

1/19/05

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Form PTO-1594 (Rev. 06/04)  
OMB Collection 0651-0027 (exp. 6/30/2005)

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



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2005

To the Director of the U. S. Patent and Trademark Office: Please record the attached documents or the new address(es) below.

1. Name of conveying party(ies)/Execution Date(s):

Sara Lee Foods, Inc.

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

Citizenship (see guidelines) Delaware

Execution Date(s) January 14, 2005

Additional names of conveying parties attached?  Yes  No

3. Nature of conveyance:

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

2. Name and address of receiving party(ies)

Additional names, addresses, or citizenship attached?  Yes  No

Name: Sweet Sue Acquisition, LLC

Internal

Address: c/o Bumble Bee Seafoods, LLC

Street Address: P.O. Box 85362

City: San Diego

State: California

Country: USA Zip: 92186

- Association
- General Partnership
- Limited Partnership
- Corporation
- Other LLC

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)

4. Application number(s) or registration number(s) and identification or description of the Trademark.

A. Trademark Application No.(s)

73/054,566

B. Trademark Registration No.(s)

1,033,998

Additional sheet(s) attached?  Yes  No

C. Identification or Description of Trademark(s) (and Filing Date if Application or Registration Number is unknown):

SWEET SUE

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

Name: Claudia Ray

Internal Address: O'Melveny & Myers LLP

Street Address: 7 Times Square

City: New York

State: New York Zip: 10036

Phone Number: (212) 326-2170

Fax Number: (212) 326-2061

Email Address: cray@omm.com

6. Total number of applications and registrations involved:

8

7. Total fee (37 CFR 2.6(b)(6) & 3.41) \$ 215.00

- Authorized to be charged by credit card
- Authorized to be charged to deposit account
- Enclosed

8. Payment Information: N/A

a. Credit Card Last 4 Numbers \_\_\_\_\_  
Expiration Date \_\_\_\_\_

b. Deposit Account Number \_\_\_\_\_  
Authorized User Name \_\_\_\_\_

9. Signature:

Signature

Date

Claudia Ray

Name of Person Signing

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

Documents to be recorded (including cover sheet) should be faxed to (703) 306-5995, or mailed to: Mail Stop Assignment Recordation Services, Director of the USPTO, P.O. Box 1450, Alexandria, VA 22313-1450

02/07/2005 ECDOPER 00000074 73054566

01 FC:8521 40.00 DP

02 FC:8522 175.00 DP

TRADEMARK  
REEL: 003117 FRAME: 0202

Continuation of Item 4

<u>Trademark Application Number</u>	<u>Trademark Registration Number</u>	<u>Identification or Description of Trademarks</u>
74/437,640	1,895,207	PICNIC
75/672,939	2,338,271	PRAIRIE BELT
75/669698	2,357,185	PRAIRIE BELT & BOY DESIGN
75/669,699	2,338,247	SWEET SUE & GIRL DESIGN
76/007,963	2,847,741	FROM THE KITCHENS OF SWEET SUE
71/481,890	429,529	TEMT & DESIGN
76/165,681	2,616,921	PENNANT

**ASSET PURCHASE AGREEMENT**

**Dated as of December 21, 2004**

**Among**

**SARA LEE CORPORATION,**

**BRYAN FOODS, INC.,**

**SARA LEE FOODS, INC.**

**and**

**BUMBLE BEE SEAFOODS, LLC**

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- Exhibit A Form of Instrument of Assignment
- Exhibit B Form of Instrument of Assumption
- Exhibit C Form of Trademark License Agreement
- Exhibit D Form of Special Warranty Deed
- Exhibit E Form of Transition Services Agreement



# ASSET PURCHASE AGREEMENT

ASSET PURCHASE AGREEMENT (this "Agreement") dated as of December 21, 2004 among Bumble Bee Seafoods, LLC, a Delaware limited liability company ("Buyer"), Sara Lee Corporation, a Maryland corporation ("Sara Lee"), Bryan Foods, Inc., a Delaware corporation and a wholly-owned subsidiary of Sara Lee ("Bryan Foods"), and Sara Lee Foods, Inc., a Delaware corporation and a wholly-owned subsidiary of Sara Lee ("Sara Lee Foods"), together with Sara Lee and Bryan Foods each a "Seller" and collectively, "Sellers").

WHEREAS, Sellers are, among other things, engaged in the business of manufacturing, processing, selling and distributing shelf-stable chicken, beef and pork products under the brand names of Sweet Sue Kitchens, Inc., Bryan, Prairie Belt, Picnic, Pennant, Red Bird and Savoy, both in word and design form (the "Business"); and

WHEREAS, Sellers desire to sell to Buyer, and Buyer desires to purchase from Sellers, certain assets and properties related exclusively to the Business, as more specifically identified in this Agreement, on the terms and subject to the conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Sellers and Buyer hereby agree as follows:

## ARTICLE I

### DEFINITIONS

1.1. Definitions. In this Agreement, the following terms have the meanings specified or referred to in this Section 1.1.

**"Acquisition Proposal"** means any proposal for the acquisition of all or a substantial portion of the Purchased Assets.

**"Affiliate"** means, with respect to any Person, any other Person that directly or indirectly controls, is controlled by or is under common control with such Person. For purposes of this definition, "control" shall mean, when used with respect to any Person, the power to direct the management and policies of such Person, directly or indirectly, through the ownership of voting securities, by contract or otherwise.

**"Agreement"** has the meaning specified in the preamble.

**"Allocation Schedule"** has the meaning specified in Section 3.2.

**"Assumed Liabilities"** has the meaning specified in Section 2.3.

**"Athens Business Employees"** has the meaning specified in Section 8.2(a)(i).

**"Bryan Foods"** has the meaning specified in the preamble.

**“Business”** has the meaning specified in the recitals.

**“Business Day”** means any day that is not a Saturday, a Sunday or other day on which commercial banks in the City of New York, New York are required or authorized by Requirements of Law to be closed.

**“Business Employees”** has the meaning specified in Section 5.12(a).

**“Business Intellectual Property”** has the meaning specified in Section 5.11(a).

**“Business Permits”** has the meaning specified in Section 2.1(i).

**“Buyer”** has the meaning specified in the preamble.

**“Buyer Ancillary Agreements”** means all Contracts and other documents being or to be executed and delivered by Buyer (and any subsidiary of Buyer to which Buyer assigns any of its rights under this Agreement pursuant to and as permitted by Section 12.5) under this Agreement or in connection herewith.

**“Buyer Group Member”** means any of Buyer and its Affiliates (including Centre Partners Management LLC) and any of their respective directors, officers, employees, agents, attorneys and consultants and their respective successors and assigns.

**“Claim Notice”** has the meaning specified in Section 10.3(a).

**“Closing”** means the closing of the transfer of the Purchased Assets and the Assumed Liabilities from Sellers to Buyer in exchange for the Closing Date Amount, as subject to adjustment pursuant to the terms of this Agreement.

**“Closing Date”** has the meaning specified in Section 4.1.

**“Closing Date Amount”** has the meaning specified in Section 3.1.

**“Closing Date Balance Sheet”** has the meaning specified in Section 3.5(a).

**“Closing Working Capital”** has the meaning specified in Section 3.4.

**“Closing Working Capital Statement”** has the meaning specified in Section 3.5(a).

**“Code”** means the Internal Revenue Code of 1986.

**“Confidentiality Agreements”** means the confidentiality agreement, dated June 16, 2004, between Sara Lee and Centre Partners Management LLC and the confidentiality agreement, dated October 22, 2004, between Sara Lee and Buyer.

**“Connors Bros.”** means Connors Bros. Income Fund, a limited purpose trust established under the laws of Ontario.

**“Connors Bros. Equity Offering”** means the proposed offering by Connors Bros. of its equity securities pursuant to terms and conditions to be reasonably agreed upon between Connors Bros. and underwriters or initial purchasers to be determined.

**“Consultation Period”** has the meaning specified in Section 3.6(b).

**“Contract”** means all written and unwritten understandings, leases, subleases, indentures, license agreements, contracts, notes, mortgages, franchise rights and agreements, purchase and sales orders, instruments, guaranties, indemnifications, arrangements, obligations or other legally binding understandings.

**“Copyrights”** means United States registered copyrights and pending applications to register the same.

**“Court Order”** means any judgment, order, award or decree of any United States federal, state or local, or any supra-national or non-U.S., court or tribunal and any award in any arbitration Proceeding.

**“Designated Other Business Employees”** has the meaning specified in Section 8.2(a)(ii)(B).

**“Encumbrance”** means any lien (statutory or other), claim, charge, security interest, mortgage, pledge, easement, right of way, option, deed of trust, right of first refusal, right of first offer, attachment, conditional sale or other title retention agreement, defect in title, covenant or other restrictions of any kind.

**“Environmental Laws”** means all applicable Requirements of Law relating to environmental, health or safety matters, including Requirements of Law governing the use, storage, disposal or remediation of Hazardous Substances.

**“Equity Offering Purchase Agreement”** has the meaning specified in Section 9.2(e).

**“ERISA”** means the Employee Retirement Income Security Act of 1974.

**“Excluded Assets”** has the meaning specified in Section 2.2.

**“Excluded Liabilities”** has the meaning specified in Section 2.4.

**“Expenses”** means any and all reasonable expenses incurred in connection with investigating, defending or asserting any Proceeding incident to any matter indemnified against hereunder (including court filing fees, court costs, arbitration fees or costs, witness fees, and reasonable fees and disbursements of legal counsel, investigators, expert witnesses, accountants and other professionals).

**“Final Closing Date Balance Sheet”** has the meaning specified in Section 3.6(c).

**“Final Working Capital Statement”** has the meaning specified in Section 3.6(c).

**“Financial Statements Date”** means July 3, 2004.

**“GAAP”** means the generally accepted accounting principles used in the United States, consistently applied, in effect at the date of the financial statements to which it refers.

**“Governmental Body”** means any United States federal, state, local, or any supra-national or non-U.S. government, regulatory or administrative authority or other governmental body.

**“Hazardous Substances”** means any toxic or hazardous substance, material or waste or any pollutant or contaminant or infectious or radioactive substance or material, including petroleum and petroleum derivatives and other substances, materials and wastes defined in or regulated under any applicable Environmental Laws.

**“Indemnified Party”** has the meaning specified in Section 10.3(a).

**“Indemnitor”** has the meaning specified in Section 10.3(a).

**“Independent Accounting Firm”** has the meaning specified in Section 3.6(c).

**“Instrument of Assignment”** means the Instrument of Assignment in the form attached hereto as Exhibit A.

**“Instrument of Assumption”** means the Instrument of Assumption in the form attached hereto as Exhibit B.

**“Intellectual Property”** means Copyrights, Patent Rights, Trademarks and Trade Secrets.

**“Interest Rate”** means an interest rate per annum equal to the average of the one month British Bankers Association LIBOR for U.S. dollars that appears on page 3750 (or a successor page) of the Dow Jones Telerate Screen as of 11:00 a.m. (London time) on each day during the period for which interest is to be paid.

**“Inventory”** has the meaning set forth in Section 2.1(a).

**“Knowledge of Sellers”** means, as to a particular matter, the current actual knowledge of the following persons: John Birch, Gay Baird, Bob Utecht, Bruce Rasch and Bob Kopriva.

**“Leased Real Property”** has the meaning specified in Section 5.7(a).

**“Losses”** means any and all losses, costs, obligations, liabilities, settlement payments, awards, judgments, fines, penalties, damages, deficiencies, disbursements or other charges of any kind or nature.

**“Marked Inventory”** has the meaning specified in Section 8.7.

**“Material Adverse Effect”** means an event, change or effect which, individually or together with other events, changes or effects, is materially adverse to, in or on (a) the business operations, assets, Assumed Liabilities, results of operations or financial condition of the Business, taken as a whole, or (b) the ability of any Seller to perform in all material respects its obligations under this Agreement or any Seller Ancillary Agreement or consummate in all material respects the transactions contemplated by this Agreement or any Seller Ancillary Agreement, in each case, other than changes (i) relating to generally applicable economic conditions or any industry in which the Business operates, (ii) resulting from the public disclosure of the transactions contemplated by this Agreement, (iii) resulting from the execution of this Agreement or the consummation of the transactions contemplated hereby or (iv) resulting from the commencement, occurrence or continuation of any war, armed hostilities or acts of terrorism; provided, that the exclusion set forth in clause (iii) hereof shall not be deemed to include any adverse effects resulting from the inability or failure to obtain any consent required to transfer a Purchased Asset pursuant to the transactions contemplated hereby.

**“Notice of Disagreement”** has the meaning specified in Section 3.6(a).

**“Optional Other Business Employees”** has the meaning specified in Section 8.2(a)(ii)(C).

**“Other Business Employees”** has the meaning specified in Section 8.2(a)(ii)(A).

**“Owned Real Property”** has the meaning specified in Section 2.1(b).

**“Patent Rights”** means United States patents, patent applications, continuations, continuations-in-part, divisions or reissues.

**“Permits”** means all franchises, licenses, permits, authorizations, consents, certificates and approvals, whether or not issued by a Governmental Body.

**“Permitted Encumbrances”** means: (i) liens for the payment of Taxes that are not yet due and payable (excluding any liens arising under ERISA); (ii) liens of landlords and liens of carriers, warehousemen, mechanics and materialmen and other like liens arising in the ordinary course of the Business for sums not yet due and payable; (iii) Encumbrances of record or listed as title exceptions in that certain Title Insurance Commitment issued by Chicago Title Insurance Company as File Number 2004-257, dated October 18, 2004, covering the Owned Real Property, a copy of which has been delivered to Buyer prior to the date hereof (the **“Title Insurance Commitment”**); (iv) such Encumbrances on the title of the Owned Real Property as are revealed on that certain ALTA/ACSM Land Title Survey, prepared by Harvel & Associates/The Matthews Company as Job Number 04673, dated November 15, 2004, as revised on December 17, 2004, a copy of which has been delivered to Buyer prior to the date hereof; (v) any applicable Requirements of Law relating to the Owned Real Property and/or the Leased Real Property; and (vi) any and all service Contracts affecting the Owned Real Property and/or the Leased Real Property as are set forth on Schedule 1.1.

**“Person”** means any individual, corporation, partnership, joint venture, association, joint stock company, limited liability company, trust, unincorporated entity, Governmental Body or other organization or entity.

**“Post-Closing Adjustment Amount”** has the meaning specified in Section 3.3.

**“Proceeding”** means any suit, claim, action, investigation, inquiry or proceeding.

**“Purchase Price”** has the meaning specified in Section 3.1.

**“Purchased Assets”** has the meaning specified in Section 2.1.

**“Records”** has the meaning set forth in Section 2.1(j).

**“Reference Balance Sheet”** means the unaudited pro forma balance sheet of the Business, in respect of the Purchased Assets and the Assumed Liabilities, as of October 2, 2004.

**“Reference Working Capital”** has the meaning specified in Section 3.4.

**“Reference Working Capital Statement”** has the meaning specified in Section 5.5.

**“Representative”** of a Person means the directors, officers, employees, advisors, agents, managers, controlling equityholders, consultants, accountants, investment bankers, attorneys or other authorized representatives of such Person.

**“Required Consents”** has the meaning specified in Section 7.3(a).

**“Requirements of Law”** means any United States federal, state and local, and any non-U.S., laws, statutes, regulations, rules, codes or ordinances enacted, adopted, issued or promulgated by any Governmental Body and any principle of common law.

**“Retained Other Business Employees”** has the meaning specified in Section 8.2(a)(ii)(A).

**“Review Period”** has the meaning specified in Section 3.5(b).

**“Sara Lee”** has the meaning specified in the preamble.

**“Sara Lee Foods”** has the meaning specified in the preamble.

**“Seller”** and **“Sellers”** have the meanings specified in the preamble.

**“Seller Agreements”** has the meaning specified in Section 5.10(b).

**“Seller Ancillary Agreements”** means all Contracts and other documents being or to be executed and delivered by any Seller under this Agreement or in connection herewith.

**“Seller Employee Benefit Plans”** has the meaning specified in Section 5.12(d).

**“Seller Group Member”** means each Seller and its Affiliates and any of their respective directors, officers, employees, agents, attorneys and consultants and their respective successors and assigns.

**“Sellers’ Accounting Principles”** means the accounting principles, methods, practices, categories, estimates, judgments and assumptions described on Schedule 1.1(A).

**“Sellers’ Marks”** has the meaning specified in Section 8.7.

**“Software”** means computer software programs and software systems, including all databases, compilations, tool sets, compilers, higher level “proprietary” languages, related documentation and materials, whether in source code, object code or human readable form; provided, that Software does not include software that is available generally through retail stores, distribution networks or is otherwise subject to “shrink-wrap” or “click-through” license agreements including any software pre-installed in the ordinary course of the Business as a standard part of hardware purchased by any Seller with respect to the Business.

**“Tax”** means any federal, state, local or foreign net income, alternative or add-on minimum, franchise, environmental, profits, lease, insurance, social security, stamp, occupation, gross income, gross receipts, property (real or personal), sales, use, transfer, gains, license, excise, employment, payroll, withholding or minimum tax, or any other tax, custom, duty, governmental fee or other like assessment or charge of any kind whatsoever, together with any interest or any penalty, addition to tax or additional amount imposed by any Governmental Body.

**“Tax Benefit”** means any Tax benefit other than a Tax benefit which results in an adjustment to the basis of (i) the Purchased Assets or (ii) the ownership interest of any direct or indirect owner of the Purchased Assets.

**“Tax Reimbursement Amount”** has the meaning specified in Section 10.7.

**“Tax Return”** means any return, report or similar statement required to be filed with respect to any Taxes (including any attached schedules), including any information return, claim for refund, amended return and declaration of estimated Tax and any schedules and exhibits thereto.

**“Third Person Claim”** has the meaning specified in Section 10.3(a).

**“Title Insurance Commitment”** has the meaning specified in the definition of “Permitted Encumbrances.”

**“Title Insurance Company”** has the meaning specified in Section 4.4(o).

**“Trademark License Agreement”** means the Trademark License Agreement between Buyer and Sellers substantially in the form attached hereto as Exhibit C.

**“Trademarks”** means registered United States, state and foreign trademarks, service marks and trade names and pending applications to register the foregoing.

**“Trade Secrets”** means confidential ideas, trade secrets, know-how, concepts, methods, processes, formulae, reports, data, customer lists, mailing lists, business plans or other proprietary information that provides the owner with a competitive advantage.

**“Transferring Employees”** has the meaning specified in Section 8.2(b).

**“Transition Services Agreement”** means the Transition Services Agreement between Buyer and Sara Lee substantially in the form attached hereto as Exhibit E.

**“WARN Act”** means the Worker Adjustment and Retraining Notification Act of 1988.

1.2. Interpretation. Article titles and headings to 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. The Schedules and Exhibits referred to herein shall be construed with and as an integral part of this Agreement to the same extent as if they were set forth verbatim herein. As used herein, (i) the word “including” means “including without limitation,” (ii) the word “or” is not exclusive and (iii) the words “herein,” “hereof,” “hereby,” “hereto” and “hereunder” refer to this Agreement as a whole. All capitalized terms used in any Schedule or Exhibit and not defined therein shall have the meanings assigned to such terms in this Agreement. Unless the context otherwise requires, references herein: (i) to Articles, Sections, Exhibits and Schedules mean the Articles and Sections of, and the Exhibits and Schedules attached to, this Agreement; (ii) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof and by this Agreement; (iii) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder and (iv) to “dollars” or “\$” means United States dollars.

## ARTICLE II

### PURCHASE AND SALE

2.1. Purchased Assets. Upon the terms and subject to the conditions of this Agreement and except as set forth in Section 2.2, on the Closing Date Sellers shall sell, transfer, assign, convey and deliver to Buyer, and Buyer shall purchase from Sellers, free and clear of all Encumbrances (except for Permitted Encumbrances), all of each Seller’s right, title and interest in, to and under only the following assets, properties, rights, privileges, claims and Contracts as the same shall exist on the Closing Date (collectively, the “Purchased Assets”):

(a) (i) all inventory held for sale, spare parts, raw materials, work in process, finished products, wrapping, supply and packaged items and similar items held on the Owned Real Property and the Leased Real Property and (ii) all other inventory held for sale, spare parts, raw materials, work in process, finished products, wrapping, supply and packaged items and similar items otherwise held for sale or used or intended for use exclusively in connection with the Business (collectively, the “Inventory”);



(b) the real properties described on Schedule 2.1(b), including all structures and other improvements thereon (the “Owned Real Property”);

(c) the real property leases, subleases, licenses and other Contracts listed or described on Schedule 2.1(c);

(d) (i) the machinery, apparatus, equipment, furniture, fixtures and other personal property located on the Owned Real Property and the Leased Real Property and (ii) the other machinery, apparatus, equipment, vehicles, furniture, fixtures and other personal property used or intended for use exclusively in connection with the Business, in each case, including those items listed or described on Schedule 2.1(d);

(e) the personal property leases set forth on Schedule 2.1(e);

(f) the Contracts of Sellers listed or described on Schedule 2.1(f), together with any Contracts entered into by any Seller exclusively in connection with the Business prior to the Closing Date in accordance with the terms of Section 7.4;

(g) all of the Intellectual Property and Software listed or described on Schedule 2.1(g) and any proprietary or confidential information of a Seller relating exclusively to any Purchased Asset or the Business;

(h) each Seller’s rights, claims or courses of action against third Persons relating exclusively to any Purchased Asset or the operation of the Business;

(i) all rights and benefits of each Seller under or with respect to the Permits listed or described on Schedule 2.1(i), to the extent transferable (the “Business Permits”);

(j) all existing books, records and files of each Seller (whether in paper form, on computer disk or any other medium) relating exclusively to the Purchased Assets, the Business, any Transferring Employee or any customer or supplier of the Business (collectively, the “Records”), including all sales data, customer and supplier lists, mailing lists and employee manuals and handbooks but excluding (i) all Tax Returns, worksheets, notes, files and documents primarily related thereto and (ii) all documents prepared in connection with the transactions contemplated by this Agreement;

(k) all of each Seller’s rights and interests in any promotional, sales and advertising materials relating exclusively to the Purchased Assets or the Business, including all catalogs and brochures; and

(l) all other assets, properties and rights set forth or described on Schedule 2.1(l).

2.2. Excluded Assets. The Purchased Assets shall not include any assets or properties of Sellers or their Affiliates other than those assets and properties specifically identified in Section 2.1 (all such excluded assets and properties being hereinafter referred to collectively as the “Excluded Assets”).

2.3. Assumed Liabilities. On the Closing Date, Buyer shall deliver to Sellers the Instrument of Assumption, pursuant to which Buyer shall assume and agree to pay, perform or otherwise discharge only the following obligations and liabilities of Sellers, whether direct or indirect, known or unknown, absolute or contingent (collectively, the “Assumed Liabilities”):

- (a) all liabilities and obligations with respect to Taxes for which Buyer is liable pursuant to Section 8.1;
  - (b) all liabilities of Sellers for which Buyer is liable pursuant to Section 8.2;
- and
- (c) (i) all liabilities and obligations of Sellers arising on or after the Closing Date under the Seller Agreements and under any other Contracts entered into by any Seller exclusively in connection with the Business after the date hereof and on or prior to the Closing Date in accordance with the terms of Section 7.4 and (ii) any payments required to be made under any Seller Agreement or other Contract described in clause (i) with respect to any asset, property, good or service transferred, conveyed or delivered to, or performed for, the Business under such Seller Agreement or such other Contract on or after the Closing.

Notwithstanding anything to the contrary set forth herein, the Assumed Liabilities shall not include (i) those liabilities and obligations arising from the breach of, or default under, any Seller Agreement by a Seller prior to the Closing Date, (ii) those liabilities and obligations arising from a Seller Agreement in connection with or relating to any Excluded Asset, (iii) all liabilities and obligations with respect to Taxes for which Sellers are liable pursuant to Section 8.1 and (iv) all obligations and liabilities for which Sellers are liable pursuant to Section 8.2.

2.4. Excluded Liabilities. Buyer shall not assume or be obligated to pay, perform or otherwise discharge any liability or obligation, whether known or unknown, direct or indirect, contingent or otherwise, whether relating to any Purchased Asset, any Business Employee or the Business or otherwise, other than the Assumed Liabilities expressly assumed by Buyer pursuant to the Instrument of Assumption (all such excluded liabilities and obligations being hereinafter referred to collectively as the “Excluded Liabilities”).

### ARTICLE III

#### PURCHASE PRICE

3.1. Purchase Price. The purchase price for the Purchased Assets (the “Purchase Price”) shall be an amount in cash equal to forty-five million dollars (\$45,000,000) (the “Closing Date Amount”) plus the assumption of the Assumed Liabilities, plus the Post-Closing Adjustment Amount as determined pursuant to Section 3.3.

3.2. Allocation of Purchase Price. Within thirty (30) days following the determination of the Final Working Capital Statement, Buyer shall deliver to Sellers a schedule (the “Allocation Schedule”) allocating the Purchase Price (taking into account the Post-Closing Adjustment Amount and including, for purposes of this Section 3.2, any other consideration paid to Sellers, including the Assumed Liabilities) among the Purchased Assets. The Allocation Schedule shall be reasonable and shall be prepared in a manner intended to comply with Section

1060 of the Code and the regulations thereunder. Sellers shall propose to Buyer in writing any changes to the Allocation Schedule within ten (10) Business Days of the receipt thereof. If no such changes are proposed in writing to Buyer within such ten (10) Business Day period, Sellers shall be deemed to have agreed to the Allocation Schedule. If any such changes are so proposed, Buyer and Sellers shall negotiate in good faith and shall use their commercially reasonable efforts to agree upon the Allocation Schedule. If Buyer and Sellers are unable to reach agreement within ninety (90) days after the determination of the Final Working Capital Statement, then the disputed items shall be resolved during the following thirty (30) day period by the Independent Accounting Firm, whose fees and expenses shall be borne 50% by Buyer and 50% by Sellers. Such determination by the Independent Accounting Firm shall be binding on the parties and shall be based solely upon written submissions by Buyer and Sellers, and not upon any independent investigations by the Independent Accounting Firm. Buyer and each Seller agree to file Internal Revenue Service Form 8594 (to the extent such form is required to be filed), and all federal, state, local and foreign Tax Returns, in accordance with the Allocation Schedule as finally determined in accordance with this Section 3.2. Buyer and each Seller agree to provide the other promptly with any other information required to complete Form 8594.

3.3. Post-Closing Adjustment Amount. The “Post-Closing Adjustment Amount” shall be equal to the amount of Closing Working Capital as set forth in the Final Working Capital Statement minus the amount of the Reference Working Capital. If the Post-Closing Adjustment Amount is a positive amount, then Buyer shall pay in cash to Sara Lee (on behalf of Sellers) the amount of the Post-Closing Adjustment Amount. If the Post-Closing Adjustment Amount is a negative amount, then Sara Lee (on behalf of Sellers) shall pay in cash to Buyer the amount of the Post-Closing Adjustment Amount. Any such payment shall be made in accordance with Section 3.7 and within five (5) Business Days after the final determination of the Final Working Capital Statement, together with interest thereon at the Interest Rate calculated and payable in cash in accordance with Section 3.7 from the Closing Date until the date of payment. Notwithstanding the foregoing, no payment by any party hereto shall be required pursuant to this Section 3.3 unless the payment required to be made by such party exceeds \$100,000, in which case the entire amount of the Post-Closing Adjustment shall be paid by such party.

3.4. Working Capital. The term “Reference Working Capital” shall mean \$6,520,363. The term “Closing Working Capital” shall mean (A) the amount recorded in the line item reflected in the Closing Date Balance Sheet under the caption “Inventories (Net)” minus (B) the amounts recorded in the line items reflected in the Closing Date Balance Sheet under the captions “Total Accrued Compensation and Benefits,” “Accrued Marketing, Advertising and Trade” (excluding the line item reflected under the caption “Trade Promotions”) and “Accrued Other Liabilities.” The Closing Date Balance Sheet, the Closing Working Capital and the Closing Working Capital Statement shall be calculated and prepared in accordance with Sellers’ Accounting Principles and, in all other respects, prepared and calculated in the same manner in which the Reference Balance Sheet, Reference Working Capital and the Reference Working Capital Statement were prepared and calculated, irrespective of whether Sellers’ Accounting Principles are in accordance with GAAP. The parties agree that the adjustment contemplated by Section 3.3 is intended to show the change in the working capital of the Business from the date of the Reference Working Capital Statement to the Closing Date, and that such change can only be measured if the calculation is done in the same manner in which the Reference Balance Sheet,

the Reference Working Capital and the Reference Working Capital Statement were prepared and using Sellers' Accounting Principles. For the avoidance of doubt, Closing Working Capital shall not include current and deferred Tax assets and liabilities.

3.5. Closing Working Capital Statements. (a) Within sixty (60) Business Days after the Closing Date, Buyer shall prepare, in accordance with Sellers' Accounting Principles, and deliver to Sara Lee (i) an unaudited balance sheet of the Business in respect of the Purchased Assets as of the close of business on the date prior to the Closing Date (the "Closing Date Balance Sheet") prepared in the same manner as the Reference Balance Sheet and (ii) a statement (the "Closing Working Capital Statement") setting forth the Closing Working Capital prepared in the same manner as the Reference Working Capital Statement. In connection with Buyer's preparation of the Closing Date Balance Sheet and the Closing Working Capital Statement, Buyer and its Representatives will be permitted to review Sellers' working papers and the working papers of Sellers' independent accountants relating to the Reference Balance Sheet and the Reference Working Capital Statement and any other books and records reasonably requested by Buyer, and Sellers shall make reasonably available the individuals in its employ, if any, responsible for and knowledgeable about the information used in, and the preparation of, the Reference Balance Sheet and the Reference Working Capital Statement in order to respond to the reasonable inquiries of Buyer; provided, that the independent public accountants of Sellers shall not be obliged to make any work papers available to Buyer unless and until Buyer has signed a customary agreement relating to such access to work papers in form and substance reasonably acceptable to such independent public accountants.

(b) During the sixty (60) Business Days immediately following Sellers' receipt of the Closing Date Balance Sheet and the Closing Working Capital Statement (the "Review Period"), Sellers and their Representatives will be permitted to review Buyer's working papers and the working papers of Buyer's independent accountants relating to the Closing Date Balance Sheet and the Closing Working Capital Statement, as well as all of the books, records and other relevant information relating to the operations and finances of the Business with respect to the period up to the Closing Date, and Buyer shall make reasonably available to Sellers the individuals in its employ responsible for and knowledgeable about the information used in, and the preparation of, the Closing Date Balance Sheet and the Closing Working Capital Statement in order to respond to the reasonable inquiries of Sellers; provided, that the independent public accountants of Buyer shall not be obliged to make any work papers available to Sellers unless and until Buyer has signed a customary agreement relating to such access to work papers in form and substance reasonably acceptable to such independent public accountants.

(c) Buyer agrees that, following the Closing through the date that the Closing Date Balance Sheet and the Closing Working Capital Statement becomes final and binding, it will not, without prior written consent of Sellers, take any actions with respect to any accounting books, records, policies or procedures on which the Reference Balance Sheet or the Reference Working Capital Statement are based or on which the Closing Date Balance Sheet and the Closing Working Capital Statement are to be based that are inconsistent with the past practice of the Business (or Sellers with respect to the Business) or, without the prior written consent of Sellers, that would impede or delay the determination of the amount of the Closing Working Capital or the preparation of the Notice of Disagreement or the Final Closing Date Balance Sheet

or the Final Working Capital Statement in the manner and utilizing the methods required by this Agreement.

3.6. Reconciliation of Post-Closing Statements. (a) Sellers shall notify Buyer in writing (the “Notice of Disagreement”) prior to the expiration of the Review Period if Sellers disagree with the Closing Date Balance Sheet or the Closing Working Capital Statement. The Notice of Disagreement shall set forth in reasonable detail the basis for such disagreement, the amounts being disputed and Sellers’ determination of the amount of the Closing Working Capital. If no Notice of Disagreement is received by Buyer prior to the expiration of the Review Period, then the Closing Date Balance Sheet and the Closing Working Capital Statement shall be deemed to have been accepted by Sellers and shall become final and binding upon the parties in accordance with Section 3.6(c).

(b) During the thirty (30) Business Days immediately following the delivery of the Notice of Disagreement (the “Consultation Period”), Sellers and Buyer shall act in good faith to resolve in writing any differences that they may have with respect to the matters specified in the Notice of Disagreement.

(c) If, upon the expiration of the Consultation Period, Sellers and Buyer have been unable to resolve any differences that they have with respect to the matters specified in the Notice of Disagreement, Sellers and Buyer shall submit all matters that remain in dispute with respect to the Notice of Disagreement to Deloitte & Touche LLP or, if such firm is unwilling or unable to act, such other independent public accounting firm in the United States of national recognition mutually acceptable to Sellers and Buyer (the “Independent Accounting Firm”). Within thirty (30) Business Days after the selection of the Independent Accounting Firm, such firm shall make a final determination, binding on the parties to this Agreement, with respect to the matters set forth in the Notice of Disagreement. The scope of any disputes to be arbitrated by the Independent Accounting Firm is limited to whether the calculations made in connection with the preparation of the Closing Date Balance Sheet and the Closing Working Capital Statement were done in accordance with Sellers’ Accounting Principles and in all other respects prepared and calculated in the same manner as used with respect to the Reference Balance Sheet and the Reference Working Capital Statement, and the Independent Accounting Firm is not to make any other determination. The Closing Date Balance Sheet and the Closing Working Capital Statement that is final and binding on the parties, as determined either through agreement of the parties or through the action of the Independent Accounting Firm pursuant to this Section 3.6(c), are referred to as the “Final Closing Date Balance Sheet” and “Final Working Capital Statement”, respectively.

(d) The cost of the Independent Accounting Firm’s review and determination shall be paid 50% by Sellers, on the one hand, and 50% by Buyer, on the other hand. During the review by the Independent Accounting Firm, Buyer and Sellers will each make available to the Independent Accounting Firm interviews with such individuals, and such information, books and records and work papers, as may be reasonably requested by the Independent Accounting Firm to fulfill its obligations under Section 3.6(c); provided, that the independent public accountants of Sellers or Buyer shall not be obliged to make any work papers available to the Independent Accounting Firm unless and until such firm has signed a customary agreement relating to such access to work papers in form and substance reasonably acceptable to such independent public

accountants. In acting under this Agreement, the Independent Accounting Firm will be entitled to the privileges and immunities of an arbitrator.

3.7. Payments and Computations. Except for the payment of the Closing Date Amount (which shall be paid at the Closing) and unless expressly stated otherwise herein, each party shall make each payment due to the other party to this Agreement not later than 11:00 a.m., central time, on the day when such payment is due. All payments shall be paid by wire transfer in immediately available funds to the account or accounts designated by the party receiving such payment. All computations of interest shall be made on the basis of a year of 365 days, in each case for the actual number of days (including the first day but excluding the last day) occurring in the period for which such interest is payable. Whenever any payment under this Agreement shall be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day, and such extension of time shall be included in the computation of payment of interest.

## ARTICLE IV

### CLOSING

4.1. Closing Date. The Closing shall be consummated at 9:00 a.m., eastern time, on January 14, 2005, or such later date as may be agreed upon by Buyer and Sellers after the conditions set forth in Article IX have been satisfied or waived (where permissible) at the offices of O'Melveny & Myers LLP, Times Square Tower, 7 Times Square, New York, New York 10036, or at such other place as may be agreed upon by Buyer and Sellers. The Closing shall be deemed to be effective as of 12:01 a.m., eastern time, on the date on which the Closing is held, such time and date referred to herein as the "Closing Date."

4.2. Payment of the Closing Date Amount. Subject to the satisfaction or waiver (where permissible) of the conditions set forth in Article IX, at Closing, Buyer shall pay Sara Lee, on behalf of Sellers, the Closing Date Amount by wire transfer of immediately available funds, to a United States account or accounts specified by Sara Lee prior to the Closing Date.

4.3. Buyer's Additional Closing Date Deliveries. Subject to the satisfaction or waiver (where permissible) of the conditions set forth in Article IX, at Closing, Buyer shall deliver to Sellers each of the following:

(a) a copy of Buyer's certificate of formation certified as of a recent date by the Secretary of State of the State of Delaware;

(b) a certificate of good standing of Buyer issued as of a recent date by the Secretary of State of the State of Delaware;

(c) a certificate of the secretary or an assistant secretary of Buyer, dated the Closing Date, in form and substance reasonably satisfactory to Sellers, as to (i) no amendments to the certificate of formation of Buyer since the date of the certificate delivered pursuant to Section 4.3(a); (ii) the limited liability company agreement (or other operating agreement) of Buyer; (iii) the resolutions of the Board of Directors (or equivalent governing body) of Buyer

authorizing the execution, delivery and performance of this Agreement and the Buyer Ancillary Agreements and the transactions contemplated hereby and thereby; and (iv) incumbency and signatures of the officers of Buyer executing this Agreement and any Buyer Ancillary Agreement;

(d) a copy of the charter or equivalent organizational document of any subsidiary of Buyer to which Buyer assigns any of its rights under this Agreement pursuant to and as permitted by Section 12.5, certified as of a recent date by the Secretary of State of the state of organization or formation of such subsidiary;

(e) a certificate of good standing (or equivalent certification) of any subsidiary of Buyer to which Buyer assigns any of its rights under this Agreement pursuant to and as permitted by Section 12.5, issued by the Secretary of State of the state of organization or formation of such subsidiary;

(f) a certificate of the secretary or an assistant secretary of any subsidiary of Buyer to which Buyer assigns any of its rights under this Agreement pursuant to and as permitted by Section 12.5, dated the Closing Date, in form and substance reasonably satisfactory to Sellers, as to (i) no amendments to the charter or equivalent organizational document of such subsidiary since the date of the certificate delivered pursuant to Section 4.3(d); (ii) the by-laws or equivalent organizational document of such subsidiary; (iii) the resolutions of the Board of Directors or other relevant governing body of such subsidiary authorizing the execution, delivery and performance of the Buyer Ancillary Agreements to which it is a party and the transactions contemplated thereby; and (iv) incumbency and signatures of the officers of such subsidiary executing any Buyer Ancillary Agreement to which it is a party;

(g) the certificate contemplated by Section 9.1(a), duly executed by an authorized officer of Buyer;

(h) the Instrument of Assumption, duly executed by Buyer;

(i) the Transition Services Agreement, duly executed by Buyer; and

(j) the Trademark License Agreement, duly executed by Buyer.

4.4. Sellers' Closing Date Deliveries. Subject to the satisfaction or waiver (where permissible) of the conditions set forth in Article IX, at Closing, Sellers shall deliver to Buyer each of the following:

(a) a copy of Sara Lee's Articles of Incorporation certified as of a recent date by the State Department of Assessments and Taxation of the State of Maryland;

(b) a certificate of good standing of Sara Lee issued as of a recent date by the State Department of Assessments and Taxation of the State of Maryland;

(c) a copy of Bryan Foods' Certificate of Incorporation certified as of a recent date by the Secretary of State of the State of Delaware;

(d) a certificate of good standing of Bryan Foods issued as of a recent date by the Secretary of State of the State of Delaware;

(e) a copy of Sara Lee Foods' Certificate of Incorporation certified as of a recent date by the Secretary of State of the State of Delaware;

(f) a certificate of good standing of Sara Lee Foods issued as of a recent date by the Secretary of State of the State of Delaware;

(g) a certificate of the secretary or an assistant secretary of each Seller, dated the Closing Date, in form and substance reasonably satisfactory to Buyer, as to (i) no amendments to the charter of such Seller since the date of the certificates delivered pursuant to Section 4.4(a), Section 4.4(c) or Section 4.4(e), as applicable; (ii) the by-laws of such Seller; and (iii) incumbency and signatures of the officers of such Seller executing this Agreement and any Seller Ancillary Agreement;

(h) the certificate contemplated by Section 9.2(a), duly executed by an authorized officer of each Seller;

(i) the Instrument of Assignment, duly executed by Sellers;

(j) the Trademark License Agreement, duly executed by Sara Lee Foods;

(k) the Transition Services Agreement, duly executed by Sara Lee;

(l) certificates of title or origin (or like documents) with respect to any vehicles or other equipment included in the Purchased Assets for which a certificate of title or origin is required in order to transfer title;

(m) a special warranty deed with respect to the Owned Real Property in the form attached hereto as Exhibit D, duly executed by the Seller possessing title to such property;

(n) a non-foreign affidavit dated as of the Closing Date in form and substance required under Treasury Regulations issued pursuant to Section 1445 of the Code stating that no Seller is a "foreign person" as defined in Section 1445 of the Code;

(o) dated-down originals of each title insurance commitment for each parcel of the Owned Real Property dated as of the Closing Date, which commits Chicago Title Insurance Company (the "Title Insurance Company") to insure the title of each parcel of such Owned Real Property to Buyer or its designee in the amount of the fair market value of the Owned Real Property as determined jointly by Buyer and Sellers (each acting reasonably), subject only to Permitted Encumbrances; provided, that Buyer shall be responsible, at its sole cost and expense, for acquiring any endorsements desired by Buyer, and any lender's policy of title insurance required by Buyer's lender (together with any endorsements required by such lender);

(p) an ALTA/ACSM land title survey with respect to each parcel of Owned Real Property, which is dated not earlier than ninety (90) days prior to the Closing Date and



certified to Sellers, Buyer or Buyer's designee, the Title Insurance Company and Buyer's lenders;

(q) an ALTA Owner's affidavit relating to the property under each title commitment, duly executed by an authorized officer of Sara Lee, concerning such Owned Real Property in a form which is reasonably and customarily required by the Title Insurance Company for issuance of title insurance commitments in similar transactions; and

(r) copies of the Required Consents.

## ARTICLE V

### REPRESENTATIONS AND WARRANTIES OF SELLERS

As an inducement to Buyer to enter into this Agreement and to consummate the transactions contemplated hereby, Sellers jointly and severally represent and warrant to Buyer and agree as follows:

5.1. Organization of Sellers. Sara Lee is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Maryland. Each of Bryan Foods and Sara Lee Foods is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Delaware. Each Seller is duly qualified to transact business and is in good standing in each jurisdiction where the ownership or leasing of the Purchased Assets or the conduct of the Business requires such qualification, except where the failure to be so qualified or in good standing could not reasonably be expected to have a Material Adverse Effect. Each Seller has full corporate power and authority to own or lease and to operate and use the Purchased Assets owned by it and to carry on the Business conducted by it as now conducted.

5.2. Authority of Sellers; Noncontravention. (a) Each Seller has full corporate power and authority to execute, deliver and perform this Agreement and the Seller Ancillary Agreements to which such Seller is a party. The execution, delivery and performance of this Agreement and the Seller Ancillary Agreements to which it is a party by each such Seller have been duly authorized and approved by such Seller and do not require any further authorization or consent of such Seller or its stockholders. This Agreement has been duly executed and delivered by each Seller and is a legal, valid and binding obligation of such Seller enforceable against such Seller in accordance with its terms, and each of the Seller Ancillary Agreements, upon execution and delivery thereof by each Seller that is a party thereto, will be a legal, valid and binding obligation of such Seller enforceable against such Seller in accordance with its terms, in each case subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general application relating to or affecting creditors' rights and to general equity principles (regardless whether enforceability is considered in equity or at law).

(b) Except as set forth on Schedule 5.2(b), neither the execution and delivery of this Agreement or any of the Seller Ancillary Agreements by any Seller or the consummation by any Seller of any of the transactions contemplated hereby or thereby nor compliance with or fulfillment by any Seller of the terms, conditions and provisions hereof or thereof will:

(i) (A) violate any provision of the charter or by-laws of such Seller, or (B) conflict with, result in a breach of the terms, conditions or provisions of, or constitute a default, an event of default or an event creating rights of acceleration, termination or cancellation or a loss of rights under, or result in the creation or imposition of any Encumbrance (other than Permitted Encumbrances) upon any of the Purchased Assets owned by such Seller, under (1) any Seller Agreement to which such Seller is a party, (2) any other material Contract, Permit or other authorization, right, restriction or obligation to which such Seller is a party or any of the Purchased Assets owned by such Seller is subject or by which such Seller is bound, (3) any Court Order to which such Seller is a party or any of the Purchased Assets owned by such Seller is subject or by which such Seller is bound, or (4) any Requirements of Law affecting such Seller or the Purchased Assets owned by such Seller; or

(ii) require the approval, consent, authorization or act of, or the making by such Seller of any declaration, filing or registration with, any Person, except for such approvals, consents, authorizations, declarations, filings or registrations the failure of which to be obtained or made could not reasonably be expected to have a Material Adverse Effect.

5.3. Taxes. Except as set forth on Schedule 5.3, (i) each Seller has, in respect of the Business conducted by such Seller and the Purchased Assets owned by such Seller, filed all material Tax Returns that are required to be filed on or prior to the date hereof and has paid all Taxes that have become due pursuant to such Tax Returns or pursuant to any assessment that has become payable, (ii) all such Tax Returns were correct and complete in all material respects and were prepared in substantial compliance with all Requirements of Law, (iii) no Seller has received any notice of and, to the Knowledge of Sellers, no Tax deficiency has been proposed or threatened against such Seller in respect of the Business conducted by such Seller and the Purchased Assets owned by such Seller, (iv) no Tax Return of any Seller, with respect to the Business conducted by such Seller and the Purchased Assets owned by such Seller, is being audited nor has any Seller received any written notice of any audit or investigation related to Taxes with respect to the Business conducted by such Seller and the Purchased Assets owned by such Seller, (v) all amounts required to be withheld by any Seller from employees, independent contractors, creditors or other third parties related to the Business conducted by such Seller and the Purchased Assets owned by such Seller for Taxes have been collected or withheld, and either paid to the respective Governmental Bodies, set aside in accounts for such purpose, or accrued, reserved against and entered upon the books of such Seller and shall be paid when due, (vi) no claim has ever been made by a Governmental Body in writing in a jurisdiction where any Seller does not file Tax Returns with respect to the Business conducted by such Seller or the Purchased Assets owned by such Seller that any Seller is or may be subject to taxation by that jurisdiction with respect to the Business conducted by such Seller or the Purchased Assets owned by such Seller, (vii) there are no liens on any of the Purchased Assets that arose in connection with any failure (or alleged failure) to pay any Tax, and (viii) none of the Assumed Liabilities is an obligation to make a payment that is not deductible under Section 280G of the Code (and all forms, if any, required with respect to such amounts have been properly completed and timely filed).

5.4. Condition of Assets. Except as set forth on Schedule 5.4, each item of tangible personal property included in the Purchased Assets is, in all material respects, in good working order (subject to normal wear and tear) and has been maintained in all material respects in the ordinary course of the Business and in accordance with past practice.

5.5. Financial Statements. Schedule 5.5 contains a true and complete copy of (i) the unaudited pro forma financial statements of the Business, in respect of the Purchased Assets and the Assumed Liabilities, as of July 3, 2004 and for the year then ended and as of October 2, 2004 and for the period then ended and (ii) the unaudited statement of Reference Working Capital as of October 2, 2004 (the "Reference Working Capital Statement"). Except as set forth on Schedule 5.5 or in such financial statements, such financial statements have been prepared in conformity, in all material respects, with Sellers' Accounting Principles, and such financial statements present fairly, in all material respects, the financial position and results of operations of the Business, in respect of the Purchased Assets and the Assumed Liabilities, as of the dates and for the time periods specified therein.

5.6. Operations Since Financial Statement Date. Except as set forth on Schedule 5.6 or as contemplated by this Agreement, since the Financial Statement Date, (i) there have been no changes in the Business, results of operations or financial condition of the Business which have resulted in, or could reasonably be expected to result in, a Material Adverse Effect, (ii) there has been no physical damage, destruction or loss that could, after taking into account any insurance proceeds received in connection with any such damage, destruction or loss and applied to replacing, repairing or restoring any assets so damaged, destroyed or lost, reasonably be expected to have a Material Adverse Effect, (iii) Sellers have not significantly changed any of their business policies relating to the Business, (iv) Sellers have conducted the Business in the ordinary course in all material respects, (v) Sellers have not, except as required by changes in GAAP or pursuant to Requirements of Law, made any material change in its accounting methods, principles or practices relating exclusively to the Business, (vi) Sellers have maintained, in all material respects, the books, accounts and records related exclusively to the Business in the ordinary course of the Business and have not disposed of any such records, except in the ordinary course of the Business and (vii) there has been no action or event that if occurring after the date hereof would violate Section 7.4(b).

5.7. Real Property. (a) Sellers have the right to possess, and do possess, that certain parcel of real property identified on Schedule 2.1(c) (the "Leased Real Property"). As of the date hereof, a Seller has fee simple title to the Owned Real Property, free and clear of any Encumbrances, other than Permitted Encumbrances. As of the date hereof, neither the owner of the Leased Real Property nor any Seller has issued a written notice of termination with respect to the Leased Real Property and no Seller has transferred its interest in the Leased Real Property. Neither the whole nor any part of the Owned Real Property is subject to any pending Proceeding for condemnation or other taking by any Governmental Body or subject to any fire, health, safety, building, zoning or other land use regulatory Proceedings by any Governmental Body (other than any such Proceeding relating to any Environmental Laws), and Sellers have not received written notice of any threatened condemnation or taking. There are no parties in possession of any of the Leased Real Property or Owned Real Property other than Sellers.

(b) To the Knowledge of Sellers, except as would not materially interfere with the continued operation of the Business as currently conducted on the Owned Real Property, (i) except as disclosed in the Title Insurance Commitment, no portion of the Owned Real Property is located within any flood plain or subject to any similar type restriction for which any Permits necessary to the use thereof have not been obtained, and the Owned Real Property or any part thereof does not serve any adjoining property for any purpose inconsistent with the use of the Owned Real Property and (ii) the Owned Real Property does not violate or conflict with any material covenants, conditions, restrictions or other material contractual obligations, including any applicable recorded Encumbrances.

(c) To the Knowledge of Sellers, the Owned Real Property is free from any material defect and is sufficient to permit the continued conduct of the Business as presently conducted subject to the provision of usual and customary maintenance and repair performed in the ordinary course with respect to similar properties of like age and construction.

(d) To the Knowledge of Sellers, there is (i) no threatened or contemplated special assessment against any portion of the Owned Real Property, and (ii) no notice of any pending increase in the assessed valuation of the Owned Real Property.

(e) All water, sewer, gas, electric, telephone and drainage facilities and other utilities required under any applicable Requirements of Law for the use of any parcel of Owned Real Property in connection with the Business are installed to the property line of such parcel pursuant to valid Permits, are fully operable and are adequate for the current usage of such utilities by Sellers in the conduct of the Business at the Owned Real Property.

(f) The Owned Real Property and the Leased Real Property constitute all real property used or occupied by Sellers in connection with the Business.

5.8. Inventory. The Inventory is fairly reflected on the books and records of the Business in accordance with GAAP in all material respects. Except as set forth on Schedule 5.8, the Inventory is, in the case of finished goods, of a quality and quantity useable and saleable in the ordinary course of the Business and, in the case of all other inventories, of a quality and quantity useable in the ordinary course of the Business. Except as set forth on Schedule 5.8, the Inventory, in the case of finished goods, is of consistent and merchantable quality and fit for its intended purposes and has been produced, in all material respects, in accordance with all applicable Requirements of Law. The Inventory (other than immaterial amounts thereof) is located on the premises constituting Owned Real Property or Leased Real Property.

5.9. Title to Property. Except for any assets disposed of in the ordinary course of the Business, each Seller has good and marketable title to all of the tangible Purchased Assets purported to be owned by it, and valid and existing leasehold interests in all of the tangible Purchased Assets purported to be leased by it, in each case free and clear of all Encumbrances (except for Permitted Encumbrances).

5.10. Seller Agreements. (a) Except as set forth on Schedule 5.10(a) and except for Contracts that are Excluded Assets, no Seller nor any of its respective Affiliates is a party to or bound by any Contract with any Business Employee or any Contract that relates to, or

arises out of or in connection with, any Purchased Asset, Assumed Liability or the Business, which Contract, subsequent to the Closing, could reasonably be expected to materially and adversely affect the conduct of the Business by Buyer subsequent to the Closing.

(b) Except as set forth on Schedule 5.10(b), each of the Contracts set forth on Schedules 2.1(c), (e) and (f) (each, a “Seller Agreement” and, collectively, the “Seller Agreements”) is valid, binding and in full force and effect and is enforceable by the Seller party thereto in accordance with its terms. Except as set forth on Schedule 5.10(b), each Seller has performed all material obligations required to be performed by it to date under each Seller Agreement to which it is a party and each Seller is not (with or without the lapse of time or the giving of notice, or both) in breach or default in any material respect thereunder and, to the Knowledge of Sellers, no other party to any Seller Agreement is (with or without the lapse of time or the giving of notice, or both) in breach or default in any material respect thereunder. Except as set forth on Schedule 5.10(b), no Seller has received any written notice or, to the Knowledge of Sellers, oral notice of the intention of any third Person to terminate, not renew on substantially similar terms or materially adversely amend the terms of any Seller Agreement. Except as set forth on Schedule 5.10(b), complete and correct copies of all Seller Agreements, together with all modifications and amendments thereto, have been made available to Buyer prior to the date hereof. Notwithstanding the foregoing, “Seller Agreement” does not and shall not include any Seller Employee Benefit Plan or any other pension, welfare or other employee benefit plan established or maintained by any Seller.

5.11. Intellectual Property. (a) Schedule 2.1(g) sets forth a true and complete list of all Intellectual Property and Software which is owned or licensed to a Seller and is used exclusively in connection with the Business (collectively, the “Business Intellectual Property”). Except as disclosed on Schedule 5.11(a), each Seller either: (i) owns the entire right, title and interest in and to the material U.S. Business Intellectual Property that is owned by such Seller, free and clear of any Encumbrance (except for Permitted Encumbrances) or (ii) has the right and license to use the material U.S. Business Intellectual Property that is licensed by such Seller in the Business. Except as disclosed on Schedule 5.11(a), to the Knowledge of Sellers, each Seller either: (i) owns the entire right, title and interest in and to the non-U.S. Business Intellectual Property that is owned by such Seller, free and clear of any Encumbrance (except for Permitted Encumbrances) or (ii) has the right and license to use the non-U.S. Business Intellectual Property that is licensed by such Seller in the Business, except in each case where the failure to so own or have such right or license to such non-U.S. Business Intellectual Property could not reasonably be expected to have a Material Adverse Effect.

(b) Except as disclosed on Schedule 5.11(b), to the Knowledge of Sellers, (i) with respect to the operations of the Business, no infringement of any Intellectual Property rights of any other Person has occurred and (ii) no Seller has received notice of a claim against it claiming that the operations of the Business infringe any Intellectual Property rights of any other Person.

(c) Except as disclosed on Schedule 5.11(c), no Proceedings are pending or, to the Knowledge of Sellers, threatened against any Seller which challenge the validity or ownership of any Trademark owned by such Seller described on Schedule 2.1(g) which could reasonably be expected to have a Material Adverse Effect.

(d) Except as disclosed on Schedule 5.11(d), to the Knowledge of Sellers, no third Person is infringing any of the Business Intellectual Property.

5.12. Employee Relations and Agreements; Employee Benefit Plans. (a) Schedule 5.12(a) sets forth (i) a true and complete listing of all employees of any Seller that are engaged exclusively in the Business (the “Business Employees”), (ii) express identification of all such Business Employees who are on short-term or long-term disability or other authorized leave of absence on such date and the reason for such absence and (iii) in the case of salaried employees, their salary range, and in the case of hourly employees, their hourly wage. Except as set forth on Schedule 5.12(a), (x) no Business Employee is covered by any collective bargaining agreement and (y) no Seller is involved in or, to the Knowledge of Sellers, threatened with, any labor dispute, arbitration, lawsuit or administrative proceeding relating to labor matters involving current or past employees of any Seller with respect to the Business (excluding routine workers’ compensation claims and grievances) that could reasonably be expected to have a Material Adverse Effect. Except as otherwise provided in Section 8.2, neither the execution and delivery of this Agreement, nor the performance of the transactions contemplated hereby, will constitute an event that will or may result in any obligation of Buyer to make any payment, accelerate, forgive indebtedness, vest, distribute, increase benefits, make severance payments or fund benefits with respect to any Transferring Employee (including to make any payment or benefit which will or may be characterized as an “excess parachute payment” within the meaning of Section 280G(b)(2) of the Code).

(b) Except as set forth on Schedule 5.12(b), no current or former officer or director of any Seller (or any Affiliate of any Seller) has any Contract with such Seller or any interest in any Purchased Asset.

(c) Schedule 5.12(c) sets forth a true and correct list of all bonus programs (as described in Section 8.2(f)) established or maintained by any Seller (or any Affiliate of any Seller) for the benefit of the Business Employees, or in which any Business Employee participates, and identifies (i) by name each Business Employee who is eligible to participate in such bonus program and (ii) the bonus amount that each such Business Employee is eligible to earn under such bonus program.

(d) Schedule 5.12(d) sets forth a true and correct list of all material employee benefit and compensation plans, programs or policies maintained, sponsored, contributed to or required to be contributed to by any Seller (or any Affiliate of any Seller) for the benefit of the Business Employees, or in which any Business Employee participates (together with the programs described on Schedule 5.12(c), the “Seller Employee Benefit Plans”).

5.13. Legal Proceedings. Except as set forth on Schedule 5.13, there are no Proceedings pending or, to the Knowledge of Sellers, threatened by or against any Seller (or any Affiliate of any Seller) (including any such Proceedings seeking injunctive relief) relating to or affecting the Business or the Purchased Assets that could reasonably be expected to have a Material Adverse Effect or would reasonably be expected to prevent or materially delay the transactions contemplated by this Agreement. There are no Proceedings pending in which any Seller is the plaintiff or claimant and which relates to the Purchased Assets or the Business.

5.14. Compliance With Law. No Seller (or any Affiliate of any Seller), with respect to the Business, the Business Employees, the Purchased Assets or the Assumed Liabilities, is subject to any Court Order. No Seller is in violation, in any material respect, of any applicable Requirements of Law with respect to the Business, the Purchased Assets or the Assumed Liabilities and no Seller has received written notice or, to the Knowledge of Sellers, any oral notice of any material violation or material non-compliance with any applicable Requirements of Law.

5.15. No Finder. No Seller nor any Person acting on any Seller's behalf has paid or become obligated to pay any fee or commission to any broker, finder or intermediary for or on account of the transactions contemplated by this Agreement.

5.16. Business Permits. Schedule 2.1(i) sets forth all Permits issued or granted to Sellers by a Governmental Body that are used, held for use or intended to be used exclusively in the operation or conduct of the Business. Except as set forth on Schedule 5.16, (i) all Business Permits are validly held by a Seller or an Affiliate thereof, and such Seller has complied in all material respects with all terms and conditions thereof and (ii) no Seller has received written notice of any Proceedings relating to the revocation or modification of any Business Permits the loss of which could reasonably be expected to have a Material Adverse Effect and, to the Knowledge of Sellers, no such Proceedings are threatened or contemplated. Sellers possess all Permits that are necessary to entitle them to own or lease, operate and use the Purchased Assets and to carry on and conduct the Business substantially as currently conducted.

5.17. Environmental Matters. (a) Except as set forth on Schedule 5.17, Sellers presently operate, and have in the past operated, the Business, the Owned Real Property and the Leased Real Property in material compliance with all applicable Environmental Laws.

(b) Sellers possess and are in material compliance with, and have at all times in the past possessed and been in material compliance with, all Permits required pursuant to the applicable Environmental Laws necessary to conduct the Business and to operate the Owned Real Property and the Leased Real Property.

(c) The operation of the Business has not resulted in any release of Hazardous Substances and no Hazardous Substances are present at levels requiring investigation or remediation, in, on, under or about the Owned Real Property or the Leased Real Property, where the costs and expenses of any required remediation in accordance with Requirements of Law as a result of any release or presence of a Hazardous Substance, individually or in the aggregate, together with all other such required remediations, could reasonably be expected to exceed \$500,000. Except as set forth on Schedule 5.17, no underground storage tanks are located or have been located on the Owned Real Property or the Leased Real Property.

(d) No Seller has received written notice or, to the Knowledge of Sellers, oral notice of any violation or environmental investigation relating to the Business, the Owned Real Property or the Leased Real Property.

(e) None of the Business, the Owned Real Property or the Leased Real Property is or during Sellers' ownership of or tenancy thereon has been the subject of any

Proceeding relating to Environmental Laws or Hazardous Substances, no such Proceeding is currently pending and, to the Knowledge of Sellers, no such Proceeding is currently threatened against any Seller or any of their Affiliates with respect to the Business, the Owned Real Property or the Leased Real Property under Environmental Laws alleging any violation or liability under Environmental Laws and no written notice or, to the Knowledge of Sellers, oral notice has been received by Sellers or any of their Affiliates requiring or seeking to require any investigatory or remedial action under any Environmental Law, in each instance relating to the Business, the Owned Real Property or the Leased Real Property.

(f) This Section 5.17 contains the sole representation and warranty made by Sellers with respect to Environmental Laws.

5.18. Investments. Schedule 5.18 sets forth all investments (other than investments that are Excluded Assets) owned by Sellers on the date hereof that are used, held for use or intended to be used exclusively in, or arise exclusively out of, the operation or conduct of the Business.

5.19. Insurance. Sellers maintain policies of fire and casualty, liability and other forms of insurance with respect to the Business, the Business Employees and the assets and properties of the Business in such amounts, with such deductibles and against such risks and losses as are consistent with Sara Lee's industry practice. The third-Person insurance policies maintained by Sellers with respect to the Business, the Business Employees and the assets and properties of the Business are listed on Schedule 5.19. All such policies are in full force and effect in all material respects, all premiums due and payable thereon have been paid and no notice of cancellation or termination has been received with respect to any such policy which has not been replaced on substantially similar terms prior to the date of such cancellation.

5.20. Sufficiency of Purchased Assets. Except as set forth on Schedule 5.20, the Purchased Assets (determined after giving effect to the second proviso of Section 12.12) constitute all of the tangible and intangible assets required to conduct the Business after the Closing in a manner substantially consistent with the manner in which the Business is currently conducted by Sellers and their respective Affiliates and has been conducted by Sellers and their respective Affiliates since January 1, 2004.

5.21. Transactions with Affiliates. (a) Except as set forth on Schedule 5.21(a), after the Closing no Seller nor any of its respective Affiliates will have any right, title or interest in or with respect to any Purchased Asset or Assumed Liability.

(b) Schedule 5.21(b) sets forth a brief description of all material services provided by any Seller or any Affiliate of such Seller with respect to the Business utilizing either (i) assets not included in the Purchased Assets or (ii) employees or individuals that are not Business Employees.

5.22. Suppliers and Customers. Schedule 5.22 sets forth the top ten (10) suppliers of goods and services to, and the top ten (10) customers of, the Business as of the date hereof with respect to the twelve month period ended July 3, 2004. Except as set forth on Schedule 5.22, no such supplier or customer has cancelled or otherwise terminated, or, to the



Knowledge of Sellers, threatened to cancel or otherwise to terminate, its relationship with the Business for any reason. To the Knowledge of Sellers, no such supplier or customer, or any other third Person having a material relationship with respect to the Business, intends to cancel or otherwise modify in any material respect its relationship with the Business or to materially decrease or limit its services, supplies or materials to the Business or its usage or purchase of the services or products of the Business.

5.23. Product Recalls and Liability. Except as set forth on Schedule 5.23, no Governmental Body or other Person has ordered, nor has any Seller or any of its Affiliates undertaken (voluntarily or otherwise), a recall of any product produced or sold by the Business since December 31, 2001 and, to the Knowledge of Sellers, no circumstances exist that would make such a recall necessary. Except as set forth on Schedule 5.23, from and after December 31, 2001, no Seller has received written notice or, to the Knowledge of Sellers, oral notice from any Governmental Body to the effect that any of the manufacturing standards applied, testing procedures used or product specifications and labels disclosed to customers of the Business have failed to comply, in any material respect, with any Requirements of Laws affecting such Seller or the Purchased Assets owned by such Seller or any Court Order to which such Seller is a party or any of the Purchased Assets owned by such Seller is subject or by which such Seller is bound. Except as set forth on Schedule 5.23, no material Proceedings are pending or, to the Knowledge of Sellers, threatened against any Seller with respect to or in connection with any product produced or sold by the Business resulting from or relating to an alleged product liability.

## ARTICLE VI

### REPRESENTATIONS AND WARRANTIES OF BUYER

As an inducement to Sellers to enter into this Agreement and to consummate the transactions contemplated hereby, Buyer hereby represents and warrants to Sellers and agrees as follows:

6.1. Organization. Buyer is a limited liability company duly formed, validly existing and in good standing under the laws of the State of Delaware and has the power and authority to own or lease and to operate and use its properties and assets and to carry on its business as now conducted.

6.2. Authority of Buyer; Noncontravention. (a) Buyer has the power and authority to execute, deliver and perform this Agreement and the Buyer Ancillary Agreements. The execution, delivery and performance of this Agreement and the Buyer Ancillary Agreements by Buyer have been duly authorized and approved by Buyer's Board of Directors (or equivalent governing body) and do not require any further authorization or consent of Buyer or its members or equity holders. This Agreement has been duly executed and delivered by Buyer and is a legal, valid and binding obligation of Buyer enforceable against Buyer in accordance with its terms, and each of the Buyer Ancillary Agreements, upon execution and delivery thereof by Buyer, will be a legal, valid and binding obligation of Buyer enforceable against Buyer in accordance with its terms, in each case subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general application relating to or affecting creditors' rights and to general equity principles (regardless whether enforceability is considered in equity or at law).

(b) Except as set forth on Schedule 6.2(b), neither the execution and delivery of this Agreement or any of the Buyer Ancillary Agreements or the consummation of any of the transactions contemplated hereby or thereby nor compliance with or fulfillment of the terms, conditions and provisions hereof or thereof will:

(i) (A) violate any provision of the certificate of formation or limited liability company agreement of Buyer (or its equivalent governing documents), or (B) conflict with, result in a breach of the terms, conditions or provisions of, or constitute a default, an event of default or an event creating rights of acceleration, termination or cancellation or a loss of rights under (1) any material Contract, Permit or other authorization, right, restriction or obligation to which Buyer is a party or any of its assets is subject or by which Buyer is bound, (2) any Court Order to which Buyer is a party or any of its assets is subject or by which it is bound or (3) any Requirements of Law affecting Buyer; or

(ii) require the approval, consent, authorization or act of, or the making by Buyer of any declaration, filing or registration with, any Person, except for such approvals, consents, authorizations, declarations, filings or registrations the failure of which to be obtained or made could not reasonably be expected to have a material adverse effect on Buyer or would not prevent the consummation of any of the transactions contemplated hereby.

6.3. Financial Ability. In order to provide Buyer with sufficient funds to pay the Closing Date Amount pursuant to Section 4.2, Connors Bros. intends to consummate the Connors Bros. Equity Offering as soon as reasonably practical after the date hereof. Upon the consummation of the Connors Bros. Equity Offering, Connors Bros. will distribute sufficient funds to Buyer (or any subsidiary of Buyer to which Buyer assigns its rights and obligations hereunder pursuant to Section 12.5) such that Buyer (or such subsidiary) shall have the financial ability to perform its obligations set forth in, and to consummate the transactions contemplated by, this Agreement and the Buyer Ancillary Agreements.

6.4. Legal Proceedings. There are no Proceedings pending or, to Buyer's knowledge, threatened by or against Buyer that, individually or in the aggregate, could reasonably be expected to prevent or materially delay the transactions contemplated by this Agreement.

6.5. No Finder. Except as set forth on Schedule 6.5, neither Buyer nor any Person acting on its behalf has paid or become obligated to pay any fee or commission to any broker, finder or intermediary for or on account of the transactions contemplated by this Agreement.

## ARTICLE VII

### ACTION PRIOR TO THE CLOSING DATE

The respective parties hereto covenant and agree to take the following actions between the date hereof and the Closing Date:

7.1. Access to Information. After the date hereof, subject to any existing confidentiality restrictions and to Requirements of Law, Sellers shall afford to the Representatives of Buyer reasonable access during normal business hours, upon reasonable advance notice, to the offices, properties and business and financial records (including computer files, retrieval programs, and similar documentation and records) of Sellers relating exclusively to the Business to the extent Buyer shall reasonably deem necessary or desirable and shall furnish to Buyer or its Representatives such additional information concerning the Purchased Assets or the Business as shall be reasonably requested. Buyer agrees that such investigation shall be conducted in such a manner as not to interfere unreasonably with the personnel and operations of Sellers or the Business. All Buyer requests for such access shall be made to such Representatives of Sellers as Sara Lee shall designate, who shall be solely responsible for coordinating all such requests and all such access hereunder. It is further understood and agreed that neither Buyer nor its Representatives shall contact any employees, customers, suppliers or other associates or Affiliates of Sellers in connection with the transactions contemplated hereby, in any manner whatsoever, without specific prior written authorization of such Representatives of Sellers as Sara Lee may designate; provided, that Sellers shall make available to Buyer (i) the Business Employees at times to be reasonably agreed upon between the date hereof and the Closing Date during which time Buyer may discuss matters relating to such Business Employee's employment with Buyer pursuant to the requirements of Section 8.2 and (ii) the customers and suppliers of the Business that are set forth on Schedule 5.22 by teleconference (together with Sellers) at times and according to procedures reasonably agreed upon by Buyer and Sellers. Buyer agrees that any such investigation shall be conducted in a manner as to not unreasonably interfere with the operations of the Business or the relationship between such customers and suppliers and the Business. In addition, all notices and applications to, filings with, and other contacts with any Governmental Body relating to the transactions contemplated hereby shall be made by Buyer only after prior consultation with, and approval by Sellers, which approval shall not be unreasonably withheld or delayed.

7.2. Notifications. Buyer, on the one hand, and Sellers, on the other hand, shall promptly notify the other of any Proceeding that shall be instituted or threatened against any such party to restrain, prohibit or otherwise challenge the legality of any transaction contemplated by this Agreement or that could otherwise reasonably be expected to have a Material Adverse Effect.

7.3. Consents of Third Parties; Governmental Approvals. Subject to the terms and conditions of this Agreement:

(a) the parties hereto will act diligently and reasonably to secure, before the Closing Date, the consents, approvals and waivers set forth on Schedule 7.3(a) (the "Required Consents"), in form and substance reasonably satisfactory to one another; provided, that such action shall not include any requirement that any Sellers or any of their respective Affiliates expend money (other than nominal amounts), commence or participate in any litigation or offer or grant any accommodation (financial or otherwise) to any such Person;

(b) During the period prior to the Closing Date, the parties hereto shall act diligently and reasonably, and shall cooperate with one another, to secure any consents and approvals of any Governmental Body required to be obtained by them in order to permit the

consummation of the transactions contemplated by this Agreement, provided, that such action shall not include any requirement of any Seller, Buyer or any of their Affiliates to expend money (other than required application and filing fees and other nominal amounts), commence or participate in any litigation or offer or grant any accommodation (financial or otherwise) to any third Person; and

(c) Subject to the terms and conditions of this Agreement, each party shall use its commercially reasonable efforts to cause the Closing to occur as promptly as practicable, including taking all commercially reasonable actions necessary to comply promptly with all Requirements of Law that may be imposed on it or any of its respective Affiliates with respect to the Closing.

7.4. Covenants of Sellers Relating to Conduct of Business. (a) Except for matters set forth on Schedule 7.4(a) or otherwise expressly permitted by the terms of this Agreement, from the date of this Agreement to the Closing, Sellers shall conduct the Business in the ordinary course in substantially the same manner as currently conducted and use their commercially reasonable efforts to keep intact the Business, keep available the services of the Business Employees and preserve the relationships of the Business with customers, suppliers, licensors, licensees, distributors and other Persons having relations with Sellers with respect to the Business.

(b) Notwithstanding the terms of Section 7.4(a), except as set forth on Schedule 7.4(b), as expressly permitted by the terms of this Agreement or with the express written consent of Buyer (which consent shall not be unreasonably withheld or delayed), no Seller shall do any of the following prior to the Closing Date in connection with the operation or use of the Purchased Assets or the conduct of the Business:

(i) adopt or amend any benefit plan or enter into, adopt, extend (beyond the Closing Date), renew or amend any collective bargaining agreement or other Contract with any labor organization, union, association, employee, consultant or advisor, except in each case (A) as required by Requirements of Law, (B) amendments of any such Contract that are not material and (C) amendments of any such Contract that affect substantially all of the Business Employees and are made in the ordinary course of the Business consistent with past practice;

(ii) grant to any Business Employee any material increase in compensation or benefits, except in the ordinary course of the Business and consistent with past practice;

(iii) incur or assume any liabilities or obligations that are Assumed Liabilities with respect to any Purchased Asset or the Business, other than in the ordinary course of the Business and consistent with past practice;

(iv) except in the ordinary course of the Business and consistent with past practice, pursuant to any Requirement of Law or pursuant to the terms of any Contract in effect on the date hereof, permit or allow any Purchased Asset to become subjected to any Encumbrance, other than Permitted Encumbrances;

(v) cancel any material obligations of any Person with respect to the Business or waive any claims or rights of substantial value that may be exercised to the benefit of the Business or any Purchased Asset subsequent to the Closing Date;

(vi) (A) except for transfers of Excluded Assets, sell, lease, sublease, license, sublicense or otherwise dispose of any of the Purchased Assets to any Person (including to any Affiliate of any Seller), except Inventory sold in the ordinary course of the Business and consistent with past practice, or (B) modify or amend in any material respect, terminate or permit the lapse of any Seller Agreement, except modifications or amendments associated with renewals of existing leases in the ordinary course of the Business and consistent with past practice (with respect to which Buyer shall have the right to participate) and except for the lapse of any such lease in accordance with its terms;

(vii) acquire by merging or consolidating with, or by purchasing a substantial portion of the assets of, or by any other manner, any business or any Person or division thereof or otherwise acquire any assets (other than inventory acquired in the ordinary course of the Business consistent with past practice) that are material, individually or in the aggregate, to the Business;

(viii) make or incur any capital expenditure not referenced in the budget included on Schedule 7.4(b);

(ix) engage in any other activity outside the ordinary course of the Business or make any material change to the Business, except pursuant to any Requirement of Law; or

(x) authorize any of, or commit or agree to take, whether in writing or otherwise, any of the foregoing actions.

(c) During the period between the date hereof and the Closing Date, Sellers shall (i) promptly advise Buyer in writing of the occurrence of any Material Adverse Effect of which Sellers are or become aware; and (ii) upon any damage, destruction or loss to any Purchased Asset, apply any and all insurance proceeds received with respect thereto to the reasonably prompt repair, replacement or restoration thereof to the condition of such Purchased Asset before such event or, if required, to such other (better) condition pursuant to any Requirement of Law.

(d) In connection with the continuing operation of the Business between the date hereof and the Closing, Sellers shall consult in good faith on a regular and frequent basis with the Representatives of Buyer to report material operational developments and the general status of ongoing operations pursuant to procedures reasonably requested by Buyer or such Representatives. Each party hereto acknowledges that any such consultation shall not constitute a waiver by any other party hereto of any rights it may have under this Agreement, and each party hereto agrees that such consultation shall not be deemed a representation or warranty by any other party hereto as to any matters discussed during the course of such consultation.

7.5. Acquisition Proposals. Sellers shall not, and shall direct and use reasonable efforts to cause each of their respective Affiliates and Representatives not to, solicit, initiate or knowingly encourage, or furnish information with respect to the Business or engage in any discussions with any Person in connection with, any Acquisition Proposal.

7.6. Intercompany Obligations. Except pursuant to the express terms of this Agreement, the Transition Services Agreement and the Trademark License Agreement, Sellers shall take such action as may be necessary so that, as of the Closing Date, there shall be no intercompany rights or obligations between the Business, on the one hand, and Sellers or their Affiliates, on the other hand.

7.7. Connors Bros. Equity Offering. Buyer will use its commercially reasonable efforts to cause Connors Bros. to consummate the Connors Bros. Equity Offering as soon as reasonably practicable after the date hereof.

## ARTICLE VIII

### ADDITIONAL AGREEMENTS

8.1. Taxes. (a) Sellers shall be liable for and shall pay all Taxes (whether assessed or unassessed) applicable to the Business or the Purchased Assets, in each case attributable to periods (or portions thereof) ending prior to the Closing Date. Buyer shall be liable for and shall pay all Taxes (whether assessed or unassessed) applicable to the Business, the Purchased Assets or the operation of any business conducted therewith, in each case attributable to periods (or portions thereof) beginning on or after the Closing Date. For purposes of this Section 8.1(a), any period beginning before and ending after the Closing Date shall be treated as two partial periods, one ending immediately prior to the Closing Date and the other beginning on the Closing Date.

(b) Notwithstanding Section 8.1(a), any Tax (including a sales Tax, use Tax, transfer Tax or documentary stamp Tax) directly attributable to the sale or transfer of the Purchased Assets shall be paid by Buyer; provided, that Buyer's obligation under this Section 8.1(b) shall not be deemed to include any obligation of Buyer to pay any income Taxes of any Seller or any Affiliate of any Seller paid or payable with regard to the Purchase Price or otherwise relating to any gains or profits of Sellers in connection with the transactions contemplated hereby. Buyer and Sellers agree to timely sign and deliver such certificates or forms as may be necessary or appropriate to establish an exemption from (or otherwise reduce), or make a report with respect to, such Taxes.

(c) Sellers or Buyer, as the case may be, shall provide reimbursement for any Tax paid by one party all or a portion of which is the responsibility of the other party in accordance with the terms of this Section 8.1. Within a reasonable time prior to the payment of any said Tax, the party paying such Tax shall give notice to the other party of the Tax payable and the portion that is the liability of each party, although failure to do so will not relieve the other party from its liability hereunder. If the other party does not pay the invoice within thirty (30) calendar days of receipt, the amount of such payment shall bear interest at the rate of 8% per annum.

(d) After the Closing Date, Buyer and Sellers shall, and shall cause their respective Affiliates to, (i) assist the other party in preparing any Tax Returns which such other party is responsible for preparing and filing, (ii) cooperate fully in preparing for any audits of, or disputes with taxing authorities regarding, any Tax Returns of the Business or the Purchased Assets, and (iii) make available to the other and to any taxing authority as reasonably requested all information, records and documents relating to Taxes of the Business or the Purchased Assets.

(e) In the event of any direct conflict between the provisions of this Section 8.1 and the provisions of Article X, the provisions of this Section 8.1 shall govern and control with respect to any matter relating to Taxes.

8.2. Employee Matters. (a) Buyer shall be obligated, or have the discretion (as specified below) to make offers of employment to the Business Employees as follows:

(i) All Business Employees Located at the Athens, Alabama Facility. Buyer shall offer employment to all Business Employees (including both union and non-union Business Employees) located at the Athens, Alabama facility of the Business (the "Athens Business Employees"), other than the individual specified on Schedule 8.2(a), effective as of the Closing. Buyer shall notify Sellers of any Athens Business Employee who elects not to accept Buyer's offer, and Sellers shall have the option to retain such Athens Business Employee. On the Closing Date, Sellers shall terminate any Athens Business Employee who accepts Buyer's offer. If Buyer elects to terminate any Athens Business Employee that had previously accepted Buyer's offer of employment within ninety (90) days following the Closing, then Buyer will so notify Sellers in writing, and Sellers will have the option to offer to rehire any such Athens Business Employee; provided, that Sellers must exercise such option with respect to any such Athens Business Employee within five (5) Business Days after Buyer notifies Sellers of its decision to terminate such Athens Business Employee; and provided, further, that if Sellers elect not to exercise such option with respect to any such Athens Business Employee, then neither Sellers nor any of their Affiliates may rehire such Athens Business Employee for the one-year period beginning on the date such Athens Business Employee terminates employment with Buyer.

(ii) Business Employees Other than Athens Business Employees.

(A) Business Employees to Whom Buyer Will Not Make Offers of Employment. For the purposes of this Agreement, all Business Employees which are not Athens Business Employees shall be referred to as the "Other Business Employees." Within five (5) Business Days following the execution of this Agreement, Buyer shall provide to Sellers a list of the Other Business Employees to whom Buyer does not want to extend offers of employment (the "Retained Other Business Employees"). Sellers shall not (i) terminate the employment of any Retained Other Business Employee or (ii) transfer any Retained Other Business Employee to any other business unit or division of any Seller or any Affiliate of any Seller, in either case prior to the

expiration of the initial term of the Transition Services Agreement without the prior written consent of Buyer, which consent shall not be unreasonably withheld.

(B) Business Employees to Whom Buyer Will Make Offers of Employment. Within five (5) Business Days following the execution of this Agreement, Buyer shall provide to Sellers a list of the Other Business Employees to whom Buyer will extend offers of employment (the "Designated Other Business Employees"). On the Closing Date, Sellers shall terminate any Designated Other Business Employee who accepts Buyer's offer. If a Designated Other Business Employee does not accept Buyer's offer of employment, Sellers shall terminate such Designated Other Business Employee's employment; provided, that in such event Sellers shall not (i) terminate the employment of such Designated Other Business Employee or (ii) transfer any Designated Other Business Employee to any other business unit or division of any Seller or any Affiliate of any Seller, in either case during the initial term of the Transition Services Agreement. Neither Sellers nor any of their Affiliates may rehire any Designated Other Business Employee who does not accept Buyer's offer of employment for the one-year period beginning on the Closing Date, and neither Sellers nor any of their Affiliates may rehire any Designated Other Business Employee who is terminated by Buyer for the one-year period beginning on the earlier of the date such Designated Other Business Employee's employment is terminated by Buyer and the date ninety (90) days following the Closing Date.

(C) Business Employees to Whom Buyer May Make Offers of Employment. Within three (3) Business Days prior to the Closing Date, Buyer shall provide to Sellers a list of the Other Business Employees (other than the Designated Other Business Employees) to whom Buyer may want to make offers of employment (the "Optional Other Business Employees"). Subject to the following sentence, if Buyer elects to make an offer of employment to any such Optional Other Business Employee, then such Optional Other Business Employee will be terminated by Sellers. Neither Sellers nor any of their Affiliates may rehire any such Optional Other Business Employee who does not accept Buyer's offer of employment for the one-year period beginning on the Closing Date, and neither Sellers nor any of their Affiliates may rehire any such Optional Other Business Employee who is terminated by Buyer for the one-year period beginning on the date such Optional Other Business Employee's employment is terminated by Buyer; provided, that if such Optional Other Business Employee rejects Buyer's offer, then Sellers may continue to employ such Optional Other Business Employee, and shall not (i) terminate such Optional Other Business Employee's employment or (ii) transfer any Optional Other Business Employee to any other business unit or division of any Seller or any Affiliate of any Seller, in either case during the initial term of the Transition Services Agreement, after which point such Optional Other Business Employee's employment with Sellers shall terminate. Any such Optional Other Business Employee to which Buyer elects to not make an offer of employment shall be treated the same as the Retained Other Business Employees for purposes of this Agreement.



(b) All such offers of employment by Buyer pursuant to this Section 8.2 shall be at the base compensation and wage levels and on other terms and conditions (determined without regard to employee benefit plans) as in effect with respect to each such Business Employee immediately prior to the Closing. Each Business Employee who accepts Buyer's offer of employment shall hereinafter be referred to as a "Transferring Employee." Buyer agrees to provide all Transferring Employees with service credit for all periods of employment with Sellers and/or their respective Affiliates prior to the Closing Date for purposes of eligibility and vesting (but not benefit accrual) under any plan adopted or maintained by Buyer or any subsidiary of Buyer which provides benefits to such Transferring Employees. Neither this Section 8.2(b) nor any other provision in this Agreement shall limit Buyer's right to terminate the employment of or change the terms and conditions of employment of any Transferring Employees after the Closing (subject to any rights of any employee pursuant to any Contract). However, for the period beginning on the Closing Date and ending on the first anniversary of the Closing Date, Buyer shall provide notice of termination or pay in lieu thereof and severance pay, if applicable, to Transferring Employees (other than Transferring Employees that are rehired by Sellers or any of their Affiliates pursuant to Section 8.2(a)) that is no less favorable than under the current practices of Buyer as in effect as of the date hereof, and Buyer shall credit such Transferring Employees with service credit for all periods of employment with Sellers and/or their respective Affiliates prior to the Closing Date for purposes of determining the amount of such severance.

(c) Except as otherwise required by the terms of any such plan or applicable law, as of the Closing Date all Transferring Employees shall cease participation in any employee benefit plan sponsored or maintained by Sellers or any of their respective Affiliates and such Transferring Employees shall be treated as terminated employees under such plans.

(d) Buyer shall (i) waive all limitations as to preexisting conditions, exclusions and waiting periods with respect to participation and coverage requirements applicable to the Transferring Employees under any welfare or fringe benefit plan in which such Transferring Employees may be eligible to participate on or after the Closing Date, other than limitations or waiting periods that are in effect with respect to such Transferring Employees and that have not been satisfied under the corresponding welfare or fringe benefit plan maintained by Sellers for the Transferring Employees prior to the Closing Date, and (ii) provide each Transferring Employee with credit under any welfare plans in which such Transferring Employee becomes eligible to participate on or after the Closing Date for any copayments, deductibles, coinsurance and out of pocket maximums paid by such Transferring Employee for the then current plan year under the corresponding welfare plans maintained by Sellers or any of their respective Affiliates prior to the Closing Date.

(e) Effective as of the Closing Date, the accrued, unused vacation and sick days of the Transferring Employees shall be transferred to and assumed by Buyer, and Buyer shall recognize and provide all such unused vacation and sick pay.

(f) Buyer shall assume and pay the bonus amounts accrued as of the Closing Date with respect to the Transferring Employees to the extent reflected on the Closing Date Balance Sheet, and shall pay such amounts at the end of the bonus determination period that includes the Closing Date, or earlier, if so determined by Buyer. At the Closing, Sellers shall

provide Buyer with a list of such accrued bonus amounts with respect to each such Transferring Employee.

(g) On and after the Closing Date, Buyer shall have the liability and obligation for, and no Seller nor any of its respective Affiliates shall have any liability or obligation for, short-term disability, sick pay or salary continuation benefits for the Transferring Employees. On and after the Closing Date, Sellers shall have the liability and obligation for, and neither Buyer nor any of its Affiliates shall have any liability or obligation for, short-term disability, sick pay or salary continuation benefits for Business Employees other than the Transferring Employees.

(h) Buyer shall have all liability for severance pay and similar obligations payable to any Transferring Employee who is terminated by Buyer on and after the Closing Date (and shall provide severance benefits on the terms set forth in the last sentence of Section 8.2(b)). Sellers shall have all liability for severance pay and similar obligations, if any, payable to any Retained Other Business Employee and each other Business Employee that does not accept Buyer's offer of employment.

(i) Sellers represent that there has not been, and covenant that prior to Closing there will not be, any "plant closing" or "mass layoff" (as defined in the WARN Act or similar Requirements of Law) affecting the Business Employees. Sellers shall indemnify and hold Buyer harmless with respect to any liability under the WARN Act or any similar federal or state statute arising out of any actions taken by Sellers with respect to the Business Employees on or prior to the Closing. Buyer shall indemnify and hold Sellers harmless with respect to any liability under the WARN Act or any similar federal or state statute arising out of any actions taken by Buyer with respect to the Transferring Employees on or after the Closing Date. Buyer agrees to comply with, and shall be solely responsible for all liabilities or obligations under, the WARN Act and the rules and regulations promulgated thereunder with respect to all Business Employees resulting from the transactions contemplated by this Agreement or from Buyer's actions following the Closing; provided, that if Buyer anticipates that a "plant closing" or "mass layoff" (as defined in the WARN Act or similar Requirements of Law) affecting the Business Employees will occur within sixty (60) days after the Closing Date, Sellers agree that, upon request by Buyer, Sellers shall provide the affected Business Employees with any appropriate notice prepared by Buyer for the purpose of satisfying its obligations under the WARN Act.

(j) Except as provided in this Section 8.2, nothing in this Agreement shall limit or restrict in any way the rights of Buyer to modify, amend, terminate or establish employee benefit plans, programs, policies or arrangements, in whole or in part, at any time after the Closing Date.

(k) Effective as of the Closing Date, Buyer, as successor employer to Sellers, shall assume all of Sellers' obligations under, and be bound by, the provisions of each labor contract covering the Business Employees.

(l) On or before the Closing Date, Buyer will offer each Athens Business Employee covered by a labor contract employment on the same terms and conditions of

employment as those that existed immediately prior to the Closing Date under Sellers, and will employ each Business Employee after the Closing Date who accepts such offer.

(m) For the avoidance of doubt, except as expressly provided in this Section 8.2, Sellers shall have the obligation and liability for any claim to compensation or benefits of any Transferring Employee (including workers' compensation or similar workers' protection claims) to the extent that such claim arose, accrued or was otherwise incurred prior to the Closing Date.

(n) Following the Closing Date, Buyer shall, or shall cause an Affiliate to, provide continuation health care coverage to all Transferring Employees and their qualified beneficiaries who incur or incurred a "qualifying event" in accordance with the continuation health care coverage requirements of Section 4980B of the Code and Title I, Subtitle B, Part 6 of ERISA at any time on or after the Closing Date.

8.3. Post-Closing Remittances. If, after the Closing Date, any Seller shall receive any remittance from any account debtors with respect to any receivables generated by Buyer on or after the Closing Date, such Seller shall endorse such remittance to the order of Buyer and forward it to Buyer promptly following receipt thereof. Conversely, if, after the Closing Date, Buyer or its Affiliates shall receive any remittance from any account debtors with respect to any receivables generated by any Seller prior to the Closing Date, or not otherwise payable to Buyer or its Affiliates, then Buyer or its Affiliates, as applicable, shall endorse such remittance to the order of such Seller and forward it to such Seller promptly following receipt thereof.

8.4. Agreement Not to Compete. (a) In furtherance of the sale of the Purchased Assets and the Business to Buyer hereunder by virtue of the transactions contemplated hereby and to protect more effectively the value and goodwill of the Purchased Assets and the Business so sold, Sellers covenant and agree that, for a period ending on the second anniversary of the Closing Date, no Seller nor any of its respective Affiliates will:

(i) directly or indirectly (whether as principal, agent, independent contractor, partner or otherwise) own, manage, operate, control, participate in, perform services for, sell materials to, or otherwise carry on, a business directly competitive with the Business as conducted by Sellers as of the date hereof anywhere it is currently conducted within the United States or the Caribbean Islands; or

(ii) knowingly induce any existing customer of the Business to terminate such business relationship in order to enter into any such relationship on behalf of any other business organization in direct competition with the Business as conducted by Sellers as of the date hereof;

provided, that nothing set forth in this Section 8.4 shall prohibit Sellers or any of their respective Affiliates from (A) acquiring the assets or capital stock of any Person that, among the businesses owned, managed or operated by such Person, owns, manages or otherwise operates a business the acquisition of which would otherwise be prohibited by this Section 8.4; provided, further, that such Seller or such Affiliate sells or otherwise disposes of that portion of such Person's

aggregate business as promptly as practicable and in any event within twelve (12) months after such acquisition or (B) owning not in excess of 5% in the aggregate of any class of capital stock of any corporation if such stock is publicly traded and listed on any national or regional stock exchange or on the Nasdaq national market.

(b) Notwithstanding anything to the contrary in this Agreement, Sellers acknowledge that in the event of a breach by a Seller or any Affiliate of a Seller of its obligations contained in this Section 8.4, money damages may be an inadequate remedy. Accordingly, without prejudice to the rights of Buyer also to seek such damages or other remedies available to it, Buyer may seek preliminary and other injunctive or other equitable relief in any Proceeding that Buyer may bring to enforce this Section 8.4.

8.5. Non-Solicitation of Employees. Sellers agree that for a period of two (2) years after Closing, no Seller, nor any of its respective Affiliates, shall, with respect to any Business Employee who becomes an employee of Buyer or any of its Affiliates in connection with the transactions contemplated by this Agreement, directly or indirectly solicit or induce such Person to terminate his or her employment with the Business or Buyer in order to accept employment with any Seller or any of their respective Affiliates; provided, that the provisions of this Section 8.5 shall not apply with respect to any Business Employee whose employment is terminated by Buyer without cause; and provided, further, that the provisions of this Section 8.5 shall not be breached by any general solicitation by any Seller or any of their respective Affiliates that is not specifically directed to such Business Employee.

8.6. Post-Closing Cooperation. (a) Sellers and Buyer shall cooperate with each other, and shall cause their Affiliates and their respective officers, employees, agents, auditors and representatives to cooperate with each other, for a period of 180 days after the Closing, to ensure the orderly transition of the Purchased Assets from Sellers to Buyer (including to develop a plan pursuant to which Sellers will notify the brokers and customers of the Business and the Business Employees of the transfer of the Purchased Assets to Buyer). After the Closing, upon reasonable written notice, Sellers and Buyer shall furnish or cause to be furnished to each other and their respective Affiliates and their respective employees, counsel, auditors and representatives access, during normal business hours, such information and assistance relating to the Purchased Assets (to the extent within the control of such party) as is reasonably necessary for financial reporting and accounting matters.

(b) Each party shall reimburse the other for reasonable out-of-pocket costs and expenses incurred in assisting the other pursuant to this Section 8.6. Neither party shall be required by this Section 8.6 to take any action that would unreasonably interfere with the conduct of its business or unreasonably disrupt its normal operations (or, in the case of Buyer, those of the Business). Any services relating to the Purchased Assets provided by Sellers pursuant to this Section 8.6 shall be subject to this Section 8.6(b).

(c) Notwithstanding the foregoing, the matters subject to this Section 8.6 shall not include those matters subject to the terms of the Transition Services Agreement, which shall be governed solely by the terms of the Transition Services Agreement.

8.7. Use of Marks. Sellers hereby grant to Buyer a limited, non-exclusive, royalty-free license to use those certain names or trademarks of Sellers that are not a Purchased Asset, are not used exclusively in the Business and are currently placed on any Inventory by any Seller (the "Sellers' Marks"), only to the extent that Sellers' Marks are affixed to (i) any Inventory, (ii) any packaging for Inventory which has been ordered but not yet delivered to the Business as of the Closing Date and (iii) any packaging that constitutes part of the Purchased Assets (collectively, the "Marked Inventory"), and only in the course of selling or otherwise using or disposing of such Marked Inventory; provided, that such license shall begin on the Closing Date and shall terminate upon the earlier of: (A) the first anniversary of the Closing Date and (B) any breach by Buyer of this Section 8.7. Buyer may not sub-license such license or otherwise allow any other Person to use such license. For the avoidance of doubt, Buyer may not otherwise affix Sellers' Marks to any product or otherwise make any new or additional use of Sellers' Marks. Buyer, in its sale, use and disposition of the Marked Inventory, shall conform to a standard of quality that is at least as high as the quality standards of the Business prior to the Closing Date. Buyer shall not alter or modify the Marked Inventory. Buyer shall not do anything that damages (other than any nominal damage) or reasonably reflects adversely on the Sellers' Marks and shall comply in all material respects with all Requirements of Laws in its sale, use and disposition of the Marked Inventory.

## ARTICLE IX

### CONDITIONS TO CLOSING

9.1. Conditions Precedent to Sellers' Obligations. The obligations of Sellers under this Agreement shall, at the option of Sellers, be subject to the satisfaction, on or prior to the Closing Date, of the following conditions:

(a) There shall have been no material breach by Buyer in the performance of any of its covenants and agreements herein which shall not have been remedied or cured; each of the representations and warranties of Buyer contained in this Agreement shall be true and correct on the Closing Date as though made on the Closing Date, except to the extent they relate to an earlier date and except for changes therein specifically permitted by this Agreement or resulting from any transaction expressly consented to in writing by Sellers or any transaction contemplated in this Agreement and other than breaches of representations and warranties which, individually or in the aggregate, could not reasonably be expected to have a material adverse effect on Buyer or materially adversely affect Buyer's ability to consummate the transactions contemplated hereby; and there shall have been delivered to Sellers a certificate to such effect, dated the Closing Date, signed on behalf of Buyer by a duly authorized officer of Buyer;

(b) All approvals and actions of or by all Governmental Bodies which are necessary to consummate the transactions contemplated hereby shall have been obtained or taken place;

(c) No court of competent jurisdiction or other Governmental Body shall have issued an injunction or protective order, decree or ruling restraining, enjoining or otherwise prohibiting the consummation of any material transaction contemplated hereby, and no such injunction or protective order, decree or ruling shall have been filed and currently pending; and

(d) Buyer and any subsidiary of Buyer to which Buyer assigns any of its rights under this Agreement pursuant to and as permitted by Section 12.5 shall have delivered all documents, agreements and certificates required to be delivered pursuant to Section 4.3.

9.2. Conditions Precedent to Buyer's Obligations. The obligations of Buyer under this Agreement shall, at the option of Buyer, be subject to the satisfaction, on or prior to the Closing Date, of the following conditions:

(a) There shall have been no material breach by Sellers in the performance of any of their covenants and agreements herein which shall not have been remedied or cured; each of the representations and warranties of Sellers contained in this Agreement shall be true and correct on the Closing Date as though made on the Closing Date, except to the extent they relate to an earlier date and except for changes therein specifically permitted by this Agreement or resulting from any transaction expressly consented to in writing by Buyer or any transaction contemplated in this Agreement and other than breaches of representations and warranties which, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect; and there shall have been delivered to Buyer a certificate to such effect, dated the Closing Date, signed on behalf of each Seller by a duly authorized officer of such Seller;

(b) All approvals and actions of or by all Governmental Bodies which are necessary to consummate the transactions contemplated hereby shall have been obtained or taken place;

(c) No court of competent jurisdiction or other Governmental Body shall have issued an injunction or protective order, decree or ruling restraining, enjoining or otherwise prohibiting the consummation of any material transaction contemplated hereby, and no such injunction or protective order, decree or ruling shall have been filed and currently pending;

(d) Sellers shall have delivered all documents, agreements and certificates required to be delivered pursuant to Section 4.4;

(e) (i) Connors Bros. shall have been able, after using its commercially reasonable efforts, to enter into an underwriting or initial purchase agreement (the "Equity Offering Purchase Agreement") on terms and conditions, and with underwriters or initial purchasers, reasonably satisfactory to Connors Bros. and (ii) if Connors Bros. has entered into the Equity Offering Purchase Agreement, the initial purchasers or underwriters party to the Equity Offering Purchase Agreement shall not have terminated the Equity Offering Purchase Agreement pursuant to the terms thereof; and

(f) There shall not have occurred any event, change or effect which, individually or together with other events, changes or effects, could reasonably be expected to be materially adverse to, in or on (x) the business operations, assets, Assumed Liabilities, results of operations, financial condition or prospects of the Business, taken as a whole, or (y) the ability of any Seller to perform in all material respects its obligations under this Agreement or any Seller Ancillary Agreement or consummate in all material respects the transactions contemplated by this Agreement or any Seller Ancillary Agreement, in each case, other than changes (A) relating to generally applicable economic conditions or any industry in which the Business operates

(except for any such generally applicable adverse effects resulting from a terrorist attack or related activity), (B) resulting from the public disclosure of the transactions contemplated by this Agreement or (C) resulting from the execution of this Agreement or the consummation of the transactions contemplated hereby.

## ARTICLE X

### INDEMNIFICATION

10.1. Indemnification by Sellers. (a) Sellers agree, jointly and severally, to indemnify and hold harmless each Buyer Group Member from and against any and all Losses and Expenses incurred by such Buyer Group Member in connection with or arising from:

- (i) any breach by Sellers of any of their covenants or obligations in this Agreement;
- (ii) any breach of any warranty or the inaccuracy of any representation of Sellers contained or referred to in this Agreement or any certificate delivered by or on behalf of Sellers pursuant hereto;
- (iii) any Excluded Liability;
- (iv) any fees, expenses or other payments incurred or owed by any Seller to any brokers, financial advisors or comparable other Persons retained or employed by such Seller in connection with the transactions contemplated hereby;
- (v) any Proceeding against Buyer or any of its Affiliates by any shareholder, officer or director of any Seller arising solely and exclusively from Buyer's purchase of the Purchased Assets, other than any such Proceeding which relates to the duties and obligations of Buyer under this Agreement or the transactions contemplated hereby;
- (vi) (1) the recall of cans that were used by the Business and produced by Ball Corporation arising from defects to such cans that were discovered in September 2002, (2) the recall of cans that were used by the Business and produced by Ball Corporation for Winn Dixie private label broth product, which recall occurred in January and February 2004 and (3) the recall by International Trading Co. of (A) 12 oz. cans of "PICNIC BRAND, HALAL, TURKEY Luncheon Meat" and (B) 12 oz. cans of "PICNIC BRAND, Turkey Luncheon Meat," which products were produced between June 15, 2004 and October 19, 2004 and as more particularly described in a USDA FSIS Recall Release dated November 8, 2004; or
- (vii) the ownership and/or use of the Purchased Assets and the operation of the Business prior to the Closing Date (other than with respect to any Assumed Liability) or any other business conducted by any Seller or any of its Affiliates;

provided, that Sellers shall be required to indemnify and hold harmless under this Section 10.1(a)(ii) with respect to Losses and Expenses incurred by Buyer Group Members (other than

with respect to Losses and Expenses resulting directly from any breaches or inaccuracies of the warranties and representations set forth in Section 5.1 (Organization of Sellers), Section 5.2(a) (Authority of Sellers) and Section 5.9 (Title to Property)) only to the extent that the aggregate amount of such Losses and Expenses exceeds \$300,000; and provided, further, that in no event shall the aggregate amount required to be paid by Sellers pursuant to Section 10.1(a)(ii) (other than with respect to Losses and Expenses resulting directly from any breaches or inaccuracies of the warranties and representations set forth in Section 5.1 (Organization of Sellers), Section 5.2(a) (Authority of Sellers) and Section 5.9 (Title to Property)) exceed \$18,000,000.

(b) The indemnification provided for in Section 10.1(a)(ii) shall terminate eighteen months after the Closing Date (and no claims shall be made by any Buyer Group Member under Section 10.1(a)(ii) thereafter), except that the indemnification by Sellers pursuant to Section 10.1(a)(ii) shall continue as to:

(i) the representations and warranties of Sellers contained in Sections 5.1, 5.2(a) and 5.9, as to which no time limitation shall apply;

(ii) the representations and warranties of Sellers set forth in Section 5.3 which shall survive until the expiration of the relevant statutory period of limitations applicable to the underlying claim;

(iii) the representations and warranties of Sellers set forth in Section 5.17 which shall survive until the fifth anniversary of the Closing Date; and

(iv) any Losses or Expenses of which any Buyer Group Member has notified Sellers in accordance with the requirements of Section 10.3 on or prior to the date such indemnification would otherwise terminate in accordance with this Section 10.1, as to which the obligation of Sellers shall continue until the liability of Sellers shall have been determined pursuant to this Article X, and Sellers shall have reimbursed all Buyer Group Members for the full amount of such Losses and Expenses in accordance with this Article X.

10.2. Indemnification by Buyer. (a) Buyer agrees to indemnify and hold harmless each Seller Group Member from and against any and all Losses and Expenses incurred by such Seller Group Member in connection with or arising from:

(i) any breach by Buyer of any of its covenants or obligations in this Agreement;

(ii) any breach of any warranty or the inaccuracy of any representation of Buyer contained or referred to in this Agreement or in any certificate delivered by or on behalf of Buyer pursuant hereto;

(iii) any Assumed Liability;

(iv) any fees, expenses or other payments incurred or owed by Buyer to any brokers, financial advisors or comparable other Persons retained or employed by Buyer in connection with the transactions contemplated hereby;



(v) any Proceeding against any Seller or any of its Affiliates by any shareholder, officer or director of Buyer arising solely and exclusively from such Seller's sale of the Purchased Assets, other than any such Proceeding which relates to the duties and obligations of such Seller under this Agreement or the transactions contemplated hereby; or

(vi) Buyer's (or any successor's or assignee's) ownership and/or use of the Purchased Assets and the operation of any business conducted therewith after the Closing Date (other than with respect to any Excluded Liability);

provided, that Buyer shall be required to indemnify and hold harmless under this Section 10.2(a)(ii) (other than with respect to Losses and Expenses resulting directly from any breaches or inaccuracies of the warranties and representations set forth in Section 6.1 (Organization) and Section 6.2(a) (Authority of Buyer)) with respect to Losses and Expenses incurred by Seller Group Members only to the extent that the aggregate amount of such Losses and Expenses exceeds \$300,000; and provided, further, that in no event shall the aggregate amount required to be paid by Buyer pursuant to Section 10.2(a)(ii) (other than with respect to Losses and Expenses resulting directly from any breaches or inaccuracies of the warranties and representations set forth in Sections 6.1 (Organization) and Section 6.2(a) (Authority of Buyer)) exceed \$18,000,000.

(b) The indemnification provided for in Section 10.2(a)(ii) shall terminate eighteen months after the Closing Date (and no claims shall be made by any Seller Group Member under Section 10.2(a)(ii) thereafter), except that the indemnification by Buyer pursuant to Section 10.2(a)(ii) shall continue as to:

(i) the representations and warranties of Buyer contained in Sections 6.1 and 6.2(a), as to which no time limitation shall apply; and

(ii) any Losses or Expenses of which any Seller Group Member has notified Buyer in accordance with the requirements of Section 10.3 on or prior to the date such indemnification would otherwise terminate in accordance with this Section 10.2, as to which Buyer's obligation shall continue until Buyer's liability shall have been determined pursuant to this Article X, and Buyer shall have reimbursed all Seller Group Members for the full amount of such Losses and Expenses in accordance with this Article X.

10.3. Notice of Claims. (a) Any Buyer Group Member or Seller Group Member seeking indemnification hereunder (the "Indemnified Party") shall give to the party obligated to provide indemnification to such Indemnified Party (the "Indemnitor") a notice (a "Claim Notice") describing in reasonable detail the facts giving rise to any claim for indemnification hereunder and shall include in such Claim Notice (if then known) the amount or the method of computation of the amount of such claim, and a reference to the provision of this Agreement or any other agreement, document or instrument executed hereunder or in connection herewith upon which such claim is based; provided, that a Claim Notice with respect to any action at law or suit in equity by or against a third Person as to which indemnification will be sought (each such action or suit being a "Third Person Claim") shall be given promptly, and in

no event later than thirty (30) days, after receipt by such Indemnified Party of written notice of such Third Person Claim; provided, further, that failure to give such notification within such timeframe shall not affect the indemnification provided hereunder except to the extent the Indemnitor is actually and materially prejudiced as a result of such failure. Thereafter, the Indemnified Party shall deliver to the Indemnitor, within ten (10) Business Days after the Indemnified Party's receipt thereof, copies of all notices and documents (including court papers) received by the Indemnified Party relating to the Third Person Claim. Notwithstanding the foregoing, should a party be physically served with a complaint with regard to a Third Person Claim, the Indemnified Party must notify the Indemnitor with a copy of the complaint within five (5) Business Days after receipt thereof and shall deliver to the Indemnitor within seven (7) Business Days after the receipt of such complaint copies of notices and documents (including court papers) received by the Indemnified Party relating to such Third Person Claim; provided, that the failure to give such notification within such timeframe shall not affect the indemnification provided hereunder except to the extent the Indemnitor is actually and materially prejudiced as a result of such failure.

(b) In calculating any Losses or Expenses there shall be deducted any insurance proceeds actually recovered in respect thereof.

(c) After the giving of any Claim Notice pursuant hereto, the amount of indemnification to which an Indemnified Party shall be entitled under this Article X shall be determined: (i) by the written agreement between the Indemnified Party and the Indemnitor; (ii) by a final judgment or decree of any court of competent jurisdiction; or (iii) by any other means to which the Indemnified Party and the Indemnitor shall agree. The judgment or decree of a court shall be deemed final when the time for appeal, if any, shall have expired and no appeal shall have been taken or when all appeals taken shall have been finally determined. The Indemnified Party shall have the burden of proof in establishing the amount of Losses and Expenses suffered by it.

10.4. Third Person Claims. (a) The Indemnitor shall have the right to conduct and control, through counsel of its choosing, the defense, compromise or settlement of any Third Person Claim against such Indemnified Party as to which indemnification will be sought by any Indemnified Party from any Indemnitor hereunder; provided, that any counsel retained by the Indemnitor shall be reasonably acceptable to the Indemnified Party. The Indemnified Party shall cooperate in connection therewith and shall furnish such records, information and testimony and attend such conferences, discovery proceedings, hearings, trials and appeals as may be reasonably requested by the Indemnitor in connection therewith; provided, that the Indemnified Party may participate, through counsel chosen by it and at its own expense, in the defense of any such Third Person Claim as to which the Indemnitor has so elected to conduct and control the defense thereof; and provided, further, that to the extent the Indemnitor elects not to defend such Third Person Claim and the Indemnified Party defends against or otherwise conducts any such Third Person Claim, the Indemnified Party may retain counsel at the expense of the Indemnitor (subject to the limitations set forth herein) and control the defense of such Third Person Claim, in which case the Indemnitor shall cooperate in connection therewith and shall furnish such records, information and testimony and attend such conferences, discovery proceedings, hearings, trials and appeals as may be reasonably requested by the Indemnified Party in connection therewith. The Indemnified Party shall not, without the written consent of the Indemnitor (which consent

shall not be unreasonably withheld), pay, compromise or settle any such Third Person Claim, except that no such consent shall be required if (i) following a written request from the Indemnified Party, the Indemnitor shall fail, within fourteen (14) days after receipt of such request, to acknowledge and agree in writing that if such Third Person Claim shall be adversely determined, such Indemnitor has an obligation to provide indemnification hereunder to such Indemnified Party or (ii) the Indemnified Party shall waive in writing any right to indemnity therefor hereunder. Neither the Indemnitor nor the Indemnified Party may settle any such Third Person Claim which settlement obligates the other party to pay money, to perform obligations or to admit liability, or which restricts the activities of such other party, without the written consent of the other party, such consent not to be unreasonably withheld.

(b) Notwithstanding the provisions set forth in Section 10.4(a), if a Third Person Claim against the Indemnified Party does not seek any monetary damages and seeks only an order, injunction or other equitable relief against the Indemnified Party, then the Indemnified Party shall have the right to control the defense of such Third Person Claim at the cost of the Indemnitor.

10.5. Additional Limitations. (a) Except for remedies that cannot be waived as a matter of law, injunctive, equitable and provisional relief (including specific performance) and claims based on fraud, if the Closing occurs, this Article X shall be the exclusive remedy for breach of this Agreement, the Instrument of Assignment, the Instrument of Assumption and the certificates delivered pursuant to Sections 9.1(a) and 9.2(a).

(b) No party hereto shall have any liability for any special, exemplary, punitive or consequential damages (including loss of profit or revenue) suffered or incurred by any Buyer Group Member or Seller Group Member, as the case may be.

(c) Notwithstanding anything herein to the contrary, no Indemnified Party shall be entitled to any indemnification against any Losses or Expenses as a result of, or based upon or arising from, any claim or liability to the extent such claim or liability is taken into account in determining the Closing Date Working Capital and any Post-Closing Adjustment Amount pursuant to Article III.

(d) If an Indemnified Party shall recover Losses or Expenses in respect of a claim for indemnification under this Article X, no other Indemnified Party shall be entitled to recover the same Losses or Expenses under this Article X.

10.6. Mitigation. Each of the parties hereto agrees to use their commercially reasonable efforts to mitigate their respective Losses and Expenses upon and after becoming aware of any event or condition that could reasonably be expected to give rise to any Losses or Expenses that are indemnifiable hereunder; provided, that any reasonable out-of-pocket expenses incurred in connection with such efforts shall constitute Expenses with respect to any claim for such indemnifiable Losses and Expenses pursuant to this Article X.

10.7. Tax Adjustments. The parties agree to treat all payments pursuant to this Article X as adjustments to the Purchase Price. Notwithstanding the preceding sentence, to the extent any payments pursuant to this Article X shall be treated by Tax authorities as income to

the Indemnified Party, and not as an adjustment to the Purchase Price for Tax purposes, then any amounts payable by the Indemnitor to or on behalf of an Indemnified Party in respect of any Losses or Expenses shall be adjusted as follows: if such Indemnified Party is liable for any additional Taxes as a result of the payment of amounts in respect of any Losses or Expenses, the Indemnitor will pay to the Indemnified Party in addition to such amounts in respect of the Loss or Expense within ten (10) days after being notified by the Indemnified Party of the payment of such liability (x) an amount equal to such additional Taxes (the "Tax Reimbursement Amount") plus (y) any additional amounts required to pay additional Taxes imposed with respect to the Tax Reimbursement Amount and with respect to amounts payable under this clause (y), with the result that the Indemnified Party shall have received from the Indemnitor, net of the payment of Taxes, an amount equal to the Loss or Expense; provided, that the Indemnified Party shall pay to the Indemnitor the amount of any Tax Benefit actually realized by the Indemnified Party or any of its Affiliates (after first taking into account all other losses, deductions, credits, and like Tax benefits) as a result of such Losses or Expenses not being treated as an adjustment to Purchase Price (after taking into account Section 10.6).

## ARTICLE XI

### TERMINATION

11.1. Termination. Notwithstanding anything contained in this Agreement to the contrary, this Agreement may be terminated at any time prior to the Closing Date:

(a) by the mutual written consent of Buyer and Sellers;

(b) by Buyer in the event of any material breach by Sellers of any of Sellers' agreements, covenants, representations or warranties contained herein and the failure of Sellers to cure such breach within thirty (30) days after receipt of written notice from Buyer requesting such breach to be cured;

(c) by Sellers in the event of any material breach by Buyer of any of Buyer's agreements, covenants, representations or warranties contained herein and the failure of Buyer to cure such breach within thirty (30) days after receipt of written notice from a Seller requesting such breach to be cured;

(d) by either Buyer or Sellers if any court of competent jurisdiction or other Governmental Body shall have issued a final and non-appealable order, decree or ruling permanently restraining, enjoining or otherwise prohibiting the consummation of the transactions contemplated hereby; or

(e) by either Buyer or Sellers if the Closing shall not have occurred on or before February 14, 2005 (or such later date as may be mutually agreed to in writing by Buyer and Sellers); provided, that the right to terminate this Agreement shall not be available to any party where failure to fulfill any obligation or other breach under this Agreement has been the cause of, or resulted in, the failure of the Closing to occur on or before February 14, 2005.

11.2. Notice of Termination. Any party desiring to terminate this Agreement pursuant to Section 11.1 shall give written notice of such termination to the other parties.

11.3. Effect of Termination. If this Agreement is terminated pursuant to this Article XI, all further obligations of the parties under this Agreement (other than Sections 12.2, 12.3 and 12.9) shall be terminated without further liability of either party to the others; provided, that nothing shall relieve any party from liability for its willful breach of this Agreement.

## ARTICLE XII

### GENERAL PROVISIONS

12.1. Survival of Obligations. All representations, warranties, covenants and obligations contained in this Agreement shall survive the consummation of the transactions contemplated by this Agreement; provided, that, except as otherwise provided in Article X, the representations and warranties contained in Articles V and VI shall terminate on the eighteen month anniversary of the Closing Date. Except as otherwise provided herein, no claim shall be made for the breach of any representation or warranty contained in Article V or VI or under any certificate delivered with respect thereto under this Agreement after the date on which such representations and warranties terminate as set forth in this Section 12.1.

12.2. Confidential Nature of Information. Each party agrees that it will treat in confidence all documents, materials and other information that it shall have obtained regarding the other parties during the course of the negotiations leading to the consummation of the transactions contemplated hereby (whether obtained before or after the date of this Agreement), the investigation provided for herein and the preparation of this Agreement and other related documents, and, in the event the transactions contemplated hereby shall not be consummated, each party will return to the other party all copies of nonpublic documents and materials that have been furnished in connection therewith. Such documents, materials and information shall not be communicated to any third Person (other than, in the case of Buyer, to its counsel, accountants, financial advisors or lenders, and in the case of Sellers, to their counsel, accountants or financial advisors). No Sellers, on the one hand, nor Buyer on the other (or any of their respective Affiliates or representatives) shall use any confidential information regarding the other party in any manner whatsoever except solely for the purpose of evaluating the proposed purchase and sale of the Purchased Assets; provided, that after the Closing Buyer may use or disclose any confidential information included in the Purchased Assets or otherwise reasonably related to the Purchased Assets. The obligation of each party to treat such documents, materials and other information in confidence shall not apply to any information that (a) is or becomes available to such party from a source other than such party, (b) is or becomes available to the public other than as a result of disclosure by such party or its agents, (c) is required to be disclosed under applicable law or judicial process, but only to the extent it must be disclosed, or (d) such party reasonably deems necessary to disclose to obtain any of the consents or approvals contemplated hereby.

12.3. No Public Announcement. Neither Buyer, on the one hand, nor Sellers on the other shall, without the approval of the other party (which consent shall not be unreasonably withheld), make any press release or other public announcement concerning the transactions contemplated by this Agreement, except (i) as and to the extent that any such party shall be so obligated by Requirements of Law, in which case the other parties shall be advised and the parties shall use their best efforts to cause a mutually agreeable release or announcement to be

issued, (ii) pursuant to the rules or regulations of any United States or foreign securities exchange, in which case the party so required to make the release or announcement shall allow the other party reasonable time to comment on such release or announcement in advance of such issuance and (iii) internal announcements to their respective employees that are consistent with the parties' prior public disclosures.

12.4. Notices. All notices or other communications required or permitted hereunder shall be in writing and shall be deemed given or delivered when delivered personally, when received by the intended recipient if delivered by facsimile, or when sent by registered or certified mail, return receipt requested, or by private courier addressed as follows:

If to Buyer, to:

Bumble Bee Seafoods, LLC  
P.O. Box 85362  
San Diego, CA 92186  
Attention: Senior Vice President, General Counsel  
Fax: 858-715-4357

with a copy to:

O'Melveny & Myers LLP  
Times Square Tower  
7 Times Square  
New York, New York 10036  
Attention: Mark E. Thierfelder  
Fax: 212-326-2061

If to Sellers, to:

Sara Lee Corporation  
Three First National Plaza  
70 W. Madison  
Chicago, IL 60602  
Attention: Senior Corporate Counsel  
Fax: 312-558-8687

Sara Lee Foods, Inc.  
Three First National Plaza  
70 W. Madison  
Chicago, IL 60602  
Attention: Senior Corporate Counsel  
Fax: 312-558-8687

with a copy to:

Sidley Austin Brown & Wood LLP  
Bank One Plaza

10 South Dearborn Street  
Chicago, IL 60603  
Attention: Kevin F. Blatchford  
Fax: 312-853-7036

or to such other address as such party may indicate by a notice delivered to the other party hereto.

12.5. Successors and Assigns; No Third Party Beneficiaries. No party shall assign any of its rights under this Agreement prior to the Closing without the prior written consent of the other parties; except that the rights of Buyer hereunder may be assigned prior to the Closing, without the consent of Sellers, to any corporation or limited liability company all of the outstanding capital stock or membership interests of which are owned or controlled, directly or indirectly, by Buyer, provided, that (i) the assignee shall assume in writing all of Buyer's obligations to Sellers hereunder and (ii) Buyer shall not be released from any of its obligations hereunder by reason of such assignment. Following the Closing, any party may assign any of its rights hereunder, but no such assignment shall relieve it of its obligations hereunder. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their successors and permitted assigns. Nothing in this Agreement, expressed or implied, is intended or shall be construed to confer upon any Person other than the parties and successors and assigns permitted by this Section 12.5 any right, remedy or claim under or by reason of this Agreement.

12.6. Access to Records after Closing. (a) For a period of six years after the Closing Date, Sellers and their Representatives shall have reasonable access to all of the books and records of Sellers transferred to Buyer hereunder to the extent that such access may reasonably be required by Sellers in connection with matters relating to or affected by the operations of the Business prior to the Closing Date. Buyer shall afford such access upon receipt of reasonable advance notice and during normal business hours. Sellers shall be solely responsible for any costs or expenses incurred by them pursuant to this Section 12.6(a). If Buyer shall desire to dispose of any of such books and records prior to the expiration of such six-year period, Buyer shall, prior to such disposition, give Sellers a reasonable opportunity, at Sellers' expense, to segregate and remove such books and records as Sellers may select.

(b) For a period of six years after the Closing Date, Buyer and its Representatives shall have reasonable access to all of the books and records relating to the Purchased Assets that Sellers or any of their Affiliates may retain after the Closing Date. Such access shall be afforded by Sellers and their Affiliates upon receipt of reasonable advance notice and during normal business hours. Buyer shall be solely responsible for any costs and expenses incurred by it pursuant to this Section 12.6(b). If Sellers or any of their Affiliates shall desire to dispose of any of such books and records prior to the expiration of such six-year period, Sellers shall, prior to such disposition, give Buyer a reasonable opportunity, at Buyer's expense, to segregate and remove such books and records as Buyer may select.

12.7. Entire Agreement; Amendments. This Agreement and the Exhibits and Schedules referred to herein and the documents delivered pursuant hereto or in connection herewith contain the entire understanding of the parties hereto with regard to the subject matter contained herein or therein, and supersede all prior agreements, understandings or letters of

intent between or among any of the parties hereto, including the Confidentiality Agreements and the letter agreement dated October 29, 2004 between Sara Lee and Buyer. This Agreement shall not be amended, modified or supplemented except by a written instrument signed by an authorized representative of each of the parties hereto.

12.8. Waivers. Any term or provision of this Agreement may be waived, or the time for its performance may be extended, by the party or parties entitled to the benefit thereof. Any such waiver shall be validly and sufficiently authorized for the purposes of this Agreement if, as to any party, it is authorized in writing by an authorized representative of such party. The failure of any party hereto to enforce at any time any provision of this Agreement shall not be construed to be a waiver of such provision, nor in any way to affect the validity of this Agreement or any part hereof or the right of any party thereafter to enforce each and every such provision. No waiver of any breach of this Agreement shall be held to constitute a waiver of any other or subsequent breach.

12.9. Expenses. Except as otherwise provided in this Agreement, each party hereto will pay all costs and expenses incident to its negotiation and preparation of this Agreement and to its performance and compliance with all agreements and conditions contained herein on its part to be performed or complied with, including the fees, expenses and disbursements of its counsel and accountants.

12.10. Partial Invalidity. Wherever possible, each provision hereof shall be interpreted in such manner as to be effective and valid under applicable Requirements of Law, but in case any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such provision shall be ineffective to the extent, but only to the extent, of such invalidity, illegality or unenforceability without invalidating the remainder of such invalid, illegal or unenforceable provision or provisions or any other provisions hereof, unless such a construction would be unreasonable.

12.11. Execution in Counterparts. This Agreement may be executed in one or more counterparts, including by way of facsimile transmission, each of which shall be considered an original instrument, but all of which shall be considered one and the same agreement, and shall become binding when one or more counterparts have been signed by each of the parties hereto and delivered to each Seller and Buyer.

12.12. Further Assurances. From time to time following the Closing, Sellers shall execute and deliver, or cause to be executed and delivered, to Buyer such other instruments of conveyance and transfer as are reasonably necessary to more effectively convey and transfer to, and vest in, Buyer and put Buyer in possession of, any part of the Purchased Assets, and, in the case of approvals, authorizations, Contracts, Permits, easements and other commitments included in the Purchased Assets that cannot be transferred or assigned effectively without the consent of third parties which consent has not been obtained prior to the Closing, to cooperate with Buyer at its request in endeavoring to obtain such consent promptly; provided, that if any such consent cannot be obtained, or until such consent is obtained, Sellers and their Affiliates will cooperate to implement reasonable arrangements resulting in Buyer obtaining the benefits and privileges of the relevant Contract, Permit, approval, authorization, easement or other commitment included in Purchased Assets while protecting Sellers and their Affiliates from



continuing liabilities and obligations thereunder; and provided, further, that notwithstanding anything in this Agreement to the contrary, this Agreement shall not constitute an agreement to assign any Contract, certificate, approval, authorization, easement or other commitment included in the Purchased Assets if an attempted assignment thereof without the consent of a third party thereto would constitute a breach thereof.

12.13. Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws (as opposed to the conflicts of law provisions) of the State of New York.

12.14. Disclaimer of Warranties. **EXCEPT AS TO THOSE MATTERS EXPRESSLY COVERED BY THE REPRESENTATIONS AND WARRANTIES IN THIS AGREEMENT, SELLERS ARE NOT MAKING ANY REPRESENTATIONS OR WARRANTIES WHATSOEVER WITH RESPECT TO THE PURCHASED ASSETS (INCLUDING ANY IMPLIED WARRANTIES)**. Buyer acknowledges that none of Sellers, any of their respective Representatives or Affiliates or any other Person has made any representation or warranty, express or implied, as to the accuracy or completeness of any memoranda, charts, summaries or schedules heretofore made available by Sellers or their Representatives or Affiliates to Buyer or any Affiliate of Buyer or any other information which is not included in this Agreement or the Schedules hereto, and none of Sellers, any of their respective Representatives or Affiliates or any other Person will have or be subject to any liability to Buyer, any Affiliate of Buyer or any other Person resulting from the distribution of any such information to, or use of any such information by, Buyer, any Affiliate of Buyer or any of their agents, consultants, accountants, counsel or other Representatives.

12.15. Consent to Jurisdiction. Each party irrevocably submits to the exclusive jurisdiction of (a) the courts of the State of Illinois sitting in Cook County and (b) the United States District Court for the Northern District of Illinois, for the purposes of any Proceeding arising out of this Agreement or any transaction or agreement contemplated hereby. Each of Buyer and Sellers agrees to commence any such Proceeding either in the United States District Court for the Northern District of Illinois or if such Proceeding may not be brought in such court for jurisdictional reasons, in the courts of the State of Illinois sitting in Cook County. Each of Buyer and Sellers further agrees that service of any process, summons, notice or document by U.S. registered mail to such party's respective address set forth above shall be effective service of process for any Proceeding in Illinois with respect to any matters to which it has submitted to jurisdiction in this Section. Each of Buyer and Sellers irrevocably and unconditionally waives any objection to the laying of venue of any Proceeding arising out of this Agreement or the transactions or agreements contemplated hereby in the courts specified above and hereby and thereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such Proceeding brought in any such court has been brought in an inconvenient forum.

12.16. Waiver of Jury Trial. **EACH PARTY HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT TO ANY PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY TRANSACTION OR AGREEMENT CONTEMPLATED HEREBY.**


EACH PARTY (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF ANY PROCEEDING, SEEK TO ENFORCE THAT FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 12.16.

12.17. Bulk Sales Laws. Buyer and Sellers each hereby waive compliance by Sellers with the provisions of the "bulk sales," "bulk transfer" or similar laws of any state or any jurisdiction outside the United States.

\* \* \* \* \*

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed the day and year first above written.

**BUMBLE BEE SEAFOODS, LLC**

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

**SARA LEE CORPORATION**

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

**BRYAN FOODS, INC.**

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

**SARA LEE FOODS, INC.**

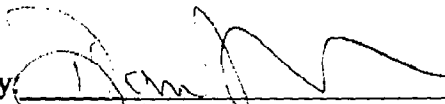
By: \_\_\_\_\_  
Name:  
Title:

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.


**BUMBLE BEE SEAFOODS, LLC**

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


**SARA LEE CORPORATION**

By:  \_\_\_\_\_  
Name: *Diana S. Ferguson*  
Title: *Senior Vice President & Treasurer*

**BRYAN FOODS, INC.**

By:  \_\_\_\_\_  
Name: *Aaron E. Alt*  
Title: *Vice President & Assistant Secretary*

**SARA LEE FOODS, INC.**

By:  \_\_\_\_\_  
Name: *Aaron E. Alt*  
Title: *Vice President & Assistant Secretary*

**INSTRUMENT OF ASSIGNMENT**

Pursuant to the Asset Purchase Agreement dated as of the date hereof (the "Agreement") among Bumble Bee Seafoods, LLC, a Delaware limited liability company ("Buyer"), Sara Lee Corporation, a Maryland corporation ("Sara Lee"), Bryan Foods, Inc., a Delaware corporation ("Bryan Foods"), and Sara Lee Foods, Inc., a Delaware corporation ("Sara Lee Foods", with Bryan Foods and Sara Lee, each a "Seller" and collectively, the "Sellers"), for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each Seller does hereby sell, assign, transfer, convey and deliver unto [\_\_\_\_], its successors and assigns, each and all of the Purchased Assets owned by such Seller, free and clear of all Encumbrances (except for Permitted Encumbrances), and with respect to the Trademarks included in the Purchased Assets, together with the goodwill attendant thereto, intending hereby to convey all of the right, title and interest of such Seller therein.

Each Seller hereby covenants and agrees to and with [\_\_\_\_], its successors and assigns, to do, execute, acknowledge and deliver to, or to cause to be done, executed, acknowledged and delivered to, [\_\_\_\_], its successors and assigns, all such further acts, deeds, assignments, transfers, conveyances, powers of attorney and assurances that may be reasonably requested by [\_\_\_\_] for the better selling, assigning, transferring, conveying, delivering, assuring and confirming to [\_\_\_\_], its successors or assigns, or for aiding and assisting in collecting or reducing to [\_\_\_\_]'s possession, any or all of the Purchased Assets.

Notwithstanding anything herein to the contrary, this Instrument of Assignment shall not constitute an agreement to assign any permit, license, certificate, approval, authorization, agreement, contract or other commitment included in the Purchased Assets if an attempted assignment thereof without the consent of a third party thereto would constitute a breach thereof.

This Instrument of Assignment shall be binding upon the successors and assigns of each Seller and shall inure to the benefit of the successors and assigns of Buyer. Capitalized terms used herein but not otherwise defined herein shall have the meanings set forth in the Agreement.

**IN WITNESS WHEREOF**, Sellers have caused this Instrument of Assignment to be duly executed and delivered this [\_\_\_\_] day of [\_\_\_\_], 2005.

**SARA LEE CORPORATION**

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

**BRYAN FOODS, INC.**

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

**SARA LEE FOODS, INC.**

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

**INSTRUMENT OF ASSUMPTION**

Pursuant to the Asset Purchase Agreement dated as of the date hereof (the "Agreement") among Bumble Bee Seafoods, LLC, a Delaware limited liability company ("Buyer"), Sara Lee Corporation, a Maryland corporation ("Sara Lee"), Bryan Foods, Inc., a Delaware corporation ("Bryan Foods"), and Sara Lee Foods, Inc., a Delaware corporation ("Sara Lee Foods", with Bryan Foods and Sara Lee, each a "Seller" and collectively, the "Sellers"), for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Buyer does hereby, agree to assume and pay, perform and discharge effective from and after the Closing Date the Assumed Liabilities.

The assumption by Buyer of the Assumed Liabilities shall not be construed to defeat, impair or limit in any way any rights or remedies of Buyer to contest or dispute the validity or amount of any Assumed Liabilities with the parties to such liabilities.

Buyer hereby covenants and agrees to and with each Seller and its respective successors and assigns, to do, execute, acknowledge and deliver to, or to cause to be done, executed, acknowledged and delivered to, such Seller, its successors and assigns, all such further acts, deeds, assumptions, instruments, powers of attorney and assurances that may be reasonably requested by such Seller in order to more fully effectuate the assumption of liabilities provided for in this instrument.

This Instrument of Assumption shall be binding upon the successors and assigns of Buyer and shall inure to the benefit of the successors and assigns of each Seller. Capitalized terms used herein but not otherwise defined herein shall have the meanings set forth in the Agreement.

**IN WITNESS WHEREOF**, Buyer has caused this Instrument of Assumption to be duly executed and delivered this [ ] day of [ ], 2005.

**BUMBLE BEE SEAFOODS, LLC**

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



**DISCLOSURE SCHEDULES**

to

**ASSET PURCHASE AGREEMENT  
(the "Agreement")**

Dated as of December 21, 2004

Among

**SARA LEE CORPORATION,**

**BRYAN FOODS, INC.,**

**SARA LEE FOODS, INC.**

and

**BUMBLE BEE SEAFOODS, LLC**

Capitalized terms not defined herein have the respective meanings specified in the Agreement. Descriptive headings are for convenience only and shall not control or affect the meaning, construction or effectiveness of any schedule in these Disclosure Schedules.

**Schedules:**

Schedule 1.1	Permitted Encumbrances
Schedule 1.1(A)	Sellers' Accounting Principles
Schedule 2.1(b)	Owned Real Property
Schedule 2.1(c)	Leased Real Property
Schedule 2.1(d)	Personal Property
Schedule 2.1(e)	Personal Property Leases
Schedule 2.1(f)	Contracts
Schedule 2.1(g)	Intellectual Property and Software
Schedule 2.1(i)	Business Permits
Schedule 2.1(l)	Other Purchased Assets
Schedule 5.2(b)	Noncontravention
Schedule 5.3	Taxes
Schedule 5.4	Condition of Assets
Schedule 5.5	Financial Statements
Schedule 5.6	Operations Since Financial Statement Date
Schedule 5.8	Inventory
Schedule 5.10(a)	Other Seller Contracts
Schedule 5.10(b)	Seller Agreements
Schedule 5.11(a)	Intellectual Property – Encumbrances
Schedule 5.11(b)	Intellectual Property – Infringement
Schedule 5.11(c)	Intellectual Property – Proceedings
Schedule 5.11(d)	Intellectual Property – Third Party Infringement
Schedule 5.12(a)	Business Employees
Schedule 5.12(b)	Officer and Director Contracts
Schedule 5.12(c)	Bonus Programs
Schedule 5.12(d)	Seller Employee Benefit Plans
Schedule 5.13	Legal Proceedings
Schedule 5.16	Business Permits
Schedule 5.17	Environmental Matters
Schedule 5.18	Investments
Schedule 5.19	Insurance
Schedule 5.20	Sufficiency of Purchased Assets
Schedule 5.21(a)	Transactions with Affiliates – Rights to Purchased Assets and Assumed Liabilities
Schedule 5.21(b)	Transactions with Affiliates – Services
Schedule 5.22	Suppliers and Customers
Schedule 5.23	Product Recalls
Schedule 6.2(b)	Buyer Noncontravention
Schedule 6.5	No Finder
Schedule 7.3(a)	Required Consents
Schedule 7.4(a)	Operations Prior to the Closing Date
Schedule 7.4(b)	Conduct Prior to the Closing Date
Schedule 8.2(a)	Excluded Athens Business Employees

**Schedule 1.1**

**Permitted Encumbrances**

**Special Services Agreement for Interruptible Natural Gas Sales Service dated as of October 30, 2002 by and between Athens Utilities and Bryan Foods, Inc. See Item 2 on Schedule 5.2(b).**

**All utilities servicing the Owned Real Property and the Leased Real Property.**

**Schedule 1,1(A)**

**Sellers' Accounting Principles**

See accounting principles of Sara Lee Corporation attached.

**Inventory Accounting****Policy Number:** 221**Applicable to:** All Reporting Entities**Category:** Accounting and Controls: Assets and Liabilities**Latest Update:** January 1, 2004**Supersedes:** December 17, 2002

This policy covers the following topics:

- I. Items and Costs to be Included in Inventory
- II. Required Use of the FIFO Cost Method
- III. Recognition of Lack of Recoverability
- IV. Elimination of Intercompany Profit in Inventory
- V. Physical Counts of Inventory
- VI. Inventory Acquired in a Business Combination
- VII. Measurement of Inventory Turnover
- VIII. Maintaining a Documented System of Internal Controls

**I. Items and Costs to be Included in Inventory**

- A. Inventories include tangible property (a) held for sale in the ordinary course of business, (b) in the process of production for those sales, or (c) to be currently consumed in the production of goods or services to be available for sale. The basic objective of inventory accounting is to identify, on a consistent basis, costs applicable to goods on hand at the end of a period and the costs that should be included in cost of goods sold and expenses for the period. The consistent application of methods to achieve this objective is critical - this includes the determination of (a) items included in inventory, (b) expenditures included in inventory costs (c) cost methods used, and (d) how recognition should be given to a lack of recoverability of inventory costs. As a general rule changes in the methodologies used in the determination and measurement of these items will be approved only if current practice is clearly out of compliance with that required by US Generally Accepted Accounting Principles and Sara Lee Accounting Policies. No changes in inventory accounting methodologies may be made without the advance written approval of the Corporate Controller.
- B. Items to be Included in Inventories
  1. Owned items that are held for sale or for consumption in the production of goods or services are to be included in inventories. Typically this would include items that are:
    - a. Physically on hand, other than items received on consignment or for which the significant risks of ownership have not passed to the company
    - b. In transit to the company with f.o.b. shipping point terms
    - c. Held by a vendor when the significant risks of ownership have passed to

the company. Although ownership generally determines when items should be included in inventory, items purchased for which title (and, in some cases, even possession) remains with the vendor until paid for should be included in the buyer's inventories when the significant risks of ownership rest with the buyer

- d. On consignment to prospective customers or others
- e. In possession of others for storage, processing, repair, shipment etc. (bailments)
- f. In transit to a customer with f.o.b. destinations terms.

Items that should be excluded from inventories are: purchases in transit with f.o.b. destination terms, consignments (when the company is the consignee), bailments (when the company is the bailee), and materials purchased on approval. Reference should also be made to the Corporation's Revenue Recognition Policy - Finance Policy 390 to determine when inventory should be removed from the financial statements.

- C. Expenditures That Should be Included in Inventory Costs - The diversity of each reporting units production processes, costing systems and management control methods makes it impossible to specify which costs should be included in cost of goods sold for a period, and which costs should be carried over to the following period as inventory. The purpose of this section of the policy is to provide overall guidance regarding which expenditures should be included in inventory cost. As noted earlier in this policy the consistent application of accounting methods in the determination of inventory cost is critical to the accounting process.

With certain exceptions (see section I.F.) inventories must be priced at cost, with cost including all purchases, conversion and other direct and indirect expenditures incurred in bringing an article to its existing condition and location.

- 1. Purchase expenditures - These costs include payments made for the goods or services and the related "freight-in" import duties and other directly attributable costs of acquisition.
- 2. Sales incentives and discounts received from a vendor - Vendors frequently offer discounts, price reductions, rebates and similar incentives to Sara Lee operating units to purchase materials that then become part of a product manufactured by an operating unit. These offers can be in the form of cash consideration or credits that the operating unit can apply against trade amounts owed to the vendor - collectively these are referred to as vendor consideration in this policy section. Such vendor consideration is a reduction of the purchase price of the vendor's products or services. As a result the vendor consideration becomes part of the cost of inventory and is recognized in cost of sales when the related inventory is sold. It is not appropriate to recognize such vendor consideration in income without first recognizing the amount in inventory.

One exception to this general rule would be the situation in which the vendor consideration received is in substance a reimbursement of costs incurred by the operating unit to sell the vendor's products. In such situations the vendor consideration would be recognized as a reduction of selling expense when the operating unit recognizes the cost of reselling the vendor's product. In order

for this exception to apply the operating unit would need to demonstrate that the reimbursement is for a specific, incremental identifiable cost incurred in selling the vendor's product. The operating unit would in effect need to be selling a vendor's branded product through a retail or direct selling channel. Given the nature of the company's operations such situations will be rare and the Corporate Controller should be consulted in advance.

3. Vendor rebates or refunds payable based upon completing a cumulative level of purchases - Vendor's frequently offer Sara Lee operating units a rebate or refund of specified amounts of consideration (either cash or trade credits) that is payable if the operating unit completes a specified cumulative level of purchases or remains a customer for a specified time period. The following guidelines apply to the recognition and measurement of such rebates or refunds:

- i) If the reporting units right to receive the rebate or refund is binding/contractual, the receipt of the amount is probable and the amount is reasonably estimable, then the anticipated rebate or refund shall be allocated to each of the underlying transactions that results in progress towards earning the rebate or refund.

For example assume that a vendor offers a cash rebate of \$1 per unit if the reporting unit's purchases exceed 500 units in a year and such an offer is binding. The vendor pays the rebate in cash at year-end when the full years purchases can be determined. If it is probable that the purchases by the reporting unit will exceed 500 units in a year the reporting unit should under these circumstances recognize a \$1 per unit reduction in the cost of all units purchased from the vendor in the year along with a receivable (EO 100 line 7.01 – Accounts Receivable Other) from the vendor. As the units of inventory are sold the related rebate will be recognized in cost of sales. As cash is received from the vendor, the related receivable will be reduced.

The following factors may impair an operating units ability to determine whether a rebate or refund is probable or reasonably estimable

- The rebate or refund relates to purchases that will occur over a period in excess of a year
  - There is an absence of historical experience with similar products or the inability to apply such experience because of changing circumstances
  - Significant adjustments to expected cash rebates or refunds have been necessary in the past
  - The product being purchased is susceptible to significant external factors (for example, technological obsolescence or changes in demand)
- ii) Changes in the estimated amount of cash rebates or refunds and retroactive changes by a vendor (an increase or decrease in the rebate amount that is applied retroactively) are changes in estimates that should be recognized using a cumulative catch up adjustment. That is, the operating unit would adjust the cumulative balance of its rebate to the revised cumulative estimate immediately.

- iii) If the right to receive the rebate or refund is contractual but the reporting unit cannot reasonably estimate the purchases to be made in a year than the rebate or refund shall be recognized in cost of sales only after the purchase limit is met. In the example above, a \$500 rebate would be recognized in cost of sales when unit 501 is purchased - assuming that the first 500 units have been sold out of inventory. Once the purchase limit is exceeded a \$1 rebate will be recognized in the determination of the cost of each subsequent inventory purchase.
  - iv) If the right to receive the rebate or refund is not contractual, the rebate or refund shall be recognized when it is received. In the above example if 750 units are purchased in a fiscal year and the reporting unit receives a \$750 check after the year is completed but before 200 of the units are sold than the reporting unit will recognize \$550 as a credit to cost of sales when the cash is received and the remaining \$200 shall be recognized as a credit to inventory when the cash is received. As the remaining 200 units of inventory are sold, cost of sales will be impacted.
4. Conversion expenditures - Inventory costs should include conversion expenditures. For goods manufactured, assembled, processed or otherwise changed in form, content or utility, wages of employees directly engaged in the production process and an allocated portion of indirect production expenses (overhead) must be included. The overhead should be allocated to inventory items on a rational and systematic basis and must include both variable and fixed expenses.
5. The allocation of fixed production overhead to the costs of conversion is based on the normal capacity of the production facilities. Normal capacity is the production expected to be achieved over a number of months or seasons under normal circumstances, taking into account the loss of capacity resulting from planned maintenance. Some variation in production levels from month to month is expected and establishes the range of normal capacity. The range of normal capacity will vary based on business specific factors. The following policies apply to the allocation of fixed production overhead to inventory cost.
- a. The normal capacity for each manufacturing facility should be documented and supported by engineering reviews and the capital expenditure requests that justified the acquisition of the facility. The normal capacity can change over time based upon equipment additions or upgrades, changes in the manufacturing process taking place within the facility, the disposition of manufacturing equipment and similar factors which impact the manufacturing capacity of the facility and related equipment. The normal capacity of a facility does not decline because production has declined in response to significantly reduced demand, labor and material shortages, unplanned facility or equipment downtime or similar factors.
  - b. Overhead standards should be established based upon the normal capacity of the manufacturing assets. These standards and the related variances from standard (volume variances) must be used in determining which costs will be capitalized into inventory and which will be expensed. The actual level of production may be used to allocate fixed production overhead only if it approximates normal capacity.



- c. Judgment is required to determine when a production level is abnormally low and outside of the range of expected variation in production. The amount of fixed overhead allocated to each unit of production is not increased as a consequence of abnormally low production or an idle plant. In periods of abnormally high production, the amount of fixed overhead allocated to each unit of production is decreased so that inventories are not measured above cost.
  - d. Volume variances arising from over or under absorbed fixed overhead must be recognized in income in the period in which they are incurred.
6. Extraordinary production expenses and inefficiencies, such as costs of relocation from one plant site to another, unusual repairs because of catastrophe, costs incurred during a strike, obsolescence costs and abnormal scrap losses, should also be excluded from inventory costs and reported as charges to expense in the period incurred. Abnormal freight, handling costs, and amounts of wasted materials (spoilage) require treatment as current period charges rather than as a portion of the inventory cost.

For example, assume operating unit A's variable manufacturing costs (materials and labor) average \$5 per unit. Company A's production quality standards are designed to ensure a defect rate no higher than 2%. The average variable cost of reworking is \$3 per unit. In January, company A manufactured 9,500 units with a defect rate of 5%. In February, company A manufactured 10,200 units with a defect rate of 6%. The cost of materials and labor continued to average \$5 per unit. Company A's abnormal rework costs for January and February are:

	January	February
<b>Abnormal Rework</b>		
Units Produced	9,500	10,200
Number of defects (Jan-5%, Feb-6%)	475	612
Normal defects (2%)	190	204
Abnormal defects	285	408
Unit cost to rework abnormal defects	\$3	\$3
Total abnormal rework costs	\$855	\$1,224

The abnormal costs (\$855 for January, \$1,224 for February) would be expensed in the income statement, not added to the cost of inventory.

- D. Other expenditures - Although selling and general and administrative expenses are essential to the operations of the business, they do not contribute to bringing inventories to their present state and location. Accordingly, they should not be included in inventory costs. The costs of holding seasonal inventories, including warehousing, taxes and insurance expenses may not be included in inventory costs.

**II. Required Use of FIFO Cost Method**

- A. It is the general policy of the Corporation to cost its inventory using the lower of cost (first-in, first-out [FIFO] method) or market. The only exception to this rule is the U.S. Hosiery business which utilizes the LIFO method.

### III. Recognition of Lack of Recoverability

- A. Although cost is the primary basis for inventory pricing, a departure from cost is required when the loss of usefulness of an item or other factors indicate that cost will not be recovered when the item is sold. Accordingly, inventories must be valued at the lower of cost or market, with market generally defined as net realizable value for finished goods and replacement cost for raw materials and work in process.

1. Judgment must be exercised in the use of "market" value. "Market" is current replacement cost (by purchase or fabrication). Replacement cost is used because changes in it usually reflect or predict a decline in selling price. Therefore, to insure that the company continues to obtain the same rate of gross profit margin, the inventory is reduced to replacement cost.

In some cases, replacement cost and selling price might not move together; therefore, additional safeguards are needed to insure that a proper inventory value is obtained. Thus, "market" is further limited to an amount that should not exceed the net realizable value (that is, estimated selling price in the ordinary course of business less reasonably predictable costs of completion and disposal) and should not be less than net realizable value reduced by an allowance for an approximately normal profit margin. These upper and lower limits cover the following situations.

2. The first limitation of "not to exceed the net realizable value" covers obsolete, damaged or shop-worn material. For example, an item that costs \$1.00 when purchased and that could be replaced for \$.90, may have a realizable value of only \$.70 because it is becoming obsolete. In this case, the item is priced at \$.70 for inventory purposes because to price the inventory at replacement cost would be an overstatement of the value of that item.
3. The second limitation of "not to be less than net realizable value reduced by an allowance for approximately normal profit margin" is a deterrent to the understatement of inventory. In effect, it establishes a floor or minimum below which the inventory should not be priced regardless of replacement cost. For example, assume that an inventory item that originally costs \$1.00 has a replacement cost of only \$.75. Because of a firm sales contract at firm prices, this item will be sold at \$1.15 per unit; however, the net realizable value after deducting the normal profit margin will be \$.90 per unit. In this case, the item would be priced in the inventory at \$.90 per unit.

A loss should not be recognized where evidence clearly indicates that cost will be recovered together with a normal profit upon sale in the normal course of business, even though replacement or reproduction costs are lower than cost. This could be true, for example, in the case of sales expected to be made in reasonable volume at stable prices or where other components of the same general categories of finished products have a market value in excess of their cost compared to the loss expected so that the utility of the total inventory has not been impaired.

When unhedged purchase commitments (see Finance Policy 222) are at prices in excess of market, a provision for losses should be made unless the purchase

commitments are covered by firm sales commitments that will permit recovery of the purchase price.

- B. The lower of cost or market concept should be applied on an item-by-item basis since this approach is in accord with the concept of eliminating unrecoverable costs from inventory. In limited circumstances, the lower of cost or market concept can be applied on a combined basis for reasonable groupings of like items. Judgment must be applied when using the reasonable grouping approach so as not to allow losses on some items or groupings to be offset by profits on others. Examples of reasonable groupings include:
1. Two or more raw materials that are combined to produce a single end product and selling prices are not significantly influenced by variations in the replacement cost of the component raw materials.

2. Finished goods that can be sold jointly or can be substituted for each other

The overall aggregate approach for determining the lower of cost or market is not acceptable if its application gives a result materially different from the item-by-item or reasonable groupings approaches.

The proper application of the item by item approach does not prohibit the grouping of varying sizes and shapes of inventory items - as long as those groupings do not materially affect the end result.

- C. An essential part of the application of the lower of cost or market concept is the reduction of the cost of obsolete, damaged and excess inventories to market value. Excess inventories are quantities of items that exceed anticipated sales or usage for a reasonable period. What is a reasonable period will vary depending on the business of the enterprise and the nature of the inventories.

Obsolete, damaged and excess inventories should be carried at net realizable value (which may be scrap value), with consideration being given to obsolescence risks for excess stock. Incremental carrying costs to the date of disposition must be considered when determining net realizable value. Write-downs must be charged to expense in the period in which the conditions giving rise to the write-down are first recognized.

- D. In developing methods and processes to measure the lack of recoverability in inventory, the following points must be observed.
1. Because of the large volume of products and styles at many of our locations, it is frequently necessary to apply formulas or mechanical approaches in identifying obsolete, damaged and excess inventories. For example, product no longer carried in the current catalog may be identified for an automatic writedown to some percentage of book value. The data developed from the application of formulas must be subject to a review in order to determine if the resultant answer is in accordance with the net realizable value concepts noted above. Mechanical approaches for the determination of inventory reserves are acceptable only to the extent that the result complies with the guidelines of this policy. In addition, assumptions used in the application of formulas must be periodically reviewed and supported by actual experience. All relevant documentation to support inventory reserves must be maintained for at least 5 years.
  2. All inventory reserves established in the financial statements must be approved by the operating unit CFO. The approval must be documented and

included with the workpapers and analysis supporting the reserves.

3. The consistent application of methodologies to identify inventory realization issues is critical. Changes in the methodology to measure the lack of recoverability is considered an accounting change that requires the advance written approval of the Corporate Controller.

**E. Lower of Cost or Market Write-downs Create a New Cost Basis**

1. A reduction in the carrying amount of an inventory item from cost to market value is viewed as creating a new "cost basis" for the item. As a result, the write-down can be recovered only through the sale or disposition of the item and cannot be restored should the market value recover prior to the sale or disposition. Inventory write-downs attach to specific physical components of the inventory on hand and it is only when those specific components are sold that recovery of the cost takes place. The utilization or reversal of lower of cost or market reserves must be supported in an operating unit's books and records by documented evidence that the related inventory has been disposed of. Correspondingly, increases in lower of cost or market reserves must be supported in an operating unit's books and records by documented evidence which ties the amount to specific inventory items as required by this policy. It is inappropriate to reverse out a lower of cost or market write-down if the related inventory has not been disposed of.

**IV. Elimination of Intercompany Profit in Inventory**

- A. Profits and losses on intercompany sales of products/inventory must be eliminated in consolidated financial statements to the extent the inventory remains in the consolidated balance sheet. In other words, profits or losses on intercompany transactions should not be recognized until the items are used or sold outside the consolidated group. The elimination of intercompany profits or losses should be based on the gross profit or loss recognized - selling and general administrative expenses should not be considered. The elimination should be charged to cost of sales and the contra reflected as an adjustment to the assets carrying amount.
- B. The Corporate Office will be responsible for the elimination of intercompany profit remaining in inventory which results from intercompany sales between operating units in different external business segments.
  1. Sara Lee Meats,
  2. Sara Lee Bakery,
  3. Coffee & Tea / Beverage,
  4. Household Products, and
  5. Branded Apparel.

It is the responsibility of the group level financial personnel to eliminate the intercompany profit in inventory resulting from transactions within a segment. For example, the Branded Apparel Group level accounting personnel (Chicago) are responsible for the elimination of any intercompany profit remaining in the Branded Apparel inventory as a result of transactions between all Branded Apparel operating units. Similarly the Meat Group level accounting personnel are responsible for the elimination of any intercompany profit remaining in the Sara Lee Meats inventory as a result of transactions between all Sara Lee Meats

operating units.

- C. Where the investee company is carried on the equity basis (typically the situation in which between 20% and 50% of the common equity is owned), intercompany gains and losses must also be eliminated. The income statement and balance sheet presentations will depend upon what is the most meaningful in the circumstances. The policies that will be followed when such transactions exist:
1. Investor sells to Investee – Charge cost of sales and credit the investment account for the gross amount of the intercompany profit elimination.
  2. Investee sells to Investor – Charge equity in income of the investee with the net of tax amount, credit inventories for the gross amount of the elimination and debit the investment account for the amount of the tax benefit.

V. **Physical Counts of Inventory**

- A. The Corporation's general policy is that a physical count of all inventory items on the books of an operating unit must be taken at least once a year and as near to the fiscal year end as practical. More frequent physical counts will be made when the internal control environment at a location is weak - as evidenced by large adjustments to the books upon the completion of the physical count.
- B. The book inventory balance must be reconciled to the physical count and any unexplained or unsupported difference must be recognized on the books of the operating unit. It is unacceptable to finalize the operating results for a year when unsupported or unexplained difference between the books and physical count exist.
- C. If an operating unit is subject to an audit or review by the external or internal auditors in a particular year, the Chief Financial Officer must coordinate the timing and execution of the physical count with the respective audit group. The audit group must be in agreement as to the timing and procedures to be performed.
- D. The use of cycle counting in lieu of a complete annual physical inventory is acceptable only with the written approval of the Corporate Controller. The request to use cycle counting must be in writing and supported by the following:
1. A summary of the operating unit's cycle counting procedures which includes the length of time the procedures have been in place; the number of counts taken annually; the dollar value of positive and negative adjustments to the book inventory resulting from the counts; the percentage of SKU's which are subject to counts annually; and any other control factors which the management of the operating unit believes supports the movement to cycle counting. No approvals for the use of cycle counting will be given unless the operating unit has at least 18 months of documented cycle count information at the date of the request.
  2. A written conclusion by the last audit team (either internal or external) to perform a full review of the operating units statements, which indicates that the audit team concurs with the management conclusion that the internal control system in place allows the use of cycle counting in lieu of a complete physical inventory. If neither the internal or external audit team is willing to make this representation, management must engage the external auditors to conduct a review of the controls so that they can reach an informed conclusion on the satisfactory nature of the control environment in this area.

That is, before any approval is made to allow cycle counting in lieu of a physical inventory both the management and the assigned audit team must concur that reliance can be placed on the operating units cycle count process.

Once obtained the Corporate Controller's approval will be in place for a three-year period at which time a new approval must be obtained. The approval to use cycle counting can be revoked at any time if an audit report indicates a deterioration in the control environment.

- E. Detailed perpetual records must be mathematically correct and agree with the general ledger inventory control account. Monthly reconciliations must be performed and any differences must be immediately resolved.
  1. If the unreconciled difference between the detailed perpetual records and the general ledger inventory control account at an operating unit exceeds \$500,000 in any period, the Corporate Controller must be notified immediately. Such differences are outside of acceptable tolerances and will need to be corrected immediately. Until these differences are resolved, it will be necessary for local management to issue a detailed monthly report on progress made to resolve these amounts.
  2. Unreconciled differences between the detailed perpetual records and the general ledger inventory control account are generally indicative of a less than adequate control environment at the operating unit. In such situations, it will likely be necessary to conduct physical inventory counts to validate the account balance.

**VI. Inventory Acquired in a Business Combination** - When a business combination is completed the following will be used in valuing the inventory of the acquired business:

- A. Finished goods will be valued at the estimated selling price less the sum of (a) costs of disposal and (b) a reasonable profit allowance for the selling effort of the acquired entity. The term "reasonable profit allowance for selling effort" is intended to permit the acquiring company to report only the profits normally associated with its activities following the combination as related to inventory items. Although a division of normal profit between manufacturing effort and selling effort will often be difficult to determine, the acquiring company cannot "purchase" major profits already earned in the production of inventories. Such situations are most likely to arise in a job-order, custom-made type of operation in which goods finished have virtually been sold from the time the manufacturing process started. In the types of businesses we are involved in, very little of the profit relates to manufacturing effort and a substantial portion of the profit relates to the selling effort.
- B. Work in process will be valued at the estimated selling price of finished goods less the sum of (a) costs to complete, (b) costs of disposal, and (c) a reasonable profit allowance for the completing and selling effort of the acquiring entity based on profit for similar finished goods.
- C. Raw materials will be valued at current replacement cost.

In the acquired company has recognized its inventory balance using a FIFO costing assumption and used lower of cost or market pricing the valuation methodology noted above will result in the inventory of the acquired business being valued at an amount which is equal to or greater than that on the books of the acquired company. No write-

downs to the opening inventory acquired in a business combination may be taken without the written approval of the Corporate Controller. As a general rule such write-downs are only applicable to situations in which local accounting standards were not in accord with US accounting standards and lower of cost or market pricing was not used.

- VII. Measurement of Inventory Turnover** - The inventory turnover ratio measures the average rate of speed with which inventories move through and out of the company. The method used by the Corporation to measure inventory turnover is as follows:

Numerator - Total cost of sales over the last three months multiplied by 4

Denominator - Average (mean) inventories over the last four months

Inventory turnover ratios are computed using peg rate information for each business reporting financial data to the Corporate Office.

**VIII. Documented System of Internal Controls and Accounting Policies**

- A. The Chief Financial Officer of each entity reporting monthly financial results to Chicago has the responsibility for establishing a system of documented controls which achieves the following objectives:

1. The reported inventories represent all raw materials, work in process, and finished goods that the entity owns as defined in section I.B.1. of this policy.
2. The detailed inventory records are mathematically correct and agree with the general ledger inventory control account. Costs associated with inventories have been properly classified and accumulated.
3. Recorded inventories physically exist in salable condition and represent property held for sale in the ordinary course of business. Recorded cost of sales represents goods sold during the period covered by the financial statements (see Finance Policy 390).
4. Production costs incurred and charged to work in process, transfers to finished goods, and cost of sales (and returns) are recorded in the proper period.
5. Costs associated with inventory and cost of sales are determined and accumulated using the generally accepted accounting principles as set out in this policy. Such policies are to be followed on a consistent basis. Inventories (including slow moving and obsolete items) are stated at not more than their net realizable value as defined by this policy.
6. The reporting entity has legal title or ownership rights to the inventory recognized on its balance sheet.

- B. The Chief Financial Officer of each entity reporting monthly financial results to Chicago has the authority and responsibility to establish a written policy which communicates how the guidelines incorporated in this policy are to be specifically applied within their respective operating unit(s). The reporting entity policy statement should specifically:

1. Define the specific cost elements to be included in inventory cost. Included in this document would be the method for allocating variances from standard cost to inventory and cost of sales.
2. Define how normal capacity is measured for purposes of allocating overhead and how standard costs are to be determined.
3. Define the specific methodology for measuring lower of cost or market

adjustments and recognizing the impact of those cost write-downs in the financial statements

4. The specific procedures for measuring and eliminating intercompany profit in inventory.
- C. As is indicated in Finance Policy 101, it is the CFO's responsibility to discuss all significant judgments made in the area of inventory accounting with the reporting entities CEO as part of the quarterly certification process. These judgments include, but are not limited to:
1. The recognition of inventory write-downs related lower of cost or market or obsolescence issues. Group level personnel should also discuss any significant changes in intercompany profit in inventory reserves.
  2. The recognition of any significant amounts recognized in P/L from volume variances.
  3. Any change in composition of inventory costs or methodologies to determine cost.
  4. Any breakdowns in the internal control system related to inventory – this would include a discussion of any difference between the perpetual records and books.



**Property, Plant and Equipment****Policy Number:** 242**Applicable to:** All Divisions & Subsidiaries**Category:** Accounting and Controls: Assets and Liabilities**Latest Update:** July 4, 2004**Supersedes:** July 1, 2002

Property, plant and equipment -- generally referred to hereafter as "property" - are tangible assets of relatively permanent nature that are normally not held for sale. This policy defines and communicates the accounting rules governing the acquisition of property, costs incurred during the ownership of property, as well as the retirement and sale of property. The Corporation's policies regarding the depreciation of property is covered in Finance Policy 303.

**I. Acquisitions of Property - Other than through Business Combinations**

- A. Approval of the annual operating plan (AOP) which includes the annual capital expenditure budget does not constitute authorization for expenditures of specific items or projects. Details for the procedures to be followed in obtaining approval for additions and dispositions are contained in Capital Expenditure Authorization, Finance Policy 240.
- B. An environmental audit must be performed before any real property (vacant land or land and existing facilities) is purchased, leased or disposed of. Refer to the Environmental Procedures manual for details of the procedures to be followed in performing these audits. The cost of this audit is to be expensed in operating profits by the reporting unit acquiring the property. Also, see Section III. E. below.
- C. Property should be recognized on an operating units financial statements when the significant benefits and risks of ownership rest with the operating unit.
- D. The use of the historical cost basis of accounting is required. Historical cost for property is the fair value of consideration surrendered for it. If property is acquired for consideration having no readily measurable fair value or is received as a contribution, the fair value of the property (as determined by appraisal, vendor quotes or other evidential matter) at the date of acquisition is the historical cost. Also see section V. E. for valuing property received in a transaction in which one property unit is exchanged with a third party for another property unit.
- E. For expediency a property unit must have a cost in excess of \$1,500 and a useful life of more than one year to be capitalized. Amounts below this threshold should be expensed as incurred. The \$1,500 capitalization threshold applies to each individual asset acquired. If, for example, a personal computer with a cost of \$1,400 is purchased, it would be expensed under this policy. If 50 personal computers costing \$60,000 were purchased (an average unit cost of \$1,200), this amount would also be expensed. There are no exceptions to this aspect of the policy. Beginning in fiscal 2006, the asset capitalization limit will be raised to \$2,000 per asset. Beginning in fiscal 2008, the asset capitalization limit will be raised to \$2,500.

- F. All expenditures made to acquire land and to ready it for use should be considered as part of the land cost.
1. Land costs typically include the purchase price; closing costs such as title to the land, attorney's fees, and recording fees; costs incurred in getting the land in condition for its intended use, such as grading, filing, draining, and clearing; assumptions of any liens, mortgages, or encumbrances on the property; and any additional land improvements that have an indefinite life.
  2. When land has been purchased for the purpose of constructing a building, all costs incurred up to the excavation for the new building are considered land costs. Removal of old buildings - clearing, grading and filing - are considered land costs because these costs are necessary to get the land in condition for its intended purpose. Any proceeds obtained in the process of getting the land ready for its intended use, such as salvage receipts on the demolition of an old building are treated as reductions in the price of the land.
  3. Special assessments made by local governments for improvements, such as pavements, street lights, sewers, and drainage systems are to be expensed as incurred - consistent with the way property taxes are handled. Improvements with limited lives such as private driveways, walks, fences and parking lots are recorded separately as land improvements so they can be depreciated over their estimated lives. Landscaping and similar maintenance charges are to be expensed.
- G. The cost of buildings should include all expenditures related directly to their acquisition or construction. These costs include materials, labor and overhead costs incurred during construction and professional fees and building permits.
1. Demolition costs of existing structures should be capitalized as part of the new asset if the structure exists on newly acquired land and the buyer intends to demolish the structure promptly after acquiring the land. Demolition costs of existing assets that have been operating assets of the Corporation should be charged to expense (capital loss), even if the demolition is necessary to construct a new asset.
  2. Costs of replacing major components should be split into costs of removing the old component, which must be charged to expense (capital loss), and the cost of installing the new component, which would be capitalized.
  3. Property taxes, insurance and similar costs associated with construction of assets should be capitalized while activities are occurring to get the asset ready for its intended use. Once any component of the asset is put in operation (in a test mode or otherwise) these costs must be expensed as incurred.
  4. The salaries, benefits and overhead costs associated with employees involved in the construction of property may not be capitalized. All such costs must be expensed as incurred.
- H. The cost of equipment includes the purchase price, freight and handling charges incurred, insurance on the equipment while in transit, cost of special foundations if required, and assembling and installation costs. The costs of conducting trial runs and similar start up expenses must be expensed as incurred.
1. The salaries, benefits, and overhead costs associated with employees

involved in the construction of property may not be capitalized. All such costs must be expensed as incurred.

- I. It is the Corporation's policy to capitalize interest on construction projects which are in process over three months and have expenditures in excess of \$500,000. However, these costs are recorded and depreciated on the Corporate Office general ledger. Under no circumstances may an operating unit capitalize interest on construction in progress.
- J. Leased assets are not to be capitalized on the accounting records of the operating units (Finance Policy 306). The decision to capitalize a lease for external reporting purposes will be made at the Chicago Office and reflected on the Corporate Office general ledger. All pro-forma lease adjustments (Finance Policy 130) to the divisions' financial statements will also be performed at the Corporate Office. The CFO of each division or subsidiary will periodically verify the accuracy of the detailed lease records maintained by the Executive Office by comparison to the supporting lease arrangements.
  1. Leasehold improvements are to be capitalized on the books of the operating units.
- K. Merchandise display racks and other fixtures given to retailers to display products must be expensed when placed in the retailers location. The decision to expense these amounts is based upon the following:
  1. In most cases, title to these displays and fixtures passes to the retailer when they are delivered to their stores. Even if title does not pass, the Corporation's ability to control the use of these fixtures, once they are placed in a customer location, is limited. The ability to exercise control over the use of an item is a necessary requirement to recognize an asset on the books.
  2. Fixtures and display racks can take a number of forms ranging from shippers (cardboard displays loaded with product which can be placed on the retailers' floor) to kiosks or custom built areas within a store which display our products. The recognition of these costs within the income statement is dependant upon the nature of the arrangement and Exhibit A to Finance Policy 393 (see examples K through M) should be consulted. As a general rule, if the operating company reimburses the retailer for costs they incur in purchasing a fixture or display, the costs are to be recognized as a deduction from sales. If the operating company engages a third party supplier to manufacture the fixture or rack and this item is given to the retailer than such costs should be recognized as an advertising and promotion expense.

Any cash consideration, or rebates provided to a retailer to place a display rack in a store location must be accounted for in the same manner as a slotting fee (see Finance Policy 393). In virtually all cases such payments must be recognized as a deduction from sales.
  3. Racks and fixtures are essentially a means of advertising our product, and in accordance with our policy, the related costs must take place the first time the advertising takes place.
  4. Existing accounting literature requires that start-up activities be expensed as incurred. The term start-up activities include those costs associated with entering a new territory, introducing a new product

or service or commencing some new operation.

**Any exceptions to this policy require the advance written approval of the Corporate Controller. This approval must be obtained annually and supported by the facts of the specific situation.** No approval to begin capitalizing display racks will be given to reporting entities which have followed a policy of expensing such racks.

Merchandise display racks owned by an operating unit and not yet shipped to a retailer should be capitalized and reported on line 15.16 of form EO-100. However, any individual display rack with a unit cost under the Corporation's capitalization threshold (See section I.E.) must be expensed when purchased. Also see Finance Policy 393 for guidance on where in the income statement to display the cost of displays placed in a retailer's location.

Any loss resulting from the disposition of merchandise display racks is to be absorbed in operating profits.

- L. Operating units must consistently follow their existing practice as to the capitalization of spare parts. Most operating units expense these parts when they are acquired as they have unit costs which are under the Corporation's capitalization limit. Under no circumstances may an operating unit begin capitalizing spare parts when such costs were previously expensed. As a matter of policy all business acquisitions completed after July 1, 2002 will follow a policy of expensing spare parts when they are acquired.

## II. **Property Acquired Through Business Combinations**

- A. Property, Plant and Equipment acquired through a business combination, which is to be used in the operations of the business, is to be valued at the current replacement cost for similar capacity unless the expected future use of the assets indicates a lower value to the acquiring entity. The procedures to be used in determining the replacement cost of the property, plant and equipment of an acquired business will be based upon the facts and circumstances of the particular business. In most situations, it will be necessary to have a third party valuation firm establish the replacement cost of these assets. The Corporate Controller will determine the procedures to be used in valuing the acquired assets and engage and pay for the services of any valuation firm. Once determined, the replacement costs will become the basis for the detailed fixed asset records.

When a business is acquired using the purchase method, the accumulated depreciation amount shown on the seller's financial statements does not become part of the purchaser's accumulated depreciation. The financial statements of the purchaser should reflect depreciation accumulated only since the date of acquisition.

For example, assume that an acquired business has a building which was carried on the seller's books at a cost of \$3 million and had accumulated depreciation of \$1 million and a depreciable life of 30 years. The annual depreciation being recognized by the seller was \$100,000 per year. As part of the purchase accounting process, assume that the replacement cost of the building was determined to be \$2.5 million and that the remaining useful life was determined to be 20 years. As of the date of acquisition, the detailed fixed asset records would be

adjusted to indicate that this specific asset had an acquisition cost of \$2.5 million with no accumulated depreciation. The annual depreciation in year 1 would be \$125,000 and this amount would be recognized in operating profits. In evaluating acquisitions, it is particularly important to consider the potential impact which these procedures may have on the future profitability of a business.

- B. Property, plant and equipment acquired in a business combination which management decides to sell or dispose of is to be valued at fair value less cost to sell. In order to value a property component acquired in a business combination at fair value, less cost to sell, all of the "held for sale" criteria outlined in section V.B. of this policy must be met.

Property, plant and equipment that meets all of the held for sale criteria noted above is not depreciated.

### III. Costs Incurred During Ownership

- A. Start up, pre-operating or pre-opening costs are costs incurred prior to the commencement of a new operation, e.g., a new plant, a new sales outlet or a new process. They include costs of operating personnel who initiate the new operations, the costs of hiring and training new employees, and testing equipment or processes. Costs of pre-opening advertising for a new retail outlet and occupancy costs before opening are examples of other costs in this category. Start-up costs should be expensed as incurred.
- B. Costs incurred in relocating equipment or rearranging a facility should be charged to expense as incurred.
- C. Ordinary repairs are expenditures made to maintain plant assets in operating condition. Replacement of minor parts, lubricating and adjusting of equipment, repainting, and cleaning are examples of maintenance charges that occur regularly and are treated as operating expenses.
- D. Improvements (often referred to as betterments) and replacements are substitutions of one asset for another. Such amounts can be capitalized if they
1. Meet the property unit capitalization limit specified in section I.E. of this policy, and
  2. The expenditure increases the future service potential or life of the asset.

Expenditures which merely maintain the existing level of service are considered ordinary repairs and maintenance. Significant judgment must be applied to such situations and the consistent application of these judgments is important.

- E. Costs to treat environmental contamination include those costs (a) to remove, contain, neutralize or prevent existing or future environmental contamination, or (b) to acquire tangible property such as waste water treatment equipment, or (c) for environmental studies, or (d) incurred voluntarily or as required (including fines) or (e) legal fees associated with environmental issues.
1. Except for tangible property costs that are clearly capitalizable (such as building a waste water treatment facility), all costs to treat environmental contamination must be expensed.

2. Costs to treat environmental contamination costs must be expensed in operating profits by the operating unit which acquired the property or created the contamination problem.
  3. Disposing of a facility does not relieve an operating unit of the responsibility for environmental claims against the corporation which caused the exposure (either by acquiring the property or creating the contamination through its own actions). The costs of treating such environmental contamination will be absorbed in operating profits.
  4. When a facility with environmental contamination is sold, the costs to treat the contamination are sometimes absorbed by the purchasers and as a result, the proceeds to the corporation are reduced. Such costs may not be included in the determination of any capital gain or loss reported. The estimated clean-up costs must be absorbed in operating profits.
  5. The corporate office will absorb costs to treat environmental contamination for discrete business units (e.g., Aris, Electrolux, Standard Meats) which are disposed of. Such dispositions typically transfer all assets, trademarks, and employees to a new owner who continues to operate the business. Discrete business units typically prepare complete financial statements including cash flows which are submitted to Chicago and reviewed by management.
- F. The Chief Financial Officer of each division is responsible for establishing systems and procedures to periodically substantiate and evaluate the recorded balances in the property accounts. The general ledger property and accumulated depreciation balances must be supported by, and reconciled to, detailed fixed asset records. Also, the accuracy of the detailed fixed asset records must be periodically substantiated by a comparison to the fixed assets physically on hand.

The specific procedures for comparing the detailed fixed asset records to the fixed assets physically on hand will vary from division to division and depend upon the nature of the fixed assets as well as the controls over their acquisition, disposition or transfer. Complete annual physical inventories generally are not contemplated unless the internal control environment contains weaknesses which would justify such procedures. Judgment is a critical factor in establishing all control techniques and no one set of procedures can apply to all operations; however, the following methodology may prove helpful in achieving the objectives of this policy. The gross fixed asset values contained on the detailed records should be stratified from high to low values. In many cases, it may be possible to physically identify a substantial percentage of the gross asset value with a relatively small number of major assets (i.e., land, major buildings, pieces of equipment, or building additions). Low dollar value assets should be tested on a sample basis, and the results used to determine additional testing. The focus of these procedures is to substantiate as much of the asset balance as possible with the minimum amount of time and effort. All procedures performed must be documented and consideration should be given to determining the level of coverage to be obtained in conjunction with the Corporate Internal Audit Department.

Any property, plant or equipment balances which are on the books of an operating unit but not located/identified as a result of a physical

inventory are to be written off through operating profits in the period the difference is validated. Losses from disposals of capital assets may be reported below Line 16 on Income Statement Form EO - 200 only if they are identified and reported in the fiscal year the asset is physically disposed. Losses resulting from internal control systems which fail to keep adequate control over physical assets entrusted to an operating unit are the responsibility of operating management.

- G. When evidence indicates that the operations of an entity will not produce sufficient revenues to cover all costs, including depreciation, and when the carrying amount of the property cannot be realized through sale, the property must be written down to fair value. The decision to write down property which is held for use will be made by the Corporate Controller and the recognition of such amounts will be on the Corporate Office ledger.

#### IV. Accounting for Asset Retirement Obligations

This policy section relates to legal obligations associated with the retirement of property, plant or equipment that results from the acquisition, construction, or development and/or the normal operation of these assets. The term *retirement* is defined as "the other than temporary removal of property, plant or equipment from service". That term encompasses sale, abandonment, recycling, or disposal in some other manner. As used in this policy section, a legal obligation is an obligation that a party is required to settle as a result of an existing or enacted law, statute, ordinance or written or oral contract or by legal construction of a contract. Examples of these types of obligations include:

- An operating unit maintains a fuel storage facility which in the normal course of operation has spillage which contaminates the ground. Local statutes require that the company clean this area and remove the storage facility when the asset is retired.
- The refrigeration system in a facility utilizes a gas which damages the environment. Special procedures will need to be used to remove this equipment from service and dispose of it under a federal law at a required future date.
- The waste water treatment facility currently being operated by an operating unit will need to be improved at a future date and the ground water contamination caused by the normal use of the current process will need to be cleaned up.
- Asbestos was used in an older facility as a fire retardant. Local statutes require that special procedures be used to remove the asbestos before the facility is sold or abandoned.

Environmental remediation liabilities that result from the improper operation of a long-lived asset are not covered by this policy section. Obligations resulting from improper operations do not represent costs that are an integral part of property, plant and equipment and therefore should not be accounted for as part of the cost basis of the asset. For example, a certain amount of spillage may be inherent in the normal operations of a fuel storage facility, but a catastrophic accident caused by noncompliance with a company's safety procedures is not. The obligation to clean up after the catastrophic accident does not result from the normal operation of the facility and is not within the scope of this policy section. An environmental remediation liability that results from the normal operation of a long-lived

asset and that is associated with the retirement of that asset shall be accounted for under the provisions of this policy section.

Current accounting standards require that the future legal obligations related to asset retirement obligations be recognized while the asset is in service as opposed to the point when the decision is made to dispose of the asset. Uncertainty about the timing of settlement of the asset retirement obligation does not remove that obligation from the scope of this policy section. The following policies apply to asset retirement obligations:

- A. The fair value of a liability for an asset retirement obligation must be recognized in the period in which it is incurred if a reasonable estimate of the fair value can be made. The fair value of a liability for an asset retirement obligation is the amount at which that liability could be settled in a current transaction between willing parties. Upon initial recognition of a liability for an asset retirement obligation, the reporting unit must capitalize the asset retirement cost by increasing the carrying amount of the related asset by the same amount as the liability.
- B. The amount capitalized as a result of the recognition of the asset retirement obligation must be depreciated over the useful life of the asset. In some cases the remaining life may be relatively short because of legal requirements to replace the asset or remove it from service. This depreciation must be recognized in operating profit.
- C. Changes in the estimated liability resulting from revisions to amount of the original estimate of undiscounted cash flows shall be recognized as an increase or a decrease in (a) the carrying amount of the liability for an asset retirement obligation and (b) the related asset retirement cost capitalized as part of the carrying amount of the related long-lived asset. Changes to the liability resulting from the passage of time must be recognized in operating profit.

Asset retirement obligations anticipated to exceed \$500,000 should be discussed in advance with the Corporate Controller in order to get agreement on the methods used to evaluate these amounts.

#### V. **Assets Identified for Sale or Disposal**

- A. In the normal course of business, operating management may identify certain elements of property, plant and equipment for sale or disposal. When assets are identified by the local management for future sale or disposition the first decision that needs to be made is whether these assets are "held for sale" or "held for use" from an accounting perspective. The accounting implications of each classification differ and it is necessary to carefully evaluate each situation.
- B. In order for an asset to be considered as "held for sale" for accounting purposes all of the following criteria must be achieved:
  1. Management, having the authority to approve the action, commits to a plan to sell the asset(s). Compliance with the corporation's capital expenditure request policy (See Finance Policy 240) is critical to meeting this requirement. Under Finance Policy 240 decisions to dispose of assets with a net book value of more than \$5 million must be approved by the Chief Financial Officer of the Corporation and the preparation of a Capital Expenditure Request (CER) is required. Asset disposals with a net book value in excess of \$5 million require additional levels of approval. Decisions to dispose of assets with a net book value under \$5 million may be approved by the operating



unit management; however, these conclusions must also be placed in writing in order to achieve held for sale status.

2. The asset is available for immediate sale in its present condition subject only to the terms that are usual and customary for sales of such assets. If a building is involved it generally necessary for the facility to be vacant in order to meet this criteria. If equipment is involved these assets generally need to be idle in order to be considered available for immediate sale.
3. An active program to locate a buyer or other actions to complete the plan to sell the asset have been initiated. The following points should be considered in this regard:
  - a) Once a decision is made to dispose of real estate within North America, the Corporate Real Estate group will handle all aspects of the sale and disposition of these assets. An active program to locate a buyer for real estate in North America requires the confirmation of the Corporate Real Estate Group. The disposition of real estate outside of North America will be managed by the management of the operating unit owning the property.  
 During the period an asset awaits sale, operating management must insure that its physical condition does not deteriorate from the date at which the decision to sell the assets was made. If the gain or loss on the disposition of the asset is negatively impacted by substandard maintenance, the estimated impact of those actions will be charged back to the operating unit.
  - b) In order for an active program for the disposition of equipment to be considered in place it is generally necessary to have engaged a broker to market the assets.
4. The sale of the asset is probable, and transfer of the asset is expected to qualify as a completed sale, within one year. In reaching this conclusion it is important to consider all factors including any environmental considerations - if a clean up is necessary the property may not be ready for sale within a year. If the corporation is required to retain the environmental exposure the transaction may not be considered a sale for accounting purposes.
5. The asset is being actively marketed for sale at a price that is reasonable in relation to its current fair value. In order to achieve this criteria the following points need to be kept in mind:
  - a) Documented support for fair value must be obtained and that support must come from credible sources. Appraisals will be required for significant real estate assets. The Corporate Controller will engage the appraisal firm to be used in valuing all real estate in North America. Real estate appraisals outside of North America will be engaged by local operating unit management and an English Language version of this report will be forwarded to the Corporate Controller. With regard to equipment, operating management may have sufficient experience in the market to estimate the related selling costs and an appraisal may not be necessary. Each situation will be determined on the related facts and circumstances.
  - b) If real estate is involved an environmental review will likely be

necessary in order to determine fair value. The facts and circumstances of each situation will determine if such an evaluation is considered necessary.

6. Actions required to complete the plan indicate that it is unlikely that significant changes to the plan will be made or that the plan will be withdrawn. Plans which are contingent on the actions or approvals of third parties first occurring generally will not meet this criteria.

As can be ascertained from the above, a significant amount of time and effort may be required to meet all of the held for sale criteria. In many cases an asset targeted for sale will not immediately meet the held for sale criteria and may initially need to be classified as held for use (see section V. E. of this policy)

- C. In order for an asset or group of assets to be accounted for as held for sale the following must occur
  1. Written documentation supporting the conclusion that all of the held for sale criteria have been achieved must be provided to the Corporate Controller
  2. The documented support for the estimated gain or loss on the disposition of the asset will be provided to the Corporate Controller if either the gain or loss is expected to exceed \$100,000. Property, plant or equipment classified as held for sale shall be measured at the lower of its carrying amount or fair value less costs to sell.

Costs to sell are the incremental direct costs to transact a sale, that is, the costs that result directly from and are essential to a sale transaction and that would not have been incurred by the reporting unit had the decision to sell not been made. Those costs include broker commissions, legal and title transfer fees, and closing costs that must be incurred before legal title can be transferred. Costs to sell exclude ongoing costs such as insurance, maintenance, security, utilities and other costs that are incurred as a result of ownership.
  3. The Corporate Controller will indicate in writing whether or not the asset or group of assets meets the held for sale criteria.
- D. If the Corporate Controller concludes that the assets meet the held for sale criteria the following will occur
  1. No further depreciation will be recognized on the held for sale assets will be taken
  2. If a loss is probable on the disposition of spare parts, leasehold improvements or construction in progress, the amount of the estimated loss must be recognized in the determination of operating profits (that is above line 16). The asset will be written down to equal the anticipated proceeds at disposition less costs to sell and a charge will be recognized in operating profits. When the sale transaction closes and the assets are sold, operating profits will be adjusted for any difference between the proceeds actually received and those originally anticipated. No below line 16 loss may be recognized on the disposition of spare parts, leasehold improvements or construction in progress. Gains on the disposition of spare parts, leasehold improvements or construction in progress will be recognized above line 16 and included in the determination of operating profits.

3. If a loss is probable on the disposition of fixed assets other than spare parts, leasehold improvements or construction in progress, the Corporate Controller will recognize the loss and the related property write down on the corporate office ledger. When the assets are sold and physically disposed of by the operating unit, the loss will be reported below line 16 and be offset against the reserve previously established.

Significant losses on the disposition of fixed assets may be indicative of a situation in which the corporation's depreciation policies are not being fully complied with. Finance Policy 303 requires periodic reviews of depreciable lives and if these reviews are properly conducted losses on the disposition of fixed assets should be immaterial.

4. Any ongoing costs of owning the asset such as insurance, maintenance, security, utilities etc. will continue to be recognized in operating profits.
  5. Assets which meet the held for sale criteria are to be reported on line 15.19 of the EO-100 report with the related accumulated depreciation reported on line 15.37.
- E. If a documented management decision is made to dispose of an asset or group of assets and the held for sale criteria are not met the assets will be considered "held for use". If the asset grouping does not constitute a complete reporting entity for which discrete cash flows are determined the following will occur
1. The CFO of the reporting entity will determine the anticipated disposition date of the asset, the anticipated proceeds at disposition less costs to sell, and the current net book value of the asset.
  2. The difference between the anticipated proceeds at disposition less cost to sell and the carrying value of the asset will be depreciated over the remaining period of time over which the asset will be used by the corporation. The asset should be written down to its net realizable value at the point it is no longer in use and is awaiting sale. This depreciation will be recognized in operating profits (above line 16). If the difference between the carrying amount and anticipated proceeds exceeds \$250,000 the Corporate Controller must be notified as the occurrence of such events may require disclosure.

Assets classified as "held for use" are to be classified as "held for sale" at the close of the monthly reporting period in which all of the held for sale criteria are met. At the point in time that the held for sale provisions are met the provisions of section V. D. of this policy will apply.

## **VI. Intercompany Transfers, Retirements, Sales and Exchanges**

- A. Transfers of property from one reporting entity to another reporting entity will be made at book value. Both the cost and accumulated depreciation of the relevant assets will be transferred from the reporting entity transferring the asset to the reporting entity receiving the asset. No gain or loss is recognized on the transfer of an asset between entities in the same consolidated group. When an operating unit acquires property, plant or equipment from another operating unit, the acquiring operating accepts responsibility for all environmental issues associated with that property. It is the responsibility of the acquiring operating unit

to understand the exposures associated with the assets acquired through intercompany transfer.

- B. When property is lost through fire, hurricane, or other involuntary event for which insurance is maintained the following should occur.
1. The Corporate Office insurance department must be notified as soon as possible of the event so that all necessary steps can be taken to recover the amount lost.
  2. A capital loss should be reported on line 23.1 of the EO 200 report for the net book value of any assets which are physically destroyed in the event. This loss must be net of any insurance deductible carried by the reporting unit. If such a loss is to exceed \$100,000 it must be cleared in advance with the Corporate Controller. A detailed listing of assets destroyed and their related book values will be required before the reporting of the loss can be approved.
  3. Any cash proceeds received from the settlement of the insurance claim related to the destroyed property must be reported on line 23.1 of EO 100 when received. Cash received from such settlements will not be included in the determination of operating cash flow. Business interruption insurance claims are covered under a separate policy. Unless the recovery of cash from an insurance carrier is deemed to be highly probable no amounts will be recognized in advance of the cash settlement.
  4. New assets acquired to replace those destroyed must be recognized on the books at their acquisitions cost and be depreciated in accordance with company policy.

The above policy statement assumes that the insurance carrier settles the claim in cash. If the carrier settles the claim through the delivery of equivalent property the Corporate Controller should be consulted as to the appropriate accounting. Typically no gain or loss would be recognized in those situations.

- C. In the period in which property is physically disposed of through sale to a third party, abandonment or destruction the following should occur.
1. When other than the composite depreciation method is used, the cost and accumulated depreciation applicable to the property should be removed from the accounts and a gain or loss recognized on line 23.1 of EO 100. The gain or loss recognized must consider sections III E, III F, III G and other sections of this policy.
  2. When the composite method of depreciation is used, the cost of property retired less any net salvage value realized should be charged against accumulated depreciation and no gain or loss recognized. However, abnormal retirements involving material amounts should be treated as if the composite method had not been used and a gain or loss recognized.
  3. The Corporate Controller must approve in advance all unplanned charges below line 16 in excess of \$100,000, including capital losses. Capital gains must also be recognized below line 16 and they may not be offset or netted against operating expenses.
- D. In order for a true sale of an asset to have occurred there must be a clear cut transfer of substantially all ownership risks and rewards relating to that asset to an unrelated third party. In most transactions this transfer is

fairly evident and the selling company has no continuing involvement with the asset. However, if the selling company has the ability to continue to use the asset through a lease or similar arrangement, directly or indirectly guarantees the debt of the purchaser, or the selling company has an obligation to purchase the output of the facility a sale may not have occurred. In such situations the Corporate Controller should be consulted in advance of executing the transaction to determine if a sale should be recognized.

- E. Sale and leaseback transactions should not be pursued by operating unit management without first obtaining the approval of the Corporate Controller and the Corporate Treasurer. These are financing transactions that require the approval of Treasury. In addition, existing accounting rules are complex and restrictive in this area – the recognition of a sale (i.e the removal of the asset from the books) when a leaseback is present is very difficult.
- F. Since the gross cost of property shown on the balance sheet is intended to include all property in service, the cost of fully depreciated assets remaining in service and the related accumulated depreciation should not be removed from the accounts. The cost and accumulated depreciation accounts should be adjusted when the asset is physically disposed.
- G. When property is exchanged for other property, a gain or loss should be recognized based on the fair values of the assets transferred. However, for exchanges of property used in the same line of business, although losses should still be recorded, gains should not be recognized except as noted in the next paragraph.

If, for example, a reporting entity trades property carried at \$100,000 and worth \$150,000 for other property used in the same line of business, the \$50,000 gain should not be recognized. If, on the other hand, the carrying amount was \$175,000, the \$25,000 loss should be recognized.

When monetary consideration is received in exchange of property used in the same line of business and the monetary consideration received is less than 25% of the fair value of the property exchanged, a gain should be recognized to the extent the monetary consideration exceeds the proportionate share of the carrying amount of the asset surrendered. If, for example, a machine with a fair value of \$50,000 and a carrying amount of \$10,000 is exchanged for a similar machine plus \$5,000 cash, a gain of \$4,000 [ $\$5,000 - (\$5,000/\$50,000 \times \$10,000)$ ] should be recorded and the carrying amount of the property reduced by \$1,000.

For an exchange of property used in the same line of business and the monetary consideration is 25% or more of the fair value of the property exchanged, the exchange is deemed a monetary transaction and recorded as indicated in item III C above.

### VIII. Monthly Reporting

Gross property amounts (cost) will be reported on the line 18.1 of Form EO-100 each month in the following accounts:

<u>Account</u>	<u>Line Number</u>
Land	15.11
Building	15.12

Leasehold Improvements	15.13
Vehicles	15.14
Machinery & Equipment	15.15
Display Stands	15.16
Construction in Progress	15.17
Spare Parts	15.18
Held for Sale Assets	15.19

Assets shall be removed from the construction in progress designation when the property is available and ready for use. Depreciation of these assets will be initiated when assets are transferred out of the "Construction in Progress" designation.

#### VIII. Documented System of Internal Controls

- A. The Chief Financial Officer of each entity reporting monthly financial results to Chicago has the responsibility for establishing a system of documented controls which achieves the following objectives:
  1. All property, plant and equipment owned by the entity at the balance sheet date are included in the financial statements.
  2. Additions to and disposals of property, plant and equipment and current period depreciation are accurately recorded.
  3. Property, plant and equipment recorded in the accounts physically exist. Recorded additions to and disposals of property, plant and equipment actually occurred and were properly authorized.
  4. No material items were charged to expense that should have been capitalized, or vice versa. The cost basis of property, plant and equipment is appropriate.
  5. Appropriate methods of depreciation (see Finance Policy 303) were properly and consistently applied to all items of property, plant and equipment that should be depreciated.
  6. The carrying value of property, plant and equipment is appropriate in periods subsequent to acquisition, considering such factors as utilization, geographic location, laws and regulations and technological change.
  7. Property, plant and equipment in the accounts are owned.
- B. Any material breakdowns in the internal control environment over property, plant and equipment must be communicated to the Corporate Controller immediately. These would include:
  1. Unauthorized fixed asset additions or dispositions.
  2. Unreconciled differences of more than \$250,000 between the detailed fixed asset records and the general ledger control account.
- C. As indicated in Finance Policy 101, it is the CFO's responsibility to discuss all significant accounting judgments with the CEO as part of the quarterly certification process. These judgments include, but are not limited to:
  1. The annual review of depreciable lives used for property elements and any changes in depreciable lives or methods (see Finance Policy

303).

2. The accounting implications of decisions to sell or dispose of property, plant or equipment.
3. The recognition of environmental claims and any asset retirement obligations.
4. Any judgments made as to the capitalization or expensing of material acquisition or ownership costs.
5. Any unreconciled differences between the fixed asset detail records and the general ledger control account.

**Depreciation of Property, Plant and Equipment****Policy Number:** 303**Applicable to:** All Divisions & Subsidiaries**Category:** Accounting and Controls: Income and Equity**Latest Update:** January 1, 2004**Supersedes:** July 1, 2002**I. Policies**

The policies of the corporation regarding the depreciation of property, plant and equipment are as follows:

- A. Except for non-exhaustible assets such as land, all property must be depreciated on a straight-line basis over the life of the asset.
- B. Depreciation should commence when the property is available and ready for use. If a facility is constructed in stages, depreciation of each stage should begin when that stage is ready for use. For expediency, it is acceptable to adopt a half-year convention in the year of addition -- that is, a half year's depreciation is taken in the year of acquisition.
- C. Depreciation should be based on the cost of the asset. Salvage values may not be utilized in computing depreciation expense without the advance approval of the Corporate Controller.

When the removal of an asset at the end of its useful life will result in an additional cost to the corporation, that cost should be estimated and accrued over the useful life of the asset. If, by way of illustration, a land lease requires the lessee to remove all improvements at the end of the lease these removal costs should be estimated and accrued as a liability over the life of the lease. The costs to remove leasehold improvements are always to be recognized in operating profits - they may never be included in the computation of capital gains or losses.

- D. The lives used in computing depreciation should be based on estimates of the period over which the assets will be of economic benefit to the reporting entity. Such lives may be the same as the physical lives of the assets but frequently are shorter. Estimated lives must be based on informed judgment; historical experience of a company or an industry, manufacturers estimates, engineering or appraisal evaluations, etc. should be used as guidelines for lives to be used.

In estimating lives, the following factors in addition to physical deterioration from the passage of time should be considered.

1. Obsolescence - both of the asset itself and of the product it is used to produce
2. Relationship to other assets - if an addition or improvement is made to a building that does not appreciably extend the buildings life; the addition to the building should be depreciated



- over the remaining life of the building.
3. Plans of an entity - when a company plans to relocate its facilities in a specified number of years, the facilities, including any interim additions or improvements, should be depreciated over that period.
  4. Environmental factors or laws - environmental factors or laws may require the closing of a plant by a particular date.
  5. Anticipated use - If a class of equipment is operated three shifts a day, it typically should be depreciated over a shorter period than if it is to be used only one shift a day.
- E. As part of the annual and long range planning process, the CFO of each operating unit must assess the useful life over which the property, plant and equipment is being depreciated.
1. This assessment is meant to focus on the following significant factors:
    - a) Product Demand – If demand for a product is declining in a consistent manner over time, it is necessary for management to establish a plan to deal with the manufacturing capacity in its operation over time. If, for example, management determines that 25% of the manufacturing capacity will be excess and need to be disposed of at the end of three years, future depreciation expense may need to be adjusted. The salvage value of the equipment at the end of the three-year period will need to be estimated and future depreciation expense adjusted so that the book value at the end of the three-year period is in line with the fair value.
    - b) Technological Change – Changes in manufacturing technology can frequently require that existing assets be replaced sooner than originally anticipated. Not only can the useful live of an asset be shortened, but salvage values on older less desirable/efficient equipment will be reduced. As such, changes are identified and the impact on the useful lives of existing assets needs to be evaluated and adjusted.  
  
Technology changes can also result in products lasting longer and this may result in over capacity in a particular industry. In such situations, manufacturing capacity may need to be eliminated and this in turn will lead to shorter useful lives.
    - c) Economic Factors in Geographic Region – Changes in labor rates, tax rates, distribution costs, local competition and a variety of other factors can have a significant impact on the profitability of a business, and the corporation periodically relocates its manufacturing capacity or restructures that capacity to address these competitive factors. In many cases, these events are planned or anticipated well in advance of the actual action. Such planned changes need to be reflected in the depreciable lives of the existing assets.

For example, if it is decided to exit manufacturing operations in a geographic region because of the loss of tax grants or benefits in the region, management needs to assess the impact of this probable future exit on existing depreciable lives. The objective is that when the area is exited and the assets sold the net book value of those assets should approximate the cash received upon the disposition of those assets.

- d) Regulatory Factors – In some situations, changes in environmental, product safety, workplace safety or similar laws may require the replacement of certain assets with others. In many cases, these changes are phased in over time and when such situations occur the depreciable lives of assets to be replaced must be adjusted.
2. In completing this annual review the following should be noted:
- a) The objective of this annual review is to consider the impact which the above factors may have on established asset lives. This is not meant to be an asset-by-asset review, but rather a documented evaluation of significant factors which may impact depreciable lives for groups of assets.
  - b) The review should be documented and the annual documentation should be retained for 5 years. It is anticipated that the documented annual review will be completed in the fourth quarter of each fiscal year when the Annual Operating Plan is submitted to Chicago.
  - c) While the preparation of this document may be delegated within the organization, the CFO is ultimately responsible for the conclusions reached in this review.
  - d) Under no circumstances may a depreciable life be lengthened without the advance written approval of the Corporate Controller.
  - e) Issues identified in this review must be dealt with on a timely basis. If it is necessary to accelerate the depreciation on certain assets, this outcome must be recognized in the financial statements immediately.  
  
While differences between book and market values will always exist, the recognition of significant losses on the disposition of assets may be indicative of problems in the application of this policy.
- F. While the documented review noted in I.E. is to be done annually, it is important to note that whenever events or changes in circumstances indicate that a depreciable life should be adjusted, steps should be taken to evaluate the issue.
- G. The lives shown below are suggested as guidelines for various categories of new assets. The use of asset lives outside of these ranges should be cleared in advance with the Corporate

Controller. Should you believe that an asset life outside of the ranges below is appropriate, a written explanation of the facts (see section I.D. of this policy) which led you to this conclusion must be provided.

<u>ASSET CATEGORY</u>	<u>LIFE (YEARS)</u>
Land Improvements	10-20
Buildings	Up to 40 years
Building Improvements	Up to the remaining life of the building
Machinery and Equipment	5-15
Office Equipment	5-10
Personal Computers	2-3
Automotive Equipment	3-6
Capital assets under lease	Primary lease term
Capitalized Interest	10 (Chicago only)

- H. Leasehold improvements will be amortized over the remaining term of the lease or the life of the property, whichever is shorter. The remaining term of the lease including renewal period(s) may be used only if all five of the following items are complied with:
1. Management fully intends to exercise the renewal option(s) and the exercise of the option is not contingent upon factors outside the control of management.
  2. All costs related to the exercise of the renewal option are known and quantifiable.
  3. The lease term is shorter than the life of the property.
  4. The term of the lease including the renewal option(s) is used in the calculation of pro forma leases and lease data in accordance with Finance Policy 130.
  5. Approval is received from the Corporate Controller.
- I. The composite method may be used to account for selected assets. The composite method may be appropriate when a large number of similar assets with low unit costs are acquired and capitalized. In such situations, the time and effort associated with tracking individual assets may be significant, and the ending answer from using the composite method may not differ materially from tracking each asset. Because of the current capitalization limits (see Finance Policy 242) and the expensing of display racks, use of the composite method is less likely to be used/approved than in prior years. However, there may be situations in which it is still appropriate. Under this method:
1. Property items are grouped and an average life is applied to determine depreciation. Groupings may be by year of acquisition, by type, by classification, by location or by a combination of these ways. However, the disparities of the lives

of the assets in a group should not be so great as to materially understate depreciation in the early years.

2. When the composite method is applied, periodic studies should be undertaken to ensure that the average life being used is appropriate.
3. When the composite method of depreciation is used, the cost of property retired less any net salvage realized should be charged against accumulated depreciation and no gain or loss recognized. However, abnormal retirements involving material amounts should be treated as if the composite depreciation method had not been used and a gain or loss recognized.

The composite method may be used only after obtaining the approval of the Corporate Controller. Any changes to asset groupings and average lives must also be approved by the Corporate Controller.

- J. Revisions in estimated depreciable lives must be recognized over current and future years. The following example illustrates the accounting for a change in the depreciable life of an asset:

Assumptions:

Cost of Asset	\$100,000
Original estimated life	20 years
Remaining estimated life determined at beginning of sixth year	5 years
Depreciation in year 6	\$15,000
Depreciation in years 7 - 10	\$15,000

The depreciable life of an asset may be lengthened only after receiving the approval of the Corporate Controller - as a general rule the corporation does not permit asset lives to be extended

- K. Since the gross cost of property shown on the balance sheet is intended to include all property in service, the cost of fully depreciated assets remaining in service and the related accumulated depreciation ordinarily should not be removed from the accounts. However, if retirements are not recorded because detailed property records are not maintained, as is generally the case for assets accounted for under the composite method, it is necessary to remove the cost of fully depreciated assets from the accounts rather than allow the gross amount to increase indefinitely.
- L. Assets, which are idle for short or protracted periods of time, must continue to be depreciated. If assets are idled for anything other than a short period of time (i.e., one month) it is necessary to evaluate the remaining depreciable life of the asset.
- M. Depreciation on an asset may be terminated if the asset is being "held for sale". In order for an asset to be classified as held for sale, all the following criteria must be met.

1. Management, having the authority to approve the action, commits to a plan to sell the asset(s). Compliance with the corporation's capital expenditure request policy (See policy 240) is critical to meeting this requirement. Under policy 240 decisions to dispose of assets with a net book value of more than \$5 million must be approved by the Chief Financial Officer of the Corporation and the preparation of a Capital Expenditure Request (CER) is required. Asset disposals with a net book value in excess of \$5 million require additional levels of approval. Decisions to dispose of assets with a net book value under \$5 million may be approved by the operating unit management; however, these conclusions must also be placed in writing in order to achieve held for sale status.
2. The asset is available for immediate sale in its present condition subject only to the terms that are usual and customary for sales of such assets. If a building is involved it generally necessary for the facility to be vacant in order to meet this criteria. If equipment is involved these assets generally need to be idle in order to be considered available for immediate sale.
3. An active program to locate a buyer or other actions to complete the plan to sell the asset have been initiated. The following points should be considered in this regard:
  - a) Once a decision is made to dispose of real estate within North America, the Corporate Real Estate group will handle all aspects of the sale and disposition of these assets. An active program to locate a buyer for real estate in North America requires the confirmation of the Corporate Real Estate Group. The disposition of real estate outside of North America will be managed by the management of the operating unit owning the property. During the period an asset awaits sale, operating management must insure that its physical condition does not deteriorate from the date at which the decision to sell the assets was made. If the gain or loss on the disposition of the asset is negatively impacted by substandard maintenance, the estimated impact of those actions will be charged back to the operating unit.
  - b) In order for an active program for the disposition of equipment to be considered in place it is generally necessary to have engaged a broker to market the assets.
4. The sale of the asset is probable, and transfer of the asset is expected to qualify as a completed sale, within one year. In reaching this conclusion it is important to consider all factors including any environmental considerations - if a clean up is necessary the property may not be sold within a year. If the corporation is required to retain the environmental exposure the transaction may not be considered a sale for accounting purposes.
5. The asset is being actively marketed for sale at a price that is

reasonable in relation to its current fair value. In order to achieve this criteria the following points need to be kept in mind

- a) Documented support for fair value must be obtained and that support must come from credible sources. Appraisals will be required for significant real estate assets. The Corporate Controller will engage the appraisal firm to be used in valuing all real estate in North America. Real estate appraisals outside of North America will be engaged by local operating unit management and an English Language version of this report will be forwarded to the Corporate Controller. With regard to equipment, operating management may have sufficient experience in the market to estimate the related selling costs and an appraisal may not be necessary. Each situation will be determined on the related facts and circumstances.
  - b) If real estate is involved an environmental review will likely be necessary in order to determine fair value. The facts and circumstances of each situation will determine if such an evaluation is considered necessary.
6. Actions required to complete the plan indicate that it is unlikely that significant changes to the plan will be made or that the plan will be withdrawn. Plans which are contingent on the actions or approvals of third parties first occurring generally will not meet this criteria.

As can be ascertained from the above, a significant amount of time and effort may be required to meet all of the held for sale criteria. In many cases an asset targeted for sale will not immediately meet the held for sale criteria and may initially need to be classified as held for use (see section V. E. of this policy).

Before depreciation on asset can be terminated, the written approval of the Corporate Controller must be obtained. Before such approval is given, all of the above criteria must be complied with. See Policy 242 for other issues associated with held for sale assets.

- N. When a business is acquired using the purchase method, the accumulated depreciation amount shown by the seller's accounts does not become part of the purchaser's accumulated depreciation. The financial statements of the purchaser should reflect depreciation accumulated only since the date of acquisition.
- O. Accumulated depreciation amounts will be reported on Line 18.3 of Form EO-100 each period in the following accounts:

<u>Account</u>	<u>Line Number</u>
Buildings	15.31
Leasehold Improvements	15.32
Vehicles	15.33

**Accounting for Vacation Pay and other Compensated Absences****Policy Number: 270****Applicable to: All Divisions & Subsidiaries****Category: Accounting and Controls: Assets and Liabilities****Latest Update: March 1, 2004****Supersedes: June 29, 1991****I. Vacation Pay**

**A. Under US Accounting Standards, reporting units are required to accrue a liability for compensated absences if all of the following conditions are met:**

- 1. The employer's obligations relating to employees rights to receive compensation for future absences is attributable to employees services already rendered,**
- 2. The obligation relates to rights that vest or accumulate. This does not mean that a liability is recognized only after an employee vests in his or her vacation benefit. The vacation plan simply needs to give the employee the right to vest in a vacation benefit at a future date to meet this condition,**
- 3. Payment of the compensation is probable, and**
- 4. The amount can be reasonably estimated.**

**If all four of these conditions are met, the vacation obligation would be accrued over the period during which the vacation benefit is earned by the employee.**

**B. Reporting units are required to document the key provisions of all vacation pay plans in place. At a minimum the key provisions should include:**

- 1. The vacation year (calendar, fiscal or other).**
- 2. Eligibility requirements for the plan - e.g. full time, part time employee, salaried, or hourly employees.**
- 3. The number of days/ weeks of vacation to be provided - typically this is tied to the employees length of service.**
- 4. The vesting provisions, if any.**
- 5. How new hires, terminations or other special situations are handled under the plan.**
- 6. Whether unused vacation is carried forward to future vacation years or is forfeited if not used. The plan should define when the benefits are earned and the period in which they must be taken.**

**A documented plan is critical to determining the appropriate accounting for the benefits. Plans should be administered in accordance with the provisions of the plan document. For example, if the plan document indicates that unused vacation**

cannot be carried forward to future periods, this provision should be enforced.

- C. There are a number of types of vacation plans. Set out below are two of the more common variations and the related accounting. If, after reviewing the following, you have questions on how to account for your reporting units' plan, the Corporate Controller should be contacted.
1. Vacation earned in year 1 and taken in year 2 - Assume that reporting unit A has a vacation year that coincides with the Corporation's fiscal year. Under the plan, employees earn a vacation benefit by working during year one, vest in the vacation benefit on day one of year 2 and are eligible to use the earned vacation benefit in year two. If an employee leaves the company before vesting in the vacation benefit, it is forfeited. If an employee leaves the company after the vacation vests, the unused benefit is paid in the last payroll check. No carryover of accrued vacation benefits is permitted and vacation not taken in the allowed year is forfeited under the policy. The reporting unit strictly enforces the provisions of the policy that prohibit the carryover of benefits.  
  
Assume that employee X's weekly pay (including the employer's share of federal taxes and an expected salary increase in year 2) is \$1,000 per week. During year one the reporting unit would accrue the \$2,000 vacation benefit for employee X as it is earned - in a straight line manner with the passage of time. At the end of year one, the reporting unit would have recognized an expense of \$2,000 and have an accrued vacation liability (line 24.06 of EO 100) of \$2,000. During year 2, the employee takes a two week vacation which reduces the accrued liability and begins earning the vacation to be taken in year 3. Assuming no changes in salary or employer payroll taxes the reporting unit would end year 2 with a \$2,000 vacation accrual for employee X. If employee X were to leave the reporting unit before the vacation is vested, the related vacation pay accrual is reversed into operating profits. Similarly, if employee X failed to take a paid vacation in the required period, the related accrual would be reversed into operating profits.
  2. Vacation earned and taken in Year 1 - Assume that reporting unit B has a vacation year that coincides with the Corporation's fiscal year. Under the plan, Employee Z earns vacation by working during year one and must take the vacation earned within year one. No vacation carries over to year two, and earned vacation which is not taken is forfeited. The reporting unit strictly enforces the provisions of the policy which prohibit the carryover of unused vacation. Under reporting unit B's policy, employee Z essentially earns vacation in a ratable manner each month. If 10 days of vacation can be earned by an employee in year 1, the company's policy specifies that 1 day is



earned at the end of January, 2 days are earned at the end of February etc. Once each monthly milestone passes, the employee has earned and is vested in the vacation benefit. If employee Z leaves the company on March 1, without having previously taken any vacation, the two days of earned and vested vacation will be added to the employees last paycheck. If employee Z takes 10 days of vacation in February and leaves the Company on March 1, the 8 days of unearned vacation will be deducted from employee Z's last paycheck.

In accounting for this plan, the reporting unit starts out the year with no vacation accrual on their books. Assume that employees Z's weekly pay (including the employers share of federal taxes and the expected salary in the year) is \$1,000 per week. During year one, the reporting unit would accrue the \$2,000 of vacation pay for employee Z as it is earned. If employee Z takes two weeks of paid vacation in June, reporting unit A would end up with a receivable of \$1,000 as the cash paid exceeds the amount accrued to date. That receivable will either be written off as the employee earns the benefit by working over the last six months or collected out of the last paycheck if the employee leaves before the end of the year. At the end of the vacation year, there is no vacation accrual required since any unused vacation is forfeited.

In this example, the fact that individuals who terminate employment either forfeit unearned vacation or have to pay back vacation taken in advance of it being earned is critical to the accounting. In example 2, if employees received a vested vacation benefit at the start of the year and received the vacation benefit even though it had not been earned, the benefit would be assumed to have been earned in the prior year. In this situation, the accounting would be similar to example 1. The facts and circumstances of each situation must be considered and judgment applied in determining the period over which a benefit is earned.

- D. Each reporting unit must support the balance sheet accrual for vacation benefits. Judgment must be applied in determining the level of detail to be documented in these computations. At a minimum, each reporting unit should be able to determine the total vacation benefit earned by employees at each level of service - e.g. X number of employees are entitled to 2 weeks of vacation; Y number of employees are entitled to 3 weeks of vacation; Z number of employees are entitled to 4 weeks of vacation etc. Based on historic data the vacation pay earned, taken and forfeited can be estimated in determining the overall accrual requirement.

## II. Other Compensated Absences

- A. Sick pay benefits must be accrued if they vest or are otherwise normally paid without an illness related absence. For example, if employees are customarily paid benefits even though their absences from work are not actually the result of illness or if

employees are routinely allowed to take compensated terminal leave for non-vesting accumulated unused sick pay benefits prior to retirement, such benefits should be accrued. Sick pay benefits which do not meet the above parameters should be expensed as incurred.

- B. Compensated time off for holidays, jury duty, voting and other reasons generally will not be accrued. The cost of making and evaluating such estimates do not justify a requirement for an accrual that is immaterial in most cases. These compensated absences will be expensed as incurred unless such costs are deemed to be material by the Corporate Controller.

**Revenue Recognition****Policy Number:** 390**Applicable to:** All Divisions & Subsidiaries**Category:** Accounting and Controls: Income and Equity**Latest Update:** January 1, 2004**Supersedes:** November 1, 2002

This policy defines and communicates the Corporation's general guidelines for the recognition of revenue; the accounting procedures for recognizing anticipated product returns; and the accounting for shipping and handling fees. Exhibit B to this policy presents a number of frequently asked questions regarding this policy.

In addition to the general revenue recognition rules set out in this policy, it is important to note that the cost of a number of common sales incentives must be reflected as reductions of revenue. The accounting policies regarding the recognition, measurement and display of these sales incentives are communicated in the following accounting policies:

**Policy 391** - Accounting for Discounts, Coupons, Rebates and similar sales incentives

**Policy 392** - Accounting for Volume or Time Based Sales Incentives

**Policy 393** - Accounting for Consideration paid to a Reseller of our products

- I. **Revenue Recognition General Guidelines** - Sales of product should be recognized when **all of the following four criteria** are met:
  - A. **Persuasive evidence of an arrangement exists** - This criteria covers the need to have written documentation of sales arrangements with customers. The use of the term "arrangement" is meant to identify the final understanding between parties as to the specific nature and agreed-upon terms of the transaction
    1. Customary business practices and processes for documenting sales transactions vary among companies and industries. Business practices and processes may also vary within individual companies (e.g., based on the class of customer, nature of product or service, or other distinguishable factors). If an operating unit does not have a standard or customary business practice of relying on written contracts to document a sales arrangement, it usually would be expected to have other forms of written or electronic evidence to document the transaction. For example, an operating unit may rely on purchase orders from third parties or on-line authorizations that include the terms of the sale. The documentation should provide persuasive evidence of the arrangement with the buyer.
  - B. **Delivery has occurred or services have been rendered** - There are two primary issues associated with this item:
    1. **Delivery to Customer Site** - Delivery generally is not considered to have occurred unless the customer has taken title and assumed the risks and rewards of ownership of the products specified in the customer's purchase order or sales agreement. Typically this occurs when a product is delivered to the customer's delivery site (if the

terms of the sale are "FOB destination") or when a product is shipped to the customer (if the terms are "FOB shipping point"). **The term FOB shipping point means that title passes to the buyer when the seller delivers the goods to the common carrier - the common carrier acts as an agent for the buyer.**

When product is shipped using FOB destination terms it will be necessary to determine / estimate when this product reaches the customer's delivery site as revenue cannot be recognized prior to this event. Since most accounting systems recognize a sale when the product is shipped from the operating unit, it is likely that an adjusting entry will be necessary to properly recognize FOB destination shipments made at or near to a period end. Exhibit A to this policy provides an example of the entries to recognize this situation. When estimating the FOB destination shipments which have yet to reach the customer as of period end, the following must be complied with:

- a. Adjustments need to be made at the end of each quarter in order to assure that quarterly revenue recognition is properly stated.
- b. Estimates of product that has yet to reach the customer's location must be supported by recent historical data which determines the lag between the date of shipment and delivery of the product at the customer's location. This supporting documentation must be retained and be of a sufficient scope to justify its use in this process. At a minimum, this historical data must be updated annually and potentially more often if the shipping process has changed.
- c. A consistent methodology must be used in determining this adjustment from period to period. Any change in methodology is considered an accounting change and requires the advance written approval of the Corporate Controller.

It is unacceptable to ignore the impact of shipping terms in the revenue recognition process. If you ship product FOB destination, it is necessary to estimate / determine the impact on revenue and operating profit each quarter.

Delivery generally is not considered to have occurred unless the product has been delivered to the customer's place of business or another site specified by the customer. If the customer specifies an intermediate site but a substantial portion of the sales price is not payable until delivery is made to a final site, then revenue should not be recognized until final delivery has occurred.

2. Customer Acceptance - After delivery of a product or performance of a service, if uncertainty exists about customer acceptance, revenue should not be recognized until acceptance occurs. Formal customer sign-off is not always necessary to recognize revenue provided that the seller objectively demonstrates that the criteria specified in the acceptance provision are satisfied. Customer acceptance provisions generally take one of the following four forms:
  - a. Acceptance provisions in arrangements that purport to be for trial evaluation purposes - In these arrangements, the seller delivers a product to a customer, and the customer agrees to receive the product, solely to give the customer the ability to evaluate the delivered product prior to acceptance. The customer does not agree

to purchase the delivered product until it accepts the product. In some cases, the acceptance provisions lapse by the passage of time without the customer rejecting the delivered product, and in other cases affirmative acceptance from the customer is necessary to trigger a sales transaction. Frequently, the title to the product does not transfer and payment terms are not established prior to customer acceptance. These arrangements are, in substance, consignment arrangements until the customer accepts the product as set forth in the arrangement with the seller. Accordingly, in arrangements where products are delivered for trial or evaluation purposes, revenue should not be recognized until the earlier of when acceptance occurs or the acceptance provisions lapse.

- b. Acceptance provisions that grant a right of return or exchange on the basis of subjective matters - An example of such a provision is one that allows the customer to return a product if the customer is dissatisfied with the product. Revenue may be recognized in these situations as long as the seller can reasonably estimate future returns - and all other revenue recognition criteria are met. See section I. C. 2. f. of this policy for factors to consider in determining whether a basis exists to estimate returns.
- c. Acceptance provisions that grant a right of replacement on the basis of seller-specified objective criteria - An example of such a provision is one that gives the customer a right of return or replacement if the delivered product is defective or fails to meet the seller's published specifications for the product. Such rights are generally identical to those granted to all others within the same class of customer and for which satisfaction can be generally assured without consideration of conditions specific to the customer. Provided the seller has previously demonstrated that the product meets the specified criteria, these provisions are not different from general or specific warranties and should be accounted for as warranties. In this case, the cost of potentially defective goods must be reliably estimable based on a demonstrated history of substantially similar transactions. However, if the seller has not previously demonstrated that the delivered product meets the seller's specifications, revenue should not be recognized until the specifications have been objectively achieved.
- d. Acceptance provisions based upon customer specified objective criteria - These provisions are referred to in this policy as "customer-specific acceptance provisions" against which substantial completion and fulfillment of the sales agreement must be evaluated. While formal customer sign-off provides the best evidence that these acceptance criteria have been met, revenue recognition also would be appropriate, presuming all other revenue recognition criteria have been met, if the seller reliably demonstrates that the delivered products or services meet all of the specified criteria prior to customer acceptance. For example, if a seller reliably demonstrates that a delivered product meets the customer-specified objective criteria set forth in the arrangement, the delivery criterion would generally be satisfied when title and the risks and rewards of ownership transfers unless product performance may reasonably be different under the customer's

testing conditions specified by the acceptance provisions. Further, the seller should consider whether it would be successful in enforcing a claim for payment even in the absence of formal sign-off.

The acceptance provisions typically associated with our products generally should allow for the recognition of revenue upon delivery of the product; however, this should not be automatically assumed in all situations (e.g. trial evaluation of product or equipment). Judgment is required by local management in assessing whether or not the above provisions have been met.

**C. Fixed or Determinable Sales Price** – All aspects of a sales arrangement must be considered in determining whether a fixed and determinable sale price exists. Following are several points which need to be considered in making this determination.

1. Agreements that provide for the buyer to be given credit for price decreases for a specified period of time, or until the buyer resells the goods (price protection arrangements), may not result in revenue recognition at the time of delivery. The following points need to be considered in such arrangements:
  - a. A typical price-protection provision states that if the seller lowers the prices of the product in the future, the buyer may request that a portion of the purchase price (that relates to the seller's product still in the buyer's inventory) be refunded. As long as it can be concluded that the price reductions are totally within the control of the seller (SLC), a sale may be recognized when all the other revenue recognition criteria have been met.

If, on the other hand, the price reductions are not within SLC's control there is not a fixed and determinable sales price. For example, if SLC refunds a portion of the selling price to the buyer because the buyer elects to reduce the selling price on our products, a fixed and determinable sales price does not exist. Similarly, if SLC guarantees the margin the buyer will earn on selling a product a fixed and determinable sales price will not exist when the buyer accepts delivery of the goods. Revenue may not be recognized in these situations until the selling price is fixed and determinable and this may take many months to resolve. The product shipped to the customer in this situation is essentially a consignment.

- b. Closely tied to this first point is our ability to accurately predict the claims a buyer may make under a price protection arrangement. If the buyer's claims are based upon pricing decisions they will unilaterally take in the future, it is unlikely that we can accurately predict the claim, and the recognition of revenue should be deferred until the uncertainty is resolved.

The same factors identified in section C. 2. f. of this policy should be considered in determining the ability to accurately evaluate price protection arrangements.

2. Certain sales arrangements result in return provisions which may impact the ability to conclude that a fixed or determinable sales price has been established at the time of delivery. If a sales arrangement gives the buyer the right to return the product, revenue from the sales transaction can only be recognized at the time of delivery if all of the

following conditions are met:

- a. The seller's price to the buyer is substantially fixed or determinable at the date of sale.
- b. The buyer has paid the seller, or the buyer is obligated to pay the seller and the obligation is not contingent on resale of the product.
- c. The buyer's obligation to the seller would not be changed in the event of theft or physical destruction or damage of the product.
- d. The buyer acquiring the product for resale has economic substance apart from that provided by the seller. This condition relates primarily to buyers that exist "on paper," that is, buyers that have little or no physical facilities or employees. It prevents enterprises from recognizing sales revenue on transactions with parties that the sellers have established primarily for the purpose of recognizing such sales revenue.
- e. The seller does not have significant obligations for future performance to directly bring about resale of the product by the buyer.
- f. The amount of future returns can be reasonably estimated. The ability to make a reasonable estimate of the amount of future returns depends on many factors and circumstances that will vary from one case to the next. However, the following factors may impair the ability to make a reasonable estimate:
  - i. The susceptibility of the product to significant external factors, such as technological obsolescence or changes in demand. The introduction of competitors' products with superior technology or greater expected market acceptance, and other factors that affect market demand and changing trends in that demand for our products needs to be considered.
  - ii. Relatively long periods in which a particular product may be returned. If you allow returns to be made more than one year after delivery takes place, you cannot conclude that future returns can be reasonably estimated at the date of sale. If there is a discernable pattern of allowing returns beyond this one-year period or if by policy returns beyond one year are allowed, you cannot conclude that a reasonable estimate of returns can be made at the time of delivery. This conclusion extends to all sales (not just the amounts you estimate will be returned after 1 year). This, in turn, means that revenue may not be recognized until the ability to reasonably estimate returns is met.
  - iii. Absence of historical experience with similar types of sales of similar products, or inability to apply such experience because of changing circumstances, for example, changes in the selling enterprise's marketing policies or relationships with its customers
  - iv. Absence of a large volume of relatively homogeneous transactions
  - v. Significant increases in or excess levels of inventory in a distribution channel (sometimes referred to as "channel stuffing") See Section II of this policy.

- vi. Lack of "visibility" into or the inability to determine or observe the levels of inventory in a distribution channel and the current level of sales to end users,
- vii. The significance of a particular distributor to the registrant's (or a reporting segment's) business, sales and marketing,

It is important to note that a number of factors need to be considered in determining whether accurate return estimates are possible - while the nature of our businesses should allow us to reasonably estimate returns in most cases this should not be automatically assumed in all cases. It is critical to have verifiable historical evidence to support return estimates. Also see Section IV of this policy for procedures to recognize estimated returns in the financial statements.

It is also important to note that unless all of the above factors (under C. 2. a. through C. 2. f.) are met no revenue can be recognized. When these criteria are not achieved it is not permissible to recognize revenue and reserve a substantial portion of the gross margin for collectibility.

- D. Collectibility is reasonably assured** - Collection must be reasonably assured or the seller must be able to reasonably estimate and provide for uncollectible amounts. For most revenue transactions, such conditions are deemed to exist and revenue should be recorded. However, if significant uncertainties exist the ability to reasonably estimate losses may not exist and revenue recognition should be deferred to a later date.
- 1. **Financing Arrangements** - Revenue should not be recognized on a sale when the seller concurrently agrees to repurchase the product at a later date. Such transactions should be treated as financing arrangements. The following provisions are also indicative of financing arrangements
    - a. The seller is not required to purchase the product but has an option to purchase the product, the economic effect of which compels the seller to purchase the product; for example, an option arrangement that provides for a significant penalty if the seller does not exercise the option to purchase.
    - b. The seller is not required by the agreement to purchase the product but the other entity has an option whereby it can require the seller to purchase the product.

If a transaction is deemed to be a financing arrangement, revenue is not recognized and inventory is not relieved from the balance sheet. Any cash received from the buyer at the front end of the transaction is recognized as a liability to be repaid at a later date.
  - 2. **Shipped, not billable** - When goods have been shipped but the seller does not have the right to bill for them and retains all significant risks of ownership, revenue should not be recognized until billing can be made. This policy does not apply to "deferred dating" arrangements under which payment terms are extended but title to the goods passes, unless other revenue recognition criteria are not met.
- II. Channel Stuffing** - Operating units periodically offer customers discounts or other inducements to sell merchandise. As long as those discounts or inducements are in line with verifiable historical levels and they are not designed to artificially pull sales forward from future periods, there is generally no accounting or disclosure issue associated with these programs.



However, when customer discounts or other inducements exceed prior historical patterns and they are made with the purpose of pulling forward sales into the current period and intentionally reducing sales in future periods this practice is known as "channel stuffing". The implementation of such a program has a number of significant accounting and business issues which include:

1. Increases in the level of inventory in the distribution channel, which exceed historical levels, will very likely limit the ability of the operating unit management to accurately predict returns. When there is little history or inadequate verifiable evidence of the returns to be expected from the discounts or inducements associated with a new sales program, revenue recognition cannot be allowed until such uncertainties are resolved. See section I.C. 2. f. of this policy.
2. Under such arrangements, resellers of our product sometimes require price protection arrangements or provisions to cover the carrying cost of the inventory while it sits on the resellers shelf. If such provisions are part of sales arrangements, it is highly likely that an inventory consignment has been made and a sale should not be reported. The risks of ownership have not been transferred to the buyer and our ability to estimate the buyers claims may not be sufficient to justify a sale.
3. Even if the level of returns can be predicted and revenue is recognized the Corporation is required to disclose the impact of such programs on the future profitability of the Corporation.
4. Once such programs begin these discounts or inducements generally must continue or increase to meet sales growth targets. This can lead to bad economic decisions in future periods.

It is important to note that the U.S. Securities Exchange Commission has taken significant actions against a number of companies which have engaged in channel stuffing - these actions have included the prosecution of company officials for issuing misleading financial statements (i.e. no disclosure of the actions) and the restatement of financial statements (i.e. revenue recognition practices were found to be in error). Proposed sales programs which potentially meet the definition of "channel stuffing" must be discussed, in advance, with the Corporate Controller by the Chief Financial Officer of the relevant operating unit. Revenue recognition will not be permitted unless verifiable historic evidence can be produced to validate return estimates. Arrangements which contain price protection or provisions to cover the carrying cost of the inventory on the customers shelf, and are in substance consignment arrangements, cannot be accounted for as sales under any circumstance. In addition before such practices are approved the Corporation's Senior Management must agree to the disclosure of such actions in quarterly earnings releases and financial statements.

- III. Reporting Revenue Gross as a Principal versus Net as an Agent -**  
 Questions sometimes arise regarding whether a company should report revenue based on (a) the gross amount billed to a customer because it has earned revenue from the sale of the goods or services or (b) the net amount retained (that is, the amount billed to a customer less the amount paid to a supplier) because it has earned a commission or fee. In the vast majority of situations the nature of our business results in revenue being reported on a

gross basis; however, there can be situations in which we act as an agent and revenue should be reported net. If your business arranges for third-party suppliers to drop-ship merchandise to customers or if revenues are generated through brokerage or similar activities you need to pay particular attention to this policy section.

In assessing whether revenue should be reported gross with separate display of cost of sales to arrive at gross profit or on a net basis, a number of factors need to be considered. Set out below are factors to be considered in determining whether revenue is to be reported gross or net.

- A. Indicators of Gross Revenue Reporting - The following factors are generally present in business transactions entered into by the operating units of the Corporation. If any of the following indicators is not readily apparent in a business arrangement entered into by your operating unit you should consult with the Corporate Controller as the gross reporting of revenue may not be appropriate.
1. The company is the primary obligor in the arrangement — Whether a supplier or a company is responsible for providing the product or service desired by the customer is a strong indicator of the company's role in the transaction. If a company is responsible for fulfillment, including the acceptability of the product(s) or service(s) ordered or purchased by the customer, that fact is a strong indicator that a company has risks and rewards of a principal in the transaction and that it should record revenue gross based on the amount billed to the customer. Representations (written or otherwise) made by a company during marketing and the terms of the sales contract generally will provide evidence as to whether the company or the supplier is responsible for fulfilling the ordered product or service. Responsibility for arranging transportation for the product ordered by a customer is not responsibility for fulfillment.
  2. The company has general inventory risk (before customer order is placed or upon customer return) — Unmitigated general inventory risk is a strong indicator that a company has risks and rewards as a principal in the transaction and, therefore, that it should record revenue gross based on the amount billed to the customer. General inventory risk exists if a company takes title to a product before that product is ordered by a customer (that is, maintains the product in inventory) or will take title to the product if it is returned by the customer (that is, back-end inventory risk) and the customer has a right of return. Evaluation of this indicator should include arrangements between a company and a supplier that reduce or mitigate the company's risk level. For example, a company's risk may be reduced significantly or essentially eliminated if the company has the right to return unsold products to the supplier or receives inventory price protection from the supplier. A similar and equally strong indicator of gross reporting exists if a customer arrangement involves services and the company is obligated to compensate the individual service provider(s) for work performed regardless of whether the customer accepts that work.
  3. The company has latitude in establishing price — If a company has reasonable latitude, within economic constraints, to establish the exchange price with a customer for the product or service, that fact may indicate that the company has risks and rewards of a principal in the transaction and that it should record revenue gross based on the

amount billed to the customer.

4. The company changes the product or performs part of the service — If a company physically changes the product (beyond its packaging) or performs part of the service ordered by a customer, that fact may indicate that the company is primarily responsible for fulfillment, including the ultimate acceptability of the product component or portion of the total services furnished by the supplier, and that it should record revenue gross based on the amount billed to the customer. This indicator is evaluated from the perspective of the product or service itself such that the selling price of that product or service is greater as a result of a company's physical change of the product or performance of the service and is not evaluated based on other company attributes such as marketing skills, market coverage, distribution system, or reputation.
5. The company has discretion in supplier selection — If a company has multiple suppliers for a product or service ordered by a customer and discretion to select the supplier that will provide the product(s) or service(s) ordered by a customer, that fact may indicate that the company is primarily responsible for fulfillment and that it should record revenue gross based on the amount billed to the customer.
6. The company is involved in the determination of product or service specifications — If a company must determine the nature, type, characteristics, or specifications of the product(s) or service(s) ordered by the customer, that fact may indicate that the company is primarily responsible for fulfillment and that it should record revenue gross based on the amount billed to a customer.
7. The company has physical loss inventory risk (after customer order or during shipping) — Physical loss inventory risk exists if title to the product is transferred to a company at the shipping point (for example, the supplier's facilities) and is transferred from that company to the customer upon delivery. Physical loss inventory risk also exists if a company takes title to the product after a customer order has been received but before the product has been transferred to a carrier for shipment. This indicator may provide some evidence, albeit less persuasive than general inventory risk, that a company should record revenue gross based on the amount billed to the customer.
8. The company has credit risk — If a company assumes credit risk for the amount billed to the customer, that fact may provide weaker evidence that the company has risks and rewards as a principal in the transaction and, therefore, that it should record revenue gross for that amount. Credit risk exists if a company is responsible for collecting the sales price from a customer but must pay the amount owed to a supplier after the supplier performs, regardless of whether the sales price is fully collected. A requirement that a company return or refund only the net amount it earned in the transaction if the transaction is cancelled or reversed is not evidence of credit risk for the gross transaction. Credit risk is not present if a company fully collects the sales price prior to the delivery of the product or service to the customer (in other words, before the company incurs an obligation to the supplier). Credit risk is mitigated, for example, if a customer pays by credit card and a company obtains authorization for the charge in advance of product shipment or service performance. Credit risk that has been substantially mitigated is not an indicator of gross reporting.

- B. Indicators of Net Revenue Reporting -** If any of the following indicators is apparent in transactions entered into by your operating unit you must discuss this situation with the Corporate Controller as it may be necessary to report revenue on a net basis.
1. The supplier (not the company) is the primary obligor in the arrangement — Whether a supplier or a company is responsible for providing the product or service desired by a customer is a strong indicator of the company's role in the transaction. If a supplier (and not the company) is responsible for fulfillment, including the acceptability of the product(s) or service(s) ordered or purchased by a customer, that fact may indicate that the company does not have risks and rewards as principal in the transaction and that it should record revenue net based on the amount retained (that is, the amount billed to the customer less the amount paid to a supplier). Representations (written or otherwise) made by a company during marketing and the terms of the sales contract generally will provide evidence as to a customer's understanding of whether the company or the supplier is responsible for fulfilling the ordered product or service.
  2. The amount the company earns is fixed — If a company earns a fixed dollar amount per customer transaction regardless of the amount billed to a customer or if it earns a stated percentage of the amount billed to a customer, that fact may indicate that the company is an agent of the supplier and should record revenue net based on the amount retained.
  3. The supplier (and not the company) has credit risk — If credit risk exists (that is, the sales price has not been fully collected prior to delivering the product or service) but that credit risk is assumed by a supplier, that fact may indicate that the company is an agent of the supplier and, therefore, the company should record revenue net based on the amount retained.

**IV. Independent Sales Representatives – Direct Selling Operations –** In the Corporation's Direct Selling business, independent sales representatives purchase product from the Corporation and resell those products to consumers. The transaction in which the independent sales representative receives product he or she ordered from the Corporation will result in revenue if:

- A. All of the four general criteria for the recognition of revenue set out in Section I of this policy are met in the transaction. These criteria are – persuasive evidence of an arrangement exists; delivery has occurred or services have been rendered; there is a fixed and determinable sales price and collection is reasonably assured. If any of these four criteria are not met, revenue cannot be recognized.
- B. The sales representative is truly independent of the corporation and is not considered an employee. Determining whether an individual is an employee of the organization is a legal distinction. If under local law it is concluded that the sales representative is an employee, transfers of product from the Corporation to the representative are essentially consignments of inventory.

When revenue is recognized as a result of the sale of product to an independent sales representative, the independent sales representative is a customer, and all sales incentives provided to that customer must be evaluated under the same guidelines as sales to other resellers of our

product. For example, if an independent sales representative is given a cash incentive based on the sales volume of other personnel they have recruited to become independent sales representatives than such incentives need to be evaluated under the provisions of Policy 392. Under U.S. accounting standards, such incentives need to be classified as deductions from sales.

- V. **Recognition of Estimated Product Returns** - If a buyer is given the right to return product and those return rights do not violate any of the revenue recognition criteria noted above, it is necessary to estimate and recognize the impact of those returns when the sale is recorded. The full amount of the revenue loss must be reflected as a reduction of revenues (line 2.1 of form EO 200) with cost of sales being reduced by the value of the merchandise to be returned. That value of the merchandise should equal the original carrying amount of the goods less any anticipated repackaging or other costs to put the merchandise in salable condition. Any adjustments necessary to recognize a lack of recoverability of the inventory should also be recognized at this time. Please see section I E. of Finance Policy 221 for the Corporation's policy in this area, as returned merchandise may have lower or cost or market valuation issues.

Exchanges by customers of one item for another of the same kind, quality, and price (for example, one color or size for another) are not considered returns for purposes of this policy.

- VI. **Accounting for Shipping and Handling Fees** - For purposes of this policy "shipping" is understood to be those costs that are incurred to physically move the product from the seller's place of business to the buyer's designated location. Shipping costs generally comprise payments to third party shippers but may also be costs incurred directly by the seller. "Handling" is understood to be those costs incurred to store, move, and prepare the products for shipment. Generally, handling costs are incurred from the point the product is removed from finished goods inventory to the point the product is provided to the shipper and often include an allocation of internal overhead.
- A. All amounts billed to a customer in a sale transaction related to shipping and handling, if any, represent revenues earned for the goods provided and should be classified as revenue.
- B. In order to achieve consistency in the manner in which shipping and handling costs are recognized in the income statement, all shipping and handling costs are to be recognized on line 11.02 (Distribution Expense - Shipping and Handling) of the EO-200 income statement. Line 11.02 may only be used to capture shipping and handling costs as defined above and this line may not be used to capture other costs. The Corporation is required to externally report shipping and handling costs and it is therefore necessary to separately capture this data.

VII. **Authority and Responsibility**

- A. It is the responsibility of the Chief Financial Officer of each division or subsidiary to establish procedures to insure that revenue is recognized in accordance with the provisions of this policy.

These procedures must insure that sufficient supporting documentation exists to justify the revenue recognition decision. In addition, it is important that appropriate judgments are applied in the evaluation of sales arrangements - particularly those that differ from prior arrangements or involve new products.

- B. On a quarterly basis the CFO and CEO of each operating unit submitting financial statements to Chicago must sign a representation (see Policy 101) which indicates that revenue has been recognized in accordance with the provisions of this policy. Any exceptions identified in the Course of this process must be reported to the Corporate Controller.

Exhibit A

Exhibit B

<b>Revenue Recognition</b>
<b>Policy Number: 390</b>
<b>Exhibit Name: Exhibit A - 390 - Recognition of FOB Destination Sales</b>

**Examples of How to Adjust for FOB Destination Sales**

**Assumptions**

	<u>Total Sales (1)</u>	<u>Product Not Reaching Customer at End of Period</u>		
<b>Quarter One</b>				
Units Shipped	5,000	120		
Unit Selling Price	10	10		
Unit Cost	7	7		
<b>Quarter Two</b>				
Units Shipped	6,000	150		
Unit Selling Price	10	10		
Unit Cost	7	7		
	<u>Quarter One</u>		<u>Quarter Two</u>	
	<u>DR</u>	<u>CR</u>	<u>DR</u>	<u>CR</u>
<b>Entries Made Through System</b>				
Accounts Receivable	50,000		60,000	
Sales		50,000		60,000
Cost of Sales	35,000		42,000	
Inventory		35,000		42,000

**Top Level Journal Entries**

**Reverse Prior Quarter Entry**

Accounts Receivable	1,200	
Sales		1,200
Cost of Sales	840	

Inventory				840
<b>Product Not Reaching</b>				
<b>Customer in current quarter</b>				
Sales	1,200		1,500	
Accounts Receivable		1,200		1,500
Inventory	840		1,050	
Cost of Sales		840		1,050

(1) Total Sales includes those FOB customer sales that have yet to reach the customer.



**Accounting for Discounts, Coupons, Rebates and Similar Sales Incentives****Policy Number:** 391**Applicable to:** All Divisions & Subsidiaries**Category:** Accounting and Controls: Income and Equity**Latest Update:** January 1, 2003**Supersedes:** July 1, 2002

- I. **Scope** - This Policy addresses the recognition, measurement, and income statement classification for sales incentives offered voluntarily by a vendor without charge to customers that can be used in, or that are exercisable by a customer as a result of, a single exchange transaction. Sales incentives within the scope of this Issue include offers that can be used by a customer to receive a reduction in the price of a product or service at the point of sale. This Policy also addresses vendor offers that entitle a customer to receive a reduction in the price of a product or service by submitting a form or claim for a refund or rebate of a specified amount of the purchase price charged to the customer at the point of sale. This Policy also covers offers by a vendor for a free product or service when the customer purchases another specified item if the vendor will deliver that free product or service to the customer at the point of sale of the specified item. This Policy also addresses sales incentives offered by manufacturers to customers of retailers or other distributors. Listed below are some common examples of incentives that are within the scope of this policy.
1. "In-Ad Coupons" (coupons printed by the retailer for exclusive use in their stores) - Coupons that are obtained by a consumer without entering into an exchange transaction and are only exercisable at a particular retailer where the vendor (i.e an SLC operating unit) reimburses the retailer for redeemed coupons.
  2. "Free Standing Inserts" - Vendor coupons that are obtained by a consumer without entering into an exchange transaction and that can be used in a future single exchange transaction at any participating retailer who in turn will be reimbursed by the vendor for the coupon amount.
  3. Instant Redemption "On Pack Coupons" - A coupon that is attached to a particular product and is exercisable by a consumer at the point of purchase of that product from the retailer who in turn will be reimbursed by the vendor for the coupon amount.
  4. "Mail in Cash Rebates" that are exercisable by the customer through the vendor as a result of a single exchange.
  5. "Buy-One-Get-One-Free" at the point of sale for the initial exchange transaction.
  6. "Floor Stock/Price Protection" - Vendor discount provided to customers in instances where a wholesale price increase has gone into effect. The Vendor provides the customer with a reduced price

that does not require the performance of merchandising activities.

This policy **does not cover** the following:

- Vendor offers for free or significantly discounted products or services that become exercisable by the customer as a result of a single exchange transaction but **will be delivered by the vendor at a future date.**
- The accounting for offers of free or discounted products or services that are exercisable after a customer has transacted a specified level of purchases, for example, "point" and loyalty programs. See Finance Policy 392.
- The accounting for consideration paid to a reseller of our products such as slotting fees, cooperative advertising, buydown programs and similar arrangements. See Finance Policy 393.

**II. Definitions** - The definition of certain terms used in this policy follow.

**Breakage** — Breakage refers to the portion or percentage of customers eligible to qualify for an offer that ultimately will not earn and/or claim an incentive award or consideration (such as rebates or refunds) from a vendor.

**Consideration** — For purposes of this policy, consideration may take a variety of different forms including cash payments by a vendor to a customer, "credits" that the customer can apply against trade amounts owed to the vendor, and "free" products or services given to the customer by the vendor. Consideration may be referred to by terms such as sales incentives, discounts, coupons, rebates, price reductions, and so forth.

For purposes of this policy the term "cash consideration" includes credits that the customer can apply against trade amounts owed to the vendor.

**Customer** — A reseller or a consumer (either an individual or a business that purchases a vendor's products or services for end use rather than for resale). For purposes of this policy, customer includes any purchaser of the vendor's products at any point along the distribution chain, regardless of whether the purchaser acquires the vendor's products directly or indirectly (for example, from a distributor) from the vendor. For example, a vendor may sell its products to a distributor who in turn resells the products to a retailer. The retailer in that example is a customer of the vendor as that term is used in this Issue.

**Reseller** — Any entity that purchases another vendor's products for resale, regardless of whether that entity is a distributor or wholesaler, a retailer, or other type of reseller.

**Vendor** — For purposes of this policy, the term vendor is used to represent a Sara Lee operating unit or subsidiary which sells product or services.

**III. Income Statement Recognition - Timing and Measurement**

- A. A vendor should recognize the "cost" of sales incentives within the

scope of this section of the policy at **the later** of the following:

1. The date at which the related revenue is recorded by the vendor
  2. The date at which the sales incentive is offered (which would be the case when the sales incentive offer is made after the vendor has recognized revenue; for example, when a manufacturer issues coupons offering discounts on a product that it already has sold to retailers).
- B. Certain sales incentives entitle a customer to receive a reduction in the price of a product or service by submitting a form or claim for a refund or rebate of a specified amount of a prior purchase price charged to the customer at the point of sale (for example, mail-in rebates and certain manufacturer coupons). Under this policy, a vendor should recognize a liability for those sales incentives at the later of (1) or (2), above, based on the estimated amount of refunds or rebates that will be claimed by customers. However, if the amount of future rebates or refunds cannot be reasonably and reliably estimated, a liability should be recognized for the maximum potential amount of the refund or rebate (that is, no reduction for **breakage** should be made). The ability to make a reasonable and reliable estimate of the amount of future rebates or refunds depends on many factors and circumstances that will vary from case to case. Given the Corporation's experience with the issuance of these types of offers it should generally be possible to reasonably and reliably estimate future rebates or refunds. However, this area requires judgement based upon the facts and circumstances of each situation. The following factors may impair a vendor's ability to make a reasonable and reliable estimate:
1. Relatively long periods in which a particular rebate or refund may be claimed.
  2. The absence of historical experience with similar types of sales incentive programs with similar products or the inability to apply such experience because of changing circumstances
  3. The absence of a large volume of relatively homogeneous transactions.
- C. These guidelines apply to the preparation of quarterly as well as full year financial statements. If the recognition of a sales incentive is triggered by the recognition of revenue both items must be reflected in the financial statements in the same period. If the offering date of the incentive triggers its recognition, the monthly financial statements in which the offer is made must reflect the incentives cost.

**IV. Income Statement Classification** - The income statement classification issue primarily deals with whether the consideration issued in a customer sales incentive is (a) an adjustment of the selling price of the vendor's products and therefore characterized as a reduction of revenue when recognized in the vendor's income statement. or (b) a cost incurred by the vendor for assets or services received from the customer and therefore characterized as a cost or

expense when recognized in the vendor's income statement.

- A. **Cash consideration** given by a vendor to a customer is presumed to be a reduction of the selling prices of the vendor's products or services and, therefore, should be characterized as a reduction of revenue when recognized in the vendor's income statement. These reductions in revenue are to be recognized on line 2.3 (Consumer Promotional Incentives) of the Form EO 200 income statement. For purposes of this policy section, cash consideration includes "credits" that the customer can apply against trade amounts owed to the vendor.

This general presumption is overcome and the consideration should be characterized as a selling expense if, and to the extent that, **both** of the following conditions are met:

1. The vendor receives, or will receive, an identifiable benefit (goods or services) in exchange for the consideration. In order to meet this condition, the identified benefit must be sufficiently separable from the recipient's purchase of the vendor's products such that the vendor could have entered into an exchange transaction with a party other than a purchaser of its products or services in order to receive that benefit.
2. The vendor can reasonably estimate the fair value of the benefit identified under condition (1). If the amount of consideration paid by the vendor exceeds the estimated fair value of the benefit received, that excess amount should be characterized as a reduction of revenue when recognized in the vendor's income statement.

For incentives within the scope of this policy it is highly unlikely that the conditions set out in (1) and (2) above can be met and as such cash consideration will typically be treated as a reduction of revenue when recognized in the income statement. For cash sales incentives, covered by this policy, the advance approval of the Corporate Controller is required if these amounts are not to be treated as a reduction of revenue.

- B. If the sales incentive is a **free product** or service delivered at the time of sale the cost of the free product or service should be classified as Cost of Sales (line 8.1 of Form EO 200) in the income statement. That is, the free item is an element in the exchange transaction and not a refund or rebate of a portion of the amount charged to the customer.

- V. **Authority and Responsibility** - The chief financial officer of each operating unit is responsible for:
- A. Establishing the procedures to insure that incentive programs within the scope of this policy are recognized and reported in accordance with the provisions of this policy. These procedures must insure that sufficient supporting documentation exists to justify the accounting judgment made.
  - B. Periodically evaluating the balance sheet liabilities resulting from

incentives covered by this policy. These liabilities must be supported by detailed computations and relevant historical data on similar incentive programs.

- VI. Exhibit A to this document sets out some questions and answers regarding the application of this policy. This exhibit should be reviewed as part of this policy.

Exhibit A

**Accounting for Volume or Time Based Sales Incentive Offers****Policy Number:** 392**Applicable to:** All Divisions & Subsidiaries**Category:** Accounting and Controls: Income and Equity**Latest Update:** January 1, 2004**Supersedes:** July 1, 2002

- I. **Scope** - This policy defines and communicates the Corporation's general guidelines for the recognition of the following types of volume or time based sales incentives:
  - A. An offer by a vendor to a customer to rebate or refund a **specified amount of cash** that is redeemable only if the customer completes a specified cumulative level of revenue transactions or remains a customer for a specified time period.
  - B. An offer by a vendor to a customer, in connection with a current revenue transaction, **for free or discounted products or services delivered by the vendor** that is redeemable (becomes earned) only if the customer completes a specified cumulative level of revenue transactions or remains a customer for a specified time period.
  - C. An offer by a vendor to a customer, in connection with a current revenue transaction, **for free or discounted products or services delivered by an unrelated entity (program operator)** under an arrangement between the program operator and the vendor that is redeemable only if the customer completes a specified cumulative level of revenue transactions or remains a customer for a specified time period.
- II. **Definitions** - The definition of certain terms used in this policy follow:
  - Breakage** — Breakage refers to the portion or percentage of customers eligible to qualify for an offer that ultimately will not earn and/or claim an incentive award or consideration (such as rebates or refunds) from a vendor.
  - Customer** — A reseller or a consumer (either an individual or a business that purchases a vendor's products or services for end use rather than for resale). For purposes of this policy, customer includes any purchaser of the vendor's products at any point along the distribution chain, regardless of whether the purchaser acquires the vendor's products directly or indirectly (for example, from a distributor) from the vendor. For example, a vendor may sell its products to a distributor who in turn resells the products to a retailer. The retailer in that example is a customer of the vendor as that term is used in this Issue.
  - Reseller** — Any entity that purchases another vendor's products for resale, regardless of whether that entity is a distributor or wholesaler, a retailer, or other type of reseller.

**Vendor** — For purposes of this policy, the term vendor is used to represent a Sara Lee operating unit or subsidiary which sells product or services

**III. Cash Consideration in Volume or Time Based Incentive Programs**

- This section of the policy covers situations in which a vendor offers a customer a rebate or refund of a specified amount of cash consideration that is redeemable only if the customer completes a specified cumulative level of revenue transactions or remains a customer for a specified time period. For purposes of this policy section, cash consideration includes "credits" that the customer can apply against trade amounts owed to the vendor. Incentive programs of this nature are frequently requested by / offered to foodservice distributors who purchase large volumes of food or beverage products manufactured by the Corporation. The following policies apply to this type of incentive:

**A. Measurement of Incentive and Timing of Recognition -**

1. Each of the underlying revenue transactions that result in progress by the customer toward earning the rebate or refund should be allocated a portion of the estimated total cash rebate or refund. Measurement of the total cash rebate or refund obligation should be based on the estimated amounts that will ultimately be earned and claimed (i.e. rebates or refunds) under the offer. Breakage must be considered if it can be reasonably estimated. However, if the amount of future cash rebates or refunds cannot be reasonably estimated, a liability should be recognized for the maximum potential amount of the refund or rebate (that is, no reduction for "breakage" should be made). The ability to make a reasonable estimate of the amount of future cash rebates or refunds depends on many factors and circumstances that will vary from case to case. However, the following factors may impair a vendor's ability to make a reasonable estimate:
  - a. Relatively long periods in which a particular rebate or refund may be claimed
  - b. The absence of historical experience with similar types of sales incentive programs with similar products or the inability to apply such experience because of changing circumstances
  - c. The absence of a large volume of relatively homogeneous transactions.

In many cases, the relative size of the cash rebate or refund changes based on the volume of purchases. For example, the rebate may be 10 percent of total consideration if more than 100 units are purchased but may increase to 20 percent if more than 200 units are purchased. If the volume of a customer's future purchases cannot be reasonably estimated, the maximum potential cash rebate or refund factor should be used to record a liability (20 percent in the example). In contrast, if the volume

of a customer's future purchases can be reasonably estimated, the estimated amount of cash to be rebated or refunded should be recognized as a liability.

Given the Corporation's experience with rebate / refund programs it should generally be possible to make a reasonable estimate of breakage; however, this should not be automatically assumed in all situations. As with all accounting judgments it is important to document the reasons for conclusions with supporting facts.

2. Changes in the estimated amount of cash rebates or refunds and retroactive changes by a vendor to a previous offer (an increase or a decrease in the rebate amount that is applied retroactively) should be recognized using a cumulative catch-up adjustment. That is, the vendor would adjust the balance of its rebate obligation to the revised estimate immediately. The vendor would then measure the rebate on future sales based on the revised refund obligation rate as computed.
3. Incentive programs within the scope of this section of the policy sometimes require the vendor to make cash deposits to the customer. The customer earns the funds deposited with them by purchasing product covered by the volume based sales incentive program. The amounts deposited are refundable by the customer if a sufficient sales incentive is not earned during the incentive program. Alternatively if the amounts earned under the incentive plan exceed the deposit an additional cash payment is remitted to the customer. In programs of this nature it is important to distinguish between the cash payment resulting from a refundable deposit and the amounts earned under an incentive plan. Cash expenditures made under a refundable deposit, directly related to this type of incentive program, should be recognized as a deposit on the balance sheet. As amounts are earned under the volume based incentive program, revenue should be reduced and the deposit should also be reduced.

In determining whether a cash payment should be recognized as a deposit, the operating unit's history in enforcing such agreements needs to be considered along with the written terms. While the terms of an agreement may indicate that a cash payment is refundable in the event a specific volume threshold is not achieved, if the operating unit exhibits a pattern of not enforcing these refund provisions, the cash payment is not really tied to volume targets and should be expensed when made. The facts and circumstances of each situation need to be carefully evaluated; however, the company's actions along with the terms of the agreement need to be considered jointly. If the operating unit does not actively enforce substantially all refund provisions, an overall conclusion is that all similar cash payments should be recognized as a deduction from revenue when made. They are essentially slotting fees.



4. These guidelines apply to the preparation of quarterly as well as full year financial statements. Since the recognition of the sales incentive is triggered by the recognition of revenue both items must be reflected in the financial statements in the same period. Amounts owed under incentive programs within the scope of this policy section must be reasonably estimated and reflected in the financial statements at the close of each quarter.
- B. Where to Classify on the Income Statement** - If a vendor offers a customer a rebate or refund of a specified amount of cash consideration that is redeemable only if the customer completes a specified cumulative level of revenue transactions or remains a customer for a specified time period, the vendor should recognize amounts earned by the customer as a reduction in revenue on line 2.4 (Volume Based Incentives) of form EO 200.
- C. Examples of the Application of this section of the Policy** - The following examples illustrate the calculation of the financial statement impacts of using cash consideration in volume based incentive programs. The examples are not necessarily intended to illustrate the only approach to formulating the estimate of the cash rebate obligation, nor do the examples consider whether the company in the example can reasonably estimate the amount of rebates.
- **Example 1** - Company A, with a fiscal year ending June 30, offers a 10 percent rebate to all customers who purchase at least 500 units during any fiscal year (this 10 percent rebate is retroactive in that it applies to the sale of units 1 through 499 after the 500-unit level has been reached and to all units sold thereafter). Each unit's list price is \$100. Company A estimates that 650 of its 2,000 customers will purchase the number of units necessary to earn the volume rebate ("high volume" customers).  
Based on that estimate, Company A records \$90 of each unit sale to a customer in the group of 650 high volume customers as revenue and \$10 as a rebate obligation. For sales to its customers that are not expected to earn the rebate, Company A records \$100 of each unit sale as revenue and does not recognize any amount as a liability under the rebate offer.  
On March 31, Company A's data indicate that a higher proportion of customers are now expected to earn the rebate than previously estimated. Company A now estimates that 850 customers will earn the rebate. Assume that as of March 31, 400,000 units have been sold to the group of customers that Company A originally estimated would earn the rebate and 80,000 units have been sold to the group of customers that Company A originally estimated would not earn the rebate but now are expected to purchase the required 500 units necessary to earn the rebate. To account for this change in estimate, as of March 31, Company A increases its refund

obligation and reduces revenue by \$800,000 (80,000 units × \$10).

As of March 31, Company A records the following journal entry:

Revenues	\$800,000	
	Rebate Obligation	\$800,000

After the adjustment, Company A continues to record \$90 of each unit sale to customers in the group of 850 high volume customers as revenue and \$10 as a rebate obligation. For sales to its customers not expected to earn the rebate, Company A records \$100 of each unit sale as revenue and does not recognize any amount as a liability under the rebate offer.

- **Example 2** - Operating Unit A agrees to pay Foodservice Customer Z \$600,000 at the inception of a three-year contract. In return the Customer Z agrees to purchase 850,000 lbs of product annually split among specified types of items. If the customer's purchases fall short of the contract commitment, they are obligated to repay Operating Unit A a pro-rata portion of the lump-sum payment.

Because the \$600,000 payment is refundable the initial entry by Operating Unit A would be to debit a customer advance account and credit cash. The debit side of the entry would be split between the current and non-current components based upon when management believes the advance will be earned by Customer Z. This payment is simply an advance on the cash which may be earned under a program tied to sales volume. The fact that the payment is refundable and tied to the volume commitment is important to this answer. The forgiveness of the cash advance would be recognized using a systematic and rational allocation of the cost to the each of the underlying transactions that results in progress toward the target. One method would be to debit revenue and credit the customer advance account \$.7059 (\$600,000 / 850,000 lbs) for each pound of product sold to Customer Z.

Whether the target is structured as an absolute amount or a volume growth percentage the underlying accounting is the same - the P/L impact as you sell units of product to the customer. How the customer agrees to spend the cash it receives in the transaction will not impact the accounting as long as the cash is not coming back to us.

- **Example 3** - Operating Unit A agrees to pay a customer in three installments early in the fiscal year for the total amount of cash rebates expected to be earned during that fiscal year. The actual cash consideration the customer earns through the rebate program is calculated monthly, based on the actual sales and is offset against the pre payment. At year end, the

actual cash consideration earned is finalized. Any additional rebate income owed by Company A to the customer is then paid. Conversely the customer is **required to refund** any portion of the up-front rebate income not actually earned.

The refundable cash advances made early in the year by Company A would be recognized as a debit to a customer advance account and a credit to cash. This would be a current asset. Because Company A receives the funds back to the extent that sales are not generated, Company A has simply made an advance to the customer. Company A recognizes the cost of the incentive at the **later** of the following 1) the date at which the related revenue is recognized 2) the date at which the sales incentive is offered. In this situation Company A would recognize the cost of the incentive when the product is sold. Company A would debit revenue and credit the customer advance for the agreed upon per unit amount. Once the customer advance account is reduced to zero Company A would put the credit side of the entry to a liability.

- IV. Free or Discounted Products or Service in Volume or Time Based Sales Incentive Programs** - This section of the policy covers how a vendor should account for an offer to a customer, in connection with a current revenue transaction, for free or discounted products or services deliverable by the vendor that is redeemable (becomes earned) only if the customer completes a specified cumulative level of revenue transactions or remains a customer for a specified time period. Loyalty programs are a fairly common example of an incentive which fit the scope of this section of the policy.

Loyalty programs typically are structured so that a specified volume of transactions over a specified period of time, is required in order for a customer or program member to earn sufficient award credits to redeem an award. Each time a customer or program member purchases a product or service, or performs an action specified as a requirement of the loyalty program, he or she earns award credits that, subject to specified minimum thresholds, may be redeemed in the future for awards such as free or deeply discounted, products or services.

**A. Measurement of Incentive and Timing of Recognition -**

1. Each of the underlying revenue transactions that result in progress by the customer toward earning the products or services should be allocated a portion of the estimated total award. Measurement of the total award (the cost of the products or services) should be based on the estimated amounts that will ultimately be earned and claimed under the offer. Breakage must be considered if it can be reasonably estimated. However, if the amount of the award cannot be reasonably estimated, a liability should be recognized for the maximum potential amount of the award (that is, no reduction for "breakage")

should be made). The ability to make a reasonable estimate of the free product or services depends on many factors and circumstances that will vary from case to case. See section III A of this policy for a listing of factors impacting the ability to reasonably estimate future awards of free product or services.

2. Changes in the estimated amount of the awards and retroactive changes by a vendor to a previous offer (an increase or a decrease in the value of the award that is applied retroactively) should be recognized using a cumulative catch-up adjustment. That is, the vendor would adjust the balance of its obligation to the revised estimate immediately. The vendor would then reduce revenue on future sales based on the revised refund obligation rate as computed.
3. These guidelines apply to the preparation of quarterly as well as full year financial statements. Since the recognition of the sales incentive is triggered by the recognition of revenue both items must be reflected in the financial statements in the same period. Amounts owed under incentive programs within the scope of this policy section must be reasonably estimated and reflected in the financial statements at the close of each quarter.

**B. Where to Classify on the Income Statement** - If a vendor offers a customer free or discounted goods or services that are redeemable only if the customer completes a specified cumulative level of revenue transactions or remains a customer for a specified time period, the vendor should recognize amounts earned by the customer as a reduction in revenue line 2.4 of form EO 200 with an offsetting rebate obligation. As the rebate obligation is reduced as the free product or service is distributed to the customer.

**V. Incentive Programs Involving Free Products or Services to be delivered by an Unrelated Party (Program Operator)** - Incentive programs involving free products or services under volume or time based incentive programs are sometimes administered by third parties or program operators. These program operators can perform some or all of the services performed by the vendor responsible for sponsoring the incentive program. Typically the program operator is responsible for determining whether a customer has achieved the targets specified by the incentive program and for distributing the promised product or service. The vendor reimburses the program operator for the services they provide.

The measurement, recognition and display of volume or time based sales incentive programs administered by a program operator should follow the same guidelines set out in sections III and IV of this policy. If the agreement with the program operator specifies some minimum or maximum obligation for the service being provided these amounts need to be considered in the measurement of the incentive.

**VI. Control over Volume and Time Based Incentive Programs** – In many situations, the incentives offered under volume and time based

programs are significant, and the judgments involved in estimating the amounts earned each period are complex. These same factors apply to the customers receiving these incentives, and as a result, all aspects of these programs need to be closely monitored and controlled. The following guidelines must be followed:

- A. Agreements must be in writing, and they need to clearly document how the incentive will be measured, the nature of the consideration to be paid, the timing of the payments and each party's rights under the agreement. If a deposit is involved, the documentation should indicate the circumstances under which the amount is refundable.
- B. The operating units' policies must clearly define and communicate who in the organization has responsibility for approving and modifying these types of arrangements. Approval responsibilities should be segregated from individuals who have direct contact with the customer. It is critical that all individuals in the organization understand their authority in this area and strictly observe the local policy.
- C. Where standard programs are offered, the CFO should review the terms of these agreements before they are put in place. Arrangements, which vary from the standard format, must be separately reviewed by the CFO in advance. An outcome of these reviews must be a determination as to how these arrangements should be accounted for and recognized in the financial statements. Defined policies must be in place to identify and account for all such arrangements in accordance with the provisions of this policy.
- D. The corporation's general policy (Policy 101) is to not respond to customer requests to confirm receivable balances or the terms of a customer agreement. In order to satisfy the requirements of auditors, customers may request that we respond to audit confirmations and override this general policy. The decision to respond to a customer request in this area can be made at the operating unit level, but only with the approval of the Chief Financial Officer of the reporting unit. If the CFO concludes that the reporting unit will respond to a confirmation request, the response must be completed by an individual in the finance area who is independent of the customer relationship. Under no circumstances may an employee who does not meet these criteria respond to a confirmation request. Confirmations should respond only to known facts (e.g., outstanding invoices) and under no circumstances should judgmental matters be discussed.  
  
Customer requests to provide written information or interpretative guidance on an existing arrangement should be handled in the same manner as a confirmation request.
- E. Among other things, Finance Policy 101 requires that the CFO of each operating unit meet with the CEO and review the judgments and decisions made regarding the sales incentive accruals. If the operating unit is a party to significant volume or time based

incentive programs, these amounts should be specifically discussed.

**VII. Authority and Responsibility** - It is the responsibility of the Chief Financial Officer of each division or subsidiary to:

- A. Establish procedures and controls to insure that sales incentives, within the scope of this policy, are measured, recognized and reported in accordance with the provisions of this policy. These procedures must insure that sufficient supporting documentation exists to justify the accounting judgments made.
- B. Periodically evaluate the balance sheet liabilities resulting from incentives covered by this policy. These liabilities must be supported by detailed computations and relevant historical data on similar incentive programs.

**Accounting for Consideration Paid to a Reseller of Our Products****Policy Number:** 393**Applicable to:** All Divisions & Subsidiaries**Category:** Accounting and Controls: Income and Equity**Latest Update:** January 1, 2003**Supersedes:** July 1, 2002

- I. **Scope** - This policy communicates the Corporation's accounting policies regarding the recognition, and income statement classification of several common forms of consideration paid to reseller's of the Corporation's products. Examples of arrangements within the scope of this policy include, but are not limited to, arrangements such as slotting fees, cooperative advertising programs, and buydowns.

This policy does not address

- A. Offers in the form of price reductions, coupons, rebates or "free" products or services by a vendor to end consumers - see Finance Policy 391.
- B. Offers to a customer to rebate or refund a specified amount of consideration that is redeemable only if the customer completes a specified cumulative level of revenue transactions or remains a customer for a specified period of time - see Finance Policy 392.

- II. **Definitions** - The definition of certain terms used in this policy follow:

**Buydowns** - A vendor agrees to reimburse a reseller or retailer up to a specified amount for shortfalls in the sales price received by the retailer for the vendor's products over a specified period of time. Buydown programs generally involve a vendor agreeing to reimburse, compensate, or issue credit memos to a reseller or retailer for the retailer's decreased revenue per unit for specific products during a specified promotion period. In contrast to cooperative advertising, buydown programs generally require no expenditures by the retailer for advertising or promotion. Other related forms of vendor consideration to a retailer include, but are not limited to, shortfalls, factory incentives, dealer holdbacks, price protection, and factory-to-dealer incentives.

**Consideration** — For purposes of this policy, consideration may take a variety of different forms including cash payments by a vendor to a customer, "credits" that the customer can apply against trade amounts owed to the vendor, equity instruments of the vendor (regardless of whether a measurement date has been reached) and "free" products or services given to the customer by the vendor. Consideration may be referred to by terms such as sales incentives, discounts, coupons, rebates, price reductions, and so forth.

For purposes of this policy the term "cash consideration" includes credits that the customer can apply against trade amounts owed to the vendor.

**Cooperative advertising** — A vendor agrees to reimburse a reseller for a portion of the advertising costs incurred by the reseller. Cooperative advertising programs generally provide that a vendor will participate in the cost of a reseller's advertising. The amount reimbursed to the reseller typically is limited to a specified percentage of that reseller's purchases from the vendor. The program may or may not require the reseller to provide documentation of the actual costs incurred to advertise the vendor's products.

**Reseller** — Any entity that purchases another vendor's products for resale, regardless of whether that entity is a distributor or wholesaler, a retailer, or other type of reseller.

**Slotting fees** — Consideration from a vendor to a reseller to "obtain space" for the vendor's products on the reseller's store shelves, whether those shelves are physical (that is, in an actual building in which the store is located) or virtual (that is, they represent space in an Internet reseller's on-line catalog). The term slotting fees also includes vendor consideration for other types of product placement arrangements between a vendor and a reseller such as brand development or new product introduction arrangements. Brand development fees and new product introduction fees involve consideration from a vendor to a reseller for that reseller to display the vendor's products in a number of ways—for example, favorable in-store positioning, end-cap placement (placement at the end of an aisle), or additional shelf space. Those arrangements are the same as slotting arrangements in that the vendor incurs a fee with the reseller in return for the reseller displaying or offering that vendor's products in the store. Slotting fees may be incurred by a vendor (1) before the vendor sells any of the related products to the reseller, (2) on a regular schedule (for example, monthly) to maintain shelf space allocation or to be a continuing vendor of the reseller, or (3) periodically as negotiated (for example, each payment is separately negotiated and is not based on a schedule). In return for those fees, the vendor may or may not receive stated rights, such as the display of the vendor's products on a specified amount of linear shelf space for a specified period of time or in a specified physical location within the reseller's store.

**Vendor** — For purposes of this policy, the term vendor is used to represent a Sara Lee operating unit or subsidiary which sells product or services.

### III. Timing of Financial Statement Recognition -

#### A. Slotting Fees

1. A slotting fee arrangement is to be recognized in the financial statements at the earlier of the date on which a liability to the reseller arises or the date on which a cash payment is made to a reseller.

Liabilities are probable future sacrifices of economic benefits arising from **present obligations** of an entity to transfer assets to other entities in the future **as a result of past transactions or events**. At times, slotting arrangements specify a series of



future cash payments and it is important to keep the following points in mind in determining whether a slotting arrangement creates a liability for the Corporation:

- a. The first issue which needs to be concluded on is whether a legal liability is created as a result of entering into a verbal or written slotting arrangement. If legal counsel advises you that a legal liability is created as a result of entering into a slotting arrangement, a balance sheet liability must be recognized. It is the responsibility of each CFO to consult with counsel and determine if a slotting arrangement constitutes a legal liability. Judgment needs to be applied in determining if a particular slotting arrangement needs to be separately reviewed by counsel or if its terms are similar to an arrangement already concluded on. Supporting documentation of the conclusions reached in such reviews should be maintained.
- b. If the agreement is not legally enforceable, we also need to consider whether an equitable or constructive obligation is created under the arrangement - these obligations also create liabilities to be recognized on the balance sheet. There is a fair amount of judgment in determining whether such an obligation is created by such arrangements. An equitable obligation stems from ethical or moral constraints rather than from rules of common or statute law, that is, from a duty to another entity to do that which an ordinary conscience and sense of justice would deem fair, just, and right - to do what one ought to do rather than what one is legally required to do. A constructive obligation is created, inferred, or construed from the facts in a particular situation rather than contracted by an agreement with another entity or imposed by a government. An equitable or constructive obligation is only created when the other side is shown to uphold its end of the bargain - that is the reseller continues to stock our product in accordance with the slotting arrangement.

For example, assume that we enter into a slotting arrangement which i) is not deemed to be a legal liability by counsel, ii) indicates that in return for stocking our products we will make three annual payments of \$1 million, and iii) the payments we make are not legally refundable by the reseller in the event they decide not to stock our product. In this situation, we have neither an equitable or constructive obligation to make future payments. As such, no accounting entry would be made until the actual cash payments are made. Judgment is required in evaluating such situations as is the consistent accounting recognition of arrangements with similar terms.

2. When either cash is paid or a liability created as a result of entering into a slotting fee arrangement, the next accounting issue to be resolved is whether the debit side of the entry is to be

recognized as an asset on the balance sheet or directly in the income statement. The following guidelines must be followed in this area:

- a. In order to recognize an asset on the balance sheet, the slotting arrangement must be legally refundable by the reseller. In addition, the refund provisions must be tied to a volume based purchase program (see Finance Policy 392) and be clearly documented in writing. For example, assume that we pay a retailer (reseller) \$50,000 for "shelf space" and the reseller is **legally bound** to return the entire payment, or a prorated amount thereof, if the reseller does not purchase products totaling \$1 million within the next year. This is in essence a volume based sales incentive and would need to be accounted for as a loan from the operating unit to the reseller combined with a rebate arrangement. As the units are sold the loan receivable would be credited and a debit to P/L, recognized in accordance with Finance Policy 392.
- b. Unless the slotting arrangement meets the specific criteria set forth in the paragraph above, the debit side of the entry must be immediately recognized in the determination of operating profits. See section IV of this policy for the guidelines on the classification within the income statement. Slotting arrangements typically do not allow us to exert the ownership rights associated with other assets on the balance sheet - we cannot sell the shelf space to a third party and in many cases the retailer has the unilateral right to remove our product from the shelves and do what they please with the space.

#### **B. Cooperative Advertising**

1. The costs of cooperative advertising arrangements are to be recognized in the income statement the first time the advertising takes place. This is consistent with the Corporation's overall advertising expense policy - see Finance Policy 395.

#### **C. Buydown Programs**

1. The cost of programs fitting the definition of a buydown should be recognized in the income statement at the later of the following:
  - a. The date at which the related revenue is recorded by the vendor
  - b. The date at which the program is offered (this would be the case when the program offer is made after the vendor has recognized the revenue)

Section I C of Finance Policy 390 should be reviewed for issues associated with revenue recognition on buydown, price protection and similar programs. It may not be appropriate to recognize revenue upon the delivery of product if such programs do not result in a fixed or determinable selling price. If the recognition of

revenue is delayed the timing of the recognition of the cost of the buydown program will also be impacted.

- D. These guidelines apply to the preparation of quarterly as well as full year financial statements. Amounts owed under incentive programs within the scope of this policy section must be reasonably estimated and reflected in the financial statements at the close of each quarter.

#### IV. Income Statement Classification

- A. Consideration from a vendor to a reseller of the vendor's products is presumed to be a reduction of the selling prices of the vendor's products and, therefore, should be characterized as a **reduction of revenue** when recognized in the vendor's income statement. That presumption is overcome and the consideration should be characterized as a **cost incurred** (e.g., MAP cost) if, and to the extent that, a benefit is or will be received from the recipient of the consideration that meets *both* of the following conditions:

1. The vendor receives, or will receive, an identifiable benefit (goods or services) in return for the consideration. In order to meet this condition, the identified benefit must be sufficiently separable from the recipient's purchase of the vendor's products such that the vendor could have entered into an exchange transaction with a party other than a purchaser of its products in order to receive that benefit.
2. The vendor can reasonably estimate the fair value of the benefit identified under condition (1). If the amount of consideration paid by the vendor exceeds the estimated fair value of the benefit received, that excess amount should be characterized as a reduction of revenue when recognized in the vendor's income statement.

As a general rule it is very difficult to meet the separability condition set out in item 1 above, and virtually all amounts of consideration paid to resellers of our products should be recognized as deductions from revenue. In most situations, the benefit which SLC receives as a result of consideration paid to a reseller of our product cannot be obtained from a party other than the purchaser of our product. About the only situation which can meet the separability condition is advertising. In some cases the benefit obtained from providing a cash incentive to a reseller of our product to advertise can be duplicated by having another party perform the same advertising effort. However, given the marketing power which many of the large retailers possess this is not always the case – see cooperative advertising discussion below. If you have situations in which the cash consideration paid to resellers of products meets both of the above conditions above, you should discuss the income statement classification of these amounts in advance with the Corporate Controller.

- B. The separability aspect of condition 1 will generally require that slotting fees and similar product development and placement fees

to be characterized as a reduction of revenue when recognized in the income statement. Buydowns as defined above could never meet the separability aspect of condition 1 and should therefore always be characterized a reduction in revenue.

- C. Cooperative advertising arrangements can sometimes meet conditions 1 and 2 above, and example D in Exhibit A of this policy sets out a transaction in which the criteria are met (also see examples B and C). However, it is frequently difficult to meet these criteria and the administrative costs necessary to document the achievement of these criteria can be high. Key points to keep in mind are:
1. In certain cases, it may not be possible for the Corporation to receive an advertising benefit equal to the one obtained with the purchaser of our products. The advertising benefit associated with a coupon appearing in a prominent retailers free standing insert, that also contains a number of non SLC products on sale, is likely to be distinctly different from that which would be obtained by the Corporation placing its own product ad in the same publication. In such situations, the retailers purchase of our product, the pricing incentives offered to the retailer, and our participation in the distinctive advertising effort are integrally tied together and not separable. If, for example, the pricing agreement with the retailer results in our being a featured product in the store and in the advertisements, it is highly unlikely that we could replicate the benefit on our own. While each situation needs to be evaluated separately, this condition can be difficult to meet given the power and consolidation of the retail trade.
  2. To meet the second condition, we have to be able to document and support the cost (fair value) of the ad space devoted to our product. Since the retailer or reseller pays for the space, we may need their input and cooperation in documenting and supporting this amount. If the consideration we pay to the retailer for the co-op advertising exceeds the documented fair value, the excess is treated as a reduction of revenue. If you have no documentation to support the fair value of the advertising received, the entire consideration paid will be treated as a reduction of revenue. For example, simply giving a retailer \$25 per store per week under the heading of co-op advertising and having no documentation to support the fair value of the advertising benefit being received means that you have not met the second condition set out above - it therefore is not possible to report the consideration paid as an advertising expense. Example D in Exhibit A sets out the type of support that needs to be produced to meet the second condition set out above.

When considering cooperative advertising arrangements, the general presumption is that everything is a deduction from revenue unless you can prove and document the advertising benefit

received. Classifying the costs of a cooperative advertising arrangement as an advertising expense when the documented support for the decision does not exist, essentially misstates the Corporation's revenue and is a significant internal control issue.

- D. Sales incentives covered by this policy are to be classified on the following lines of form EO 200.
1. Cooperative advertising amounts recognized in P/L, which the above rules require to be treated as a reduction of revenue, must be recognized on line 2.2 of form EO 200. Cooperative advertising amounts recognized in P/L, which meet the criteria for classification as a MAP expense should be classified on line 10.01 (Media Advertising).
  2. Slotting fees and buydown arrangements recognized in P/L, which the above rules require to be treated as a reduction of revenue, must be recognized on line 2.5 of EO 200.
- V. **Authority and Responsibility** - The chief financial officer of each operating unit is responsible for:
- A. Establishing the procedures to insure that incentive programs within the scope of this policy are recognized and reported in accordance with the provisions of this policy. These procedures must insure that sufficient supporting documentation exists to justify the accounting judgment made.
  - B. Periodically evaluating balance sheet liabilities resulting from incentives covered by this policy. These liabilities must be supported by detailed computations and relevant historical data or similar incentive programs.
- VI. Exhibit A to this policy sets out some questions and answers regarding the application of this policy. This exhibit should be reviewed as part of this policy.

Exhibit A

**Schedule 2.1(b)**

**Owned Real Property**

All land referred to in the attached Title Insurance Commitment.

CHICAGO TITLE INSURANCE COMPANY  
A.L.T.A. COMMITMENT  
SCHEDULE A

REVISED  
12/16/04

File Number  
**2004-257**

Effective Date  
**10/18/04**  
at **03:00** P.M.

1. Policy or Policies to be issued: Amount

ALTA Owner's Policy (10-17-92): \$

Proposed Insured:  
**TBD**

ALTA Loan Policy (10/17/92): \$

Proposed Insured:  
**TBD**

2. The estate or interest in the land described or referred to in this Commitment and covered herein is Fee Simple, and title thereto is at the effective date hereof vested in:

**Sara Lee Corporation by virtue of Warranty Deed recorded in Fiche 736, Page 27-31 and Warranty Deed recorded in Fiche 736, Page 32-34 in the Office of the Judge of Probate of Limestone County, Alabama.**

3. The land referred to in this commitment is described as follows:

**All of the following described property is situated in the City of Athens, Alabama, in Section 4, Township 3 South, Range 4 West, Lots 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, 35, 37, 39, 41, 43, 45, 47, 49, 51, 52, and 53 of Block E, of the College View Addition to Athens, Alabama, according to the Map or Plat of said addition on file in the Office of the Judge of Probate of Limestone County, Alabama, recorded in Plat Book "A", Page 40.**

**ALSO: A part of Lots 10, 12, 14, 16, and 18, Block E, of College View Addition to the City of Athens on file in the Office of the Judge of Probate of Limestone County, Alabama, that lies West of the centerline of City Springs Branch and more particularly described as follows,**

**Beginning at an iron pin at the Southwest corner of Lot 10, Block E, of said subdivision, thence North 01 degrees 50 minutes 58 seconds East along the West boundary of Lots 10, 12, 14, 16 and part of Lot 18 to the centerline of City Spring Branch at a distance of 118.17 feet, thence South 18 degrees 47 minutes 21 seconds East along the centerline of City Springs Branch a distance of 126.76 feet to the**  
**See Continuation Sheet**

NOTE: This Commitment consists of insert pages labeled in Schedule A, Schedule B-Section 1, and Schedule B-Section 2. This Commitment is of no force and effect unless all schedules are included, along with any Rider pages incorporated by reference in the insert pages.

(03/04 Diaphysa 25-WN-1-CRTA)

TRADEMARK  
REEL: 003117 FRAME: 0344

ADDED PAGE

(Schedule A-3 continued)

File No.: 2004-257

South boundary of Lot 10, thence North 87 degrees 34 minutes 22 seconds West a distance of 44.68 feet to the Point of True Beginning.

ALSO: Lots 12, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, and the East 95.00 feet of Lots No. 11 and 13, Block D, of the College View Addition to Athens, Alabama, according to the Map of Plat of said Addition on file in the Office of the Judge of Probate of Limestone County, Alabama, in Plat Book "A", Page 40.

ALSO: The alley 20.00 feet in width lying South of Lot No. 12 and the East 95.00 feet of said alley lying South of Lot No. 11 of Block D of the College View Addition to Athens, Alabama, according to the Map of Plat of said Addition on file in the office of the Judge of Probate of Limestone County, Alabama, in Plat Book "A", Page 40.

ALSO: The East Half of Carrol Avenue in the College View Addition to the City of Athens, commencing at a line being the extension of the South boundary of Lot No. 15 of Block D of said College View Addition and extending North the entire distance of said subdivision, according to the Map or Plat of said Addition on file in the office of the Judge of Probate of Limestone County, Alabama, in Plat Book "A", Page 40.

ALSO: All of Gilbert Street of said subdivision which borders Lots 54 and Lot 55 of Block D of said subdivision and Lot 53 of Block E of said subdivision according to the Map or Plat of said Addition on file in the Office of the Judge of Probate of Limestone County, Alabama, in Plat Book "A", Page 40.

ALSO: All of Hightower Avenue in College View Addition to the City of Athens as recorded in the Office of the Judge of Probate of Limestone County, Alabama, in Plat Book "A", Page 40, commencing at a line being an extension of the North boundary of Lot No. 10, Block D, of said College View Addition and extending North the entire distance of said subdivision.

ALSO: A tract of land being a part of Lots 1 and 3, Block 71 1/2 of the 1914 Map of the City of Athens, more particularly described as follows,

Commencing at an iron pin on the centerline of Carrol Avenue and the North boundary of Gilbert Street according to the Map or Plat of College View Addition to the City of Athens as recorded in the Office of the Judge of Probate of Limestone County, Alabama, in Plat Book "A", Page 40, said point being the Point of True Beginning of said tract,

See Continuation Sheet

(03/04 DisplayOR 25-WIN-a-CMTACON)

TRADEMARK  
REEL: 003117 FRAME: 0345



ADDED PAGE

(Schedule A-3 continued)

File No.: 2004-257

Thence South 85 degrees 15 minutes 50 seconds East along the North boundary of Gilbert Street a distance of 622.70 feet to an iron pin, Thence North 01 degrees 50 minutes 58 seconds East a distance of 303.53 feet to an iron pin, Thence North 88 degrees 34 minutes 23 seconds West a distance of 412.09 feet to an iron pin, Thence North 00 degrees 44 minutes 35 seconds East a distance of 251.49 feet to an iron pin, Thence North 89 degrees 15 minutes 25 seconds West a distance of 251.14 feet to an iron pin, Thence South 00 degrees 44 minutes 35 seconds West a distance of 512.05 feet to an iron pin in a fence line, Thence South 82 degrees 12 minutes 12 seconds East along an existing fence a distance of 36.43 feet to the Point of True Beginning and containing 5.754 acres, more or less.

AND ALSO:

Commence at the Northeast corner of the Southwest Quarter of Section 4, Township 3 South, Range 4 West, thence South 02 degrees 52 minutes 23 seconds West along the East boundary of the Southwest Quarter of said section a distance of 1139.51 feet to an iron pin, passing a concrete monument at a distance of 1136.69 feet, said iron pin being the point of true beginning; thence along an existing fence on the West side of an old road South 03 degrees 38 minutes 05 seconds West a distance of 576.71 feet to a concrete monument; thence continue along an old fence on the West side of an old road South 05 degrees 37 minutes 10 seconds East a distance of 413.88 feet to an iron pin on the North right of way of Pryor Street; thence along the North right of way of Pryor Street, being 25.00 feet from and parallel to its centerline, South 83 degrees 37 minutes 36 seconds West a distance of 102.36 feet to a point in the centerline of City Spring Branch; thence along the centerline of the meandering City Spring Branch the following chord bearings and distances; North 07 degrees 52 minutes 26 seconds West a distance of 61.09 feet to a point; North 22 degrees 15 minutes 15 seconds West a distance of 202.34 feet to a point; North 18 degrees 47 minutes 21 seconds West a distance of 305.80 feet to a point on the West boundary of Lot 18, Block E, and also being North 01 degree 50 minutes 58 seconds East, a distance of 118.17 feet from an iron pin at the Southwest corner of Lot 10, Block E, of the College View Addition to the City of Athens as recorded in the Office of the Judge of Probate of Limestone County, Alabama, recorded in Plat Book "A", Page 40; thence leaving the centerline of said City Spring Branch and running along a fence line North 01 degree 50 minutes 58 seconds East a distance of 483.78 feet to an iron pin on the North boundary of said College View Addition Subdivision; thence South 85 degrees 15 minutes 50 seconds East along the North boundary of said College View Addition Subdivision and along a fence a distance of 266.55 feet to the point of true beginning, and containing 4.865 acres, more or less.

See Continuation Sheet

(03/04 DisplaySoft 25-WIN4-CMTACON)

ADDED PAGE

(Schedule A-3 continued)

File No.: 2004-257

LESS AND EXCEPT:

Being the southern part of property recorded in the Office of the Judge of Probate of Limestone County, Alabama, in Fiche 736, Page 27, and described as follows,

Commence at the Northeast corner of the Southwest Quarter of Section 4, Township 3 South, Range 4 West, thence South 02 degrees 52 minutes 23 seconds West along the East boundary of the Southwest Quarter of said section a distance of 1139.51 feet to an iron pin, passing a concrete monument at a distance of 1136.69 feet, thence along an existing fence on the west side of an old road South 03 degrees 38 minutes 05 seconds West a distance of 474.09 feet to a concrete monument, being the Point of True Beginning.

Thence continue along an old fence on the west side of an old road South 03 degrees 38 minutes 05 seconds West a distance of 102.62 feet to a concrete monument,

Thence continue along an old fence on the west side of an old road South 05 degrees 37 minutes 10 seconds East a distance of 413.88 feet to an iron pin on the north right-of-way of Pryor Street,

Thence along the north right-of-way of Pryor Street, being 25.00 feet from and parallel to its centerline, South 83 degrees 37 minutes 36 seconds West a distance of 102.36 feet to a point in the centerline of City Spring Branch,

Thence along the centerline of the meandering City Spring Branch the following chord bearings and distances:

North 07 degrees 52 minutes 26 seconds West a distance of 61.09 feet to a point,

North 22 degrees 15 minutes 15 seconds West a distance of 202.34 feet to a point,

North 18 degrees 47 minutes 21 seconds West a distance of 179.04 feet to a concrete monument on the South boundary of Lot NO. 10, Block E, and also being South 87 degrees 34 minutes 22 seconds East a distance of 44.68 feet from the Southwest corner of Lot NO. 10, Block E, of College View Addition to the City of Athens as recorded in the Office of the Judge of Probate, Limestone County, Alabama, recorded in Plat Book "A", Page 40,

Thence leaving the centerline of said City Spring Branch and running northeasterly crossing the eastern portion of Lots 10, 12, 14, 16 and part of Lot 18, Block E, of said College View Addition to the City of Athens, North 62 degrees 44 minutes 30 seconds East a distance of 236.65 feet to the Point of True Beginning and containing 1.678  
See Continuation Sheet

(03/04 DisplaySoft 25-WIN-1-CMTACON)

TRADEMARK  
REEL: 003117 FRAME: 0347

**ADDED PAGE**

(Schedule A-3 continued)

File No.: 2004-257

acres, more or less."

**LESS AND EXCEPT:** The right-of-way easement recorded in Fiche 1828, Page 37, at the intersection of East Pryor Street and ConAgra Industrial Access Road.

(03/04 DisplaySoft 25-WDL-L-CMTACON)

**TRADEMARK**  
**REEL: 003117 FRAME: 0348**

**CHICAGO TITLE INSURANCE COMPANY  
A.L.T.A. COMMITMENT  
SCHEDULE B - SECTION 1**

File Number: **2004-257**

The following are the requirements to be complied with:

1. Instrument(s) creating the estate or interest to be insured must be approved, executed and filed for record, to wit:

**TBD**

2. Payment of the full consideration to, or for the account of, the grantors or mortgagors.
3. Payment of all taxes, charges, assessments, levied and assessed against subject premises, which are due and payable.
4. Satisfactory evidence should be had that improvements and/or repairs or alterations thereto are completed; that contractor, subcontractor, labor and materialmen are all paid.

(03/04 Displayed 25-WTR-AL-CMTB1)

**TRADEMARK  
REEL: 003117 FRAME: 0349**

CHICAGO TITLE INSURANCE COMPANY  
A.L.T.A. COMMITMENT  
SCHEDULE B - SECTION 2

File Number: 2004-257

Schedule B of the policy or policies to be issued will contain exceptions to the following matters unless the same are disposed of to the satisfaction of the Company:

1. Defects, liens, encumbrances, adverse claims, or other matters, if any, created, first appearing in the public records or attaching subsequent to the effective date hereof but prior to the date the proposed Insured acquires for value of record the estate or interest or mortgage thereon covered by this Commitment.
2. Any owner's policy issued pursuant hereto will contain under Schedule B the standard exceptions set forth on the inside cover. Any loan policy will also contain under Schedule B thereof, the standard exceptions set forth on the inside cover of this commitment relating to the owner's policy.
3. Standard Exceptions 2 and 3 may be removed from the policy when a satisfactory survey and inspection of the premises is made.
4. All taxes for the year 2004 and subsequent years, not yet due and payable.
5. Encroachments, overlaps, boundary line disputes, and any other matters which would be disclosed by an accurate survey and inspection of the premises.
6. Rights or claims of parties in possession not shown by the public records.
7. Easements, or claims of easements, not shown by the public records.
8. Any lien, or right to a lien, for services, labor, or material heretofore or hereafter furnished, imposed by law and not shown by the public records.
9. Taxes or special assessments which are not shown as existing liens by the public records.
10. Such state of facts as shown on subdivision plat recorded in Plat Book A, Page 40, Limestone County Records.
11. All property subject to a permanent and perpetual right of way easement for construction, operation, repair, maintenance and reconstruction of a storm drain and other improvements therewith recorded in Fiche 1828, Page 37.
12. This property is in a special flood hazard area according to the Federal Insurance Administration Flood Hazard Boundary Maps for the City of Athens.

NOTE: On loan policies, junior and subordinate matters, if any, will not be reflected in Schedule B.

(03/04 DaphySoft 25-WIN-41-CMTB2)

TRADEMARK  
REEL: 003117 FRAME: 0350

File 736 27

STATE OF ALABAMA  
LIMESTONE COUNTY

KNOW ALL MEN BY THESE PRESENTS, that Sweet Sue Kitchens, Inc., a Corporation, for and in consideration of the sum of TEN DOLLARS (\$10.00) DOLLARS and other good and valuable considerations, to it in hand paid by Sara Lee Corporation, the receipt whereof is hereby acknowledged, have granted, bargained, and sold, and by these presents do grant, bargain, sell, convey, and confirm unto the said Sara Lee Corporation, its successors and assigns, the following described real estate, lying and being in the County of Limestone and State of Alabama, to-wit:

Commence at the Northeast corner of the Southwest Quarter of Section 4, Township 3 South, Range 1 West; thence South 01 degree 32 minutes 23 seconds West along the East boundary of the Southwest Quarter of said section a distance of 1139.51 feet to an iron pin passing a concrete monument at a distance of 1138.80 feet; said iron pin being the point of true beginning; thence along an existing fence on the west side of an old road south 03 degrees 38 minutes 05 seconds west a distance of 576.71 feet to a concrete monument; thence continue along an old fence on the west side of an old road south 05 degrees 37 minutes 10 seconds east a distance of 413.58 feet to an iron pin on the north right-of-way of Pryor Street; thence along the north right-of-way of Pryor Street, being 25.00 feet from and parallel to its centerline, south 83 degrees 37 minutes 36 seconds west a distance of 102.36 feet to a point in the centerline of City Spring Branch; thence along the centerline of the meandering City Spring Branch the following chord bearings and distances: North 07 degrees 57 minutes 20 seconds West a distance of 81.00 feet to a point; North 22 degrees 15 minutes 15 seconds West a distance of 282.34 feet to a point; North 18 degrees 41 minutes 21 seconds West a distance of 105.80 feet to a point on the west boundary of Lot 18, Block E, and also being North 01 degree 50 minutes 55 seconds East, a distance of 118.17 feet from an iron pin at the southwest corner of Lot 10, Block E, of the College View Addition to the City of Athens as recorded in the Office of the Judge of Probate of Limestone County, Alabama, recorded in Plat Book "A", Page 40; thence leaving the centerline of said City Spring Branch and running along a fence line North 01 degree 50 minutes 55 seconds east a distance of 483.78 feet to an iron pin on the north boundary of said College View Addition Subdivision; thence South 85 degrees 15 minutes 50 seconds east along the north boundary of said College View Addition Subdivision and along a fence a distance of 265.55 feet to the point of true beginning, and containing 4.865 acres, more or less.

This deed is made subject to Lease Agreement entered into between A. J. Markowitz and Clara D. Markowitz, his wife, as Lessors and ConAgra, Inc., a Corporation, as Lessee, on the 18th day of November, 1976, which said Lease Agreement is hereby assigned to the grantee herein, without recourse.

The Grantors herein, by the execution of this instrument, and the Grantee herein, by the acceptance of this instrument and recording the same in the Probate Office of Limestone County, Alabama, hereby agree to execute such documents as are reasonably necessary and to take all procedures as are reasonably necessary to vacate any portion of the hereinabove described real estate which is or may be included within the area of a dedicated street or alley by virtue of the plat of College View Addition to the City of

Athens, Alabama, of record in the Office of the Judge of Probate of Limestone County, Alabama, at Plat Book "A", Page 40.

The warranties herein contained in this deed do not extend to any portion of the hereinabove described real estate lying within any portion of the hereinabove described real estate which is or may be included within the area of a dedicated street or alley by virtue of the plat of College View Addition to the City of Athens, Alabama, of record in the Office of the Judge of Probate of Limestone County, Alabama, at Plat Book "A", Page 40.


The execution of this deed was authorized by the Board of Directors of Sweet Sue Kitchens, Inc., held on the 24th day of November, 1986, a copy of the minutes being appended hereto of such meeting.

TO HAVE AND TO HOLD said premises, with the hereditaments and appurtenances thereto belonging to said Sara Lee Corporation, its successors and assigns forever. And Sweet Sue Kitchens, Inc., a Corporation, covenants with said Sara Lee Corporation, its successors and assigns, that it is seized in fee of the above described premises, and has a good right to sell and convey the same, and that the same is free from encumbrance, and that it will warrant and forever defend the title to the same against itself, and its successors and assigns, and all other persons claiming the same or any part thereof.

IN WITNESS WHEREOF, Sweet Sue Kitchens, Inc., a Corporation, has caused these presents to be executed for and in its name by its undersigned officers, they being duly authorized in this premises to execute the same for and as the act of said corporation, on this the 24th day of November, 1986.

SWEET SUE KITCHENS, INC.,  
A CORPORATION

BY   
ITS PRESIDENT

ATTEST:  
  
ITS SECRETARY

STATE OF ALABAMA  
LIMESTONE COUNTY

I, the undersigned, a Notary Public in and for said county, and state, hereby certify that J. E. Beasley, III, whose name as President of Sweet Sue Kitchens, Inc., a Corporation, is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day

**Schedule 2.1(c)**

**Leased Real Property**

The Business utilizes warehouse space provided by Charlie Baucom Incorporated on an as-needed basis. Such space is not subject to a written lease agreement but is based on the attached agreed terms. This arrangement is terminable at will by Sara Lee or Charlie Baucom Incorporated. See Item 5 on Schedule 5.2(b) and Item 5 on Schedule 5.10(b).



CHARLIE BAUCOM  
INCORPORATED

NUM 475 - 1002/002

Document 2.1 (2) (T)

August 1, 2004

To: Sweet Sue Kitchens  
106 Sweet Sue Drive  
Athens, AL 35611  
Attn: Chris Rial

Re: Warehouse Rent

- 1300 pallet minimum for \$4,875.00 minimum per month reserves ASI certified
- Rent per pallet above 1300 @ \$3.75 per month
- Handling is \$7.00 per pallet in/out 1 time charge
- Loading containers \$50.00 extra for each
- Labeling \$1.00 per pallet
- Hand stacking is 5 cents a box
- Transportation - \$100.00 each load from Sweet Sue to CBI  
\$100.00 each load from CBI to Sweet Sue

18800 MOORESVILLE ROAD • ATHENS, AL 35613 • 256-233-4870

TRADEMARK  
REEL: 003117 FRAME: 0354

**Schedule 2.1(d)**

**Personal Property**

See attached.

The attached current asset listing for the Athens Facility does not reflect the following list of items that are physically located in Athens and constitute Purchased Assets:

One (1) Complete Telephone / Voice Mail System

Two (2) Dell Poweredge 4300 Servers

One (1) Dell Poweredge 2650 Server

See Items 8 and 9 on Schedule 5.20.

Sara Lee Foods - Athens  
 Asset Listing  
 As of 12/15/04

Date	Location Name	Asset Type	Type	Asset Description	Inventory Date	Convention	Life	Life Rem	Method	Book Basis	Book Value	Deprec Yr	Deprec Ltr
12/15/2004	1532-SWEET SUE	FURN & FIX		36027 NEC MONITOR 3"GX	2/15/1993	FM	60	772.17	SL	772.17			772.17
12/15/2004	1532-SWEET SUE	FURN & FIX		36059 NEC 3"GX MONITOR (S TRUBB	3/15/1994	FM	36	656.85	SL	656.85			656.85
12/15/2004	1532-SWEET SUE	FURN & FIX		37804 FAC/MLR MACHINE	1/15/1997	FM	60	2,776.85	SL	2,776.85			2,776.85
12/15/2004	1532-SWEET SUE	FURN & FIX		40644 FAX MACHINE	6/15/1997	FM	60	1,900.00	SL	1,900.00			1,900.00
12/15/2004	1532-SWEET SUE	FURN & FIX		40652 FAX MACHINE FOR DIST SUPE	6/15/1997	FM	60	1,900.00	SL	1,900.00			1,900.00
12/15/2004	1532-SWEET SUE	FURN & FIX		270991 SORT Automag	3/15/2004	AD	36	4,268.36	SL	4,268.36	3,240.78		601.85
12/15/2004	1532-SWEET SUE	FURN & FIX		37891 LABOR FILES AL	3/15/1998	FM	60	1,950.55	SL	1,950.55			1,950.55
12/15/2004	1532-SWEET SUE	FURN & FIX		36074 TIME & ATTENDANCE SYS-WR	1/15/1993	FM	60	30,358.01	SL	30,358.01			30,358.01
12/15/2004	1532-SWEET SUE	FURN & FIX		36074 TIME & ATTENDANCE 18M PS2	1/15/1993	FM	60	2,776.33	SL	2,776.33			2,776.33
12/15/2004	1532-SWEET SUE	FURN & FIX		36076 TIME ATTEND EPSON FX 1050	1/15/1993	FM	60	369.00	SL	369.00			369.00
12/15/2004	1532-SWEET SUE	FURN & FIX		36076 TIME CLOCK WIREADER #1	1/15/1993	FM	60	1,250.00	SL	1,250.00			1,250.00
12/15/2004	1532-SWEET SUE	FURN & FIX		36077 TIME CLOCK WIREADER #2	1/15/1993	FM	60	1,250.00	SL	1,250.00			1,250.00
12/15/2004	1532-SWEET SUE	FURN & FIX		36078 TIME CLOCK WIREADER #3	1/15/1993	FM	60	1,250.00	SL	1,250.00			1,250.00
12/15/2004	1532-SWEET SUE	FURN & FIX		36084 TIME & ATTENDANCE SV8-PHO	1/15/1993	FM	60	2,965.00	SL	2,965.00			2,965.00
12/15/2004	1532-SWEET SUE	FURN & FIX		36084 MODULAR OFFICE FURNITURE-	6/15/1995	FM	60	2,613.00	SL	2,613.00			2,613.00
12/15/2004	1532-SWEET SUE	FURN & FIX		41271 OFFICE EQUIPMENT 5 YEAR	1/15/1998	FM	60	7,130.41	SL	7,130.41			7,130.41
12/15/2004	1532-SWEET SUE	FURN & FIX		36082 IBM CONTROL UNIT SAN 1851	1/15/1998	FM	36	50,398.84	SL	50,398.84			50,398.84
12/15/2004	1532-SWEET SUE	FURN & FIX		36082 IBM 3174 CRT SAN 1878	1/15/1998	FM	36	4,971.22	SL	4,971.22			4,971.22
12/15/2004	1532-SWEET SUE	FURN & FIX		36082 IBM 3174 CONTROLLER SN 2	1/15/1998	FM	36	2,441.95	SL	2,441.95			2,441.95
12/15/2004	1532-SWEET SUE	FURN & FIX		36082 IBM 3174 CRT SAN 1878	1/15/1998	FM	36	8,605.02	SL	8,605.02			8,605.02
12/15/2004	1532-SWEET SUE	FURN & FIX		36082 IBM 3174 CRT SAN 1878	1/15/1998	FM	36	1,061.84	SL	1,061.84			1,061.84
12/15/2004	1532-SWEET SUE	FURN & FIX		36220 IBM 3174 CRT SAN 1878	6/15/1995	FM	60	13,228.31	SL	13,228.31			13,228.31
12/15/2004	1532-SWEET SUE	FURN & FIX		36220 IBM 3174 CRT SAN 1878	6/15/1995	FM	60	1,483.40	SL	1,483.40			1,483.40
12/15/2004	1532-SWEET SUE	FURN & FIX		37879 IBM PRINTER	1/15/1998	FM	36	665.00	SL	665.00			665.00
12/15/2004	1532-SWEET SUE	FURN & FIX		36085 IBM 4224 PRINTER SAN 3364	1/15/1998	FM	36	8,268.08	SL	8,268.08			8,268.08
12/15/2004	1532-SWEET SUE	FURN & FIX		36085 IBM 4224 PRINTER SAN 3364	1/15/1998	FM	36	1,001.15	SL	1,001.15			1,001.15
12/15/2004	1532-SWEET SUE	FURN & FIX		36085 LASER PRINTER R & D	6/15/2002	AD	36	2,920.37	SL	2,920.37	778.54		419.15
12/15/2004	1532-SWEET SUE	FURN & FIX		43196 Printer IBM System	6/15/2002	AD	36	8,065.81	SL	8,065.81			8,065.81
12/15/2004	1532-SWEET SUE	FURN & FIX		43196 Printer IBM System	6/15/2002	AD	36	4,827.47	SL	4,827.47	1,202.27		660.85
12/15/2004	1532-SWEET SUE	FURN & FIX		43196 Printer IBM System	6/15/2002	AD	36	943,877.88	SL	943,877.88	5,172.87		1,061.85
12/15/2004	1532-SWEET SUE	MACH-EQUIP		36173 ROTARY VACUUM PUMP SAN	3/15/1973	FM	180	5,700.81	SL	5,700.81			5,700.81
12/15/2004	1532-SWEET SUE	MACH-EQUIP		36186 MACHINE CONVERTOR FOR HOLA	4/15/1973	FM	180	1,414.47	SL	1,414.47			1,414.47
12/15/2004	1532-SWEET SUE	MACH-EQUIP		36297 1 1/2 HP VACUUM PUMP SAN 3	3/15/1975	FM	180	3,783.22	SL	3,783.22			3,783.22
12/15/2004	1532-SWEET SUE	MACH-EQUIP		36647 1 CUPK LEG POWERED FORKL	9/15/1978	FM	172	2,350.70	SL	2,350.70			2,350.70
12/15/2004	1532-SWEET SUE	MACH-EQUIP		37053 1 TONN MODEL 1833 CAN COD	7/15/1981	FM	60	6,510.21	SL	6,510.21			6,510.21
12/15/2004	1532-SWEET SUE	MACH-EQUIP		37053 185-34 RUSS VACUUM PUMPS	4/15/1983	FM	120	13,288.37	SL	13,288.37			13,288.37
12/15/2004	1532-SWEET SUE	MACH-EQUIP		37143 BOLDT BLENDER SAN 82-83	9/15/1985	FM	120	29,276.46	SL	29,276.46			29,276.46
12/15/2004	1532-SWEET SUE	MACH-EQUIP		37256 MODEL 105 MAGTRAP-PRODUCT	12/15/1984	FM	60	1,647.66	SL	1,647.66			1,647.66
12/15/2004	1532-SWEET SUE	MACH-EQUIP		37652 SUI BOX SEALER SAN 3005 18	9/15/1986	FM	84	3,000.00	SL	3,000.00			3,000.00
12/15/2004	1532-SWEET SUE	MACH-EQUIP		37659 ALER-CAN CAN CLOSER 06A-U	1/15/1986	FM	48	2,450.00	SL	2,450.00			2,450.00
12/15/2004	1532-SWEET SUE	MACH-EQUIP		37659 COOKER-GW174 (1)	1/15/1986	FM	48	1,000.00	SL	1,000.00			1,000.00
12/15/2004	1532-SWEET SUE	MACH-EQUIP		37697 TOLERO SCALE-PRINTER-SN	1/15/1987	FM	60	17,032.00	SL	17,032.00			17,032.00
12/15/2004	1532-SWEET SUE	MACH-EQUIP		37741 JUG WASHER	5/15/1987	FM	120	666.51	SL	666.51			666.51
12/15/2004	1532-SWEET SUE	MACH-EQUIP		37765 BOSTITCH STAPLER-CAN MT L	9/15/1987	FM	60	888.50	SL	888.50			888.50
12/15/2004	1532-SWEET SUE	MACH-EQUIP		37767 BOSTITCH STAPLER-CAN MT L	9/15/1987	FM	60	9,027.00	SL	9,027.00			9,027.00
12/15/2004	1532-SWEET SUE	MACH-EQUIP		37768 COLUMN DUMPER-KITCHEN	9/15/1987	FM	120	2,350.70	SL	2,350.70			2,350.70
12/15/2004	1532-SWEET SUE	MACH-EQUIP		37768 COLUMN DUMPER-KITCHEN	9/15/1987	FM	120	8,510.21	SL	8,510.21			8,510.21
12/15/2004	1532-SWEET SUE	MACH-EQUIP		37769 COLUMN DUMPER-KITCHEN	9/15/1987	FM	120	13,288.37	SL	13,288.37			13,288.37
12/15/2004	1532-SWEET SUE	MACH-EQUIP		37805 CAN SEALER 48 OZ 8334 SN	1/15/1987	FM	60	25,325.00	SL	25,325.00			25,325.00
12/15/2004	1532-SWEET SUE	MACH-EQUIP		37805 AIR COMPRESSOR - QUINCY O	1/15/1987	FM	60	9,600.50	SL	9,600.50			9,600.50
12/15/2004	1532-SWEET SUE	MACH-EQUIP		37818 DIGITAL PLAT-FORM SCALES W	12/15/1987	FM	60	6,730.37	SL	6,730.37			6,730.37
12/15/2004	1532-SWEET SUE	MACH-EQUIP		37915 R & D LAB	4/15/1988	FM	120	2,988.00	SL	2,988.00			2,988.00
12/15/2004	1532-SWEET SUE	MACH-EQUIP		38028 BULK FLOUR SHUCK TUBE SYS	1/15/1988	FM	36	5,150.02	SL	5,150.02			5,150.02
12/15/2004	1532-SWEET SUE	MACH-EQUIP		38086 COOKER COOLER CJ 7020	1/15/1988	FM	94	63,901.16	SL	63,901.16			63,901.16
12/15/2004	1532-SWEET SUE	MACH-EQUIP		38087 COOKER COOLER CJ 7020	1/15/1988	FM	94	50,676.27	SL	50,676.27			50,676.27
12/15/2004	1532-SWEET SUE	MACH-EQUIP		38077 LIGHTNIN MIXER UNO-G33	3/15/1988	FM	60	52,284.74	SL	52,284.74			52,284.74
12/15/2004	1532-SWEET SUE	MACH-EQUIP		38078 BECHT RUSH VACUUM PUMP 25	5/15/1988	FM	94	1,631.63	SL	1,631.63			1,631.63
12/15/2004	1532-SWEET SUE	MACH-EQUIP		38136 BECHT RUSH VACUUM PUMP 25	7/15/1988	FM	94	12,908.50	SL	12,908.50			12,908.50
12/15/2004	1532-SWEET SUE	MACH-EQUIP		38136 H&A UNISORREL MEAT DICER	7/15/1988	FM	94	6,655.07	SL	6,655.07			6,655.07
12/15/2004	1532-SWEET SUE	MACH-EQUIP		38138 CAN CLOSER #334 SAN 2078	7/15/1988	FM	94	45,578.04	SL	45,578.04			45,578.04
12/15/2004	1532-SWEET SUE	MACH-EQUIP		38139 PFC CAN PROJEKT 20-10	8/15/1988	FM	120	33,507.90	SL	33,507.90			33,507.90
12/15/2004	1532-SWEET SUE	MACH-EQUIP		38143 VACUUM SEALER (60-022) 08	10/15/1988	FM	120	64,027.00	SL	64,027.00			64,027.00
12/15/2004	1532-SWEET SUE	MACH-EQUIP		38086 COOLER SUPERIOR 3-5-3502	4/15/1980	FM	120	19,545.78	SL	19,545.78			19,545.78
12/15/2004	1532-SWEET SUE	MACH-EQUIP		38272 BROTH RM METERS - FLOWDAT	4/15/1980	FM	120	150,659.07	SL	150,659.07			150,659.07
12/15/2004	1532-SWEET SUE	MACH-EQUIP		38273 WALKERSHA PUMP #130	4/15/1980	FM	120	31,859.86	SL	31,859.86			31,859.86
12/15/2004	1532-SWEET SUE	MACH-EQUIP		38311 FAC MODEL 0150 FILLER 7.5	9/15/1980	FM	120	25,451.82	SL	25,451.82			25,451.82
12/15/2004	1532-SWEET SUE	MACH-EQUIP		38312 DEMARCO PASTA EXTRUDER/DU	9/15/1980	FM	120	142,150.06	SL	142,150.06			142,150.06
12/15/2004	1532-SWEET SUE	MACH-EQUIP					120	290,540.89	SL	290,540.89			290,540.89

TRADEMARK

REEL: 003117 FRAME: 0356







12152004	1552-SWEET SUE	MACH-EQUIP	41606	ELECTRICAL FOR TWO STAGE	21/52000	FM	24,921	SL	2,827.19	8,484.06	2,827.19	573.32	6,537.76
12152004	1552-SWEET SUE	MACH-EQUIP	41510	NON-TAG EQUIP FOR TWO STA	21/52000	FM	24,921	SL	1,964.31	6,519.30	1,964.31	570.35	11,066.00
12152004	1552-SWEET SUE	MACH-EQUIP	41511	FILLER PAK MODEL ZIG FOR	21/52000	FM	24,921	SL	21,497.37	49,511.00	21,497.37	4,310.48	48,013.83
12152004	1552-SWEET SUE	MACH-EQUIP	41512	SEAMER CONTINENTAL 330CR	21/52000	FM	24,921	SL	1,007.10	3,390.00	1,007.10	184.35	22,529.27
12152004	1552-SWEET SUE	MACH-EQUIP	41513	AUGER/DUMPER FOR DUMP-LING	21/52000	FM	24,921	SL	1,311.26	4,178.50	1,311.26	243.24	15,181.30
12152004	1552-SWEET SUE	MACH-EQUIP	41604	VIDEO JET CAR COOLER SN 00	9/152000	FM	84,921	SL	4,443.84	6,386.36	4,443.84	3,643.85	3,643.85
12152004	1552-SWEET SUE	MACH-EQUIP	41605	VIDEO JET CAR COOLER SN 00	9/152000	FM	84,921	SL	4,372.04	6,328.31	4,372.04	3,625.82	3,625.82
12152004	1552-SWEET SUE	MACH-EQUIP	41606	GENERATORS FOR YPK CONTIN	7/152000	FM	36	SL	21,229.06	6,184.65	21,229.06	4,655.60	6,184.65
12152004	1552-SWEET SUE	MACH-EQUIP	41727	BOILER BURNER CONVERSION	10/152000	FM	120	SL	36,434.52	6,184.65	36,434.52	1,541.49	1,541.49
12152004	1552-SWEET SUE	MACH-EQUIP	41728	IMS BONE SCAN BLDG IMPROV	10/152000	FM	120	SL	6,184.65	6,184.65	6,184.65	441.74	441.74
12152004	1552-SWEET SUE	MACH-EQUIP	41729	IMS BONE SCAN BLDG IMPROV	10/152000	FM	120	SL	6,422.85	6,422.85	6,422.85	3,684.50	3,684.50
12152004	1552-SWEET SUE	MACH-EQUIP	41730	PIPING - IMS BONE SCAN	10/152000	FM	120	SL	30,083.82	17,836.82	30,083.82	1,733.24	12,562.13
12152004	1552-SWEET SUE	MACH-EQUIP	41731	IMS BONE SCAN - NON TAG E	10/152000	FM	120	SL	2,501.11	2,501.11	2,501.11	181.60	181.60
12152004	1552-SWEET SUE	MACH-EQUIP	41732	IMS BONE SCAN SYSTEM/CONV	10/152000	FM	120	SL	237,288.21	43,060.56	237,288.21	33,060.60	183,966.23
12152004	1552-SWEET SUE	MACH-EQUIP	41814	E-SYSTEM 2000 MULTIPACK	2/22001	FM	84	SL	20,400.84	45,557.00	20,400.84	2,746.27	25,362.11
12152004	1552-SWEET SUE	MACH-EQUIP	41815	COMPRESSOR SCREW TYPE R	2/22001	FM	120	SL	19,017.60	40,384.17	19,017.60	728.02	6,532.89
12152004	1552-SWEET SUE	MACH-EQUIP	41864	REBUILD 2004 SEAMER	6/002001	FM	36	SL	25,016.30	25,016.30	25,016.30	2,516.30	10,084.44
12152004	1552-SWEET SUE	MACH-EQUIP	41867	COOLING POND FLOW METER	6/002001	FM	60	SL	3,300.00	3,300.00	3,300.00	2,254.48	2,254.48
12152004	1552-SWEET SUE	MACH-EQUIP	41868	TEKLOGIC UPGRADE	6/002001	FM	60	SL	1,653.22	3,206.37	1,653.22	2,472.73	2,472.73
12152004	1552-SWEET SUE	MACH-EQUIP	41869	2/448 SOX CARRIERS/FELL	6/002001	FM	60	SL	40,903.90	12,216.95	40,903.90	3,461.36	28,064.97
12152004	1552-SWEET SUE	MACH-EQUIP	41870	PARTIAL OVERHAUL OF ZIG	6/002001	FM	60	SL	12,181.60	12,181.60	12,181.60	1,229.11	6,558.91
12152004	1552-SWEET SUE	MACH-EQUIP	41884	REPLACE LOCKERS IN MEN S	6/202001	FM	60	SL	7,701.38	3,872.54	7,701.38	1,097.07	6,062.09
12152004	1552-SWEET SUE	MACH-EQUIP	42006	METERING INCLINE HOPPER/C	6/12002	FM	84	SL	52,621.80	4,118.64	52,621.80	666.48	3,642.74
12152004	1552-SWEET SUE	MACH-EQUIP	42007	COOK SYSTEM	6/12002	FM	84	SL	60,108.44	7,559.49	60,108.44	722.53	4,421.51
12152004	1552-SWEET SUE	MACH-EQUIP	42008	CANNING LINE	6/12002	FM	120	SL	319,780.71	28,954.61	319,780.71	13,529.44	62,615.90
12152004	1552-SWEET SUE	MACH-EQUIP	42009	DOCK LEVELER	6/12002	FM	84	SL	1,257,843.72	60,522.63	1,257,843.72	84,765.45	567,320.18
12152004	1552-SWEET SUE	MACH-EQUIP	42010	NON-TAG CANNING LINE	6/12002	FM	84	SL	220,024.05	163,042.83	220,024.05	9,338.40	56,981.22
12152004	1552-SWEET SUE	MACH-EQUIP	211061	Aliboth	6/12002	FM	60	SL	3,945.64	1,922.05	3,945.64	333.85	2,043.79
12152004	1552-SWEET SUE	MACH-EQUIP	211062	Roller	6/12002	FM	60	SL	26,787.29	5,168.45	26,787.29	3,775.20	21,920.64
12152004	1552-SWEET SUE	MACH-EQUIP	211063	Conveyors and Ergonomic	6/12002	FM	84	SL	462,712.81	403,621.13	462,712.81	27,086.19	58,781.05
12152004	1552-SWEET SUE	MACH-EQUIP	211064	LLR Tables	6/12002	FM	84	SL	572,456.62	499,715.96	572,456.62	34,586.71	72,734.84
12152004	1552-SWEET SUE	MACH-EQUIP	211065	Checkweigher and Divertor	6/12002	FM	84	SL	265,425.54	229,695.06	265,425.54	15,821.33	33,470.49
12152004	1552-SWEET SUE	MACH-EQUIP	211066	Conveyors for Pack and Fill	6/12002	FM	84	SL	48,788.00	40,643.18	48,788.00	2,627.85	6,944.82
12152004	1552-SWEET SUE	MACH-EQUIP	211067	Box and Pallet Printer	6/12002	FM	84	SL	73,219.25	63,916.10	73,219.25	4,425.25	9,303.15
12152004	1552-SWEET SUE	MACH-EQUIP	211068	Box and Pallet Printer	6/12002	FM	84	SL	51,040.77	4,483.36	51,040.77	309.03	640.05
12152004	1552-SWEET SUE	MACH-EQUIP	43197	INFEEDCONVEYORS	7/12002	AD	84	SL	61,040.77	76,673.26	61,040.77	5,522.47	11,567.82
12152004	1552-SWEET SUE	MACH-EQUIP	43003	Regula Clever Broods Boiler	7/12002	AD	84	SL	5,800.06	426.73	5,800.06	426.73	652.84
12152004	1552-SWEET SUE	MACH-EQUIP	43004	INLP-PAK 200 Camblers Flyer	6/12002	AD	84	SL	13,763.34	12,074.59	13,763.34	831.85	1,748.76
12152004	1552-SWEET SUE	MACH-EQUIP	43005	Angular Seamer	6/12002	AD	84	SL	48,537.50	30,446.36	48,537.50	2,812.80	7,418.35
12152004	1552-SWEET SUE	MACH-EQUIP	102215	Dad Develcon	6/12003	AD	84	SL	24,308.32	19,069.31	24,308.32	4,040.36	19,632.61
12152004	1552-SWEET SUE	MACH-EQUIP	102216	Purchase/Install Labor/Parts	6/12003	AD	84	SL	22,455.17	18,069.31	22,455.17	1,489.21	5,206.01
12152004	1552-SWEET SUE	MACH-EQUIP	208180	Chemical Injection Kettle	1/17/2003	AD	84	SL	29,000.00	25,359.84	29,000.00	1,801.09	4,440.18
12152004	1552-SWEET SUE	MACH-EQUIP	208181	Water Meter for Broth Room	4/5/2004	AD	84	SL	4,150.00	3,515.06	4,150.00	250.62	634.35
12152004	1552-SWEET SUE	MACH-EQUIP	210062	Blow Wrapper	3/15/2004	AD	84	SL	29,424.25	29,068.04	29,424.25	1,778.51	2,787.27
12152004	1552-SWEET SUE	MACH-EQUIP	210063	Blow Wrapper	3/15/2004	AD	84	SL	54,175.05	48,586.41	54,175.05	3,274.31	5,886.05
12152004	1552-SWEET SUE	MACH-EQUIP	217167	Can Chaser	7/28/2004	AD	84	SL	66,780.50	94,728.79	66,780.50	5,051.77	5,051.77
12152004	1552-SWEET SUE	MACH-EQUIP	130070	Camblers Up-Grade	6/2/2003	AD	84	SL	91,662.34	66,000.47	91,662.34	3,483.07	3,483.07
12152004	1552-SWEET SUE	MACH-EQUIP	130071	Lab Analytical Equipment	6/2/2003	AD	84	SL	19,500.00	19,031.33	19,500.00	1,178.59	3,486.67
12152004	1552-SWEET SUE	MACH-EQUIP	130072	Boiler Modification	6/18/2003	AD	84	SL	69,627.40	2,808.06	69,627.40	208.49	641.49
12152004	1552-SWEET SUE	MACH-EQUIP	210066	Floor Sweeper	3/1/2004	AD	84	SL	3,655.00	3,256.16	3,655.00	220.00	368.82
MACH-EQUIP Total										13,339,444.17	4,099,818.57	371,464.89	6,338,824.90

**Schedule 2.1(e)**

**Personal Property Leases**

1. Lease Agreement dated March 28, 2001 among Sweet Sue Kitchens, Pitney Bowes Inc. ("Pitney Bowes") and Pitney Bowes Credit Corporation ("PBCC") (consisting of an Equipment Lease with PBCC, Postage Meter Rental Agreement with Pitney Bowes, Maintenance and Service Agreement with Pitney Bowes, Purchase Power Agreement with PBCC and a U.S. Postal Service Acknowledgment of Deposit). See Item 2 on Schedule 5.2(b).
2. Commercial Lease Agreement (Equipment) dated June 1, 2003 between Sara Lee Foods, U.S. and Toyota Material Handling, U.S.A., Inc. for the provision of forklifts. See Item 2 on Schedule 5.2(b).
3. Addendum #23 to Management Services Agreement dated May 15, 2003 by and between Sara Lee Foods, U.S. and IKON Office Solutions Inc. for the provision of equipment. See Item 7 on Schedule 5.10(b).



## Schedule 2.1(f)

### Contracts

1. **Supply Contracts, Consulting Agreements and related commitments (other than purchase orders):**

Co-packing Agreement dated as of September 15, 1999 between Bryan Foods, Inc. and Castleberry for the manufacture of certain designated meat products. See Item 1 on Schedule 5.2(b) and Item 6 on Schedule 5.10(b).

Co-packing Agreement dated as of September 26, 1996 between Bryan Foods, Inc. and Dial Corp. for the manufacture of certain designated meat products. See Items 1 and 2 on Schedule 5.2(b) and Item 6 on Schedule 5.10(b).

Supply Agreement dated July 22, 2004 between Sara Lee Foods US and Franz Foods for the supply of chicken. See Schedule 7.4(a) and Item 2 on Schedule 5.10(b).

Supply Letter Agreement dated April 14, 2004 between Sara Lee Foods US and Gold Kist Inc. for the supply of poultry products. See Item 8 on Schedule 5.2(b) and Item 1 on Schedule 5.10(b).

Service Arrangements dated April 8, 2004 between Sara Lee Foods, Inc. and Terry Hill, Waste Management, Waste Away Group, Inc. for the provision of waste disposal services at Sweet Sue facility.

Consulting Services Agreement dated March 10, 2004 between Sara Lee Foods, a division of Sara Lee Corporation, and TechniCAL, Inc. for the provision of consulting services. See Item 8 on Schedule 5.2(b) and Items 1 and 2 on Schedule 5.10(b).

Supply Arrangement dated as of July 19, 2004 between Sara Lee Foods, a division of Sara Lee Corporation, and Impress USA, Inc. for the provision of cans. See Items 1 and 8 on Schedule 5.2(b) and Item 1 on Schedule 5.10(b).

Supply Arrangement with Ball Corporation for the provision of cans (course of trade based on unsigned mark-up of draft contract dated March 31, 2004 provided to Buyer). See Items 1 and 8 on Schedule 5.2(b) and Item 1 on Schedule 5.10(b).

Crown Point Limited Pouch Pricing (course of trade based on presentation disclosed to Buyer). See Item 8 on Schedule 5.2(b) and Item 1 on Schedule 5.10(b).

2. **Union Contracts:**

Agreement dated as of September 30, 2001 between Sweet Sue Kitchens, Inc. and

Retail, Wholesale and Department Store Union, AFL-CIO. See Item 6 on Schedule 5.2(b) and Item 4 on Schedule 5.10(b).

**3. Brokerage Contracts:**

Full Service Retail Brokerage/Merchandising Agreement dated November 1, 2003 between Sara Lee Foods – U.S. and Advantage Sales & Marketing/ESM.

Retail Brokerage Agreement dated December 1, 2002 between Sara Lee Foods – U.S. and GES & Assoc.

Retail Brokerage Agreement dated December 1, 2002 between Sara Lee Foods – U.S. and G.F. Gardner & Assoc.

Retail Brokerage Agreement dated December 1, 2002 between Sara Lee Foods – U.S. and Daymon & Assoc. Inc. See Item 8 on Schedule 5.2(b) and Item 1 on Schedule 5.10(b).

Retail Brokerage Agreement dated December 1, 2002 between Sara Lee Foods – U.S. and M.R. Sales. See Item 8 on Schedule 5.2(b) and Item 1 on Schedule 5.10(b).

Retail Brokerage Agreement dated December 1, 2002 between Sara Lee Foods – U.S. and Howell Sales & Marketing.

Retail Brokerage Agreement dated December 1, 2002 between Sara Lee Foods – U.S. and P.L. Marketing. See Item 8 on Schedule 5.2(b) and Item 1 on Schedule 5.10(b).

Retail Brokerage Agreement dated December 1, 2002 between Sara Lee Foods – U.S. and First Coast Sales, Inc.

Retail Brokerage Agreement dated September 12, 2003 between Sara Lee Foods and EVR Solutions, Inc.

Brokerage Services Agreement between Sara Lee Foods and CROSSMARK, Inc. See Item 8 on Schedule 5.2(b) and Items 1 and 2 on Schedule 5.10(b).

Distribution Agreement dated March 10, 1995 between Bryan Foods, Inc. and Mendez & Co., Inc. See Item 8 on Schedule 5.2(b) and Item 1 on Schedule 5.10(b).

Broker Letter Agreement dated October 17, 2000 between Bryan Foods, Inc. and Montuno, Inc. (course of trade based on this expired contract). See Item 8 on Schedule 5.2(b) and Items 1 and 3 on Schedule 5.10(b).

Supplier Agreement dated June 15, 1998 between Bryan Foods, Inc. and Federated Foods, Inc.

4. Purchase Orders entered into in the ordinary course of the Business, including with the following companies for the specified packaging and ingredients:

Proliant	-	Dry Beef Stock
Halsley Grocery	-	Louisiana Hot Sauce, Catsup and Worcestershire Sauce
Lewisburg Printing	-	Labels
ConAgra	-	Flour
Flavotech	-	Seasoning Blends
Tony Downs Foods	-	Broth Concentrate
Groeb Farms	-	Molasses

5. Intellectual Property Contracts (see Schedule 5.11(a)):

Agreement dated March 4, 1994 by and between Saramar Corporation and Nabisco, Inc.

Agreement effective as of August 17, 2001 by and between Saramar, L.L.C. and Prairie Harvest Canada, Ltd.

6. Miscellaneous Contracts:

Services Agreement for the Security Guard Services dated September 29, 2003 by and between Sara Lee Corporation and the Wackenhut Corporation (with respect to Athens, Alabama site only).

Transportation Agreement dated October 21, 2003 by and between Penske Logistics LLC and Bryan Foods/Sweet Sue Kitchens, as amended. See Item 2 on Schedule 5.2(b).

Special Services Agreement for Interruptible Natural Gas Sales Service dated as of October 30, 2002 by and between Athens Utilities and Bryan Foods, Inc. See Item 2 on Schedule 5.2(b).

Responsibility for all utilities servicing the Owned Real Property and the Leased Real Property.

**Schedule 2.1(g)****Intellectual Property and Software****1. Trademarks**

<b><u>Trademark</u></b>	<b><u>Registered Holder</u></b>	<b><u>Actual Holder</u></b>	<b><u>Jurisdiction</u></b>	<b><u>Application #</u></b>	<b><u>Registration #</u></b>
HODGE'S	Sara Lee Corporation	Sara Lee Foods, Inc.	Egypt	80861	80861
HODGE'S	Sara Lee Corporation	Sara Lee Foods, Inc.	Trinidad & Tobago	20194	20194
PENNANT	Sara Lee Corporation	Sara Lee Foods, Inc.	Argentina	1817991	1599989
PENNANT	Sara Lee Corporation	Sara Lee Foods, Inc.	Egypt	80864	80864
PENNANT	Sara Lee Corporation	Sara Lee Foods, Inc.	Trinidad & Tobago	20196	20196
PENNANT	Sara Lee Corporation	Sara Lee Foods, Inc.	United States of America	76/165681	2616921
PICNIC	Sara Lee Corporation	Sara Lee Foods, Inc.	Bahrain	581/93	16334
PICNIC	Sara Lee Corporation	Sara Lee Foods, Inc.	Belize	46/TM/2001	46/TM/2001
PICNIC	Sara Lee Corporation	Sara Lee Foods, Inc.	Egypt	80859	80859
PICNIC	Sara Lee Corporation	Sara Lee Foods, Inc.	Korea, Republic of	24517/93	303180
PICNIC	Sara Lee Corporation	Sara Lee Foods, Inc.	Kuwait	43213	40230
PICNIC	Sara Lee Corporation	Sara Lee Foods, Inc.	Mexico	222978	490701
PICNIC	Sara Lee Corporation	Sara Lee Foods, Inc.	Panama	071704	71704

PICNIC	Sara Lee Corporation	Sara Lee Foods, Inc.	Puerto Rico	31578	31578
PICNIC	Sara Lee Corporation	Sara Lee Foods, Inc.	Qatar	10282	10282
PICNIC	Sara Lee Corporation	Sara Lee Foods, Inc.	Saudi Arabia	14504	254/57
PICNIC	Sara Lee Corporation	Sara Lee Foods, Inc.	Trinidad & Tobago	20414	20414
PICNIC	Sara Lee Corporation	Sara Lee Foods, Inc.	United Arab Emirates	13012	15966
PICNIC	Sara Lee Corporation	Sara Lee Foods, Inc.	United States of America	437640	1895207
PICNIC	Sara Lee Corporation	Sara Lee Foods, Inc.	Uruguay	247936	247936
PICNIC	Sara Lee Corporation	Sara Lee Foods, Inc.	Yemen	7439	5770
PRAIRIE BELT	Sara Lee Corporation	Sara Lee Foods, Inc.	Argentina	1831798	1646090
PRAIRIE BELT	Sara Lee Corporation	Sara Lee Foods, Inc.	Belize	1271.02	1271.02
PRAIRIE BELT	Sara Lee Corporation	Sara Lee Foods, Inc.	Brazil	819927414	819927414
PRAIRIE BELT	Sara Lee Corporation	Sara Lee Foods, Inc.	Egypt	80856	80856
PRAIRIE BELT	Sara Lee Corporation	Sara Lee Foods, Inc.	Saudi Arabia	14505	254/58
PRAIRIE BELT	Sara Lee Corporation	Sara Lee Foods, Inc.	Tennessee	N/A	TN016941
PRAIRIE BELT	Sara Lee Corporation	Sara Lee Foods, Inc.	Trinidad & Tobago	20192	20192
PRAIRIE	Sara Lee	Sara Lee	United States	75/672939	2338271

BELT	Corporation	Foods, Inc.	of America		
PRAIRIE BELT & BOY DESIGN	Sara Lee Corporation	Sara Lee Foods, Inc.	United States of America	75/669698	2357185
RED BIRD	Sara Lee Corporation	Sara Lee Foods, Inc.	Trinidad & Tobago	20191	20191
RED BIRD (Common Law)	Sara Lee Corporation	Sara Lee Foods, Inc.	United States of America	N/A	N/A
SAVOY	Sara Lee Corporation	Sara Lee Foods, Inc.	Canada	688868	448489
SAVOY	Sara Lee Corporation	Sara Lee Foods, Inc.	Saudi Arabia	14508	284/23
SAVOY	Sara Lee Corporation	Sara Lee Foods, Inc.	Trinidad & Tobago	20195	20195
SWEET SUE	Sara Lee Corporation	Sara Lee Foods, Inc.	China	93101321	746287
SWEET SUE	Sara Lee Corporation	Sara Lee Foods, Inc.	Egypt	80860	80860
SWEET SUE	Sara Lee Corporation	Sara Lee Foods, Inc.	Guatemala	94-1748	81622
SWEET SUE	Sara Lee Corporation	Sara Lee Foods, Inc.	Japan	99168/1991	2656856
SWEET SUE	Sara Lee Corporation	Sara Lee Foods, Inc.	Panama	59935	59935
SWEET SUE	Sara Lee Corporation	Sara Lee Foods, Inc.	Saudi Arabia	14674	257/95
SWEET SUE	Sara Lee Corporation	Sara Lee Foods, Inc.	Saudi Arabia	14671	255/60
SWEET SUE	Sweet Sue Kitchens*	Sara Lee Foods, Inc.	Taiwan	82040991	639918
SWEET SUE	Sara Lee	Sara Lee	Trinidad &	20193	20193

	Corporation	Foods, Inc.	Tobago		
SWEET SUE	Sara Lee Corporation	Sara Lee Foods, Inc.	United States of America	054566	1033998
SWEET SUE & GIRL DESIGN	Sara Lee Corporation	Sara Lee Foods, Inc.	United States of America	75/669699	2338247
FROM THE KITCHENS OF SWEET SUE & DESIGN	Sara Lee Corporation	Sara Lee Foods, Inc.	United States of America	76/007963	2847741
TEMT	Sara Lee Corporation	Sara Lee Foods, Inc.	Panama	54513	54513
TEMT & DESIGN	Sara Lee Corporation	Sara Lee Foods, Inc.	United States of America	481890	429529

\* Title in this mark has been transferred to Sara Lee Corporation and subsequently to Sara Lee Foods, Inc. but the completion of the registration update is still underway. Any documentation related to the transfer of these trademarks will form part of the Records.

2. Patents.

None.

3. Copyrights.

None.

4. Software.

None.

**Schedule 2.1(i)**

**Business Permits**

1. Alabama Department of Environmental Management – Air Permit Number 708-0018-X001 – 29.3 MMBtu/hr Cleaver Brooks Natural Gas and Oil Fired Boiler. See Item 3 on Schedule 5.2(b).
2. Alabama Department of Environmental Management – Air Permit Number 708-0018-X002 – 28.0 MMBtu/hr Superior Natural Gas and Oil Fired Boiler. See Item 3 on Schedule 5.2(b).
3. Alabama Department of Environmental Management – Air Permit Number 708-0018-X003 – 12,000 Gallon Fuel Oil Storage Tank No. 2 Fuel Oil. See Item 3 on Schedule 5.2(b).
4. Alabama Department of Environmental Management – Air Permit Number 708-0018-X004 – 10.5 MMBtu/hr Natural Gas Fired Boiler. See Item 3 on Schedule 5.2(b).
5. Alabama Department of Environmental Management – National Pollutant Discharge Elimination System Permit Number AL0023817. See Item 4 on Schedule 5.2(b).
6. Alabama Department of Environmental Management – State Indirect Discharge Permit Number IU 08-42-00073. See Item 4 on Schedule 5.2(b).



**Schedule 2.1(l)**

**Other Purchased Assets**

None.

## **Schedule 5.2(b)**

### **Noncontravention**

1. Consents to assign the following Seller Agreements are defined in the Agreement as Required Consents (see Schedule 7.3(a)):

Co-packing Agreement dated as of September 15, 1999 between Bryan Foods, Inc. and Castleberry for the manufacture of certain designated meat products. See Item 6 on Schedule 5.10(b).

Co-packing Agreement dated as of September 26, 1996 between Bryan Foods, Inc. and Dial Corp. for the manufacture of certain designated meat products. See Item 6 on Schedule 5.10(b).

Supply Arrangement dated as of July 19, 2004 between Sara Lee Foods, a division of Sara Lee Corporation, and Impress USA, Inc. for the provision of cans. See Item 1 on Schedule 5.10(b).

Supply Arrangement with Ball Corporation for the provision of cans (course of trade based on unsigned mark-up of draft contract dated March 31, 2004 provided to Buyer). See Item 1 on Schedule 5.10(b).

2. Consent to assignment is required for the following Seller Agreements:

Lease Agreement dated March 28, 2001 among Sweet Sue Kitchens, Pitney Bowes Inc. ("Pitney Bowes") and Pitney Bowes Credit Corporation ("PBCC") (consisting of an Equipment Lease with PBCC, Postage Meter Rental Agreement with Pitney Bowes, Maintenance and Service Agreement with Pitney Bowes, Purchase Power Agreement with PBCC and a U.S. Postal Service Acknowledgment of Deposit). (Assignment of this Contract is subject to payment of Pitney Bowes's "then applicable Assignment fee" and costs including filing fees and reasonable attorneys' fees. Sellers shall be responsible for payment of such fee and costs.)

Commercial Lease Agreement (Equipment) dated June 1, 2003 between Sara Lee Foods, U.S. and Toyota Material Handling, U.S.A., Inc. for the provision of forklifts.

Co-packing Agreement dated as of September 26, 1996 between Bryan Foods, Inc. and Dial Corp. for the manufacture of certain designated meat products. See Item 6 on Schedule 5.10(b).

Special Services Agreement for Interruptible Natural Gas Sales Service dated as of October 30, 2002 by and between Athens Utilities and Bryan Foods, Inc.

Transportation Agreement dated October 21, 2003 by and between Penske Logistics LLC and Bryan Foods/Sweet Sue Kitchens, as amended.

Supplier Agreement dated June 15, 1998 between Bryan Foods, Inc. and Federated Foods, Inc.

3. The following permits are not transferable. Upon sale or legal transfer, the new owner or operator must apply for a permit within 30 days.

Alabama Department of Environmental Management – Air Permit Number  
708-0018-X001 – 29.3 MMBtu/hr Cleaver Brooks Natural Gas and Oil Fired Boiler

Alabama Department of Environmental Management – Air Permit Number  
708-0018-X002 – 28.0 MMBtu/hr Superior Natural Gas and Oil Fired Boiler

Alabama Department of Environmental Management – Air Permit Number  
708-0018-X003 – 12,000 Gallon Fuel Oil Storage Tank No. 2 Fuel Oil

Alabama Department of Environmental Management – Air Permit Number  
708-0018-X004 – 10.5 MMBtu/hr Natural Gas Fired Boiler

4. Notice of transfer is required for the following permits and submission of new permit applications may be required at the discretion of the Director of the Alabama Department of Environmental Management.

Alabama Department of Environmental Management – National Pollutant Discharge Elimination System Permit Number AL0023817

Alabama Department of Environmental Management – State Indirect Discharge Permit Number IU 08-42-00073

5. The Business utilizes warehouse space provided by Charlie Baucom Incorporated on an as-needed basis. Such space is not subject to a written lease agreement but is based on the terms attached to Schedule 2.1(c). This arrangement is terminable at will by Sara Lee or Charlie Baucom Incorporated.
6. The employees of Sweet Sue Kitchens, Inc. at the Athens, Alabama facility are represented by the Retail, Wholesale and Department Store Union, AFL-CIO pursuant to a union agreement dated as of September 30, 2001. See Item 4 on Schedule 5.10(b).
7. Software installed on certain computer hardware included in the Purchased Assets is not transferable and will need to be replaced by Buyer.
8. As disclosed on Schedule 5.10(b), the following Contracts have not been fully executed in written form by all of the parties thereto:

Supply Letter Agreement dated April 14, 2004 between Sara Lee Foods US and Gold

Kist Inc. for the supply of poultry products (disclosure copy unsigned by Sara Lee Foods US). See Item 1 on Schedule 5.10(b).

Consulting Services Agreement dated March 10, 2004 between Sara Lee Foods, a division of Sara Lee Corporation, and TechniCAL, Inc. for the provision of consulting services (disclosure copy unsigned by both parties). See Items 1 and 2 on Schedule 5.10(b).

Supply Arrangement dated as of July 19, 2004 between Sara Lee Foods, a division of Sara Lee Corporation, and Impress USA, Inc. for the provision of cans (disclosure copy unsigned by Impress USA, Inc.). See Item 1 on Schedule 5.10(b).

Supply Arrangement with Ball Corporation for the provision of cans (course of trade based on unsigned mark-up of draft contract dated March 31, 2004 provided to Buyer). See Item 1 on Schedule 5.10(b).

Crown Point Limited Pouch Pricing (course of trade based on presentation disclosed to Buyer). See Item 1 on Schedule 5.10(b).

Retail Brokerage Agreement dated December 1, 2002 between Sara Lee Foods – U.S. and Daymon & Assoc. Inc. (disclosure copy unsigned by Daymon & Assoc. Inc.). See Item 1 on Schedule 5.10(b).

Retail Brokerage Agreement dated December 1, 2002 between Sara Lee Foods – U.S. and M.R. Sales (disclosure copy unsigned by M.R. Sales). See Item 1 on Schedule 5.10(b).

Retail Brokerage Agreement dated December 1, 2002 between Sara Lee Foods – U.S. and P.L. Marketing (disclosure copy unsigned by P.L. Marketing). See Item 1 on Schedule 5.10(b).

Brokerage Services Agreement between Sara Lee Foods and CROSSMARK, Inc. (course of trade based on unsigned mark-up of draft contract dated January 8, 2004 provided to Buyer). See Items 1 and 2 on Schedule 5.10(b).

Distribution Agreement dated March 10, 1995 between Bryan Foods, Inc. and Mendez & Co., Inc. (disclosure copy unsigned by Mendez & Co, Inc.). See Item 1 on Schedule 5.10(b).

Broker Letter Agreement dated October 17, 2000 between Bryan Foods, Inc. and Montuno, Inc. (course of trade based on this expired contract). See Items 1 and 3 on Schedule 5.10(b).

**Schedule 5.3**

**Taxes**

None.

**Schedule 5.4**

**Condition of Assets**

None.

**Schedule 5.5**

**Financial Statements**

**See attached.**

**BALSHT - Balance Sheet Analysis**  
**Company and Accounting Unit:**  
**Period 12 ended JUN, 2004**

Note - Updated for Coupon (Marketing) accrual,  
 Brokerage Accrual, Vacation and PPE & Inv Reserves

1652 224BALSHT BALSHT-Sweet Sue

		Current Period	
Account	Description	Current Period	
111130 0001	Cash In Bank Receipts-Local	3,250	
111180 0000	Petty Cash	500	
	<b>Total Cash</b>	<b>3,750</b>	
131100 0000	Inventories-Raw Materials	73,710	
131115 0000	Ingredients	293,880	
131120 0000	Packaging	474,452	
132300 0000	WIP Inventory-Materials	5,043	
133400 0093	FG Tot Cost-General Account	48,079	
	Finished Goods Inventory - On SLF Supply Chain B/S	5,558,251	Contact - Neal Sol
	Inventories-Cost	6,463,414	
139200 0000	Inv Res-Obsolescence Res	(79,010)	
	Inv Res - Cost Saves - On SLF Supply Chain B/S	(130,000)	Contact - Neal Sol
	Inv Reserve - Packaging - On Dinner B/S	(23,116)	Contact - Kris Cecil
	Inventory Reserve - Obe - On SLF Supply Chain B/S	(2,279)	Contact - Neal Sol
	Less Reserves	(234,405)	
	<b>Inventories (Net)</b>	<b>6,218,008</b>	
142100 0000	Accounts Receivable Other	100,256	
142100 0003	Accounts Receivable Other -3	(100,256)	
	Accounts Receivable Other	-	
	<b>Total Current Assets</b>	<b>6,222,759</b>	
181100 0000	PPE Cost-Land	244,500	
181110 0000	PPE Cost-Land Improvements	1,235,737	
181200 0000	PPE Cost-Buildings	4,957,881	
181300 0000	PPE Cost-Leasehold Imp	64,248	
181400 0000	PPE Cost-Vehicles	-	
181500 0000	PPE Cost-Machinery & Equipment	13,144,245	
181540 0000	PPE Cost-Spare Parts	269,253	
	Inv Res - Spare Parts - On SLF Supply Chain B/S	(64,274)	Contact - Neal Sol
181550 0000	PPE Cost-Furniture & Fixtures	216,627	
181700 0000	PPE Cost-CIP	732,299	
	<b>Total PPE Cost</b>	<b>20,800,518</b>	
182110 0000	Acc Deprn-Land Improvements	(888,492)	
182200 0000	Acc Deprn-Buildings	(2,631,106)	
182300 0000	Acc Deprn-Leasehold Imp	(2,447)	
182400 0000	Acc Deprn-Vehicles	-	
182500 0000	Acc Deprn-Machinery & Equipment	(8,955,341)	
182550 0000	Acc Deprn-Furniture & Fixtures	(209,759)	
	Accumulated Depreciation	(12,687,145)	
	<b>Property Plant And Equipment (Net)</b>	<b>8,113,370</b>	See Note 1 below
	<b>Total Assets</b>	<b>14,338,129</b>	
212110 0000	AP-Manual Accrual	(45,931)	
	AP- Brokers Accrual - On Grocery Front End B/S	(175,521)	Contact - Kris Cecil
	Accounts Payable	(221,462)	
212705 0000	Bonus & Comm-General Bonus	(104,919)	
	Bonus & Comm-General Bonus - On Grocery Front End B/S	(89,885)	Contact - Kris Cecil
	Bonus & Comm-Selling Bonus - On Grocery Front End B/S	(47,503)	Contact - Kris Cecil
	Accrued Bonus And Commissions	(222,307)	
212890 0000	Employee WH-Union Dues	(5)	
	Employee Withholdings	(9)	
	Vacation - On SLF HQ Balance Sheet	(170,519)	Contact - Dan Back
	Accrued Vacation Hol Sick	(170,519)	
	<b>Total Accrued Compensation And Benefits</b>	<b>(382,831)</b>	
	Marketing - On Grocery Front End B/S	(5,000)	Contact - Kris Cecil
	Marketing - Coupon Promotion - On Dinner Front End B/S	(149,000)	Contact - Kris Cecil
	Trade Promotions - On Grocery Front End B/S	(806,615)	Contact - Kris Cecil
	Accrued Marketing, Advertising and Trade	(780,616)	
213800 0000	Property Taxes	(62,065)	
	Accrued Property Taxes	(62,065)	
213710 0001	Sales Taxes-Alabama	(177)	
	Accrued Use & Sales Taxes	(177)	
214110 0000	Utilities Payable-Gas	(33,473)	
214120 0000	Utilities Payable-Water	(7,874)	
214130 0000	Utilities Payable-Electric	(13,304)	
	Accrued Utilities Payable	(54,651)	
215100 0000	Oth Liab-General	(21,246)	
	Oth Liab-General - On Grocery Front End B/S	(3,785)	Contact - Kris Cecil
	Accrued Other Liabilities	(26,011)	
	<b>Total Accrued Expenses</b>	<b>(1,516,800)</b>	

Note - Contact for explanation of accruals is Shirley Brown, unless noted

Note 1 - Difference from original balance sheet is due to a tax related entry that will not be sold with the business.



# Sara Lee Foods - Canned & Pouch Meat Business

(Includes Canned Chili, Canned Other, Chicken dumpings, Chunk, Broth, Vienna, Oil Sausage & Pouch (Grocery))

**NOTE: Marketing Margin as reported includes geography change for plant reported cost saves. ( Included as plant reported not as allocated). Incremental Operating Profit represents "takeout" Operating profit if this business were not part of the Sara Lee Foods portfolio.**

	FY04 Actual	
	Canned Meat	Pouch
Lbs	69,515,547	1,978,065
		Total
		71,493,612
Net Sales pre added trade	\$70,348,257	\$7,872,275
Additional Foodservice trade		\$78,220,532
Net Sales, adjusted	\$70,348,257	\$7,872,275
	\$1.01	\$3.98
Net Sales rate/lb.		78,220,532
COGS-Standard (*)	57,957,405	6,381,077
	\$0.83	\$3.23
COGS-Std. rate/lb.		64,338,482
Additional Copack Inbound Freight(*)		\$0.90
Total Other COGS (*)		-
COGS-Vol Variance (*)	(7,193)	(1,135)
Total COGS Mfg Var (*)	(2,025,000)	-
Actual Gross Margin	14,423,045	1,492,333
Trade Promo-non-EITF	49,141	8,887
GMAT	14,373,904	1,483,446
	\$0.21	\$0.75
GMAT rate/lb.		15,857,350
GMAT %	20.4%	18.8%
		20.3%
Distribution Exp	3,679,100	120,793
Marketing Exp	556,073	15,823
Selling Exp	3,123,546	88,880
Divisional Admin Exp	147,665	4,202
Operating Profit As Reported	6,867,520	1,253,748
	9.8%	15.9%
% to Net Sales		10.4%
MEMO: Total Cost of Sales (*)		
(Incl. all COGS related lines)	55,925,212	6,379,942
	\$0.80	\$3.23
per lb.		62,305,154
		\$0.87

**BALSHT - Balance Sheet Analysis**  
**Company and Accounting Unit:**  
**Period 3 ended SEP, 2005**  
**1552 224BALSHT BALSHT-Sweet Sue**

Note - Inv Reserves

Account	Description	Current Period	
111130 0001	Cash In Bank Receipts-Local	5,153	
111160 0000	Petty Cash	500	
	<b>Total Cash</b>	<b>5,653</b>	
131100 0000	Inventories-Raw Materials	137,887	
131115 0000	Ingredients	283,219	
131120 0000	Packaging	578,848	
132300 0000	WIP Inventory-Materials	87,273	
133400 0093	FG Tot Cost-General Account	18,891	
	Finished Goods Inventory - On SLF Supply Chain B/S	6,048,530	Contact - Neal Sol
	<b>Inventories-Cost</b>	<b>7,134,649</b>	
139200 0000	Inv Res-Obsolescence Res	(79,010)	
	Inv Res - Cost Saves - On SLF Supply Chain B/S	(214,000)	Contact - Neal Sol
	Inv Reserve - Packaging - On Specialty B/S	(8,586)	Contact - Kris Cecil
	Inventory Reserve - Obs - On SLF Supply Chain B/S	(2,868)	Contact - Neal Sol
	<b>Less Reserves</b>	<b>(304,473)</b>	
	<b>Inventories (Net)</b>	<b>6,830,176</b>	
142100 0000	Accounts Receivable Other	100,258	
142100 0003	Accounts Receivable Other -3	(100,258)	
	<b>Total</b>	<b>-</b>	
	<b>Total Current Assets</b>	<b>6,835,829</b>	
161100 0000	PPE Cost-Land	244,500	
161110 0000	PPE Cost-Land Improvements	1,235,737	
161200 0000	PPE Cost-Buildings	4,957,881	
161300 0000	PPE Cost-Leasehold Imp	84,248	
161500 0000	PPE Cost-Machinery & Equipment	13,144,245	
161540 0000	PPE Cost-Spare Parts	269,253	
	Inv Res - Spare Parts - On SLF Supply Chain B/S	(64,274)	Contact - Neal Sol
161550 0000	PPE Cost-Furniture & Fixtures	210,627	
161700 0000	PPE Cost-CIP	767,814	
	<b>Total PPE Cost</b>	<b>20,836,032</b>	
162110 0000	Acc Deprn-Land Improvements	(904,502)	
162200 0000	Acc Deprn-Buildings	(2,692,332)	
162300 0000	Acc Deprn-Leasehold Imp	(3,518)	
162500 0000	Acc Deprn-Machinery & Equipment	(9,169,777)	
162550 0000	Acc Deprn-Furniture & Fixtures	(210,761)	
	<b>Accumulated Depreciation</b>	<b>(12,980,890)</b>	
	<b>Property Plant And Equipment (Net)</b>	<b>7,855,142</b>	
	<b>Total Assets</b>	<b>14,690,971</b>	
212110 0000	AP-Manual Accrual	(22,536)	
	AP- Brokers Accrual - On Retail HQ Front End B/S	(152,664)	Contact - Kris Cecil
	<b>Accounts Payable</b>	<b>(175,201)</b>	
212705 0000	Bonus & Comm-General Bonus	(40,876)	
	Bonus & Comm-General Bonus - On Retail HQ & Specialty Front End B/S	(20,000)	Contact - Kris Cecil
	Bonus & Comm-Selling Bonus - On Retail HQ Front End B/S	(54,195)	Contact - Kris Cecil
	<b>Accrued Bonus And Commissions</b>	<b>(115,071)</b>	
213201 0000	Vacation	(8,106)	
	Vacation - On SLF HQ Balance Sheet	(170,518)	Contact - Dan Back
213202 0000	Holiday	(9,913)	
	<b>Accrued Vacation Hol Sick</b>	<b>(188,540)</b>	
213211 0000	Medical Plan	15,044	
	<b>Accrued Medical</b>	<b>15,044</b>	
	<b>Total Accrued Compensation And Benefits</b>	<b>(288,567)</b>	
	Trade Promotions - On Specialty & Retail HQ Front End B/S	(647,483)	Contact - Kris Cecil
	<b>Accrued Marketing, Advertising and Trade</b>	<b>(647,483)</b>	
213800 0000	Property Taxes	(83,790)	
	<b>Accrued Property Taxes</b>	<b>(83,790)</b>	
213710 0001	Sales Taxes-Alabama	(281)	
	<b>Accrued Use &amp; Sales Taxes</b>	<b>(281)</b>	
214110 0000	Utilities Payable-Gas	(39,330)	
214120 0000	Utilities Payable-Water	(10,328)	
214130 0000	Utilities Payable-Electric	(15,464)	
	<b>Accrued Utilities Payable</b>	<b>(65,122)</b>	
215100 0000	Oth Liab-General	(21,246)	
	<b>Accrued Other Liabilities</b>	<b>(21,246)</b>	
	<b>Total Accrued Expenses</b>	<b>(1,281,690)</b>	

Note - Contact for explanation of accruals is Shirley Brown, unless noted

# Sara Lee Foods - Canned & Pouch Meat Business

(Includes Canned Chili, Canned Other, Chicken dumplings, Chunk, Broth, Vienna, Oil Sausage & Pouch (Grocery))

**NOTE: Marketing Margin as reported includes geography change for plant reported cost saves. ( Included as plant reported not as allocated). Incremental Operating Profit represents "takeout" Operating profit if this business were not part of the Sara Lee Foods portfolio.**

	Q1 FY05		
	Canned Meat	Pouch	Total
Lbs	14,395,989	327,453	14,723,442
Net Sales	17,209,748	\$1,713,626	\$18,923,374
Net Sales rate/lb.	\$1.20	\$5.23	\$1.29
COGS-Standard	14,098,060	1,524,984	15,623,044
COGS-Std. rate/lb.	\$0.98	\$4.66	\$1.06
COGS-Vol Variance	(197,600)	40,340	(157,260)
Total COGS Mfg Var	(486,000)	(228,000)	(714,000)
Actual Gross Margin	3,795,288	376,302	4,171,590
Trade Promo-non-EITF	5,600	509	6,109
GMAT	3,789,688	375,793	4,165,481
GMAT rate/lb.	\$0.26	\$1.15	\$0.28
GMAT %	22.0%	21.9%	22.0%
Distribution Exp	886,852	20,172	907,025
Marketing Exp	18,648	424	19,072
Selling Exp	685,876	15,601	701,477
Divisional Admin Exp	24,750	563	25,313
Operating Profit As Reported	2,173,562	339,032	2,512,594
% to Net Sales	12.6%	19.8%	13.3%
MEMO: Total Cost of Sales (*)	13,414,460	1,337,324	14,751,784
(Incl. all COGS related lines)	\$0.93	\$4.08	\$1.00
			per lb.

Reference Working Capital  
as of 10.2.2004

Inventory - Raw Materials	137,887
Ingredients	283,219
Packaging	578,848
WIP Inventory - Materials	67,273
FG TOT cost - General Account	18,891
Finished Goods Inventory - On SLF Supply Chain B/S	6,048,530
<b>Inventories - Cost</b>	<b>7,134,649</b>
Inv Reserve - Obsolescence Res	(79,010)
Inv Reserve - Cost Saves on SLF Supply Chain B/S	(214,000)
Inv Reserve - Packaging - on Specialty B/S	(8,596)
Inventory Reserve - Obs - On SLF Supply Chain B/S	(2,868)
<b>Less Reserves</b>	<b>(304,473)</b>
<b>Inventories - Net</b>	<b>6,830,176</b>
Accruals	
Bonus and Commission - General Bonus	(40,876)
Bonus and Commission - Genr. Bonus on Retail HQ and Specialty Front end B/S	(20,000)
Bonus and Commission - Selling Bonus - On Retail HQ Front end B/S	(54,195)
<b>Accrued Bonus and Commissions</b>	<b>(115,071)</b>
Vacation	(8,108)
Vacation - On SLF HQ Balance Sheet	(170,519)
Holiday	(9,913)
<b>Accrued Vacation Holiday Sick</b>	<b>(188,540)</b>
Medical Plan	15,044
<b>Accrued Medical</b>	<b>15,044</b>
<b>Total Accrued Comp and Benefits</b>	<b>(288,567)</b>
Other Liab - General	(21,246)
<b>Accrued Other Liabilities</b>	<b>(21,246)</b>
<b>Net Working Capital</b>	<b>6,520,363</b>

## **Schedule 5.6**

### **Operations Since Financial Statements Date**

The following Seller Agreements have been entered into since the Financial Statements Date:

Supply Agreement dated July 22, 2004 between Sara Lee Foods US and Franz Foods for the supply of chicken. See Schedule 7.4(a).

Supply Arrangement dated as of July 19, 2004 between Sara Lee Foods, a division of Sara Lee Corporation, and Impress USA, Inc. for the provision of cans. See Items 1 and 8 on Schedule 5.2(b) and Item 1 on Schedule 5.10(b).

Sellers' arrangements for the supply of chicken expire at the end of calendar 2004. Sellers have an oral agreement with each of Franz Foods and House of Raeford for the supply of chicken for a twelve-month period at favorable pricing; however, such arrangements will not be documented prior the date of execution of the Agreement and possibly not until after the Closing. It is possible that either or both of Franz Foods and House of Raeford will seek to modify terms of such supply arrangements once the transactions contemplated by the Agreement are announced and/or consummated. See Schedule 7.4(a).

Sara Lee Foods was notified by Wal\*Mart on or about December 15, 2004 that Wal\*Mart had ordered approximately 250,000 pounds more broth product than required. Wal\*Mart will be returning this product to Sara Lee Foods within financial year period 6 (December 2004) and granted a refund. There will be a reversal of this amount in the Period 6 financials, which will reduce gross margin after trade by approximately \$25,000. Inventory will also be increased to reflect this return.

Sellers have made certain offers of employment and are in the process of filling certain open positions as disclosed on Schedule 7.4(a).

William Baer resigned as Director of Grocery Products for the Business in August 2004.

**Schedule 5.8**

**Inventory**

See attached.

The product is produced with a 3 year shelf life. It is sold with no restriction for 2 years. When there is one year or less remaining on the shelf life, it is considered short-coded and will be sold for a reduced margin. Once expired, it is destroyed.

The attached listing includes \$3,361.61 in the expired category and \$54,792.38 in the short coded category, in each case as of December 11, 2004.

Total Shelf Life Report

Line of Business	Branch	Plant	Product	RBU	Description	Quantity On Hand	UM	Pounds	Internal Date	Condition Code	QC Hold	Lot Code	# Days Remain	Total Date	Cost	Expired	30+ days remaining	30 days or less remaining		
224			53198 SPECIALTY		SSK CKN BBO 24/5	52	CA	390.00	1/4/2004 MS01			02003 00000209	21	1/6/2005	607.90		\$ 1,168.04	\$ 607.90		
224			53198 SPECIALTY		SSK CKN BBO 24/5	100	CA	750.00	2/7/2004 MS01			02037 00000209	65	2/6/2005	1,168.04		\$ 525.42			
224			35045 SPECIALTY		PB SGE SMK BLOT 48/5	36	CA	540.00	2/21/2004 MS01			02051 00000338	99	2/20/2005	1,168.04		\$ 13.70			
224			34155 SPECIALTY		RB VIE 48/5	1	CA	15.00	2/27/2004 MS01			02057 00000338	62	2/6/2005	13.70		\$ 148.87			
224			34280 SPECIALTY		PB SGE SMK HT 24/9.5	9	CA	128.25	3/5/2004 MS01			02064 00000338	64	3/7/2005	148.87		\$ 1,005.37			
224			53198 SPECIALTY		SSK CKN BBO 24/5	86	CA	645.00	3/7/2004 MS01			02066 00000209	88	3/12/2005	1,005.37		\$ 73.32			
224			60551 SPECIALTY		HVY CKN BRST 24/5	4	CA	30.00	3/12/2004 MS01			02071 00000209	110	4/2/2005	73.32		\$ 10,591.50			
224			53198 SPECIALTY		SSK CKN BBO 24/5	906	CA	6,795.00	4/2/2004 MS01			02082 00000209	125	4/17/2005	10,591.50		\$ 4,091.64			
224			53198 SPECIALTY		SSK CKN BBO 24/5	827	CA	2,625.00	4/17/2004 MS01			02107 00000209	132	4/24/2005	4,091.64		\$ 9,667.96			
224			34647 SPECIALTY		SSK CKN BBO 24/5	2	CA	6.202.50	4/24/2004 MS01			02114 00000209	133	4/25/2005	9,667.96		\$ 25.83			
224			34664 SPECIALTY		ELP VIE CKN 48/5	1	CA	30.00	4/25/2004 MS01			02115 00000338	133	4/25/2005	25.83		\$ 12.90			
224			53197 SPECIALTY		SSK CKN WH CHUNK DGEN 24/5	1	CA	82.50	4/25/2004 MS01			02119 00000209	137	4/29/2005	12.90		\$ 182.42			
224			53197 SPECIALTY		SSK CKN WH CHUNK DGEN 24/5	409	CA	3,067.50	4/29/2004 MS01			02120 00000209	151	5/3/2005	182.42		\$ 2,824.31			
224			30030 SPECIALTY		SSK GYV SO STY SGE 12/10	15	CA	225.00	5/13/2004 MS01			02133 00000338	151	5/18/2005	2,824.31		\$ 117.97			
224			34010 SPECIALTY		BRY VIE 48/5	7	CA	105.00	5/13/2004 MS01			02135 00000338	153	5/18/2005	117.97		\$ 94.53			
224			53171 SPECIALTY		JEW CKN CHUNK 12/10	3	CA	22.50	5/16/2004 MS01			02136 00000209	154	5/18/2005	94.53		\$ 40.14			
224			53197 SPECIALTY		SSK GYV SO STY SGE 12/10	17	CA	127.50	5/16/2004 MS01			02150 00000209	169	5/30/2005	40.14		\$ 117.39			
224			34155 SPECIALTY		SSK GYV SO STY SGE 12/10	1	CA	82.50	5/30/2004 MS01			02154 00000209	172	5/3/2005	117.39		\$ 75.96			
224			53143 SPECIALTY		HVY CKN BRST 24/5	1	CA	15.00	6/17/2004 MS01			02168 00000338	186	6/17/2005	75.96		\$ 13.70			
224			50032 SPECIALTY		BYT CKN BRST 24/5	4	CA	30.00	6/18/2004 MS01			02169 00000209	187	6/18/2005	13.70		\$ 72.98			
224			50031 SPECIALTY		BYT CKN CHUNK 24/5	28	CA	7.50	6/20/2004 MS01			02171 00000209	188	6/20/2005	72.98		\$ 18.68			
224			34494 SPECIALTY		SAV VIE CKN 24/9.5	163	CA	2,322.75	7/17/2004 MS01			02198 00000338	215	7/16/2005	18.68		\$ 425.13			
224			50011 SPECIALTY		BRY VIE DTR 48/5	93	CA	1,395.00	8/27/2004 MS01			02239 00000338	257	8/27/2005	425.13		\$ 2,248.35			
224			55427 SPECIALTY		SSK CKN-DUMP FF 12/24	4	CA	72.00	9/3/2004 MS01			02246 00000209	264	9/3/2005	2,248.35		\$ 1,181.98			
224			34114 SPECIALTY		SHM BROTH CKN 24/14.5	309	CA	6,720.75	9/3/2004 MS02H			02246 00000209	284	9/3/2005	1,181.98		\$ 52.06			
224			55427 SPECIALTY		BRY PT MT DTR 48/5	194	CA	1,746.00	9/4/2004 MS01			02247 00000338	265	9/4/2005	52.06		\$ 2,264.91			
224			55427 SPECIALTY		SHM BROTH CKN 24/14.5	506	CA	11,005.50	9/11/2004 MS02H			02254 00000209	272	9/11/2005	2,264.91		\$ 2,545.14			
224			55240 SPECIALTY		TMD BROTH CKN 24/14.5	8	CA	174.00	9/13/2004 MS01			02256 00000209	274	9/13/2005	3,708.88		\$ 3,708.88			
224			38278 SPECIALTY		PB SGE SMK HT 24/9.5	3	CA	42.75	9/17/2004 MS01			02260 00000338	278	9/17/2005	53.05		\$ 53.05			
224			53144 SPECIALTY		BRY HAM DEV DGEN 48/3	34	CA	306.00	9/17/2004 MS01			02260 00000338	278	9/17/2005	48.96		\$ 48.96			
224			23335 SPECIALTY		HVY CKN BRST 12/10	2	CA	15.00	10/3/2004 MS01			02276 00000209	294	10/3/2005	553.06		\$ 553.06			
224			55240 SPECIALTY		TMD BROTH CKN 24/14.5	46	CA	1,000.50	10/15/2004 MS02H		H	02281 00000338	306	10/15/2005	33.45		\$ 33.45			
224			35044 SPECIALTY		PB SGE SMK FDO 48/5	130	CA	1,950.00	10/16/2004 MS01			02288 00000209	307	10/16/2005	120.29		\$ 120.29			
224			50011 SPECIALTY		SSK CKN-DUMP FF 12/24	6	CA	144.00	10/16/2004 MS01			02289 00000338	307	10/16/2005	305.05		\$ 305.05			
224			50012 SPECIALTY		SSK BROTH CKN DRP 24/08PK/14.5	6	CA	10,440.00	10/16/2004 MS01		H	02289 00000209	307	10/16/2005	1,880.39		\$ 1,880.39			
224			55241 SPECIALTY		SSK BROTH CKN 24/14.5	3	CA	54.00	10/22/2004 MS01			02289 00000209	313	10/22/2005	104.13		\$ 104.13			
224			50033 SPECIALTY		BYT CKN BRST 12/10	12	CA	261.00	10/26/2004 MS02H		H	02298 00000209	317	10/26/2005	4,196.68		\$ 4,196.68			
224			50036 SPECIALTY		DISC SSK CKN-DUMP 12/30	19	CA	427.50	11/19/2004 MS01			02323 00000209	341	11/19/2005	38.06		\$ 38.06			
224			11557 SPECIALTY		BYT CKN CHUNK 24/5	2	CA	15.00	12/3/2004 MS01			02337 00000209	355	12/3/2005	86.63		\$ 86.63			
224			55153 SPECIALTY		SSK GYV SO STY SGE FDO 12/10	18	CA	135.00	12/11/2004 MS01		H	02345 00000209	363	12/11/2005	135.98		\$ 135.98			
224			33074 SPECIALTY		MAR BROTH CKN 24/14.5	30	CA	652.50	12/12/2004 P			02346 00000209	364	12/12/2005	300.02		\$ 300.02			
224			53144 SPECIALTY		BRY HAM DEV 48/3	8	CA	72.00	12/23/2004			02357 00000338	375	12/23/2005	300.02		\$ 300.02			
224			34155 SPECIALTY		HVY CKN BRST 12/10	182	CA	1,215.00	12/30/2004			02364 00000209	382	12/30/2005	123.93		\$ 123.93			
224			50031 SPECIALTY		BYT CKN CHUNK 24/5	13	CA	97.50	1/9/2005			02008 00000338	391	1/9/2006	200.65		\$ 200.65			
224			30052 SPECIALTY		6CH PT MT 48/3	8	CA	54.00	4/21/2005 E			01110 00000338	392	4/21/2006	180.58		\$ 180.58			
224			34128 SPECIALTY		BRY CHILI HOS DTR 24/10	4	CA	60.00	10/23/2003 E			01078 00000338	EXPIRED	4/20/2004	58.06	\$ 58.06	\$ 58.06			
224			35045 SPECIALTY		PB SGE SMK BLOT 48/5	4	CA	60.00	10/23/2003 E			01295 00000338	EXPIRED	10/22/2004	51.86	\$ 51.86	\$ 51.86			
224			50032 SPECIALTY		BYT CKN BRST 24/5	58	CA	870.00	10/24/2003 E			01298 00000338	EXPIRED	10/23/2004	32.50	\$ 32.50	\$ 32.50			
224			53142 SPECIALTY		SSK CKN WH CHUNK DGEN 24/5	6	CA	45.00	9/16/2002 E			01228 00000209	EXPIRED	8/16/2003	846.51	\$ 846.51	\$ 846.51			
224			53173 SPECIALTY		ACM CKN BRST 12/10	6	CA	22.50	9/9/2003 E			01251 00000209	EXPIRED	9/8/2004	112.10	\$ 112.10	\$ 112.10			
224			53196 SPECIALTY		SSK CKN BRQ 24/5	18	CA	135.00	3/29/2003 E			01220 00000209	EXPIRED	9/8/2004	99.50	\$ 99.50	\$ 99.50			
224			53196 SPECIALTY		SSK CKN BRQ 24/5	79	CA	592.50	8/2/2003 E			01087 00000209	EXPIRED	3/28/2004	50.08	\$ 50.08	\$ 50.08			
224			53196 SPECIALTY		SSK CKN BRQ 24/5	20	CA	150.00	10/12/2003 E			01213 00000209	EXPIRED	8/1/2004	210.43	\$ 210.43	\$ 210.43			
224			60551 SPECIALTY		KRO CKN BRQ 24/5	25	CA	187.50	12/13/2003 E			01346 00000209	EXPIRED	10/11/2004	923.54	\$ 923.54	\$ 923.54			
224			60551 SPECIALTY		HVY CKN BRST 24/5	27	CA	202.50	5/12/2003 E			01051 00000209	EXPIRED	2/20/2004	233.81	\$ 233.81	\$ 233.81			
224			60551 SPECIALTY		HVY CKN BRST 24/5	2	CA	15.00	5/12/2003 E			01162 00000209	EXPIRED	5/11/2004	292.26	\$ 292.26	\$ 292.26			
224			60551 SPECIALTY		HVY CKN BRST 24/5	2	CA	15.00	5/12/2003 E			01162 00000209	EXPIRED	5/11/2004	414.30	\$ 414.30	\$ 414.30			
																	\$ 54,792.38	\$ 607.90	\$ 54,792.38	\$ 607.90
																	\$ 54,792.38	\$ 607.90	\$ 54,792.38	\$ 607.90
																	\$ 54,792.38	\$ 607.90	\$ 54,792.38	\$ 607.90

**Schedule 5.10(a)**

**Other Seller Contracts**

See Schedule 5.10(b) and Schedule 5.20.



## **Schedule 5.10(b)**

### **Seller Agreements**

1. The following Contracts have not been fully executed in written form by all of the parties thereto:

Supply Letter Agreement dated April 14, 2004 between Sara Lee Foods US and Gold Kist Inc. for the supply of poultry products (disclosure copy unsigned by Sara Lee Foods US). See Item 8 on Schedule 5.2(b).

Consulting Services Agreement dated March 10, 2004 between Sara Lee Foods, a division of Sara Lee Corporation, and TechniCAL, Inc. for the provision of consulting services (disclosure copy unsigned by both parties). See Item 8 on Schedule 5.2(b).

Supply Arrangement dated as of July 19, 2004 between Sara Lee Foods, a division of Sara Lee Corporation, and Impress USA, Inc. for the provision of cans (disclosure copy unsigned by Impress USA, Inc.). See Items 1 and 8 on Schedule 5.2(b).

Supply Arrangement with Ball Corporation for the provision of cans (course of trade based on unsigned mark-up of draft contract dated March 31, 2004 provided to Buyer). See Items 1 and 8 on Schedule 5.2(b).

Crown Point Limited Pouch Pricing (course of trade based on presentation disclosed to Buyer). See Item 8 on Schedule 5.2(b).

Retail Brokerage Agreement dated December 1, 2002 between Sara Lee Foods – U.S. and Daymon & Assoc. Inc. (disclosure copy unsigned by Daymon & Assoc. Inc.). See Item 8 on Schedule 5.2(b).

Retail Brokerage Agreement dated December 1, 2002 between Sara Lee Foods – U.S. and M.R. Sales (disclosure copy unsigned by M.R. Sales). See Item 8 on Schedule 5.2(b).

Retail Brokerage Agreement dated December 1, 2002 between Sara Lee Foods – U.S. and P.L. Marketing (disclosure copy unsigned by P.L. Marketing). See Item 8 on Schedule 5.2(b).

Brokerage Services Agreement between Sara Lee Foods and CROSSMARK, Inc. (course of trade based on unsigned mark-up of draft contract dated January 8, 2004 provided to Buyer). See Item 8 on Schedule 5.2(b).

Distribution Agreement dated March 10, 1995 between Bryan Foods, Inc. and Mendez & Co., Inc. (disclosure copy unsigned by Mendez & Co, Inc.). See Item 8 on

Schedule 5.2(b).

Broker Letter Agreement dated October 17, 2000 between Bryan Foods, Inc. and Montuno, Inc. (course of trade based on this expired contract). See Item 8 on Schedule 5.2(b).

2. The following Contracts expire pursuant to their terms on December 31, 2004:

Supply Agreement dated July 22, 2004 between Sara Lee Foods US and Franz Foods for the supply of chicken. See Schedule 7.4(a).

Consulting Services Agreement dated March 10, 2004 between Sara Lee Foods, a division of Sara Lee Corporation, and TechniCAL, Inc. for the provision of consulting services. See Item 8 on Schedule 5.2(b).

Brokerage Services Agreement between Sara Lee Foods and CROSSMARK, Inc. (The term of this Agreement has been extended by negotiation to January 31, 2005.) See Item 8 on Schedule 5.2(b).

3. The Broker Letter Agreement dated October 17, 2000 between Bryan Foods, Inc. and Montuno, Inc. has expired but the parties continue to operate under such Contract on a course of trade basis. See Item 8 on Schedule 5.2(b).
4. The following Contract is expected to be renegotiated beginning in January 2005 in anticipation of its expiration pursuant to its terms on March 31, 2005 (see Item 6 on Schedule 5.2(b)):

Agreement dated as of September 30, 2001 between Sweet Sue Kitchens, Inc. and Retail, Wholesale and Department Store Union, AFL-CIO

5. The Business utilizes warehouse space provided by Charlie Baucom Incorporated on an as-needed basis. Such space is not subject to a written lease agreement but is based on the terms attached to Schedule 2.1(c). This arrangement is terminable at will by Sara Lee or Charlie Baucom Incorporated.
6. The following Contracts have been provided to Buyer in redacted form only:

Co-packing Agreement dated as of September 15, 1999 between Bryan Foods, Inc. and Castleberry for the manufacture of certain designated meat products. See Item 1 on Schedule 5.2(b).

Co-packing Agreement dated as of September 26, 1996 between Bryan Foods, Inc. and Dial Corp. for the manufacture of certain designated meat products. See Items 1 and 2 on Schedule 5.2(b).

7. Addendum #23 to Management Services Agreement dated May 15, 2003 by and between Sara Lee Foods, U.S. and IKON Office Solutions Inc. amends the Management Services Agreement effective as of August 14, 2001. Neither the original Management Services Agreement effective as of August 14, 2001 nor any other amendments or addenda have been provided to Buyer.

**Schedule 5.11(a)**

**Intellectual Property – Encumbrances**

1. Sara Lee Corporation contributed all of the trademarks listed on Schedule 2.1(g) to Sara Lee Foods, Inc. in July of 2004. Because all trademarks are still within the Sara Lee group, registrations of such marks have not been updated to reflect such transfer.
2. Saramar, L.L.C. (a Sara Lee group company which previously held the trademarks listed on Schedule 2.1(g)) and Nabisco, Inc. entered into an agreement effective March 4, 1994 pursuant to which Saramar agreed not to use the its mark “PENNANT” in the United States on nuts and Nabisco agreed not to use their mark “PENNANT” in the United States on meat products. This agreement is a Seller Agreement included on Schedule 2.1(f).
3. Saramar, L.L.C. (a Sara Lee group company which previously held the trademarks listed on Schedule 2.1(g)) and Prairie Harvest Canada Limited entered into an agreement effective August 17, 2001 pursuant to which Prairie Harvest Canada Limited agreed not to use their mark “Prairie Harvest & Design” in the United States or any confusing mark on meat products. Saramar agreed not to oppose any application filed by Prairie Harvest Canada Limited this is filed for other unrelated products. This agreement is a Seller Agreement included on Schedule 2.1(f).

**Schedule 5.11(b)**

**Intellectual Property – Infringement**

None.

**Schedule 5.11(c)**

**Intellectual Property – Proceedings**

None.

**Schedule 5.11(d)**

**Intellectual Property – Third Party Infringement**

**Samar, L.L.C. (a Sara Lee group company) has recently challenged two marks used by third parties:**

- 1. Samar, L.L.C. v. Atalanta Corporation in connection with Atalanta Corporation's use of the mark "PIC-HAM". Samar's mark is "PICNIC". Samar's opposition was filed on February 19, 2002. Samar settled this matter with Atalanta and has permitted them to use the PIC-HAM mark only with respect to pork shoulder ham.**
- 2. Samar, L.L.C. challenged Gagwear, Inc.'s use of the name "Sweet Sue" on clothing. Samar and Gagwear have reached an oral agreement that confirms Samar's right to use the mark "Sweet Sue" on promotional clothing such as T-shirts.**

**Schedule 5.12(a)**

**Business Employees**

See attached.

**Business Employees not included on the attached list:**

Carol Moore (currently on long-term disability)

Thomas Holbrook, Sr. Research Scientist

Date of hire: 1-11-88

Salary: \$85,109 per annum

Except as set forth above, there are no Business Employees currently on short-term disability, long-term disability or other authorized leave of absence.

The employees of Sweet Sue Kitchens, Inc. at the Athens, Alabama facility are represented by the Retail, Wholesale and Department Store Union, AFL-CIO pursuant to a union agreement dated as of September 30, 2001. Such union agreement is expected to be renegotiated beginning in January 2005 in anticipation of its expiration pursuant to its terms on March 31, 2005.

Alaandro Conerly, an Athens Business Employee, has been called for active duty in Iraq.

See Schedule 7.4(a) for information regarding open positions and pending offers of employment.



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E#	DOH	1ST NAME	2ND NAME	DEPT	RATE
123929	6/7/2004	Memory	Stewart	Accounting/Payroll Clerk	\$11.00
109587	10/2/1978	Barbara	Jackson	Bone Scan Utility Operator	\$8.80
109567	9/8/1969	Willie	Randolph	CANNING LINE 1-2	\$7.55
109117	2/12/1979	Mary	Burks	CANNING LINE 1-2	\$7.55
109297	7/18/1994	Linda	Hicks	CANNING LINE 1-2	\$7.55
109242	5/28/1996	Larry	Gilbert	CANNING LINE 1-2	\$7.55
109107	6/17/1998	Essie	Bobo	CANNING LINE 1-2	\$7.55
109535	8/14/2000	Alan	Pack	CANNING LINE 1-2	\$7.55
109617	2/26/2001	Francisca	Sanchez	CANNING LINE 1-2	\$7.55
109397	8/15/2001	Thomas	Chapman	CANNING LINE 1-2	\$7.55
124057	6/10/2004	Romona	Standley	CANNING LINE 1-2	\$7.55
109426	10/13/2004	Sauntia	Hicks	CANNING LINE 1-2	\$7.55
126403	10/13/2004	Eddie	Townsend	CANNING LINE 1-2	\$7.55
126885	11/8/2004	Jennifer	Ivey	CANNING LINE 1-2	\$7.55
109538	6/14/1994	Willie	Parker	Case Packer Operator	\$9.30
109375	7/18/2001	Angelo	Southard	Case Packer Operator	\$9.30
109507	7/23/2003	Jason	Winsett	Case Packer Operator	\$9.30
126407	10/13/2004	Raymond	Robinson	Case Packer Operator	\$9.30
109114	4/10/1995	Shirley	Brown	Controller	\$57,988.00
109650	6/9/1998	Jay	Thatch	DAY SANITATION	\$9.30
109708	4/30/1984	Patricia	Willard	Dispatcher	\$13.11
109670	8/19/1996	Debbie	Turner	Dual Depalletizer Operator	\$8.55
109156	7/14/1997	Douglas	Conley	Electrician A	\$16.45
124060	6/10/2004	Crystal	Leff	FORKLIFT B	\$8.80
123568	4/25/2001	Gregory	Anderson	Facilitator	\$46,820.00
120511	9/10/2003	Corey	Troupe	Forklift B	\$8.80
107417	4/19/1976	Gay	Baird	General Manager	\$101,757.00
109622	9/24/1990	Cynthia	Green	HR Administrative Assislar	\$12.96
109578	10/8/1990	Chris	Rial	Inventory Control Manager	\$58,525.00

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107307	10/8/1984	Robert	Kee	Inventory Control Supervisor	\$44,298.00
109357	10/1/2004	Felicia	Gilbert	LABEL LINE	\$7.55
126241	10/1/2004	Theresa	Haggard	LABEL LINE	\$7.55
109334	9/10/1980	Paul	Jacobs	LAFSTACKER	\$8.30
109498	7/23/1990	Vickie	Mosley	LAFSTACKER	\$8.30
109374	1/6/1999	Willie	King	LAFSTACKER	\$8.30
109521	2/2/1999	Angela	Nelson	LAFSTACKER	\$8.30
117413	12/11/2002	Joann	Brown	LAFSTACKER	\$8.30
126682	10/29/2004	Brandon	Cooley	LAFSTACKER	\$7.30
126890	11/11/2004	Sandra	Jones	LAFSTACKER	\$8.30
109606	2/26/2001	Ascencion	Romero	LASSTACKER	\$8.30
109436	12/28/2001	Randy	Raiz	LASSTACKER	\$8.30
126518	10/20/2004	Andrew	Taylor	LASSTACKER	\$8.30
109710	3/4/1987	Pam	Yarbrough	Label Machine Operator	\$9.00
109695	4/1/1993	Deloris	White	Label Machine Operator	\$9.00
109416	11/8/1999	Ronnie	McCurry	Label Machine Operator	\$9.00
116711	9/18/2002	Julian	Koger	Label Machine Operator	\$9.00
126408	10/13/2004	Lashanda	Nance	Label Machine Operator	\$9.00
109500	3/24/1997	Lidia	Munoz	Line Service	\$7.90
109720	2/1/1989	Vonel	Wootton	MACHINE OPERATOR	\$8.30
109420	12/14/1992	Emith	McClain	MACHINE OPERATOR	\$8.30
109216	2/10/1999	Lucina	Flores	MACHINE OPERATOR	\$8.30
109247	5/17/1999	Imelda	Goicochea	MACHINE OPERATOR	\$8.30
109522	8/31/1999	Josefina	Nava	MACHINE OPERATOR	\$8.30
109358	3/1/2000	Kissinger	Jones	MACHINE OPERATOR	\$8.30
116975	10/16/2002	Evelyn	Koger	MACHINE OPERATOR	\$8.30
109656	7/16/1980	Anthony	Thompson	MAINT A	\$14.45
109674	1/21/1982	Larry	Turner	MAINT A	\$14.45
109647	3/30/1987	Marvin	Tarpley	MAINT A	\$14.45
109225	2/15/1988	Charles	Free	MAINT A	\$14.45

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109228	3/18/1985	Ronald	Foster	MAINT B	\$13.95
109361	8/24/1992	Steve	Kauppila	MAINT B	\$13.95
109311	6/8/1994	George	Howard	MAINT B	\$13.95
109552	12/12/1994	Larry	Phillips	MAINT B	\$13.95
109112	11/1/1999	James	Brown	MAINT B	\$13.95
125994	9/20/2004	Denny	Ballentine	MAINT B	\$13.95
126539	10/19/2004	James	Steele	MAINT B	\$13.95
109337	7/24/1975	James	Jamar	MSTR LEAD A	\$10.80
109160	5/4/1981	Lawrence	Cosby	MSTR LEAD A	\$10.80
109659	2/19/1985	Jerry	Thompson	MSTR LEAD A	\$10.80
109151	5/15/1989	Edna	Moore	MSTR LEAD A	\$10.80
109085	6/10/1996	Joel	Bahena	MSTR LEAD A	\$10.80
109211	5/28/1998	Jesus	Figueroa	MSTR LEAD A	\$10.80
109331	4/25/1985	Mary	Jackson	Machine Operator	\$8.30
109652	10/21/1996	Angela	Thatch	Machine Operator	\$8.30
109544	7/1/2000	Amalia	Pelico	Machine Operator	\$8.30
109646	7/1/2000	Audrey	Tennison	Machine Operator	\$8.30
109648	10/16/2000	Stephanie	Tennison	Machine Operator	\$8.30
116859	10/3/2002	Shawn	Cosby	Machine Operator	\$8.30
127322	12/14/2004	Halanda	Lampkin	Machine Operator	\$8.30
127323	12/14/2004	Latoya	Fuqua	Machine Operator	\$8.30
109680	4/5/1993	Randy	Trotter	Maintenance Manager	\$72,371.00
122866	3/24/2004	Obinna	Njubiogo	Maintenance Planner	\$16.28
109723	3/1/1985	Peggy	Wray	Maintenance Seam Technic	\$13.95
118711	3/24/2004	Felix	Doimitsin	Maintenance Utility	\$9.45
109717	12/7/1987	Peggy	Gattis	Manager Human Resources	\$78,121.00
109453	5/11/1992	Michelle	Malone	Marinator	\$8.80
109166	6/11/1971	Billy	Crutcher	Master Lead A	\$10.80
109653	1/6/1978	Willie	Thatch	Master Lead A	\$10.80
109566	4/12/1983	James	Randolph	Master Lead A	\$10.80

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109672	11/13/1984	Gwendolyn	Turner	Master Lead A	\$10.80
109472	3/23/1987	Dorothy	Mcclendon	Master Lead A	\$10.80
109364	10/20/1993	Doris	Kelley	Master Lead B	\$9.30
109658	2/28/1994	James	Thompson	Master Lead B	\$9.30
109541	11/1/1993	Annette	Peoples	Meat Prep	\$8.30
109626	4/13/1992	Ernest	Shoulders	NIGHT SANITATION	\$9.30
109628	9/20/1993	Johnnie	Shoulders	NIGHT SANITATION	\$9.30
109551	11/6/1995	Gary	Phillips	NIGHT SANITATION	\$9.30
109501	4/7/1997	Roberto	Munoz	NIGHT SANITATION	\$9.30
109828	5/28/2002	Zacarias	Lagunas	NIGHT SANITATION	\$9.30
118810	5/21/2003	Jimmy	Woods	NIGHT SANITATION	\$9.30
124063	6/10/2004	Josc	Figueroa	NIGHT SANITATION	\$9.30
109615	10/5/2004	Andres	Samano	NIGHT SANITATION	\$9.30
126412	10/13/2004	Norberto	Martinez	NIGHT SANITATION	\$9.30
109274	7/11/1985	Barbara	Harris	OVEN/CHILLER OPERA1	\$9.45
118097	3/19/2003	Michael	Weatherford	PROCESS & ENVIRONM	\$68,557.00
109540	3/28/1985	Brendia	Mechling	Plant Clerical	\$9.00
10740	10/13/2003	Kris	Johnson	Plant Nurse	\$50,024.00
109718	4/2/1969	J	Woods	Product Formulator	\$8.55
109464	1/20/1999	Heladio	Martinez	Product Formulator	\$8.55
109161	10/4/2000	Lillie	Cosby	Product Formulator	\$8.55
109081	1/8/2001	Dario	Nava	Product Formulator	\$8.55
109432	12/3/2001	Donald	Hargrove	Product Formulator	\$8.55
109579	8/9/1978	Joyce	Rice	QA Inspector	\$10.89
109163	2/7/1979	Edith	Crabtree	QA Inspector	\$10.74
109586	10/25/1983	Carol	Mitchell	QA Inspector	\$10.74
109696	3/22/1984	Catherine	Sledge	QA Inspector	\$10.74
109709	10/9/1984	Stella	Williams	QA Inspector	\$10.79
109635	12/21/1992	Delores	Smith	Qa Technologist	\$47,488.00
107868	11/3/2003	James	Snipes	Qa Technologist	\$45,189.00

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109701	5/3/1973	Angela	Williams	RAW PRODUCT INSPEC	\$8.30
109124	4/9/1979	Darlene	Caldwell	RAW PRODUCT INSPEC	\$8.30
109303	10/9/1979	Jeanette	Hill	RAW PRODUCT INSPEC	\$8.30
109332	3/12/1984	Vivian	Thompson	RAW PRODUCT INSPEC	\$8.30
109087	8/20/1985	Lois	Bailey	RAW PRODUCT INSPEC	\$8.30
109679	12/2/1986	Martha	Adams	RAW PRODUCT INSPEC	\$8.30
118967	6/4/2003	Charles	Dingler	RTR AGENT	\$76,510.00
109576	12/19/1994	Pamela	Reynolds	Raw Product Handler	\$8.80
109154	12/17/1990	Bertha	Coleman	Raw Product Inspector	\$8.30
109283	8/5/1998	Ernutt	Hamilton	Retort Operator	\$10.05
109305	8/28/2000	Christopher	Holt	Retort Operator	\$10.05
109490	9/1/2000	Robert	Moore	Retort Operator	\$10.05
109675	11/30/2000	Jeremy	Turner	Retort Operator	\$10.05
116363	8/22/2002	Chadwick	King	Retort Operator	\$10.05
116524	9/4/2002	Richardo	Ruiz	Retort Operator	\$10.05
118752	5/14/2003	William	Johnson	Retort Operator	\$10.05
126251	10/1/2004	Donald	Southard	Retort Operator	\$10.05
126869	11/8/2004	Tammy	Borne	Retort Operator	\$10.05
109452	1/22/2002	Alaandro	Conerly	RIR Assistant	\$47,741.00
109135	5/9/1994	Marty	Cartwright	SENIOR RETORT OPERA	\$12.10
109715	10/12/1984	Samuel	Woodruff	Senior Process Control	\$12.85
109368	7/12/2001	Kevin	Sanders	Senior Retort Operator	\$12.10
109193	9/17/1982	Roger	Dunnivant	Senior Warehouse Worker	\$10.80
109265	10/7/1985	Roger	Haney	Senior Warehouse Worker	\$10.80
109533	10/31/1988	Carl	Overton	Senior Warehouse Worker	\$10.80
109118	5/15/1989	Shem	Harris	Senior Warehouse Worker	\$10.80
109359	9/6/1994	Robert	Jones	Senior Warehouse Worker	\$10.80
109700	9/21/1998	Pamela	White	Senior Warehouse Worker	\$10.80
109568	7/31/1972	Walter	Hill	Superintendent	\$83,981.00
109711	7/8/2002	Trashia	Young	Superintendent	\$63,651.00

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109445	1/1/1965	Charlie	Malone	Supervisor	\$43,781.00
109528	1/30/1978	Jeffery	Nyholm	Supervisor	\$48,852.00
109103	7/23/1979	Willie	Black	Supervisor	\$46,719.00
109187	5/27/1987	Shirley	Disney	Supervisor	\$41,418.00
109514	6/19/1989	John	Neville	Supervisor	\$45,928.00
126469	10/18/2004	Jeffery	Pinchon	Supervisor	\$43,004.00
109126	3/12/1998	Keith	Campbell	TPM Facilitator	\$44,251.00
109455	5/12/1982	Milton	Malone	Utility Operator	\$8.80
109644	9/24/1990	Drenda	Sinnett	Warehouse Worker 1	\$10.05
109482	6/1/1998	Patsy	Michael	Warehouse Worker 1	\$10.05
109183	12/11/2000	Michael	Dees	Warehouse Worker 1	\$10.05
109383	7/23/2001	Sonya	Holt	Warehouse Worker 1	\$10.05
109440	12/31/2001	Carlos	Crutcher	Warehouse Worker 1	\$10.05
118709	5/9/2003	Quentia	Wiley	Warehouse Worker 1	\$10.05
124693	7/13/2004	Sally	Degidio	Warehouse Worker 1	\$10.05
109078	10/19/1992	Garnial	Anderson	Wastewater Operator	\$12.10

Non-Athens Employees

PL	CO	AU	EE#	NAME	TITLE	DOH	DOB	RACE	GENDER	BASE RATE	GRADE	BONUS
16125	1553	1255101	107450	Matthews, Paul B.	Sr Product Manager	06/05/89	09/16/65	WH	M	102,923.00	D1	25
*	52550	1550	1688230	107450 Matthews, Paul B.	Sr Inventory/Forecast Analyst	02/16/91	11/14/63	WH	F	53,580.54	F4	0
	52553	1553	1256001	107097 Mastry, Debra L.	Demand/Forecast Analyst	12/13/94	07/14/56	WH	F	40,348.00	F3	0
	16151	1553	1016530	51596 Lutgring, Duane	Portfolio Development Manager	06/03/91	03/10/62	WH	M	97,607.00	E3	Sales
	16151	1553	1016515	108954 Subach, John	Portfolio Development Manager	08/14/96	10/29/62	WH	M	83,000.00	E3	Sales
	16151	1553	1016530	51588 Biegler, Lawrence	Portfolio Development Manager	07/09/90	08/10/53	WH	M	100,450.00	E3	Sales
	52553	1553	1256001	106331 Schell, Patricia L.	Portfolio Development Manager	01/04/01	04/22/68	WH	F	83,347.00	E3	Sales
	52553	1553	1256001	107154 Harmon, Beverly J.	Manager, Customer Service	06/03/85	11/01/54	WH	F	60,228.00	E1	15
	52553	1553	1256001	105128 Binder, Olivia M.	GROCERY PROD CUSTOMER SVC REP	05/17/93	11/04/71	BL	F	12.39	056	0
	52553	1553	1256001	106987 Williams, Tiffney S.	GROCERY PROD CUSTOMER SVC REP	10/06/03	06/24/71	BL	F	11.85	056	0

\* The parties agree that, following the consummation of the transactions contemplated by the Agreement, Julia Ready will remain an employee of Sellers and will not be transferred to Buyer.

**Schedule 5.12(b)**

**Officer and Director Contracts**

None.



**Schedule 5.12(c)**

**Bonus Programs**

Estimated payouts for all bonusable Athens employees (based on payout of 60% of their potential based on 7 months earnings) under the Sweet Sue Bonus Plan:

Hill	\$6,000
Gattis	\$5,500
Trotter	\$4,000
Dingler	\$4,000
Young	\$3,340
Rial	\$3,072
Weatherford	\$3,600
Brown	\$3,060
Nyholm	\$1,740
Disney	\$1,550
Malone	\$1,535
Pincheon	\$1,560
Black	\$1,635
Keel	\$1,554
Neville	\$1,620
Holbrook	\$4,463
Baird	\$14,420

Estimated payouts for non-Athens employees:

Mathews	\$9,000
Harmon	\$3,200
Ready	\$0

Estimated payouts for salespersons:

	<u>1st Quarter</u>	<u>2nd Quarter (estimate)</u>
Larry Biegler	\$17,075	\$5,600
John Subach	\$17,075	\$2,800
Duane Lutgring	\$13,660	\$2,800
Patti Schell	\$13,000	\$4,900

To the extent actual bonus amounts exceed the amounts listed on this Schedule 5.12(c), such amounts will be covered in the determination of the Post-Closing Adjustment Amount.

**Schedule 5.12(d)**

**Seller Employee Benefit Plans**

1. Sara Lee Corporation Group Insurance Program (includes Basic and Optional Life, Dependent Life, Basic Accidental Death and Dismemberment (AD&D), Optional AD&D and Business Travel Accident Plans).
2. Sara Lee Corporation Long Term Disability Plan.
3. Sara Lee Corporation Flexible Spending Account Plan.
4. Sara Lee Corporation Health Care Plan.
5. Sara Lee Corporation Employee Stock Purchase Plan.
6. Sara Lee Corporation 401(k) Plan (Non-Union Employees).
7. Sara Lee Corporation 401(k) Plan (Union Employees).
8. Sara Lee Corporation Consolidated Pension and Retirement Plan.
9. Sara Lee Corporation Severance Pay Plan.

### **Schedule 5.13**

#### **Legal Proceedings**

On September 3, 2002, a Penske driver was pulling a Sweet Sue trailer and was involved in an accident resulting in a fatality. As a result of the accident, Penske was sued and Sweet Sue was named in the suit. Penske handled the suit and it has been settled. A second suit has been filed by a "passer-by" claiming emotional damage as a result of driving up on the scene immediately after the accident occurred. That suit is also being handled by Penske and Sweet Sue is named. This suit has not been settled at this time. Any losses arising from this suit would constitute an Excluded Liability.

**Schedule 5.16**

**Business Permits**

See Items 3 and 4 on Schedule 5.2(b).

## Schedule 5.17

### Environmental Matters

Two diesel underground storage tanks have been permanently closed on the Owned Real Property. A 20,000 gallon UST was closed in February 1993 and a 12,000 gallon UST was closed in March 1993. Soil sampling was conducted after each tank closure following State protocol. Soil sampling results for the site of the 12,000 gallon UST indicated the presence of petroleum hydrocarbon concentrations above 100 ppm. As requested by the Alabama Department of Environmental Management, overexcavation was conducted on the sidewall and endwall that indicated concentrations above 100 ppm. Results from groundwater samples taken from borings around the 12,000 gallon UST indicated no presence of Polynuclear Aromatic Hydrocarbons (PAH). The State of Alabama determined that no further investigative or corrective actions were required. Any losses arising from this matter would constitute an Excluded Liability.

An asbestos survey of the Athens facility was conducted in 1999. This survey identified certain asbestos-containing materials at the facility, mostly in non-friable floor tile and mastic, and in roofing materials. The report did not note any damaged material and did not recommend any immediate repair or removal inside the buildings. The report did recommend proper handling of such materials in the course of any future renovation or demolition, and proper maintenance of such materials in place in the interim. The precise locations of the asbestos-containing materials are set forth in detail in the report. To the extent any liability arises relating to exposure to, or the disturbance, handling or disposal of, asbestos at the Athens facility prior to the Closing Date, such liability would constitute an Excluded Liability. To the extent any liability arises relating to exposure to, or the disturbance, handling or disposal of, asbestos at the Athens facility on or after the Closing Date, such liability would be the sole responsibility of Buyer. To the extent any such liability arises relating to exposure to asbestos at the Athens facility that began prior to the Closing Date and extends beyond the Closing Date, such liability would be shared pro rata between Sellers, on the one hand, and Buyer, on the other hand.

**Schedule 5.18**

**Investments**

None.

**Schedule 5.19**

**Insurance**

**“All Risk” Property Insurance**

**Carrier – ACE American Insurance Company**

**Limits – Replacement Cost**

**Current Insured Values**

**Building - \$5,731,000**

**Mach & Equip - \$16,565,000**

**Raw Mat. - \$838,000**

**Finished Inv. - \$9,390,000**

**Bus. Int. \$26,522,650**

**Workers’ Compensation – Statutory Limits**

**Employers’ Liability - \$1,000,000 Limit**

**General Liability - \$5,000,000 Limit**

**Product Liability - \$5,000,000 Limit**

**Automobile Liability - \$5,000,000 Limit**

**Carrier – ACE American Insurance Company**

**Umbrella Liability - \$25,000,000 Limit**

**Carrier – Lexington Insurance Company (AIG)**

**Excess Liability - \$225,000,000 Limits**

**Carriers – Various Insurance Companies**

**Employee Crime - \$25,000,000 Limit**

**Carrier – Federal Ins. Co. (Chubb)**

## Schedule 5.20

### Sufficiency of Purchased Assets

1. Sellers purchase corrugated products for use in the Business pursuant to a Master Purchase Agreement for Corrugated Products dated May 21, 2001 between Packaging Corporation of America and Sara Lee Corporation. Such agreement is a corporate-wide arrangement of Sara Lee Corporation and will not be assigned to Buyer. However, Sara Lee Corporation will seek to designate Buyer as a "Buyer" under the terms of that Agreement and thereby permit Buyer access to the product on the same terms and conditions until June 21, 2005.
2. Sellers purchase package supplies for use at the Athens plant pursuant to a Packaging Supplies Agreement dated May 6, 2002 between Sara Lee Corporation and Intertape Polymer Corporation. Such agreement is a corporate-wide arrangement of Sara Lee Corporation and is not assignable to Buyer. Sara Lee Corporation is not permitted to designate Buyer as a purchaser under this contract; accordingly, Buyer will need to negotiate its own source of such package supplies.
3. Sellers purchase packaging supplies for use at the Athens plant pursuant to a Packaging Supplies Agreement dated June 2002 between Bostik Findley, Inc. and Sara Lee Corporation. Such agreement is a corporate-wide arrangement of Sara Lee Corporation and is not assignable to Buyer. Sara Lee Corporation is not permitted to designate Buyer as a purchaser under this contract; accordingly, Buyer will need to negotiate its own source of such package supplies.
4. Sellers purchase pipes, valves, fittings and related products for use at the Athens plant pursuant to a Pipes, Valves and Fittings Agreement dated July 1, 2002, between Ferguson Enterprises, Inc. and Sara Lee Corporation. Such agreement is a corporate-wide arrangement of Sara Lee Corporation and is not assignable to Buyer. Sara Lee Corporation is not permitted to designate Buyer as a purchaser under this contract; accordingly, Buyer will need to negotiate its own source of such items.
5. Sellers purchase industrial automation and control products for use at the Athens plant pursuant to a Corporate Procurement Agreement dated July 29, 2002 between Sara Lee Corporation and Rockwell Automation. Such agreement is a corporate-wide arrangement of Sara Lee Corporation and is not assignable to Buyer. Sara Lee Corporation is not permitted to designate Buyer as a purchaser under this contract; accordingly, Buyer will need to negotiate its own source of such items.
6. Sellers purchase industrial automation and control products for use at the Athens plant pursuant to a National Account Master Agreement dated April 8, 2003



between Sara Lee Corporation and Grainger Industrial Supply. Such agreement is a corporate-wide arrangement of Sara Lee Corporation and is not assignable to Buyer. Sara Lee Corporation is not permitted to designate Buyer as a purchaser under this contract; accordingly, Buyer will need to negotiate its own source of such items.

7. Sellers' arrangements for the supply of chicken expire at the end of calendar 2004. Sellers have an oral agreement with each of Franz Foods and House of Raeford for the supply of chicken for a twelve-month period at favorable pricing; however, such arrangements will not be documented prior the date of execution of the Agreement and possibly not until after the Closing. It is possible that either or both of Franz Foods and House of Raeford will seek to modify terms of such supply arrangements once the transactions contemplated by the Agreement are announced and/or consummated. See Schedule 7.4(a).
8. Office equipment and furnishings located in West Point, Mississippi used by the Business are not used exclusively in the Business and are accordingly not a Purchased Asset.
9. The personal property of employees located at the Athens, Alabama facility is not included in the Purchased Assets.
10. Seller currently utilizes software licensed from JD Edwards and JBA International in connection with running the Business. Such software licenses are a corporate asset used across the Sara Lee Foods division of Sara Lee Corporation, is not assignable to Buyer, and will not constitute part of the Purchased Assets.
11. Legal and Risk Management services are provided to the Business by Sara Lee Corporation and its Sara Lee Foods division law departments. Such services, and all files related to Sara Lee legal matters, will not be available to Buyer or the Business after the Closing Date.
12. Procurement services are provided to the Business by the Sara Lee Corporation and Sara Lee Foods division Procurement and Supply Chain Management departments. Such services, other than with respect to such services as may be provided by Transferring Employees, and any files related thereto, will not be available to Buyer or the Business after the Closing Date.
13. Tax planning, reporting and compliance services are provided to the Business by Sara Lee Corporation and the Sara Foods division tax employees. Such services, other than with respect to such services as may be provided by Transferring Employees, will not be available to Buyer or the Business after the Closing Date.
14. Human resources and employee benefits support is provided to the Business by Sara Lee Corporation and the Sara Lee Foods division employees. Such services,

other than with respect to such services as may be provided by Transferring Employees, will not be available to Buyer or the Business after the Closing Date.

15. The sales function is supported by a sales team located in West Point, Mississippi. To the extent that Buyer does not elect to hire some or all of such sales team, at the termination of the transition services period such services will not be available to Buyer or the Business.
16. Senior management of Sara Lee Corporation, the Sara Lee Foods division and the plant manager of the Athens, Alabama facility will not transfer with the Business and the services provided by such employees will not be available to Buyer or the Business after the Closing Date, except as provided in the Transition Services Agreement.
17. The Business is currently serviced by the Sara Lee Business Services department, which handles all material accounts payable. Such services will not be available to Buyer or the Business after the Closing Date, except as provided in the Transition Services Agreement.
18. The Business is currently supported by the Sara Lee Technology Services department which handles overall administration of Sara Lee's IT platforms and services. Such services will not be available to Buyer or the Business after the Closing Date, except as provided in the Transition Services Agreement.
19. Marketing services are currently provided to the Business by Sara Lee Corporation and the Sara Lee Foods division employees. Such services, other than with respect to such services as may be provided by Transferring Employees, will not be available to Buyer or the Business after the Closing Date.
20. Accounting, Controller, Cash Management and Treasury Services are currently provided to the Business by Sara Lee Corporation and the Sara Lee Foods division employees. Such services, other than with respect to such services as may be provided by Transferring Employees, will not be available to Buyer or the Business after the Closing Date.
21. Distribution of the product of the Business is currently handled by a third-party operator, but centrally coordinated by Sara Lee Foods. Such centralized coordination will not be available to Buyer or the Business after the Closing Date, except as provided in the Transition Services Agreement.
22. The Business benefits from the economies of scale resulting from the participation of Sara Lee Corporation and its various lines of business in negotiations with third-party suppliers. The Business will not have the benefit of such economies of scale post-closing.

23. Software installed on certain computer hardware included in the Purchased Assets is not transferable and will need to be replaced by Buyer.
24. The "Bryan" and "Bryan"-related Trademarks of the Business are not included in the Purchased Assets.
25. The Business Permits listed in Item 3 on Schedule 5.2(b) are not transferable. Upon sale or legal transfer, the new owner or operator must apply for a permit within 30 days.
26. The Business Permits listed in Item 4 on Schedule 5.2(b) may not be transferable. Notice of transfer is required for such Business Permits and submission of new permit applications may be required at the discretion of the Director of the Alabama Department of Environmental Management.
27. Qualification to do business is held by Sellers as corporate bodies and is not transferred with the Purchased Assets.

See Schedule 5.21(a) and Schedule 5.21(b).

**Schedule 5.21(a)**

**Transactions with Affiliates – Rights to Purchased Assets and Assumed Liabilities**

1. **Sellers are contractually required to provide transition services in connection with the Business.**
2. **Sellers have retained pre-closing liabilities in connection with the Purchased Assets.**

**Schedule 5.21(b)**

**Transactions with Affiliates – Services**

1. **Legal and Risk Management services are provided to the Business by Sara Lee Corporation and its Sara Lee Foods division law departments. Such services, and all files related to Sara Lee legal matters, will not be available to Buyer or the Business after the Closing Date.**
2. **Procurement services are provided to the Business by the Sara Lee Corporation and Sara Lee Foods division Procurement and Supply Chain Management departments. Such services, other than with respect to such services as may be provided by Transferring Employees, and any files related thereto, will not be available to Buyer or the Business after the Closing Date.**
3. **Tax planning, reporting and compliance services are provided to the Business by Sara Lee Corporation and the Sara Lee Foods division tax employees. Such services, other than with respect to such services as may be provided by Transferring Employees, will not be available to Buyer or the Business after the Closing Date.**
4. **Human resources and employee benefits support is provided to the Business by Sara Lee Corporation and the Sara Lee Foods division employees. Such services, other than with respect to such services as may be provided by Transferring Employees, will not be available to Buyer or the Business after the Closing Date.**
5. **The sales function is supported by a sales team located in West Point, Mississippi. To the extent that Buyer does not elect to hire some or all of such sales team, at the termination of the transition services period such services will not be available to Buyer or the Business.**
6. **Senior management of Sara Lee Corporation, the Sara Lee Foods division and the plant manager of the Athens, Alabama facility will not transfer with the Business and the services provided by such employees will not be available to Buyer or the Business after the Closing Date, except as provided in the Transition Services Agreement.**
7. **The Business is currently serviced by the Sara Lee Business Services department, which handles all material accounts payable. Such services will not be available to Buyer or the Business after the Closing Date, except as provided in the Transition Services Agreement.**
8. **The Business is currently supported by the Sara Lee Technology Services department which handles overall administration of Sara Lee's IT platforms and**

services. Such services will not be available to Buyer or the Business after the Closing Date, except as provided in the Transition Services Agreement.

9. Marketing services are currently provided to the Business by Sara Lee Corporation and the Sara Lee Foods division employees. Such services, other than with respect to such services as may be provided by Transferring Employees, will not be available to Buyer or the Business after the Closing Date.
10. Accounting, Controller, Cash Management and Treasury Services are currently provided to the Business by Sara Lee Corporation and the Sara Lee Foods division employees. Such services, other than with respect to such services as may be provided by Transferring Employees, will not be available to Buyer or the Business after the Closing Date.
11. Distribution of the product of the Business is currently handled by a third-party operator, but centrally coordinated by Sara Lee Foods. Such centralized coordination will not be available to Buyer or the Business after the Closing Date, except as provided in the Transition Services Agreement.

See Schedule 5.20.

**Schedule 5.22**

**Suppliers and Customers**

**Top 10 Suppliers**

1. Gold Kist Poultry (Broiler/Trim Meat)
2. Franz Foods (Trim/Chunk Meat)
3. Ball Corporation (Cans)
4. Van Can (Cans)
5. Impress USA (Cans)
6. Lewisburg Printing (Labels)
7. PCA (Boxes/Trays)
8. Wackenhut (Guard Services)
9. Waste Management (Incinerator for waste disposal)
10. Supply Systems (Sanitation Chemicals)

**Top 10 Customers**

1. Wal\*Mart Stores Inc.
2. Dollar General Corp.
3. Supervalu Inc.
4. Kroger Co.
5. Family Dollar Stores
6. Mendez and Co Inc.
7. Aldi Inc.
8. Winn Dixie Inc.
9. Ahold USA
10. Piggly Wiggly Inc.

Sara Lee Foods was notified by Wal\*Mart on or about December 15, 2004 that Wal\*Mart had ordered approximately 250,000 pounds more broth product than required. Wal\*Mart will be returning this product to Sara Lee Foods within financial year period 6 (December 2004) and granted a refund. There will be a reversal of this amount in the Period 6 financials, which will reduce gross margin after trade by approximately \$25,000. Inventory will also be increased to reflect this return.

See Schedule 5.23.

## Schedule 5.23

### Product Recalls

#### Ball Corporation 300X407 Can Claim Summary

The issue, flaking of the enamel coating inside the can after production, was discovered in September, 2002. The resulting claim encompassed 114,342 cases of product. The claim, including inventory and storage costs of the broth involved, disposal fees to destroy the defective product and associated sales-related charges for customers that were required to return product, was submitted to Ball Corporation. \$600M was received from Ball Corporation in settlement of the claim. Of the 114,342 cases initially identified as defective, 34,249 were eventually returned to stock after Ball Corporation arranged for a complete inspection of the product. 80,093 cases were sent to the landfill between October, 2003 and January, 2004. This claim is now considered settled and all defective broth has been removed from inventory and destroyed.

#### Ball Corporation 3 piece can with improperly coated can striping

Market withdrawal Jan/Feb 2004

Ball cans that were improperly coated used for Winn Dixie private label broth product manufactured resulted in a 5,337 case withdrawal. Additionally, the same Ball cans were used for Marsh private label broth that did not result in a market withdrawal.

#### Picnic Turkey Canned Luncheon Meat Recall

This item is manufactured for Sara Lee Foods by an outside third party. Attached are excerpts from the USDA FSIS Recall Release (complete release not included):

WASHINGTON, Nov. 8, 2004 - International Trading Co., a Houston, Texas, firm, is voluntarily recalling.....turkey luncheon meat due to possible underprocessing, the U.S. Department of Agriculture's Food Safety and Inspection Service (FSIS) announced today.

The expanded recall includes:

- 12 oz. cans of "PICNIC BRAND, HALAL, TURKEY Luncheon Meat" bearing the message "Best if Used by Date 092807" on the top, and the codes "40474 03 EST P7220A" and "2724 PTW" on the bottom. This product was produced solely for export to Holland.
- 12 oz. cans of "PICNIC BRAND, Turkey Luncheon Meat" bearing the message "Best if Used by Date 062407" on the top, and the codes "40434 03 EST



P7220A" and "1764 PTW" on the bottom. This product was distributed to wholesale and retail establishments in Puerto Rico.

- 12 oz. cans of "PICNIC BRAND, Turkey Luncheon Meat" bearing the message "Best if Used by Date 080407" or "Best if Used by Date 100507" on the top, and the codes "40434 03 EST P7220A" and "2174 PTW" or "2794 PTW" on the bottom. This product was distributed to wholesale and retail establishments in Puerto Rico.

The products were produced on various dates between June 15 and October 19, 2004.

The problem was discovered by a wholesale customer who notified the company. FSIS has received no reports of illnesses from consumption of the product.

The HALAL product had been shipped to a third party export warehouse in New Jersey and had not yet been released into further distribution, all product was returned to International Trading Co.

The shipments to Puerto Rico totaled 2,137 cases. A determination of how much quantity was retrieved from the marketplace is not available at present.

**Schedule 6.2(b)**

**Buyer Noncontravention**

None.

**Schedule 6.6**

No Finder

Fees owed to Piper Jaffrey in connection with the transactions contemplated by this Agreement.

**Schedule 7.3(a)**

**Required Consents**

**Consents for assignment of the following Seller Agreements:**

**Co-packing Agreement dated as of September 15, 1999 between Bryan Foods, Inc. and Castleberry for the manufacture of certain designated meat products. See Item 1 on Schedule 5.2(b) and Item 6 on Schedule 5.10(b).**

**Co-packing Agreement dated as of September 26, 1996 between Bryan Foods, Inc. and Dial Corp. for the manufacture of certain designated meat products. See Items 1 and 2 on Schedule 5.2(b) and Item 6 on Schedule 5.10(b).**

**Supply Arrangement dated as of July 19, 2004 between Sara Lee Foods, a division of Sara Lee Corporation, and Impress USA, Inc. for the provision of cans. See Items 1 and 8 on Schedule 5.2(b) and Item 1 on Schedule 5.10(b).**

**Supply Arrangement with Ball Corporation for the provision of cans (course of trade based on unsigned mark-up of draft contract dated March 31, 2004 provided to Buyer). See Item 8 on Schedule 5.2(b). See Items 1 and 8 on Schedule 5.2(b) and Item 1 on Schedule 5.10(b).**

**Schedule 7.4(a)**

**Operations Prior to the Closing Date**

Sellers' arrangements for the supply of chicken expire at the end of calendar 2004. Sellers have an oral agreement with each of Franz Foods and House of Raeford for the supply of chicken for a twelve-month period on the following terms; however, such arrangements will not be documented prior the date of execution of the Agreement and possibly not until after the Closing. It is possible that either or both of Franz Foods and House of Raeford will seek to modify terms of such supply arrangements once the transactions contemplated by the Agreement are announced and/or consummated.

Vendor: House of Raeford  
Item: 98% fat free boneless skinless chicken breast, fresh  
Duration of contract: January 3, 2005 to December 31, 2005  
Volume: 40,000 # per week; Sellers have an option to increase this to 80,000 # per week if needed  
Pricing: \$1.55 per pound for shipments of 35,000 # to 40,000 #  
\$1.56 per pound for shipments of 30,000 # to 35,000 #  
\$1.57 per pound for shipments of 25,000 # to 30,000 #  
Prices are delivered to the Athens, AL plant.

Vendor: Franz Foods  
Note: Franz Foods is a broker; the product would actually be produced by Keystone  
Item: Chicken breast trim without rib meat, fresh  
Duration of contract: January 3, 2005 to December 31, 2005  
Volume: 40,000 # per week; Sellers have an option to increase this to 80,000 # per week in May 2005 with 30 days notification  
Pricing: \$1.42 per pound delivered to the Athens, AL plant.

There are currently open positions at the Athens plant, certain of which are in the process of being filled, as listed below:

**Offers made (pending background):**

David Russell  
Warehouse Worker II  
Wage: \$9.00/hour

Shaquetta Johnson  
Lineworker  
Wage: \$7.55 + .25

Applications sent out:

Phillip Eaton  
Utility Sanitation  
Wage: \$9.30 +.25

Dustin Taylor  
Forklift Operator-Day Canning  
Wage: \$8.80

Vinson Rogers  
Utility Sanitation  
Wage: \$9.30 +.25

Raul Mendoza  
Lineworker  
Wage: \$7.55 + .25

Stanley Hughes  
Utility Sanitation  
Wage: \$9.30 + .25

Open Exempt Positions:

Quality Assurance Manager	E2	15% Bonus	\$58,000-\$78,400-\$94,100
Maintenance Supervisor	F6	10% Bonus	\$47,100-\$63,600-\$76,300

The above two Open Exempt Positions will not be filled with employees from outside of the Business.

**Schedule 7.4(b)**

**Conduct Prior to the Closing Date**

Sellers shall only make or incur capital expenditures on the attached budget other than expenditures marked with an asterisk (\*).

The employees of Sweet Sue Kitchens, Inc. at the Athens, Alabama facility are represented by the Retail, Wholesale and Department Store Union, AFL-CIO pursuant to a union agreement dated as of September 30, 2001. Such union agreement is expected to be renegotiated beginning in January 2005 in anticipation of its expiration pursuant to its terms on March 31, 2005. Consent of the Buyer shall not be required for the execution of such union agreement.

**Shelf Stable Business  
Capital Expenditure  
As of P4 FY05 YTD (October 2004)  
(000's)**

	<u>Nov LE</u>	<u>Jul LE</u>	<u>Variance</u>
* Continuous Cooker Rebuild	250	250	-
* Broth Filter Replacement	214	150	64
* Automatic Case Stacker	139	-	139
Other	36	100	(64)
<b>TOTAL</b>	<b>639</b>	<b>500</b>	<b>139</b>

P4 YTD Spend

23

Estimated Spend P5-12

616



**Schedule 8.2(a)**

**Excluded Athens Business Employees**

Gay Baird

## INSTRUMENT OF ASSIGNMENT

Pursuant to the Asset Purchase Agreement dated as of the date hereof (the "Agreement") among Bumble Bee Seafoods, LLC, a Delaware limited liability company ("Buyer"), Sara Lee Corporation, a Maryland corporation ("Sara Lee"), Bryan Foods, Inc., a Delaware corporation ("Bryan Foods"), and Sara Lee Foods, Inc., a Delaware corporation ("Sara Lee Foods", with Bryan Foods and Sara Lee, each a "Seller" and collectively, the "Sellers"), for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each Seller does hereby sell, assign, transfer, convey and deliver unto Sweet Sue Acquisition, LLC, a Delaware limited liability company ("Sweet Sue Acquisition"), its successors and assigns, each and all of the Purchased Assets owned by such Seller, free and clear of all Encumbrances (except for Permitted Encumbrances), and with respect to the Trademarks included in the Purchased Assets, together with the goodwill attendant thereto, intending hereby to convey all of the right, title and interest of such Seller therein.

Each Seller hereby covenants and agrees to and with Sweet Sue Acquisition, its successors and assigns, to do, execute, acknowledge and deliver to, or to cause to be done, executed, acknowledged and delivered to, Sweet Sue Acquisition, its successors and assigns, all such further acts, deeds, assignments, transfers, conveyances, powers of attorney and assurances that may be reasonably requested by Sweet Sue Acquisition for the better selling, assigning, transferring, conveying, delivering, assuring and confirming to Sweet Sue Acquisition, its successors or assigns, or for aiding and assisting in collecting or reducing to Sweet Sue Acquisition's possession, any or all of the Purchased Assets.

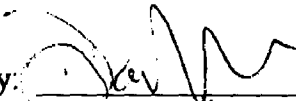
Notwithstanding anything herein to the contrary, this Instrument of Assignment shall not constitute an agreement to assign any permit, license, certificate, approval, authorization, agreement, contract or other commitment included in the Purchased Assets if an attempted assignment thereof without the consent of a third party thereto would constitute a breach thereof.

This Instrument of Assignment shall be binding upon the successors and assigns of each Seller and shall inure to the benefit of the successors and assigns of Sweet Sue Acquisition. Capitalized terms used herein but not otherwise defined herein shall have the meanings set forth in the Agreement.


\* \* \* \*

IN WITNESS WHEREOF, Sellers have caused this Instrument of Assignment to be duly executed and delivered this \_\_\_\_ day of January, 2005.

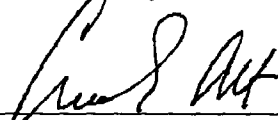
**SARA LEE CORPORATION**

By:   
Name: *Diana S. Ferguson*  
Title: *Senior Vice President & Treasurer*

**BRYAN FOODS, INC.**

By:   
Name: *Aaron E. Ait*  
Title: *Vice President & Assistant Secretary*

**SARA LEE FOODS, INC.**

By:   
Name: *Aaron E. Ait*  
Title: *Vice President & Assistant Secretary*