

TRADEMARK ASSIGNMENT

Electronic Version v1.1
 Stylesheet Version v1.1

SUBMISSION TYPE:		NEW ASSIGNMENT	
NATURE OF CONVEYANCE:		ASSIGNS THE ENTIRE INTEREST AND THE GOODWILL	
CONVEYING PARTY DATA			
Name	Formerly	Execution Date	Entity Type
Munsey Products, Inc.		08/07/2009	CORPORATION:
RECEIVING PARTY DATA			
Name:	New Carbon Company, Inc.		
Street Address:	4101 William Richardson Drive		
City:	SOUTH BEND		
State/Country:	INDIANA		
Postal Code:	46628		
Entity Type:	CORPORATION:		
PROPERTY NUMBERS Total: 2			
Property Type	Number	Word Mark	
Registration Number:	3710797	TASTEETFARE	
Registration Number:	2096007	TASTEE FARE	
CORRESPONDENCE DATA			
Fax Number:	(574)239-1900		
	<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>		
Phone:	574-234-4149		
Email:	sbteas@bakerd.com		
Correspondent Name:	Baker & Daniels LLP		
Address Line 1:	202 South Michigan Street		
Address Line 2:	Suite 1400		
Address Line 4:	SOUTH BEND, INDIANA 46601		
ATTORNEY DOCKET NUMBER:	CRB-T0072		
NAME OF SUBMITTER:	Daniel Tychonievich		
Signature:	/Daniel Tychonievich/		

CH \$65.00 3710797

Date:

07/15/2010

Total Attachments: 17

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ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this "Agreement") is dated as of August 7, 2009, by and between NEW CARBON COMPANY, INC., a Maryland corporation ("Purchaser"), and MUNSEY PRODUCTS, INC., an Arkansas corporation ("Seller").

WHEREAS, Seller is the sole owner of the Assets (as defined below); and

WHEREAS, Seller desires to sell to Purchaser, and Purchaser desires to purchase from Seller, all of the Assets, all pursuant and subject to the terms and conditions set forth herein; and

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, it is hereby agreed between Purchaser and Seller as follows:

**ARTICLE I
DEFINITIONS**

In this Agreement, the following terms have the meanings specified or referred to in this Article I.

"Assets" means any and all Equipment, Inventory, Intellectual Property, Customer Lists, Confidential Information, and Contract Rights relating to the Business.

"Business" means the waffle iron and flour business conducted by Seller's "Tastee-Fare" division.

"Closing" means the closing of the transfer of the Assets from Seller to Purchaser.

"Closing Date" has the meaning specified in Section 4.1.

"Confidential Information" means, other than Intellectual Property and Customer Lists, all other trade secrets, confidential, non-public proprietary information, technology, data or documentation, internal manuals, logs, reports, research, inventions, discoveries, know-how, source code, processes, designs, algorithms, formulae, recipes, patterns, compilations, programs, devices, methods, techniques, plans, developments, improvements, experimental work, work in progress, customer lists, price lists, records, contracts or licenses related to, used by Seller in connection with, or useful or necessary for, the Business.

"Contract Rights" means, with respect to the Business, all phone and telefax numbers, post office boxes and keys thereto, and Equipment lease or loan agreements to which Seller is a party, as listed on **Schedule A** hereto.

"Customer Count" means the listing of the number of customers purchasing waffle mixes from Seller, broken down by state, attached hereto as **Schedule B**.

"Customer List" means a listing, to be delivered at Closing, of all of the Seller's customers which includes the name, address, city, state, zip code, phone number, contact name, the number of waffle irons



loaned to such customer at the location, and a purchase history and waffle iron exchange for the preceding twelve (12) months.

"Equipment" means all Waffle Irons, a count of which is set forth on **Schedule C**, together with the other equipment identified on **Schedule C** hereto.

"Intellectual Property" means all Trademark Rights, rights in mask works, patents and patent applications, copyrights, and any and all other U.S. and foreign intellectual property rights related to, used by Seller in, or useful or necessary for, the conduct of the Business, and all goodwill associated therewith. All of such Intellectual Property is identified on **Schedule D** hereto.

"Inventory" means so much of Seller's inventory of waffle flours, wherever located, as Purchaser shall deem reasonably necessary to meet its operating needs following the Closing and to ensure a smooth transition of the Business.

"Legal Requirement" means any statute, law, ordinance, regulation, order or rule of any federal, state, local, foreign or other governmental agency or body or of any other type of regulatory body, whether in the United States or in any other jurisdiction, including but not limited to those covering food and drug, environmental matters, energy, safety, health, transportation, bribery, recordkeeping, zoning, employment and employee benefit plans and practices, antidiscrimination, antitrust, taxes, wage and hour, and price and wage control matters.

"Trademark Rights" means any and all registered and common law, U.S., state and foreign, trademarks, service marks, trade dress, logos, photographs, and artwork owned or used by Seller in connection with the Business, including without limitation the name "Tastee-Fare" and all variations thereof.

"Waffle Irons" means all waffle irons owned by Seller, whether in the possession of Seller's customers or in any warehouse, and all blending equipment. The Waffle Irons are listed on **Schedule C** hereto.

ARTICLE II PURCHASE AND SALE

2.1. **Deposit.** Seller has previously delivered to Purchaser a refundable good-faith deposit of [REDACTED] (the "Deposit").

2.2. **Sale of Assets.** Upon the terms and subject to the conditions of this Agreement, on the Closing Date, Seller shall sell, transfer, assign, convey and deliver to Purchaser, and Purchaser shall purchase from Seller good and marketable title to the Assets, free and clear of all liens and encumbrances.

2.3. **Assumption of Liabilities.**

2.3.1. Subject to Section 2.3.2, at the Closing, Purchaser shall assume, and shall agree to pay and discharge when due, the liabilities of Seller with respect to the Contract Rights arising from and

after the Effective Date, as more fully set forth in the Assignment and Assumption Agreement in the form of Exhibit 2.3.1 hereto (the "Assumption Agreement").

2.3.2. Except as set forth in Section 2.3.1, Purchaser shall not be deemed to assume or to be otherwise liable, and Seller will be responsible for, any liabilities of Seller (the "Excluded Liabilities"). The Excluded Liabilities include without limitation: (a) all amounts outstanding under any and all indebtedness for borrowed money, including lines of credit, letters of credit, notes payable and loans payable; (b) all environmental liabilities that arise out of or result from events occurring or conditions existing on or prior to the Closing Date; (c) all product liability or claims for injury to any person or property that relate to goods sold by Seller prior to the Closing Date; (d) all liabilities for taxes of Seller, including any such liabilities of Seller related to consummation of the transactions contemplated hereby; (e) any liabilities arising out of Seller's violation or failure to comply with any legal requirement or any court order; (f) any liability arising under any Seller employee benefit plans; (g) any liability arising out of or relating to payroll, workers' compensation, workers' compensation premiums, or unemployment benefits arising prior to the Closing Date; (h) any liability arising out of or related to employee bonus compensation; (i) any deductibles, self-insured retentions or retrospective rating plans connected with any insurance policy of Seller; (j) any fees, costs and expenses incurred by Seller in connection with this Agreement and the transactions contemplated hereby; and (k) any liabilities arising out of Seller's default under any of the Contract Rights prior to the Closing Date.

2.4 Payments and Mail Received by Purchaser. The parties recognize that, as a result of Purchaser's acquisition of Seller's post office boxes and keys thereto, Purchaser may receive Seller's mail and payment upon Seller's accounts receivable. Purchaser shall remit to Seller, via Automated Clearing House on Monday and Thursday of every week, any payments received by Purchaser for the account of Seller. Purchaser shall forward, to an address supplied by Seller, Seller's mail on Monday and Thursday of every week. Seller shall provide Purchaser a phone contact to enable addressing questions related to payments and mail.

ARTICLE III PURCHASE PRICE

3.1 Purchase Price. Subject to Section 3.4 hereof, the purchase price (the "Purchase Price") for the Assets (other than inventory) shall be the sum of [REDACTED] and (b) the assumption of liabilities described in Section 2.3.1 above.

3.2 Payment of Purchase Price for Non-Inventory Assets. Subject to Section 3.4 hereof, the Purchase Price for Assets (other than inventory) shall be paid as follows:

3.2.1. At the Closing, the Seller shall retain the Deposit, and Purchaser shall execute the Assumption Agreement;

3.2.2. The sum of [REDACTED] shall be payable at the Closing by electronic funds transfer or other immediately available funds; and



3.2.3.

_____ shall be payable by Purchaser's delivery to Seller of a Promissory Note in the form of Exhibit 3.2.3 attached hereto (the "Promissory Note").

3.3. Payment for Inventory. On or about September 18, 2009, Purchaser and Seller shall conduct an inventory of Seller's Inventory. Based on such inventory, within two (2) business days after the mutually satisfactory completion thereof, Purchaser shall remit to Seller, by electronic funds transfer or other immediately available funds, an amount equal to the cost of the Inventory in full payment therefor.

3.4. Adjustment to Purchase Price. In the event that Purchaser determines, within ninety (90) days after the Closing, that the actual count of Waffle Irons is more than Five Percent (5%) less than the amounts listed on Schedule C, Purchaser shall have the right to reduce the Purchase Price by setting off against the amounts due under the Promissory Note, in the amount _____ beyond the Five Percent (5%) shortfall.

3.5. Allocation of Purchase Price. The Purchase Price (including the Assumed Liabilities) shall be allocated among the Assets (other than Inventory) as determined mutually by Seller and Purchaser; the price paid pursuant to Section 3.3 shall be allocated to Inventory. After the Closing Date, Purchaser and Seller shall each report the federal, state and local income and other tax consequences of the transactions contemplated by this Agreement in a manner consistent with such allocation, including but not limited to the preparation and filing of Form 8594 under Section 1060 of the Internal Revenue Code (or any successor form or successor provision of any future tax law, or any comparable provision of state or local tax law) with their respective federal, state and local income tax returns for the taxable year that includes the Closing Date unless otherwise required by applicable law.

ARTICLE IV CLOSING

4.1 Closing Date. The Closing shall be consummated at 10:00 A.M., local time, as soon as practicable and in any event, no later than September 30, 2009. Closing shall occur in such manner as may be mutually agreed by Purchaser and Seller. The time and date on which the Closing is actually held is referred to herein as the "Closing Date."

4.2 Deliveries of Seller. Subject to fulfillment or waiver of the conditions set forth in Article IX, at Closing Seller shall deliver to Purchaser all the following:

4.2.1. The Assumption Agreement, together with such other assignments as shall be necessary to transfer the Contract Rights to Purchaser, which assignments shall contain any necessary third party consents.

4.2.2. A Bill of Sale in the form set forth in Exhibit 4.2.2 executed by Seller assigning the Assets to Purchaser.



4.2.3. Non-Competition Agreements in the form of Exhibit 4.2.3 executed by each of the persons listed on Schedule 4.2.3.

4.3. Change and Use of Name; Phone Numbers.

4.3.1. Concurrently with the Closing, Seller shall take all actions required (including filing appropriate trade name documentation with the Secretary of State of the State of Arkansas to enable Purchaser to use the name "Taste-Fare" and any derivative or combination thereof that it may elect, and Seller shall make no further use of any of such names.

4.3.2. At or prior to Closing, Seller shall have (i) notified its telephone company to assign the Seller's existing telephone number(s) to Purchaser, and (ii) paid all outstanding balances (whether or not due and payable) relating to the expenses incurred for the use of telephone privileges, service or advertising through the Closing Date, so that, at Closing, Purchaser shall have the absolute right to use Seller's telephone number(s) without liability for any pre-existing or previously incurred expenses.

ARTICLE V
REPRESENTATIONS AND WARRANTIES OF SELLER

As an inducement to Purchaser to enter into this Agreement and to consummate the transactions contemplated hereby, Seller represents and warrants to Purchaser and agrees, both as of the date hereof and the Closing Date, as follows: Representations and warranties in this Agreement are not intended as statements of fact, but rather are negotiated provisions which allocate risks related to the subject matter of the statements between the parties to this Agreement.

5.1 **Organization of Seller.** Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of Arkansas, and has full corporate power and authority to own or lease and to operate and use its properties and assets (including, without limitation, the Assets) and to carry on its business as now conducted. Seller is qualified to do business as a foreign corporation in any jurisdiction where it is required to be so qualified, except where the failure to be so qualified would not have a material adverse effect on the Assets or the Business.

5.2 **Authority of Seller.** Seller has the full and unrestricted legal right, capacity and authority to execute, deliver and perform this Agreement, to consummate the transactions contemplated hereby and to comply with the terms, conditions and provisions hereof. The execution, delivery and performance of this Agreement by Seller have been duly authorized and approved by Seller's board of directors and stockholders and do not require any further authorization or consent of Seller or any other party. This Agreement has been duly authorized, executed and delivered by Seller and constitutes the legal, valid and binding agreement of Seller enforceable against Seller in accordance with its terms. Neither the execution and delivery by Seller of this Agreement, nor the consummation by Seller of any of the transactions contemplated hereby, nor compliance by Seller with or fulfillment by Seller of the terms, conditions and provisions hereof or thereof will, directly or indirectly (with or without notice or lapse of time) require the

approval, consent, authorization or act of, or the making by Seller of any declaration, filing or registration with, any third party or any foreign, federal, state or local court, governmental body or regulatory body, result in the imposition or creation of any encumbrance upon or with respect to any of the Assets, or cause the termination or default of any of the Contract Rights.

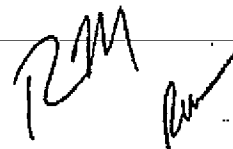
5.3 Title to Assets. Seller has the unrestricted right to use, and is the sole record and beneficial owner of all right, title and interest in and to the Assets, and the Assets are so owned free from all liens and encumbrances. No person other than Seller owns, has any rights in, or claims any ownership of, any of the Assets. Delivery of the Assets pursuant to this Agreement will convey good and marketable title to the Assets to Purchaser, free and clear of all liens and encumbrances. Except as set forth on Schedule 5.3, all of the Waffle Irons are owned by Seller, and are leased or loaned to Seller's customers; no Waffle Irons have been sold to any of Seller's customers.

5.4 No Finder. Neither the Seller nor any person acting on behalf of Seller 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.

5.5 Infringement. None of the Assets infringes upon or otherwise violates the patent, trade secret, know-how, proprietary processes or formulae, copyright, registered or common law trademark or service mark, trade dress or other intellectual property or proprietary rights of any person whatsoever. Seller is not using any confidential information or trade secrets of any other person in the operation of the Business.

5.6 Protection of Confidential Information and Customer List. Seller has used, and will continue to use until Closing, its best efforts to protect the proprietary nature or trade secret status of the Confidential Information and the Customer List. Seller has taken all reasonable precautions to protect the secrecy, confidentiality and value of the Confidential Information and Customer List in accordance with standard industry custom and practice. The Seller has good title and an absolute right to use the Confidential Information and Customer List, which is not part of the public domain, knowledge or literature and has not been used, divulged, or appropriated either for the benefit of any person or to the detriment of Seller. Neither the Confidential Information nor the Customer List is subject to any adverse claim or has been challenged or threatened in any way.

5.7 Intellectual Property. Schedule D contains a complete and accurate list of all Intellectual Property. Except as set forth on Schedule 5.7, Seller is the owner of all right, title and interest in and to all of the Intellectual Property, free and clear of all liens and encumbrances. Except as set forth on Schedule 5.7, all trademarks comprising the Trademark Rights have been registered with the United States Patent and Trademark Office and are currently in compliance with all formal legal requirements (including the timely post-registration filing of affidavits of use and incontestability and renewal applications), are valid and enforceable, and are not subject to any maintenance fees or taxes or actions falling due within one hundred eighty (180) days before or after the Closing Date.



5.8. Products Liability. Seller has not had within the past five years nor has any liability (and, to the knowledge of the Seller, there is no reasonable basis for any present or future action, suit, proceeding, hearing, investigation, charge, complaint, claim or demand against it giving rise to any liability) arising out of any injury to individuals or property as a result of the ownership, possession or use of any products sold, loaned, leased or delivered by the Seller, including without limitation the Inventory and the Equipment.

5.9. Customers. The Customer Count and Customer List supplied by Seller are true, correct and complete. Seller has not received any oral or written notice from any such customer to the effect that, and the Seller has no knowledge that, any such customer will stop or materially decrease the rate of or change the terms (whether related to payment, price or otherwise) with respect to, buying products from the Seller (whether as a result of the consummation of the transactions contemplated hereby or otherwise).

5.10 Tax Matters. All tax returns and related information required to be filed by or on behalf of Seller prior to the date hereof have been prepared and filed in accordance with applicable law, and all taxes, interest, penalties, assessments or deficiencies that have become due pursuant to such returns or any assessments or otherwise have been paid in full, except where the failure to file such returns or to pay such taxes, interest, penalties, assessments or deficiencies would not have an adverse effect on the Business or the Assets. All such returns are true and correct in all material respects, and there is no unresolved claim concerning Seller's federal, state and local tax liabilities that could have a material adverse effect on the Business or the Assets.

5.11 Financial Disclosures. Seller has delivered to Purchaser copies of the following materials: schedules of case sales, customer counts, revenues associated with the Business and related rebates, and counts of Waffle Irons (the "Seller Financial Disclosures"). Each of the Seller Financial Disclosures accurately presents Seller's financial performance and condition with respect to the matters reflected therein.

5.12. Legal Proceedings. There is no litigation that is pending or, to the knowledge of Seller, threatened against or related to the Business or the Assets which, if determined adversely to Seller, would have a material adverse effect on the Business or the Assets.

5.13. Conformity with Law. Seller has materially complied with all Legal Requirements applicable to it or to the operation of the Business, including all permits and reporting requirements, and has not received any notice of any alleged claim or threatened claim, violation of, liability or potential responsibility under, any such Legal Requirements which has not heretofore been cured and for which there is no remaining liability, except where to failure to so comply would not have a material adverse effect upon the Business or the Assets.

5.14. Insurance. Prior to the Closing, Seller has maintained insurance policies with respect to the Business that are customary in the industry.

5.15. Absence of Certain Business Practices. Neither Seller nor, to Seller's actual knowledge without investigation, any officer, employee or agent acting on its behalf, has since the

December 31, 2001, given (or agreed to give) any material gift, or similar material benefit to any customer, supplier, governmental employee or other person in a position to help or hinder the Business."

5.16. Disclosures. No representation or warranty of Seller in this Agreement, the schedules and exhibits attached hereto or any other written documentation provided in connection with the series of transactions contemplated hereby omits to state a material fact necessary to make the statements herein or therein, in light of the circumstances in which they were made, not misleading. There is no fact known to Seller that has specific application to Seller (other than general economic or industry conditions) and that adversely affects or threatens the Assets that has not been set forth in this Agreement or the exhibits and schedules.

5.17. No Additional Warranties. Except as expressly set forth in this Article V, Seller makes no representation or warranty, express or implied, at law or in equity, in respect of any of its Assets, liabilities or operations, including, without limitation, with respect to merchantability or fitness for any particular purpose, and any such other representations or warranties are hereby expressly disclaimed. Purchaser hereby acknowledges and agrees that, except to the extent specifically set forth in this Article V, the Purchaser is purchasing the Assets on an "as-is, where-is" basis. Without limiting the generality of the foregoing, Seller makes no representation or warranty regarding any assets other than the Assets or regarding any of its liabilities, and none shall be implied at law or in equity.

ARTICLE VI REPRESENTATIONS AND WARRANTIES OF BUYER

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

6.1 Organization of Purchaser. Purchaser is a corporation duly organized, validly existing and in good standing under the laws of the State of Maryland, and has full corporate 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 Purchaser. Purchaser has the full and unrestricted legal right, capacity and authority to execute, deliver and perform this Agreement, to consummate the transactions contemplated hereby and to comply with the terms, conditions and provisions hereof. The execution, delivery and performance of this Agreement by Purchaser have been duly authorized and approved by Purchaser's board of directors and do not require any further authorization or consent of Purchaser or its stockholders or any other party. This Agreement has been duly authorized, executed and delivered by Purchaser and constitutes the legal, valid and binding agreement of Purchaser enforceable against Purchaser in accordance with its terms. Neither the execution and delivery by Purchaser of this Agreement, nor the consummation by Purchaser of any of the transactions contemplated hereby, nor compliance by Purchaser with or fulfillment by Purchaser of the terms, conditions and provisions hereof or thereof will, directly or indirectly (with or without notice or lapse of time) require the approval, consent, authorization or act of, or

the making by Purchaser of any declaration, filing or registration with, any third party or any foreign, federal, state or local court, governmental body or regulatory body.

6.3 No Finder. Neither Purchaser 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 ACTIONS 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 Investigation by Purchaser. Prior to Closing, Seller will (a) afford Purchaser and its representatives full and free access to personnel, properties, contracts, books and records, and other documents and data concerning the Assets, and (b) furnish to Purchaser and its authorized representatives copies of such contracts, books and records, and other documents and data, and such additional information concerning the Assets, as Purchaser shall reasonably request.

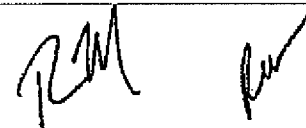
7.2 Preserve Accuracy of Representations and Warranties. Each of the parties hereto shall refrain from taking any action which would render any of its applicable representations or warranties contained in Article V or Article VI of this Agreement inaccurate. In the event that any of either party's representations or warranties becomes inaccurate, that party shall notify the other party in writing within 5 days of discovering the inaccuracy.

7.3 Operations Prior to the Closing Date. Except with the express written approval of Purchaser (which shall be determined in Purchaser's sole discretion), Seller shall not take, allow or approve any action which would have a material adverse effect on the Assets in any manner whatsoever, or fail to take any affirmative action required to preserve the value of the Assets or otherwise prevent an adverse effect thereto. Seller shall fill customers' orders for flour inventory in the ordinary course.

7.4 No Shop. Prior to the Closing, Seller shall neither negotiate for nor consummate the sale, lease, transfer or conveyance in any way of its assets or any rights thereto to any party other than Purchaser.

7.5 Distribution Agreements. Seller shall provide notice to its distributors (the "Distributors"), in accordance with the terms of their distribution agreements (the "Distribution Agreements") that the term of the Distribution Agreements shall cease upon the Closing Date. Seller shall comply with all requirements of the Distribution Agreements, as well as all Legal Requirements, associated with the termination of a distributorship.

7.6 Employees and Distributors. Purchaser shall have the right to enter into discussions with any of Seller's employees or Distributors for the purpose of evaluating a relationship between Purchaser and any such employees or Distributors after the Closing.



7.6.1. Purchaser may offer employment (to be effective the day after the Closing Date) to those of the employees of Seller engaged in the Business as it deems appropriate (in its sole discretion) on terms and conditions mutually acceptable to Purchaser and such employees. The Seller employees so employed by Purchaser shall be subject to Purchaser's personnel management and administrative policies, procedures and guidelines. Unless a Seller employee has entered into an employment agreement with Purchaser specifying different terms, each Seller employee so hired shall be an employee "at will." Neither Purchaser nor any of Purchaser's affiliates shall be responsible for any severance or termination pay obligations payable to Seller's employees as a result of the transactions contemplated hereunder.

7.6.2. Purchaser may enter into agreements with any one or more of Seller's Distributors, as it deems appropriate (in its sole discretion) on terms and conditions mutually acceptable to Purchaser and such Distributors. Unless Purchaser expressly assumes any Distribution Agreement with such a Distributor, Purchaser shall not become liable for any of Seller's obligations under such Distribution Agreements.

ARTICLE VIII **CONDITIONS PRECEDENT TO OBLIGATIONS OF PURCHASER**

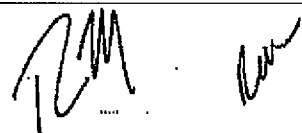
The obligations of Purchaser under this Agreement shall, at the option of Purchaser, be subject to the satisfaction, on or prior to the Closing Date, full satisfaction of the following conditions:

8.1. **No Misrepresentation or Breach of Covenants and Warranties.** There shall have been no breach by Seller in the performance of any of its warranties, representations, covenants and agreements herein; each of the representations and warranties of Seller contained or referred to herein shall be true and correct in all regards. There shall be no adverse change to, damage to, destruction of, or loss of any of the Assets.

8.2. **Closing Deliveries.** Seller shall have delivered, or caused the delivery, of the documents referenced in Section 4.2 hereof.

8.3. **Consents and Approvals.** Purchaser shall have obtained all governmental and third party consents and approvals and release of liens necessary, proper or advisable to consummate the transactions contemplated by this Agreement. Seller shall have delivered to Purchaser a Secretary's Certificate as evidence that its Board of Directors and stockholders previously approved and adopted the transactions contemplated by this Agreement in accordance with its charter documents and the laws of the State of Arkansas and that such approval has not been revoked, modified, amended or rescinded and is still in full force and effect.

8.4. **Tax Clearance.** Purchaser shall have delivered to Seller all tax clearance certificates available under Arkansas law, either (a) demonstrating that Seller has no outstanding state tax liabilities, or (b) pursuant to which Purchaser and Seller shall make appropriate arrangements for the escrowing and payment of outstanding state tax liabilities.



8.5. **No Governmental Order or Legal Requirement.** There shall not be in effect any order, decree or injunction (whether preliminary, final or appealable) of a United States federal or state court of competent jurisdiction, and no Legal Requirement shall have been enacted or promulgated by any governmental authority or agency, that prohibits consummation of the transactions contemplated hereby.

8.6. **Lease of Premises.** Purchaser and Seller's landlord shall have entered into a short-term lease for the use of Seller's facilities located in Little Rock, Arkansas, upon terms and conditions reasonably satisfactory to Purchaser.

ARTICLE IX

CONDITIONS PRECEDENT TO OBLIGATIONS OF SELLER

The obligations of Seller under this Agreement shall, at the option of Seller, be subject to the satisfaction, on or prior to the Closing Date, of the following condition: There shall have been no breach by Purchaser in the performance of any of its warranties, representations, covenants and agreements herein; each of the representations and warranties of Purchaser contained or referred to in this Agreement shall be true and correct, except for changes therein specifically permitted by this Agreement or resulting from any transaction expressly consented to in writing by Seller.

ARTICLE X

INDEMNIFICATION: POST-CLOSING AGREEMENTS

10.1 **Indemnification by Seller.** Seller agrees to indemnify, defend and hold Purchaser, its successors and permitted assigns, harmless from and against any and all Losses whatsoever (including, without limitation, reasonable attorneys' fees) incurred by such Purchaser in connection with, resulting from, or arising out of: (a) any misrepresentation or breach by Seller with respect to any of their respective warranties, representations, covenants or agreements contained in this Agreement or the agreements entered into in connection herewith; (b) any failure of Seller to perform any of its obligations in this Agreement; (c) any liability, demand, action, cause of action, claim or damages (including, without limitation, attorneys' fees) relating to the Assets or the Business and attributable to periods before Closing; (d) any liability, demand, action, cause of action, claim or damages attributable to Seller's customers' use of the Waffle Irons, whether before or after Closing; (e) any liability, demand, action, cause of action, claim or damages attributable to claims by Seller's customers that they own the Waffle Irons, whether before or after Closing; (f) any environmental liability that arises out of or results from events occurring or conditions existing on or prior to the Closing Date or any tax liability of Seller, including any such liabilities of Seller related to consummation of the transactions contemplated hereby; and (g) any Excluded Liability, whether arising before, on or after the Closing. Notwithstanding any provision herein to the contrary, Seller's obligation to provide indemnity with respect to Clause (d) of this Section 10.1 shall expire six (6) months after the Closing Date.

10.2 **Indemnification by Purchaser.** Purchaser agrees to indemnify, defend and hold Seller, its successors and permitted assigns, harmless from and against any and all Losses whatsoever



(including reasonable attorneys' fees) incurred by Seller in connection with, resulting from, or arising out of: (a) any misrepresentation or breach by Purchaser with respect to any of its warranties, representations, covenants or agreements in this Agreement; or (b) any failure of Purchaser to perform any of its obligations in this Agreement.

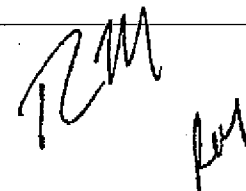
10.3 Set-Off. In the event that Purchaser reasonably believes that it has any claim for indemnification under this Article X at any time as of which any payment under the Promissory Note otherwise would be due and payable, and if any breach or failure giving rise to such a claim of indemnification continues uncured for a period of forty five (45) days after Purchaser's written notice thereof to Seller, Purchaser shall have the right to withhold any such payment to the extent, but only to the extent, necessary to indemnify Purchaser for the amount of such claim. Any payments so withheld shall be deposited in escrow with a third party, subject to an escrow agreement containing customary terms and conditions which shall provide that any sums deposited in escrow shall be subject to release upon joint written notice from Purchaser and Seller or a court order.

10.4 Payment of Creditors. After the Closing, Seller shall pay its obligations to accounts payable and other creditors as and when due.

ARTICLE XI TERMINATION

11.1 Termination. Anything contained in this Agreement to the contrary notwithstanding, this Agreement may be terminated at any time prior to the Closing Date: (a) by the written mutual consent of Purchaser and Seller; (b) by Purchaser or Seller if the Closing shall not have occurred on or before September 30, 2009 (or such later date as may be set forth in a written agreement between Purchaser and Seller); or (c) by Purchaser or Seller if the other party materially breaches any of its warranties, representations, covenants and agreements contained in this Agreement and such breach has continued without cure for a thirty (30) day period after notice of the breach.

11.2 Effect of Termination. In the event that this Agreement shall be terminated pursuant to this Article XI, all further obligations of the parties under this Agreement shall be terminated without further liability of any party to the other, and the Deposit shall be immediately refunded to Purchaser, provided that nothing herein shall relieve any party from liability for its breach of this Agreement. Notwithstanding the provisions hereof, any confidentiality provisions of this Agreement shall survive termination.



ARTICLE XII
NON-DISCLOSURE/NON-COMPETITION

12.1 Restrictions on Seller. Seller shall not, either directly or indirectly: (a) use, apply, reveal, report, publish or otherwise disclose any of the Confidential Information or Customer List to, or for the benefit of, Seller or any third party; (b) use or incorporate any of the Confidential Information or Customer List in any products or services; or (c) assist, act as an agent for, or act as an advisor or consultant to, any person or entity for the purpose of developing, marketing or selling any product or service that incorporates any of the Confidential Information or Customer List. Seller shall immediately notify Purchaser in writing of any unauthorized disclosure of Confidential Information or Customer List. The obligations of this Article XII shall survive the Closing.

12.2 Delivery of Confidential Information at Closing. At Closing, Seller shall provide Purchaser all written material in any media or format whatsoever containing, reflecting or in any way derived from the Confidential Information and Customer List (including, without limitation, notes, summaries, copies, extracts or other reproductions, in whole or in part), regardless of whether the material was prepared by Seller or on Seller's behalf. The delivery of the Confidential Information and Customer List shall not in any way relieve Seller of its obligation of confidentiality.

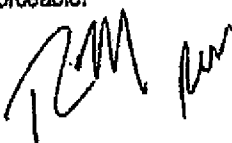
12.3 Copies of Confidential Information. Seller shall not retain any copies or duplicates whatsoever (whether electronic, in writing or otherwise), in whole or in part, of any part of the Confidential Information and Customer List.

12.4 Non-Competition. In addition to honoring fully all of Seller's obligations with respect to the sale and transfer of the Assets, for a period of four (4) years following the Closing, Seller shall not engage in any of the following activities without Purchaser's prior express written consent:

12.4.1. Directly or indirectly, anywhere in North America, engage, participate, invest or become interested in, affiliated or connected with, render services to, or, in exchange for any compensation or remuneration, direct or indirect, furnish any aid, assistance or advice to any person, corporation, firm or other organization engaged in, the production, development, sales, marketing and distribution of waffle and pancake mixes, or in a business that is otherwise competitive with the business that is conducted by Purchaser, or any of its affiliates, whether or not related to the Assets.

12.4.2. Interfere, directly or indirectly, with the conduct of the business of Purchaser, or of any its affiliates, anywhere in the world.

12.5. Acknowledgment; Severability. Purchaser and Seller acknowledge and agree that (i) the restrictions set forth in this Article XII are reasonable in terms of scope, duration, geographic area, and otherwise, and (ii) the protections afforded to Purchaser and its affiliates hereunder are necessary to protect their legitimate business interests. If any restriction set forth in Article XII is held by a court of competent jurisdiction to be unenforceable with respect to one or more geographic areas, lines of business and/or months of duration, the Seller agrees, and hereby submits, to the reduction and limitation of such restriction to the minimal extent necessary so that the provisions of Article XII shall be enforceable.



12.6. Remedies for Breach. Seller agrees that the Purchaser shall be entitled to a decree of specific performance, an injunction, or other appropriate equitable or legal relief, for the enforcement of its rights under this Agreement. The Purchaser shall not be required to show irreparable harm, actual harm or to furnish a bond or other security in order to such relief. The existence of any claim or cause of action of Seller against the Purchaser, whether predicated on this Agreement or otherwise, shall not constitute a defense to the enforcement by the Purchaser of this Agreement. In addition to any other remedies available hereunder, or at equity or law, a breach of the covenants contained in this Article XII shall excuse payment of any amount due under Section 3.2.3.

**ARTICLE XIII
GENERAL PROVISIONS**

13.1 Survival of Obligations. Except as otherwise expressed herein, all representations, warranties, covenants and obligations contained in this Agreement shall survive the consummation of the transaction contemplated by this Agreement and continue indefinitely thereafter. Time is of the essence in the performance of the terms and conditions of this Agreement.

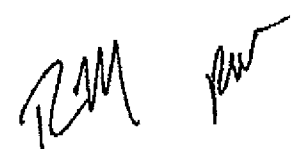
13.2 No Public Announcement. Seller shall not, without the approval of Purchaser, make any press release or other announcement concerning the transactions contemplated by this Agreement, except as and to the extent that any such party shall be so obligated by law, in which case the other party shall be advised and the parties shall use their best efforts to cause a mutually agreeable release or announcement to be issued; provided that the foregoing shall not preclude communications or disclosures necessary to implement the provisions of this Agreement.

13.3 Notices. All notices or other communications required or permitted hereunder shall be in writing and shall be deemed given or delivered (i) when delivered, (ii) when sent, if delivered by facsimile and the appropriate acknowledgment of receipt of such facsimile is received, or (iii) when received, if sent by registered or certified mail or by overnight courier.

13.4 Successors and Assigns. The rights of either party under this Agreement shall not be assignable by such party hereto without the prior written consent of the other.

13.5 Entire Agreement; Amendments. This Agreement and the exhibits and schedules referred to herein and the documents delivered pursuant hereto 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. This Agreement shall not be amended, modified or supplemented except by written instrument signed by an authorized representative of each of the parties hereto.

13.6 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.

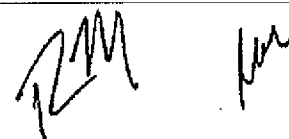
13.7 Expenses. Without limiting a party's right to recover reasonable attorneys' fees as set forth in this Agreement, each party hereto will pay all costs and expenses incident to its negotiation and preparation of this Agreement and to its performance and compliance with all agreements and conditions contained herein on its part to be performed or complied with, including the fees, expenses and disbursements of its counsel and accountants. In the event any action is brought to enforce one or more provisions of this Agreement, the prevailing party obtaining a final judgment in its favor, shall be entitled to recover from the non-prevailing party its reasonable attorneys fees incurred in connection with such action.

13.8 Execution in Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be considered an original instrument, but all of which shall be considered one and the same agreement. This Agreement may be executed via facsimile and a facsimile copy of either party's signature shall be deemed and be enforceable as an original hereof.

13.9 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Arkansas without regard to its conflicts of law principles.

13.10. Further Assurances. From time to time following the Closing, Seller shall execute and deliver, or cause to be executed and delivered, to Purchaser such other instruments of conveyance and transfer as Purchaser may reasonably request to more effectively convey and transfer to, and vest in, Purchaser and put Purchaser in possession of, any of the Assets conveyed hereunder.

[SIGNATURES ON FOLLOWING PAGE]

Handwritten signatures in black ink, appearing to be initials or names, located at the bottom right of the page.

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

NEW CARBON COMPANY, INC.

By: *Rick J. McKeel*
Rick McKeel, President

MUNSEY PRODUCTS, INC.

By: *Ron L. Munsey*
President

1862874

RM
RM

SCHEDULE D
to
ASSET PURCHASE AGREEMENT

Intellectual Property

1. The name "Tastee-Fare";
2. All schematic drawings, specifications, parts lists, instructions, manuals and other information and documentation related to Waffle Irons;
3. All tooling related to Waffle Irons;
4. Any and all recipes and formulations
5. Any and all domain names
6. Any and all Patents
7. Any and all Trademarks

RLM
[Signature]