28oz	TOMATO	81	TM	TOMATOES		TP One Tier
REDPACK TOM WH PLD HP PEAR SHP 12/28oz	TOMATOES	80	TM	TOMATOES		TP One Tier
REDPACK TOM WH PLD HP PEAR SHP 12/28oz	TOMATOES	80	TM	TOMATOES	5559	TP One Tier
TUTTOROSSO BLU TOM PUR 1.045 BAS 12/29z	MQF TOMATO	78	TP	TOMATO PRODUCTS		TP One Tier
TUTTOROSSO BLU TOM WH PLD XSTD JC 12/28z	TOMATOES	80	TM	TOMATOES		TP One Tier

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REEL: 002453 FRAME: 0617

TUTTOROSSO BLU TOMS CRUSHED LP 12/28oz	TOMATO	81	TM	TOMATOES		TP One Tier
TUTTOROSSO GRN TOM PUREE 1.038 F 12/28oz	MQF TOMATO	78	TP	TOMATO PRODUCTS		TP One Tier
TUTTOROSSO GRN TOM SCE FR CONC 12/29z	MQF TOMATO	78	TP	TOMATO PRODUCTS		TP One Tier
TUTTOROSSO GRN TOMS CRUSHED W/BAS 12/28oz	MQF TOMATO	78	TP	TOMATO PRODUCTS		TP One Tier
TUTTOROSSO GRN TOMS CRSH FR CNC 12/28z	MQF TOMATO	78	TP	TOMATO PRODUCTS	WAKEFERN	TP One Tier
TUTTOROSSO GRN TOMS CRSHD FR CNC 12/28z	W.C. MQFTOM	77	TP	TOMATO PRODUCTS	5559	TP One Tier
TUTTOROSSO GRN TOM WH JC PR SH BAS12/28z	TOMATOES	80	TM	TOMATOES		TP One Tier
TUTTOROSSO GRN TOMS PLD JC PR SH 12/28z	TOMATOES	80	TM	TOMATOES		TP One Tier
TUTTOROSSO GRN TOMS PLD JC PR SH 12/28z	TOMATOES	80	TM	TOMATOES	5559	TP One Tier
TUTTOROSSO GRN TOMS PLD JC PR SH 12/28z	TOMATOES	80	TM	TOMATOES	10372	TP One Tier
CORINA RED TOM SAUCE FCY 12/29oz	TOM SAUCE	87	TP	TOMATO PRODUCTS		TP One Tier
CORINA RED TOM FCY SCE FR CONC 12/29oz	MQF TOMATO	78	TP	TOMATO PRODUCTS		TP One Tier
CORINA RED TOM SCE FCY FR CONC 12/29z	W.C. MQFTOM	77	TP	TOMATO PRODUCTS		TP One Tier
CORINA RED TOMS WH PLD JC 12/28oz	TOMATOES	80	TM	TOMATOES	5559	TP One Tier
IL MIGLIORE TOMS WH PLD HP PR SHP 12/28z	TOMATOES	80	TM	TOMATOES		TP One Tier
TUTTOROSSO GRN TOMS CRSH W/BAS 12/28z	MQF TOMATO	78	TP	TOMATO PRODUCTS		TP1NFLM
TUTTOROSSO PC TOMS CRSH BAS FR CNC12/28z	MQF TOMATO	78	TP	TOMATO PRODUCTS	10372	TP One Tier
REDPACK TOM 1.06 PUREE FR CONC 24/29z	MQF TOMATO	78	TP	TOMATO PRODUCTS	2000-02	Full Fiber
REDPACK TOMATOES WHOLE PEELED XS 24/28oz	TOMATOES	80	TM	TOMATOES		Full Fiber
REDPACK TOMATOES CRUSHED HVY PUR 24/28oz	TOMATO	81	TM	TOMATOES	500080	Full Fiber
REDPACK TOM PUREE 1.05 FCY CF RP 24/29oz	MQF TOMATO	78	TP	TOMATO PRODUCTS	10372	TP Two Tier
REDPACK TOMS WH PLD XSTD PUREE 24/28oz	TOMATOES	80	TM	TOMATOES	500080	TP Two Tier
REDPACK TOMATOES WH PLD XSTD JC 24/28oz	TOMATOES	80	TM	TOMATOES	10372	TP Two Tier
REDPACK TOMS CRUSHED HY PUREE 24/28oz	TOMATO	81	TM	TOMATOES	500080	TP Two Tier
REDPACK TOM WH PLD XSTD HP PEAR SH24/28z	TOMATOES	80	TM	TOMATOES		TP Two Tier
TUTTOROSSO BLU TOM PUR 1.045 BAS 24/29z	MQF TOMATO	78	TP	TOMATO PRODUCTS	10372	TP Two Tier
TUTTOROSSO BLU TOM WH PLD IC B 24/28z	TOMATOES	80	TM	TOMATOES	10372	TP Two Tier
TUTTOROSSO GRN TOM PUR1.038 FR CNC24/28z	MQF TOMATO	78	TP	TOMATO PRODUCTS	10372	TP Two Tier
TUTTOROSSO GRN TOMS CRUSHED W/BAS 24/28oz	MQF TOMATO	78	TP	TOMATO PRODUCTS	10372	TP Two Tier
CORINA RED TOM SAUCE FR CONC 24/29oz	MQF TOMATO	78	TP	TOMATO PRODUCTS	500080	TP Two Tier
TUTTOROSSO BLU TOM WHOLE PLD XST 04/35oz	TOMATOES	80	TM	TOMATOES	BJ CLUB	TP One Tier

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REEL: 002453 FRAME: 0618



TUTTOROSSO BLU TOM WH PLD JC PEAR 12/35z	TOMATOES	80	TM	TOMATOES		Full Fiber
TUTTOROSSO BLU TOM WH PLD JC PEAR 24/35z	TOMATOES	80	TM	TOMATOES		Full Fiber
	TOMATOES	80	TM	TOMATOES	5559	Full Fiber
SACRAMENTO BLOODY MARY SAC LITHO 12/46oz	W.C. MQFTOM	77	TP	TOMATO PRODUCTS		Full Fiber
SACRAMENTO VEGETABLE COCKTAIL SA 12/46oz	VEG COCKTAIL	84	TP	TOMATO PRODUCTS		Full Fiber
SACRAMENTO TOM JC FR CONC 48/6z	W.C. MQFTOM	77	TP	TOMATO PRODUCTS		Full Fiber
SACRAMENTO TOMATO JCE SACTO LITH 12/46oz	W.C. MQFTOM	77	TP	TOMATO PRODUCTS		Full Fiber
SACRAMENTO TOMATO JCE SACTO LITH 12/46oz	W.C. MQFTOM	77	TP	TOMATO PRODUCTS	JETPRNT	Full Fiber
CORINA RED VEG CKTL FCY FR CONC 12/46oz	W.C. MQFTOM	77	TP	TOMATO PRODUCTS		Full Fiber
TOMATO JUICE FANCY	TOM JUICE	83	TP	TOMATO PRODUCTS		Full Fiber
GLORIJETTA TOM JUICE FCY 12/46oz	TOM JUICE	83	TP	TOMATO PRODUCTS	USDA	Full Fiber
GLORIJETTA TOMATO JC FCY FR CONC 12/46oz	W.C. MQFTOM	77	TP	TOMATO PRODUCTS		Full Fiber
GLORIJETTA TOM JUICE FCY 12/46oz	TOM JUICE	83	TP	TOMATO PRODUCTS	7489	Full Fiber
GLORIJETTA TOM JUICE FCY 12/46oz	TOM JUICE	83	TP	TOMATO PRODUCTS	SWEDEN	Full Fiber
	TOM JUICE	83	TP	TOMATO PRODUCTS	SWEDEN	Full Fiber
SACRAMENTO BLOODY MARY SAC LITHO 12/46oz	MQF TOMATO	78	TP	TOMATO PRODUCTS		TP One Tier
SACRAMENTO VEG COCKTAIL SACTO FR 12/46oz	MQF TOMATO	78	TP	TOMATO PRODUCTS		TP One Tier
SACRAMENTO TOMATO JCE SACTO LITH 12/46oz	MQF TOMATO	78	TP	TOMATO PRODUCTS		TP One Tier
SACRAMENTO TOMATO JCE SACTO LITH 12/46oz	MQF TOMATO	78	TP	TOMATO PRODUCTS	10372	TP One Tier
GLORIJETTA TOMATO JC FCY FR CONC 12/46oz	MQF TOMATO	78	TP	TOMATO PRODUCTS		TP One Tier
GLORIJETTA TOMATO JC FCY FR CONC 12/46oz	MQF TOMATO	78	TP	TOMATO PRODUCTS	530080	TP One Tier
Tomato Juice Fancy From Juice	W.C. MQFTOM	77	TP	TOMATO PRODUCTS		TP One Tier
REDPACK TOM PASTE 24% FCY 060 HB 6/111oz	TOM PASTE	85	TP	TOMATO PRODUCTS		Full Fiber
RED PACK 25% NTS FCY FS HB 06/10	TOM PASTE	85	TP	TOMATO PRODUCTS	SUBSTITUT	Full Fiber
REDPACK TOM PUR 1.06 THK FR CONC 6/106oz	MQF TOMATO	78	TP	TOMATO PRODUCTS		Full Fiber
REDPACK TOM PUREE 1.06 FCY FR CONC 6/106z	W.C. MQFTOM	77	TP	TOMATO PRODUCTS		Full Fiber
REDPACK CHILI SAUCE FROM CONC 06/115oz	MQF TOMATO	78	TP	TOMATO PRODUCTS		Full Fiber
REDPACK CHILI SAUCE FROM CONC 06/115oz	W.C. MQFTOM	77	TP	TOMATO PRODUCTS		Full Fiber
REDPACK TOMATO CATSUP FCY FR CONC 6/115z	MQF TOMATO	78	TP	TOMATO PRODUCTS		Full Fiber
TOMATO CATSUP FANCY FR	MQF TOMATO	78	TP	TOMATO PRODUCTS	10372	Full Fiber

REDPACK TOMATO CATSUP FCY FR CONC 6/115z	W.C. MQFTOM	77	TP	TOMATO PRODUCTS		Full Fiber
REDPACK TOMS CONC FR CONC 06/107oz	W.C. MQFTOM	77	TP	TOMATO PRODUCTS		Full Fiber
REDPACK TOM SCE FR CONC 06/107oz	MQF TOMATO	78	TP	TOMATO PRODUCTS		Full Fiber
REDPACK PIZZA SAUCE FCY BASIL SUP 6/107z	MIXED SAUCE	89	TP	TOMATO PRODUCTS		Full Fiber
REDPACK TOM PIZZA FCY BASIL SUP 06/107oz	W.C. MQFTOM	77	TP	TOMATO PRODUCTS	500880	Full Fiber
	MIXED SAUCE	89	TP	TOMATO PRODUCTS	500880	Full Fiber
REDPACK PIZZA FCY BAS XHY FR CONC 6/107z	MQF TOMATO	78	TP	TOMATO PRODUCTS		Full Fiber
PIZZA FCY BASIL XHY FROM	MQF TOMATO	78	TP	TOMATO PRODUCTS	500880	Full Fiber
REDPACK PIZZA FCY BASIL XHY FR CNC6/107z	W.C. MQFTOM	77	TP	TOMATO PRODUCTS		Full Fiber
REDPACK PIZZA SAUCE FCY BAS W/OIL 6/107z	MIXED SAUCE	89	TP	TOMATO PRODUCTS		Full Fiber
	MIXED SAUCE	89	TP	TOMATO PRODUCTS	500880	Full Fiber
REDPACK TOM PIZZA FCY BAS W/OIL 6/107oz	MQF TOMATO	78	TP	TOMATO PRODUCTS		Full Fiber
REDPACK TOM PIZZA FCY BAS W/OIL 6/107oz	MQF TOMATO	78	TP	TOMATO PRODUCTS	10372	Full Fiber
REDPACK PIZZA FCY BAS W/OIL FR CNC6/107z	W.C. MQFTOM	77	TP	TOMATO PRODUCTS		Full Fiber
REDPACK PIZZA FCY BAS SUP FR CONC 6/107z	MQF TOMATO	78	TP	TOMATO PRODUCTS		Full Fiber
REDPACK SPAGH SAUCE FCY FR CONC 6/106oz	MQF TOMATO	78	TP	TOMATO PRODUCTS		Full Fiber
REDPACK TOMATO SAUCE FANCY 06/106oz	TOM SAUCE	87	TP	TOMATO PRODUCTS		Full Fiber
REDPACK TOMATO SAUCE FCY FR CONC 6/106oz	MQF TOMATO	78	TP	TOMATO PRODUCTS		Full Fiber
REDPACK TOMATO SAUCE FCY FR CONC 6/106oz	W.C. MQFTOM	77	TP	TOMATO PRODUCTS		Full Fiber
REDPACK SLI ZUCCH&TOMATO IN JC 6/104z	TOMATO	81	TM	TOMATOES		Full Fiber
REDPACK SLI ZUCCH&TOMATO IN JC 06/104oz	TOMATO	81	TM	TOMATOES	USDA	Full Fiber
REDPACK SLI ZUCCH&TOMATO IN JC 6/104z	TOMATO	81	TM	TOMATOES	USDA	Full Fiber
REDPACK TOMS WH PLD XSTD PUREE 06/102oz	TOMATOES	80	TM	TOMATOES		Full Fiber
REDPACK TOMATOES WH PLD XSTD JC 06/102oz	TOMATOES	80	TM	TOMATOES		Full Fiber
REDPACK TOMS DICED XSTD HVY PUREE 6/104z	TOMATOES	80	TM	TOMATOES		Full Fiber
REDPACK TOMS DICED XSTD HVY PUREE 6/104z	TOMATOES	80	TM	TOMATOES	5559	Full Fiber
REDPACK TOMS DICED XSTD HVY PUREE 6/104z	TOMATOES	80	TM	TOMATOES	10372	Full Fiber
REDPACK TOMATOES DICED XSTD JC 06/102oz	TOMATOES	80	TM	TOMATOES		Full Fiber
REDPACK TOMS DCD XSTD JC 7ZZ DR WT6/102z	TOMATOES	80	TM	TOMATOES	USDA	Full Fiber
REDPACK TOMS CRUSHED UNPLD HP 06/106oz	TOMATO	81	TM	TOMATOES		Full Fiber

REDPACK TOMS CRUSHED UNPLD HP 06/106oz	TOMATO	81	TM	TOMATOES	CLASS 3	Full Fiber
REDPACK TOMATOES CONC & CRUSHED 06/107oz	MIXED SAUCE	89	TP	TOMATO PRODUCTS		Full Fiber
REDPACK TOM CONC/CRSH SUP FR 6/107z	W.C. MQFTOM	77	TP	TOMATO PRODUCTS		Full Fiber
REDPACK TOM 1" DICED XSTD JC 06/102oz	TOMATOES	80	TM	TOMATOES		Full Fiber
REDPACK TOM 1" DICED JC 7ZZ DR WT 06/102z	TOMATOES	80	TM	TOMATOES		Full Fiber
REDPACK TOMS GROUND PLD HVY PUREE 6/106z	TOMATO	81	TM	TOMATOES		Full Fiber
REDPACK TOMATOES GROUND PLD HVY 06/106oz	TOMATO	81	TM	TOMATOES	5559	Full Fiber
REDPACK TOMS RDY-CUT/CHOPPED 06/102oz	TOMATOES	80	TM	TOMATOES		Full Fiber
REDPACK TOM WH PLD HP PEAR SHP 6/102oz	TOMATOES	80	TM	TOMATOES		Full Fiber
REDPACK TOM WH PLD JC PEAR SHP 6/102oz	TOMATOES	80	TM	TOMATOES		Full Fiber
REDPACK TOM WH PLD JC PEAR SHP 6/102oz	TOMATOES	80	TM	TOMATOES	5559	Full Fiber
REDPACK TOMATOES MARINARA DICED 06/106oz	TOMATO	81	TM	TOMATOES		Full Fiber
REDPACK TOMS STEWED FCY JC 06/102oz	TOMATOES	80	TM	TOMATOES		Full Fiber
CONTENTO TOM CATSUP XSTD FR CONC 6/113oz	W.C. MQFTOM	77	TP	TOMATO PRODUCTS	USDA	Full Fiber
GARDEN VALLEY TOMATO CATSUP STD 06/111oz	W.C. MQFTOM	77	TP	TOMATO PRODUCTS		Full Fiber
GARDEN VALLEY TOMATO CATSUP STD 06/111oz	W.C. MQFTOM	77	TP	TOMATO PRODUCTS	7489	Full Fiber
GARDEN VALLEY TOMS PEELED STD JC 6/102z	MQF TOMATO	78	TP	TOMATO PRODUCTS		Full Fiber
GARDEN VALLEY TOMS PLD JC PEAR SH 6/102z	W.C. MQFTOM	77	TP	TOMATO PRODUCTS		Full Fiber
VERONA TOM PUREE 1.07 FCY CF 06/107oz	TOMATOES	80	TM	TOMATOES		Full Fiber
COMO TOM PUR 1.06 FCY THK FR CNC 6/106z	TOMATOES	80	TM	TOMATOES		Full Fiber
TOMATO CATSUP FANCY FR	TOM PUREE	86	TP	TOMATO PRODUCTS		Full Fiber
COMO PIZZA SCE BASIL HP FR CONC 6/105oz	MQF TOMATO	78	TP	TOMATO PRODUCTS		Full Fiber
COMO TOMS CRUSHED HP FR CONC 06/105oz	MQF TOMATO	78	TP	TOMATO PRODUCTS	10372	Full Fiber
TUTTOROSSO BLU TOMS RDY-CUT/CHOP 6/102z	MQF TOMATO	78	TP	TOMATO PRODUCTS		Full Fiber
TUTTOROSSO BLU TOM RDY CUT BASIL 06/102Z	TOMATOES	80	TM	TOMATOES	5559	Full Fiber
TUTTOROSSO BLU TOM WHOLE PLD XS 06/102oz	TOMATOES	80	TM	TOMATOES		Full Fiber
TUTTOROSSO BLU TOM PLD JC BAS NCAL 6/102z	TOMATOES	80	TM	TOMATOES	ENGTAL	Full Fiber
TUTTOROSSO GRN TOMS PEELED STD JC 6/102z	TOMATOES	80	TM	TOMATOES		Full Fiber
TUTTOROSSO GRN TOMS CRSHD HY FR C 6/105z	MQF TOMATO	78	TP	TOMATO PRODUCTS		Full Fiber

TUTT'OROSSO PIZZA SCE FR CONC 06/107oz	W.C. MQFTOM	77	TP	TOMATO PRODUCTS	24452	Full Fiber
CORINA GREEN TOM PUREE 1.047 FC 06/105oz	MQF TOMATO	78	TP	TOMATO PRODUCTS		Full Fiber
CORINA GREEN TOM PUREE 1.047 FC 06/105oz	MQF TOMATO	78	TP	TOMATO PRODUCTS	10372	Full Fiber
CORINA GREEN TOM CATSUP STD FR CNC6/111z	MQF TOMATO	78	TP	TOMATO PRODUCTS		Full Fiber
MQF TOMATO STD CATSUP	MQF TOMATO	78	TP	TOMATO PRODUCTS	10372	Full Fiber
SUPREMO PIZZA SCE HVY W/BASIL 06/107oz	MIXED SAUCE	89	TP	TOMATO PRODUCTS		Full Fiber
TERESA RED TOM PUREE 1.06 FCY T 06/106oz	MQF TOMATO	78	TP	TOMATO PRODUCTS		Full Fiber
TERESA RED TOM PUREE 1.06 FCY C 06/106oz	W.C. MQFTOM	77	TP	TOMATO PRODUCTS		Full Fiber
TERESA RED CHILI SAUCE FR CONC 06/115oz	MQF TOMATO	78	TP	TOMATO PRODUCTS		Full Fiber
TERESA RED TOM CATSUP FCY FR CONC 6/115z	MQF TOMATO	78	TP	TOMATO PRODUCTS		Full Fiber
TERESA RED TOM CATSUP FCY FR CONC 6/115z	MQF TOMATO	78	TP	TOMATO PRODUCTS	10372	Full Fiber
TERESA RED PIZZA FCY BASIL XHY 06/107oz	MQF TOMATO	78	TP	TOMATO PRODUCTS		Full Fiber
TERESA RED PIZZA FCY BASIL XHY 06/107oz	W.C. MQFTOM	77	TP	TOMATO PRODUCTS		Full Fiber
TERESA RED SPAGH SCE FCY FR CONC 6/106z	MQF TOMATO	78	TP	TOMATO PRODUCTS		Full Fiber
TERESA RED TOM SCE FCY FR CONC 6/106oz	MQF TOMATO	78	TP	TOMATO PRODUCTS		Full Fiber
TERESA RED TOMS WH PLD XSTD PUREE 6/102z	TOMATOES	80	TM	TOMATOES		Full Fiber
TERESA RED TOMS WH PLD XSTD PUREE 6/102z	TOMATOES	80	TM	TOMATOES	5559	Full Fiber
TERESA RED TOMS WH PEELED XSTD JC 6/102z	TOMATOES	80	TM	TOMATOES		Full Fiber
TERESA RED TOMATOES DICED XSTD 06/102oz	TOMATOES	80	TM	TOMATOES		Full Fiber
TERESA RED TOMATOES DICED XSTD 06/102oz	TOMATOES	80	TM	TOMATOES		Full Fiber
TERESA RED TOMS CONC & CRSHD XH 06/107oz	MQF TOMATO	78	TP	TOMATO PRODUCTS		Full Fiber
TERESA RED TOMS CONC & CRSHD XH 06/107oz	W.C. MQFTOM	77	TP	TOMATO PRODUCTS		Full Fiber
TERESA RED TOMS 1" DICED JC 06/102oz	TOMATOES	80	TM	TOMATOES		Full Fiber
TERESA RED TOMS GROUND PLD HP 6/106z	TOMATO	81	TM	TOMATOES		Full Fiber
TERESA RED TOM WH PLD HP PEAR SHP 6/102z	TOMATOES	80	TM	TOMATOES		Full Fiber
TERESA RED TOM WH PLD JC PEAR SHP 6/102z	TOMATOES	80	TM	TOMATOES		Full Fiber
TERESA RED TOMS STEWED FCY JC 06/102oz	TOMATOES	80	TM	TOMATOES		Full Fiber
TERESA WHITE PIZZA SAUCE FANCY 06/107oz	MIXED SAUCE	89	TP	TOMATO PRODUCTS		Full Fiber
TERESA WHITE PIZZA FCY BASIL SU 06/107oz	MQF TOMATO	78	TP	TOMATO PRODUCTS		Full Fiber
TERESA WHITE TOMS CONC & CRUSHE 06/107oz	MIXED SAUCE	89	TP	TOMATO PRODUCTS		Full Fiber
TERESA WHITE TOM CONC & CRSHD S 06/107oz	MQF TOMATO	78	TP	TOMATO PRODUCTS		Full Fiber



REDPACK TOM PASTE 24%060 HB FR CNC6/111z	W.C. MQFTOM	77	TP	TOMATO PRODUCTS		Full Fiber
SUPREMO TOMATO SAUCE FCY FROM C 06/106oz	W.C. MQFTOM	77	TP	TOMATO PRODUCTS	salvage	Full Fiber
SUPREMO TOMATO SAUCE FCY FROM C 06/106oz	W.C. MQFTOM	77	TP	TOMATO PRODUCTS	Class 3	Full Fiber
TUTTOROSSO PC PIZZA SCE FR CONC 06/107oz	W.C. MQFTOM	77	TP	TOMATO PRODUCTS		Full Fiber
	W.C. MQFTOM	77	TP	TOMATO PRODUCTS	50080	Full Fiber
REDPACK TOM CATSUP SPL FR CNC 1/456z	W.C. MQFTOM	77	TP	TOMATO PRODUCTS		Full Fiber

**Schedule 2.1(d)**

**Assumed Contracts**

All open customer purchase orders for sales of the Branded Tomato Business as of the date of Closing, subject to Buyer's review of pricing.

**Schedule 3.2**

**Transition Agreement**

(Form enclosed separately)





**Schedule 4.4**

**Allocation of Purchase Consideration**

(to be prepared)

**Schedule 5.1(b)****Trademark License Agreement****TRADEMARK LICENSE AGREEMENT**

**THIS TRADEMARK LICENSE AGREEMENT** (this "Agreement"), effective as of the \_\_\_ day of \_\_\_\_\_, 2001, is by and between **TRI VALLEY GROWERS**, a California nonprofit agricultural cooperative association and Debtor and Debtor-in-Possession ("Licensor") under Case No. 00-44089-J-11 in the United States Bankruptcy Court for the Northern District of California, Oakland Division, and **RED GOLD INCORPORATED**, a \_\_\_\_\_ corporation ("Licensee").

**WHEREAS**, LICENSOR is the owner of the trademarks listed on Schedule 1 (the "Licensed Marks"), which may be amended from time to time by Licensor as provided below;

**WHEREAS**, effective as of the date hereof, the parties entered into an Asset Purchase Agreement (the "Purchase Agreement") pursuant to which Licensor agreed to sell, and Licensee agreed to purchase, certain assets owned by Licensor relating to Licensor's Branded Tomato Business (as such term is defined in the Purchase Agreement);

**WHEREAS**, as part of such sale and purchase, Licensor is willing to grant to Licensee a license to use the Licensed Marks in connection with the Products (as such term is defined below);

**WHEREAS**, following the closing of such sale and purchase (the "Closing"), Licensor will manufacture Products for Licensee on an interim basis pursuant to a Transitional Services Agreement;

**WHEREAS**, Licensee is willing to accept such license on the terms and conditions set forth below;

**NOW, THEREFORE**, in consideration of the foregoing, and the respective covenants and agreements of the parties contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. **Grant of Trademark License.** Licensor hereby grants to Licensee an exclusive, royalty-free, global license to use the Licensed Marks on or in association with the packaging, labeling, advertising, sale, marketing, and distribution of tomato and tomato products and vegetable juices (the "Products"). Licensee shall use, display and reproduce the Licensed Marks only in accordance with (a) the forms in which the Licensed Marks are used on packaging, labels

or cartons used by Licensor within the twelve (12) months preceding the Closing Date on or in connection with the Products, (b) the trademark usage guidelines provided by Licensor from time to time in its sole discretion, or (c) any other form in which the Licensed Marks are subsequently used or adopted for use by Licensor at its sole discretion, provided that Licensee has twelve (12) months to phase out the old versions of the Licensed Marks and phase in the new versions. Licensee may sublicense this Agreement to its subsidiaries, affiliates and related companies, provided that Licensee shall ensure that its sublicensees meet all applicable requirements of this Agreement including without limitation quality control and that Licensee shall remain liable to Licensor for any breaches of this Agreement.

2. **Prohibitions Regarding Use of Licensed Marks.** Licensee shall not have the right to and shall not:

(a) use any Licensor corporate names or trade names, trademarks, service marks, logos, designs, slogans, and other means of identifying products of Licensor and its subsidiaries, divisions and affiliated companies (collectively "Licensor Marks") other than the Licensed Marks;

(b) use any Licensed Mark on any products or services other than the Products covered by this Agreement;

(c) use any trademark or product names confusingly similar to the Licensed Marks or other Licensor Marks;

(d) use any Licensed Marks or Licensor Marks with one or more other trademarks of Licensee or any third party so as to create a unitary mark that includes any Licensed Mark;

(e) register or use any Internet domain names or successor identifiers containing the Licensed Marks or other Licensor Marks without the prior written consent of Licensor; or

(f) use the Licensed Marks as part of its corporate or other trade names, on signs at the premises of its offices, on business cards, stationery, envelopes, invoices, forms, or other similar documents in or in any other manner in any media, other than as specifically authorized under this Agreement.

3. **Rights in Licensed Marks; Reservation of Rights.**

3.1 **Licensor's Rights In Licensed Marks.** Licensee recognizes the significant value of the goodwill associated with the Licensed Marks and acknowledges that Licensor is the exclusive owner of the Licensed Marks and the goodwill associated therewith. All the goodwill in the Licensed Marks shall inure solely to the benefit of Licensor. Except as specifically provided herein, nothing in this Agreement shall be deemed to confer upon Licensee any right, title or interest in any of the Licensed Marks or in any other intellectual property of Licensor. Licensee

shall not do or cause to be done anything inconsistent with such ownership, including without limitation challenge the title or validity of the Licensed Marks. Licensee agrees not to register the Licensed Marks. Licensee also agrees not to register, maintain the registration of, or use any trademark, trade name, trade dress or logo that infringes upon, is in conflict with, is confusingly similar to, is dilutive of, tarnishes, damages the reputation of, or constitutes unfair competition with any of the Licensed Marks. If Licensee has acquired, or at any time by any means shall acquire, any rights in or under any such Licensed Mark, it shall promptly upon request, assign all such rights to Licensor.

3.2 Reservation of Rights. Licensor reserves all rights to the Licensed Marks not expressly licensed to Licensee hereunder. Licensee acknowledges and agrees that Licensor has used and will continue to use the Licensed Marks on products other than the Products.

4. Limitations on Licensed Marks. Licensee expressly acknowledges that Licensor does not own registrations for the Licensed Marks in all jurisdictions throughout the world and that existing registrations may not cover all of the Products.

5. Enforcement and Maintenance of Licensed Marks.

5.1 Infringement and Infringement Claims. To protect the Licensed Marks and related trade dress, Licensee shall give Licensor written notice of (a) any conduct which comes to its attention and which, in its opinion, appears to infringe or constitute a conflicting use of the Licensed Marks in connection with the Products, and (b) any claim or assertion by any person, whether or not made in a legal action, that any of the Licensed Marks used on Products in the Territory infringes any rights of a third party. When requested, Licensee shall cooperate with and assist Licensor in its efforts to stop an infringement or other violation of Licensor's rights with respect to the Products. The determination of whether to take legal action or to prosecute or settle any such infringement or other violation shall lie exclusively with Licensor and Licensor shall bear the costs of taking such legal action or prosecuting or settling any such infringement or other violation.

5.2 Assistance in Maintaining Licensed Marks. Licensee shall cooperate fully and in good faith with Licensor to preserve and protect the Licensed Marks throughout the world. Such cooperation shall include, but shall not be limited to, providing information relating to Licensee's use of the Licensed Marks which Licensor requires for the preparation or prosecution of trademark registration applications and executing or causing to be executed registered user agreements or other documents required by Licensor to apply for, prosecute, maintain or renew any trademark registration application or to comply with the laws, regulations, codes or standards of any country with respect to recordation of licenses. Upon the expiration or termination of this Agreement, Licensee shall cooperate with Licensor to cancel any registered user agreement or any similar recordation of Licensee as an authorized user of the Licensed Marks in any country and shall execute any documents necessary for that purpose. Licensor shall bear any and all costs and expenses in maintaining the Licensed Marks, and shall reimburse Licensee for any such out-of-pocket costs and expenses incurred by Licensee at Licensor's request.

6. Changes to Licensed Marks and Products. If Licensee desires to use, display or reproduce the Licensed Marks other than in one of the forms provided in section 1, it may do so only with advance written approval from Licensor, and any such approved revised mark shall be deemed added to Exhibit A as a Licensed Mark and shall be subject to all the terms and conditions governing Licensed Marks. If Licensee desires to use a Licensed Mark on a food product other than a Product, it may do so only with advance written approval from Licensor and any such approved new product shall be deemed added to this Agreement as a Product, and shall be subject to all the terms and conditions governing Products.

7. Quality Control. During the term of this Agreement, Licensee agrees to observe the following procedures with respect to its use of the Licensed Marks.

7.1 Minimum Quality Control Standards. Licensee agrees to maintain standards of quality for the Products as currently manufactured by Licensor and marketed by Licensor under the Licensed Marks and the current standards of quality for the advertising and marketing for the Products (collectively "Minimum Quality Control Standards").

7.2 Review of Marketing Materials. Prior to any use of the Licensed Marks in Licensee's product packaging, advertising, manuals, brochures, and other materials in whatever media (collectively, "Marketing Materials"), Licensee shall submit samples, photographs and/or copies of such Marketing Materials for Licensor to review for the purpose of conformity to the trademark usage guidelines and the Minimum Quality Control Standards. If Licensor rejects the form of any such usage, it shall notify Licensee of the specific reasons for the rejection, and Licensee shall then make the required changes. If Licensor does not respond to such request within fourteen (14) days, it shall be deemed to have rejected such request.

8. Additional Quality Control Provisions if TVG Does Not Manufacture Products. The provisions of this Section 8 shall apply only to Products not manufactured by Licensor and to the manufacture of Products by entities other than Licensor.

8.1 Manufacturing of Products. Licensor or its designee shall be permitted to audit the manufacturing of the Products at any facility upon reasonable notice to Licensee. If, with Licensor's prior written approval which may be withheld at its sole discretion, Licensee subcontracts the manufacture of the Products, Licensee shall ensure that such subcontractor both complies and is contractually obligated to comply with all applicable provisions of this Agreement, provided, however, Licensee shall remain fully and primarily liable to Licensor under this Agreement for the performance of any such subcontractors.

8.2 Testing of Products. Licensee shall test and manufacture Products in accordance with all applicable state and federal requirements and standards. Licensee shall maintain its manufacturing facilities and equipment in a clean and sanitary manner and in good working order. For any Products not manufactured by Licensor, Licensee shall conduct, at its own expense, certain tests of the Products pursuant to the Minimum Quality Control Standards and which test results shall, at Licensor's request, be delivered by Licensee to Licensor, provided, however, Licensee shall immediately advise Licensor of results that indicate material

noncompliance with such standards and upon instruction of Licensor immediately correct such defects.

8.3 Inspections. Licensee acknowledges and agrees that Licensor, or a mutually acceptable third party, may inspect, or cause to be inspected, on reasonable notice, the following: manufacturing and warehouse facilities, ingredients and raw materials, and finished and in-process Products; and Licensor may audit or cause to be audited Licensee's quality control and sanitation programs. After each inspection and audit, Licensor will submit written reports to Licensee, instructing corrective action if the facility, program or condition does not meet the requirements set forth in Title 21 of the Code of Federal Regulations and the Federal Food Drug and Cosmetic Act, as amended, or does not comply with the quality standards set forth herein. Licensee agrees to implement the necessary corrective action within a reasonable time; provided, however, Licensee shall immediately suspend utilizing a manufacturing and/or warehouse facility, when in Licensor's reasonable judgment, a defect or condition is found that causes or may cause a material health or safety risk. Licensee shall, for as long as the material health or safety risk is present, refrain from utilizing the affected facility to make the Products. If Licensee continues to utilize the affected facility to manufacture the Products despite the presence of the material health or safety risk, Licensor shall have the right immediately to terminate or suspend this Agreement. Should this Agreement be so terminated or suspended, Licensee shall have no cause of action against Licensor in connection with such termination or suspension, including but not limited to, any claim for damages or compensation for losses or expenses incurred, or for lost profits. Licensee agrees to incorporate provisions consistent herewith into any agreement with any third parties whom Licensee may employ to manufacture or store any Products or components of Products.

8.4 No Adulteration or Misbranding. Licensee represents and warrants that the Products produced by it shall not be adulterated or misbranded within the meaning of the Federal Food, Drug and Cosmetic Act, as from time to time amended, and regulations promulgated thereunder, and are not articles which, under the provisions of Sections 404 and 505 of such federal act may not be introduced into interstate commerce and are not in violation of the provisions of the Food Additives Amendment of 1958. This guarantee is in like terms extended and shall be applicable to any lawful state law or municipal ordinance in which the definitions of adulteration or misbranding are substantially the same as those in such federal act.

8.5 Conformity with Applicable Laws. Licensee warrants that the Products shall be manufactured in accordance with all applicable federal, state and local laws, rules, regulations, and guidelines. The policy of manufacture and exploitation of the Products by Licensee shall be of a high standard and shall in no manner reflect adversely upon the good name of Licensor or any of its programs, products or properties, or the Licensed Marks.

## 9. Indemnification.

9.1 By Licensor. If a third party shall claim that Licensee's use of a Licensed Mark on a Product infringes, dilutes or otherwise violates the trademark, trade dress, patent, trade secret, copyright or other intellectual property rights of any third party and such usage occurs in a

country where Licensor owns a trademark registration for such Licensed Mark that covers such Product, Licensor shall defend, indemnify and hold harmless Licensee and each of its partners, directors, officers, agents and employees from any and all proceedings, suits, losses, claims of infringement, damages, costs or expenses or liabilities, including reasonable attorneys' fees against any and all such claims. Such indemnification obligation is expressly conditioned upon Licensee notifying Licensor promptly of any such claim, giving Licensor sole control over defense and settlement of the claim, and providing reasonable assistance to Licensor in defending the claim. For the purposes of this Section 9.1, for usage to occur in a country there must be targeted, active marketing or sales in that country, and passive advertising that may reach that country through the use of the Internet or a successor technology shall not be deemed to be such a usage.

9.2 By Licensee. Except for claims against which Licensor will indemnify Licensee pursuant to Section 9.1 or to any other agreement between the parties, Licensee shall defend, indemnify and hold harmless Licensor and each of its partners, directors, officers, agents and employees from any and all proceedings, suits, losses, claims of infringement, damages, costs or expenses or liabilities, including reasonable attorneys' fees against any and all claims in connection with, arising out of or resulting from any actual or alleged injury, damage, death or other occurrence to any person or property arising or resulting directly or indirectly out of the packaging, labeling, advertising, sale, marketing, distribution, or the possession, use or consumption of any products bearing the Licensed Marks (including, without limitation, any Products) manufactured, sold or supplied by Licensee at any time. Such indemnification obligation is expressly conditioned upon Licensor notifying Licensee promptly of any such claim, giving Licensee sole control over the defense and settlement of the claim, and providing reasonable assistance to Licensee in defending the claim.

## 10. Term and Termination and Other Remedies for Non-Performance.

10.1 Term. This Agreement shall commence as of the Closing Date, and shall continue in force indefinitely unless terminated pursuant to Section 10.2 below. The license is fully paid up by the consideration paid under the Asset Purchase Agreement and no further royalty or license fee is due unless Licensee seeks to extend the term hereof.

10.2 Grounds for Termination. This Agreement may be terminated as follows: (1) by Licensee at any time upon notice by a duly authorized official, or (2) by Licensor upon Licensee's material breach of this Agreement, provided that Licensee fails to remedy such breach within a ninety (90)-day cure period commencing on Licensee's receipt of the notice of termination.

10.3 Rights Upon Termination. Upon termination of this Agreement, all rights granted to Licensee hereunder shall forthwith revert to Licensor and Licensee shall immediately discontinue all use of the Licensed Marks or any reference to them, direct or indirect, or any reproduction, counterfeit or colorable imitation thereof in connection with, Licensee's business or the manufacture, sale or distribution of Licensee's products, except that if the Agreement is terminated for a reason other than Licensee's material breach Licensee may sell and/or otherwise



dispose of any Products which are on hand or in process for a period of ninety (90) days after expiration or notice of termination.

10.4 Survival. Sections 2, 3, 9, 10.3-10.5, 11, and 13 shall survive any termination of this Agreement.

10.5 Other Remedies for Non Performance. Either in addition or as an alternative to the termination remedies set forth herein, either party shall have the right to seek from a court damages, injunctive relief or specific performance for the failure to perform the obligations of the other party in this Agreement, after giving the other party sixty (60) days' written notice of the specific details of the exact grounds of non-performance and an opportunity of the other party to cure the alleged non-performance.

11. Right to Compete. Nothing in this Agreement shall prohibit Licensor from using or authorizing others to use the Licensed Marks or any reproduction, counterfeit, copy or colorable imitation of the Licensed Marks on or in association with the packaging, labeling, advertising, sale, marketing, or distribution of products that may compete with the Products, so long as such products themselves do not contain tomatoes.

12. Assignment. Licensee anticipates assigning this Agreement to Signature Fruit Company LLC ("Signature"), and Signature shall otherwise have the right to assign this Agreement upon written notice to Buyer. Licensee may assign this Agreement to a successor entity pursuant to a sale of all or substantially all of its assets, provided that such successor entity agrees in writing to accept all of the rights and obligations hereunder. Any other proposed assignment requires the consent of Licensor, which shall not unreasonably be refused.

13. Miscellaneous.

13.1 Notices. All notices given pursuant to this Agreement shall be in writing and shall be delivered by hand or sent by United States registered mail, postage prepaid, addressed as follows (or to another address or person as a party may specify on notice to the other):

To Licensor: William A. Brandt, Jr.  
Three First National Plaza  
Suite 2300  
Chicago, IL 60602-4205  
Facsimile: (312) 263-1180

With copies to: Dorsey & Whitney LLP  
Pillsbury Center South  
220 South Sixth Street  
Minneapolis, MN 55403  
Attn: Robert G. Hensley, Esq.  
Facsimile: (612) 340-8738

and

Pachulski, Stang, Ziehl, Young & Jones, P.C.  
Three Embarcadero Center, Suite 1020  
San Francisco, California 94111  
Attn: William P. Weintraub, Esq.  
Facsimile: (415) 263-7010

To Licensee: Red Gold Incorporated

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

With a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

13.2 Amendment and Waiver. Any provision of this Agreement may be amended or waived only by a writing signed by the party against which enforcement of the amendment or waiver is sought.

13.3 Choice of Law Jurisdiction. This Agreement shall be construed and interpreted in accordance with the laws of the State of California as though all acts and omissions related to this Agreement occurred in the State of California. **BUYER AND SELLER AGREE THAT THE BANKRUPTCY COURT SHALL HAVE EXCLUSIVE JURISDICTION OVER ALL DISPUTES AND OTHER MATTERS RELATING TO (i) THE INTERPRETATION AND ENFORCEMENT OF THIS AGREEMENT OR ANY ANCILLARY DOCUMENT EXECUTED PURSUANT HERETO; AND/OR (ii) THE ASSETS AND/OR ASSUMED LIABILITIES, AND BUYER EXPRESSLY CONSENTS TO AND AGREES NOT TO CONTEST SUCH EXCLUSIVE JURISDICTION.**

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13.4 Attorneys' Fees. In the event that either party hereto brings an action or other proceeding to enforce or interpret the terms and provisions of this Agreement, the prevailing party in that action or proceeding shall be entitled to have and recover from the non-prevailing party all such fees, costs and expenses (including, without limitation, all court costs and reasonable attorneys' fees) as the prevailing party may suffer or incur in the pursuit or defense of such action or proceeding.

13.5 Construction. In the interpretation and construction of this Agreement, the parties acknowledge that the terms hereof reflect extensive negotiations between the parties and that this

Agreement shall not be deemed, for the purpose of construction and interpretation, drafted by either party hereto.

13.6 Limited Recourse. Licensee acknowledges that William A. Brandt, Jr. ("WB") is entering into this Agreement solely in his capacity as representative of Licensor's bankruptcy estate (and not in his individual or any other capacity) and that in the event of Licensor's or WB's default hereunder or under any document or instrument executed in furtherance of the transaction contemplated herein, WB shall have no personal liability other than for his gross negligence or willful misconduct, it being expressly understood that, subject in all events to any limitations on damages set forth above, Licensee's recourse in any such event shall be limited solely to the assets of Licensor's bankruptcy estate.

13.7 Severability. The provisions of this Agreement shall, where possible, be interpreted so as to sustain their legality and enforceability, and for that purpose the provisions of this Agreement shall be read as if they cover only the specific situation to which they are being applied. The invalidity or unenforceability of any provision of this Agreement in a specific situation shall not affect the validity or enforceability of that provision in other situations or of other provisions of this Agreement.

13.8 Counterparts. This Agreement may be executed in counterparts, each of which shall be considered an original.

13.9 Captions. All captions and headings contained in this Agreement are for convenience of reference only and shall not be construed to limit or extend the terms or conditions of this Agreement.

13.10 Binding Effect. This Agreement shall be binding upon, and shall inure to the benefit of, the parties, their successors and permitted assigns.

14. Entire Agreement. This Agreement, including the exhibits and schedules attached to this Agreement, constitutes the entire agreement and understanding between Licensor and Licensee with respect to the sale and purchase of the Assets and the other transactions contemplated by this Agreement. All prior representations, understandings and agreements between the parties with respect to the purchase and sale of the Assets and the other transactions contemplated by this Agreement are superseded by the terms of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed and delivered by their duly authorized officers as of the date and year first above written.

LICENSOR:

TRI VALLEY GROWERS

By: \_\_\_\_\_

Name: William A. Brandt, Jr.

Its: Responsible Natural Person

**LICENSEE:**

**RED GOLD INCORPORATED**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**Schedule 1 to Trademark License Agreement**

Licensed Marks

GLORIETTA  
GLORIETTA (stylized)

**Schedule 5.1(c)-1****Bill of Sale for Intellectual Property****Bill of Sale and Assignment  
(Intellectual Property)**

THIS BILL OF SALE is executed as of March \_\_, 2001, by Tri Valley Growers, a California nonprofit agricultural cooperative and Debtor and Debtor-in-Possession under Case No. 00-44089-J-11 in the United States Bankruptcy Court for the Northern District of California, Oakland Division ("Grantor"), in favor of Red Gold Incorporated, a \_\_\_\_\_ corporation ("Grantee").

FOR VALUE RECEIVED, receipt of which is hereby acknowledged, Grantor does hereby grant, bargain, sell, convey, assign, transfer and set over unto Grantee, absolutely and not as security, all of Grantor's right, title and interest in and to the following, whether now existing or hereafter arising, acquired or created:

a. All of the "Intellectual Property" described in that certain Asset Purchase Agreement (the "Asset Purchase Agreement") dated March \_\_, 2001, by and between the Grantee and the Grantor;

b. All goodwill of Grantor's business symbolized by, incorporated in or associated with the Intellectual Property and all customer lists and other records of Grantor relating to the distribution of products or provision of services bearing or covered by the Intellectual Property;

c. All claims by Grantor against any individual, corporation, partnership, association, trust, government or political subdivision or agent or instrumentality thereof, or other entity or organization for past, present or future infringement of the Intellectual Property; and

d. All premium refunds and insurance proceeds payable pursuant to insurance on the Intellectual Property, and all rights to payment with respect to any cause of action affecting or relating to such Intellectual Property.

PROVIDED, HOWEVER, that Grantee acknowledges and agrees that, to the extent Grantor is using product specifications or recipes that are trade secrets in both its Branded Tomato Business and outside of its Branded Tomato Business as of the date hereof, Grantor and its successors and assigns may continue to use such product specifications and recipes in the future.

SUBJECT TO provisions to the contrary contained in the Asset Purchase Agreement, the Grantor will cause to be promptly and duly taken, executed, acknowledged or delivered all such

further acts, conveyances, documents and assurances as the Grantee may from time to time reasonably request in order to carry out more effectively the intent and purposes of this Bill of Sale.

IN WITNESS WHEREOF, Grantor has executed this Bill of Sale and Assignment as of the day and year first above written.

GRANTOR:

TRI VALLEY GROWERS

a California nonprofit agricultural cooperative and Debtor and Debtor-in-Possession under Case No. 00-44089-J-11 in the United States Bankruptcy Court for the Northern District of California, Oakland Division

By: \_\_\_\_\_  
Title:

**Schedule 5.1(c)-1****Bill of Sale for Other Personal Property****Bill of Sale and Assignment  
(Personal Property)**

THIS BILL OF SALE is executed as of March \_\_, 2001, by Tri Valley Growers, a California nonprofit agricultural cooperative and Debtor and Debtor-in-Possession under Case No. 00-44089-J-11 in the United States Bankruptcy Court for the Northern District of California, Oakland Division ("Grantor"), in favor of Red Gold Incorporated, a \_\_\_\_\_ corporation ("Grantee").

FOR VALUE RECEIVED, receipt of which is hereby acknowledged, Grantor does hereby grant, bargain, sell, convey, assign, transfer and set over unto Grantee, absolutely and not as security, all of Grantor's right, title and interest in and to the following, whether now existing or hereafter arising, acquired or created:

a. All of the "Assets" described in paragraphs (a), (c), (d), (e), (f) and (g) of Section 2.1 of that certain Asset Purchase Agreement (the "Asset Purchase Agreement") dated March \_\_, 2001, by and between the Grantee and the Grantor; and

b. All premium refunds and insurance proceeds payable pursuant to insurance on the Assets, and all rights to payment with respect to any cause of action affecting or relating to such Assets.

SUBJECT TO provisions to the contrary contained in the Asset Purchase Agreement, the Grantor will cause to be promptly and duly taken, executed, acknowledged or delivered all such further acts, conveyances, documents and assurances as the Grantee may from time to time reasonably request in order to carry out more effectively the intent and purposes of this Bill of Sale.

IN WITNESS WHEREOF, Grantor has executed this Bill of Sale and Assignment as of the day and year first above written.

GRANTOR:

TRI VALLEY GROWERS

a California nonprofit agricultural cooperative and Debtor-in-Possession under Case No. 00-44089-J-11 in the United States Bankruptcy Court for the Northern District of California, Oakland Division



By: \_\_\_\_\_  
Title:

## Disclosure Schedule

### General Disclosure

Seller is currently in possession of its properties and operating its business as a debtor and debtor in possession under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code").

By reason of Seller's financial condition immediately prior to the commencement of its Chapter 11 Case, and its current status as a debtor in possession, Seller believes it is likely that it is in default under virtually all of its pre-bankruptcy contractual agreements or arrangements for any one or more of the following reasons, among others: (i) failure by Seller to pay amounts claimed to be due by the non-debtor party to the contract or agreement; (ii) breach or default by Seller of a financial covenant contained in the contract or agreement; and/or (iii) the pendency of the Chapter 11 Case.

In several places in the Agreement Seller has been asked to warrant or represent that its pre-bankruptcy agreements are enforceable. Seller does not believe that its pre-bankruptcy agreements are enforceable against it to the extent that such enforcement would violate the automatic stay or require payment to the non-debtor party to the contract or agreement in a manner that is contrary to the requirements of Bankruptcy Code or the handling and payment of pre-bankruptcy debts. Seller also believes that the efficacy or operation of certain defaults by it under its pre-bankruptcy contracts or agreements are suspended during the pendency of its Chapter 11 Case or until such time as the non-debtor party to the apposite contract or agreement has obtained relief from the automatic stay. Conversely, Seller does not believe that the pre-bankruptcy contracts or agreements between it and the non-debtor parties to such contracts or agreements are enforceable by Seller against the non-debtor party in all circumstances. For example, enforcement by Seller may be limited due to Seller's default under such contracts or agreements, and enforcement may also be limited by the non-debtor party's bankruptcy or insolvency, by reason of moratorium, or by reason of the unavailability of equitable remedies.

Matters listed anywhere in this Schedule II (including the Attachments hereto) shall be deemed disclosed with reference to all sections of this Schedule II. Any capitalized and undefined term used in this Schedule II shall have the same meaning assigned to such term in this Agreement.

\*\*\*\*\*

Excluded Assets: Certain Causes of Action,  
Insurance Proceeds and Claims  
(Section 2.2(h))

- Claims against lenders of Seller for lender liability
- Claims to recover bankruptcy recoveries (i.e., causes of action of proceeds thereof arising out of or relating to the assertion by Seller of any claims under Sections 544, 547, 548, 549, 550, 551 or 553(b) of the Bankruptcy Code)
- Claims against officers or directors of Seller and claims against insurance coverage available for such claims
- Claims against owners and members of Seller that arise as a result of their status as owners or members, and contract claims against such owners or members
- Claims against professionals who advised Seller against malpractice for errors or omissions
- Any claim of Seller against Oracle
- Any other claim or cause of action of Seller not specifically assigned to Buyer

\*\*\*\*\*

Required Governmental Authorizations  
(Section 9.3)

Certain filings will be required to be made with the Bankruptcy Court in connection with the transactions contemplated herein.

\*\*\*\*\*

Agreements, Contracts and Other Instruments  
Binding Upon Seller Requiring Consent  
(Section 9.8)

Seller will need to obtain the consent of its lenders in connection with the transactions contemplated herein.

\*\*\*\*\*

Exceptions to Intellectual Property Covenants  
(Section 9.11(b)(iii))

*Marks not in Use*

Schedule 2.1(b) contains certain registrations for marks that are no longer in use either in whole or in part and are subject to cancellation in whole or in part by third parties on the grounds of non-use.

\*\*\*\*\*

Exceptions Concerning Third Party  
Rights to Supply Products or Services  
(Section 9.12(d))

Seller has entered into numerous distribution agreements with distributors, in the United States and overseas, for the distribution of its products. These agreements were entered into in the ordinary course of Seller's business, and contain terms customary for such agreements.

\*\*\*\*\*

Summary of Warranties and Indemnities  
(Section 9.13)

Seller has entered into numerous food warranty agreements with its customers, most typically at the request of its customers. These agreements were entered into in the ordinary course of Seller's business, and contain terms customary for such agreements and consistent with industry standards. Most of these agreements require Seller to indemnify the customer in the event of a breach of warranty.

\*\*\*\*\*

Exceptions Concerning Material  
Contracts and Licenses  
(Section 9.19(b))

Reference is made to the General Disclosure made on the first page of this Schedule II.

\*\*\*\*\*

Product Liability  
(Section 9.20)

Seller sells approximately 1 billion cans of product per year from the Business as a whole. Seller receives several thousand remarks and complaints from consumers each year, ranging from comments about flavor to claims that a pit fragment or other foreign object caused tooth damage or other personal injury. The vast majority of these have been handled by Seller directly, usually through the issuance of product coupons. Historically, approximately 30 claims a year have been handled through the National Food Processors Association.

\*\*\*\*\*

Litigation; Other Claims  
(Section 9.21)

- Claims pending against certain current and former directors and officers (Pearson lawsuit)
- Claims threatened by creditors and growers in Chapter 11 proceedings
- Claim relating to sabbatical pay

\*\*\*\*\*

Insurance Policies and Fidelity Bonds  
(including Pending Claims)  
(Section 9.22)

A list of insurance coverage has been made available to Buyer and is hereby incorporated by this reference.