

10-07-2009

REC
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103576432

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

10-07-09

1. Name of conveying party(ies):

ProMark Brands, Inc.

- Individual(s)
- General Partnership
- Corporation- State: Idaho
- Other _____

Citizenship (see guidelines) _____

Additional names of conveying parties attached? Yes No

3. Nature of conveyance /Execution Date(s) :

Execution Date(s) September 16, 2009

- 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: Kabobs Acquisition, Inc.

Internal Address: _____

Street Address: 5423 North Lake Drive

City: Lake City

State: Georgia

Country: USA Zip: 30260

- Association
- General Partnership
- Limited Partnership
- Corporation
- Other _____

Citizenship _____
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.

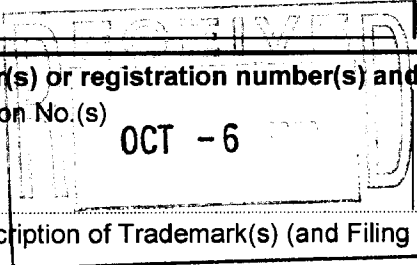
A. Trademark Application No.(s)

B. Trademark Registration No.(s)

2,456,698; 3,375,821; 3,260,495; 3,372,714; 3,264,591

Additional sheet(s) attached? Yes No

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



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

Name: R. Lawton Jordan III

Internal Address: _____

Street Address: 3400 Peachtree Road NE
14th Floor, Lenox Towers II

City: Atlanta

State: Georgia Zip: 30326

Phone Number: (404) 601-2631

Fax Number: (404) 261-0159

Email Address: LJORDAN@DMQLAW.COM

6. Total number of applications and registrations involved:

5

7. Total fee (37 CFR 2.6(b)(6) & 3.41) \$ 140.00

- Authorized to be charged to deposit account
- Enclosed

8. Payment Information:

10/07/2009 NJAMA1 00000001 2456698

Deposit Account Number _____

Authorized User Name _____

40.00 OP
100.00 OP

9. Signature: R. Lawton Jordan III

10/2/09

Signature

Date

R. Lawton Jordan III

Name of Person Signing

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

18

Documents to be recorded (including cover sheet) should be faxed to (571) 273-0140, or mailed to: Mail Stop Assignment Recordation Services, Director of the USPTO, P.O. Box 1450, Alexandria, VA 22313-1450


TRADEMARK
REEL: 004074 FRAME: 0647

Description of Intellectual Property

See Permitted Liens.

Trademark Registrations

Mark	Jurisdiction	Registration No.	Registration Date	Goods	Disclaimers
KABOBS, THE HORS D'OEUVRES SPECIALIST	Canada	TMA621111	September 30, 2004	Fresh and frozen party type finger and single-portion foods, consisting of meat, poultry, fish, shellfish, vegetables, nuts, cheese and pastry.	Disclaimers for "kabobs" and "hors d'oeuvres"
KABOBS, THE HORS D'OEUVRES SPECIALISTS	United States	2,456,698	June 5, 2001	Fresh and frozen party type finger foods, consisting of meat, poultry, fish, shellfish, vegetables and nuts.	Disclaimers for "kabobs" and "hors d'oeuvres"
KABOBS, THE HORS D'OEUVRE SPECIALISTS	United States	3,375,821	January 29, 2008	Frozen prepared appetizers and hors d'oeuvres consisting of fruits, mushrooms, beans and potatoes; frozen prepared entrees consisting of meats, poultry, fruits, vegetables and mushrooms. Appetizers and hors d'oeuvres consisting of pastry, bread and dough; frozen prepared entrees consisting of pastry.	Disclaimers for "kabobs" and "h d'oeuvre"
Kabobs	United States	3,260,495	July 10, 2007	Fresh and frozen party type finger and single-portion goods, consisting of meat, poultry, fish, shellfish, vegetables, nuts and cheese. Fresh and frozen party type finger and single-portion goods, consisting of pastry; fresh and frozen party type finger and single-portion goods,	Disclaimer for "kabobs"

Mark	Jurisdiction	Registration No.	Registration Date	Goods	Disclaimers
				namely, dough-based pockets with filling consisting primarily of meats, poultry, fish, shellfish, vegetables, nuts and cheese.	
				Frozen prepared appetizers and hors d'oeuvres consisting of	Disclaimer for "kabobs"
Kabobs	United States	3,372,714	January 22, 2008	fruits, mushrooms, beans and potatoes; frozen prepared entrees consisting of meats, poultry, fruits, vegetables and mushrooms. Appetizers and hors d'oeuvres consisting of bread and dough; frozen prepared entrees consisting of pastry.	
	United States	3,264,591	July 17, 2007	Fresh and frozen party type finger and single-portion goods, consisting of meat, poultry, fish, shellfish, vegetables, nuts, and cheese. Fresh and frozen party type finger and single-portion goods consisting of pastry; fresh and frozen party type finger and single-portion goods, namely, dough-based pockets with filling consisting primarily of meats, poultry, fish, shellfish, vegetables, nuts and cheese.	N/A

The domain name – www.kabobs.com. This Kabobs site is controlled by Christopher Gilliam at the Facility. [Any restrictions associated with the rights pursuant to this domain name constitute a Permitted Lien.

On August 24, 2009, H. J. Heinz Company (the "Company") sent a registered letter to Kabobs Incorporated regarding the Unauthorized Use of Heinz's KABOBS Marks. The Company demanded that Kabobs immediately cease and desist from using the trade name Kabobs Incorporated, the Kabobs mark, and any intellectual property confusingly similar thereto. On September 3, 2009, this same letter was sent to Kabobs Incorporated via US Mail. As of September 15 2009, Purchaser has not received a response.

A true and correct copy of each letter is attached at Tab 1.

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201000026
09/16/2009

TRADEMARK
REEL: 004074 FRAME: 0649

ASSIGNMENT AND ASSUMPTION AGREEMENT

This ASSIGNMENT AND ASSUMPTION AGREEMENT is made and entered into as of the 16th day of September, 2009, by and among H. J. Heinz Company, L.P., a Delaware limited partnership ("**Asset Seller**"), ProMark Brands, Inc., an Idaho corporation ("**IP Seller**"), Heinz Management L.L.C., a Delaware limited liability company ("**Intangibles Seller**") and together with Asset Seller and IP Seller, collectively "**Seller**", and Kabobs Acquisition, Inc., a Georgia corporation ("**Purchaser**") (the "**Assignment Agreement**"), in connection with that certain Asset Purchase Agreement dated September 16, 2009, by and between Purchaser and Seller (the "**Asset Purchase Agreement**"). All terms and conditions of, and all representations, warranties, covenants and agreements relating to, the transactions contemplated by the Asset Purchase Agreement are set forth in the Asset Purchase Agreement.

WHEREAS, pursuant to the Asset Purchase Agreement, Seller has agreed to assign to Purchaser, and Purchaser has agreed to assume certain assets, including Intellectual Property, which includes Customer Intellectual Property.

NOW, THEREFORE, in consideration of the foregoing premises and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, Seller and Purchaser hereby agree as follows:

Seller hereby sells, assigns, transfers and delivers to Purchaser the Intellectual Property, including Customer Intellectual Property (the "**Assignment**"). Purchaser hereby accepts the Assignment, and agrees to assume, and shall pay and discharge when due, the Assumed Liabilities.

From time to time after the Closing Date, at the request of one of the parties hereto and at the expense of the party so requesting, subject to the limitations set forth in the Asset Purchase Agreement, each of Seller and Purchaser agree to execute and deliver to such requesting party such documents and take such other action as such requesting party may reasonably request in order to consummate more effectively the transactions contemplated hereby.

The scope, nature, and extent of the assets transferred by this Assignment are expressly set forth in the Asset Purchase Agreement. Nothing contained herein shall itself change, amend, extend or alter (nor should it be deemed or construed as changing, amending, extending or altering) the terms or conditions of the Asset Purchase Agreement in any manner whatsoever. This instrument does not create, establish or expand rights, liabilities or obligations not otherwise created or existing under or pursuant to the Asset Purchase Agreement. In the event of any conflict or inconsistency between the terms of the Asset Purchase Agreement and the terms of this instrument, the terms of the Asset Purchase Agreement will govern.

This Assignment Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

This Assignment Agreement shall be construed, performed and enforced in accordance with, and governed by, the laws of Georgia (without giving effect to the principles of conflicts of laws thereof).

Capitalized terms appearing herein and not expressly defined herein shall have the respective meanings given thereto by the Asset Purchase Agreement.

This Assignment Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together will constitute one and the same instrument. To facilitate execution of this Assignment Agreement, the parties may execute and exchange counterparts of the signature page by electronic mail.

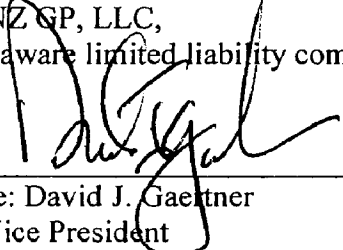
[Signatures appear on the following page.]

IN WITNESS WHEREOF, the undersigned have caused this Assignment and Assumption Agreement to be executed by their respective duly authorized officers as of the date first above written.

SELLER:

H.J. HEINZ COMPANY, L.P.,
a Delaware partnership

By: HEINZ GP, LLC,
a Delaware limited liability company

By:  (SEAL)
Name: David J. Gaertner
Its: Vice President

[DULY AUTHORIZED, EMPOWERED AND DIRECTED
TO EXECUTE AND DELIVER THIS INSTRUMENT]

PURCHASER:

KABOBS ACQUISITION, INC.,
a Georgia corporation

By: _____
Name: _____
Its: _____

[DULY AUTHORIZED, EMPOWERED AND DIRECTED
TO EXECUTE AND DELIVER THIS INSTRUMENT]

(CORPORATE SEAL)

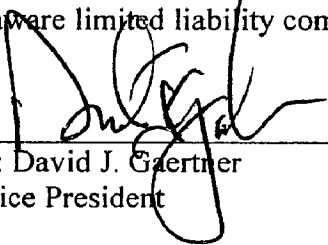
PROMARK BRANDS INC.,
an Idaho corporation

By: _____
Name: Robert Yoshida
Its: President

[DULY AUTHORIZED, EMPOWERED AND DIRECTED
TO EXECUTE AND DELIVER THIS INSTRUMENT]

(CORPORATE SEAL)

HEINZ MANAGEMENT L.L.C.,
a Delaware limited liability company

By:  (SEAL)
Name: David J. Gaertner
Its: Vice President

[DULY AUTHORIZED, EMPOWERED AND DIRECTED
TO EXECUTE AND DELIVER THIS INSTRUMENT]

IN WITNESS WHEREOF, the undersigned have caused this Assignment and Assumption Agreement to be executed by their respective duly authorized officers as of the date first above written

SELLER:

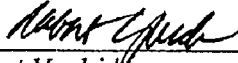
H.J. HEINZ COMPANY, L.P.,
a Delaware partnership

By: HEINZ GP, LLC,
a Delaware limited liability company

By: _____ (SEAL)
Name: David J. Gaertner
Its: Vice President

[DULY AUTHORIZED, EMPOWERED AND DIRECTED
TO EXECUTE AND DELIVER THIS INSTRUMENT]

PROMARK BRANDS INC.,
an Idaho corporation

By: 
Name: Robert Yoshida
Its: President

[DULY AUTHORIZED, EMPOWERED AND DIRECTED
TO EXECUTE AND DELIVER THIS INSTRUMENT]

(CORPORATE SEAL)

HEINZ MANAGEMENT L.L.C.,
a Delaware limited liability company

By: _____ (SEAL)
Name: David J. Gaertner
Its: Vice President

[DULY AUTHORIZED, EMPOWERED AND DIRECTED
TO EXECUTE AND DELIVER THIS INSTRUMENT]

PURCHASER:

KABOBS ACQUISITION, INC.,
a Georgia corporation

By: _____
Name: _____
Its: _____

[DULY AUTHORIZED, EMPOWERED AND DIRECTED
TO EXECUTE AND DELIVER THIS INSTRUMENT]

(CORPORATE SEAL)

IN WITNESS WHEREOF, the undersigned have caused this Assignment and Assumption Agreement to be executed by their respective duly authorized officers as of the date first above written.

SELLER:

H.J. HEINZ COMPANY, L.P.,
a Delaware partnership

By: HEINZ GP, LLC,
a _____ limited liability company

By: _____ (SEAL)
Name: _____
Its: _____

[DULY AUTHORIZED, EMPOWERED AND DIRECTED
TO EXECUTE AND DELIVER THIS INSTRUMENT]

PROMARK BRANDS, INC.,
an Idaho corporation

By: _____
Name: _____
Its: _____

[DULY AUTHORIZED, EMPOWERED AND DIRECTED
TO EXECUTE AND DELIVER THIS INSTRUMENT]

(CORPORATE SEAL)

HEINZ MANAGEMENT L.L.C.,
a Delaware limited liability company

By: _____ (SEAL)
Name: _____
Its: _____

[DULY AUTHORIZED, EMPOWERED AND DIRECTED
TO EXECUTE AND DELIVER THIS INSTRUMENT]

PURCHASER:

KABOBS ACQUISITION, INC.,
a Georgia corporation

By: *Steven W. Law*
Name: Steven W. Law
Its: CEO

[DULY AUTHORIZED, EMPOWERED AND DIRECTED
TO EXECUTE AND DELIVER THIS INSTRUMENT]

(CORPORATE SEAL)

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this "Agreement"), dated the 16th day of September, 2009, between H. J. Heinz Company, L.P., a Delaware limited partnership ("Asset Seller"), ProMark Brands, Inc., an Idaho corporation ("IP Seller"), Heinz Management L.L.C. ("Intangibles Seller", and together with Asset Seller and IP Seller, collectively "Seller") and Kabobs Acquisition, Inc., a Georgia corporation ("Purchaser").

WITNESSETH:

WHEREAS, Seller desires to sell to Purchaser, and Purchaser desires to purchase from Seller, Seller's Lake City factory located at 5423 North Lake Drive, Lake City, Georgia 30260, including the real property and certain equipment and personal property therein, and the business of selling products manufactured at the factory, all subject to and as specified in the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements set forth herein, the parties hereto, intending to be legally bound, agree as follows:

ARTICLE I DEFINITIONS

"AAI Business" shall have the meaning specified in Section 2.1(i)(iii)(v).

"Accrued Vacation Amount" shall have the meaning specified in Section 2.4(c).

"Acquired Assets" shall mean the property and assets to be conveyed by Seller to Purchaser as specified in Section 2.1.

"Acquired Inventory" shall have the meaning specified in Section 2.1(f).

"Affiliate" means a person or entity, which directly or indirectly, alone or through one or more intermediaries, controls, or is controlled by, or is under common control with a specified person or entity.

"Agreement" shall mean this Agreement between Seller and Purchaser as originally executed and delivered, as the same may be amended or supplemented in accordance with the provisions hereof, together with all Exhibits and Schedules made a part hereof.

"Assumed Contracts" shall have the meaning specified in Section 2.1.

"Seller Confidential Information" shall have the meaning specified in Section 5.5(a).

"Seller Employee Obligations" means the Seller's severance obligations and other arrangements in respect of the termination of employment of certain employees of the Business as operated by Seller (including those required by Section 6.6), together with all obligations and liabilities arising under or relating to the Company Plans.

"Seller Loss" shall have the meaning specified in Section 9.3.

"Seller Ownership Period" shall have the meaning specified in Article III.

"Seller's knowledge" or "knowledge of Seller" or similar words shall be limited to the actual knowledge, and such knowledge as reasonably diligent and prudent persons in a like position would possess, of the following employees of Seller or Seller's Affiliates: David Gaertner, Steve Lagasse, Dan Poland, Wayne Skinner and Jeff Fisher.

"Shared Sale Contracts" shall have the meaning specified in Section 2.1(f).

"Tangible Assets" shall have the meaning specified in Section 3.8.

"Third Party Accountants" shall have the meaning specified in Section 2.4(b).

"Third Party Claims" shall have the meaning specified in Section 9.4(c).

"Transferred Employees" shall have the meaning specified in Section 6.1.

ARTICLE II SALE AND PURCHASE OF ASSETS

SECTION 2.1. Transfer of Assets. On the terms and subject to the conditions set forth in this Agreement, Seller shall sell, assign, transfer, convey and deliver to Purchaser, and Purchaser shall purchase and accept from Seller, on the Closing Date, all right, title and interest in and to all assets used by Seller exclusively in the Business, including the following assets, but in all cases excluding the Excluded Assets (the "Acquired Assets"), in each case, free and clear of all Liens:

- (a) the real property described in Schedule 2.1(a) and the buildings, structures, fixtures or other improvements located thereon (the "Owned Real Property").
- (b) telephone numbers and the www.kabobs.com website address and content (but with references to Heinz's other businesses removed).
- (c) All Tangible Assets, in all cases excluding the Excluded Assets.

- (d) subject to Section 2.6, all Permits held by or on behalf of Seller to the extent related to the Owned Real Property and the Business and which are transferable without cost or payment by Seller, other than costs which are reimbursed by Purchaser.
- (f) subject to Section 2.6, (i) all of the rights and interests of Seller under all the Contracts relating exclusively to the Business, including those so designated in Schedule 3.9 (collectively the "Assumed Contracts") and (ii) such other rights and interests in certain Contracts designated in Schedule 3.9(c) (the "Shared Sale Contracts") in regards to which the Parties shall cooperate so that both Parties may have the benefit of the sales to customers in such contracts and abide by the terms and conditions thereof, and shall also cooperate on reaching agreement with other parties to such Shared Sale Contracts to permit Purchaser to enter separate contracts directly with such parties.
- (g) all Inventory related to the Business and the Products, but excluding any Inventory related solely to the Excluded Assets (the "Acquired Inventory").
- (h) all books, records, ledgers, files, documents, correspondence, lists, creative materials, advertising, marketing and promotional materials relating exclusively to the Business, to specifically include, whether meeting the foregoing definition or not, the current Kabob's full line tri-fold brochure having a print date of 6/09 (Purchaser shall remove HEINZ trademarks on next printing.).
- (i) all Intellectual Property, including goodwill associated therewith, licenses granted and obtained with respect thereto, and rights thereunder, remedies against infringement thereof, and rights to protection thereof in all jurisdictions, including without limitation, trademarks, formulations and recipes of all Products, provided:
- (i) with respect to Products which are manufactured using recipes with respect to which the customer for such Products has or asserts some ownership interest (the "Customer Intellectual Property"), Seller hereby conveys all of its right, title and interest, if any, to such recipes and shall cooperate with Purchaser in obtaining but does not assure Purchaser will receive, approval from each such customer so that Purchaser may, utilize the recipe or formulation; and
- (ii) with respect to those recipes and formulations listed in Schedule 2.1(j)(ii) (the "Co-Pack Products") Purchaser shall utilize the corresponding recipe and process requirements (as is currently applied) to produce the Co-Pack Products for Seller under the Co-Packaging Agreement. Co-Pack Products are products of Appetizers And Inc., a division of H.J. Heinz Company, L.P. ("AAI") and certain NANCY'S brand products brought to the Plant for production since 2006 and which may have been modified in whole or in part at the Plant with spices,

formulations, processing techniques or ingredients from different suppliers (the "Kabobs Changes"). With respect to each Co-Pack Product, for six (6) months following the date Purchaser ceases making that particular Co-Pack Products at the Plant under the Co-Packaging Agreement on behalf of AAI, Seller at its AAI factory in Chicago shall have the non-exclusive, royalty free license to continue using the Kabobs Changes in the manufacture of the Co-Pack Products. Following the conclusion of the applicable six (6) month period, Seller shall have full and complete rights to continue making the Co-Pack Products but shall vary any, all or some of the spices, formulation, processing techniques or suppliers of ingredients such that the Co-Pack Products will be different compared to the Co-Pack Products using all the Kabobs Changes and Seller shall initiate and maintain such different recipe following the applicable six (6) month period. It is understood that the Co-Pack Products before and after such variation may remain similar.

(ii) Seller, at its option, may assign its rights as specified in subpart (ii) above to a third party purchaser of AAI but no other rights relating to the Kabobs Changes. Likewise, both during the term of the Co-Packaging Agreement and following termination, Purchaser shall have full and complete rights to making the Co-Pack Products with the Kabobs Changes as currently produced on the date hereof, and Seller hereby conveys all of its right, title and interest to the recipes and formulas listed in Schedule 2.1(j)(ii), to the extent of such Kabobs Changes, to Purchaser, subject to Seller's rights as specified herein. Seller shall take appropriate steps to assure that Seller, and any Affiliate, or any successor or assign of Seller or its Affiliates, including without limitation AAI (including any purchaser of AAI, or of the assets comprising the AAI Business, comply with the terms of this Section 2.1 (h) (ii) and (iii).

(iii) with respect to the recipes and formulation for [pizza and spanokopita] currently manufactured by AAI for sale under the KABOBS brand ("Certain AAI Recipes"), no later than six (6) months following the Closing Date, Purchaser shall vary any, all or some of the spices, formulation, processing techniques or suppliers of ingredients, using the Certain AAI Recipes such that the resulting Products will be different compared to such Products using the Certain AAI Recipes. It is understood that such resulting different Products may remain similar to such Products using the Certain AAI Recipes.

provided, however, the Acquired Assets shall not include and Seller will retain and Purchaser will not acquire the following assets and property (the "Excluded Assets"):

- (a) All Acquired Inventories of Seller are, and all Products made at the Plant and previously shipped by Seller were, merchantable, fit for their intended purpose and neither adulterated nor misbranded within the meaning of, and in material compliance with, the Federal Food Drug and Cosmetic Act of 1938, as amended, the Federal Fair Packaging or Labeling Act of 1966, as amended, and any other applicable federal, state or local food and drug, consumer safety or consumer protection law or regulation; will comply with all applicable hazardous and toxic substance laws, rules and regulations; and will comply with all other applicable state and local laws and regulations. Such Acquired Inventories are not excessive in kind or amount in light of the historical business needs and practices of the Business, and have a commercial value at least equal to the value shown in the Closing Statement. The portions thereof consisting of finished goods will be saleable in the ordinary course of business at normal list prices and terms without discounts, and will be labeled with labels which will be currently usable. The portions thereof consisting of goods in process, ingredients and packaging materials will not be obsolete and will be of a quality usable in the production and packaging of such finished goods. All Acquired Inventories at the Closing will be free and clear of any mortgage, lien, encumbrance, security interest, adverse claim, charge or liability whatsoever. Seller has not made sales on consignment or granted return privileges to any purchaser of its finished goods other than normal spoilage, defect or damage allowances. All finished goods made at AAI shall have been prepared in accordance with applicable recipes and formulations. This warranty relating to recipes and formulations shall not apply to Acquired Inventories manufactured at the Plant.
- (b) The values at which the Acquired Inventories will be carried on the Closing Statement reflect and will reflect the normal and consistent inventory valuation method of Seller of valuing inventory at the lower of cost or market, all in accordance with GAAP, and include appropriate allowances for obsolescence.
- (c) The manufacturing practices, ingredients, composition and labeling for each of the Products are, in all material respects, in compliance with, and the Purchaser may produce, distribute and sell each of the Products on and after the Closing Date without violating, any federal, state or local food and drug, consumer safety, consumer protection or hazardous and toxic substance laws or regulations. All labeling used on the Acquired Inventories and the products sold or delivered by Seller for sale to consumers has been filed or registered with and/or approved by each state regulatory agency which requires such filing, registration and/or approval.

SECTION 3.11. Intellectual Property.

- (a) Attached as Schedule 3.11(a) is (i) a description of all intellectual property owned by, licensed to or used in the Business, including, but not limited to, United States and foreign patents, trademarks (whether registered or unregistered), tradenames (whether registered or unregistered), copyrights (whether registered or unregistered), trade dress, label designs, logos, domain names (whether

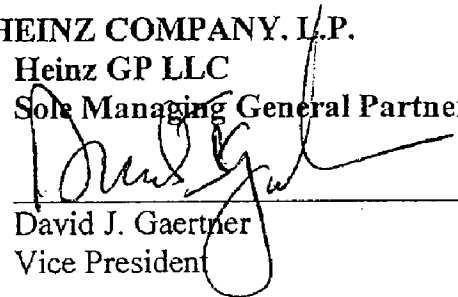
registered or unregistered) and applications for any of the foregoing, computer software programs, trade secrets, know-how, customer lists, manufacturing processes, formulas, recipes, process sheets and mixing instructions and similar rights (collectively, the "Intellectual Property") together with a designation of ownership, and (ii) a listing of all agreements or arrangements which affect the ownership or use of any item of Intellectual Property.

- (b) Except as set forth in Schedule 3.11(a), as of the date hereof and as of the Closing Date:
- (i) Seller is the owner of all right, title and interest in and to each such item of owned Intellectual Property, free and clear of all liens, security interests, charges, encumbrances, equities and other adverse claims or, with respect to those items of Intellectual Property which are not owned, has the right to use, free and clear of royalties or any claims or rights of others, such Intellectual Property, and no officer, director or employee of the Seller or, to the knowledge of Seller, any third party has an interest in any of the Intellectual Property;
 - (ii) Seller has not licensed or sublicensed any party to use any of the Intellectual Property;
 - (iii) There are no claims or proceedings pending or, to the knowledge of Seller, threatened which challenge the rights of Seller in any respect in and to any of the Intellectual Property or any license thereof;
 - (iv) The practice or use by Seller of any of the Intellectual Property or any process utilized or any product produced by Seller does not infringe, nor to the knowledge of Seller, is infringed by, any patent, computer software program, trademark, tradename, domain name, trade secret, know-how or copyright owned or used by another;
 - (v) There are no orders, decrees, judgments, settlements or stipulations pending against or affecting the Intellectual Property;
 - (vi) Seller has no knowledge of any claim, demand or proceeding that it may have against any party for violation of any of Seller's rights with respect to the Intellectual Property or any license thereof;
 - (vii) There is no unexpired valid patent on products or processes that Seller uses in manufacturing the Products that Seller is not entitled to use;
 - (viii) There is no governmental restriction or limitation, domestic or foreign, on the manner in which any of the Intellectual Property may be used, other than those imposed by applicable law; and

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered by the duly authorized officers of Seller and Purchaser as of the date first above written.

H. J. HEINZ COMPANY, L.P.

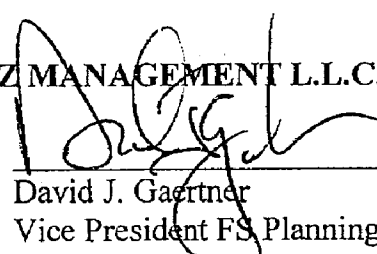
**BY: Heinz GP LLC
Sole Managing General Partner**

By: 
Name: David J. Gaertner
Title: Vice President

PROMARK BRANDS, INC.

By: _____
Name: Robert Yoshida
Title: President

HEINZ MANAGEMENT L.L.C.

By: 
Name: David J. Gaertner
Title: Vice President FS Planning Acquisitions

KABOBS ACQUISITION, INC.

By: _____
Name: _____
Title: _____

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered by the duly authorized officers of Seller and Purchaser as of the date first above written.

H. J. HEINZ COMPANY, L.P.

**BY: Heinz GP LLC
Sole Managing General Partner**

By: _____
Name: David J. Gaertner
Title: Vice President

PROMARK BRANDS INC.

By: Robert Yoshida
Name: Robert Yoshida
Title: President

HEINZ MANAGEMENT L.L.C.

By: _____
Name: David J. Gaertner
Title: Vice President

KABOBS ACQUISITION, INC.

By: _____
Name: _____
Title: _____

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Title: Vice President

PROMARK BRANDS INC.

By: _____
Name: Robert Yoshida
Title: President

HEINZ MANAGEMENT L.L.C.

By: _____
Name: David J. Gaertner
Title: Vice President

KABOBS ACQUISITION, INC.

By: Steven J. Law
Name: STEVEN J. LAW
Title: CEO