

TRADEMARK ASSIGNMENT COVER SHEET

Electronic Version v1.1
Stylesheet Version v1.2

ETAS ID: TM523651

SUBMISSION TYPE:	NEW ASSIGNMENT		
NATURE OF CONVEYANCE:	LICENSE		
CONVEYING PARTY DATA			
Name	Formerly	Execution Date	Entity Type
ProMark International, Inc.		06/30/1997	Corporation: IDAHO
RECEIVING PARTY DATA			
Name:	McCain Foodservice, Inc.		
Street Address:	One Tower Lane, 11th Floor		
Internal Address:	Oakbrook Terrace Tower		
City:	Oakbrook Terrace		
State/Country:	ILLINOIS		
Postal Code:	60181		
Entity Type:	Corporation: MAINE		
PROPERTY NUMBERS Total: 2			
Property Type	Number	Word Mark	
Registration Number:	0668762	TATER TOTS	
Registration Number:	0739456	ORE-IDA	
CORRESPONDENCE DATA			
Fax Number:	9086547866		
<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent using a fax number, if provided; if that is unsuccessful, it will be sent via US Mail.</i>			
Email:	informationspecialists@lerner david.com		
Correspondent Name:	Robert B. Cohen		
Address Line 1:	600 SOUTH AVENUE WEST		
Address Line 4:	Westfield, NEW JERSEY 07090		
ATTORNEY DOCKET NUMBER:	AFPINC.315		
NAME OF SUBMITTER:	Robert B. Cohen		
SIGNATURE:	/Robert B. Cohen/		
DATE SIGNED:	05/15/2019		
Total Attachments: 16			
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PROMARK-MCCAIN TRADEMARK LICENSE AGREEMENT

THIS AGREEMENT, made and entered into this 30th day of June, 1997, by and between PROMARK INTERNATIONAL, INC., a corporation organized and existing under the laws of Idaho, having its principal place of business at 877 W. Main Street, Suite 510, Boise, Idaho 83702 (hereinafter referred to as "*LICENSOR*"), and MCCAIN FOODSERVICE, INC., a corporation organized and existing under the laws of Maine, having its principal place of business at 2905 Butterfield Road, Oak Brook, Illinois 60521 (hereinafter referred to as "*LICENSEE*"). Terms not otherwise defined herein shall have the meanings ascribed to them in the Asset Purchase Agreement.

WITNESSETH:

WHEREAS, LICENSOR is the owner of certain rights, title and interest in the trademarks and the United States trademark registrations and pending applications for registration set forth on Exhibit A attached hereto, and to the trade dress and label designs associated therewith as well as associated goodwill (cumulatively referred to hereafter as the "*Licensed Property*"); and

WHEREAS, LICENSOR and LICENSEE have entered into that certain Asset Purchase Agreement dated as of the 28th day of May, 1997 (the "*Asset Purchase Agreement*") whereby LICENSOR has agreed to grant LICENSEE a renewable, royalty-free license to use the Licensed Property in connection with the manufacture, distribution and sale of potatoes, appetizers and pasta through foodservice channels of distribution which include (i) foodservice distributors, (ii) chain and independent restaurants, (iii) hospitals, prisons, schools and other institutions, (iv) in store "delis" (but only in connection with prepared, ready-to-eat products) and (v) other establishments for purposes of (x) "cash and carry" sales of cases that cannot be divided and resold to the end consumer and (xx) prepared and ready-to-eat home delivery (collectively referred to herein as the "*Foodservice Products*"). (Foodservice Products incorporating Licensed Property existing as of the Closing Date as well as new Foodservice Products incorporating the Licensed Property shall hereinafter be referred to as "*Licensed Products*").

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and contracts hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, LICENSOR and LICENSEE agree as follows:

1. *Grant of License.* LICENSOR hereby grants to LICENSEE an exclusive (except for rights previously granted to Agripac, Inc.), renewable, royalty free, non-transferable license and right to use the Licensed Property in the United States in connection solely with the manufacture, advertisement, distribution and sale of Foodservice Products. LICENSEE's rights shall be fully exclusive, to the exclusion of LICENSOR and any or all of LICENSOR's affiliates. All rights granted to LICENSEE by LICENSOR pursuant to this Agreement are restricted to use of the Licensed Property solely in connection with the Foodservice Products as defined herein. In the event the parties disagree as to whether a channel of distribution is properly classified as a foodservice channel as defined herein, then a mutual determination

shall be made on the basis of whether the proposed channel is predominately retail or foodservice under marketing practices in effect at the time of determination. Such determination shall be made by applying criteria including: (a) package format (*i.e.*, case vs. unit); (b) product preparation (*i.e.*, foodservice operator vs. consumer); (c) product form and (d) such other factors as the parties deem relevant. If the parties are unable to agree on whether the proposed channel is a foodservice channel, such dispute shall be resolved in accordance with the procedures set forth in Sections 21 and 22 hereof.

2. *Quality Control.*

(a) *Quality of Licensed Products.* LICENSEE shall use the Licensed Property only on Foodservice Products of high quality which comply with the following requirements:

(i) The finished Licensed Products (including packaging) shall meet or exceed the quality of comparable products sold under Licensed Property by Ore-Ida Foods, Inc. as of the Closing Date.

(ii) The Licensed Products shall comply with, and shall have been manufactured in compliance with, (a) the Federal Food Drug and Cosmetic Act; (b) laws and regulations implemented by the United States Department of Agriculture and (c) any similar applicable federal, state, county, city, provincial or local laws or regulations.

(iii) LICENSEE shall use only the Specifications in the formulation and manufacture of the Licensed Products as approved by LICENSOR. LICENSOR represents that the Licensed Products existing as of the Closing Date are in compliance with the specifications and standards as used in connection with the formulation and manufacture of such products by LICENSOR'S current licensee, Ore-Ida Foods, Inc. and that such specifications shall not have been materially changed during the three (3) months prior to the Closing Date. Such specifications shall be delivered to Licensee on the Closing Date at the respective manufacturing facilities (the "*Specifications*"). LICENSEE shall adhere to all Specifications in the formulation and manufacture of the Licensed Products and shall not distribute or permit the sale of any Licensed Products, which are not in conformance with such Specifications.

(iv) LICENSEE shall submit to LICENSOR for prior approval, copies of any notices of intent to change the Specifications for the formulation and manufacture of existing Licensed Products together with the revised Specifications. LICENSEE shall submit two (2) samples of the proposed products manufactured in accordance with the revised Specifications. In the event LICENSOR fails to reply within fourteen (14) business days, such revised Specifications shall be deemed to be approved. Any disputes over LICENSOR'S failure to grant approval of such revised Specifications shall be resolved in accordance with the procedures set forth in Sections 21 and 22 herein. Further, LICENSEE shall furnish or make available for review by LICENSOR any American Institute of Bakery "AIB" audits and any material, unresolved customer complaints relating to the Licensed Products.

(b) LICENSEE agrees to maintain appropriate processes and procedures for the following quality control functions so as to insure that the finished Licensed Products meet the Specifications for each Licensed Product and satisfy the standards set forth in Section 2(a) herein:

- 1) Management responsibility and accountability
- 2) Quality system procedures and planning
- 3) Document and data control
- 4) Purchasing
- 5) Product identification and traceability
- 6) Process control
- 7) Inspection and testing
- 8) Control of Inspection, Measuring and Test Equipment
- 9) Control of Nonconforming Products
- 10) Corrective and Preventive Actions
- 11) Handling, storage, packaging, preservation and delivery of products
- 12) Control of quality records
- 13) Internal quality audits
- 14) Training

(c) *Sample Products.* Upon request of LICENSOR, LICENSEE shall provide LICENSOR or its designee with five (5) packages of each Licensed Product, which samples shall be taken by random sampling from LICENSEE's normal production and shall be packaged and shipped to LICENSOR in the desired state (*i.e.* frozen, etc.). LICENSOR may make such a request for samples no more than four (4) times per year for each facility of LICENSEE which manufactures Licensed Products, except that LICENSOR may request additional samples in the event that LICENSOR has a reasonable belief that significant quality problems or derivatives from Specifications exist with respect to certain Licensed Products and so advises LICENSEE in writing. Samples provided to LICENSOR shall identify the facility and production line from which the samples were taken as well as the date of manufacture.

(d) *Plant Inspection.* LICENSOR or its designee shall have the right to conduct an inspection of LICENSEE's facilities used in the production of Licensed Products for the purpose of determining compliance with subparagraph (a) of this paragraph. LICENSOR may inspect each such facility of LICENSEE once per year, except that additional inspections may be conducted by LICENSOR in the event that LICENSOR has a reasonable belief that significant quality problems or deviations from Specifications exist at a facility of LICENSEE and so advises LICENSEE in writing. LICENSOR shall coordinate all such inspections with inspections conducted by Ore-Ida Foods, Inc. pursuant to the "ORE-IDA-MCCAIN TRADEMARK LICENSE AGREEMENT" dated as of the Closing Date. Plant inspections shall be conducted during regular business hours upon reasonable notice. During such inspections, LICENSOR shall be permitted to examine all equipment, materials and facilities employed in the manufacture and packaging of Licensed Products; however, LICENSOR shall not have access to portions of facilities or production lines within such facilities which are being utilized in manufacturing or packaging products outside the scope of this Agreement. During such inspections, LICENSEE will make available to LICENSOR one or more employees responsible for quality control to confer with LICENSOR and answer LICENSOR's questions regarding LICENSEE's compliance with subparagraph (b) of this section. LICENSOR and any of its designees who conduct an inspection of LICENSEE's facilities as set forth herein shall maintain in confidence all information obtained in such inspection and shall disclose only facts relating to LICENSEE's compliance or non-compliance with subparagraph (a) hereof to those employees of LICENSOR having a need to know.

3. *Trademark Use.*

(a) *Labels and Advertising.* LICENSEE shall submit copies of labels and advertising materials bearing the Licensed Property which were not in use prior to the Closing Date to LICENSOR for review prior to commercial use to assure proper use of the Licensed Property. LICENSOR shall have seven (7) business days to provide comments to LICENSEE and to approve use of the Licensed Property. LICENSOR's approval shall not be unreasonably withheld. In the event LICENSOR fails to reply to LICENSEE within seven (7) business days, such labels and advertising materials shall be deemed approved by LICENSOR. Any dispute between LICENSOR and LICENSEE over the reasonableness of a failure to grant approval of labels and/or advertising materials by LICENSOR shall be resolved in accordance with the procedures set forth in Sections 21 and 22 of this Agreement. However, to the extent such labels and/or advertising materials are rejected by LICENSOR, LICENSEE shall not use such labels and/or advertising materials until the matter is resolved in accordance with such procedures.

(b) *Guidelines for Proper Trademark Use.* LICENSEE shall at all times during the term of this Agreement use the Licensed Property on Licensed Products in accordance with the Guidelines For Proper Trademark Use attached hereto as Exhibit B or in the form as used by LICENSOR in connection with the Licensed Products as of the Closing Date.

4. *New Products.* LICENSEE may from time to time introduce new Foodservice Products under the Licensed Property. Prior to such introduction, LICENSEE shall submit samples of proposed new products to U.S. Testing Inc. or another comparable independent

testing laboratory (hereinafter the "*Testing Laboratory*") to determine if the product complies with Section 2(a)(ii). If the Testing Laboratory finds that the product does not comply, LICENSEE shall not introduce the product. If the Testing Laboratory finds that the product does comply, LICENSEE shall cause it to so certify in writing. LICENSEE may then introduce such new product. At the time of introduction, LICENSEE shall provide LICENSOR with (i) five (5) samples of the new product; (ii) Specifications for the new product (which LICENSOR shall maintain in confidence); and (iii) a copy of the Testing Laboratory's certification. LICENSEE shall not be required to submit labels and advertising materials to LICENSOR in advance pursuant to Section 3 for new products so long as the Licensed Property is used on such new products in a manner substantially similar to usage previously approved by LICENSOR. To the extent LICENSOR reasonably believes that the Licensed Property is not used on such new products in a manner substantially similar to usage previously approved by LICENSOR, such dispute shall be resolved in accordance with Sections 21 and 22 of this Agreement except where such dispute relates to compliance with Section 3(b).

5. *Cure of Quality Control and Trademark Usage Defects.* In the event LICENSOR believes that LICENSEE is in violation of paragraph 2 or paragraph 3(b), the parties shall forthwith refer the matter to the Steering Committee (having two or more members appointed as agents by LICENSOR) established pursuant to Sections 32 of the "Potato Supply Agreement" entered into between Ore-Ida Foods, Inc. and LICENSEE dated as of the Closing Date (the "*Potato Supply Agreement*"). Upon failure of the Steering Committee to resolve the dispute within 5 business days, LICENSOR may in its reasonable judgment request LICENSEE to discontinue production until the defect is cured. If LICENSOR in its reasonable judgment concludes that LICENSEE has not cured such defect within ninety (90) days of such discontinuance, LICENSOR may in its reasonable judgment terminate this Agreement. LICENSEE may seek judicial review of LICENSOR'S termination under this Section.

6. *Ownership Rights to Trade Dress and Label Designs.* LICENSEE may from time to time alter or develop new packaging, label designs and trade dress for the Licensed Products. The parties agree that all alterations or new packaging, label designs and trade dress used on or in connection with the Licensed Products shall be deemed owned from their inception by LICENSOR without need for additional or future assignments, and shall be deemed licensed to LICENSEE under the terms of this Agreement without need for additional agreements or other documentation. At LICENSEE's request and at LICENSEE's cost, LICENSOR shall file trademark applications to register any such new Licensed Property. LICENSOR, at its discretion, may decline to file such applications should it conclude in its reasonable judgment that such action shall lead to a third party claim or any opposition to or dilution of the Licensed Property.

7. *Term and Termination.*

(a) *Term of Agreement.* The initial term of this Agreement shall be for a period of ten (10) years from the date first above written. Thereafter, this Agreement shall be automatically renewed for additional ten (10) year periods unless and until LICENSEE shall

give LICENSOR written notice at least six (6) months prior to LICENSEE'S proposed termination date.

(b) *Termination for Insolvency and the Like.* LICENSOR may immediately terminate this Agreement in the event that the LICENSEE shall declare bankruptcy, suffer proceedings in insolvency or make an assignment for the benefit of creditors. LICENSEE may seek judicial review of LICENSOR'S decision to terminate under this subparagraph 7(b).

(c) *Termination for Material Breach.* In the event LICENSOR concludes in the exercise of reasonable judgment that LICENSEE has committed a material breach of this Agreement other than a violation of Sections 2, 3(b) and 7(b), LICENSOR shall have the option to give LICENSEE written notice identifying the material breach and setting forth its intention to terminate this Agreement. The parties shall attempt to resolve their dispute as to whether there has been a material breach in accordance with the procedures set forth in Section 21 of this Agreement. If the parties fail to resolve the dispute, either party may seek judicial review.

(d) *Procedure Upon Termination.* Upon termination of this Agreement, LICENSEE shall immediately cease to manufacture and sell the Licensed Products, and shall cease using the Licensed Property in any form or any term, label design or trade dress which may be confusingly similar to the Licensed Property. For a period of up to three (3) months after termination, LICENSEE may sell inventory of Licensed Products which were manufactured by LICENSEE prior to the date of termination.

8. *Damages, Compensation and Other Relief.* In the event a dispute over termination of this Agreement or any other dispute relating to this Agreement is the subject of litigation, the court may award either party such reasonable equitable relief (including reinstatement of this Agreement where appropriate) and financial relief as the court may deem appropriate, except that neither party shall be liable for punitive damages or consequential damages (other than diminution (caused by LICENSEE) in the value of the Licensed Property, including the Ore-Ida trademark owned by LICENSOR as used in connection with the retail sale of food products) whether based on breach of contract, breach of warranty, tort or otherwise. The parties acknowledge that any financial award may appropriately reflect the fact that LICENSOR has received substantial advance consideration for the rights granted hereunder to LICENSEE pursuant to the Asset Purchase Agreement and that nothing shall preclude either party from seeking or obtaining an amount as damages irrespective of which party or parties were partially or wholly responsible for the termination; *provided, however*, that neither party shall recover damages on account of a termination of the Agreement which such party shall cause deliberately or in bad faith.

9. *Trademark Ownership.* LICENSEE shall not assert any right, title or interest in or to the Licensed Property for use in connection with the manufacture, marketing, distribution or sale of the Licensed Products except for the rights granted under this Agreement and all use thereof shall inure to the benefit of LICENSOR. LICENSEE shall not contest the validity, ownership or title of LICENSOR to any of the Licensed Property.

10. *Infringements.* LICENSEE shall promptly notify LICENSOR in writing of any known or suspected infringements of the Licensed Property promptly after the same comes to LICENSEE's attention. LICENSOR shall have the sole and exclusive right to take action or institute proceedings with respect to such infringement, and shall proceed as it may, in its sole discretion, deem appropriate or desirable. LICENSEE shall cooperate in any action or proceeding by LICENSOR, at LICENSOR's expense, with respect to an infringement or suspected infringement in such manner as LICENSOR may reasonably request. LICENSOR shall promptly notify LICENSEE in writing of any known or suspected infringement of the Licensed Property promptly after the same comes to LICENSOR's attention. In the event that LICENSOR declines to take action or institute proceedings with respect to any infringement, LICENSEE may undertake such action at its expense and LICENSOR shall reasonably cooperate in any such actions or proceeding by LICENSEE.

11. *Trademark Indemnity.* In the event a third party should make or file any claim for trademark infringement, passing off, unfair competition or dilution on account of LICENSEE's use of the Licensed Property in accordance with the terms hereof, LICENSEE shall promptly notify LICENSOR of such claim, and thereafter LICENSOR shall undertake diligent efforts to have such claim withdrawn, settled, compromised or defended. LICENSOR shall, at its sole expense and in accordance with its own reasonable business judgment, take whatever steps it deems necessary or appropriate to finally dispose of such claim (including, at LICENSOR's election, defending any legal action to final judgment). If such claim is disposed of by the payment of money to the claimant, LICENSOR shall be solely responsible for such payment. If such claim is disposed of by an agreed suspension or limitation in the sales of Licensed Products employing the Licensed Property in question (or if any court shall direct such suspension or limitation), then LICENSEE shall, upon notice from LICENSOR to that effect, so suspend or limit its sales of Licensed Products employing the Licensed Property in question. LICENSOR shall not agree to any such suspension without first consulting with LICENSEE and attempting to secure an adequate sell-off period for inventory on hand and in process. In the event the foregoing process results in LICENSEE being unable to employ any Licensed Property, the parties will attempt to determine whether and to what extent LICENSEE should be compensated for LICENSEE's loss of the right to use the Licensed Property in question in accordance with the provisions of Section 21 of this Agreement. If the parties fail to resolve the dispute, either party may seek judicial review.

12. *Independent Contractors.* Each party shall perform its obligations under this Agreement as an independent contractor and not as an employee or agent of the other. This Agreement does not constitute a joint venture. Neither party has authority to create or to assume in the name of the other any express or implied obligations of the other.

13. *Liability.* LICENSEE shall indemnify and save harmless LICENSOR from any and all losses, claims, suits or damages and expenses, including reasonable attorneys' fees, resulting from or arising out of the manufacture, packaging, distribution, selling, handling, consumption or marketing of the Licensed Products prepared or sold by LICENSEE, *provided however*, that such loss, claim, suit, damage or expense is not determined by a court or other tribunal of competent jurisdiction to be the result of or caused by the negligence of LICENSOR or its agents or employees, or the result of instructions or

specifications of LICENSOR with respect to labeling or marketing the Licensed Products. Notwithstanding anything in this Agreement to the contrary, except as set forth in Section 8, LICENSEE shall not be liable to LICENSOR for any consequential damages, whether based on breach of contract, breach of warranty, tort or otherwise. Each party shall provide the other with reasonable notice of any such claim and cooperate with the defense of any such claim. The provisions of this paragraph shall survive the termination of this Agreement for any reason for the period of any applicable statute of limitations.

14. *Recall.* LICENSEE shall work in cooperation with LICENSOR in the event of recalls by governmental authorities of any of the Foodservice Products employing Licensed Property. LICENSEE agrees to perform mock recall trials in order to analyze the effectiveness and efficiencies of such recalls. LICENSOR shall be made aware of and shall receive all performance results associated with such trials. LICENSEE will advise LICENSOR of any government recall of Licensed Products or any recall by LICENSEE in anticipation of same.

15. *Insurance.* LICENSEE shall maintain throughout the term of this Agreement an adequate Products Liability Insurance Policy with limits of no less than Two Million Dollars (\$2,000,000) combined single limit with a responsible and reputable insurance company or association as would be prudent for companies engaged in business similar to LICENSEE's naming LICENSOR as an additional insured and providing LICENSOR with thirty (30) days notice of cancellation or alteration.

16. *Assignment.* Neither this Agreement, nor any right conferred therein, shall be sold, assigned, transferred, sublicensed, pledged or otherwise encumbered by LICENSEE, nor shall any interest of LICENSEE pass to any third party by operation of law or otherwise, whether as part of the sale, transfer of control or other disposition of all or substantially all of LICENSEE's business except with the prior written approval of LICENSOR, which approval shall not be unreasonably withheld, except, however, that LICENSEE may transfer or sublicense to or may merge, or consolidate, or be acquired by LICENSEE's parent or an affiliated company controlled by LICENSEE or LICENSEE's parent without LICENSOR's prior consent. "Control" means ownership, directly or indirectly, of at least 51% of the voting shares.

17. *Force Majeure.* Neither party to this Agreement shall be held liable for failure to comply with any of the terms of this Agreement when such failure has been caused by fire, flood, labor dispute, strike, war, energy shortage, insurrection, government restrictions or regulations or force majeure beyond the control of the party involved.

18. *Taxes.* LICENSEE shall pay and discharge, at its own expense, any and all expenses, charges, fees and taxes arising out of and incidental to the carrying on of its own business and save harmless LICENSOR against any and all claims for such expenses, charges, fees and taxes.

19. *Notices.* Any and all notices which either party desires to give to the other under the terms of this Agreement shall be in writing and shall be mailed via certified mail,

or registered mail, directed to the other person at the address set forth herein, or such other address as may be communicated in writing and such notice, three business days after being deposited in the United States mail, shall be deemed to have been received by the other party unless the sending party can show actual receipt at an earlier date:

If to LICENSOR: President
ProMark International, Inc.
877 W. Main Street, Suite 510
Boise, ID 83706

with a copy to: Senior Vice President and General Counsel
H. J. Heinz Company
600 Grant Street
Pittsburgh, PA 15230

If to LICENSEE: President
McCain Foodservice, Inc.
2905 Butterfield Road
Oak Brook, IL 60521

with a copy to: General Counsel
McCain Foods Limited
Florenceville, New Brunswick EOJ 1KO
CANADA

20. *Waiver.* The failure by either party to enforce at any time or for any period of time any one or more of the terms or conditions of this Agreement shall not be considered a waiver of such terms or conditions or of either party's right thereafter to enforce each and every term and condition of this Agreement.

21. *Dispute Resolution.* Each party acknowledges that the amicable resolution of disputes is an important element of this Agreement. If this paragraph is specifically authorized and invoked pursuant to this Agreement, the first party shall so notify the second party ("*Notice*"). Within ten (10) days after the second party receives such Notice, LICENSOR shall appoint designated representatives at Ore-Ida Foods, Inc. to act as LICENSOR'S agent in such dispute resolution and thereafter the Operating Team established pursuant to Section 32 of the "Potato Supply Agreement" entered into between Ore-Ida Foods, Inc. and LICENSEE dated as of the Closing Date ("*Potato Supply Agreement*"), shall meet to discuss whether a default has occurred and the steps that the parties shall implement to correct the default and prevent its recurrence, or to discuss any other matter pursuant to which this section may be invoked. If the parties do not settle the dispute within thirty (30) days after receipt of the Notice, the Steering Committee established pursuant to Section 32 of the Potato Supply Agreement shall meet to attempt to resolve the dispute. Upon failure of the Steering Committee to resolve the dispute within forty-five (45) days after the Notice, where specifically authorized by this Agreement, either party may initiate arbitration pursuant to Section 22 hereof or take such other action as this Agreement may authorize.

Nothing in this Agreement shall prevent either party from seeking injunctive relief where such relief is appropriate.

22. *Arbitration.* (a) Where specifically authorized by this Agreement, either party may submit this dispute to arbitration under this Section 22. The arbitration shall be administered by the American Arbitration Association ("AAA") under its Commercial Arbitration Rules, except as this Agreement may vary those rules. A party may submit a dispute to arbitration by giving written notice to the other party and the AAA within seventy-five (75) days after receipt of the notice of default under Section 21. The arbitration proceedings shall be conducted in New York, New York.

(b) Within ten (10) days after receipt of the arbitration notice, the AAA shall submit to each party a list of arbitrators having the qualifications set forth in this section. Within ten (10) days after the receipt of the list of arbitrators, each party shall select one person to act as an arbitrator. If either party does not desire to choose an arbitrator from the list that the AAA submits, it shall request an additional list. The AAA shall submit as many additional lists as a party may request. The parties may select an arbitrator from the original list or any additional lists. The two selected arbitrators shall select a third arbitrator within fifteen (15) days of their appointment. The third arbitrator may, but does not have to, come from the arbitration lists submitted by the AAA. Each arbitrator must be an attorney or a certified public accountant having experience with an knowledge of the potato processing industry. Each arbitrator shall commit to meet the schedule that this Section 22 provides. All decisions of the arbitration panel shall be by majority vote.

(c) The arbitration panel may permit limited civil discovery for the production of documents and taking of depositions under procedures that the arbitration panel establishes. The arbitration panel shall decide all issues regarding discovery requests. The discovery period shall end no more than 120 days after the selection of the third arbitrator.

(d) The arbitration panel shall establish a commencement date for the arbitration hearing no later than 30 days after the end of the discovery period. Before the arbitration hearing commences, each party may submit to the arbitration panel a written brief stating its position and the support for that position. The arbitration panel shall adopt such procedures for the hearing as it deems reasonable. The arbitration panel may hear any evidence that the panel deems relevant to the dispute. The arbitration panel shall have the discretion to permit evidence by testimony, by affidavit, by documentation, by inspection, or by such other method as the panel deems appropriate. The arbitration hearing shall end no later than 30 calendar days after its commencement. Each party may submit to the arbitration panel a post-hearing brief of its position and one response brief to the other party's post-hearing brief upon a briefing schedule that the arbitration panel shall set.

(e) The arbitration panel shall have the authority to award any remedy or relief that a court of the State of New York could order or grant, including, without limitation, specific performance of any obligation created under this Agreement, the issuance of an injunction, or the imposition of sanctions for abuse or frustration of the arbitration process. The arbitration award shall be in writing, shall specify the factual and legal bases for the

award, and shall be signed by a majority of the arbitrators. Where required by this Agreement, the arbitration panel shall also determine which party is the less culpable party, or whether a party has acted reasonably or not, in the dispute being arbitrated. Any court having jurisdiction over the parties and the dispute may enter judgment upon the award that the arbitration panel renders.

(f) All fees and expenses of the arbitration shall be borne by the parties equally.

(g) Neither party nor the arbitrators may disclose the existence, content, or results of any arbitration under this Agreement without the prior written consent of both parties.

23. *Governing Law.* This Agreement shall be construed and interpreted in accordance with the laws of the State of New York and the Second Circuit Court of Appeals without giving effect to conflicts of law rules. The federal and state courts of the State of New York, to the personal jurisdiction of which each party voluntarily submits, shall have jurisdiction over any dispute arising out of the construction, interpretation, or enforcement of this Agreement. The parties agree that in any proceeding relating to this Agreement brought before any Court, the parties do waive and agree to waive their right (if any) to trial by jury.

24. *Prior Contracts.* This License Agreement constitutes the entire understanding between the parties with respect to the licensing of the Licensed Property for use on the Foodservice Products and may not be altered, amended or modified unless the same shall be in writing and duly executed by the duly authorized officers or representatives of each party.

25. *Paragraph Headings.* The paragraph headings appearing herein are intended for convenience in the reading of this Agreement and are to have no force or effect.

26. *Calendar Days.* All reference to notice periods in days shall mean calendar days unless otherwise specified.

27. *Modification.* This Agreement shall be modified only by a writing signed by both parties.

IN WITNESS WHEREOF, INTENDING TO BE LEGALLY BOUND, the parties hereto have executed this License Agreement as of the day and year first above written.

ATTEST:

PROMARK INTERNATIONAL, INC.

Bonnie L. Pastorek

By Kaye S. Woods
Name: KAYE S. WOODS
Title: VICE-PRESIDENT

ATTEST:

MCCAIN FOODSERVICE, INC.

Michael J. Campbell

By Harold Durost
Name: Harold Durost
Title: Vice President

EXHIBIT A

TRADEMARKS OF PROMARK
FOOD SERVICE/RETAIL

TRADEMARK	COUNTRY	STATUS	APPL. NO.	FILE DATE	REG. NO.	REG. DATE	CLASS	GOODS
ANIMAL TOTS	US	REGISTERED	74/458,534	11/15/1993	2,027,393	12/31/1996	29	Processed potatoes.
BAKE-A-TATER	US	REGISTERED	73/798,577	05/08/1989	1,602,578	06/19/1990	29	Frozen processed potatoes.
BREW CITY	US	PENDING	75/068,768	03/07/1996			29	Frozen appetizers, namely, frozen battered vegetables, frozen battered cheese portion and frozen vegetable and cheese portions.
BREW CITY & DESIGN	US	REGISTERED	75/068,750	03/07/1996	2,062,902	05/20/1997	29	Frozen vegetables.
BREW CITY & DESIGN	US	PENDING	75/072,058	03/13/1996			29	Frozen appetizers, namely, frozen battered vegetables, frozen battered cheese portions, and frozen vegetable and cheese portions.
BREW CITY & DESIGN	US	REGISTERED	75/120,296	06/17/1996			29	Frozen potatoes.
BRIGHT HARVEST IN DESIGN	US	PENDING	75/170,417	09/23/1996			29	Frozen vegetables.
CHEESE BITES IN DESIGN	US	PENDING	75/107,218	05/20/1996	1,867,119	12/13/1994	29	Frozen breaded cheese.
DOMANI	US	REGISTERED	74/394,344	05/25/1993			30	Pasta products, namely ravioli, cannelloni, tortellini, manicotti, stuffed shells, lasagna and lasagna sheets, in Class 30.
DOMANI ITALIAN FOODS IN OVAL DESIGN	US	REGISTERED	74/605,490	06/20/1986	1,474,359	01/26/1988	30	Ravioli, cannelloni, tortellini, ziti, manicotti, lasagna, lasagna sheets and stuffed shells, in Class 30.
DOMANI ITALIAN FOODS IN STRIPED OVAL DESIGN	US	REGISTERED	605,482	06/20/1986	1,444,325	06/23/1987	30	Ravioli, cannelloni, tortellini, ziti, manicotti, lasagna, lasagna sheets and stuffed shells, in Class 30.
DYNA BITES IN DESIGN	US	REGISTERED	74/545,938	07/05/1994	2,064,331	05/20/1997	29	Frozen breaded vegetables and cheese combinations.
FRYER SAVER	US	REGISTERED	721,019	04/07/1988	1,525,975	02/21/1989	29	Frozen protein-type foods, battered cheeses, cheese wedges and cheese sticks, and frozen staple foods, namely, battered potatoes, onions, corn, zucchini, cauliflower, squash, yams, okra, peppers, broccoli,

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TRADEMARK	COUNTRY	STATUS	APPL. NO.	FILE DATE	REG. NO.	REG. DATE	CLASS	GOODS
FRYER SAVER PRODUCTS & DESIGN	US	REGISTERED	462,161	01/23/1984	1,339,666	06/04/1985	42	asparagus, mushrooms, artichoke hearts, vegetable rings, vegetable sticks, apples, cherries and pineapples.
GOLDEN CRISP	US	REGISTERED	514,393	12/19/1984	1,425,849	01/20/1987	29	Frozen, breaded meat.
GOLDEN CRISP	US	PENDING	75/164,002	09/11/1996			29	Frozen vegetables, potatoes, cheese and fruit.
HOT BITES	US	PENDING	75/021,792	11/16/1995			29	Frozen appetizers including frozen breaded vegetables and frozen breaded vegetables and cheese combinations.
IDA-GOLD	US	REGISTERED	100,710	07/12/1960	739,073	10/09/1962	46	Frozen french fried potatoes in various forms in Class 46.
IDAHO CROWN & DESIGN	US	REGISTERED	81,929	09/23/1959	704,054	09/06/1960	46	Frozen french fried potatoes.
IDAHO VALLEY IN DESIGN	US	REGISTERED	72/102,242	08/08/1960	713,263	03/28/1961	46	Fresh frozen french fried potatoes; and frozen hash brown potatoes.
KILLER RINGS	US	REGISTERED	75/024,083	11/17/1995	2,068,720	06/10/1997	29	Frozen breaded vegetables.
KILLER STRAWS	US	PENDING	75/068,757	03/07/1996			29	Frozen battered vegetables.
LA PIZZERIA	US	REGISTERED	74/471,733	12/17/1993	1,933,942	11/07/1995	30	Frozen pasta shells stuffed with cheese or meat, in Class 30.
LA PIZZERIA	US	REGISTERED	73/495,394	08/17/1984	1,424,994	01/13/1987	30	Frozen pizza, in Class 30.
MOOR-RING	US	REGISTERED	72/375,339	11/05/1970	940,576	08/08/1972	46	Frozen onion rings in Class 46.
MOORE'S	US	REGISTERED	74/391,214	05/17/1993	1,928,904	10/24/1995	29	Frozen appetizers, namely, chopped/diced onions, breaded mushrooms, battered mushrooms, breaded zucchini slices and sticks, battered zucchini slices and sticks, breaded cauliflower, breaded cheese cubes, breaded cheese sticks, battered cheese sticks in Class 29.
MOORE'S	US	REGISTERED	74/367,634	03/08/1993	1,883,715	03/14/1995	29	Frozen onion rings in Class 29.
OLLIE PENO (STYLIZED)	US	ALLOWED	75/024,088	11/17/1995			29/30	(29) Prepared appetizers, namely, frozen breaded vegetables, frozen breaded cheese portions, and frozen

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TRADEMARK	COUNTRY	STATUS	APPL. NO.	FILE DATE	REG. NO.	REG. DATE	CLASS	GOODS
ONION CHIPS IN DESIGN	US	REGISTERED	169,568	05/08/1978	1,146,966	02/10/1981	29	breaded vegetable and cheese combinations. (30) A sauce consisting of sugar, vegetables and spices used for dipping appetizers. Fresh frozen breaded onion segments in Class 29.
ONION STRAWS	US	REJECTED	74/580,339	09/30/1994			29	Frozen processed onions.
ORE-IDA	US	REGISTERED	119,999	05/15/1961	739,456	10/16/1962	46	Frozen prepared potatoes in Class 46.
ORE-IDA BREW CITY FRIES	US	REGISTERED	75/054,751	02/07/1996	2,054,535	04/22/1997	29	Frozen potatoes.
ORE-IDA IN LEAF DESIGN	US	REGISTERED	72/375,777	11/12/1970	922,884	10/26/1971	46	Frozen potato products - namely, french fries, hash browns, potato patties, whole and peeled potatoes, and stew vegetables, onions and corn in Class 46.
ORE-IDA POTATO WORKS	US	PENDING	75/238,081	02/07/1997			29	Frozen potatoes.
ORE-IDA POTATO WORKS PEPPER MAN DESIGN	US	PENDING	75/238,079	02/07/1997			42	Restaurant services.
			75/024,085	11/17/1995			29/30	(29) Prepared appetizers, namely, frozen breaded vegetables, frozen breaded cheese portions, and frozen breaded vegetable and cheese combinations. (30) A sauce consisting of sugar, vegetables, and spices used for dipping appetizers.
SCRATCH PLUS	US	REGISTERED	74/458,527	11/15/1993	1,888,649	04/11/1995	29	Processed potatoes in Class 29.
SPUD BITES	US	REGISTERED	417,028	03/14/1983	1,278,190	05/15/1984	29	Frozen potatoes in Class 29.
SUN SPOTS	US	REGISTERED	75/068,763	03/07/1996	2,054,694	04/22/1997	29	Frozen battered vegetables.
SUN STIX	US	REGISTERED	74/580,338	09/30/1994	1,959,856	03/05/1996	29	Frozen vegetables in Class 29.
SUNSACTIONS	US	PENDING	75/068,758	03/07/1996			29	Frozen battered vegetables.
TATER ABC'S	US	PENDING	75/120,297	06/17/1996			29	Processed potatoes.
TATER TOTS	US	REGISTERED	39,264	10/21/1957	668,762	10/21/1958	46	Frozen shredded potatoes.
TEX-MEX STRAWS	US	REJECTED	75/068,753	03/07/1996			29	Frozen battered vegetables.
TNT'S	US	REGISTERED	75/106,299	05/20/1996	2,047,874	03/25/1997	29	Processed potatoes.

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EXHIBIT B

Guidelines for Proper Trademark Use

Improper use of a trademark can lead to misuse in the marketplace and loss of rights. Conformance to the following guidelines for applications to trademarks to packaging, advertising, and other media will strengthen their legal protection against encroachment and enhance their communications effectiveness as well.

1. Faithful reproduction of trademark graphics.

Graphic displays of logs, symbols, or other identifying visual devices or features, must be true facsimiles of the original design claimed as the trademark. Art, lettering, and the layout and proportioning of graphic elements in a logo or symbol, even color if claimed, must not be altered, and nothing should be added or deleted from the original design.

2. Notice of trademark legal status.

A trademark notice may follow the mark, at least in its primary or most visually prominent display of each package or print item, or the first time the name appears in the text.

As to the U.S. trademarks, if registered in the U.S. Patent and Trademark Office for the product it is used with, the registration notice, circle R, should be displayed, or an asterisk used referring to a footnote "Reg. U.S. Pat. & Tm Ofc." The use of ® or other symbol of notice may be appropriate outside the United States.

3. Distinguishing a trademark when used in copy.

A trademark must be recognized by the public as a trademark. The name should be displayed in copy in a distinguishing manner that visually sets it apart from surrounding text. Several typographic choices are available, such as all uppercase letters, initial uppercase letters with quote marks, initial uppercase letters and underlined, italics, and a bolder typeface.

4. Proper grammatical use.

- a. A trademark is a proper adjective. It should never be used as a common descriptive adjective or as a verb.
- b. Since a trademark is not a noun, it should never be used in the plural form.