

## TRADEMARK ASSIGNMENT

Electronic Version v1.1  
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|   |  |                |                                      |
|---|--|----------------|--------------------------------------|
| SUBMISSION TYPE:  | NEW ASSIGNMENT                               |                |                                      |
| NATURE OF CONVEYANCE:   | ASSIGNS THE ENTIRE INTEREST AND THE GOODWILL |                |                                      |
| CONVEYING PARTY DATA  |  |                |                                      |
| Name  | Formerly                                     | Execution Date | Entity Type                          |
| COUNTRY CREEK FARMS, LLC  |  | 09/02/2011     | LIMITED LIABILITY COMPANY: TENNESSEE |
| RECEIVING PARTY DATA  |  |                |                                      |
| Name:   | Bakewise Brands, Inc.                        |                |                                      |
| Street Address:   | 1688 N. Wayneport Road                       |                |                                      |
| City:   | Macedon                                      |                |                                      |
| State/Country:  | NEW YORK                                     |                |                                      |
| Postal Code:  | 14502  |                |                                      |
| Entity Type:  | CORPORATION: DELAWARE                        |                |                                      |
| PROPERTY NUMBERS Total: 1   |  |                |                                      |
| Property Type   | Number                                       | Word Mark      |                                      |
| Registration Number:  | 3178559                                      | OLDE HEARTH    |                                      |
| CORRESPONDENCE DATA   |  |                |                                      |
| Fax Number:   | 9147234301                                   |                |                                      |
| <i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent via US Mail.</i> |  |                |                                      |
| Phone:  | 914-723-4300                                 |                |                                      |
| Email:  | rduff@lsllp.com                              |                |                                      |
| Correspondent Name:   | Renee L. Duff                                |                |                                      |
| Address Line 1:   | Lackenbach Siegel LLP                        |                |                                      |
| Address Line 2:   | One Chase Road                               |                |                                      |
| Address Line 4:   | Scarsdale, NEW YORK 10583                    |                |                                      |
| ATTORNEY DOCKET NUMBER:   | #16819                                       |                |                                      |
| NAME OF SUBMITTER:  | Renee L. Duff                                |                |                                      |
| Signature:  | /RLD/  |                |                                      |

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Date:

05/13/2013

**Total Attachments: 14**

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## ASSET PURCHASE AND SETTLEMENT AGREEMENT

This Asset Purchase and Settlement Agreement ("Agreement") is entered into as of September 2, 2011, by and between Country Creek Farms, LLC, a Tennessee limited liability company d/b/a CCF Brands ("Seller"), and Bakewise Brands, Inc., a Delaware corporation f/k/a Fleischer's Bagels, Inc. ("Buyer"). Seller and Buyer are sometimes referred to herein individually as a "Party" and collectively as the "Parties."

### Recitals

WHEREAS, Seller owns and sells a brand of bagel products known as the Olde Hearth® brand (the "Brand");

WHEREAS, Seller and Buyer are parties to a lawsuit styled Fleischer's Bagels, Inc v Country Creek Farms d/b/a CCF Brands, 10-CV-6524T pending in the United States District Court for the Western District of New York (the "New York Litigation") and a separate lawsuit styled Country Creek Farms, LLC d/b/a CCF Brands v Fleischer's Bagels, Inc, CV10-3890-2 pending in the Circuit Court of Washington County, Arkansas (the "Arkansas Litigation" and together with the New York Litigation, the "Litigation");

WHEREAS, Seller desires to sell the Brand, and Buyer desires to purchase the Brand and certain assets related thereto; and

WHEREAS, the Parties desire to settle both the New York Case and the Arkansas Case and to release all claims against each other.

### Agreement

NOW, THEREFORE, for and in consideration of the foregoing and the mutual covenants, agreements, representations, and warranties contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

## ARTICLE I PURCHASE AND SALE OF ASSETS

1.1 Purchase and Sale of Assets. Subject to all of the terms and conditions of this Agreement, on the Closing Date, Seller shall sell, transfer, assign, convey, and deliver to Buyer, free and clear of all claims, liens, restrictions, and encumbrances (collectively, "Liens"), all of Seller's right, title, and interest of in and to the following assets and properties related solely and exclusively to the Brand (collectively, the "Assets"):

(a) Intellectual Property. (i) All of the rights of Seller to the name "Olde Hearth" and all variations thereof, the Trademark (as defined hererin), and the goodwill associated therewith; (ii) all recipes and product formulae in the possession of Seller relating to the Brand, including the recipes for all currently produced bagel products listed on Schedule A attached hereto and made a part hereof; (iii) all

trade dress, and other trade rights, whether or not registered, used in or related solely to the Brand, if any, and the goodwill associated therewith; (iv) all other intellectual property rights of any character or description relating solely and exclusively to the Brand (collectively, the "Intellectual Property").

(b) Inventory. Such unique ingredients held for use in or acquired by Seller from its supplier for use in Olde Hearth products as are approved by Buyer after inspection (the "Ingredient Inventory"); and all Olde Hearth specific packaging supplies ("Packaging Inventory," and together with the Ingredient Inventory, the "Inventory"). Buyer and Seller shall mutually agree on the Inventory to be purchased pursuant this Agreement and shall coordinate the delivery of such Inventory to a location designated by Buyer; provided, however, Buyer shall not purchase any Inventory for products not currently offered by Seller or which exceed the amount required for Buyer to produce ninety (90) days of products after Closing (as defined herein), based on Buyer's production forecasts.

(c) Purchase Orders. All rights of Seller under all open purchase orders for Olde Hearth branded products (the "Purchase Orders").

1.2 Excluded Assets. Buyer shall not purchase, and Seller shall retain, all right, title, and interest in and to all rights, properties, contracts, and assets of the Seller other than those assets specifically listed in Section 1.1 (collectively, the "Excluded Assets").

1.3 Consideration. The purchase price (the "Purchase Price") for the sale, transfer, and conveyance of the Assets, the assignment and assumption of the Assumed Liabilities (as defined below), and the other covenants and agreements of Seller in this Agreement shall be the sum of the following:

(a) One Dollar (\$1.00); plus

(b) Seller's actual cost of the Ingredient Inventory and the Packaging Inventory as evidenced by reasonable supporting documentation to be provided to Buyer by Seller.

The Purchase Price shall be paid no later than ninety (90) days after the Closing Date.

1.4 Assumed Liabilities.

(a) Buyer will not assume any liabilities of Seller except for the obligations under the Purchase Orders accruing on and after the Closing Date (as defined herein) (collectively, the "Assumed Liabilities").

(b) Except as specifically set forth above, Seller shall retain responsibility for all liabilities accrued as of the Closing Date and for all liabilities and obligations arising from Seller's operations, whether or not accrued or known and whether or not disclosed, including, without limitation (i) any product liability claims or product returns on sales made by Seller prior to Closing, and (ii) any liability under any contracts or agreements (whether or not assumed by Buyer) that arise after the Closing Date but that arise out of or relate to a breach that occurred on or prior to the Closing Date (the "Excluded Liabilities").

1.5 Closing. The purchase and sale of the Assets and the assumption of the Assumed Liabilities contemplated hereby (the "Closing") shall be effective as of such time and on such date as the Parties hereto may agree in writing (the "Closing Date"), but as soon as practicable after Buyer notifies Seller that it is capable of manufacturing and delivering the Brand to customers. The Parties anticipate that the signature pages to all documents contemplated herein will be exchanged by overnight delivery or electronic or facsimile transmission on or prior to the Closing Date.

1.6 Closing Deliveries. On the Closing Date, Seller shall deliver to Buyer, the Assets and Buyer shall deliver to Seller an executed counterpart to the Bill of Sale, Assignment and Assumption Agreement in the form attached hereto and made a part hereof as Exhibit A, collectively covering all of the Assets and Assumed Liabilities. In addition, Seller shall deliver to Buyer an executed Trademark Assignment for the Trademark in the form attached hereto and made a part hereof as Exhibit B.

## ARTICLE II REPRESENTATIONS AND WARRANTIES

2.1 Representations and Warranties of Seller. Seller represents and warrants to Buyer as of the date of this Agreement as follows:

(a) Existence. Seller is a limited liability company duly organized, validly existing, and in good standing under the laws of the State of Tennessee and has all requisite power and authority to own and operate the Assets and to carry on its business involving the Brand as presently conducted.

(b) Authorization. Seller has all requisite power and authority to execute, deliver, enter into, and perform its obligations under this Agreement and any other document, agreement, or instrument executed and delivered in connection with this Agreement and the transactions contemplated herein (collectively, the "Transaction Documents"). The execution, delivery, and performance of the Transaction Documents to which it is a party and the consummation of the transactions contemplated therein have been duly and validly authorized by all necessary action on the part of the Seller. The Transaction Documents to which it is a party will be duly executed and delivered by Seller and will constitute when executed and delivered valid and binding obligations of Seller, enforceable against Seller in accordance with their terms, except that the enforceability thereof may be limited by bankruptcy, insolvency, reorganization, or other similar laws affecting creditor's rights generally and by principles of equity regarding the availability of remedies.

(c) Conflicts; Consents.

(i) The execution, delivery, and performance of the Transaction Documents to which it is a party by Seller do not violate, conflict with, or result in a breach of any term, condition, or provision of, or require the consent of any other person under, (a) any existing law, ordinance, or governmental rule or regulation to which Seller is subject, (b) any judgment, order, writ, injunction, decree, or award of any court, arbitrator, or any Governmental Authority that is applicable to Seller,

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(c) the Articles of Organization, Operating Agreement, and other charter documents of Seller, or (d) any mortgage, indenture, agreement, contract, commitment, lease, plan, permit, license, or other instrument, document, or understanding, oral or written, to which Seller is a party, by which Seller may have rights or by which any of the Assets may be bound or affected.

(ii) No consent, approval, authorization, permit, order, filing, registration, or qualification of or with any governmental authority or third person is required to be obtained by Seller (whether under applicable law, pursuant to agreements to which Seller is a party, or otherwise) in connection with the execution and delivery of the Transaction Documents to which it is a party or the consummation by Seller of the transactions contemplated thereby in the manner contemplated thereby.

(d) Title. Seller has good, valid, and marketable title to all of the Assets, and will convey the Assets free and clear of any and all Liens.

(e) No Judgments or Orders. With respect to the Brand, Seller is not a party to or subject to any judgment, order, or decree entered in any action or proceeding brought by any governmental authority or any other party either enjoining Seller in respect of any business practice or the conduct of business in any area or the acquisition of any property or which otherwise has had or could have a material adverse effect on the Brand.

(f) Compliance with Laws. Seller is not in violation of any applicable laws with respect to the Brand or the Assets. Seller has not received any notice from any governmental authority or any other party regarding any actual, alleged, or potential violation of, or failure to comply with, any applicable law.

(g) Litigation. Except for the Litigation, there are no actions, suits, or proceedings pending or, to the knowledge of Seller, threatened against Seller related to the Brand or the Assets, including, without limitation, breach of contract, product liability, or warranty claims.

(h) Intellectual Property. The name "Olde Hearth" is registered with the United States Patent and Trademark Office as Trademark No. 3,178,559 (the "Trademark"). Seller intends to use the name "Olde Hearth Bakery" as an unregistered variation of the Trademark. Seller, to its knowledge, has the right to use all of the Intellectual Property, free and clear of all claims and encumbrances of any other individual, entity, corporation, partnership, association, limited liability company, or unincorporated organization (a "Person"). To the Seller's knowledge the use of the Intellectual Property does not infringe or misappropriate any rights of any other Person and are not being infringed or misappropriated by any other Person.

(i) Customer. As of the date of this Agreement, Seller's sole customer for the Brand is Wal-Mart Stores, Inc. ("Wal-Mart"). A true and correct copy of Seller's Vendor Agreement with Wal-Mart is attached hereto and made a part hereof as Exhibit C (the "Vendor Agreement"). As of the date hereof, the Vendor Agreement is (i) in full force and effect; (ii) Seller is not in material breach or default thereof; (iii) to the knowledge of Seller, Wal-Mart is not in breach or default thereof; and (iv) Seller has

received no written or oral notice from Wal-Mart of its intent to terminate the Vendor Agreement or discontinue the sale of Olde Hearth-branded bagel products.

(j) Warranties Exclusive. Buyer acknowledges and agrees that the representations and warranties contained in Section 1.1 and this Section 2.1 are the only representations or warranties given by Seller with respect to the Brand or the Assets and that all other express or implied warranties are disclaimed. Without limiting the foregoing, Buyer acknowledges and agrees that the Assets are conveyed "AS IS," "WHERE IS" and "WITH ALL FAULTS" and that ALL WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE ARE DISCLAIMED. WITHOUT LIMITING THE FOREGOING, BUYER ACKNOWLEDGES THAT SELLER AND SELLER'S AFFILIATES HAVE MADE NO REPRESENTATION OR WARRANTY CONCERNING (I) ANY USE TO WHICH THE ASSETS MAY BE PUT, (II) ANY FUTURE REVENUES, COSTS, EXPENDITURES, CASH FLOW, RESULTS OF OPERATIONS, FINANCIAL CONDITION OR PROSPECTS THAT MAY RESULT FROM THE OWNERSHIP, USE OR SALE OF THE ASSETS OR THE ASSUMPTION OF THE ASSUMED LIABILITIES, (III) ANY OTHER INFORMATION OR DOCUMENTS MADE AVAILABLE TO BUYER OR ITS AFFILIATES OR (IV) THE CONDITION OF THE ASSETS.

2.2 Representations and Warranties of Buyer. Buyer represents and warrants to Seller as of the date of this Agreement as follows:

(a) Existence. Buyer is a corporation duly organized, validly existing, and in good standing under the laws of the State of Delaware and has all requisite corporate power and authority to own, lease, and operate its assets and to carry on its business as presently conducted.

(b) Authorization. Buyer has all requisite power and authority to execute, deliver, enter into, and perform its obligations under the Transaction Documents to which it is a party. The execution, delivery, and performance of the Transaction Documents to which it is a party and the consummation of the transactions contemplated therein have been duly and validly authorized by all necessary action on the part of the Buyer. The Transaction Documents to which it is a party will be duly executed and delivered by Buyer and will constitute when executed and delivered valid and binding obligations of Buyer, enforceable against Buyer in accordance with their terms, except that the enforceability thereof may be limited by bankruptcy, insolvency, reorganization, or other similar laws affecting creditor's rights generally and by principles of equity regarding the availability of remedies.

(c) Conflicts; Consents.

(i) The execution, delivery, and performance of the Transaction Documents to which it is a party by Buyer do not violate, conflict with, or result in a breach of any term, condition, or provision of, or require the consent of any other person under, (a) any existing law, ordinance, or governmental rule or regulation to which Buyer is subject, (b) any judgment, order, writ, injunction, decree, or award of any court, arbitrator, or any governmental authority that is applicable to Buyer, (c) the Articles of Incorporation, Bylaws, and other charter documents of Buyer, or (d) any mortgage, indenture,

agreement, contract, commitment, lease, plan, permit, license or other instrument, document or understanding, oral or written, to which Buyer is a party.

(ii) No consent, approval, authorization, permit, order, filing, registration, or qualification of or with any governmental authority or third person is required to be obtained by Buyer (whether under applicable law, pursuant to agreements to which Buyer is a party, or otherwise) in connection with the execution and delivery of the Transaction Documents to which it is a party or the consummation by Buyer of the transactions contemplated thereby in the manner contemplated thereby.

### ARTICLE III SETTLEMENT AND RELEASE

3.1 Payment. Seller agrees to pay to Buyer the sum of Fifty Thousand and No/100 Dollars (\$50,000.00), upon execution of this Agreement, with the payment to be made in consideration of the Buyer's covenants set forth in Section 3.2.

3.2 Release and Discharge.

(a) Upon receipt by Buyer of the above-referenced payment, Buyer for itself and for its affiliates, parent companies, subsidiaries, agents, representatives, successors, and assigns, hereby fully and forever releases and discharges Seller and its directors, officers, members, subsidiaries, employees, agents, representatives, and the predecessors, successors, and assigns of each, from any and all liability, obligations, claims, demands, damages, fees, actions, causes of action, or suits at law or in equity, of whatsoever kind or nature, whether arising by contract, tort, statute or otherwise, arising or to arise out of any matter which has happened or occurred before the signing of this Agreement, including, without limitation, all liability, obligations, claims, demands, damages, fees, actions, causes of action, or suits at law or in equity, of whatsoever kind or nature, whether arising by contract, tort, statute or otherwise, relating to the Brand, that certain Supply Agreement dated as of October 1, 2009 between Seller and Buyer or the claims and counterclaims made in the Litigation, or any matter related thereto, which Buyer ever had, now has, or ever may have.

(b) Upon receipt by Buyer of the above-referenced payment, Seller for itself and for its affiliates, parent companies, subsidiaries, agents, representatives, successors, and assigns, hereby fully and forever releases and discharges Buyer and its directors, officers, members, subsidiaries, employees, agents, representatives, and the predecessors, successors, and assigns of each, from any and all liability, obligations, claims, demands, damages, fees, actions, causes of action, or suits at law or in equity, of whatsoever kind or nature, whether arising by contract, tort, statute or otherwise, arising or to arise out of any matter which has happened or occurred before the signing of this Agreement, including, without limitation, all liability, obligations, claims, demands, damages, fees, actions, causes of action, or suits at law or in equity, of whatsoever kind or nature, whether arising by contract, tort, statute or otherwise, relating to the Brand, that certain Supply Agreement dated as of October 1, 2009 between Seller and Buyer or the claims and counterclaims made in the Litigation, or any matter related thereto, which Seller ever had, now has, or ever may have.

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(c) Upon receipt by Buyer of the above-referenced payment, (i) Buyer shall promptly, and in any event no later than 5 days following receipt of payment, take all action necessary to have the New York Litigation dismissed with prejudice, including presentation to the court an order of dismissal with prejudice, and (ii) Seller shall promptly, and in any event no later than 5 days following receipt of payment, take all action necessary to have the Arkansas Litigation dismissed with prejudice, including presentation to the court an order of dismissal with prejudice.

(d) Notwithstanding the foregoing, the releases in this Article III DO NOT include any claims that arise after the date of this Agreement, including, but not limited to, claims resulting from a breach of this Agreement by either of the Parties.

(e) The Parties waive their rights to an appeal related to both the New York Litigation and the Arkansas Litigation.

(f) This Agreement is entered into by the Parties for the purpose of compromising and settling matters between and among them in the New York Litigation and the Arkansas Litigation. This Agreement does not constitute, and shall not be construed as, an admission by any Party of the truth or validity of any claims asserted or contentions advanced by any other Party.

#### ARTICLE IV COVENANTS

##### 4.1 Transition Services.

(a) As soon as practical following the date of this Agreement, Seller shall coordinate a meeting with appropriate personnel at Wal-Mart to discuss the sale and transition of the Brand and the Purchase Orders to Buyer.

(b) As soon as practical following the date of this Agreement, Buyer shall apply to become a Wal-Mart approved vendor and receive a vendor identification number. Buyer agrees to use all commercially reasonable efforts to obtain a vendor ID as soon as possible. Pending approval of Buyer as a Wal-Mart vendor and issuance of a unique vendor ID, the Parties shall cooperate to transition production and supply of all Olde Hearth-branded bagel products to Buyer in a commercially reasonable manner. Seller shall provide Buyer with its monthly production forecasts at the time such forecasts are sent to Seller's current supplier.

(c) Seller shall reasonably assist Buyer to transition all manufacturing of products under the Brand to Buyer as soon as possible after the date hereof and to become ready to deliver products to customers, including the transition of packaging and recipe development. In addition, Seller shall provide reasonable sales and administrative support to Buyer for a period of ninety (90) days following Closing in order to effectively transition the business related to the Brand to Buyer.

(d) In the event that as of the Closing Date Buyer does not have an active vendor number with Wal-Mart, Seller and Buyer shall cooperate and use their best efforts to allow Buyer to sell its bagel products to Wal-Mart through or using Seller's vendor number. During the period from the Closing Date to the date that Buyer becomes an approved vendor of Wal-Mart: (i) Seller shall submit all purchase orders for bagels to Buyer, and Buyer shall produce the products in accordance with the purchase orders; (ii) Seller shall arrange all logistics for delivery of the products to Wal-Mart; (iii) Seller shall invoice Wal-Mart for all orders, collect all revenue and pay all shipping and other usual and necessary expenses associated with supplying the products to Wal-Mart; and (iv) Seller shall pay all Net Profits (defined below) to Buyer. For purposes of this Section 4.1(d), the term "Net Profits" shall mean all revenue received by Seller from the sale of bagel products produced after the Closing Date less transportation and storage charges and any expenses or deductions made by Wal-Mart related to such bagel products.

(e) From and after the date hereof and pending the Closing, Seller shall (a) operate the Brand and the Assets in the ordinary and usual course of business, in good faith, consistent with Seller's past practice; (b) use its commercially reasonable efforts to preserve the goodwill associated with the Brand; and (c) use its commercially reasonable efforts to preserve Seller's existing relationship with the customer of the Brand. Prior to Closing, Seller shall provide Buyer on a weekly basis with one case of each product produced during that week so that Buyer can monitor the quality the products.

#### 4.2 Indemnification.

(a) Indemnification by Seller. Seller shall indemnify, defend, and hold harmless Buyer and its officers, directors, shareholders, employees, and affiliates (the "Buyer Indemnitees") from, against, and with respect to any and all loss, damage, claim, obligation, liability, cost, and expense (including, without limitation, reasonable attorneys' fees and costs and expenses incurred in investigating, preparing, defending against, or prosecuting any litigation, claim, proceeding, or demand), of any kind or character (a "Loss") arising out of or in connection with any of the following:

(i) any breach of any of the representations, warranties, or covenants of Seller contained in this Agreement or any of the Transaction Documents;

(ii) any and all liabilities and obligations of Seller of any nature whatsoever, except for the Assumed Liabilities; and

(iii) Seller's ownership and operation of the Brand and the Assets prior to the Closing Date, except for the Assumed Liabilities.

(b) Indemnification by Buyer. Buyer shall indemnify, defend, and hold harmless Seller and its officers, directors, and affiliates (the "Seller Indemnitees") from, against, and with respect to any Loss arising out of or in connection with any of the following:

(i) any breach of any of the representations, warranties, or covenants of Buyer contained in this Agreement or any of the Transaction Documents;

(ii) the Assumed Liabilities; and

(iii) Buyer's ownership and operation of the Brand and the Assets after the Closing Date.

(c) Notice of Claim. Any party seeking to be indemnified hereunder (the "Indemnified Party") shall notify the party from whom indemnity is sought (the "Indemnity Obligor") in writing of any claim for recovery, specifying in reasonable detail the nature of the Loss and the amount of the liability estimated to arise therefrom, provided, however, that failure to give such notice, or deficiency in such notice, will not relieve the Indemnity Obligor of any liability that it may have to any Indemnified Party, except to the extent that the Indemnity Obligor is substantially prejudiced by the Indemnified Party's failure to give such notice. Within fifteen (15) days of receipt of a notice of claim, the Indemnity Obligor shall notify the Indemnified Party in writing whether it accepts the claim or shall object in writing to the recoverability of any such Loss. If the Indemnity Obligor accepts such claim or fails to notify the Indemnified Party within ten (10) days of any dispute, the Indemnity Obligor shall satisfy the obligation to the Indemnified Party within ten (10) days after such acceptance or the time period to object expires. If the Indemnity Obligor objects to the recoverability of such loss within ten (10) days, the parties shall work in good faith to resolve the differences. If the parties cannot agree within thirty (30) days of the Indemnity Obligor's objection, either party shall have the right to seek resolution through the dispute resolution proceedings described in Section 4.2(e). The Indemnity Obligor shall satisfy the obligation to the Indemnified Party for any such Loss within ten (10) days after the Indemnity Obligor's liability for such Loss is deemed final by mutual written agreement of the Indemnity Obligor and the Indemnified Party or by final resolution by a court of competent jurisdiction.

(d) Defense.

(i) If the facts pertaining to a Loss arise out of the claim of any third party, or if there is any claim against a third party available by virtue of the circumstances of the Loss, the Indemnity Obligor shall be entitled to, by giving written notice to the Indemnified Party within ten (10) days following its receipt of the notice of such claim, participate in the defense or the prosecution thereof and, to the extent that it wishes (unless (i) the Indemnity Obligor is also a person against whom the claim is made and the Indemnified Party determines in good faith that joint representation would be inappropriate or (ii) the Indemnity Obligor fails to provide reasonable assurance to the Indemnified Party of its financial capacity to defend such claim and provide indemnification with respect to such claim), to assume the defense of such claim, including the employment of counsel or accountants reasonably satisfactory to the Indemnified Party at the Indemnity Obligor's cost and expense; provided, however, that during the interim the Indemnified Party shall use its best efforts to take all action (not including settlement) reasonably necessary to protect against further damage or loss with respect to the Loss. After notice from the Indemnity Obligor to the Indemnified Party of its election to assume the defense of such claim, the Indemnity Obligor shall not, so long as it diligently conducts such defense, be liable to the Indemnified Party under this Section 5 for any fees of other counsel or any other expenses with respect to the defense of such claim, in each case subsequently incurred by the Indemnified Party in connection with the defense of such claim, other than reasonable costs of investigation. If the Indemnity Obligor assumes

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the defense of a claim, (i) such assumption will conclusively establish for purposes of this Agreement that such claim is within the scope of and subject to indemnification, and (ii) no compromise or settlement of such claim may be effected by the Indemnity Obligor without the Indemnified Party's consent unless (A) there is no finding or admission of any violation of law or any violation of the rights of any person; (B) the sole relief provided is monetary damages that are paid in full by the Indemnity Obligor; and (C) the Indemnified Party shall have no liability with respect to any compromise or settlement of such claim effected without its consent. If notice of a claim is given to the Indemnity Obligor and the Indemnity Obligor does not, within ten (10) days after the Indemnified party's notice is given, give notice to the Indemnified Party of its election to assume the defense of such claim, the Indemnity Obligor will be bound by any determination made in any such claim or compromise or settlement effected by the Indemnified Party.

(ii) Notwithstanding the foregoing, if an Indemnified Party determines in good faith that there is a reasonable probability that a claim under this Section 4.2 may adversely affect it or its affiliates other than as a result of monetary damages for which it would be entitled to indemnification under this Agreement, the Indemnified Party may, by notice to the Indemnity Obligor, assume the exclusive right to defend, compromise, or settle such claim, but the Indemnity Obligor will not be bound by any determination or any such claim so defended for purposes of this Agreement or any compromise or settlement effected without its consent (which shall not be unreasonably withheld).

(iii) With respect to any claim subject to indemnification under this Section 4.2: (i) both the Indemnified Party and the Indemnity Obligor, as the case may be, shall keep the other party fully informed of the status of such claim and any related proceedings at all stages thereof where such party is not represented by its own counsel, and (ii) the parties agree to render to each other such assistance as they may reasonably require of each other and to cooperate in good faith with each other in order to ensure the proper and adequate defense of any such claim.

#### 4.3 Non-competition.

(a) Seller agrees that for a period of five (5) years after the Closing Date, Seller shall not, directly or indirectly, produce or sell bagel dough-based products, including, without limitation, bagels, bagel chips, bagel flats, bagel thins, and mini-bagels (the "Protected Products"), in competition with Buyer. Notwithstanding the foregoing, Buyer acknowledges and agrees that Seller or its affiliates may act as a retail broker with respect to products other than the Protected Products for other parties that compete with Seller.

(b) A violation by Seller of the provisions of this Section 4.3 will cause irreparable harm to Buyer, for which money damages alone will be inadequate. Seller therefore agrees that any court having jurisdiction may enter a preliminary or permanent restraining order or injunction against Seller in the event of actual or threatened breach of any of the provisions of this Section 4.3. The prevailing Party in any such action shall indemnify the other Party for its reasonable costs and expenses, including attorneys fees and expenses, related to the prosecution or defense of such action.

(c) If any provision of this Section 4.3 is deemed to be in violation of any law or public policy, the remainder of this Section shall remain in full force and effect and shall continue to be binding upon Seller. If any term of this section is deemed by any court to be unenforceable, the Parties

agree that the court shall substitute a reasonable, judicially enforceable limitation in place of the invalid provision in order to serve the intent of the Parties as expressed herein.

4.4 Non-Disclosure. Each Party agrees that it shall not (a) use, publish, disseminate or otherwise disclose, directly or indirectly, any information heretofore or hereafter acquired, developed or used by the other Party relating to its business, operations, employees or customers ("Confidential Information"), including without limitation any Confidential Information contained in any customer lists, mailing lists and sources thereof, statistical data and compilations, patents, copyrights, trademarks, trade names, inventions, recipes, formulae, methods, processes, agreements, contracts, manuals or any other documents; or (b) use, publish, disseminate or otherwise disclose, directly or indirectly, any Confidential Information, but excluding any Confidential Information which the Party can prove has become public knowledge or understanding or otherwise in the public domain (other than from disclosure by a Party in violation of this Agreement). In addition, each Party shall maintain as confidential the existence and terms of this Agreement.

#### ARTICLE V MISCELLANEOUS

5.1 Notices. All notices or other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been delivered to a Party upon personal delivery to that Party or (i) one (1) business day following electronically confirmed delivery by facsimile or email transmission to the telephone number or email address provided by the Party for such purposes, if simultaneously mailed as provided herein; (ii) one (1) business day following deposit for overnight delivery with a bonded courier holding itself out to the public as providing such services, with charges prepaid; or (iii) three (3) business days following deposit with the United States Postal Service, postage prepaid, and in any case addressed to the Party's address set forth below, or to any other address that the Party provides by notice, in accordance with this Section 5.1, to the other Party:

If to Seller:

Country Creek Farms, LLC  
5211 Village Parkway, Suite 101  
Rogers, Arkansas 72758-5105  
Attention: Justin Whaley  
Facsimile: (479) 254-8532  
email: jwhaley@ccfbrands.com

with a copy to:

Wright, Lindsey & Jennings LLP  
200 West Capitol Avenue, Suite 2300  
Little Rock, Arkansas 72201  
Attention: M. Sean Hatch  
Facsimile: (501) 376-9442  
email: shatch@wlj.com

If to Buyer:

Bakewise Brands, Inc.  
1688 North Wayneport Road  
Macedon, New York 14502  
Attention: Robert Drago  
Facsimile: (315) 986-7200  
email: rdrago@bakewisebrands.com

with a copy to:

Harter Secrest & Emery LLP  
Twelve Fountain Plaza, Suite 400  
Buffalo, New York 14202-2293  
Attention: Anthony D. Mancinelli  
Facsimile: (716) 853-1617  
email: amancinelli@hselaw.com

5.2 Entire Agreement. This Agreement contains the entire agreement of the Parties with respect to the transactions described herein, and no representation, warranties, inducements, agreements, promises or understandings, altering, modifying, limiting or adding to the terms or conditions of this Agreement shall have any force or effect, unless the same are in writing and executed by the Parties sought to be bound thereby.

5.3 Further Assurances. From time to time after the Closing, the Parties agree to acknowledge, execute and deliver all such further acts, bills of sale, transfers, conveyances, assignments, certificates of title, registrations of title, and other documents and things as may be reasonably requested in order to transfer and vest title in Buyer to the Assets and to otherwise fully consummate all the transactions provided for herein.

5.4 Assignment. This Agreement shall be binding upon and inure to the benefit of Buyer and Seller and their respective successors and assigns.

5.5 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute an original and which together shall constitute one and the same document.

5.6 Headings. The section headings contained in this Agreement are intended solely for convenience of reference and shall be given no effect in the construction or interpretation of this Agreement.

5.7 Governing Law. This Agreement and all matters related hereto shall be construed in accordance with, and shall be governed by, the laws of the State of New York, without regard to principles of conflicts of law.

5.8 Survival. The provisions of Articles II, III, IV and V shall survive the Closing Date and the transactions contemplated herein.

[The next page is the signature page.]



IN WITNESS WHEREOF, the parties have duly executed this Asset Purchase and Settlement Agreement as of the date first above written.

**COUNTRY CREEK FARMS, LLC**

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

Name: \_\_\_\_\_

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

**BAKEWISE BRANDS, INC.**

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

Name: Robert J. Drago \_\_\_\_\_

Title: President \_\_\_\_\_