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RE

U.S. DEPARTMENT OF COMMERCE U.S. Patent and Trademark Office

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

100-083

1. Name of conveying party(ies): Welsh Farms, Inc. [] Individual(s) [] Association [] General Partnership [] Limited Partnership [x] Corporation-State [] Other State of New York Additional name(s) of conveying party(ies) attached? [] Yes [x] No

2. Name and address of receiving party(ies) Name: Parmalat USA Corp Internal Address: Street Address: 520 Main Avenue City: Wallington State: NJ Zip: 07057 [] Individual(s) citizenship [] Association [] General Partnership [] Limited Partnership [x] Corporation-State Delaware [] Other If assignee is not domiciled in the United States, a domestic representative designation is attached: [] Yes [] No (Designations must be a separate document from assignment) Additional name(s) & address(es) attached? [] Yes [] No

3. Nature of conveyance: [] Assignment [] Merger [] Security Agreement [] Change of Name [x] Other Asset Purchase Agreement Execution Date: July 15, 1998

4. Application number(s) or registration number(s): A. Trademark Application No.(s) B. Trademark Registration No.(s) 1,525,989 1,516,182; 1,487,666; 1,537,504; 1,548,475 Additional number(s) attached [] Yes [x] No

5. Name and address of party to whom correspondence concerning document should be mailed: Name: Krista Vink Venegas Internal Address: McDermott, Will & Emery LLP Street Address: 2049 Century Park East Suite 3400 City: Los Angeles State: CA Zip: 90067

6. Total number of applications and registrations involved: 5 7. Total fee (37 CFR 3.41) \$ 140 [] Enclosed [x] Authorized to be charged to deposit account 8. Deposit account number: 501946

DO NOT USE THIS SPACE

9. Signature. KRISTA VINK VENEGAS Name of Person Signing [Signature] Signature MARCH 26, 2004 Date

Total number of pages including cover sheet, attachments, and document: 67

03/31/2004 6TOM11 00000029 501946 1525989 01 FC:8521 40.00 BA 02 FC:8522 100.00 BA

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

TRADEMARK REEL: 002940 FRAME: 0287

PARMALAT USA CORP.
PARMALAT WELSH FARMS, INC.

ACQUISITION OF THE ASSETS
OF
WELSH FARMS, INC.

JULY 27, 1998

WELSH FARMS, INC. ("Seller")

and

PARMALAT USA CORP. ("Purchaser")

ASSET PURCHASE AGREEMENT

as of July 27, 1998

Glossary of Parties

| | |
|--------------------------------------|---------------------------|
| Welsh Farms Inc. | "Seller" or "Welsh Farms" |
| Parmalat USA Corp. | "Parent" |
| Parmalat Welsh Farms, Inc. | "Parmalat" |
| Pavia & Harcourt | "Escrow Agent" |
| Fleet Capital Corporation | "Fleet" |
| Pavia & Harcourt | "P&H" |
| Kalkines, Arky, Zall & Bernstein LLP | "KAZ&B" |

ASSET PURCHASE AGREEMENT

ASSET PURCHASE AGREEMENT, dated as of July 15, 1998, by and between PARMALAT USA CORP., a New York corporation ("Purchaser") and WELSH FARMS INC., a Delaware corporation ("Seller").

WHEREAS, Seller is engaged in the business of processing, distributing and marketing fresh milk, ice cream, and related food and beverage products.

WHEREAS, subject only to the limitations and exclusions contained in this Agreement and on the terms and conditions hereinafter set forth, Seller desires to sell and Purchaser desires to purchase the Business (as hereinafter defined), its operations and the assets of Seller used therein.

NOW THEREFORE, in consideration of the mutual covenants and promises contained herein and for other good and valuable consideration the receipt and adequacy of which are hereby acknowledged, the parties hereto hereby agree as follows:

ARTICLE I
EXHIBITS AND SCHEDULES

The Exhibits and Schedules hereto constitute an integral and substantive part of this Agreement.

ARTICLE II
DEFINITIONS

2.1 Certain Defined Terms. As used herein, the terms below shall have the following meanings:

"Adjustment Amount Escrow Agreement" shall have the meaning set forth in Section 7.2(a) hereof.

"Adjustment Date" shall have the meaning set forth in Section 8.4.

3.1. "Assets" shall have the meaning set forth in Section

"Authorizations" shall mean all franchises, licenses, permits, easements, rights, applications, filings, registrations and other authorizations which are in any manner necessary for Seller to conduct its the Business.

"Business" shall mean the business carried on by Seller consisting of processing, distributing and marketing fresh milk, ice cream, and related food and beverage products, but shall

not include the business of Seller carried on using the Excluded Assets.

"Business Day" means a day other than Saturday, Sunday and any other day on which commercial banks are authorized or required by law to close under the laws applicable to such banks in New York and in Parma, Italy.

"Books and Records" shall mean all technical, business, financial and accounting records, financial books and records of account, books, data, reports, files, lists, drawings, plans, logs, briefs, customer and supplier lists, deeds, certificates, contracts, surveys, title opinions or any other documentation and information in any form whatsoever (including written, printed, electronic or computer printout form) relating to the Business. Books and Records shall not include any such records, books, data, lists or other documents relating exclusively to the Excluded Assets.

"Closing Balance Sheet" shall have the meaning set forth in Section 8.1 hereof.

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

"Employees of Seller" shall mean any and all current employees of Seller.

"Encumbrance" shall mean any claim affecting title, lien, pledge, option, charge, security interest, mortgage, right-of-way, encumbrance or other similar right of any third party.

"Excluded Assets" shall have the meaning set forth in Section 3.1.2 hereof.

"Facilities" shall have the meaning set forth in Section 3.1.1(a).

"Financial Statements" shall mean (i) the Interim Balance Sheet, and the audited statements of income, retained earnings and changes in financial position of Seller for the year ended as of the Interim Balance Sheet Date, together with the notes thereto; (ii) Seller's unaudited balance sheet as at March 31, 1998, and the statement of income and retained earnings, and schedule of expenses for the three (3) months ended March 31, 1998; and (iii) the Pro Forma Balance Sheet; it being acknowledged that such financial statements as of March 31, 1998 have been compiled from information provided by management. All of said Financial Statements have been previously delivered to Purchaser and are attached hereto as part of Schedule 9.12.

"Fixtures and Equipment" shall have the meaning set forth in Section 3.1.1(b).

"Governmental Entity" shall mean (i) any multi-national, federal, provincial, state, municipal, local or other governmental or public department, court, commission, board, bureau, agency or instrumentality, domestic or foreign; (ii) any subdivision, agent, commission, board, or authority of any of the foregoing; and (iii) any quasi-governmental or private body exercising any regulatory, expropriation or taxing authority under or for the account of any of the foregoing.

"Income Taxes" shall mean taxes measured by or with reference to net income imposed by any federal, state, local or foreign governmental taxing authority, including additions to tax and penalties related to such taxes, and interest on such taxes and on such additions to tax and penalties.

"Indemnification Escrow Agreement" shall have the meaning set forth in Section 7.2(a) hereof.

"Interim Balance Sheet" shall mean the audited balance sheet of Seller as at December 31, 1997, together with the notes thereon, previously delivered to Purchaser and attached hereto as part of Schedule 9.12.

"Interim Balance Sheet Date" shall mean December 31, 1997.

"Inventory" or "Inventories" shall mean all inventories of Seller including (i) all finished goods, work in process, raw material, new and unused production, spare parts, and packing and shipping supplies (ii) all new and unused maintenance items; and (iii) all other materials and supplies on hand to be used or consumed in the production of products. Inventory or Inventories shall not include any inventories of Seller included in the Excluded Assets.

"Material" or "Materiality" shall mean any contract, obligation, commitment or other agreement or an effect on Seller in excess of \$75,000, or otherwise material to the Business of Seller taken as a whole.

"Notice" shall have the meaning set forth in Section 14.2 hereof.

"Permitted Encumbrances" shall mean (i) Encumbrances for current real or personal property taxes not yet due and payable, (ii) Encumbrances as set forth in First America Title Insurance Company of New York Policy Nos. 135NJ25794-1 through 4 and (iii) Encumbrances that are immaterial in character, amount,

and extent, and which do not detract from the value or interfere with the present or proposed use of the properties they affect.

"Pro Forma Balance Sheet" shall mean Seller's unaudited balance sheet, as of December 31, 1997, attached hereto as part of Schedule 9.12, setting forth the assets and liabilities of Seller, excluding, however, the Retained Liabilities and the Excluded Assets.

"Retained Liabilities" shall have the meaning set forth in Section 3.4 hereof.

"Taxes" shall mean any federal, state, local or foreign income, sales, use, transfer, payroll, personal property, occupancy or other tax, levy, impost, fee, imposition, assessment or similar charge, together with any related addition to tax, interest or penalty thereon.

"Transition Services Agreement" shall have the meaning set forth in Section 5.3.9 hereof.

ARTICLE III
PURCHASE AND SALE; CLOSING

3.1 Agreement to Sell. At the Closing hereunder (as defined in Section 3.4 hereof) and except as otherwise specifically provided in this Section 3.1, Seller shall grant, sell, convey, assign, transfer and deliver to Purchaser, upon and subject to the terms and conditions of this Agreement, all right, title and interest of Seller in and to (a) the Business as a going concern, (b) the name "Welsh Farms" and all goodwill associated therewith, and (c) all of the assets, properties and rights of Seller constituting the Business or used therein, of every kind and description, real, personal and mixed, tangible and intangible, wherever situated (which Business, name, goodwill, assets, properties and rights are herein sometimes called the "Assets"), free and clear of all Encumbrances, except Permitted Encumbrances.

3.1.1 Included Assets. The Assets shall include without limitation all of Seller's right, title and interest in and to the following assets, properties and rights of Seller used directly or indirectly in the conduct of, or generated by or constituting, the Business, and listed on Schedule 3.1.1, except as otherwise expressly set forth in Section 3.1.2:

(a) all the land, structures, improvements and all water lines, rights of way, uses, licenses, easements, hereditaments, tenements and appurtenances belonging or pertaining thereto the metes and bounds description of which is listed on Schedule 3.1.1(a) (the "Facilities");

(b) all machinery, equipment, tools, vehicles, telephone systems, computers, furniture, fixtures, furnishings, leasehold improvements, goods, and other tangible personal property, located in, at or upon the Facilities or used in the Business as of the Interim Balance Sheet Date, plus or minus all additions, replacements or deletions since the Interim Balance Sheet Date in the ordinary course of Seller's Business ("Fixtures and Equipment");

(c) all cash or cash equivalents in transit, in hand or in bank accounts;

(d) all prepaid items, deposits, unbilled costs and fees, and accounts, notes and other receivables;

(e) all Inventory, backlog, and office and other similar supplies;

(f) to the extent permitted by applicable law, all rights under any written or oral contract, agreement, lease, purchase order, bid, quotation, proposal, plan, instrument, registration, license, certificate of occupancy, other permit or approval of any nature, or other document, commitment, arrangement, undertaking, practice or authorization;

(g) all rights under any patent, design registration, trademark, service mark, tradename or copyright, whether registered or unregistered, and any applications therefor;

(h) all technologies, methods, formulations, data bases, trade secrets, know-how, drawings, designs, patterns, inventions and other intellectual property used in the Business or under development;

(i) all computer software (including documentation and related object and source codes);

(j) all rights or choses in action arising out of occurrences before or after the Closing, including without limitation, all rights under express or implied warranties relating to the Assets;

(k) all assets and properties reflected on the Closing Balance Sheet; and

(l) all information, manuals, catalogs, files, books and records, data, plans, contracts and recorded knowledge, including customer lists, supplier lists and credit information.

3.1.2 Excluded Assets. Notwithstanding the foregoing, the Assets shall not include any of the following (the "Excluded Assets"):

(a) the corporate seals, certificates of incorporation, minute books, stock books, tax returns, books of account or other records having to do solely with the corporate organization of Seller;

(b) the rights which accrue or will accrue to Seller under this Agreement;

(c) the rights to any of Seller's claims for any federal, state, local or foreign tax refunds;

(d) the assets, properties and rights located at Seller's retail stores listed on Schedule 3.1.2 (the "Retail Stores") which assets, properties and rights relate exclusively to such Retail Stores, consistent solely with food store activity, provided, however, that no Assets are currently located at such Retail Stores nor shall Seller, prior to Closing, move any Assets to such Retail Stores;

(e) Seller's bank accounts;

(f) claims in respect of environmental liabilities, including claims against Globe Petroleum, Inc. relating to the Red Bank facility;

(g) all of Seller's insurance policies and insurance claims in respect of the Retained Liabilities; and

(h) the other assets, properties or rights set forth on Schedule 3.1.2.

3.2 Agreement to Purchase. At the Closing hereunder, Purchaser shall, in exchange for the Purchase Price (as defined in Section 7.1), (i) purchase the Assets from Seller, upon and subject to the terms and conditions of this Agreement and in reliance on the representations, warranties and covenants of Seller contained herein, and (ii) assume at the Closing and agree to pay, discharge or perform, as appropriate, certain liabilities and obligations of Seller, but only to the extent and as provided in Section 3.3 of this Agreement. Except as specifically provided in Section 3.3 hereof, Purchaser shall not assume or be responsible for any liabilities or obligations of the Business or Seller.

3.3 Assumption of Liabilities. At the Closing hereunder and except as otherwise specifically provided in this Section 3.3, Purchaser shall assume and agree to pay, discharge or perform, as appropriate, the following liabilities and obligations of Seller (the "Assumed Liabilities"):

(a) all liabilities of Seller in respect of the Business which are classified on the Interim Balance Sheet Date as Current Liabilities (excluding however, the amount reflected in the

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Financial Statements for the Current Portion of Long Term Debt, which was stated as \$1,160,925 on the Pro Forma Balance Sheet), but only if and to the extent that the same are accrued or reserved for on the Interim Balance Sheet and remain unpaid and undischarged on the Closing Date;

(b) all liabilities of Seller arising in the regular and ordinary course of the Business between the Interim Balance Sheet Date and the Closing Date, but only if and to the extent that such liabilities (i) would be classified on the Closing Balance Sheet as Current Liabilities in accordance with Seller's past practice (excluding however, the Current Portion of Long Term Debt); and (ii) the same remain unpaid and undischarged on the Closing Date and are accrued or reserved for on the Closing Balance Sheet; and

(c) all liabilities and obligations of Seller in respect of the agreements, contracts, commitments and leases which are specifically identified in any list called for by Schedule 9.9, or are ordinary course contracts and are not required to be listed, except that Purchaser shall not assume or agree to pay, discharge or perform any:

(i) liabilities or obligations of the aforesaid character existing as of the Interim Balance Sheet Date, and which under generally accepted accounting principles should have been accrued or reserved for on a balance sheet or the notes thereto as a liability or obligation, if and to the extent that the same were not accrued or reserved for on the Interim Balance Sheet; or

(ii) liabilities or obligations arising out of any breach by Seller of any provision of any agreement, contract, commitment or lease referred to in this paragraph (c), including but not limited to liabilities or obligations arising out of Seller's failure to perform any agreement, contract, commitment or lease in accordance with its terms prior to the Closing, provided that Purchaser shall assume any liability arising out of the assignment to Purchaser of such agreements, contracts, commitments or leases in violation of the terms thereof to the extent that the agreement, contract, commitment or lease is listed on Schedule 9.9 hereof, so long as Purchaser is receiving the benefit thereof.

(d) Seller's liabilities incurred in the ordinary course in respect of Seller's self-insured health benefits plan and Seller's workers compensation-related liabilities;

(e) Seller's obligations to its employees in respect of vacation and sick time accrued during 1998 and not utilized as of the Closing Date under the plans described in Section 9.21(a) hereof;

(f) all liabilities of Seller in respect of litigation and proceedings to collect those accounts receivable referenced on Schedule 9.14 hereto, provided, however, that (i) such account receivables shall not have been reserved for in the calculation of Net Working Capital Adjustment (as defined in Section 7.1 hereof) and (ii) such liabilities shall not exceed, in the aggregate Ten Thousand Dollars (\$10,000.00); and

(g) all liabilities of Seller relating to environmental remediation at the Facilities, to the extent that such costs exceed the amount available therefor under the Indemnification Escrow (as defined in Section 7.2(a) hereof).

3.4 Retained Liabilities. All liabilities of Seller not included specifically in the Assumed Liabilities described in Section 3.3 hereof shall be retained by Seller (the "Retained Liabilities"), and Seller shall be solely, absolutely and irrevocably responsible for the same. In no event, however, and not by way of limitation, shall Purchaser assume or incur any liability or obligation under Section 3.3 above or otherwise in respect of any of the following:

(a) any product liability or similar claim for injury to person or property, regardless of when made or asserted, which arises out of or is based upon any express or implied representation, warranty, agreement or guarantee made by Seller, or alleged to have been made by Seller, or which is imposed or asserted to be imposed by operation of law, in connection with any service performed or product sold or leased by or on behalf of Seller on or prior to the Closing, including without limitation, any claim relating to any product delivered in connection with the performance of such service and any claim seeking recovery for consequential damage, lost revenue or income;

(b) any federal, state or local income or other tax (i) payable with respect to the business, assets, properties or operations of Seller or any member of any affiliated group of which it is a member for any period prior to the Closing Date, or (ii) incident to or arising as a consequence of the negotiation or consummation by Seller, or any member of any affiliated group of which it is a member, of this Agreement and the transactions contemplated hereby;

(c) any liability or obligation under or in connection with the Excluded Assets, as set forth in Section 3.1.2;

(d) except as expressly set forth in Sections 3.3(d) and (e) hereof, and except such as may arise from a breach by Purchaser of its covenants in Section 12.4 hereof, any liability or obligation of Seller arising prior to or as a result of the Closing to any employees, agents or independent contractors of

Seller, whether or not employed by Purchaser after the Closing, or under any benefit arrangement with respect thereto; or

(e) any liability or obligation of Seller arising or incurred in connection with the negotiation, preparation and execution of this Agreement and the transactions contemplated hereby, including without limitation, fees and expenses of Seller's counsel, accountants and other experts.

3.5 Closing. Subject to the performance, satisfaction or waiver by the relevant party of the covenants and/or conditions of Closing set forth in Articles IV, V and VI hereof, the closing (the "Closing") of the transactions contemplated herein shall take place on July 27, 1998, but effective for all purposes as of July 25, 1998, or on such other date on or prior to August 31, 1998 (subject to the last paragraph of Section 3.8(c) hereof), as Purchaser shall designate with the consent of Seller, such consent not to be unreasonably withheld, at 10:00 a.m., local time, at the offices of Pavia e Ansaldo, 600 Madison Avenue, New York, New York. The date of the Closing is sometimes herein referred to as the "Closing Date." The parties acknowledge that the Closing will be effective as of midnight on a Saturday, but that the financial transactions required to be completed at the Closing will take place at the opening of business on a Monday, and that the effectiveness of the Closing is subject to the completion of such financial transactions.

3.6 Change in Name. On the Closing Date, Seller shall deliver to Purchaser all such executed documents as may be required to change Seller's name on that date to another name bearing no similarity to "Welsh Farms Inc.", including but not limited to a name change amendment with the Secretary of State of Delaware and an appropriate name change notice for each state where Seller is qualified to do business. Seller hereby appoints Purchaser as its attorney-in-fact to file all such documents on or after the Closing Date. Notwithstanding the provisions of this Section 3.6, Seller shall retain rights in the name "Welsh Farms" to the extent and in accordance with the terms and conditions of the Supply and License Agreement to be executed by the parties hereto, substantially in the form of Exhibit 5.3A.

3.7 Third Party Consents. To the extent that Seller's rights under any agreement, contract, commitment, lease, Authorization or other Asset to be assigned to Purchaser hereunder may not be assigned without the consent of another person which has not been obtained, this Agreement shall not constitute an agreement to assign the same if an attempted assignment would constitute a breach thereof or be unlawful, and Seller, after the Closing and at Purchaser's expense, shall use its reasonable commercial efforts to obtain any such required consent(s) as promptly as possible. To the extent that after the Closing Date any such consent has not been obtained or if any attempted assignment would be ineffective

or would impair Purchaser's rights under the Asset in question so that Purchaser would not in effect acquire the benefit of all such rights, the risks of any of the foregoing shall be borne by Purchaser, it being acknowledged and agreed by the parties that (i) Purchaser has requested that Seller not seek any such consent prior to the Closing except for Authorizations listed in Section 5.3.7 hereof, (ii) Purchaser shall be solely and exclusively responsible for all agreements, contracts, commitments, leases, Authorizations and other assets the benefit of which accrues to Purchaser after the Closing notwithstanding any denial of consent of assignment of the other party thereto, and (iii) Seller shall remain solely and exclusively responsible for, but shall have no further obligation to Purchaser with respect to any benefits which would have been received under, all other agreements, contracts, commitments, leases, Authorizations or other Assets the consent to assignment of which was denied by the other party thereto.

3.8 Risk of Loss. If, prior to the Closing Date, all or any material part of the Facilities, Fixtures and Equipment or Assets of Seller (i) are destroyed or damaged by fire or any other casualty or shall be appropriated, expropriated, seized or claimed by any private party or any Governmental Entity or other lawful authority, or (ii) cannot be operated by order of any judicial authority or Governmental Entity or other lawful authority, then, notwithstanding any investigation made by or on behalf of each of Seller and Purchaser or any disclosure made by Seller, Purchaser shall have the option, exercisable by written Notice to Seller within four (4) Business Days (x) after Purchaser has received written Notice from Seller of such destruction, damage, expropriation or seizure or (y) after Purchaser has become aware of such Material adverse change:

(a) of reducing the Purchase Price by an amount equal to the cost of repair, or, if destroyed or damaged beyond repair, by an amount equal to the mutually agreed replacement cost of the assets forming part of the Assets damaged or destroyed and to complete the purchase, unless the value of such destruction or damage is less than \$750,000 and Seller assigns insurance recoveries in such amount to Purchaser in respect of the casualty (including business interruption insurance proceeds); or

(b) if the value of such destruction or damage is less than or equal to \$750,000, of requiring Seller to repair such damage within ninety (90) days of Seller's Notice thereof or Purchaser's having become aware thereof, as the case may be, at Seller's sole cost and expense, to a condition acceptable to Purchaser in Purchaser's sole discretion; in which event the Closing shall be postponed by a period equal to the period required for such repair; or

(c) of terminating this Agreement and not completing the purchase, if the value of such destruction or damage

is greater than \$750,000. If Purchaser terminates this Agreement pursuant to this Section 3.8(c), then all of its obligations, except for the confidentiality obligations described in Section 4.2.3 hereof, shall terminate forthwith upon Purchaser giving Notice as required herein; provided, however, that if, prior to the execution of this Agreement, Seller had knowledge of the destruction, damage, expropriation or seizure which was the subject of Seller's Notice pursuant to this Section 3.8, and had failed to disclose same to Purchaser as required by this Agreement, then Purchaser shall have the right to be indemnified by Seller for any damage, liability, cost or expense (including counsels' fees and out-of-pocket expenses) incurred in connection with the negotiation of the transactions contemplated by this Agreement, as well as the preparation and execution of this Agreement.

Notwithstanding the foregoing, if the value of such damage or destruction is greater than Seven Hundred Fifty Thousand Dollars (\$750,000.00), Seller shall have the right, by written notice given to Purchaser within four (4) Business Days after such occurrence, to toll the Closing Date for up to four (4) months to allow Seller to repair such damage or destruction. In such event, upon the completion of such repair to Purchaser's reasonable satisfaction, and subject to the performance, satisfaction or waiver by the relevant party of the covenants and/or conditions of Closing set forth in Articles IV, V and VI hereto, Purchaser and Seller shall proceed to Closing and the dates and figures in Section 3.5, Section 7.1(d), Section 7.2(a)(i), Section 9.33 and Section 14.13(a)(ii) shall be amended accordingly.

3.9 Attorney-Client Privilege. Notwithstanding any other provision of this Agreement, all rights and documents with respect to the attorney-client relationship between Seller and its legal counsel ("Counsel"), whether in-house or outside, in connection with the negotiation, execution and consummation of this Agreement and the transactions contemplated hereby, or exclusively in connection with the operations of the Business prior to the Closing consisting of the Excluded Assets and the Retained Liabilities (the "Attorney-Client Relationship"), shall remain the sole property of the Seller. In no event, including without limitation any future litigation between the parties, or by any third party against any of the parties, shall Purchaser (i) seek access to or disclosure of any privileged or otherwise protected communication, past or future, in connection with the Attorney-Client Relationship, or (ii) seek to assert or waive any such privilege or other protection. In any event of any dispute between Seller and Purchaser, or any successor of either of them, it is understood and agreed that Counsel may act as counsel for Seller, and neither Purchaser nor any successor thereof shall seek to disqualify such counsel on the grounds of such Counsel's prior representation of Seller.

ARTICLE IV
PRECLOSING COVENANTS OF THE PARTIES

4.1 Conduct of Business prior to Closing

4.1.1 During the period between the close of business on the date hereof and the time of Closing on the Closing Date (the "Interim Period"), Seller shall conduct the business in the ordinary course thereof consistent with Seller's past practice, including without limitation keeping in full force and effect the full coverage of all of the insurance policies of Seller in force as at the date hereof, subject to the provisions of Section 4.1.2 hereof, and except as set out in Schedule 4.1.1 hereto.

4.1.2 Without limiting the generality of Section 4.1.1 hereof, Seller shall:

(i) maintain levels of Inventories sufficient to carry on the Business in the ordinary course consistent with Seller's past practice;

(ii) use reasonable commercial efforts to keep available to Seller the services of the present employees and agents of Seller and to maintain the relations and goodwill with the suppliers, customers, distributors and any others having business relations with Seller;

(iii) use reasonable commercial efforts consistent with past practice to preserve the possession and control of its properties and assets, excluding sales of Inventory in the ordinary course and dispositions of equipment and assets not used or useful in the Business or which are replaced in the ordinary course with equipment or assets of like tenor and the same or longer useful lives, and to preserve the confidentiality of any confidential or proprietary information of the Business;

(iv) use reasonable commercial efforts to conduct the Business in such a manner that on the Closing Date the representations and warranties of Seller contained in this Agreement shall be true, correct and complete as if such representations and warranties were made on and as of such dates;

(v) promptly, and in any event within ten (10) days of Seller having knowledge of the existence of:

(a) any notice from, proceeding before or order of any judicial authority, or any Governmental Entity or any other relevant lawful authority requiring Seller to comply with or take action under any applicable law and/or regulation in any applicable jurisdiction; or

(b) any state of affairs arising outside the ordinary course of business which could reasonably be expected to give rise to future liabilities and costs in the amount of \$25,000 or more or the imposition of a fine in an amount in lawful currency equal to \$25,000 or more, which in each case would constitute an Assumed Liability, or the shutting down of any Facility owned by Seller for a period of twenty-four hours or more,

provide written Notice of the foregoing to Purchaser, including details of any actions taken in response;

(vi) provide written Notice to Purchaser of any Material occurrences relating to:

(a) the receipt of any notice or claim alleging that Seller (i) has violated any environmental law, (ii) is or may be liable for any release of any hazardous substance, or (iii) is under investigation for any such release;

(b) the receipt of any notice of a condition concerning the owned properties or leased properties that might reasonably result in a notice of violation of any environmental law;

(c) the receipt of any notice that all or any portion of the owned properties or leased properties is subject to an order or an encumbrance under or pursuant to any environmental law; or

(d) any changes or proposed changes to any existing environmental law or the enactment of any new environmental law that could have a material adverse effect on Seller;

(vii) not incur any liabilities outside the ordinary course of business in accordance with past practice in excess of \$25,000 if the same would constitute an Assumed Liability; and

(viii) not enter into any contract with a term or maturity in excess of three months without first obtaining Purchaser's consent, which consent shall not be unreasonably withheld.

4.2 Access for Due Diligence

4.2.1 Seller (i) shall permit Purchaser and its employees, agents, counsel, accountants and other representatives, between the date hereof and the Closing Date, to have full access (A) to the premises of Seller, including the owned properties and the leased properties, (B) to all the Assets and to the Business and, in particular to any other information, including accounting

records, corporate records and tax records and returns whether retained by Seller or otherwise, and (C) to the senior personnel of Seller; and (ii) shall furnish to Purchaser or its employees, agents, counsel, accountants, or other representatives such financial and operating data and other information with respect to the Assets and the Business as Purchaser or they shall from time to time request, and shall provide full cooperation to Purchaser.

4.2.2 No investigations made by or on behalf of Purchaser, whether under this Section 4.2.2 or any other provision of this Agreement or any ancillary agreement, shall have the effect of waiving, diminishing the scope of or otherwise affecting any representation or warranty made in this Agreement or any ancillary agreement. It is understood that Purchaser will exercise its rights of access to the greatest extent possible off of the premises of Seller, and that any exercise of the right of access on the premises of Seller will not disrupt the business of Seller, will only take place on reasonable notice, and will be conducted with reasonable discretion and without revealing the purpose of the examination to Seller's staff. It is further understood and agreed that upon execution of this Agreement, Seller shall permit Purchaser to examine all pricing data relative to Seller's Business.

4.2.3 Until Closing and in the event of termination of this Agreement without Closing, Purchaser will keep confidential any information obtained from Seller or its agents and representatives, unless such information (i) is or becomes generally available to the public other than as a result of a disclosure in violation of this Agreement, (ii) becomes available to Purchaser on a non-confidential basis from a source other than Seller or its representatives; or (iii) was known to Purchaser on a non-confidential basis before its disclosure to Purchaser by Seller or its representatives. If this Agreement is terminated, promptly after such termination and upon request by Seller, Purchaser will return or cause to be returned or destroyed all documents, work papers and other written material (including all copies thereof) obtained from Seller or its agents and representatives in connection with this Agreement and not theretofore made public. The obligation of Purchaser under this Section 4.2.3 shall survive any termination of this Agreement without limitation as to time.

4.3 Actions to Satisfy Pre-Closing Covenants, Closing Covenants and Closing Conditions. Each of the parties hereby agrees to take all such actions as are within its power to control and to use reasonable commercial efforts to cause other actions to be taken which are not within its power to control, so as to ensure compliance with all of the pre-Closing covenants set forth in this Article IV, the Closing covenants set forth in Article V hereof and all of the conditions to Closing set forth in Article VI hereof.

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4.4 Request for Consents. Seller will use reasonable commercial efforts to obtain, after the Closing and at Purchaser's sole expense, all consents, if any, which are required under any agreement to which Seller is a party as set forth in Schedule 9.9 hereto. Such consents shall be upon such terms as are acceptable to Purchaser, acting reasonably. Purchaser will co-operate in obtaining such Consents.

4.5. Filings and Authorizations. Seller and, to the extent required, Seller and Purchaser, as promptly as practicable after the execution hereof, (i) will make, or cause to be made, all such filings and submissions under all laws applicable to it, as may be required for it to consummate the purchase and sale of the Assets in accordance with the terms of this Agreement, (ii) will use all reasonable commercial efforts to obtain, or cause to be obtained, all authorizations, approvals, consents and waivers described in Section 5.3.7 hereof; and (iii) will use all reasonable efforts to take, or cause to be taken, all other actions necessary, proper or advisable in order for it to fulfil its obligations hereunder. Seller and, to the extent required, Seller and Purchaser, will coordinate and cooperate with one another in exchanging such information and supplying such assistance as may be reasonably requested by each in connection with the foregoing. Each party shall bear the expense of its own compliance with this Section 4.5, except that Purchaser shall pay the filing fees associated with the filing pursuant to the HSR Act.

4.6 Notice of Untrue Representation or Warranty. Seller shall promptly notify Purchaser, and Purchaser shall promptly notify Seller, upon any representation or warranty made by Seller contained in this Agreement or any ancillary agreement becoming untrue or incorrect during the Interim Period and for the purposes of this Article IV each representation and warranty shall be deemed to be given at and as of all times during the Interim Period.

4.7 Exclusive Dealing. From April 17, 1998 until the Closing Date or termination of this Agreement, Seller shall not have taken nor shall it take any action, directly or indirectly, to encourage, initiate or engage in discussions or negotiations with, or provide any information to, any Person, other than Purchaser, concerning any purchase of any shares in the capital of Seller, the assets, a controlling interest in Seller or (except after giving effect to the transaction contemplated hereby) any merger, sale of substantial assets or similar transaction involving Seller, the Business or the Assets.

ARTICLE V
CLOSING COVENANTS

5.1 Press Release. Upon the Closing, Purchaser shall issue or cause the publication of a press release or other announcement or public notice or disclosure with respect to the

transactions contemplated hereby. Purchaser shall afford Seller a reasonable right of consultation (but no right of approval) with respect to such press release or other disclosure, and Seller acknowledges that Purchaser may have disclosure obligations as described in Section 14.10 hereof, and shall not interfere with such obligations.

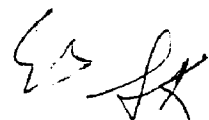
5.2 Opinions of Counsel. Seller shall arrange for Purchaser to receive a legal opinion, dated as of the Closing Date, from Kalkines, Arky, Zall & Bernstein LLP, counsel to Seller, such opinion to be substantially in the form of Exhibit 5.2A hereto. Purchaser shall arrange for Seller to receive a legal opinion, dated as of the Closing Date, from Pavia & Harcourt, counsel to Purchaser, such opinion to be substantially in the form of Exhibit 5.2B hereto.

5.3 Deliveries to Purchaser. At the Closing, Seller shall deliver, or shall cause to be delivered, the following documents to Purchaser:

5.3.1(a) such bills of sale with covenants of warranty, assignments, affidavits, endorsements, and other good and sufficient instruments and documents of conveyance and transfer, including bargain and sale deeds with covenants, in form reasonably satisfactory to Purchaser and its counsel, as shall be necessary and effective to transfer and assign to, and vest in, Purchaser all of Seller's right, title and interest in and to the Assets of record, including without limitation, (A) good and valid title in and to all of the Assets owned by Seller, (B) good and valid leasehold interests in and to all of the Assets leased by Seller as lessee, and (C) all of Seller's rights under all agreements, contracts, commitments, leases, plans, bids, quotations, proposals, instruments and other documents included in the Assets to which Seller is a party or by which it has rights on the Closing Date; and

(b) all of the agreements, contracts, commitments, leases, plans, bids, quotations, proposals, instruments, computer programs and software, data bases whether in the form of computer tapes or otherwise, related object and source codes, manuals and guidebooks, price books and price lists, customer and subscriber lists, supplier lists, sales records, files (including, without limitation, personnel files), correspondences, legal opinions, rulings issued by any Governmental Entities, and other documents, books, records, papers, files, office supplies and data belonging to Seller which are part of the Assets;

and simultaneously with such delivery, all such steps will be taken as may be required to put Purchaser in actual possession and operating control of the Assets.



5.3.2 a copy of the resolution of the competent corporate body of Seller, certified by the Secretary of Seller, approving (i) the transactions provided for herein; and (ii) the execution of any agreement and related document required to complete said transactions;

5.3.3 an executed Adjustment Amount Escrow Agreement, substantially in the form of Exhibit 7.2A hereto, and an executed Indemnification Escrow Agreement, substantially in the form of Exhibit 7.2B hereto;

5.3.4 an executed Supply and License Agreement, substantially in the form of Exhibit 5.3A hereto;

5.3.5 a certificate of Seller signed on behalf of Seller by an officer of Seller, stating that what is represented and warranted pursuant to Article IX hereof is and shall be true and correct as at the date hereof and the Closing Date;

5.3.6 a legal opinion of Kalkines, Arky, Zall & Bernstein LLP, counsel to Seller, substantially in the form of Exhibit 5.2A;

5.3.7 with respect to the Real Property: estoppel certificates executed by Seller as tenant with respect to leased property listed on Schedule 9.9 hereto included in the Assets, in form and substance satisfactory to Purchaser; a certificate of occupancy for the Facility in Elizabeth, New Jersey, a temporary certificate of occupancy for the Facility in Neptune, New Jersey, and a temporary certificate of occupancy for the Facility in West Caldwell, New Jersey (or evidence satisfactory to the Purchaser that no such certificate of occupancy is required); and municipal zoning letters indicating that the current use of the Real Property and the improvements located thereon is in compliance with all local zoning ordinances;

5.3.8 an executed Trademark Assignment Agreement, substantially in the form of Exhibit 5.3B hereto, to be filed with the United States Patent and Trademark Office;

5.3.9 an executed Transition Services Agreement, substantially in the form of Exhibit 5.3C hereto; and

5.3.10 such certificates of Seller signed on behalf of Seller by an officer of Seller as may be reasonably requested by and satisfactory to Purchaser and its counsel.

5.4 Deliveries by Purchaser. At the Closing, Purchaser shall deliver, or shall cause to be delivered, the following documents to Seller:

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5.4.1 a copy of the minutes of the Board of Directors of Purchaser, certified by the Secretary of Purchaser, approving the transactions contemplated herein;

5.4.2 a legal opinion of Pavia & Harcourt, counsel to Purchaser, substantially in the form of Exhibit 5.2B hereto;

5.4.3 an executed Adjustment Amount Escrow Agreement, substantially in the form of Exhibit 7.2A hereto, and an executed Indemnification Escrow Agreement, substantially in the form of Exhibit 7.2B hereto;

5.4.4 an executed Supply and License Agreement, substantially in the form of Exhibit 5.3A hereto;

5.4.6 an executed Transition Services Agreement, substantially in the form of Exhibit 5.3C hereto; and

5.4.6 such certificates of Purchaser signed on behalf of Purchaser by an officer of Purchaser as may be reasonably requested by and satisfactory to Seller and its counsel; and

5.4.7 an instrument of assignment and assumption whereby Purchaser will assume and agree to pay, discharge or perform, as appropriate, Seller's liabilities and obligations to the extent and as provided under Section 3.3 hereof in form reasonably satisfactory to Seller and its counsel.

ARTICLE VI
CONDITIONS PRECEDENT

6.1 Conditions Precedent to the Parties' Obligations. Each and every obligation of the Parties under this Agreement shall be subject to the satisfaction on or prior to the Closing Date of the following conditions precedent;

6.1.1 Approvals, Consents and Filing. The approvals, consents and filings with any governmental, judicial or regulatory authority set forth on Schedule 6.1.1 hereto in respect of the purchase and sale of the Assets contemplated hereby shall have been obtained.

6.1.2 Waiting Periods. All applicable waiting periods under any applicable law or regulation in any applicable jurisdiction imposing waiting periods shall have expired or been terminated, including, without limitation, the expiration or early termination of the waiting period under the HSR Act.

6.1.3 Consummation of the Transaction. No preliminary or permanent injunction, restraining order, cease trading order or other order of any court, regulatory body or agency in Italy or other United States or any other applicable

jurisdiction which prevents the consummation of the transactions contemplated by this Agreement shall have been issued and remain in effect and no action or proceeding to obtain such an order shall be pending or threatened.

6.2 Conditions for the Benefit of Purchaser. The purchase and sale of the Assets is subject to the following conditions to be fulfilled or performed at or prior to the Closing Date, which conditions are for the exclusive benefit of Purchaser and may be waived in whole or in part by Purchaser in its sole discretion:

6.2.1 Truth of Representations and Warranties of Seller. The representations and warranties of Seller contained in Article IX of this Agreement or in any ancillary agreement shall have been and shall be true and correct as of the Closing Date, and Seller shall update all Schedules required to be delivered pursuant to Article IX hereof, to the extent necessary to make the statements and disclosures contained therein true, correct and complete as of the Closing Date.

6.2.2 Performance of Covenants. Seller shall have duly performed any and all covenants set forth hereunder and to be executed on or prior to Closing.

6.2.3 Deliveries to Purchaser. Purchaser shall have duly received all of the deliveries set forth in Section 5.3 hereof.

6.2.4 Opinions of counsel. Purchaser shall have received the opinion of counsel set forth in Section 5.2 hereof.

6.2.5 Necessary Steps. Purchaser shall have received evidence that all necessary steps and proceedings to be taken by Seller hereunder as approved by counsel for Purchaser to permit consummation of the transactions contemplated herein have been taken, including the obtaining of any consent required to be obtained by Seller hereunder prior to Closing, the absence of which would materially adversely affect the conduct of the Business by Purchaser after the Closing.

6.2.6 Absence of Tax Liabilities. Purchaser shall have received evidence that at the Closing Date there are no arrears or liabilities for taxes (including taxes on income), rates, assessments or other charges that will constitute Assumed Liabilities or that will adversely affect the Assets not shown as accruals or allowances on the Financial Statements, except taxes, rates, assessments or other charges accruing in the ordinary course of business since the date of the Financial Statements.

6.2.7 Proceedings. All proceedings to be taken by Seller in connection with the transactions contemplated by this

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Agreement and any ancillary agreement shall be reasonably satisfactory in form and substance to Purchaser and Purchaser shall have received copies of all such instruments and other evidence as it may reasonably request in order to establish the consummation of such transactions and the taking of all proceedings in connection therewith.

6.2.8 Change in Law. At the Closing Date, no law, proposed law, any change in any law, or the interpretation or enforcement of any law shall have been introduced, enacted or announced, the effect of which will be to prevent (i) the completion of the transactions contemplated in this Agreement; or (ii) Purchaser from owning or operating the Business after Closing on substantially the same basis as heretofore operated or would increase any related cost to Purchaser or Seller.

6.2.9 Title Insurance. First America Title Insurance Company of New York shall be irrevocably committed to insure Purchaser's title to the Real Property, subject only to Permitted Encumbrances.

6.2.10 Consequences of Termination. If any condition, obligation or covenant of Seller to be performed at or prior to the Closing Date shall not have been fulfilled or performed by such time and Purchaser shall have terminated this Agreement in accordance with the terms hereof, Purchaser shall be released from all obligations hereunder except the confidentiality obligation set forth in Section 4.2.3. Seller shall only be released from its obligations hereunder if the condition or conditions for the non-performance of which Purchaser has terminated this Agreement does not constitute a breach of Seller's obligation hereunder. Notwithstanding the foregoing, Purchaser shall be entitled to waive compliance with any of such conditions, obligations or covenants in whole or in part if it sees fit to do so without prejudice to any of its rights of termination in the event of non-performance of any other condition, obligation, or covenant in whole or in part.

6.3 Conditions for the Benefit of Seller. The purchase and sale of the Assets is subject to the following conditions to be fulfilled or performed at or prior to the Closing Date, which conditions are for the exclusive benefit of Seller and may be waived in whole or in part by Seller in its sole discretion:

6.3.1 Truth of Representations and Warranties of Purchaser. The representations and warranties of Purchaser contained in Article X of this Agreement or in any ancillary agreement shall be true and correct as of the Closing Date.

6.3.2 Deliveries. Purchaser shall have delivered or caused to be delivered to Seller copies of the resolution set forth in Section 5.4.1 hereof.

6.3.3. Purchase Price. The Purchase Price shall be paid in accordance with Article VII.

6.3.4. Fleet Capital Corporation Collateral. Purchaser shall post \$293,7000.00 in cash as collateral to secure repayment of certain letters of credit and/or guarantees made by Fleet Capital Corporation in support of certain state-required bonds.

6.3.5 Insurance. Purchaser shall have caused Seller to be listed as an additional insured under Purchaser's product liability insurance policy, provided, however, that any costs associated with the same shall be borne solely by Seller.

ARTICLE VII

PURCHASE PRICE; TERMS OF PAYMENT; ESCROW

7.1 The Purchase Price. The purchase price hereunder (the "Purchase Price") shall be an amount equal to:

(a) Thirty-Four Million (\$34,000,000.00) Dollars;
plus

(b) Two Hundred Eighty-One Thousand Dollars (\$281,000.00), which represents the current portion of certain capital leases of the Company as shown on the Pro Forma Balance Sheet, which capital leases are to be paid off by Purchaser in full pursuant to Section 7.1(d) below; minus

(c) One Million Four Hundred Six Thousand Three Hundred Fourteen Dollars (\$1,406,314.000) which represents the present value, calculated using a discount rate of six percent (6.0%), of the remaining payments due under those capital equipment lease agreements listed on Schedule 9.9(c) hereto and designated as "Payoff/Escrow" (the "Assumed Capital Leases"), the periodic payments under which Assumed Capital Leases Purchaser shall make for the remainder of the respective terms thereof; minus

(d) One Million Two Hundred Fifty-Seven Thousand Three Hundred Fourteen Dollars (\$1,257,314.00), which represents the approximate pay-off amount of the other capital leases of the Company, listed on Schedule 9.9(c) hereto and designated as "Payoff" (the "Pay-Off Leases"), which capital leases shall be paid off in full by Purchaser within five (5) business days following the Closing (it being acknowledged that the parties shall recalculate such figure on a basis consistent with that reflected in Schedule 9.9(c) to the extent that the Closing Date occurs on a Monday after July 27, 1998); plus or minus

(e) the amount (the "Adjustment Amount"), if any, by which the Net Working Capital (hereinafter defined) as reflected on the Closing Balance Sheet differs from the Net Working Capital

on the Pro Forma Balance Sheet; provided, however, that the Adjustment Amount shall be deemed to be zero if the Net Working Capital reflected on the Closing Balance Sheet is within ten (10%) per cent, plus or minus, of the Net Working Capital reflected on the Interim Balance Sheet.

For the purposes of this Asset Purchase Agreement, the term "Net Working Capital" of Seller as reflected on a Balance Sheet shall mean the current assets of Seller as reflected on such Balance Sheet, reduced by the current liabilities of Seller which are not Retained Liabilities (without giving effect to the Current Portion of Long Term Debt) as reflected on such Balance Sheet. In determining Net Working Capital:

(i) the amount of any collateral pledged by Seller to secure bonds required by law in the State of New York and the Commonwealth of Pennsylvania shall be credited to Seller, to the extent that such collateral is included in the Assets; it being agreed that, (x) to the extent that such collateral is released to Seller, in whole or in part, prior to the Closing, then, the Purchase Price shall be reduced accordingly and (y) to the extent that the such collateral remains pledged at the Closing, the Purchase Price will reflect such amounts and Seller shall execute such assignment or other documents authorizing and requesting the State of New York and the Commonwealth of Pennsylvania, at such time when the collateral shall no longer be required by law, to release such collateral to Purchaser;

(ii) transaction-related costs and liabilities of Seller other than Assumed Liabilities (as defined in Section 3.3), shall not be treated as current liabilities;

(iii) the reserve for accounts receivable shall be determined in accordance with generally accepted accounting principles, without regard for whether such reserve is consistent with Seller's practices in prior periods. The Adjustment Amount shall be determined as provided in Article VIII; and

(iv) any amount by which the pay-off amount with respect to the Pay-Off Leases is less than the amount specified in Section 9.33 hereof shall be treated as a current asset, and any amount by which the pay-off amount with respect to the Pay-Off Leases is more than the amount specified in Section 9.33 hereof shall be treated as a current liability, of Seller.

7.2 Payment of Purchase Price. The Purchase Price shall be payable as follows:

(a) On the Closing Date, Purchaser shall pay:

(i) to Seller, on account of the Purchase Price, the amount of Twenty-Seven Million Six Hundred Seventeen

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Thousand Three Hundred Seventy-Two Dollars (\$27,617,372.00) (the "Seller Closing Payment") (it being acknowledged that the parties shall recalculate such figure on a basis that is consistent with the provisions of Section 7.1 if the Closing Date occurs on a Monday after July 27);

(ii) to the Escrow Agent, under an Escrow Agreement substantially in the form attached hereto as Exhibit 7.2A (the "Adjustment Amount Escrow Agreement"), on account of the Purchase Price, the amount of One Million Dollars (\$1,000,000.00) representing sums to be used in satisfaction of the obligations of Purchaser and Seller hereunder in respect of the Adjustment Amount, if any (the "Adjustment Escrow"); and

(iii) to the Escrow Agent, under an Escrow Agreement substantially in the form attached hereto as Exhibit 7.2B (the "Indemnification Escrow Agreement"), on account of the Purchase Price, Three Million Dollars (\$3,000,000.00) representing sums to be used in satisfaction of Seller's indemnification obligations hereunder as provided in the Indemnification Escrow Agreement (the "Indemnification Escrow").

The Adjustment Escrow and the Indemnification Escrow shall be maintained and distributed by the Escrow Agent pursuant to the terms of the Adjustment Amount Escrow Agreement and the Indemnification Escrow Agreement, respectively.

(b) (i) If there is determined to be no Adjustment Amount, then Escrow Agent shall, in accordance with the Adjustment Amount Escrow Agreement, deliver to Seller from escrow the entire Adjustment Escrow, plus interest accrued thereon, within seven (7) days after the Adjustment Date (as defined in Section 8.4).

(ii) If there is determined to be a negative Adjustment Amount (i.e., because Net Working Capital on the Closing Balance Sheet is lower than Net Working Capital on the Pro Forma Balance Sheet by more than ten percent (10%)), then Escrow Agent shall, in accordance with the Adjustment Amount Escrow Agreement, deliver to Purchaser from escrow an amount equal to the entire Adjustment Amount (but not to exceed the Adjustment Escrow), plus interest thereon, within seven (7) days after the Adjustment Date. If the Adjustment Amount is more than the Adjustment Escrow, then Seller shall, within seven (7) days after the Adjustment Date, pay to Purchaser the entire amount by which the Adjustment Amount exceeds the Adjustment Escrow, plus interest thereon at the same rate as earned on the Adjustment Amount. If the Adjustment Amount is less than the Adjustment Escrow, then Escrow Agent, shall, in accordance with the Adjustment Amount Escrow Agreement, simultaneously deliver to Seller from escrow the amount by which the Adjustment Amount is less than the Adjustment Escrow, plus interest thereon.

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(iii) If there is determined to be a positive Adjustment Amount (i.e., because Net Working Capital on the Closing Balance Sheet is higher than Net Working Capital on the Pro Forma Balance Sheet by more than ten percent (10%)), then (A) Escrow Agent shall, in accordance with the Adjustment Amount Escrow Agreement, deliver to Seller from escrow the entire Adjustment Escrow, plus interest thereon, within seven (7) days after the Adjustment Date; and (B) Purchaser shall, within seven (7) days after the Adjustment Date, pay to Seller the entire amount of the Adjustment Amount, plus interest thereon at the same rate as earned on the Adjustment Amount.

(iv) If a dispute arises under Section 8.3, the provisions of this Section 7.2 shall nonetheless apply to any undisputed amounts of the Adjustment Amount.

(c) All payments hereunder shall be by certified or bank cashier's check, or, if requested by the payee thereof, by wire transfer of immediately available funds to such account of which such payee shall give notice to the payor hereunder not later than three (3) business days prior to the due date of such payment.

7.3 Allocation of Purchase Price. The Purchase Price as finally determined shall be allocated among the Assets acquired hereunder as described on Schedule 7.3 hereof. Purchaser and Seller shall timely complete a Form 8594, Asset Acquisition Statement of Allocation, consistent with such mutually agreed allocation (excluding transaction costs), shall provide such form to the other parties thereto and shall file a copy of such form with its Federal income tax return for the period that includes the Closing Date. Seller and Purchaser each hereby covenant and agree that it will not take a position on any income tax return, before any governmental agency charged with the collection of any income tax, or in any judicial proceeding that is in any way inconsistent with the terms of this Section 7.3.

ARTICLE VIII CLOSING FINANCIAL STATEMENTS

8.1 Preparation of Closing Financial Statements. Not later than sixty (60) days after the Closing Date, Purchaser shall cause its independent accountants ("Purchaser's Independent Accountants") to prepare and deliver, at Purchaser's expense, an audited balance sheet of the Business at the Closing Date (the "Closing Balance Sheet") and an audited statement of income, changes in financial position, and notes of the Business for the period from the Interim Balance Sheet Date until the Closing Date (the "Closing Income Statement"), in accordance with generally accepted accounting principles consistently applied by Seller in accordance with past practice utilized in the preparation of the financial statements described in Section 9.12 (the Closing Balance Sheet and the Closing Income Statement, collectively, the "Closing

Financial Statements"). Such Closing Balance Sheet shall include all of the Assets and no liabilities other than (i) current liabilities of Seller reflected on the Interim Balance Sheet and unpaid as of the Closing Date and (ii) all current liabilities of Seller arising in the regular and ordinary course of business between the Interim Balance Sheet Date and the Closing Date in accordance with Seller's past practice (excluding however, the Current Portion of Long Term Debt).

8.2 Purchaser's Independent Accountant's Report.

Purchaser's Independent Accountants shall issue its report thereon to Seller and Purchaser to the effect that the Closing Financial Statements present fairly the financial position of the Business as of the Closing Date, and the results of operations for the period from the Interim Balance Sheet Date until the Closing Date, in conformity with generally accepted accounting principles applied on a consistent basis in accordance with past practice. Such report shall also include a detailed schedule setting forth the calculation of the Purchase Price and the Adjustment Amount and a statement to the effect that the Purchase Price was calculated in accordance with the provisions of this Agreement. In rendering the foregoing report, Purchaser's Independent Accountants shall consult with Kraft Haiken & Bell LLP, Seller's independent accountants ("Seller's Independent Accountants"), and permit Seller's Independent Accountants at the earliest practicable date to review, at Seller's expense, the report of Purchaser's Independent Accountants, including all work papers, schedules and calculations related thereto, prior to the issuance thereof. Seller's Independent Accountants shall commence their review of said work papers, schedules and calculations as soon as practicable after Purchaser's Independent Accountants have completed the field work phase of their review.

8.3 Dispute Resolution. Any dispute which may arise between Seller and Purchaser as to such financial statements or the proper amount of the Purchase Price and the Adjustment Amount shall be resolved in the following manner:

(a) Seller, if it disputes the Closing Financial Statements or the amount of the Purchase Price and the Adjustment Amount, shall notify Purchaser in writing within fifteen (15) days after the issuance of the report of Purchaser's Independent Accountants pursuant hereto that Seller disputes the financial statements or the amount of the Purchase Price and the Adjustment Amount; such notice shall specify in reasonable detail the nature of the dispute;

(b) during the fifteen (15) day period following the date of such notice, Seller and Purchaser shall attempt to resolve such dispute and to determine the appropriateness of the Closing Financial Statements or the Purchase Price; and

(c) if at the end of the fifteen (15) day period specified in subsection (b) above, Seller and Purchaser shall have failed to reach a written agreement with respect to such dispute, the matter shall be referred to Ernst & Young, in Newark, New Jersey, independent certified public accountants (the "Arbitrator"), which firm Seller and Purchaser each represents to the other has not performed any accounting or auditing services therefor, which shall act as an arbitrator and shall issue its report as to the Closing Financial Statements or the Purchase Price within sixty (60) days after such dispute is referred to the Arbitrator. Each of the parties hereto shall bear all costs and expenses incurred by it in connection with such arbitration, except that the fees and expenses of the Arbitrator hereunder shall be borne equally by Seller and Purchaser. This provision for arbitration shall be specifically enforceable by the parties and the decision of the Arbitrator in accordance with the provisions hereof shall be final and binding and there shall be no right of appeal therefrom.

8.4 Adjustment Date. References in this Agreement to the "Adjustment Date" shall mean the later of the fifteenth (15th) day after delivery of the report of Purchaser's Independent Accountants pursuant hereto, or the date upon which any dispute concerning the amount of the Purchase Price is resolved by the Arbitrator or by agreement of the parties.

8.5 Accounts Receivable Reserve. If Seller disputes the amount of the reserve in respect of accounts receivable reflected on the Closing Balance Sheet and such dispute is not resolved by agreement of Seller and Purchaser within the fifteen (15) day period referred to in Section 8.3(b), then (i) the Adjustment Amount shall be calculated using the reserve in respect of accounts receivable reflected on the Closing Balance Sheet, (ii) Purchaser shall remit to Seller, as and when collected, any accounts receivable reserved for on the Closing Balance Sheet that are collected during the period ending one hundred twenty (120) days after the Closing Date, and (iii) on the one hundred twentieth (120th) day after the Closing Date, Purchaser shall assign to Seller, without further consideration, all accounts receivable reserved for on the Closing Date Balance Sheet that have not been collected during such one hundred twenty (120) day period and Seller shall be free to take such steps as it deems necessary or appropriate, at its sole cost and expense, to collect such assigned accounts receivable and retain all proceeds thereof.

ARTICLE IX
REPRESENTATIONS AND WARRANTIES OF SELLER

Seller hereby represents and warrants to Purchaser as follows:

9.1 Organization and Foreign Qualifications of Seller. Seller is duly incorporated, validly existing and in good standing under the laws of the State of Delaware, and has all requisite corporate power and authority to conduct its business as it is presently being conducted and to own and lease its properties and assets. Seller is duly qualified to do business as a foreign corporation and is in good standing in each jurisdiction in which such qualification is necessary under the applicable law as a result of the conduct of its business or the ownership of its properties. Schedule 9.1 hereto sets forth a list of (i) each jurisdiction in which Seller is qualified to do business as a foreign corporation, and (ii) each jurisdiction in which Seller is conducting business under an assumed name.

9.2 Authorization. Seller has all necessary corporate power and authority to enter into this Agreement and has taken all corporate action necessary to consummate the transactions contemplated hereby and to perform its obligations hereunder. This Agreement has been duly executed and delivered by Seller and is a legal, valid and binding obligation of Seller enforceable against Seller in accordance with its terms, except that (i) such enforcement may be subject to bankruptcy, insolvency, reorganization, moratorium or other similar laws now or hereafter in effect relating to creditors' rights, and (ii) the remedy of specific performance and injunctive and other forms of equitable relief may be subject to equitable defenses and to the discretion of the court before which any proceeding therefor may be brought.

9.3 No Interest in Other Entities. No shares of any corporation or any ownership or other investment interest, either of record, beneficially or equitably, in any association, partnership, joint venture or other legal entity are included in the Assets, other than shares of capital stock representing immaterial, non-controlling interest in publicly-traded companies obtained by Seller in the ordinary course of the Business.

9.4 Absence of Certain Changes or Events. Except as set forth in Schedule 9.4 hereto, since the Interim Balance Sheet Date, there has not been any:

(a) change, or notice of any pending change, in the condition (financial or otherwise), prospects, assets, liabilities, working capital, reserves, or results of operations of Seller, except for changes generally affecting all similarly situated producers and distributors of dairy products, seasonal changes consistent with past practice, and changes which have not, individually or in the aggregate, had a materially adverse effect on Seller;

(b) (i) except for normal periodic increases in the ordinary course of business consistent with past practice, increase in the compensation payable or to become payable by Seller



to any of its employees whose total compensation for services rendered to Seller is currently at an annual rate of more than \$1,000, (ii) material bonus, incentive compensation, service award or other like benefit granted, made or accrued, contingently or otherwise, (iii) Material employee welfare, pension, retirement, profit-sharing or similar payment or arrangement made or agreed to by Seller for any employee except pursuant to the existing plans and arrangements described in Schedules 9.21 and 9.24(d) hereto, or (iv) new written employment agreement to which Seller is a party paying in excess of \$25,000 per annum;

(c) Material addition to or Material modification of the employee benefit plans, arrangements or practices described in Schedules 9.21 or 9.24(d) other than (i) contributions made in accordance with the normal practices of Seller or (ii) the extension of coverage to other employees who became eligible after the Balance Sheet Date;

(d) other than in the ordinary course of business, sale, assignment or transfer of any of the assets of Seller, material to the Business;

(e) cancellation of any indebtedness or waiver of any rights by Seller, other than in respect of receivables consistent with Seller's past practice, in the ordinary course of business, that is material in the aggregate to the Business;

(f) amendment, cancellation or termination of any contract, license or other instrument Material to the Business taken as a whole;

(g) capital expenditures or execution of any lease or incurrence of liability therefor by Seller, in each case involving payments in excess of \$25,000, except to the extent relating exclusively to Retained Liabilities;

(h) change in accounting methods or practices by Seller affecting its assets, liabilities or business;

(i) revaluation by Seller of any of its assets, including without limitation writing off of notes or accounts receivable, except for revaluations in the ordinary course of business consistent with normal practices or revaluations that would not, individually or in the aggregate, have a Material adverse effect on the business or financial condition of Seller;

(j) except purchase money mortgages arising in the ordinary course of business and statutory liens arising or incurred in the ordinary course of business with respect to which the underlying obligations are not delinquent, mortgage, pledge or other encumbrance of any assets of Seller, Material to Seller;

(k) declaration, setting aside or payment of dividends or distributions in respect of any capital stock of Seller or any redemption, purchase or other acquisition of any of Seller's equity securities;

(l) issuance by Seller of, or commitment of Seller to issue, any shares of stock or other equity securities or obligations or securities convertible into or exchangeable for shares of stock or other equity securities or obligations;

(m) guarantee or the incurrence of any liability for the payment or performance of any obligations or liabilities of any other person, by Seller, except in the ordinary course of business; or

(n) agreement by Seller to do any of the foregoing, except in the ordinary course of business, consistent with Seller's past practice.

9.5 Title to Assets, Etc. Except as disclosed or reflected in the Financial Statements, and except as set forth on Schedule 9.5 hereto:

(a) Seller has good and marketable title to the Assets reflected on the Interim Balance Sheet or acquired in the ordinary course of business since the Interim Balance Sheet Date (except assets sold or otherwise disposed in the ordinary course of business since the Interim Balance Sheet Date;

(b) none of the Assets is subject to any Encumbrances that will not be discharged at or prior to the Closing, except for Permitted Encumbrances arising or incurred in the ordinary course of business with respect to which the underlying obligations are not delinquent or such Encumbrances which does not, individually or in the aggregate, materially impair the use of the assets subject thereto in the ordinary course of business of Seller; and

(c) Seller has good and valid fee simple or, as applicable, leasehold interests in all properties (real and personal) held under lease, none of which are subject to any Encumbrances, other than Permitted Encumbrances arising or incurred in the ordinary course of business with respect to which the underlying obligations are not delinquent and Encumbrances which does not in the aggregate materially impair the use of the leasehold interest subject thereto in the ordinary conduct of the business of Seller, and Seller is not in breach under any of such leasehold interests other than breaches which would not, individually or in the aggregate, have a material adverse effect upon the business or financial condition of Seller.

9.6 Accounts Receivable. The accounts receivable of Seller arising from the Business as set forth on the Interim Balance Sheet or arising since the date thereof (the "Accounts Receivable") are valid and genuine; have arisen solely out of bona fide sales and deliveries of goods, performance of services and other business transactions in the ordinary course of business consistent with past practice; and are not subject to valid defenses, set-offs or counterclaims not in the ordinary course consistent with past practice. The allowance for collection losses on the Interim Balance Sheet has been determined in accordance with generally accepted accounting principles consistent with past practice.

9.7 Inventory. All Inventory reflected on the Interim Balance Sheet, or acquired since the date thereof, after giving effect to reserves reflected on the Closing Balance Sheet therefor, consists substantially of a quality, quantity and condition usable, leasable or saleable in the ordinary course of the Business. Seller is not under any liability or obligation in excess of \$50,000 with respect to the return of Inventory in the possession of wholesalers, retailers or other customers.

9.8 Condition of Tangible Assets. All Facilities, Fixtures, Equipment and other material items of tangible property and assets which would be included in the Assets if the Closing took place on the date hereof are usable in the regular and ordinary course of business and conform to all applicable laws, ordinances, codes, rules and regulations, and Authorizations relating to their construction, use and operation, except where non-conformity would not have a Material adverse effect on the Business. No person other than Seller owns any equipment or other tangible assets or properties situated on the premises of Seller or necessary to the operation of the Business, except for leased items disclosed in Schedule 9.9 and for items of immaterial value.

9.9 Material Contracts, Commitments and Licenses. Except as set forth on Schedule 9.9 hereto and except for contracts and commitments included in the Excluded Assets, Seller is not a party to, nor are the Assets bound by, any:

(a) commitment, contract, note, loan, evidence of indebtedness, purchase order or letter of credit involving any obligation or liability on the part of Seller of more than \$10,000 and not cancelable (without liability) within 30 days;

(b) lease of real property (Schedule 9.9 indicates with respect to each such lease the term, annual rent, security deposits, date through which rent payments have been made, renewal options and number of square feet leased);

(c) lease of personal property involving any annual expense in excess of \$10,000 and not cancelable (without liability)

within 30 days (Schedule 9.9 indicates with respect to each such lease a general description of the leased items, term, and annual rent);

(d) material governmental or regulatory licenses or permits required to conduct the Business as presently conducted;

(e) contract, agreement or commitment containing covenants limiting the freedom of Seller to engage in any line of business or compete with any person;

(f) license, franchise, distributorship or other agreement; or

(g) contract, agreement or commitment not otherwise listed in Schedule 9.9 materially affecting the business of Seller.

All the contracts and other instruments, obligations, evidences of indebtedness or other commitment of Seller are valid and binding obligations of Seller enforceable against Seller in accordance with their terms. Seller is not in breach or violation of, nor to the best knowledge of Seller, is there any default under, any of the contracts or other instruments, obligations, evidences of indebtedness or commitments described in (a) - (g) above, which breach or default will have a material adverse effect on the Business.

Seller has unrestricted access to any necessary new material required for the carrying out of the Business and, other than for any general market conditions, does not experience any shortfall or difficulty for such purchases.

Seller has made available to Purchaser true and complete copies of all the contracts and other instruments, obligations, evidences of indebtedness or other commitments of Seller, together with accurate copies of each form used in the business of Seller and which is in effect with respect to any third party on the date hereof.

9.10 No Conflict or Violation. Neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby will result in:

(a) a violation of or a conflict with any provision of the Certificate of Incorporation or Bylaws of Seller;

(b) a breach on the part of Seller of, or a default on the part of Seller under, any term or provision of any contract, commitment or license to which Seller is a party or by which the Assets are bound (except to the extent that any necessary third party consents to assignment are not obtained in connection with the transactions contemplated by this Agreement), which breach or

default would have a Material adverse effect on the Business or financial condition of Seller;

(c) a violation by Seller of any statute, rule, regulation, ordinance, code, order, judgment, writ, injunction, decree or award, which violation would have a material adverse effect on the business or financial condition of Seller; or

(d) an imposition of any Encumbrances (except for Permitted Encumbrances) on the business of Seller or on any of the Assets which Encumbrance would have a material adverse effect on the Business or the financial condition of Seller.

9.11 Consents and Approvals. Except as set forth on Schedule 9.11 hereto, no consent, approval or authorization of, or declaration, filing or registration with, any governmental or regulatory authority, or any other person or entity, is required to be made or obtained by Seller in connection with the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby, except for consents, approvals or authorizations, declarations, filings or registrations, the failure of which to obtain would not (i) impair the ability of Seller to perform its obligations hereunder, or (ii) in the aggregate have a material adverse effect on the Business or the financial condition of Seller.

9.12 Financial Statements. Attached hereto as Schedule 9.12 are the Financial Statements all of which have been prepared in accordance with generally accepted accounting principles consistently applied throughout the periods involved. The Financial Statements fairly present the financial position, assets and liabilities (whether accrued, absolute, contingent or otherwise) of Seller at the dates indicated and such statements of income, cash flow and changes in shareholders equity fairly present the results of operations, cash flow and changes in shareholders equity of Seller for the periods indicated in accordance with generally accepted accounting principals consistently applied. The unaudited Financial Statements contain all adjustments which are solely of a normal recurring nature necessary to present fairly the financial position for the periods then ended.

9.13 Books of Account. The Books, Records and accounts of Seller maintained with respect to the Business accurately and fairly reflect, in reasonable detail and in all Material respects, the transactions and the assets and liabilities of Seller with respect to the Business in accordance with past practice. Seller has not engaged in any Material transaction with respect to the Business, maintained any bank account for the Business or used any of the funds of Seller in the conduct of the Business except for transactions, bank accounts and funds which have been and are reflected in the normally maintained Books and Records of the Business.

9.14 Litigation. Except as set forth on Schedule 9.14 hereto, there is no action, order, writ, injunction, judgment or decree outstanding or claim, suit, litigation, arbitration, proceeding, or investigation (collectively, "Actions") pending or, to the best knowledge of Seller, threatened or anticipated against, relating to or affecting Seller which may have a material adverse effect on the Business or the financial condition of Seller, and Seller is not aware of any facts or circumstances which are likely to give rise to any of the foregoing. Since the Interim Balance Sheet Date, Seller has not entered into any agreement to settle or compromise any Actions pending or threatened against it. Seller is not in default with respect to any judgment, order, writ, injunction or decree of any court or governmental agency which default, individually or in the aggregate, would have a material adverse effect on the Business or the financial condition of Seller.

9.15 Labor Matters. Seller has not suffered any, and there is no threat known to Seller of any, strike, slowdown, picketing or work stoppage by any union or other group of employees affecting the business of Seller. Seller is not a party to any collective bargaining agreement, no such agreement determines the terms and conditions of employment of any employee of Seller, no collective bargaining agent has been certified as a representative of any of the employees of Seller, and no representation campaign or election is now in progress with respect to any of the employees of Seller.

9.16 Absence of Undisclosed Liabilities. Seller has no liabilities or obligations with respect to the Business, either direct or indirect, matured or unmatured or absolute, contingent or otherwise which will constitute an Assumed Liability, except:

(a) those liabilities or obligations set forth on the Interim Balance Sheet and not heretofore paid or discharged;

(b) liabilities arising in the ordinary course of business under any agreement, contract, commitment, lease or plan specifically disclosed on Schedule 9.9 or not required to be disclosed because of the term or amount involved; and

(c) those liabilities or obligations incurred, consistently with past business practice, in or as a result of the normal and ordinary course of business since the Interim Balance Sheet Date.

For purposes of this Agreement, the term "liabilities" shall include, without limitation, any direct or indirect indebtedness, guaranty, endorsement, claim, loss, damage, deficiency, cost, expense, obligation or responsibility, fixed or unfixed, known or unknown, asserted or unasserted, choate or inchoate, liquidated or unliquidated, secured or unsecured.



9.17 Compliance with Law. Seller is in compliance with all applicable laws, statutes, ordinances, orders and regulations, whether federal, state, local or foreign, except where the violation thereof would not individually or in the aggregate materially adversely affect the Business or the financial condition of Seller, and Seller has not received notice claiming any asserted past or present failure to comply with any applicable laws, statutes, ordinances, orders and regulations, whether federal, state, local or foreign.

9.18 No Brokers. Neither Seller nor any affiliate of Seller has entered into or will enter into any contract, agreement, arrangement or understanding with any person or entity which will result in the obligation of Purchaser, or Seller to pay any finder's fee, brokerage commission or similar payment in connection with the transactions contemplated hereby.

9.19 No Other Agreements to Sell the Assets or Seller. Other than in the ordinary course of business, Seller has no legal obligation, absolute or contingent, to any other person or entity to do any of the following: sell any of the Assets, sell any capital stock of Seller, or (except after giving effect to the transaction contemplated hereby) effect any merger, consolidation or other reorganization of Seller, or enter into any agreement with respect thereto.

9.20 Proprietary Rights.

(a) Schedule 9.20(a) hereto sets forth a true and complete list of all trademarks, service marks, trade names and other trade rights, trademark and service mark registrations and applications, patents, patent applications, copyrights, copyright registrations and applications, grants of a license to Seller with respect to the foregoing, both domestic and foreign, both registered and not registered, and both owned or claimed by Seller, or used or proposed to be used by Seller in the conduct of and that are Material to the Business (collectively, "Proprietary Rights"). Said Schedule 9.20(a) also sets forth, as to each Proprietary Right, the date of registration or application thereof, and the remaining duration thereof.

(b) Seller owns and has the unrestricted right to use the Proprietary Rights, free and clear of any and all Encumbrances, except Permitted Encumbrances; it being agreed that, for the purposes of this Agreement, the term "Proprietary Rights" shall also include each and every trade secret, know-how, process, discovery, design, development, technique, invention, confidential data and other information required for or incident to the design, development, manufacture, operation, sale and use of all products and services sold or rendered by Seller that are Material to the Business. The Proprietary Rights comprise all of the intellectual property or proprietary rights required for or incident to the

design, development, manufacture, operation, sale and use of all products and services sold or rendered by Seller that are Material to the Business.

(c) Except as set forth on Schedule 9.20(c) hereof and other than pursuant to license agreements granted by Seller described on such Schedule 9.20(c), Seller has received no notice, and has no knowledge, that any person or entity has a right to receive or has claimed a right to receive a royalty or similar payment in respect of any Proprietary Rights pursuant to any contractual arrangements entered into by Seller, or that any person or entity otherwise has a right to receive or has claimed a right to receive a royalty or similar payment in respect of any such Proprietary Rights. Seller has not been notified that, and is not aware that, its use of the Proprietary Rights or other intellectual property rights is not infringing upon or otherwise violating the rights of any third party in or to such Proprietary Rights. No proceedings have been instituted against, or notices received by, Seller alleging, nor does Seller know of any basis for any allegation, that Seller's use of its Proprietary Rights infringes upon or otherwise violates any rights of a third party in or to such Proprietary Rights.

(d) Schedule 9.20(a) lists the Proprietary Rights that have been duly registered with, filed in or issued by, as the case may be, the United States Patent and Trademark Office, United States Copyright Office or such other filing offices, domestic or foreign, as are set forth in said Schedule 9.20(a).

9.21 Employee Benefit Plans and Arrangements.

(a) Identification of Employee Benefit Plans. Schedule 9.21 hereto contains a complete list of all employee benefit plans, whether formal or informal, whether or not set forth in writing, and whether covering one person or more than one person, sponsored or maintained by the Seller. For the purposes hereof, the term "employee benefit plan" includes all plans, funds, programs, policies, arrangements, practices, customs and understandings providing benefits of economic value to any employee, former employee, or present or former beneficiary, dependent or assignee of any such employee or former employee other than regular salary, wages or commissions paid substantially concurrently with the performance of the services for which paid and that are Material to the Business of Seller. Without limitation, the term "employee benefit plan" includes all employee welfare benefit plans within the meaning of section 3(1) of the Employee Retirement Income Security Act of 1974 as amended ("ERISA"), all employee pension benefit plans within the meaning of section 3(2) of ERISA, and all multiemployer plans within the meaning of section 3(37) of ERISA. Each plan providing benefits which are funded through a policy of insurance is indicated by the word "insured" placed by the listing of the plan in Schedule 9.21.

(b) Seller has, or as of the Closing shall have, made or properly accrued and reserved for all required contributions with respect to each of Seller's employee benefit plans.

(c) Seller has complied, or as of the Closing shall have complied, with the group health continuation coverage requirements of Section 4980(B) of the Code (or Section 162(k) of the Code with respect to taxable years beginning before 1989), and Part 6 of Title of ERISA.

(d) Except as expressly set forth in Sections 3.3(d) and (e) hereof, Purchaser shall have no obligation by reason of any of Seller's employment benefit plans to pay any pensions or contributions, severance pay, holiday pay, vacation pay or other benefits to any persons who were employees of Seller prior to the Closing Date, even if the same are discharged immediately following the Closing Date or at any time thereafter.

9.22 Transactions with Certain Persons and Affiliates. Except as set forth on Schedule 9.22 hereto, no officer, director or employee of Seller, or any member of any such person's immediate family, or any affiliate of Seller, is presently a party to any transaction with Seller, including without limitation, any contract, agreement or other arrangement (i) providing for furnishing of services by, (ii) providing for the rental of real or personal property from, or (iii) otherwise requiring payments to (x) any such person, or any entity in which any such person owns more than 5% of the outstanding ownership interests, or is an officer, director, manager, trustee or general partner, or (y) any such affiliate.

9.23 Tax Representation. As of the Closing, Seller will have paid in full on a timely basis all Taxes which Seller has been required to pay for all periods ending on or before the Closing Date ("Seller Periods"), and will have duly collected or withheld all Taxes which Seller has been required to collect or withhold for all Seller Periods. As of the Closing, Seller will have timely filed all tax returns and returns required to be filed by it for all Seller Periods, including all federal, state, local and foreign tax returns and reports. Except for Internal Revenue Service audits for the tax years 1994 and 1995 and for periodic New Jersey sales tax audits, all as described on Schedule 9.23 hereto, the tax returns of Seller have not been examined by any federal, state, local or foreign governmental taxing authority. Seller has made adequate provision, in conformity with generally accepted accounting principles consistently applied, for the payment of all Taxes which may subsequently become due from Seller. No deficiencies for Taxes have been asserted in writing or assessed against Seller which remain unpaid. There are no audits or examinations known by Seller to be pending of Seller's tax returns

nor has Seller received any notice of an audit or examination. There have been no waivers of statutes of limitations by Seller.

9.24 Additional Information. Schedule 9.24 hereto contains accurate and complete lists and summary descriptions of the following (except to the extent the same constitute Excluded Assets):

(a) all Inventory, equipment and furniture and fixtures of Seller included in the Assets as of the Interim Balance Sheet Date, specifying such items as are owned and such as are leased and, with respect to the owned property, specifying its aggregate cost or original value and the net book value as of the Interim Balance Sheet Date and, with respect to the leased property as to which Seller is lessee, specifying the identity of the lessor, the rental rate and the unexpired term of the lease;

(b) all real property and interests in real property owned, leased or otherwise held by Seller in the conduct of the Business or upon which the Assets are located as of the Interim Balance Sheet Date, specifying which are owned and which are leased and, with respect to the leased property, specifying the identity of the lessor, the rental rate and the unexpired term of the lease;

(c) the names and titles of and current annual base salary or hourly rates for all employees of Seller engaged in the conduct of the Business, together with Seller's regularly maintained statement of the full amount and nature of any other remuneration, whether in cash or kind, paid to each such person during the past or current fiscal year or payable to each such person in the future and the bonuses accrued for, it being understood that Seller has no severance policy and that the vacation benefits for all employees, as of the Closing, shall not exceed the unused entitlements for calendar year 1998; and

(d) all names under which Seller has conducted any business or which it has otherwise used during the last five years.

9.25 Insurance. Schedule 9.25 contains a complete and accurate list of all policies or binders of fire, liability, title, worker's compensation and other forms of insurance (showing as to each policy or binder the carrier, policy number, expiration dates, and a general description of the type of coverage provided) maintained by Seller on its business, property or employees. Seller is not in default in any material respect under any of such policies or binders.

9.26 Compliance with Legislation Regulating Environmental Quality. Except as set forth on Schedule 9.26 hereto:

(a) all properties owned or used in the Business by Seller during the period of Seller's ownership or use have been maintained, and all activities of Seller have been conducted, in compliance with all federal, state, local and foreign environmental laws, licenses and regulations to all standards and criteria applicable to non-residential properties;

(b) Seller has not received notification from any federal, state, local or foreign governmental authority with respect to current, existing violations of any of the laws enumerated in clause (a) above, or pursuant to any of the respective implementing regulations or analogues to such laws or regulations;

(c) Seller has not (i) received notification from the United States Environmental Protection Agency that it is a Potentially Responsible Party under CERCLA for "removal" or "remedial" action at a waste site listed on the National Priorities List to which it sent or arranged for the transportation or disposal of hazardous waste, or (ii) received notification that it is liable for contribution for costs incurred by another person in taking "removal" or "remedial" action under CERCLA; and

(d) there are currently no, nor has Seller removed any, underground storage tanks located on any property owned or presently leased by Seller.

9.27 Licenses and Permits. Schedule 9.27 sets forth a correct and complete list of all permits, licenses, orders, certificates or approvals (collectively, the "Permits") of all governmental authorities presently held by Seller. The Permits constitute all Permits which are required to be obtained by Seller in order to allow Seller to continue to carry on the Business and transfer and use its properties as now conducted. Seller owns or has, and at all times during the past year has owned or had, valid Permits to use all properties necessary for the conduct of the Business. Without any other action required by the Purchaser, all of the Permits will continue as valid Permits to allow Seller to transfer the Real Property and operate the Business, without interruption, through and until the Closing Date, subject to the terms and conditions set forth therein.

9.28 Real Property.

(a) Real Property Defined. A metes and bounds description of all real property (including, without limitation, all interests in and rights to real property) and improvements located thereon which are owned or leased by Seller and used in connection with the Business or included in the Assets are listed on Schedule 9.24(b) (the "Real Property").



(b) Title to Owned Real Property. With respect to the Real Property that is owned by Seller, which is identified on Schedule 9.24(b) as being owned by Seller, title to such Real Property is (except for Retained Liabilities and such Encumbrances as will be satisfied and discharged at Closing), and at Closing shall be, good and marketable, fee simple absolute, free and clear of all Encumbrances other than Permitted Encumbrances, adverse claims and other matters affecting Seller's title to or possession of such Real Property, including, but not limited to, all encroachments, boundary disputes, covenants, restrictions, easements, rights of way, mortgages, security interests, leases, encumbrances and title objections, excepting only such easements, restrictions and covenants presently of record, which easements, restrictions and covenants are listed on the First America Title Insurance Company of New York Policy Nos. 135NJ25794-1 through 4, in a manner so that the Real Property to which they relate is readily identifiable. At Closing, title to the Real Property owned by Seller shall be insurable by any title insurance company selected by Purchaser, at such company's regular rates pursuant to an ALTA 1987 owner's form of policy, free of all exceptions except Permitted Encumbrances.

(c) Leased Real Property. With respect to the Real Property which is identified on Schedule 9.24(b) as being leased by Seller (the "Leased Properties"):

(i) Seller has delivered to Purchaser a true and complete copy of every lease and sublease to which Seller is a tenant or subtenant (the "Leases"), and has described each Lease on the Schedule 9.9 by listing the name of the landlord or sublandlord, a description of the leased premises, the commencement and expiration dates of the current term, the security deposited by Seller with the landlord or sublandlord, if any, the monthly rental (including base and all additional rents), and whether Seller may assign the Lease to Purchaser (if the consent of the landlord or sublandlord is required for such an assignment, that should be set forth on Schedule 9.9);

(ii) each Lease is in full force and effect and has not been assigned, modified, supplemented or amended by Seller except as listed on the Schedule 9.9, and neither Seller nor, to the best knowledge of Seller, the landlord or sublandlord under any Lease is in default under any of the Leases, and no circumstances or state of facts currently exists (other than the failure to obtain any required consent to assignment) which, with the giving of notice or passage of time, or both, would permit the landlord or sublandlord under any Lease to terminate any Lease prior to the scheduled expiration of its term; and

(iii) subject to obtaining any required consent of any landlord, at Closing, Seller shall assign to the Purchaser all right, title and interest of Seller in and to all

Leases (and shall deliver to Purchaser original copies of all consents required for such assignments) and all security deposits made by Seller pursuant to any of the Leases, including, but not limited to, the security deposits listed on Schedule 9.9, together with all interest earned on such deposits.

(d) Zoning. At Closing Seller shall deliver to the Purchaser certificates of zoning compliance with respect to all of the Real Property issued by the appropriate municipal authorities, or if no certificate of zoning compliance is generally issued by a municipality in which some or all of the Real Property is located, evidence reasonably acceptable to the Purchaser that the Real Property is in compliance with all applicable zoning and other land use requirements.

(e) Utility Services. The water, electric, gas and sewer utility services, and the septic tank, waste-water treatment and storm drainage facilities currently available to the Real Property are adequate for the present use of the Real Property by Seller in conducting the Business, are not being appropriated by Seller, but rather are being supplied to Seller by utility companies or municipalities pursuant to valid and enforceable contracts (except in the case of the waste-water treatment facility at Long Valley, New Jersey, which is provided and available independently), and there is no condition as of the date hereof which will result in the termination of the present access from the Real Property to such utility services and other facilities.

(f) Access. Seller has obtained all Authorizations and rights-of-way, including proof-of-dedication, which are necessary to ensure vehicular and pedestrian ingress and egress to and from the Real Property. There are no restrictions on entrance to or exit from the Real Property to adjacent public streets and no conditions as of the date hereof which will result in the termination of the present access from the Real Property to existing highways and roads.

(g) Assessments or Hazards. Except as set forth on Schedule 9.28(g) hereto, Seller has received no notices, oral or written, from any governmental body, that the assessed value of the Real Property has been determined to be greater than that upon which county, township or school tax was paid for the most recent tax year applicable to each such tax, or from any insurance carrier of Seller of fire hazards with respect to the Real Property. If, at the time of Closing, the Real Property or any portion thereof is affected by any assessment which is or may become payable in annual installments, of which one or more is then payable or has been paid, then for the purpose of this Agreement, all the unpaid installments of any such assessment including, without limitation, those which are to become due and payable after Closing, shall be deemed to be liens on the Real Property and shall be paid or discharged at or prior to Closing.

(h) Eminent Domain. Seller has received no notices, oral or written, that any governmental body having the power of eminent domain over the Real Property has commenced or intends to exercise the power of eminent domain or a similar power with respect to all or any party of the Real Property. If between the date of this Agreement and Closing the Real Property or any portion thereof or interest therein that is Material to the conduct of the Business shall be taken or condemned as a result of the exercise of the power of eminent domain, or if a governmental body having the power of eminent domain informs Seller or the Purchaser that it intends to take or condemn all or part of the Real Property then the Purchaser may elect to terminate this Agreement. If the Purchaser does not elect to terminate this Agreement (a) after the Closing, the Purchaser shall have the sole right, in the name of Seller, if the Purchaser so elects, to negotiate for, claim, contest and receive all damages on account thereof, (b) Seller shall be relieved of its obligation to convey to the Purchaser the Real Property taken or condemned, (c) at Closing Seller shall assign to the Purchaser all of Seller's rights to all damages payable for such taking or injury of the Real Property and shall pay to the Purchaser all damages theretofore paid to Seller by reason thereof, and (d) following Closing, Seller shall give the Purchaser such further assurances of such rights and assignment as the Purchaser may from time to time reasonably request.

(i) No Violations. The Real Property and the present uses thereof comply with all Regulations of all governmental bodies having jurisdiction over the Real Property, except where the failure to so comply would not individually or in the aggregate Materially adversely affect the Business or the financial condition of Seller, and Seller has received no notices, oral or written, from any governmental body, that the Real Property or any improvements erected or situate thereon, or the uses conducted thereon or therein, violate any Regulations of any governmental body having jurisdiction over the Real Property.

(j) Improvements. The improvements located on the Real Property are in good condition and are structurally sound, and all mechanical and other systems located therein are in good operating condition, subject to normal wear, and no condition exists requiring material repairs, alterations or corrections in order for Purchaser to continue the operation of the Business substantially as it has been conducted assuming a level of capital expenditures consistent with Seller's past practice.

(k) No Encumbrances. Between the date of this Agreement and Closing Seller shall not sell, mortgage or encumber the Real Property, or do or permit any act which constitutes an Encumbrance on title to the Real Property.

(l) Public Improvements. Except as set forth on Schedule 9.28(1) hereto, no work for municipal improvements has

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been commenced on or in connection with the Real Property or any street adjacent thereto. No assessment for public improvements has been made against the Real Property which remains unpaid. No notice from any county, township or other governmental body has been served upon the Real Property or received by Seller requiring or calling attention to the need for any work, repairs, construction, alteration or installation on or in connection with the Real Property which has not been complied with.

(m) Surveys. Prior to Closing Seller shall deliver to the Purchaser its regularly maintained sets of surveys of the Real Property.

(n) Flood Plain. Except as reflected on title searches obtained by Purchaser and/or surveys supplied by Seller, no part of the Real Property contains, is located within, or abuts any flood plain, navigable water or other body of water, tideland, wetland, marshland or any other area which is subject to special state, federal or municipal regulation, control or protection.

(o) Executory Contracts. Set forth on Schedule 9.9 is a description of all Material executory contracts made by or on behalf of Seller, or by which Seller is bound, with respect to the Real Property ("Executory Contracts") including, without limitation, service, operation, management, maintenance, utility, and construction contracts. Seller has delivered to the Purchaser a true and complete copy (the original execution copy, if available) of each of the Executory Contracts.

9.29 Availability of Documents. Seller has made available to Purchaser copies of all documents, including without limitation, all agreements, contracts, commitments, insurance policies, leases, plans, instruments, undertakings authorizations, permits, licenses, patents, trademarks, tradenames, service marks, copyrights and applications therefor listed in the Schedules hereto or referred to herein. Such copies are true and complete and include all amendments, supplements and modifications thereto or waivers currently in effect thereunder.

9.30 Assets. The Assets include all of the assets, properties and rights of Seller constituting the Business or used in the conduct of the Business as the Business is presently conducted by Seller (except for assets disposed of in the ordinary course in accordance with the terms and conditions hereof), and no property excluded from the Assets under Section 3.1.2 constitutes property or rights material to the Business.

9.31 Restrictions. Except as set forth on Schedule 9.32 hereto, Seller is not a party to any indenture, agreement, contract, commitment, lease, plan, license, permit, authorization or other instrument, document or understanding, oral or written, or subject to any charter or other corporate restriction or any

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judgment, order, writ, injunction, decree or award, the terms of which materially adversely affect or materially restrict or, so far as Seller can now reasonably foresee, may in the future materially adversely affect or materially restrict, the business, operations, assets, properties, prospects or condition (financial or otherwise) of the Business after consummation of the transactions contemplated hereby.

9.32 Conditions Affecting Seller. Except as set forth on Schedule 9.32 hereto, (i) there is no fact, development or threatened development with respect to the markets, products, services, clients, customers, facilities, computer software, data bases, personnel, vendors, suppliers, operations, assets or prospects of the Business which are known to Seller which would materially adversely affect the business, operations or prospects of Seller individually or in the aggregate in an amount exceeding 5% of Seller's EBITDA for its 1997 fiscal year, other than such conditions as may affect on an industry-wide basis the businesses in which Seller is engaged; (ii) Seller has used reasonable commercial efforts to keep available for Seller the services of the employees, agents, customers and suppliers of Seller active in the conduct of the Business; and (iii) Seller does not have knowledge that any loss of any employee, agent, customer or supplier or other advantageous arrangement will result because of the consummation of the transactions contemplated hereby.

9.33 Capital Lease Pay-Off Amounts. The remaining payments due under the Assumed Capital Leases, as of the date hereof, is One Million Five Hundred Thirty-Five Thousand One Hundred Forty-Five Dollars (\$1,535,145.000) and the pay-off amount with respect to the Pay-Off Leases is not more than one hundred two percent (102.0%) of One Million Two Hundred Fifty-Seven Thousand Three Hundred Fourteen Dollars (\$1,257,314.00). Seller further represents and warrants that any breach of this representation shall be cured by payment to Purchaser by Seller on a full recourse basis of (i) the present value, calculated using a six percent (6%) discount rate, of any deficiencies owing with respect to the Assumed Capital Leases, up to One Million Four Hundred Six Thousand Three Hundred Fourteen Dollars (\$1,406,314.000), (which is equal to the present value, calculated using a discount rate of six percent (6.0%), of the sums owed under the Assumed Capital Leases) or (ii) any deficiencies with respect to the Pay-Off Leases, up to one hundred two percent (102.0%) of One Million Two Hundred Fifty-Seven Thousand Three Hundred Fourteen Dollars (\$1,257,314.00), in either case, without regard or recourse to the Indemnification Escrow Amount (it being acknowledged that the parties shall recalculate such figure on a basis consistent with that reflected in Schedule 9.9(c) hereof to the extent that the Closing Date occurs on a Monday after July 27, 1998).

9.34 Representations. This Agreement and the Schedules hereto, taken as a whole, do not contain any untrue statements of

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material fact with respect to Seller or omit to state a material fact necessary to make the statements herein and therein contained not misleading. All of the Schedules hereto applicable to Seller will constitute representations and warranties by Seller herein. All representations, covenants and warranties made by or on behalf of Seller in this Agreement will be deemed to have been relied upon by the Purchaser (notwithstanding any investigation by the Purchaser).

ARTICLE X
REPRESENTATIONS AND WARRANTIES OF PURCHASER

Purchaser hereby represents and warrants to Seller as follows:

10.1 Organization of Purchaser. Purchaser is duly incorporated, validly existing and in good standing under the laws of the State of New York, and has all requisite corporate power and authority to conduct its business as it is presently being conducted and to own and lease its properties and assets.

10.2 Authorization. Purchaser has all necessary corporate power and authority to enter into this Agreement and has taken all corporate action necessary to consummate the transactions contemplated hereby and to perform its obligations hereunder. This Agreement has been duly executed and delivered by Purchaser and is a legal, valid and binding obligation of Purchaser enforceable against Purchaser in accordance with its terms, except that (i) such enforcement may be subject to bankruptcy, insolvency, reorganization, moratorium or other similar laws now or hereafter in effect relating to creditors' rights, and (ii) the remedy of specific performance and injunctive and other forms of equitable relief may be subject to equitable defenses and to the discretion of the court before which any proceeding therefor may be brought.

10.3 No Conflict or Violation. Neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby will result in:

(a) a violation of or a conflict with any provision of the constitutive documents of Purchaser;

(b) a breach of, or a default under, any term or provision of any contract, commitment or license to which Purchaser is a party or by which its assets are bound, which breach or default would have a material adverse affect on Purchaser's ability to consummate the transactions contemplated hereby; or

(c) a violation by Purchaser of any statute, rule, regulation, ordinance, code, order, judgment, writ, injunction, decree or award, which violation would have a material adverse

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effect on Purchaser's ability to consummate the transactions contemplated hereby.

10.4 Consents and Approvals. No consent, approval or authorization of, or declaration, filing or registration with, any governmental or regulatory authority, or any other person or entity, is required to be made or obtained by Purchaser in connection with the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby, except for consents, approvals or authorizations, declarations, filings or registrations, the failure of which to obtain would not in the aggregate impair the ability of Purchaser to perform its obligations hereunder.

10.5 No Brokers. Neither Purchaser nor any affiliate of Purchaser has entered into or will enter into any agreement, arrangement or understanding with any person or entity which will result in the obligation of Seller to pay any finder's fee, brokerage commission or similar payment in connection with the transactions contemplated hereby.

ARTICLE XI
SURVIVAL OF REPRESENTATIONS AND WARRANTIES

11.1 Representations and Warranties. The representations and warranties contained herein and in any certificate or other writing delivered pursuant hereto shall survive for the periods as set forth in Section 12.6(f) hereof.

ARTICLE XII
POST CLOSING COVENANTS AND INDEMNIFICATION

12.1 Books and Records. Seller and Purchaser agree that each party at its expense shall have the right to inspect and to make copies of any and all Books and Records, at any time during business hours for any proper purpose for a period of at least five years from the Closing Date, except as such period may be extended by other provisions of this Agreement. Seller and Purchaser agree not to destroy or dispose of any such Books and Records without giving the other party a reasonable opportunity to remove such documents at such other party's expense.

12.2 Further Assurances. On and after the Closing Date, Seller and Purchaser will take all appropriate action and execute all documents, instruments or conveyances of any kind which may be reasonably necessary or advisable to carry out any of the provisions hereof.

12.3 Sales, Transfer and Documentary Taxes, etc. Seller shall pay all federal, state and local sales, documentary and other transfer taxes, if any, due as a result of the purchase, sale or transfer of the Assets in accordance herewith whether imposed by

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law on Seller or Purchaser and Seller shall indemnify, reimburse and hold harmless Purchaser in respect of the liability for payment of or failure to pay any such taxes or the filing of or failure to file any reports required in connection therewith.

12.4 Offers of Employment. Purchaser shall at Closing extend offers of employment at will to each Employee of Seller, and shall for purposes of calculation of service credit in connection with the application of Purchaser's employee welfare and benefit plans and employment policies and practices treat each such Employee of Seller as if he or she had been hired by Purchaser on the date he or she was hired by Seller.

12.5 Assumed Liabilities; Retained Liabilities. Purchaser shall pay and discharge all Assumed Liabilities in a timely fashion, in accordance with their terms. Seller shall likewise pay and discharge all Retained Liabilities in a timely fashion, in accordance with their terms, and shall take all actions necessary to notify third parties that Seller, not Purchaser is solely responsible for the discharge of such Retained Liabilities. Each party further agrees to provide reasonable cooperation to the other party in connection with the discharge of the Assumed Liabilities and the Retained Liabilities, respectively, including without limitation in the settlement or satisfaction on claims described in Section 3.4(a) hereof.

12.6 Indemnification.

(a) General Indemnification Obligation of Seller.

From and after the Closing, Seller shall reimburse, indemnify and hold harmless Purchaser and its officers, directors, shareholders, affiliates, successors and permitted assigns (an "Indemnified Purchaser Party") against and in respect of:

(i) any and all damages, losses, deficiencies, liabilities, costs and expenses incurred or suffered by any Indemnified Purchaser Party that result from, relate to or arise out of:

(A) any misrepresentation, breach of warranty or nonfulfillment of any agreement or covenant on the part of Seller under this Agreement, or from any misrepresentation in or omission from any certificate, schedule, exhibit, statement, document or instrument furnished to Purchaser pursuant hereto or in connection with the negotiation, execution or performance of this Agreement; it being agreed that losses shall include, without limitation, any and all diminution in the value of the tangible or intangible assets of Seller as compared with what such value would have been had the representation or warranty been accurate when made; or

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(B) any and all actions, suits, claims, or legal, administrative, arbitration, governmental or other proceedings or investigations against any Indemnified Purchaser Party that relate to Seller or the Business in which the principal event giving rise thereto occurred prior to the Closing Date or which result from or arise out of any action or inaction prior to the Closing Date of Seller or any director, officer, employee, agent, representative or subcontractor of Seller, except for those which Purchaser specifically assumes pursuant to this Agreement; or

(C) any and all of the Retained Liabilities; and

(ii) any and all actions, suits, claims, proceedings, investigations, demands, assessments, audits, fines, judgments, costs and other expenses (including, without limitation, reasonable legal fees and expenses) incident to any of the foregoing or to the enforcement of this Section 12.6(a).

Any and all such damages, losses, deficiencies, liabilities, actions, suits, claims, proceedings, investigations, demands, assessments, audits, fines, judgments, costs and other expenses (including, without limitation, reasonable legal fees and expenses) are referred to herein as "Losses".

(b) General Indemnification Obligation of Purchaser. From and after the Closing, Purchaser will reimburse, indemnify and hold harmless Seller and its officers, directors, successors and permitted assigns (an "Indemnified Seller Party") against and in respect of:

(i) any and all damages, losses, deficiencies, liabilities, costs and expenses incurred or suffered by any Indemnified Seller Party that result from, relate to or arise out of:

(A) any misrepresentation, breach of warranty or non-fulfillment of any agreement or covenant on the part of Purchaser under this Agreement, or from any misrepresentation in or omission from any certificate, schedule, exhibit, statement, document or instrument furnished to Seller pursuant hereto or in connection with the negotiation, execution or performance of this Agreement; or

(B) any and all actions, suits, claims, or legal, administrative, arbitration, governmental or other proceedings or investigations against any Indemnified Seller Party that relate to Purchaser or the Business which result from or arise out of any action or inaction after the Closing Date of Purchaser or any director, officer, employee, agent, representative or subcontractor of Purchaser, except for those which Seller specifically retained pursuant to this Agreement; or

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(C) the Assumed Liabilities; and

(ii) any and all actions, suits, claims, proceedings, investigations, demands, assessments, audits, fines, judgments, costs and other expenses (including, without limitation, reasonable legal fees and expenses) incident to any of the foregoing or to the enforcement of this Section 12.6(b).

Any and all such damages, losses, deficiencies, liabilities, actions, suits, claims, proceedings, investigations, demands, assessments, audits, fines, judgments, costs and other expenses (including, without limitation, reasonable legal fees and expenses) are referred to herein as "Losses".

(c) Method of Asserting Claims by Purchaser. In the event that any claim or demand for which Seller would be liable to an Indemnified Purchaser Party hereunder is asserted against or sought to be collected from an Indemnified Purchaser Party by a third party, the Indemnified Purchaser Party shall promptly give written notice to Seller of such claim or demand, specifying the nature of such claim or demand and the amount or the estimated amount thereof to the extent then feasible (which estimate shall not be conclusive of the final amount of such claim and demand) (the "Claim Notice"). Seller agrees that a delay in the Indemnified Purchaser Party's providing such Claim Notice shall not affect Seller's indemnification obligations hereunder, except to the extent that such delay causes material prejudice to Seller. Seller shall have ten (10) days from the giving of the Claim Notice hereunder (the "Notice Period") to notify the Indemnified Purchaser Party whether or not it disputes its liability to the Indemnified Purchaser Party hereunder with respect to such claim or demand. If Seller disputes its liability with respect to such claim or demand or the amount thereof, such dispute shall be resolved between the parties or by judicial proceeding.

(i) Except in the case of a Loss that is covered by Seller's insurance in circumstances where Seller's insurer will decline coverage if it is unable to defend the claim giving rise to such Loss ("Carved Out Claims"), the Indemnified Purchaser Party shall have the right, in its sole discretion, to control the defense or settlement of such claim or demand; and its costs and expenses shall be included as part of the indemnification obligation of Seller hereunder, and shall be reimbursed by Seller promptly as and when requested by the Indemnified Purchaser Party; provided however, that the Indemnified Purchaser Party shall not settle any such claim or demand without the prior written consent of Seller, which consent shall not be unreasonably withheld. If the Indemnified Purchaser Party shall elect to exercise such right, Seller shall cooperate with Purchaser to the extent requested by Purchaser, at Seller's sole cost and expense.

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(ii) In the case of Carved Out Claims, and in respect of other claims if the Indemnified Purchaser Party notifies Seller that it shall not elect to control the defense or settlement of such claim or demand, then Seller, within five (5) business days thereof shall give notice whether it agrees to defend the Indemnified Purchaser Party, retaining counsel, of reputable standard acceptable to the Indemnified Purchaser Party, shall defend the Indemnified Purchaser Party by appropriate proceedings, which proceedings shall be promptly settled or prosecuted by them to a final conclusion in such a manner as to avoid any risk of Indemnified Purchaser Party becoming subject to liability for any other matter; provided however, that Seller shall not, without the prior written consent of the Indemnified Purchaser Party, (A) consent to the entry of any judgment against the Indemnified Purchaser Party, (B) enter into any settlement or compromise of any claim or demand for other than monetary damages, or (C) enter into any settlement or compromise of any claim or demand for monetary damages which does not include, as an unconditional term thereof, the giving by the claimant or plaintiff to the Indemnified Purchaser Party of a release, in form and substance satisfactory to the Indemnified Purchaser Party from all liability in respect of such claim or litigation. If the Indemnified Purchaser Party desires to participate in, but not control, any such defense or settlement, it may do so, and its costs and expenses shall be included as part of the indemnification obligation of Seller hereunder, and shall be reimbursed by Seller promptly as and when requested by the Indemnified Purchaser Party.

(iii) If Seller elects not to defend the Indemnified Purchaser Party against such claim or demand in accordance with paragraph (ii) above, whether by not giving the Indemnified Purchaser Party timely notice as provided above or otherwise, then the amount of any such claim or demand, or if the same be defended by Seller or by the Indemnified Purchaser Party (but the Indemnified Purchaser Party shall not have any obligation to defend any such claim or demand), then that portion thereof as to which such defense is unsuccessful, in each case shall be conclusively deemed to be a liability of Seller hereunder, unless Seller shall have disputed its liability to the Indemnified Purchaser Party hereunder, as provided in paragraph (i) above, in which event such dispute shall be resolved between the parties or by judicial proceeding.

(iv) In the event an Indemnified Purchaser Party should have a claim against Seller hereunder that does not involve a claim or demand being asserted against or sought to be collected from it by a third party, the Indemnified Purchaser Party shall promptly send a Claim Notice with respect to such claim to Seller. If Seller disputes its liability with respect to such claim or demand, such dispute shall be resolved between the parties or by judicial proceeding; if Seller does not notify the Indemnified Purchaser Party within the Notice Period that it

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disputes such claim, the amount of such claim shall be conclusively deemed a liability of Seller hereunder.

(d) Method of Asserting Claims by Seller. In the event that any claim or demand for which Purchaser would be liable to an Indemnified Seller Party hereunder is asserted against or sought to be collected from an Indemnified Seller Party by a third party, the Indemnified Seller Party shall promptly give written notice to Purchaser of such claim or demand, specifying the nature of such claim or demand and the amount or the estimated amount thereof to the extent then feasible (which estimate shall not be conclusive of the final amount of such claim and demand) (the "Claim Notice"). Purchaser agrees that a delay in the Indemnified Seller Party's providing such Claim Notice shall not affect Purchaser's indemnification obligations hereunder, unless such delay causes material prejudice to Purchaser. Purchaser shall have ten (10) days from the giving of the Claim Notice hereunder (the "Notice Period") to notify the Indemnified Seller Party, (A) whether or not it disputes its liability to the Indemnified Seller Party hereunder with respect to such claim or demand, and (B) notwithstanding any such dispute, whether or not it desires, at its sole cost and expense, to defend the Indemnified Seller Party against such claim or demand.

(i) If Purchaser disputes its liability with respect to such claim or demand or the amount thereof (whether or not Purchaser desires to defend the Indemnified Seller Party against such claim or demand as provided in paragraphs (ii) and (iii) below), such dispute shall be resolved between the parties or by judicial proceeding.

(ii) In the event that Purchaser notifies the Indemnified Seller Party within the Notice Period that it desires to defend the Indemnified Seller Party against such claim or demand then, Purchaser shall have the right to defend the Indemnified Seller Party by appropriate proceedings, which proceedings shall be promptly settled or prosecuted by it to a final conclusion in such a manner as to avoid any risk of Indemnified Seller Party becoming subject to liability for any other matter; provided however, that Purchaser shall not, without the prior written consent of the Indemnified Seller Party, (A) consent to the entry of any judgment against the Indemnified Seller Party, (B) enter into any settlement or compromise of any claim or demand for other than monetary damages, or (C) enter into any settlement or compromise of any claim or demand for monetary damages which does not include, as an unconditional term thereof, the giving by the claimant or plaintiff to the Indemnified Seller Party of a release, in form and substance satisfactory to the Indemnified Seller Party from all liability in respect of such claim or litigation. If any Indemnified Seller Party desires to participate in, but not control, any such defense or settlement, it may do so at its sole cost and expense.

(iii) If Purchaser elects not to defend the Indemnified Seller Party against such claim or demand, whether by not giving the Indemnified Seller Party timely notice as provided above or otherwise, then the amount of any such claim or demand, or if the same be defended by Purchaser or by the Indemnified Seller Party (but the Indemnified Seller Party shall not have any obligation to defend any such claim or demand), then that portion thereof as to which such defense is unsuccessful, in each case shall be conclusively deemed to be a liability of Purchaser hereunder, unless Purchaser shall have disputed its liability to the Indemnified Seller Party hereunder, as provided in paragraph (i) above, in which event such dispute shall be resolved between the parties or by judicial proceeding.

(iv) In the event an Indemnified Seller Party should have a claim against Purchaser hereunder that does not involve a claim or demand being asserted against or sought to be collected from it by a third party, the Indemnified Seller Party shall promptly send a Claim Notice with respect to such claim to Purchaser. If Purchaser disputes its liability with respect to such claim or demand, such dispute shall be resolved between the parties or by judicial proceeding; if Purchaser does not notify the Indemnified Seller Party within the Notice Period that it disputes such claim, the amount of such claim shall be conclusively deemed a liability of Purchaser hereunder.

(e) Payment. Upon the determination of the liability under Section 12.6(c) or 12.6(d) hereof, as the case may be, or otherwise by agreement between the parties or by final judicial determination that is not subject to appeal, the appropriate party shall pay to the other, as the case may be, within ten (10) days after such determination, the amount of any claim for indemnification made hereunder. In the case of Seller's liability, such payment to Purchaser shall be made under the Indemnification Escrow Agreement pursuant to Section 12.6(g)(iii). In the event that the indemnified party is not paid in full for any such claim pursuant to the foregoing provisions promptly after the other party's obligation to indemnify has been determined in accordance herewith, then, subject in the case of Seller's indemnification obligations to the provisions of Section 12.6(g)(iii), it shall have the right, notwithstanding any other rights that it may have against any other person or entity, to setoff the unpaid amount of any such claim against any amounts owed by it under any instrument or agreement entered into pursuant to this Agreement. Upon the payment in full of any claim, either by setoff or otherwise, the entity making payment shall be subrogated to the rights of the indemnified party against any person, firm or corporation with respect to the subject matter of such claim. With respect to indemnification claims made by Purchaser from the Closing until the third (3rd) anniversary date of the Closing, upon the final determination of liability under Section 12.6(c) as described in this Section 12.6(e), payment of such claims shall be

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made in accordance with the Indemnification Escrow Agreement, up to the amount remaining in escrow. Any amounts remaining in escrow and not otherwise subject to any claims by Purchaser shall be remitted to Seller at the end of such three-year period.

(f) Time and Manner of Certain Claims. All representations and warranties made by Seller or Purchaser in this Agreement and in any Schedule, Exhibits, certificates or other documents delivered in connection with the transactions contemplated hereby shall survive the Closing as hereinafter set forth for a period equal to the longest of: (i) three (3) years; (ii) the applicable statute of limitations (including extensions thereof) to the extent related to Taxes, environmental matters, employee benefit matters, and (iii) indefinitely, with respect to claims relating to the obligation of Seller to discharge the Retained Liabilities pursuant to Section 3.4 hereof or the obligation of Purchaser to discharge the Assumed Liabilities pursuant to Section 3.3 hereof. If a party gives notice with respect to a claim for Losses prior to the expiration of the applicable time periods, the indemnifications provided herein with respect to such claim shall survive such time period for the purpose of remedy and collection if it is subsequently determined that such alleged breach giving rise to a claim for Losses in fact occurred or existed within such applicable time period.

(g) Limitations on Indemnification. Notwithstanding anything contained in this Section 12.6 to the contrary:

(i) Neither party, as indemnifying party, shall be liable for any amounts for which the other party, as indemnified party, is otherwise entitled to indemnification pursuant to this Section 12.6 until the aggregate amount for which the indemnified party is entitled to indemnification under all such claims for indemnification under this Agreement in the aggregate exceed \$50,000, at which time the indemnifying party shall be liable, dollar-for-dollar, for the full amount of such claims.

(ii) In calculating any amounts payable to Purchaser or Seller pursuant to Section 12.6(a) or Section 12.6(b) hereof, Purchaser or Seller, as the case may be, shall receive credit for any insurance recoveries.

(iii) All claims of Purchaser in respect of Losses under this Section 12.6 shall be satisfied first out of the General Claims Amount (as such term is defined in the Indemnification Escrow Agreement). In no event will Seller have any liability in respect of Losses arising from Seller's negligent misrepresentation, breach or nonfulfillment described in Section 12.6(a)(i)(A) in excess of the amount available under the Indemnification Escrow Agreement (including taking into account the funds in the Neptune Set-Aside, as such term is defined in the Indemnification Escrow Agreement), provided, however, that this

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limitation shall not apply to any fraudulent misrepresentation, breach or non-fulfillment described in Section 12.6(a)(i)(A), with respect to which no resort shall be made to any amounts held pursuant to the Indemnification Escrow Agreement and Seller shall remain liable for such Losses.

(h) Additional Indemnification Provisions.

(i) The indemnification rights of the parties under this Section 12.6 are independent of and in addition to such rights and remedies as the parties may have at law or in equity or otherwise for any misrepresentation, breach of warranty or failure to fulfill any agreement or covenant hereunder on the part of any party hereto, including without limitation, the right to seek specific performance, rescission or restitution, none of which rights or remedies shall be affected or diminished hereby. Notwithstanding the foregoing, if the Closing shall occur, the provisions of this Section 12.6 shall constitute the sole remedy of Purchaser against Seller in respect of the matters described in Section 12.6(a), except to the extent of a breach of Seller's agreements contained in Article XIII, for which Purchaser shall have the right, without limitation, to seek specific performance.

(ii) Nothing herein shall be deemed to prevent an indemnified party from making a claim hereunder for potential or contingent claims or demands, provided the Claim Notice sets forth the specific basis for any such potential or contingent claim or demand to the extent then feasible and the indemnified party has reasonable grounds to believe that such a claim may be made.

(iii) Any claim for indemnification shall not be invalid as a result of any disclosure in this Agreement, together with all exhibits and schedules hereto, or any investigation by or opportunity to investigate afforded to an indemnified party or an indemnifying party, as the case may be.

(iv) Any claim for indemnification by an Indemnified Purchaser Party shall not be invalid merely because reserves were accrued by Seller on the Closing Balance Sheet; provided however, that Seller's obligation of indemnity shall not extend to any amounts which were accrued by Seller on the Closing Balance Sheet specifically in respect of the obligation or liability from which such indemnification is sought.

12.7 Required Remediation. Purchaser agrees that, notwithstanding the provisions of Section 12.6 hereof, it shall not be entitled to draw upon the Indemnification Escrow in respect of any costs of remediation of environmental conditions except to the extent that such remediation is a Required Remediation. A remediation shall be deemed to be a "Required Remediation" if it is necessary to comply with applicable law, using the least costly permissible alternative acceptable to applicable agencies of

competent jurisdiction and consistent with the use of the property. Purchaser agrees if and to the extent permitted by applicable law to agree to standards applicable to non-residential properties and/or using institutional and/or engineering controls. The parties further agree that the Neptune Remediation (as such term is defined in the Indemnification Escrow Agreement) shall not be deemed to have been completed until a "No Further Action" letter is obtained from the New Jersey Department of Environmental Protection.

12.8 Employee Benefits.

(a) Offer of Employment. Each Employee of Seller who is actively working for the Business on the Closing Date shall be offered employment at will by Purchaser effective as of the day after the Closing Date and, upon acceptance of such offer, shall be transferred from Seller to Purchaser. Such offer of employment shall be for a substantially similar job position with base salary or base compensation at a rate comparable to that paid by Seller to the Employee of Seller immediately prior to the Closing Date. Any Employee of Seller not actively working with respect to the Business on the Closing Date shall not receive such an offer of employment from Purchaser unless and until such Employee of Seller is willing to, and capable of, returning to active employment. An Employee of Seller shall be deemed to be actively working for purposes of this Section 12.8(a) notwithstanding that the Employee of Seller is on leave for short-term disability, sick days or vacation, but an Employee of Seller shall be deemed not actively working if such Employee of Seller is on any other leave of absence (including without limitation, long-term disability leave) on the Closing Date, provided, however, that if an Employee of Seller who is on short-term disability leave on the Closing Date accepts an offer of employment described in this Section 12.8(a) but does not subsequently return to perform services for Purchaser at the end of such period of short-term disability (a "Non-Returning Employee"), Seller shall be obligated to reimburse Purchaser for all expenses and liability (including, without limitation, for compensation, long-term disability or other employee benefits) incurred by Purchaser with respect to such Non-Returning Employee. An Employee of Seller who accepts an offer of employment from Purchaser made pursuant to this Section 12.8(a) shall be deemed a "Transferred Employee".

(b) Benefits for Transferred Employees. Except as expressly stated in this Section 12.8, or in Sections 3.3(d) or (e) hereof:

(i) Seller shall pay directly to each employee of the Business that portion of all benefits (including the arrangements, plans and programs set forth in Schedule 9.21) which has been accrued on behalf of that employee (or is attributable to

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expenses properly incurred by that employee) as of the Closing Date, and Purchaser shall assume no liability therefor;

(ii) Seller shall be solely responsible and pay all claims for welfare benefits (including without limitation, medical, dental, disability and life benefits), and any other benefits, under any of Seller's employee health benefit plans which are incurred or which arise out of events or conditions occurring or existing on or prior to the Closing Date, whether or not such claims have been filed with Seller or otherwise reported;

(iii) all amounts payable directly to employees, or to any fund, program, arrangement or plan maintained by Seller therefor shall be paid by Seller within thirty (30) days after the Closing Date to the extent that such payment is not inconsistent with the terms of such fund, program, arrangement or plan;

(iv) after the Closing Date, and with respect to Transferred Employees only, Purchaser shall pay and be responsible for all liabilities and obligations arising under Seller's employee health benefit plans and Purchaser shall be responsible for all claims for welfare benefits (including, without limitation, medical, dental, disability and life benefits), and any other benefits, under any of Seller's employee health benefit plans which are incurred or which arise out of events or conditions occurring or existing after the Closing Date. Purchaser shall recognize the service of Transferred Employees with Seller for purposes of continued eligibility under the welfare and other benefit programs assumed by Purchaser;

(v) all of the assets of any plan, fund, program or arrangement, written or unwritten, heretofore sponsored or maintained by Seller (and all amounts attributable to any such plan, fund, program or arrangement) shall be transferred to Purchaser, and Purchaser shall continue all such plans, funds, programs or arrangements after the Closing Date;

(vi) after the Closing Date, Seller shall retain or assume, and shall hold Purchaser harmless from and against, all liabilities and claims which may be brought by Employees of Seller or any other person in connection with their employment with Seller, the termination thereof by Seller, Purchaser's failure to offer employment to any of them (except as required pursuant to this Section 12.8), or, with respect to periods ending on or prior to the Closing Date, in connection with any employee benefit plan or workers' compensation program of Seller (it being recognized that all such liabilities shall be deemed to be Retained Liabilities);

(vii) with respect to those Employees other than the Retail Store Employees (as defined in Section 13.1 hereof), Purchaser (x) shall be responsible for complying with the

Consolidated Omnibus Budget Reconciliation Act of 1985, as amended ("COBRA") and for providing health care continuation coverage to the aforesaid Employees and their "qualified beneficiaries" as defined under COBRA, and (y) shall assume and be responsible for disability plans and workers compensation plans for the aforesaid Employees, all in accordance with applicable law, the terms of the Transition Services Agreement and the terms of such plans; and

(viii) all Employees of Seller who become Transferred Employees shall be new employees of Purchaser and any prior employment by Seller of such Transferred Employees shall not affect entitlement to, or the amount of, salary or other cash compensation, current or deferred, which Purchaser may make available to its employees.

(c) Accrued Vacation and Sick Time. Each Transferred Employee shall be entitled after the Closing Date to the accrued vacation days and sick time which such Transferred Employee would have carried past the Closing Date under the terms of the applicable employee benefit plan of Seller.

(d) Required Documentation. In connection with the implementation of this Section 12.8, Purchaser and Seller shall cooperate in the preparation and filing of all documentation required to be filed with the Internal Revenue Service, the Department of Labor or any other applicable governmental agency. Purchaser and Seller will furnish to each other all information reasonably requested, and will otherwise cooperate with each other, as each may reasonably request, to implement the foregoing provisions. The Pro-Forma Balance Sheet includes within the line-item "accrued expenses" Seller's liabilities in respect of employee benefit matters as of December 31, 1997, in accordance with generally accepted accounting principles, consistently applied in accordance with Seller's past practices.

12.9 Discharge of Business Obligations. From and after the Closing Date, Seller shall pay and discharge, in accordance with past practice and the terms of such obligations but not less than on a timely basis, all obligations and liabilities incurred prior to the Closing Date in respect of the Business, its operations or the assets and properties used therein (other than the Assumed Liabilities), including without limitation, any liabilities or obligations to employees, trade creditors and clients of the Business that do not constitute Assumed Liabilities.

12.10 Payments Received. Seller and Purchaser each agree that after the Closing they will hold and will promptly transfer and deliver to the other, from time to time as and when received by them, any cash, checks with appropriate endorsements (using their best efforts not to convert such checks into cash), or other property that they may receive on or after the Closing which properly belongs to the other party, including without limitation,

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any insurance proceeds, and will account to the other for all such receipts. From and after the Closing, Purchaser shall have the right and authority to endorse without recourse the name of Seller on any check or any other evidences of indebtedness received by Purchaser that constitutes part of the Business and the Assets transferred to Purchaser hereunder. Without limiting the generality of the foregoing, (i) Seller shall endorse to the order of Purchaser checks received by Seller after midnight the relevant Saturday on which the Closing becomes effective, and (ii) Seller shall deliver to Purchaser any cash receipts of the Business received during the day of the relevant Saturday on which the Closing becomes effective.

12.11 Use of Name. From and after the Closing Date, Seller will sign such consents and take such other action as Purchaser shall reasonably request in order to permit Purchaser to use the name "Welsh Farms" and variants thereof. From and after the Closing Date, Seller will not itself use the name "Welsh Farms" or any names similar thereto or variants thereof, except to the extent and in accordance with the terms and conditions of the Supply and License Agreement, in the form attached hereto as Exhibit 5.3A.

12.12 UCC Matters. From and after the Closing Date, Seller will promptly refer all inquiries with respect to ownership of the Assets or the Business to Purchaser. In addition, Seller will execute such documents and financing statements as Purchaser may request from time to time to evidence transfer of the Assets to Purchaser, including any necessary assignments of financing statements.

12.13 Non-Recourse. The Purchaser acknowledges that promptly following the Closing, Seller intends to declare a partially liquidating dividend to its shareholders after establishing such reserves for the payment of Retained Liabilities as Purchaser shall deem reasonable and appropriate. In no event will the holder of any debt obligation of Seller or any shareholder of Seller have any liability or responsibility to Purchaser hereunder; provided however, that the foregoing limitation of liability shall not affect any rights which Purchaser may have against the holder of any debt obligation of Seller, or any shareholder of Seller in the event of any such person's or entity's fraud under this Agreement or otherwise.

ARTICLE XIII
NON-SOLICITATION; NON-COMPETE

13.1 Until the fifth anniversary of the Closing Date, (i) Seller will not directly or indirectly solicit, offer employment to, or employ any person employed by Purchaser (A) who did not become an employee of Purchaser, (B) who is then an employee of Purchaser, or (C) who has terminated such employment

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without the consent of Purchaser within one hundred eighty (180) days preceding such solicitation, offer, or employment; provided, however, that Seller may continue to employ such employees of Seller as are employed in the retail stores of Seller set forth on Schedule 13.1 (the "Retail Store Employees").

13.2 Until the fifth anniversary of the Closing Date, Seller will not directly or indirectly solicit, offer services to, or provide services to any customer of Purchaser, whether such customer was a customer of Purchaser's or of Seller's prior to the Closing of the transactions contemplated hereunder; provided, however, that nothing in this Section 13.2 shall be violated by the operation of, and Seller, its successors and assigns shall be free at all times to operate, a retail store line of business.

13.3 Seller agrees that for a period of five (5) years after the Closing Date, it will not, directly or indirectly, own, manage, operate, join, control or participate in the ownership, management, operation or control of, any person or entity, whether in corporate, proprietorship or partnership form or otherwise as more than a five (5%) percent owner of such person or entity if such person or entity is engaged in any way in the processing, distributing and marketing of fresh-milk, ice cream, or related food and beverage products; provided, however, that nothing in this Section 13.2 shall be violated by the operation of, and Seller, its successors and assigns shall be free at all times to operate, a retail store line of business.

13.4 The parties hereto specifically acknowledge and agree that the remedy at law for any breach of the foregoing provisions of this Article XIII will be inadequate and that the Purchaser, in addition to any other relief available to it, shall be entitled to temporary and permanent injunctive relief without the necessity of proving actual damage or posting a bond. In the event that the provisions of this Article XIII should ever be deemed to exceed the limitation provided by applicable law, then the parties hereto agree that such provisions shall be reformed to set forth the maximum limitations permitted.

ARTICLE XIV
MISCELLANEOUS

14.1 Assignment. Neither this Agreement nor any of the rights or obligations hereunder may be assigned by Seller without the prior written consent of Purchaser, or by Purchaser without the prior written consent of Seller, except that Purchaser may, without such consent, but with prior Notice to Seller, assign in writing its rights and obligations under this Agreement to an affiliate of Purchaser; provided however, that Purchaser shall continue to be party to this Agreement and to be bound by the provisions hereof and shall not as a result of such assignment be released from any of its obligations hereunder. Subject to the foregoing, this

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Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and permitted assigns, and no other person shall have any right, benefit or obligation hereunder. Purchaser hereby consents to any assignment by Seller of its rights and obligations hereunder that may be deemed to have occurred as a result of the merger of Seller after the Closing with and into OWF LLC.

14.2 Notices. Any notice, request, demand, waiver, consent, approval or other communication (a "Notice") which is required or permitted hereunder shall be in writing. All Notices shall be delivered by telecopier or similar device, with a copy thereof sent simultaneously by Federal Express, DHL Courier, or other similar overnight delivery service, and shall be deemed given or made upon receipt thereof. All Notices are to be given or made to the parties at the following addresses (or to such other address as any party may designate by a Notice given in accordance with the provisions of this Section 14.2):

If to Purchaser:

Parmalat USA Corp.
Glenpointe, The Atrium (2nd floor)
400 Frank W. Burr Boulevard
Teaneck, New Jersey 07666
Attn: Eric Dailey, President
Telefax No.: 201-836-6090

With a copy to:

Parmalat S.p.A.
Via O. Grassi 22/26
43044 Collecchio
Parma, Italy
Attn: Fausto Tonna
Chief Financial Officer
Telefax No.: 011-39-0521-808327
Telephone No.: 011-39-0521-8081

With a copy to:

Pavia e Ansaldo
Via dell' Annunciata, 7
20121 Milano
Italy
Attn: Gian Paolo Zini
Telefax No.: 011-39-02-6554055

With a copy to:

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Pavia & Harcourt
600 Madison Avenue
New York, New York 10022
Attn: Harold A. Flegelman, Esq.
Telefax No.: 212-980-3185

If to Seller:

Welsh Farms Inc.
55 Fairview Avenue
Long Valley, New Jersey 10177
Attn: Scott Korman, President
Telefax No.: 908-876-5083

With a copy to:

Kalkines, Arky, Zall & Bernstein LLP
1675 Broadway
New York, New York 10019-5820
Attn: Peter F. Olberg, Esq.
Telefax No.: 212-541-9250

With a copy to:

Scott Korman
175 Elm Road
Englewood, New Jersey 07631
Telefax No.: 201-568-2230

With a copy to:

Timothy Healy
2 Washington Square Village
Apartment 14J
New York, New York 10012

Failure to send any copy to counsels shall invalidate such notice.

14.3 Choice of Law. This Agreement shall be construed and interpreted, and the rights of the parties determined, in accordance with the laws of the State of New York, without reference to the principles of conflicts of law thereof, except that (i) with respect to matters of law concerning the internal corporate affairs of any corporate entity which is a party to or the subject of this Agreement, the law of the jurisdiction under which the respective entity derives its powers shall govern; and (ii) in any jurisdiction where the Proprietary Rights have been registered or filed, the mandatory laws and regulations of such jurisdiction applicable to such Proprietary Rights shall govern.

14.4 Consent to Jurisdiction. The parties hereto hereby consent and submit to the exclusive personal jurisdiction of the United States District Court for the Southern District of New York and any New York State court of competent jurisdiction located in

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New York County, New York in any suit, action or proceeding arising out of or relating to this Agreement. The parties further agree that, notwithstanding any contrary provision of law, process will only be sufficient and effective if served in accordance with the notice provisions set forth in Section 14.2 hereof.

14.5 Entire Agreement; Amendments and Waivers. This Agreement, together with all exhibits and schedules hereto, constitutes the entire agreement among the parties pertaining to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the parties. No supplement, modification or waiver of this Agreement shall be binding unless executed in writing by the party to be bound thereby. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision hereof (whether or not similar), nor shall such waiver constitute a continuing waiver unless otherwise expressly provided.

14.6 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

14.7 Invalidity. In the event that any one or more of the provisions contained in this Agreement or in any other instrument referred to herein, shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement or any other such instrument.

14.8 Headings. The headings of the Articles and Sections herein are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement.

14.9 Expenses. Seller and Purchaser will each be liable for its own costs and expenses incurred in connection with the negotiation, preparation, execution and performance of this Agreement.

14.10 Publicity. No party shall issue any press release or, except as required by law or legal process, make any public statement regarding the transactions contemplated hereby without the prior approval of the other parties; it being expressly agreed, however, that after the Closing, Purchaser shall have the right (without obtaining such prior approval) to make any press release or disclosure required under any applicable law, regulation, stock exchange rule, order of any judicial or lawful authority, and/or contractual covenant.

14.11 Confidential Information. The parties acknowledge that the transaction described herein is of a confidential nature,

and agree that the terms hereof shall be maintained in confidence; it being expressly agreed, however, that after the Closing, Purchaser shall have the right (without obtaining the prior approval of Seller) to make any press release or disclosure required under any applicable law, regulation, stock exchange rule, order of any judicial or lawful authority, and/or contractual covenant. Seller, with the prior approval of Purchaser, at a time and in a manner that is acceptable to both Purchaser and Seller, may notify employees of the fact of the subject transaction.

14.12 Knowledge. As used in this Agreement, "to the best of Seller's knowledge" or "to Seller's knowledge" or Seller having "knowledge" shall mean the actual knowledge possessed by the following senior executive officers of Seller: Scott Korman, Michael Honig, Frank Hood and Cleland Cochran.

14.13 Termination.

(a) Anything herein or elsewhere to the contrary notwithstanding, this Agreement may be terminated by written notice of termination at any time before the Closing Date only as follows:

(i) by mutual consent of Seller and Purchaser;

(ii) by Purchaser, upon written notice to Seller given at any time after August 31, 1998, or such later date as shall have been specified in a writing authorized on behalf of Seller and Purchaser (the "Termination Date"), if all of the conditions precedent set forth in Sections 6.1 and 6.2 hereof have not been met; or

(iii) by Seller, upon written notice to Purchaser given at any time after the Termination Date, if all of the conditions precedent set forth in Sections 6.1 and 6.3 hereof have not been met.

(b) In the event of the termination and abandonment hereof pursuant to the provisions of this Section 14.13, this Agreement (except for Section 4.2.3 which shall continue) shall become void and have no effect, without any liability on the part of any of the parties or their directors or officers or stockholders in respect of this Agreement, unless the termination was the result of the representations and warranties of a party being materially incorrect when made or the material breach by such party of a covenant hereunder in which event the party whose representations and warranties were incorrect or who breached such covenant shall be liable to the other party for such damages as may be provided by applicable law, including all costs and expense of

the other party in connection with the preparation, negotiation, execution and performance of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

PARMALAT USA CORP.

By: Eric Darby Eric Darby
Its: President & CEO

WELSH FARMS INC.

By: Scott Korman
Its: President + CEO

July 14, 1998 10:40 AM DC # 94 JMS C:\PRODCS\PARMALAT\CMAT\ASSETP\R.13

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**Schedule 9.20
Proprietary Rights**

| <u>Trademarks</u> | <u>Registration Number</u> | <u>Country</u> | <u>Registration Date</u> |
|---------------------|----------------------------|----------------|--------------------------|
| Welsh Farms | 1,536,583 | USA | April 25, 1989 |
| Welsh Farms (Logo) | 1,525,989 | USA | February 21, 1989 |
| B-Thin | 1,516,182 | USA | December 13, 1988 |
| Dyna-Milk | 1,487,666 | USA | May 10, 1988 |
| Welsh Farms (Logo) | 1,550,316 | USA | August 1, 1989 |
| Boy and Calf (Logo) | 1,537,504 | USA | May 2, 1989 |
| Welsh Farms | 1,548,475 | USA | July 18, 1989 |

9.20(c): None

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