

**ASSET PURCHASE AGREEMENT**

**by and among**

**DEAN FOODS COMPANY  
as the Purchaser**

**and**

**MILK PRODUCTS OF ALABAMA, L.L.C., D.I.P.  
as the Seller**

**Dated as of September 1, 2004**

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## ASSET PURCHASE AGREEMENT

**ASSET PURCHASE AGREEMENT**, dated as of September 1, 2004 (this "**Agreement**"), by and among **DEAN FOODS COMPANY**, a Delaware corporation (the "**Purchaser**"), and **MILK PRODUCTS OF ALABAMA, L.L.C., D.I.P.**, an Alabama limited liability company (the "**Seller**").

**WHEREAS**, each of the Seller and certain of its Affiliates has filed a voluntary petition (the "**Petitions**") on February 24, 2004 (the "**Petition Date**") for relief commencing a case under Chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1330, as amended (the "**Bankruptcy Code**" and the regulations promulgated thereunder, the "**Bankruptcy Rules**"), in the United States Bankruptcy Court for the Southern District of New York (the "**Bankruptcy Court**") (jointly administered under Case No. 04-11139-RDD) (the "**Bankruptcy Cases**") and is conducting its business as a debtor-in-possession in accordance with the Bankruptcy Code; and

**WHEREAS**, the Seller is engaged in, among other things, the Business (as hereinafter defined); and

**WHEREAS**, the Seller desires to sell and transfer to the Purchaser or one or more of its Designees (as hereinafter defined), and the Purchaser desires for it or one or more of its Designees to purchase and assume from the Seller, the Acquired Assets (as hereinafter defined), and the Purchaser is willing for it or one or more of its Designees to assume, and the Seller desires to transfer to and have assumed by the Purchaser or one or more of its Designees, the Assumed Liabilities (as hereinafter defined), all in the manner and subject to the terms and conditions set forth herein and in accordance with sections 105, 363, 365 and 1146 of the Bankruptcy Code (the "**Contemplated Transactions**"); and

**WHEREAS**, the Purchaser desires to obtain, and Parmalat S.p.A. is willing to enter into with the Purchaser, (i) a limited license to use for certain transitional purposes the Parmalat Name Rights (as hereinafter defined) and (ii) a license and agreement regarding the continued use of processes involved in the operation of certain machinery used by the Seller in the Business that utilize the DASI Technology (as hereinafter defined) owned by Parmalat S.p.A. or its Affiliates, all on the terms and conditions contained in the agreements with Parmalat S.p.A. provided therein;

**NOW, THEREFORE**, in consideration of the foregoing and the respective representations, warranties, covenants, and agreements set forth herein (including the definition of the capitalized terms included in Article X hereof), the parties hereto hereby agree as follows:

### ARTICLE I

#### PURCHASE AND SALE OF ASSETS

Section 1.01 Purchase and Sale of Assets. On the terms and subject to the conditions set forth in this Agreement, at the Closing, the Seller shall sell and transfer to the Purchaser or one or more of its Designees, and the Purchaser shall or shall cause one or more of

its Designees to, as the case may be, purchase and assume from the Seller all of the Seller's legal and beneficial rights, title and interests in and to all of the following (all of the following assets, collectively, the "**Acquired Assets**"): all of the Seller's properties, assets, contracts, rights and claims used in or arising out of the Business of whatever kind or nature, whether real or personal, tangible or intangible, wherever located, except for such properties, assets, contracts, rights and claims as are provided hereby to be excluded from such sale and purchase; in each case free and clear of all "claims" (as defined in the Bankruptcy Code), Liens, encumbrances and interests (collectively, "**Encumbrances**") as provided in the Sale Order, other than Surviving Permitted Encumbrances.

Without limiting the foregoing, the Acquired Assets shall include all of the Seller's legal and beneficial rights, title, and interests in and to the properties, assets, contracts, rights and claims described in clauses (a) through (n) below (except as expressly excluded under Section 1.02):

- (a) all equipment, furniture, furnishings, fixed assets and other tangible personal property used in connection with the Business;
- (b) the real property owned by the Seller that is the mix production facility, located at 1611 6th Avenue in Decatur, Alabama (the "**Real Property**");
- (c) all inventory of the Business;
- (d) all Intellectual Property used in connection with the Business (which excludes the Parmalat Name Rights and the DASI Technology, as to which Purchaser (or its Designees) shall obtain rights pursuant to provisions separately provided herein), other than as specifically excluded in Section 3.20 of the Disclosure Letter (such Intellectual Property not so excluded, the "**Acquired Intellectual Property**"), the rights to sue for, and remedies against, past, present, and future infringements thereof, and the rights of priority and protection of interests therein under Applicable Laws, except insofar as the provisions of Section 1.06(b) shall apply;
- (e) all copies of marketing brochures and materials and other printed or written materials in any form or medium used in connection with the Business that the Seller is not required by law to retain and duplicates of any such materials that the Seller is required by law to retain;
- (f) all rights under all warranties, representations, and guarantees related to the Business made by suppliers, manufacturers, and contractors, except any such rights relating to Excluded Assets;
- (g) all Permits used in connection with the Business held by the Seller (or, to the extent any such Permits are not freely transferable by the holder of such Permits, all rights, title and interests of the Seller in such Permits to the full extent such right, title and interest may be transferred);
- (h) all books, records, files or papers (whether in hardcopy or computer format) related to the Business, including data processing records, employment and personnel records for Transferred Employees, engineering information, technical information, customer lists, files and records, advertising and marketing data and records, designs, drawings, credit

records, records relating to suppliers, and other data that the Seller is not required by law to retain and duplicates of any such materials that the Seller is required by law to retain; provided, however, that the Seller shall not be required to transfer to the Purchaser any information (pursuant to this subparagraph or any of the other provisions of this Section) (i) if the Seller is subject to any non-disclosure or confidentiality agreement with respect to such information and the Purchaser is not assuming the non-disclosure or confidentiality obligations relating to such information or (ii) such information may not be transferred under any Applicable Laws regarding privacy;

(i) subject to Section 1.02(c), (i) all Contracts listed in Section 1.01(i) of the Disclosure Letter, (ii) all other Contracts entered into in the ordinary course of business with unaffiliated third parties by the Seller relating to the Business in effect as of the date hereof, including any as to which there are Cure Amounts but in each case subject to Section 1.04(i), and (iii) any Contracts entered into by the Seller in the conduct of the Business after the date of this Agreement and before the Closing, provided that in the case of such Contracts referred to in this clause (iii) entered into after the date of this Agreement, the Purchaser shall have been furnished with a true and complete copy of such Contract and, after a reasonable opportunity to review such Contract, has agreed in writing to assume such Contract, in each case except insofar as the provisions of Section 1.04(i) or 1.06(b) shall apply to exclude such a Contract (collectively and after giving effect to such exclusions, the "**Assumed Contracts**");

(j) all credits, prepaid expenses, deferred charges, advance payments, security deposits, and prepaid items that arise directly from any Acquired Asset or Assumed Liability (in each case, to the extent relating to the Business, and to the extent of the Seller's interest relating to any of the foregoing);

(k) all rights, privileges, claims, demands, refunds, insurance and indemnification agreements in favor of the Seller, and any indemnification and similar rights, offsets, recoupment rights, and other claims against third parties, in each case relating to any Acquired Asset or Assumed Liability related to the Business (excluding, subject to Section 5.21 hereof, any claims or actions for preferences, fraudulent conveyances, and other avoidance power claims, and any recoveries, under sections 542, 544, 545, 547, 548, 549, 550, and 553 of the Bankruptcy Code relating to any such Acquired Asset or Assumed Liability);

(l) subject to Section 1.06(b), all other assets of any nature whatsoever owned by the Seller and used in connection with the Business and any of the Seller's rights in any other assets of any nature whatsoever used by the Seller in connection with the Business;

(m) the name "Milk Products of Alabama, L.L.C." in accordance with Section 6.05; and

(n) all goodwill associated with the Business.

In addition, as contemplated by Section 5.05(c), at the Closing each of the Parmalat Name Rights License and the DASI Technology Agreement shall become effective, providing when and how the Purchaser will become entitled to use the Parmalat Name Rights and the DASI Technology in accordance with the provisions thereof.



Section 1.02 Excluded Assets. The following assets, properties, and rights (the "***Excluded Assets***") are not included in the Acquired Assets and shall be retained by the Seller.

- (a) Equity Securities of the Seller or any direct or indirect subsidiary of the Seller;
- (b) all receivables or interests in receivables owned by the Seller, including all receivables owned by the Seller and owed to any Affiliate of the Seller;
- (c) the Parmalat Receivables Purchase Agreement, any Contract referred to in Section 1.01(i) that is of no further effect as of the Closing and any Contract referred to in Section 1.01(i) in respect of which the Purchaser provides notice to the Seller prior to the Closing that it does not wish to assume such Contract pursuant to Section 1.04(i) and, in each case, any and all money payable under or with respect to any of the foregoing;
- (d) except as otherwise provided in respect of Acquired Assets or Assumed Liabilities by Section 1.01(k), any claims, rights or causes of action arising under sections 542, 544, 545, 547, 548, 549, 550 and 553 of the Bankruptcy Code;
- (e) cash, cash equivalents, bank deposits, bank accounts and lock-boxes of the Seller;
- (f) the Seller's rights under this Agreement and other agreements between the Purchaser, any Designee and the Seller relating to the transactions contemplated hereby;
- (g) any claims against current or former directors, officers or other employees of, or agents, accountants or other advisors of or to, the Seller;
- (h) minute books, articles or certificates of incorporation, by-laws, limited liability company certificates or articles of formation, limited liability company operating agreements, all amendments thereto, stock ledgers and stock certificates of the Seller; and
- (i) any Tax Refunds of the Seller.

Section 1.03 Assumed Liabilities. On the terms and subject to the conditions set forth in this Agreement, at the Closing, the Purchaser or one or more of its Designees shall assume and/or accept assignment from the Seller and thereafter pay, perform, or discharge in accordance with their terms, only the following obligations of the Seller (the "***Assumed Liabilities***"):

- (a) All Liability associated with a Surviving Permitted Encumbrance on any of the Real Properties that are Acquired Assets, and all Liability and obligations of the Seller under the Assumed Contracts arising out of events occurring or circumstances first existing after the Closing Date, except in respect of any Cure Amounts to the extent the Purchaser shall have assumed any Cure Amounts in accordance with Section 1.04(i); and
- (b) the obligations to Transferred Employees expressly assumed by the Purchaser pursuant to Section 5.16.

The Purchaser hereby agrees to indemnify and hold the Seller and its directors, officers, employees, Affiliates, agents, successors and permitted assigns harmless from and against any and all losses, damages, expenses or other liabilities arising after the Closing directly out of any Assumed Liability and any and all such liabilities arising after the Closing directly out of any Acquired Asset.

Section 1.04 Excluded Liabilities. Notwithstanding anything to the contrary contained herein, neither the Purchaser nor any of its Designees shall assume, or in any way be liable or responsible for, any Liabilities or commitments of the Seller except for the Assumed Liabilities. Without limiting the generality of the foregoing, neither the Purchaser nor any of its Designees shall assume, and the Seller shall remain responsible for the following (the "***Excluded Liabilities***"):

(a) all Liabilities for any administrative expenses or fees or expenses of professional persons (including any attorney, consultant or financial advisor) employed or retained by the Seller in connection with, resulting from or attributable to the transactions contemplated hereby, the Bankruptcy Cases, or any transaction relating to an Excluded Asset;

(b) except as provided in Section 1.03(b), all Liabilities (whether absolute, contingent, or otherwise) which have accrued with respect to or arisen out of the Acquired Assets on or prior to the Closing Date, including any Liability of the Seller or any of its employees, directors, officers, Affiliates, or agents arising out of, relating to, or caused by (whether directly or indirectly), the Seller's ownership, possession, operation, interest in, use or control of the Acquired Assets before the Closing Date;

(c) any Liability for (i) Taxes of the Seller or any of its Affiliates or (ii) Taxes attributable to the Acquired Assets or the Business, in each case, relating to any period or any portion of any period ending on or prior to the Closing Date (for this purpose, ad valorem taxes shall be prorated as of the Closing Date) (the Taxes described under clauses (i) and (ii) of this subparagraph, collectively, the "***Seller's Taxes***");

(d) subject to Section 1.03(b), with respect to current or former employees, officers, directors and consultants of the Seller and its Affiliates, all Liabilities in respect of any compensation, benefit plan, agreement, arrangement, program, policy or understanding relating to such individuals, their service to and tenure with the Seller and its Affiliates, and their benefits, including any employment, consulting, severance, Liability in respect of WARN, change in control or similar agreements, workers' compensation liabilities any other employment-related claim (including for actual, constructive or deemed termination, employment discrimination or wrongful discharge) or any right of indemnification;

(e) all Liabilities that are allocated to the Seller under Section 5.16 or that are otherwise excluded as Liabilities of the Purchaser under Section 5.16;

(f) all Liabilities which arise, whether before, on or after the Closing Date, out of, or in connection with, the Excluded Assets, including any Liabilities of the Seller under the Parmalat Accounts Receivables Agreement and all Liabilities arising out of or in connection with any Indebtedness of the Seller or any of its Affiliates;

(g) all Liabilities arising from any litigation, investigation or other proceeding pending or threatened prior to the Closing Date in respect of the Seller or any of its officers, directors, representatives or agents relating to the Business or arising from any litigation, investigation or other proceeding, whenever asserted, arising out of any event or transaction occurring on or prior to the Closing Date;

(h) the Seller's Transfer Taxes;

(i) all Cure Amounts; provided, however, that, if and to the extent the aggregate Cure Amounts for all of the Assumed Contracts exceed \$150,000, the Seller shall not be required to assume Assumed Contracts for assignment to the Purchaser pursuant hereto unless the Purchaser shall agree in writing by notice to the Seller to pay the Cure Amounts, if any, in excess of \$150,000 in the aggregate in respect of those specific Contracts Purchaser selects as stated in the following provisions of this Section 1.04(i); it being understood and agreed that in such event the Purchaser may select from among the Assumed Contracts which Assumed Contracts the Seller shall be required to assume and assign to the Purchaser in accordance herewith, and the Seller shall not be required to assume the Assumed Contracts not so designated by the Purchaser (and Purchaser shall not be required to purchase and accept hereunder any such Contracts it does not select), to the extent that the aggregate Cure Amounts in respect of the Contracts so selected by Purchaser are in excess of \$150,000 and such additional amount as the Purchaser may agree to pay in accordance herewith; and

(j) all Liabilities incurred by the Seller on or after the Closing Date other than any Assumed Liabilities.

#### Section 1.05 Consideration.

(a) The consideration for the Acquired Assets shall be (i) \$21,600,000 (the "**Cash Consideration**") and (ii) the assumption of the Assumed Liabilities. The Cash Consideration and assumption of the Assumed Liabilities is referred to herein as the "**Consideration**."

(b) Simultaneously herewith, the Purchaser is making a good faith deposit (the "**Purchaser's Good Faith Deposit**") in the amount of \$2,160,000 by delivery of a certified check (or in such other form of payment as is acceptable to the Seller in its sole discretion) payable to the Seller's financial advisor, Lazard Freres & Co. LLC (or such other party as the Seller may determine) which amount will be held in a segregated interest bearing account. The Purchaser's Good Faith Deposit shall be distributed as follows:

(i) If the Closing shall occur, the Purchaser's Good Faith Deposit, together with all accrued interest thereon, shall be applied towards the Cash Consideration payable by the Purchaser to the Seller at the Closing under Section 2.02;

(ii) if this Agreement is validly terminated by the Seller pursuant to Section 8.01(e)(i), the Purchaser's Good Faith Deposit, together with all accrued interest thereon, may be retained by the Seller;

(iii) if this Agreement is validly terminated (x) by the Purchaser pursuant to Section 8.01(d), (y) by the Seller pursuant to Section 8.01(e)(iii) or (z) by the Purchaser or the Seller pursuant to Section 8.01(a), (b), or (c) the Purchaser's Good Faith Deposit, together with all interest thereon, shall in each case be returned to the Purchaser not later than five (5) Business Days after the termination of this Agreement pursuant to such provision; or

(iv) if this Agreement is validly terminated by the Seller pursuant to Section 8.01(e)(ii), the Purchaser's Good Faith Deposit, together with all interest thereon, shall be returned to the Purchaser not later than five (5) Business Days after the termination of this Agreement pursuant to such Section.

#### Section 1.06 Transitional Services; Shared Contracts.

(a) With respect to the transitional services identified in Section 1.06(a) of the Disclosure Letter (the "***Transitional Services***"), from and after the Closing Date for a period of up to 90 days at the option of the Purchaser, and without limiting the parties' obligations pursuant to Section 5.13, Section 6.01, Section 6.02 and Section 6.04, the Seller shall provide, or procure the provision of, the Transitional Services to the Purchaser (or its Designee), at no cost to the Purchaser (or its Designee), using administrative facilities and capacities (including personnel) retained by the Seller or one or more of its Affiliates or sold by the Seller or one or more of its Affiliates to third parties.

(b) With respect to the contracts identified in Section 1.06(b) of the Disclosure Letter (the "***Shared Contracts***"), such contracts shall not be assigned to the Purchaser at the Closing but from and after the Closing Date, at the Purchaser's option exercised by notice to the Seller for a period of up to 120 days after the Closing Date, the Seller covenants and agrees to use its commercially reasonable efforts to cooperate with the Purchaser in establishing and maintaining any reasonable arrangement designed to provide the Purchaser (or its Designee) with all of the benefits under such Shared Contract that the Purchaser (or its Designee) requires to conduct the Business. Alternatively, the Purchaser and the Seller may agree, at or after the Closing, to assign a Shared Contract to the Purchaser and to establish and maintain similar reasonable arrangements designed to provide the Seller (or its assignees) with all the benefits under such Shared Contract that the Seller (or its assignees) require for the reasonable conduct of their businesses. Such reasonable arrangement may include (i) the subcontracting, sublicensing or subleasing to the Purchaser of any and all rights of the Seller against the other party under such Shared Contract and (ii) the enforcement by the Seller for the benefit (and at the cost) of the Purchaser (or its Designee) of any rights under such Shared Contract; provided, however, that the Seller shall not be required to undertake any activities (other than incidental administrative activities) in furtherance of any such arrangement for a period of more than one year after the Closing Date.

## **ARTICLE II**

### **THE CLOSING**

Section 2.01 Closing. The closing of the Contemplated Transactions (the "**Closing**") shall take place at the New York offices of Weil, Gotshal & Manges LLP at 12:01 a.m. on the second Business Day after the conditions set forth in Article VII shall have been satisfied or waived or at such other time, date and place as shall be fixed by agreement among the Purchaser and the Seller (the date of the Closing being herein referred to as the "**Closing Date**"). At least one Business Day prior to the Closing Date, the Seller and the Purchaser shall agree in writing on the amount of any reduction to the amount of Cash Consideration to be made pursuant to Section 2.02(b)(vii).

Section 2.02 Closing Deliveries.

(a) Deliveries by the Purchaser. Subject to the terms and conditions hereof, at the Closing, the Purchaser shall deliver, or cause to be delivered, to the Seller the following:

- (i) the Cash Consideration in immediately available funds by wire transfer to an account designated by the Seller;
- (ii) a duly executed assignment and assumption agreement in form and substance reasonably satisfactory to the Purchaser, providing for assignment of the Acquired Assets and Assumed Contracts and assumption of the Assumed Liabilities by the Purchaser or one or more of its Designees (the "**Assignment and Assumption Agreement**");
- (iii) a release by the Purchaser and its Designee, if applicable, of all claims (other than any claims arising under this Agreement or any document or agreement executed and delivered in connection herewith) arising through the Closing Date against the Seller, its Affiliates and its current and former officers, directors, employees, agents, accountants or other advisors, in their capacities as such;
- (iv) any document required to transfer of record any of the Acquired Assets, including any documentation reasonably required by a title company; and
- (v) such other documents as are required to be delivered by the Purchaser to the Seller pursuant to this Agreement.

(b) Seller's Deliveries. Subject to the terms and conditions hereof, at the Closing the Seller shall deliver, or cause to be delivered, to the Purchaser, any Designee or their permitted assigns the following:

- (i) all documents, certificates, and agreements reasonably necessary to transfer to the Purchaser or one or more of its Designees all of the Seller's legal and beneficial right, title and interest in, to and under all of the Acquired Assets, free and clear of any and all Encumbrances thereon other than Surviving Permitted Encumbrances, including (A) special warranty deeds or the equivalent thereof in the applicable jurisdiction in recordable form relating to the Real Property included in the Acquired Assets, (B) a duly executed bill of sale in

form and substance reasonably satisfactory to the Purchaser transferring the Acquired Assets consisting of personalty to the Purchaser, (C) a duly executed Assignment and Assumption Agreement with respect to each Assumed Contract together with any necessary transfer declarations or other filings (and in recordable form if required by the Purchaser), subject, however, to the provisions of Section 1.06(b) in the case of Shared Contracts and (D) executed assignments of all patents, trademarks, trade names, assumed names, and copyrights and all applications therefor, and all other Intellectual Property included within the Acquired Assets in forms suitable for filing with the U.S. Patent and Trademark Office or U.S. Copyright Office, and any other applicable offices and jurisdictions, as appropriate;

(ii) a certified copy of the Sale Order, which order shall have become final and non-appealable and shall not have been modified or amended in any manner that has not been agreed to by Purchaser in its sole discretion;

(iii) an executed release of the security interest held by General Electric Capital Corporation in any and all of the trademark registrations and applications included in the Acquired Intellectual Property in form suitable for recording with the U.S. Patent and Trademark Office and any other applicable offices and jurisdictions;

(iv) executed copies of any consents referred to in Section 7.03(d) hereof;

(v) all documents containing or relating to "know-how" included within the Acquired Assets;

(vi) all of the books and records included within the Acquired Assets, and all of the other tangible Acquired Assets, possession of which in each case shall be delivered to the Purchaser, its Designee or their permitted assigns, as applicable, at the Real Property;

(vii) certificates of non-foreign status for the Seller substantially in the form attached hereto as Exhibit G ("***FIRPTA Certificates***"); provided, however, that if the Seller fails to deliver the FIRPTA Certificates and the Purchaser elects to proceed with the Closing, the Purchaser shall be entitled to withhold from the Cash Consideration the amount required to be withheld pursuant to Section 1445 of the Code;

(viii) all other previously undelivered documents required to be delivered by the Seller to the Purchaser at or prior to the Closing in connection with the Contemplated Transactions;

(ix) a release by the Seller and its current officers or directors of any and all claims arising through the Closing Date against the Purchaser, its Affiliates or any of their respective current or former officers, directors,

employees, agents, accountants or other advisors, in their capacities as such, other than any arising under this Agreement; and

(x) at the Seller's expense, the Owner's Title Insurance Policy (in accordance with the commitment for title insurance delivered to the Purchaser pursuant to Section 5.19).

In addition, not later than one Business Day prior to the Closing Date, the Purchaser shall have received executed copies of the Parmalat Name Rights License and the DASI Technology Agreement, to be effective at the Closing Date, substantially in the forms attached hereto as Exhibits E and F, respectively.

(c) Other Closing Transactions. At the Closing, each of the Parmalat Name Rights License and the DASI Technology Agreement shall become effective.

Section 2.03 Closing Structures. On or before the Closing Date, the Purchaser may designate (by written notice to the Seller) one or more Designees to purchase all or part of the Acquired Assets or to assume all or part of the Assumed Liabilities; provided, however, that such designation shall not obviate the Purchaser's obligations hereunder or prevent or cause a delay in closing the Contemplated Transactions or materially increase the Seller's liability for Taxes.

Section 2.04 Purchase Price Allocation. The Purchaser and the Seller agree that, subject to Section 1.05, the Purchaser shall determine the allocation of the Consideration to the Acquired Assets pursuant to section 1060 of the Code and the rules and regulations thereunder (the "**Allocation**") after consultation with the Seller and taking into account in making the Allocation the reasonable requests of the Seller, and that the Purchaser and the Seller shall use the Allocation for purposes of filing all required forms under Section 1060 of the Code and all other Tax Returns. The Purchaser and the Seller shall not take any position inconsistent with the Allocation upon any examination of any such Tax Return, in any refund claim or in any Tax litigation; provided, that the Seller shall determine in its sole discretion the allocation of the Consideration to the Acquired Assets for any other purpose of the Bankruptcy Cases or any other purpose whatsoever and shall not be prohibited in any way by this Section 2.04 in connection therewith.

### **ARTICLE III**

#### **REPRESENTATIONS AND WARRANTIES OF THE SELLER**

The Seller hereby represents and warrants to the Purchaser that the statements contained in this Article III (subject to the disclosures contained in the Disclosure Letter) are true and correct as of the date hereof (or, if made as of a specified date, as of such date), and will be true and correct as of the Closing Date as though made on the Closing Date (or, if made as of a specified date, as of such date). The disclosures in any section of the Disclosure Letter referenced herein shall qualify the disclosures made with respect to all other sections of the Disclosure Letter referenced herein only where specifically cross-referenced.

Section 3.01 Organization. The Seller is a limited liability company duly organized, validly existing and in good standing under the laws of Alabama and has full power to own its properties and to conduct its business as presently conducted. The Seller is duly authorized, qualified or licensed to do business and is in good standing in each state or other jurisdiction in which its Acquired Assets are located or in which its Business as presently conducted makes such qualification necessary. The Seller is formed in, and is required to be qualified to do business as a foreign entity in, the jurisdictions set forth on Section 3.01 of the Disclosure Letter, and the Seller is so qualified in such jurisdictions. Set forth on Section 3.01 of the Disclosure Letter is a list of all assumed names under which the Seller operates and all jurisdictions in which any of the assumed names is registered.

Section 3.02 Authority. Subject only to entry of the Sale Order, the Seller has all requisite power and authority, limited liability company or otherwise, to execute, deliver and perform under this Agreement and the other agreements, certificates and instruments to be executed by the Seller in connection with or pursuant to this Agreement (collectively, the "***Seller Documents***"). The execution, delivery and performance by the Seller of the Seller Documents and the consummation by the Seller of the Contemplated Transactions have been duly authorized by all necessary action, limited liability company or otherwise, on the part of the Seller. This Agreement has been, and at the Closing the other Seller Documents will be, duly executed and delivered by the Seller. Subject to the entry of the Sale Order, this Agreement is, and, upon execution and delivery by the Seller at the Closing, each of the other Seller Documents will be (assuming this Agreement and the Seller Documents, as applicable, constitute binding obligations of the Purchaser or one or more of its Designees party thereto, as applicable), a legal, valid and binding agreement of the Seller, enforceable against the Seller in accordance with its terms.

Section 3.03 Formation Documents. The Seller has delivered to the Purchaser true, correct and complete copies of the Seller's certificate of formation and operating agreement and, to the extent reasonably available to the Seller, minute books and equity record books, as applicable. To the Seller's Knowledge, the records so delivered include minutes or consents reflecting all actions taken by the managers (including any committees) and members of the Seller.

Section 3.04 Title to Assets.

(a) Set forth in Section 3.04(a) of the Disclosure Letter is a complete list (including the street address, where applicable) of: (i) all Real Property owned by the Seller and included within the Acquired Assets; (ii) all Real Property leased by the Seller and included within the Acquired Assets; (iii) each vehicle owned or leased by the Seller and included within the Acquired Assets; and (iv) each other tangible asset (other than inventory items) owned or leased by the Seller and included within the Acquired Assets and having a book value in excess of \$50,000.

(b) The Seller has valid title to all of the Acquired Assets, other than Real Property, it purports to own and use in connection with the Business, and owns all of such Acquired Assets free and clear of any Encumbrances, other than (i) Surviving Permitted Encumbrances, or (ii) any other Encumbrances set forth in Section 3.04(b) of the Disclosure



Letter and which will be released at or prior to the Closing. The Seller holds a valid leasehold interest in or otherwise has a valid and enforceable right to use, all of the Acquired Assets used in connection with the Business that it does not own.

(c) With respect to each parcel of owned Real Property listed in Section 3.04(a)(i) of the Disclosure Letter, and except as set forth in Section 3.04(b) of the Disclosure Letter:

(i) The Seller has good and marketable title to such parcel of Real Property, free and clear of any Encumbrance except for Surviving Permitted Encumbrances or Encumbrances which will be released at or prior to the Closing;

(ii) There are no leases or subleases of any portion of any parcel of Real Property; and

(iii) There are no outstanding options or rights of first refusal to purchase the parcel of Real Property, or any portion thereof or interest therein.

(d) Except as set forth in Section 3.04(d) of the Disclosure Letter, with respect to each lease or sublease that is an Assumed Contract and except to the extent excused by or unenforceable as a result of the commencement or pendency of the Bankruptcy Cases or the application of any provision of the Bankruptcy Code (but only to the extent such excuse, lack of enforceability or application of law will continue to apply in favor of the Purchaser and its successors and assigns following the Closing), (i) such lease or sublease is in full force and effect, and to Seller's Knowledge no party to the lease or sublease is in breach or default, and (ii) no event has occurred which, with notice or lapse of time, would constitute a breach or default or permit termination, modification or acceleration thereunder.

(e) The Real Property is zoned for a classification that permits the continued use of the Real Property in the manner currently used by the applicable Seller except as where the failure to be so zoned would not individually or in the aggregate have a Material Adverse Effect. Improvements included in the assets of the Seller were constructed in material compliance with, and remain in material compliance with, all Applicable Laws, covenants, conditions and restrictions affecting the Real Property except where the failure to do so would not individually or in the aggregate have a Material Adverse Effect. Final certificates of occupancy have been issued for the improvements on the Real Property permitting the existing use of such improvements. There are no actions pending or, to the Knowledge of the Seller, threatened that would alter the current zoning classification of the Real Property or alter any covenants, conditions or restrictions that would adversely affect the use of the Real Property in the Business. The Seller has not received notice from any insurance company or Governmental Authority of any defects or inadequacies in the Real Property or the improvements thereon that would adversely affect the insurability or usability of the Real Property or such improvements or prevent the issuance of new insurance policies thereon at rates not materially higher than present rates. To the Knowledge of the Seller, no fact or condition exists that would result in the discontinuation of necessary utilities or services to the Real Property or the termination of current access to and from the Real Property. The Seller is not a "foreign person" as that term is defined in Section 1445 of the Code, and applicable regulations.

Section 3.05 Condition and Sufficiency of Acquired Assets. Except as set forth on Section 3.05 of the Disclosure Letter, the Acquired Assets (i) have been properly and regularly maintained in all material respects, and (ii) include all material assets used by the Seller in the conduct of the Business (other than any Excluded Assets). All of the tangible Acquired Assets are located at the Real Property.

Section 3.06 Title to Property. At the Closing, the Purchaser will acquire all of the Seller's legal and beneficial rights, title and interest in, to and under all of the Acquired Assets, in each case free and clear of any and all Encumbrances (including any and all claims that may arise by reason of the execution, delivery or performance by the Seller of this Agreement) other than Surviving Permitted Encumbrances.

Section 3.07 Governmental Consents and Approvals. No consent, approval, authorization of, declaration, filing, or registration with, any domestic or foreign government or regulatory authority, is required to be made or obtained by the Seller in connection with the execution, delivery, and performance of this Agreement and the consummation of the Contemplated Transactions, except for: (a) consents, approvals, authorizations of, declarations, or filings with, the Bankruptcy Court, (b) if required under applicable law and regulations, the filing of a notification and report form under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "**HSR Act**"), and the expiration or earlier termination of the applicable waiting period thereunder, (c) consents, approvals, authorizations, declarations, filings and registrations listed in Section 3.07 of the Disclosure Letter, (d) title filings to record changes of ownership (e.g., for real property and vehicles) and (e) consents, approvals, authorizations, declarations, filings and registrations the lack of which would not reasonably be expected to have a Material Adverse Effect. The items referred to in clauses (a), (b) and (c) of this Section 3.07 to the extent involving a Governmental Authority, are hereinafter referred to as the "**Governmental Requirements.**"

Section 3.08 No Violations. To the Seller's Knowledge, assuming that the Governmental Requirements will be fulfilled, made, or obtained and will remain in full force and effect, and assuming receipt of the consents, approvals and authorization of the Persons listed in Section 3.08 of the Disclosure Letter, neither the execution, delivery, or performance of this Agreement by the Seller, nor the consummation by the Seller of the Contemplated Transactions, nor compliance by the Seller with any of the provisions hereof, will (a) contravene, conflict with or result in any violation or breach of any provisions of the certificates of incorporation or bylaws or similar organizational documents of the Seller, (b) result in a violation, or breach of, or constitute (with or without due notice or lapse of time) a default (or give rise to any right of termination, cancellation, vesting, payment, exercise, acceleration, suspension, or revocation) under any of the terms, conditions, or provisions of any note, bond, mortgage, deed of trust, security interest, indenture, license, contract, agreement, plan, or other instrument or obligation to which the Seller is a party or by which such Seller's properties or assets may be bound or affected, (c) violate any order, writ, injunction, decree, statute, rule, or regulation applicable to the Seller or to any properties or Acquired Assets of a Seller, or (d) result in the creation or imposition of any Encumbrance on any Acquired Asset of a Seller, except in each case for violations, breaches, defaults, terminations, cancellations, accelerations, creations, impositions, suspensions, or revocations that (i) would not individually or in the aggregate have a Material Adverse Effect or (ii) are excused by or unenforceable as a result of the filing of the Petitions or

the applicability of any provision of any Applicable Laws or the Bankruptcy Code (but only to the extent such excuse, lack of enforceability or application of law will continue to apply in favor of the Purchaser and its successors and assigns following the Closing).

Section 3.09 Litigation. Except for the pendency of the Bankruptcy Cases and except as set forth in Section 3.09 of the Disclosure Letter, there is no suit, action, proceeding, or investigation (whether at law or equity, before or by any federal, state, or foreign commission, court, tribunal, board, agency, or instrumentality, or before any arbitrator) pending or, to any of the Seller's Knowledge, threatened against, involving or affecting the Business or any Acquired Assets, the outcome of which would be reasonably likely, individually or in the aggregate, to have a Material Adverse Effect, nor is there any judgment, decree, injunction, rule, or order of any court, governmental department, commission, agency, instrumentality, or arbitrator outstanding against the Business that would be reasonably likely to have a Material Adverse Effect.

Section 3.10 No Violation of Law. Except as disclosed in Section 3.10 of the Disclosure Letter and except to the extent excused by or unenforceable as a result of the commencement or pendency of the Bankruptcy Cases or the application of any provision of the Bankruptcy Code (but only to the extent such excuse, lack of enforceability or application of law will continue to apply in favor of the Purchaser and its successors and assigns following the Closing), to the Knowledge of the Seller; the Seller is in material compliance with all Applicable Laws, and the Seller is not in violation of, nor has it been given notice or been charged with any violation of, Applicable Laws, except for such violations, notices, or changes that would not reasonably be expected to, individually or in the aggregate, result in a Material Adverse Effect.

Section 3.11 Permits. The Seller owns or possesses from each appropriate Governmental Authority all right, title and interest in and to all material Permits issued by any Governmental Authority necessary to conduct the Business. Each of such Permits is described in Section 3.11 of the Disclosure Letter. To the Knowledge of the Seller, no loss or termination of any such Permit is pending, threatened or reasonably foreseeable, other than expiration in accordance with the terms thereof of Permits that may be renewed in the ordinary course of business without lapsing.

Section 3.12 Financial Statements. Attached hereto as Exhibit D are true and complete copies of: (i) the consolidated audited balance sheet of Parmalat USA Corporation and subsidiaries as of December 28, 2002 and December 29, 2001 and the related audited statements of operations and cash flow for the years then ended; (ii) the (A) unaudited consolidating balance sheets of Parmalat USA Corporation and subsidiaries as of December 27, 2003, (B) the unaudited consolidated statement of earnings of Parmalat USA Corporation and subsidiaries for the year then ended, and (C) the unaudited consolidated statement of cash flows of Parmalat USA Corporation and subsidiaries for the year then ended, in each case as regularly prepared in the ordinary course of business by the management of the Company (the "**2003 Management Financial Statements**"); and (iii) the (A) unaudited consolidating balance sheet of Parmalat USA Corporation and subsidiaries as of May 22, 2004, (B) the unaudited consolidated statement of earnings of Parmalat USA Corporation and subsidiaries for the month then ended and (C) the unaudited consolidated statement of cash flows of Parmalat USA Corporation and subsidiaries for the month then ended, in each case as regularly prepared in the ordinary course of business

by the management of the Company (the "**2004 Period Financial Statements**"). Subject to the matters discussed in Section 3.12 of the Disclosure Letter, the 2003 Management Financial Statements and the 2004 Period Financial Statements present fairly in all material respects the financial condition of the Seller at the date specified and the results of its operations and cash flows for the period specified and have been prepared in accordance with U.S. generally accepted accounting principles, consistently applied ("**GAAP**"), from the books and records of the Seller, which accurately and fairly reflect in all material respects the transactions of, acquisition and dispositions of assets by, and incurrence of Liabilities by the Seller, except that the 2003 Management Financial Statements and 2004 Period Financial Statements are in the form regularly used by management for internal financial reporting purposes, do not contain the footnote and other supplemental disclosures required for financial statements by GAAP, do not reflect any normal year-end adjustments that may be made in respect of the subsequent commencement by the Seller of the Bankruptcy Cases and are not in the form in which audited financial statements of the Seller would appear if such financial statements were prepared.

Section 3.13 Absence of Certain Changes or Events. Since December 31, 2003 to the date hereof, except as set forth in Section 3.13 of the Disclosure Letter and except for the filing, pendency and other events in the Bankruptcy Cases, (i) the Seller has conducted the Business only in, and have not engaged in any material transaction other than according to, the ordinary course of business consistent with past practice and the commencement of the Bankruptcy Cases, (ii) there has not been any material physical damage, destruction or loss (whether or not covered by insurance) to any of the Acquired Assets and (iii) the Seller has not taken any action that would have been prohibited by Section 5.01.

Section 3.14 Environmental Matters. Except as set forth in Section 3.14 of the Disclosure Letter:

- (a) Intentionally omitted.
- (b) to the Knowledge of the Seller, there has been no actual or threatened judgment, action or proceeding, citation or written notice of violation against the Seller, relating to any material noncompliance with, or material liabilities or obligations pursuant to, Environmental Laws;
- (c) to the Knowledge of the Seller, there are no conditions or circumstances currently existing at the Real Property including the presence, release or disposal of any Hazardous Materials, that could reasonably be expected to result in the Purchaser incurring material liabilities or obligations pursuant to Environmental Laws; and
- (d) to the Knowledge of the Seller, the Seller has made available to the Purchaser all material assessments, audits, investigations, and sampling or similar reports (including summaries) relating to the environment, compliance with and liabilities pursuant to Environmental Laws, or the presence or release of any Hazardous Materials, to the extent available and relating to the Acquired Assets, the activities or operations of the Seller with respect to the Acquired Assets or the properties subject to the Assumed Contracts that are leases.

Section 3.15 Employee Matters.

(a) Set forth in Section 3.15(a) of the Disclosure Letter is a complete list of all current employees and any "leased employees" (within the meaning of Section 414(n) of the Code) of the Seller employed in the Business as of the most recent payroll date prior to the date of this Agreement, including the date of employment, current title and compensation rate, and date and amount of last increase in compensation rate and status (i.e., active, inactive, leave of absence, short- or long-term disability, etc.). There are no collective bargaining, union or labor agreements, contracts or other arrangements with any group of employees, labor union or employee representative affecting or relating to the Business or any employees thereof and there is no organization effort currently being made or, to the Knowledge of the Seller, threatened by or on behalf of any labor union, in each case with respect to any employees of the Business. Except as set forth in Section 3.15(a) of the Disclosure Letter, there has not occurred, and, to the Knowledge of the Seller, there is no basis for, any strike, material labor trouble, work stoppage, slow down or other interference with or impairment of the Business.

(b) Except as set forth in Section 3.15(b) of the Disclosure Letter, there are no unfair labor practice charges, arbitrations, grievances or complaints pending or, to the Knowledge of the Seller, threatened in writing against the Seller relating to the employment or termination of employment of any employee of the Business.

(c) Except as set forth in Section 3.15(c) of the Disclosure Letter, there are no material complaints, charges, administrative proceedings or claims against the Seller pending or, to the Knowledge of the Seller, threatened in writing to be brought or filed with any Governmental Authority based on or arising out of the employment (including the termination of such employment) by the Seller of any employee of the Business.

(d) The Seller is in compliance with all Applicable Laws relating to the employment of labor, independent contractors and "leased employees" (within the meaning of Section 414(n) of the Code) of the Business including all such Applicable Laws relating to wages, hours, collective bargaining, discrimination (including, but not limited to, based upon age, sex, marital status, race, national origin, disability or veteran status), civil rights, safety and health, workers' compensation and the collection and payment of employment Taxes, except where the failure to be so in compliance would not have a Material Adverse Effect.

(e) As of the date of this Agreement, the Seller has not incurred in connection with the Business any material Liability or obligation under WARN or similar state Applicable Laws, which remains unpaid or unsatisfied.

(f) Except as set forth in Section 3.15(f) of the Disclosure Letter, the employment of each employee of the Business is at-will, and the Seller has the right to terminate such employees' employment, and such employees have the right to resign their employment, at any time, without reason or cause, and without the requirement for the payment to any such terminated employee of any additional severance or other benefits as a result of such termination. Section 3.15(f) of the Disclosure Letter lists all written (and includes a summary of all legally binding oral) employment and consulting agreements to which any employee of the Business is a party or by which such employee is bound. Complete and correct copies of the agreements or arrangements listed and summarized on Section 3.15(f) of the Disclosure Letter have been provided or made available to the Purchaser prior to the date hereof.

(g) To the Knowledge of the Seller, the employment by the Purchaser of any employees of the Business following the Closing Date does not and will not conflict with, breach, violate or cause a default under any Contract or Judgment, including any non-competition or non-solicitation agreements, to which the Seller is a party or by which they are bound.

(h) Except as set forth in Section 3.15(h) of the Disclosure Letter, there are no Liabilities, whether absolute or contingent, of the Seller relating to workers compensation benefits relating to the Business that are not fully insured against by a bona fide third-party insurance carrier (except for deductibles, retentions or rights to retroactive premium adjustment that may be provided for in the respective policy). Except as set forth in Section 3.15(h) of the Disclosure Letter, with respect to each workers' compensation arrangement relating to the Business that is funded wholly or partially through an insurance policy or public or private fund, all premiums required to have been paid to the date of this Agreement under the insurance policy or fund have been paid, all premiums required to be paid under the insurance policy or fund through the Closing will have been paid on or before the Closing and, as of the Closing, there will be no material Liability of the Seller under any such insurance policy, fund or ancillary agreement with respect to such insurance policy or fund in the nature of a retroactive rate adjustment, loss sharing arrangement or other actual or contingent material Liability arising wholly or partially out of events occurring prior to the Closing.

(i) For the avoidance of doubt, the foregoing representations and warranties set forth in this Section 3.15 relate solely to the Business and its employees.

#### Section 3.16 Employee Benefits.

(a) Section 3.16(a) of the Disclosure Letter contains a list of each "employee pension benefit plan" (as defined in Section 3(2) of ERISA and including any multi-employer plan), each "employee welfare benefit plan" (as defined in Section 3(1) of ERISA), whether or not subject to ERISA and whether or not maintained in the United States, and each stock option or other equity-based, bonus, incentive or deferred compensation, severance, retention or change in control, sick leave, vacation pay and personal leave programs or other welfare or material fringe benefit (as defined in section 132 of the Code) or compensation agreement, plan, program or policy maintained, contributed to or required to be contributed to or with respect to which there may be any Liability by the Seller or any Person that, together with the Seller, is treated as a single employer under Section 414(b), (c) or (m) of the Code or which is currently in effect for the benefit of any individual who is employed by a Seller in respect of the Business and under which any of the individuals listed in Section 3.15(a) of the Disclosure Letter have earned, are earning, may potentially earn, or are receiving compensation, benefits or coverage (collectively, the "**Benefit Plans**").

(b) With respect to each Benefit Plan, a complete and correct copy of each of the following documents (if applicable) has been provided or made available to the Purchaser: (i) the most recent plan and related trust documents (or, if there is no plan or trust document, any written description of the plan, program, or policy that is used in administering the plan, program or policy) and all amendments thereto; (ii) the most recent summary plan description (or, if there is no summary plan description, any written description of the plan, program or policy that is

used to communicate the plan, program or policy to employees), and all related summaries of material modifications; (iii) the most recent Form 5500 (including schedules); (iv) the most recent IRS determination letter; (v) the most recent actuarial reports (including for purposes of Financial Accounting Standards Board report nos. 87, 106 and 112); and (vi) any filings or other documentation concerning any Benefit Plan provided to any Governmental Authority.

(c) Except as set forth in Section 3.16(c) of the Disclosure Letter, the Seller is not contributing to nor is it obligated to contribute to, nor has it contributed to nor was it during the preceding six years obligated to contribute to, any "multiemployer plan" within the meaning of Section 3(37) or 4001(a)(3) of ERISA.

(d) Except as set forth in Section 3.16(d) of the Disclosure Letter, each Benefit Plan that a Seller has treated as qualified under Section 401(a) of the Code is the subject of a "favorable determination letter" (within the meaning of Internal Revenue Service Revenue Procedure 2003-44) that considers "GUST" (within the meaning of Internal Revenue Service Revenue Procedure 2003-44) and with respect to each such Benefit Plan a Seller adopted an EGTRRA good faith amendment (within the meaning of Internal Revenue Service Revenue Procedure 2003-44) within the period described in Internal Revenue Service Notice 2001-42.

Section 3.17 Non-Competition Agreements. Except as set forth in Section 3.17 of the Disclosure Letter, to the Seller's Knowledge, the Seller is not a party to any agreement of current effect that purports to restrict or prohibit it, directly or indirectly, from engaging in the Business or any other business in any geographical location or which contains any "exclusivity" or "most favored nation" provisions (as such terms are commonly understood in the Business).

Section 3.18 Brokers. No Person is entitled to any brokerage, financial advisory, finder's, or similar fee or commission from the Seller in connection with the Contemplated Transactions, or if the Closing does not occur, except Lazard Freres & Co. LLC, whose fee for services rendered in connection with this Agreement will be paid by the Seller or an Affiliate thereof in connection with the Closing and for which neither Purchaser nor any Designee shall have any Liability of any kind.

Section 3.19 Contracts.

(a) Except as disclosed in Section 3.19(a) of the Disclosure Letter, the Seller is not a party to any agreement of current effect (other than this Agreement) for the acquisition, sale, license or lease of any Acquired Assets (by merger, purchase, syndication or sale of assets or otherwise).

(b) Section 3.19(b) of the Disclosure Letter contains a list of all Contracts that (i) individually or taken together with related Contracts, require payments by the Seller of \$100,000 or more over the next twelve months other than Real Property leases or (ii) are otherwise material to the conduct of the Business such that the absence of such Contracts from the Business would have a Material Adverse Effect (each, a "**Covered Contract**"). True and complete copies of each such written Covered Contract have been heretofore made available to the Purchaser. The Seller has not received written notice, and to the Seller's Knowledge it is not the case, that any party to any Covered Contract has demanded accelerated payment or declared

a default thereunder or intends to cancel, terminate or refuse to renew such Covered Contract. Each such Covered Contract is a valid, binding and enforceable obligation of such parties in accordance with its terms, except (i) to the extent excused by or unenforceable as a result of the commencement or pendency of the Bankruptcy Cases or the application of any provision of the Bankruptcy Code (but only to the extent such excuse, lack of enforceability or application of law will continue to apply in favor of the Purchaser and its successors and assigns following Closing) and (ii) to the extent that the failure of such Contracts to be valid and binding would not have a Material Adverse Effect.

(c) The estimates of the Cure Amounts as of the date hereof and as of the Closing Date set forth on Section 1.01(i) of the Disclosure Letter for the Contracts identified on Section 1.01(i) of the Disclosure Letter are derived from the books and records of the Seller and, except as set forth in such section, to the best of Seller's Knowledge, such Cure Amounts are materially correct.

(d) At the Closing, there will be no rebate or slotting fee obligations under any Assumed Contract (except any approved by the Purchaser), and, to the Knowledge of the Seller, the only exclusivity, most-favored nation or non-competition arrangements (in each case, as such term is commonly understood in the Business) in any Contracts identified on Section 1.01(i) of the Disclosure Letter are identified in such section.

#### Section 3.20 Intellectual Property.

(a) Set forth in Section 3.20 of the Disclosure Letter is a complete and accurate list of all Intellectual Property material to the Business. Section 3.20 of the Disclosure Letter identifies, with respect to the Intellectual Property listed thereon, the owner of such Intellectual Property, any user of such Intellectual Property other than the owner and the component of the Business, and any business of the Seller other than the Business that uses such Intellectual Property. To the Knowledge of Seller, the Seller owns or has a valid right to use all the Intellectual Property used in the Business, free and clear of all Encumbrances.

(b) The Intellectual Property owned by the Seller and used in the Business, and, to the Knowledge of the Seller, any other Intellectual Property used by the Seller in the Business, is subsisting, in full force and effect, and has not been cancelled, expired, or abandoned, and, to the Knowledge of the Seller, is valid and enforceable. Except as listed on Section 3.20 of the Disclosure Letter, no claims have been brought or threatened against the Seller challenging its use of the Intellectual Property used in the Business.

(c) As currently conducted, the conduct of the Business does not infringe on or otherwise violate the rights or claimed rights of any Person, and the Seller is not obligated to pay any royalty or other consideration to any Person in connection with the use of any Intellectual Property in the Business, except as set forth in the licenses identified on Section 3.20 of the Disclosure Letter. To the Knowledge of the Seller, no other Person is infringing or otherwise violating the rights of the Seller in any of its Intellectual Property.



(d) The Acquired Intellectual Property, together with the Parmalat Name Rights and the DASI Technology, is all of the intellectual property used in or necessary to the continued operation of the Business as currently conducted.

(e) The consummation of the Contemplated Transactions will not result in the loss or impairment of any of Seller's rights to own or use any Acquired Intellectual Property used in the Business as such rights are transferred to the Purchaser as part of the Contemplated Transactions.

(f) To the Seller's Knowledge, the Parmalat Name Rights License and the DASI Technology Agreement are the only agreements required by the Purchaser from Parmalat S.p.A. or any of its Affiliates, and no other rights of Parmalat S.p.A. or any of its Affiliates are necessary for the continued operation of the Business as currently conducted or contemplated to be conducted.

Section 3.21 Tax Matters. Except as set forth in Section 3.21 of the Disclosure Letter:

(a) the Seller has (i) duly filed (or there has been filed on its behalf) with the appropriate Governmental Authorities all Tax Returns required to be filed by it with respect to the Business or the Acquired Assets and all such Tax Returns are complete, true and correct and (ii) duly paid (or there has been paid on its behalf) all Taxes due and payable or claimed by any Taxing Authority to be due and payable with respect to the Business or the Acquired Assets;

(b) there are no outstanding Liens for Taxes in respect of any Acquired Asset and no claims are being asserted with respect to any Tax that could result in a Lien for Taxes in respect of any Acquired Asset or in any Liability of the Purchaser or any Designee for such Tax;

(c) the Seller has duly withheld and paid over to the appropriate Taxing Authority all amounts required to be so withheld or paid over with respect to the Business; it being understood that, notwithstanding the foregoing and assuming that any such withholding was required under the circumstances, no such withholding has been made with respect to licenses from Affiliates of the Seller, which have been provided to the Seller on a royalty-free basis;

(d) no federal, state, local, or foreign audits or other administrative proceedings or court proceedings are presently pending with regard to any Taxes or Tax Returns of the Seller with respect to the Business;

(e) the Tax Returns of the Seller that include the Business or the Acquired Assets have been examined by the appropriate Taxing Authorities (or the applicable statutes of limitation for the assessment of Taxes for such periods have expired) for all periods through and including those identified in Section 3.21(e) of the Disclosure Letter, and no deficiencies were asserted as a result of such examinations that have not been resolved and fully paid;

(f) the Seller has not granted any requests, agreements, consents, or waivers to extend the statutory period of limitations applicable to the assessment of any Taxes with respect to any Tax Returns of such Seller that include the Business or the Acquired Assets; and

(g) Section 3.21(g) of the Disclosure Letter sets forth all jurisdictions in which the Seller is required to file income, franchise or sales Tax Returns in connection with the Business.

Section 3.22 Insurance. Section 3.22 of the Disclosure Letter lists the insurance policies (including the premiums payable in connection therewith and the amount of the coverage provided thereunder) maintained by the Seller with respect to the Acquired Assets and the Business in accordance with customary industry practice for similarly-situated companies. All of such policies are in full force and effect and the Seller is not in material default of any provision thereof.

Section 3.23 GE Capital Corporation Consent. To the extent required by the Secured Super Priority Debtor in Possession Credit Agreement dated as of February 24, 2004, by and among the Seller, General Electric Capital Corporation, as administrative agent, and the other parties thereto, the Seller has obtained the written consent of General Electric Capital Corporation consenting to the Seller's execution of this Agreement and consummation of the Contemplated Transactions in accordance with the terms hereof and such consent continues to be in full force and effect.

Section 3.24 Bidding Procedures; Qualified Bidder Status. The Bidding Procedures Order entered by the Bankruptcy Court, on August 5, 2004 attached hereto as Exhibit A (the "***Bidding Procedures Order***") remains in effect and has not been modified. The Bidding Procedures annexed to and made part of the Bidding Procedures Order remain in effect without modification and are the procedures that are being utilized by the Seller in connection with the Contemplated Transactions. The Purchaser is a Qualified Bidder and this Agreement represents a Qualified Bid within the meaning of the Bidding Procedures Order.

## **ARTICLE IV**

### **REPRESENTATIONS AND WARRANTIES OF THE PURCHASER**

The Purchaser represents and warrants to the Seller as follows:

Section 4.01 Organization. The Purchaser is a corporation validly existing and in good standing under the laws of Delaware.

Section 4.02 Authority Relative to this Agreement. The Purchaser has the requisite corporate power and authority to enter into this Agreement and each of the Purchaser and its Designees has the requisite power and authority to carry out its obligations hereunder. The execution, delivery, and performance of this Agreement by the Purchaser and the consummation by each of the Purchaser and its Designees of the Contemplated Transactions have been duly authorized by all requisite corporate actions. This Agreement has been duly and validly executed and delivered by the Purchaser and (assuming this Agreement constitutes a valid and binding obligation of the Seller) constitutes a valid and binding agreement of the Purchaser, enforceable against the Purchaser in accordance with its terms, subject to applicable bankruptcy, reorganization, insolvency, moratorium, and other laws affecting creditors' rights generally from time to time in effect and to general equitable principles.

Section 4.03 No Violations. Neither the execution, delivery, or performance of this Agreement by the Purchaser, nor the consummation by the Purchaser of the Contemplated Transactions, nor compliance by the Purchaser with any of the provisions hereof, will conflict with or result in any breach of any term or provision of, or violate or constitute a default under the certificate of incorporation or bylaws of the Purchaser or under any material agreement, order or Law to which the Purchaser is a party or by which the Purchaser is in any way bound or obligated.

Section 4.04 Consents and Approvals. Except for Governmental Requirements, no consent, approval, or authorization of, or declaration, filing, or registration with, any domestic or foreign government or regulatory authority is required to be made or obtained by the Purchaser in connection with the execution, delivery, and performance of this Agreement and the consummation of the Contemplated Transactions.

Section 4.05 Financing. As of the date hereof the Purchaser has, and on the Closing Date it will have, access to sufficient funds to deliver the Cash Consideration to the Seller.

## **ARTICLE V**

### **CERTAIN COVENANTS AND AGREEMENTS OF THE SELLER AND THE PURCHASER**

Section 5.01 Conduct of Business. Subject to any obligations as a debtor-in-possession under the Bankruptcy Code, prior to the Closing Date, the Seller shall use its commercially reasonable efforts to preserve intact and operate in the ordinary course the Business, including meeting its post-Petition Date obligations as they become due, in each instance taking into account the filing of the Petitions, the directives of the Bankruptcy Court and the additional covenants and agreements set forth herein; provided that the foregoing shall not prevent the Seller from rejecting Contracts that are not Assumed Contracts being assumed by the Purchaser hereunder. Except as otherwise contemplated under this Agreement or set forth in Section 5.01 of the Disclosure Letter, from the date hereof until the Closing Date, without the prior written consent of the Purchaser:

(a) the Seller shall not adopt or propose any change in its certificate of incorporation or bylaws (or similar organizational documents);

(b) the Seller shall not engage in any transaction outside the ordinary course of business, including by making any material expenditure, investment or commitment or entering into any material agreement or arrangement of any kind;

(c) the Seller shall not merge or consolidate with any other Person;

(d) in respect of the Business, the Seller shall not acquire assets of any other Person or sell any Acquired Assets to any other Person other than in the ordinary course of business;

(e) in respect of the Business, the Seller shall not enter into any collective bargaining agreement;

(f) the Seller shall not permit the loss, lapse or abandonment of any rights in any Intellectual Property that is part of the Acquired Assets;

(g) in respect of the Business, the Seller shall not establish any new agreement, plan or policy relating to employees or employment matters of the Seller, or modify or increase the compensation or benefits under, or promise to establish, modify or increase the compensation or benefits under, any existing agreement, plan or policy, or otherwise increase the compensation payable to any directors, officers, or employees of the Seller other than pursuant to any existing agreement, plan or policy identified in Section 3.15 of the Disclosure Letter or Section 3.16 of the Disclosure Letter and other than reasonable adjustments to compensation of a current employee in connection with an expansion in the responsibilities of an employee after the date hereof;

(h) in respect of the Business, the Seller shall not enter into any new agreement, or modify or amend any existing agreement, in respect of any agreement not to compete, any "most favored nation" provision (as such term is commonly understood in the Business), any "exclusivity" provision (as such term is commonly understood in the Business) or any similar arrangement;

(i) in respect of the Business, the Seller shall not make a Material Decision;

(j) the Seller so bound shall not agree or commit to do any of the foregoing.

In addition, in respect of the Business, the Seller shall:

(a) maintain books of account and records in the usual, regular and ordinary manner, and consistent with past practices;

(b) maintain inventory levels in the usual, regular and ordinary manner, and consistent with past practice; and

(c) maintain all insurance policies and all Permits maintained or required in connection with the Business.

Section 5.02 Access and Information. The Seller shall afford to the Purchaser and to the Purchaser's financial advisors, legal counsel, accountants, consultants and other authorized representatives reasonable access without unreasonable disruption to the Business throughout the period prior to the Closing Date to all its books, documents, records, properties, facilities and personnel that relate to the Business, the Acquired Assets and the Assumed Liabilities and, during such period, shall furnish as promptly as practicable to the Purchaser (a) a copy of each report, appraisal, statement, schedule, pleading and other document filed or received by them pursuant to the requirements of federal or state securities laws or filed with, submitted, presented to or otherwise made available by the Seller to the Bankruptcy Court and (b) all other information as the Purchaser reasonably may request in furtherance of the Contemplated Transactions; subject, however, to Seller's compliance with any confidentiality

obligations with respect to documents and other records which Seller has with third parties; and provided, however, that the Seller shall be required to provide to the Purchaser information regarding Bids only to the extent provided by the Bidding Procedures Order. Any and all information obtained by the Purchaser or the Purchaser's financial advisors, legal counsel, accountants, consultants and other authorized representatives pursuant to this Section 5.02 shall be subject to and maintained in compliance with the Confidentiality Agreement. No investigation pursuant to this Section 5.02 shall affect any representations or warranties made herein or the conditions to the obligations of the respective parties to consummate the Contemplated Transactions. The Confidentiality Agreement shall continue in full force and effect in accordance with its terms after the execution of the Agreement and upon and after the termination hereof, subject, however, to Section 5.08 in connection with the Parties' execution and performance of this Agreement and consummation of the Contemplated Transactions.

Section 5.03 Filings and Other Governmental Actions. Subject to the terms and conditions herein provided, as promptly as practicable, the Seller and the Purchaser shall (a) promptly make all filings and submissions required of it under the HSR Act, (b) use all commercially reasonable efforts to cooperate with each other in (i) determining which filings are required to be made prior to the Closing Date with, and which material consents, approvals, permits, or authorizations are required to be obtained prior to the Closing Date from, Governmental Authorities of the United States and foreign jurisdictions in connection with the execution and delivery of this Agreement and the consummation of the Contemplated Transactions; provided, however, that the Purchaser and the Seller agree that none of them will make any voluntary filing under applicable foreign antitrust laws or regulations unless advised by legal counsel in such jurisdiction that the failure to make a filing could reasonably be expected to result in a Material Adverse Effect or otherwise be in violation of Applicable Laws, and (ii) timely making all such filings and timely seeking all such material consents, approvals, permits, or authorizations, (c) subject to the second sentence of Section 5.07, comply at the earliest practicable date with any request under the HSR Act or any law or regulation pertaining to any filing, consent, approval, permit or authorization made or sought in accordance with clause (b)(ii) of this sentence for additional information, documents or other materials received by it and (d) use all commercially reasonable efforts to take, or cause to be taken, all other action and do, or cause to be done, all other things reasonably necessary or appropriate to consummate the Contemplated Transactions, as soon as practicable, in accordance with law and any applicable rules, regulations or orders of any Governmental Authority. In connection with the foregoing, the Seller will promptly provide the Purchaser, and the Purchaser will promptly provide the Seller, with copies of all correspondence, filings, or communications (or memoranda setting forth the substance thereof) between such party or any of its representatives, on the one hand, and any Governmental Authority or members of its staff, on the other hand, with respect to all filings and submissions required hereunder.

Section 5.04 Supplemental Disclosure. Prior to the Closing but as soon as practicable after the discovery thereof, the Seller will supplement or amend each Section of the Disclosure Letter with respect to any matter that, to the Knowledge of the Seller, arises or is discovered after the date hereof that, if existing or known at the date hereof would have been required to be set forth or listed in the Disclosure Letter, provided, however, that for purposes of determining the satisfaction of the condition contained in Section 7.03(a) and of the Purchaser's right of termination pursuant to Section 8.01(d)(iii), and for purposes of determining the

Purchaser's rights under Section 8.02, any and all such supplements and amendments shall be disregarded.

Section 5.05 Assistance with Permits and Assignments: Unassignable Contracts.

(a) The Seller will use commercially reasonable efforts to assist the Purchaser in obtaining any Permits, or any consents to assignment related thereto, that the Purchaser will require in connection with the continued operation of the Business.

(b) The Seller will use commercially reasonable efforts to request and obtain the consent of any counterparty to an Assumed Contract that is required in order for the Seller to assign to the Purchaser (or a Designee), and for the Purchaser (or a Designee) to assume, any Assumed Contract as provided herein.

(c) The Seller will use its commercially reasonable efforts to cause the Parmalat Name Rights License and the DASI Technology Agreement (providing when and how the Purchaser will become entitled to use the Parmalat Name Rights and the DASI Technology), to be effective, only at the Closing, to be executed and delivered to the Purchaser (or its Designee) by the respective parties thereto other than the Purchaser (or its Designee) no later than one Business Day prior to the Closing Date.

(d) If any consent required for the assignment of an Assumed Contract as provided hereby is not obtained by the Closing, at the Closing, in lieu of the assignment of such Assumed Contract (such contract, an "**Unassignable Contract**"), the beneficial interest in and to each Unassignable Contract will in any event pass to the Purchaser (or its Designee) at the Closing, and the Seller covenants and agrees to use its commercially reasonable efforts to cooperate with the Purchaser in establishing and maintaining any reasonable arrangement (including a sub-contract relationship) designed to provide the Purchaser (or its Designee) with all of the benefits under such Unassignable Contract that the Purchaser (or its Designee) would have received if such consent had been obtained against the undertaking by the Purchaser to perform all obligations of the applicable Seller under the Unassignable Contract as the agent of the applicable Seller. Such reasonable arrangement may include (i) the subcontracting, sublicensing or subleasing to the Purchaser (if permitted under the terms of the Unassignable Contract and any contract to which Seller or the Acquired Asset at issue is subject) of any and all rights of the Seller against the other party under such Unassignable Contract and (ii) the enforcement by the Seller for the benefit (and at the cost) of the Purchaser (or its Designee) of any rights under the Unassignable Contract. If the Purchaser shall not assume all Assumed Liabilities under any Unassigned Contract, the Purchaser (or its Designee) shall not be entitled to any beneficial interest in such Unassigned Contract and such Unassigned Contract and any beneficial interest in such Unassigned Contract shall automatically be excluded from treatment as an Acquired Asset (without any other adjustment in the Consideration); conversely, if the Purchaser (or its Designee) is unable to receive substantially all of the rights and benefits of such Unassignable Contract, the Purchaser shall not be responsible for the related Assumed Liability.

(e) Notwithstanding any other provision of this Agreement, the Seller will not assign (and this Agreement shall not constitute an agreement to assign) in whole or in part any agreement or provide any benefit under any agreement if such assignment, partial assignment or

attempted assignment or the provision of such benefit would constitute a breach thereof unless otherwise permitted by Section 365 of the Bankruptcy Code.

(f) For purposes of this Section 5.05, the Seller in using its commercially reasonable efforts to obtain any Permit or consent to assignment thereof or any consent to the assignment and assumption by the Purchaser (or a Designee) of any Assumed Contract or to provide to the Purchaser (or a Designee) any benefit under an Unassignable Contract (subject to Purchaser's assumption of all Assumed Liabilities associated therewith) shall not be required to make any payment (other than customary filing fees payable to a Governmental Authority customarily paid by a seller rather than a purchaser), give any concession or provide any benefit to any Person (other than a benefit that is without cost to the Seller), except with respect to any payment required under the Bankruptcy Code in order to cure any breach of an Assumed Contract in connection with the Purchaser's assumption thereof, the cost of which cure shall be borne by the Seller (to the extent provided hereby).

Section 5.06 Fulfillment of Conditions by the Seller. The Seller will take commercially reasonable steps to cause to be fulfilled the conditions precedent to the Purchaser's obligations to consummate the transactions contemplated hereby that are dependent on the actions of the Seller, including, but not limited to, any steps necessary to provide adequate assurance of future performance within the meaning of section 365 of the Bankruptcy Code to any party to an Assumed Contract, subject to the limitations of Section 5.05 with respect to the Purchaser's obtaining any Permits and assuming any Assumed Contracts, and to disclose in any manner that would result in such information not becoming publicly available, confidential information about the Seller or its Affiliates as needed to comply with any request or requirement imposed by the Department of Justice (the "**DOJ**") or any other Governmental Authority in connection with the HSR Act, if applicable, or any other Applicable Law in order for the waiting period under the HSR Act to expire or to obtain any approval for the Contemplated Transactions or to avoid any prohibition by any Governmental Authority of the Contemplated Transactions.

Section 5.07 Fulfillment of Conditions by the Purchaser. The Purchaser will take commercially reasonable steps to cause to be fulfilled the conditions precedent to the obligations of the Purchaser to consummate the transactions contemplated hereby that are dependent on the actions of the Purchaser, including, but not limited to, commercially reasonable steps necessary to provide adequate assurance of future performance within the meaning of section 365 of the Bankruptcy Code to any party to an Assumed Contract; provided, however, that the Purchaser will not be required to make any deposits or payment or provide any benefit to any Person in connection with the foregoing. The Purchaser will use its commercially reasonable efforts to comply with any request or requirement imposed by the DOJ or any other Governmental Authority in connection with the HSR Act, if applicable, or any other Applicable Law in order for the waiting period under the HSR Act to expire or to obtain any approval for the Contemplated Transactions or to avoid any prohibition by such Governmental Authority of the Contemplated Transactions, including any request or requirement: (i) to disclose in any manner that would result in such information not becoming publicly available, confidential information about the Purchaser or its Affiliates; (ii) to dispose of any assets or operations of the Purchaser or its Affiliates (including any assets or operations acquired or to be acquired by the Purchaser pursuant to this Agreement); or (iii) to comply with any restriction on the manner in which the

Purchaser or its Affiliates conduct their operations (including any operations acquired or to be acquired by the Purchaser pursuant to this Agreement), except for any such restriction that would be required to comply with any such requested requirement if doing so would have a material adverse effect on the financial condition or business prospects of the Purchaser after the consummation of the Contemplated Transaction.

Section 5.08 Public Announcements. The Purchaser and the Seller will cooperate with each other in the development and distribution of all news releases and other public disclosures relating to this Agreement and the Contemplated Transactions. Neither the Purchaser nor the Seller will issue or make, or allow to have issued or made, any press release or public announcement concerning the transactions contemplated by this Agreement without giving the other party a reasonable opportunity to comment on such release or announcement in advance, consistent with Applicable Laws, the Bankruptcy Court or any stock market requirements.

Section 5.09 Submission for Bankruptcy Court Approval

(a) This Agreement and the sale of the Acquired Assets to the Purchaser is subject to approval of the Bankruptcy Court as provided in this Agreement. On the timetables set forth below, the Seller shall (i) file with the Bankruptcy Court one or more motions, each in form and substance reasonably satisfactory to the Purchaser, and proposed orders, each in form and substance satisfactory to the Purchaser in its sole discretion, for the purpose set forth below in this Section 5.09, (ii) notify, as required by the Bankruptcy Code and the Bankruptcy Rules, all parties entitled to notice of such motions and orders (including all relevant Taxing Authorities), as modified by orders in respect of notice which may be issued at any time and from time to time by the Bankruptcy Court, and such additional parties as the Purchaser may reasonably request, and (iii) subject to the provisions of this Agreement, including the provisions of Article VIII, use commercially reasonable efforts to obtain Bankruptcy Court approval of such orders without any stay, modification, reversal or amendment adverse or unacceptable to the Purchaser or any Designee.

(i) Sale Order. As promptly as possible, but in no event later than September 16, 2004, the Seller shall file one or more motions (collectively, the "**Sale Motion**") and a proposed order, which shall be in the form attached hereto as Exhibit B (the "**Sale Order**"), with the Bankruptcy Court seeking the approval of the Bankruptcy Court pursuant to sections 105, 363, 365 and 1146 of the Bankruptcy Code of the transfers of the Acquired Assets to the Purchaser or one or more of its Designees and the assumption by the Seller and assignment to the Purchaser or one or more of its Designees of the Assumed Liabilities.

(b) The sale of all of the Acquired Assets to the Purchaser or one or more of its Designees pursuant to this Agreement and in the Contemplated Transactions must have been approved by order of the Bankruptcy Court pursuant to sections 363 and 365 of the Bankruptcy Code, pursuant to the Sale Order prior to the Closing. The Seller agrees to use its reasonable best efforts to cause the Bankruptcy Court to enter the Sale Order, which will contain, among other provisions reasonably requested by the Purchaser, the following provisions (it being



understood that certain of such provisions may be contained in either the findings of fact or conclusions of law to be made by the Bankruptcy Court as part of the Sale Order):

(i) the transfers of the Acquired Assets and the assignment of the Assumed Liabilities by the Seller to the Purchaser or one or more of its Designees (A) are or will be legal, valid and effective transfers, (B) vest or will vest the Purchaser or its Designees with all right, title and interest of the Seller in and to the Acquired Assets pursuant to section 363(f) of the Bankruptcy Code free and clear of all Encumbrances (other than Surviving Permitted Encumbrances and Encumbrances created by the Purchaser), whether known or unknown, including Encumbrances of any of the Seller's creditors, vendors, suppliers, employees, lessors or any other third party (collectively, the "**Potential Claimants**") and that neither the Purchaser nor any of the Purchaser's Affiliates or agents shall be liable in any way (as successor entity, derivatively or otherwise) for any claims that any of the Potential Claimants may have against the Seller, its Affiliates or the Business arising at or prior to the Closing and/or the Acquired Assets arising at or prior to the Closing, and that the Potential Claimants shall be permanently enjoined and restrained from the assertion and prosecution of any claims against the Purchaser, the Purchaser's Affiliates or any agent of the foregoing and the ownership, use and operation of the Acquired Assets, other than claims on the account of Assumed Liabilities, and (C) constitute transfers for reasonably equivalent value and fair consideration under the Bankruptcy Code and the Uniform Fraudulent Conveyance Act (7A part II, U.L.A. 2 (1999) or the Uniform Fraudulent Transfer Act (7A part II, U.L.A. 66 (1999) or any similar Laws of any state whose law is applicable to the Contemplated Transactions;

(ii) all Persons are enjoined from taking any action against the Purchaser, the Purchaser's Affiliates or any agent of the foregoing to recover any claim which such Person has solely against the Seller or any of the Seller's Affiliates;

(iii) the Bankruptcy Court retains exclusive jurisdiction to interpret, construe and enforce the provisions of this Agreement and the Sale Order in all respects and further to hear and determine any and all disputes between the Seller and/or the Purchaser, as the case may be, and any non-Seller party to, among other things, any Assumed Contracts, concerning inter alia, the Seller's assignment thereof to the Purchaser or its Designees under this Agreement of any Acquired Assets, and any claims against Seller arising under any agreements relating to Excluded Liabilities and any dispute between Purchaser and Seller as to their respective obligations with respect to any asset or Liability of or claim against Seller or otherwise arising hereunder; provided, however, that in the event the Bankruptcy Court abstains from exercising or declines to exercise jurisdiction with respect to any matter provided for in this clause (iv) or is without jurisdiction, such abstention, refusal or lack of jurisdiction shall have no effect upon and shall not control, prohibit or limit the exercise of jurisdiction of any other court having competent jurisdiction with respect to any such matter;

- (iv) the provisions of the Sale Order are nonseverable and mutually dependent;
- (v) the Contemplated Transactions are undertaken by the Purchaser and the Seller at arm's-length, without collusion and in good faith within the meaning of section 363(m) of the Bankruptcy Code, and such parties are entitled to the protections of section 363(m) of the Bankruptcy Code;
- (vi) a determination that approval of the terms and conditions of this Agreement and the contemplated Transactions are fair and reasonable;
- (vii) a determination that the Sale Order and consummation of the Contemplated Transactions are in the best interests of the Seller, its creditors and its bankruptcy estate and not selling the Acquired Assets free and clear of Encumbrances other than Surviving Permitted Encumbrances would adversely affect the Seller's bankruptcy estate;
- (viii) a determination that a sale of the Acquired Assets other than one free and clear of Encumbrances other than Surviving Permitted Encumbrances would be of substantially less benefit to the estate of the Seller,
- (ix) the Seller shall assign and transfer to the Purchaser or its Designees all of the Seller's right, title and interest (including common law rights) in and to all of its intangible property included among the Acquired Assets except as otherwise explicitly provided by this Agreement;
- (x) approves the Seller's assignment of the Assumed Contracts pursuant to sections 363 and 365 of the Bankruptcy Code;
- (xi) that any stay of orders authorizing the use, sale or lease of property, or the assignment of an executory contract or unexpired lease as provided for in Bankruptcy Rules 6004(g) or 6006(d) shall not apply to the Sale Order and that the Sale Order is immediately effective and enforceable;
- (xii) except for Assumed Liabilities and those COBRA liabilities explicitly assumed by the Purchaser under Section 5.16(d), that none of the Purchaser or its Affiliates (including any Designee) shall be liable, either directly or indirectly, as successor, transferee or otherwise, for any liabilities of the Seller or any of its Affiliates (whether under federal or State law or otherwise (including COBRA)) as a result of the sale of the Acquired Assets;
- (xiii) that none of the Purchaser or its Affiliates (including any Designee) shall have assumed liabilities of any Seller or its Affiliates other than the Assumed Liabilities;
- (xiv) that neither the Purchaser nor its Affiliates shall be liable, either directly or indirectly, as a successor, transferee or otherwise, for the Seller's

Taxes and pursuant to section 1146(c) of the Bankruptcy Code the exemption of the transactions contemplated herein from certain transfer Taxes applies;

(xv) that adequate assurance of future performance has been demonstrated by or on behalf of the Purchaser with respect to the Assumed Contracts;

(xvi) that any party that may have had the right to consent to the assumption or assignment of the Assumed Contracts is deemed to have consented to such assumption and assignment as required by section 365(c) of the Bankruptcy Code if it fails to object to such assumption or assignment;

(xvii) a determination of amounts necessary to "cure" (within the meaning of section 365(b)(1) of the Bankruptcy Code) all "defaults" (within the meaning of section 365(b) of the Bankruptcy Code) under the Assumed Contracts and a directive that the Seller pay the related Cure Amounts as and to the extent provided by this Agreement;

(xviii) that there shall be no rent accelerations, assignment fees, increases or any other fees charged to the Purchaser or its Affiliates (including any Designee) as a result of the Seller's assumption or assignment to the Purchaser or its Designees of the Assumed Contracts, and that the validity of such assumption or assignment shall not be affected by any dispute between the Seller or any of its Affiliates and any counterparty to any Assumed Contract and that the Assumed Contracts, upon assignment to the Purchaser or its Designees, shall be deemed valid and binding and in full force and effect in accordance with their terms; and

(xix) that the so-called "bulk-sale" laws in all necessary jurisdictions are waived or inapplicable as to the Contemplated Transaction and the transactions contemplated herein are deemed to be under or in contemplation of a plan to be confirmed under section 1129 of the Bankruptcy Code.

(c) If the Sale Order or any other order of the Bankruptcy Court relating to this Agreement shall be appealed by any Person (or a petition for certiorari or motion for rehearing, reargument or stay shall be filed with respect thereto, including Purchaser or its Designee), the Seller agrees to, and to cause its Affiliates to, take all steps as may be reasonable and appropriate to defend against such appeal, petition or motion, and the Purchaser agrees to cooperate in such efforts, at no cost to the Purchaser; provided, however, that, subject to the terms hereof, nothing herein shall preclude the parties hereto from consummating the Contemplated Transactions if the Sale Order shall have been entered and have not been stayed.

Section 5.10 Consultation; Notification; No Conflict. The Seller shall, and shall cause its Affiliates to, (a) consult with the Purchaser, prior to its submission to the Bankruptcy Court, on the form and substance of the Sale Order, the motions and all court submissions by the Seller relating to this Agreement, and (b) use its commercially reasonable efforts to cooperate with the Purchaser and its representatives in connection with the Sale Order and the bankruptcy

proceedings in connection therewith. Such cooperation shall include consulting with the Purchaser at the Purchaser's reasonable request concerning the status of such proceedings. The Seller further covenants and agrees that, to the extent that the Sale Order is entered approving this Agreement and the transactions contemplated hereby, the terms of any plan of reorganization or liquidation submitted by the Seller or its Affiliates to the Bankruptcy Court for confirmation shall not conflict with, supersede, abrogate, nullify, modify or restrict the terms of this Agreement and the rights of the Purchaser or its Affiliates hereunder, or in any way prevent or interfere with the consummation or performance of the transactions contemplated hereby, including, without limitation, any transaction that is contemplated by or approved pursuant to the Sale Order.

Section 5.11 Intentionally Omitted.

Section 5.12 Intentionally Omitted.

Section 5.13 Other Assets and Agreements. Upon the discovery by the Seller or any of its Affiliates of any item included within the definition of Acquired Assets but not transferred, conveyed or assigned to the Purchaser or any Designee, such Seller will, and will cause its Affiliates to, (a) deliver written notice to the Purchaser of the existence and non-transfer, non-conveyance or non-assumption of such item and provide the Purchaser with all the information in Seller's possession about, and with access to, such item as the Purchaser may reasonably request, and (b) if requested by the Purchaser, shall use commercially reasonable efforts to transfer, convey or assign to the Purchaser or its Designee (as specified by the Purchaser) such item in the manner and on the terms and conditions that would have been applicable as if it had originally been identified as an Acquired Asset under this Agreement, subject to Applicable Laws and the terms of this Agreement. For the avoidance of doubt, the provisions of this Section 5.13 will survive the Closing.

Section 5.14 Tax Returns and Filings; Payment of Taxes. On or before the Sale Hearing, the Seller shall give appropriate notice to any federal, state, local or other Taxing Authority to which the Purchaser could have Liability for withholding or paying Taxes with respect to the conduct of the Business for any period or any portion of any period ending on or prior to the Closing Date, or with respect to the transfer of the Business or the Acquired Assets, notifying such Taxing Authority of the Contemplated Transactions and stating that any claim of such Taxing Authority arising out of actions prior to the Closing may be asserted only against the Cash Consideration delivered to the Seller at the Closing.

Section 5.15 Tax Matters. The parties agree that they will seek for all real property and personal property transfer, documentary, sales, use, registration, value-added and other similar Taxes (including interest, penalties and additions to Tax) incurred in connection with the Contemplated Transactions ("**Transfer Taxes**") assessable in the United States to be exempt to the maximum extent possible pursuant to section 1146 of the Bankruptcy Code. In the event that not all Transfer Taxes are so exempt, the Seller will be responsible for the payment of such non-exempt Transfer Taxes (the "**Seller's Transfer Taxes**").

Section 5.16 Employment and Benefit Plan Matters.

(a) Prior to the Closing (to be effective as of the Closing), the Purchaser will offer regular full-time or part-time employment, as applicable, to such full-time and part-time employees of the Seller who are employed in the operations of the Business (as identified in accordance with Section 3.15) as the Purchaser deems appropriate on terms and conditions of employment substantially comparable to those which are applicable to the Business employees on the date hereof and hired before January 1, 2004 ("**Business Employees**"). Business Employees who accept offers of employment made by the Purchaser pursuant to this Section 5.16(a) and who actually commence active employment with the Purchaser (or any Designee or Affiliate of the Purchaser) as of the Closing will be referred to herein as the "**Transferred Employees**"; provided, however, that any Business Employee who accepts a position with the Purchaser but who is not actively at work on the Closing Date on account of sickness, vacation or short-term disability will be deemed a "Transferred Employee" only upon his or her return to active employment with the Purchaser (or any Designee or Affiliate of the Purchaser) after the Closing Date. Nothing in this Section 5.16(a) will be deemed to require, however, that the employment of any Transferred Employee be continued for any specific period of time after the Closing Date or that the terms and conditions of employment will remain unchanged for any specific period of time after the Closing Date. Except as provided in Section 5.16(c), the Seller will be responsible for all liabilities and claims relating to any current or former employee of the Seller or its Affiliates arising on or prior to the time such Person becomes a Transferred Employee of the Purchaser or its Designee or Affiliates (including any liabilities arising under any Benefit Plan or other compensation program, arrangement or agreement of the Seller). The Seller will retain liability for all Benefit Plans maintained by the Seller or its Affiliates and no such Benefit Plans (or any liabilities thereunder) will be assumed by or transferred to the Purchaser. The Purchaser will provide any benefits promised by it under this Section 5.16 through benefit plans established or maintained by the Purchaser, it being understood that Transferred Employees shall receive under such plans for eligibility and vesting purposes credit for prior service to the Seller to materially the same extent as if such service had been provided to the Purchaser. The Seller shall make the employees of the Business available to the Purchaser, at reasonable times and in a manner intended not to disrupt ongoing operations, for the purpose of making employment offers to such employees. The Seller will and will cause its Affiliates to cooperate with the Purchaser to encourage employees of the Business to accept any offer of employment made by the Purchaser (or its Designee or Affiliates).

(b) The Purchaser shall make a sufficient number of offers of employment to the Business Employees to avoid the trigger of liability under WARN in respect of the Business. The Purchaser will be solely responsible for any notification and liability under WARN relating to any termination of Business Employees occurring on or after the Closing Date. The Seller will retain all Liability for any failure of the Seller or its Affiliates to comply with any of the requirements of WARN, including applicable notice requirements related to any "plant closing" or "mass layoff" (each as defined under WARN) occurring as a result of action taken by the Seller prior to or after the Closing Date and not incident to the Contemplated Transactions. The Purchaser will provide the Seller with copies of all notices to be given to employees subject to the Seller's consent, which shall not be unreasonably withheld, regarding the Contemplated Transactions as promptly as practicable (and in the case of notices required by WARN or other Applicable Laws at least three Business Days) in advance of giving such notice to employees.

(c) The Purchaser will be responsible for all liabilities and claims arising under any Benefit Plan for sick leave, vacation pay and personal leave programs for a Transferred Employee arising on or prior to the date such Person becomes a Transferred Employee of the Purchaser or its Designee or Affiliates, and the Seller will be responsible for all other liabilities and claims under all Benefit Plans relating to any current or former employee of the Seller or its Affiliates arising on or prior to the date such Person becomes a Transferred Employee of the Purchaser or its Designee or Affiliates. No such Benefit Plans (or any other liabilities thereunder) will be assumed by or transferred to the Purchaser.

(d) The Seller will be responsible for providing continuation coverage as required by Section 4980B(f) of the Code and Part 6 of Title I of ERISA or any similar law ("**COBRA**"), under a group health plan to be maintained by the Seller (or a successor) (if necessary, exclusively for such purpose) to all employees of such Seller and its Affiliates, and other qualified beneficiaries under COBRA with respect to such employees, who have a COBRA qualifying event (due to termination of employment with such Seller or otherwise) prior to or in connection with the Contemplated Transactions or otherwise. The Purchaser or its Designee shall be responsible for any COBRA obligations in respect of Transferred Employees with respect to qualifying events that occur after the Closing Date.

(e) No provision of this Agreement will create any third party beneficiary or other rights in any employee or former employee (including any beneficiary or dependent thereof) of the Seller in respect of continued employment (or resumed employment) with either the Business, the Purchaser or any of its Affiliates, and no provision of this Agreement will create any such rights in any such Persons in respect of any benefits that may be provided, directly or indirectly, under any plans of the Seller and its Affiliates or any plan or arrangement which may be established or maintained by the Purchaser or any of its Affiliates. No provision of this Agreement will constitute a limitation on rights to amend, modify or terminate any such plans or arrangements of the Purchaser or any of its Affiliates.

(f) To the extent any other provision of this Agreement is inconsistent with the provisions of this Section 5.16, the provisions of this Section 5.16 will control.

(g) Any action required to be taken under this Section 5.16 by the Seller may be taken by an Affiliate of the Seller and any action required to be taken under this Section 5.16 by the Purchaser may be taken by an Affiliate of the Purchaser.

(h) The "accrued benefit" within the meaning of Section 411(a)(7) of the Code of each Transferred Employee under any Benefit Plan sponsored by a Seller will become 100% vested on the Closing Date.

Section 5.17 Cooperation Regarding Collection of Receivables; Parmalat Receivables Purchase Agreement; Payment of Trade Accounts Payable of the Business.

(a) The Purchaser agrees to use reasonable efforts for a period of 90 days after the Closing Date to collect the accounts receivables of the Seller that are created with respect to sales of products by the Seller before the Closing at no cost to the Seller (the "***Seller Accounts Receivables***"). The Purchaser agrees that it will perform all cash application functions in

accordance with paragraph (f) of this Section 5.17 in connection with the collection of such Seller Accounts Receivables and pay daily or cause to be paid daily to the Seller (and until so paid, shall be held in trust for the Seller) all sums received by the Purchaser in respect of or on account of any such Seller Accounts Receivables, and allow the Seller to audit, access and copy any records in connection with such cash application functions and collection activities (provided that such are performed in accordance with the provisions of Section 6.02 hereof). Furthermore, during this 90 day period, (x) on a weekly basis the Purchaser shall provide a weekly accounts receivable aging of all Seller Accounts Receivables, and (y) the Purchaser shall provide to the Seller, promptly after request by the Seller, such other reports or information as to the Seller Accounts Receivables as the Seller may from time to time reasonably request. After the expiration of the 90 day period provided for by this section, the Purchaser shall transfer to the Seller all files and records in connection with the Seller Accounts Receivables and the Purchaser shall thereafter have no further obligations with respect to such files and records; provided, that nothing in this sentence shall relieve the Purchaser of its other obligations under this Section 5.17 (including, without limitation, those under the first and second sentences of this clause (a) and those under clause (c) of this Section 5.17).

(b) The Seller agrees that the Purchaser shall have the right and authority to collect for its own account or the account of its Affiliates all accounts receivables with respect to the Acquired Assets that are created with respect to sales of products by the Purchaser after the Closing. The Seller agrees that it will promptly pay or cause to be paid to the Purchaser all sums received by the Seller in respect of or on account of any such accounts receivables with respect to the Acquired Assets that are created with respect to sales of products by the Purchaser after the Closing. Promptly after the Closing, the Purchaser agrees to (i) establish new bank accounts and/or lock-box accounts into which collections of receivables of the Business arising after the Closing are remitted and (ii) give notice to all obligors of such accounts receivable to remit payments on such receivables into such new bank accounts and/or lock-box accounts or as Purchaser otherwise shall direct.

(c) The Purchaser acknowledges that in the event any payments are received by the Purchaser or its Designee after the Closing under or with respect to the Parmalat Receivables Purchase Agreement or any Seller Accounts Receivables, such payments will constitute Excluded Assets and will be paid over daily to the Seller or as it designates.

(d) The Purchaser acknowledges that the Seller has sold interests in Seller Accounts Receivables to Citibank, N.A. ("**Citibank**") under the Parmalat Receivables Purchase Agreement and that certain of the payments to be made by the Purchaser under this Section 5.17 are the property of Citibank, and in connection therewith the Purchaser and Seller agree that (i) Citibank is a third party beneficiary of the agreements made by the Purchaser under this Section 5.17 and Section 6.02, (ii) Citibank shall have any and all rights and benefits of the Seller under this Section 5.17 and under Section 6.02 and may enforce the provisions of this Section 5.17 and Section 6.02 as if it were the Seller (including, without limitation, the right to instruct the Purchaser as to the account into which payments to be made by the Purchaser under this Section 5.17 shall be made), (iii) Citibank shall have no liability to the Purchaser in connection with any of the Purchaser's agreements made in this Section 5.17 or in Section 6.02 and (iv) in the event of any conflict between any instructions of the Seller and Citibank with respect to this Section 5.17, the instructions of Citibank shall control. Seller agrees that Purchaser shall have no

liability to Seller for complying with any instructions it receives from Citibank in compliance with this paragraph (d).

(e) Notwithstanding anything in this Section 5.17 or any other provision of this Agreement to the contrary, without the prior written consent of the Seller and Citibank (i) the Purchaser shall not initiate any legal action to enforce payment of any Seller Accounts Receivables, (ii) the Purchaser shall not, except as expressly provided in clause (f)(ii) below, grant or provide any credits, discounts or any adjustments to any Seller Accounts Receivables (or setoff any amounts against any Seller Accounts Receivables) or extend or otherwise amend or modify any Seller Accounts Receivables and (iii) neither this Section 5.17 nor Section 6.02 nor any definitions used directly or indirectly in this Section 5.17 or Section 6.02 may be amended, modified or waived.

(f) The Seller and the Purchaser agree that (i) all payments received from an obligor of any Seller Accounts Receivables shall be applied to the accounts receivable of such obligor in the order of the age of such accounts receivable, starting with the oldest such accounts receivable, unless the obligor designates its payment for application to specific accounts receivable and (ii) any non-specific dilution of accounts receivable of any obligor on any Seller Accounts Receivables (that is, an adjustment to the outstanding principal balance of an account receivable owing by such obligor which is not identifiable, pursuant to contract or otherwise, to any specific accounts receivable of such obligor, such as an adjustment for volume discounts or advertising rebates or credits) shall be allocated between the Seller Accounts Receivables of such obligor and any accounts receivable owing by such obligor to the Purchaser created on or after the Closing based upon the respective outstanding balance thereof on the date such dilution is asserted.

(g) The Purchaser shall promptly transmit to the Seller any invoices it receives with respect to the Trade Accounts Payable of the Business after the Closing, and the Seller shall promptly transmit to the Purchaser any invoices it receives with respect to the Business arising after the Closing.

#### Section 5.18 Covenant Not to Compete.

(a) Purchaser acknowledges that it has been provided a copy of the Asset Purchase Agreement dated as of June 8, 2004 between Farmland Dairies LLC, D.I.P., a subsidiary of the Seller, and Integrated Brands, Inc. and represents and warrants to the Seller, for its benefit and the benefit of Farmland Dairies LLC, D.I.P., that prior to June 8, 2004 Purchaser was engaged, directly or indirectly, in the "Business" as defined in said agreement (i.e., business activities and operations relating specifically to the manufacturing, sale, marketing and distribution of finished goods ice cream, frozen novelties, frozen desserts and related frozen confection products in the States of Georgia, Alabama and South Carolina) and as referred to in section 8.18 of such agreement (or a business competitive therewith within the meaning of such section). Accordingly, Seller, in reliance on such representation and warranty, has not provided herein that Purchaser shall have any responsibility for complying with the restrictions contained in such section 8.18 of such agreement regarding the conduct by Farmland Dairies LLC and its subsidiaries, and successors and assigns thereof, of certain business activities competitive with the Business as provided by such section 8.18.



Section 5.19 Real Property Survey and Title Commitment. Not later than thirty (30) days after the date of this Agreement, the Seller shall provide to the Purchaser, at Seller's expense, (i) a current survey of the Real Property (the "**Real Property Survey**") prepared by a professional land surveyor certified as such in the State of Alabama and containing a completed and executed surveyor's certificate in the form attached hereto as Exhibit H, and (ii) a commitment issued by a title insurance company to issue an owner's policy of title insurance (the "**Owner's Title Insurance Policy**") in the amount of \$4,000,000 for the benefit of the Purchaser or its Designee, as applicable, showing fee simple title to the Real Property vested in Purchaser or such Designee, as applicable, each provided by such parties and provided in such forms and reflecting only such encumbrances and other matters as are reasonably satisfactory to the Purchaser.

Section 5.20 Intentionally Omitted.

Section 5.21 Non-pursuit of Claims. The Seller shall not, and shall cause its successors and assigns not to, from and after the Closing, pursue any claims or actions for preferences, fraudulent conveyances, or other avoidance power claims, or any recoveries, under sections 542, 544, 545, 547, 548, 549, 550, or 553 of the Bankruptcy Code relating to any Acquired Asset or Assumed Liability.

Section 5.22 Additional Matters. Subject to the terms and conditions herein provided, each of the parties hereto agrees to use all commercially reasonable efforts to take, or cause to be taken, all action and to do, or cause to be done, all things necessary and proper under Applicable Laws and regulations to consummate and make effective the Contemplated Transactions, including using all commercially reasonable efforts to obtain all necessary waivers, consents, and approvals in connection with the Governmental Requirements.

## ARTICLE VI

### ADDITIONAL POST-CLOSING COVENANTS

Section 6.01 Further Assurances. In addition to the provisions of this Agreement, from time to time after the Closing Date, the Seller and the Purchaser will use all commercially reasonable efforts to execute and deliver such other instruments of conveyance, transfer, or assumption, as the case may be, and take such other action as may be reasonably requested to implement more effectively the Contemplated Transactions. If it turns out that the Seller or any direct or indirect subsidiary of the Seller owns any of the Acquired Assets and such subsidiary is not a party to this Agreement, the Seller shall take and shall cause such subsidiary to take all reasonable actions to assign such assets, properties, rights or claims to the Purchaser and take all other actions necessary to cause such entity to give full effect to the Contemplated Transactions.

Section 6.02 Books and Records; Personnel. The Purchaser shall allow the Seller, any of its directors, officers, employees, legal counsel, financial advisors, representatives, accountants and auditors and Citibank as Seller's assignee (collectively, the "**Seller's Representatives**") access to all business records and files of the Seller or the Business that are transferred to the Purchaser in connection herewith or kept by the Purchaser in connection with

the Seller Accounts Receivables, that are reasonably required by such Seller's Representative the administration of the Bankruptcy Cases or anticipation of, or preparation for, any existing or future Legal Proceeding involving a Seller, Tax Return preparation, litigation, Excluded Liability or Excluded Asset or requested by such Seller's Representative in connection with collection activities pursuant to Section 5.17, during regular business hours and upon reasonable notice at the Purchaser's principal place of business or at any location where such records are stored, and the Seller's Representatives shall have the right to make copies of any such records and files; provided, however, that any such access or copying shall be had or done in such a manner so as not to interfere with the normal conduct of the Purchaser's business or operations.

Section 6.03 Continued Cooperation. If the Closing occurs at a time when not all Governmental Requirements have been fulfilled, the parties shall (i) continue to abide by their obligations hereunder to fulfill all Governmental Requirements, and (ii) cooperate in continuing to operate the Business, to the extent commercially practicable, in the ordinary course in those countries or states with respect to which Governmental Requirements have not been fulfilled, with the Purchaser receiving the economic benefits of such operation.

Section 6.04 Undisclosed Contracts; Contested Cure Amount Contracts. Notwithstanding anything to the contrary in Section 1.02(b), if, after Closing, the Seller or the Purchaser discover any Contract of the Seller that is related to the Business but was not disclosed to the Purchaser prior to Closing, then, in the case of any such discovery by the Seller, the Seller shall notify the Purchaser of the existence of such Contract, and in either case, at the Purchaser's request, the Seller shall take such steps as are necessary to cause such Contract to be assumed by, and assigned to, the Purchaser or one or more of its Designees, with any Cure Amounts associated therewith to be borne by the Seller and/or the Purchaser on the terms provided hereby in accordance with Section 1.04. The procedures of Section 1.04 shall apply as to any Contract which the Seller declines to assume at the Closing by reason of a dispute over the applicable Cure Amounts.

Section 6.05 Change of Company Name. At or as soon as practicable after the Closing, but in no event later than ten (10) calendar days after the Closing, the Seller shall change its name to a name of its selection that is not confusingly similar to "Milk Products of Alabama" or suggests any continued association between the Designee of the Purchaser and the Seller. The Seller shall provide any consent required under Alabama law for a Designee of Purchaser to adopt and use that name and relinquishes to and for the benefit of Purchaser or its Designee any common law rights it may have with respect to the use of such name.

## **ARTICLE VII**

### **CONDITIONS PRECEDENT**

Section 7.01 Conditions Precedent to Obligations of the Seller and the Purchaser. The respective obligations of each party to effect the Contemplated Transactions shall be subject to the satisfaction at or prior to the Closing Date of the following conditions precedent (compliance with which or the occurrence of which may be waived in whole or in part in a writing executed by the Purchaser and the Seller to the extent permitted by Applicable Law):

(a) the Bidding Procedures Order in the form attached hereto as Exhibit A and the Sale Order in the form attached hereto as Exhibit B shall have each been entered by the Bankruptcy Court and shall not have been modified or amended in any manner unless agreed to by the parties hereto, and shall have become final and non-appealable;

(b) any waiting period applicable to the consummation of the Contemplated Transactions under the HSR Act shall have expired or been terminated;

(c) no statute, rule, regulation, executive order, decree, decision, ruling, temporary restraining order or preliminary or permanent injunction shall have been enacted, entered, promulgated, or enforced by any U.S. federal or state court or foreign Governmental Authority that prohibits, restrains, enjoins, or restricts the consummation of the Contemplated Transactions that has not been withdrawn, terminated or rendered unenforceable; and

(d) no action, suit or proceeding shall have been commenced and remain pending by any United States federal, state, local or any foreign governmental, regulatory, or administrative authority, agency, or commission or any court, tribunal or judicial body against the Purchaser or the Seller which seeks to restrain or materially and adversely alter the Contemplated Transactions and the pendency of which has a Material Adverse Effect on the Business.

Section 7.02 Conditions Precedent to Obligation of the Seller. The obligation of the Seller to effect the Contemplated Transactions shall be subject to the satisfaction at or prior to the Closing Date of the conditions set forth in Section 7.01 and of the following additional conditions precedent (compliance with which or the occurrence of which may be waived in whole or in part in a writing executed by the Seller to the extent permitted by Applicable Law):

(i) the Purchaser shall have performed in all material respects its obligations under this Agreement required to be performed by it at or prior to the Closing Date and (ii) the representations and warranties of the Purchaser contained in this Agreement (A) that are not qualified as to materiality or material adverse effect shall be true and correct in all material respects as of the Closing Date, as if made as of such time, or if not true and correct in all material respects, the failure of representation or warranty does not have a material adverse effect on the benefit to the Seller of the Contemplated Transactions, and (B) that are qualified as to materiality or material adverse effect shall be true and correct when made and as of the Closing Date, as if made as of such time (except in each case to the extent such representations and warranties shall be expressly made as of a certain date, in which case such representations and warranties shall be true and correct in all material respects or true and correct, as the case may be, as of such earlier date).

Section 7.03 Conditions Precedent to Obligation of the Purchaser. The obligation of the Purchaser to effect the Contemplated Transactions shall be subject to the satisfaction at or prior to the Closing Date of the conditions set forth in Section 7.01 and of the following additional conditions precedent (compliance with which or the occurrence of which may be waived in whole or in part in a writing executed by the Purchaser):

(a) (i) the Seller shall have performed in all material respects its obligations under this Agreement required to be performed by it at or prior to the Closing Date and (ii) the

representations and warranties of the Seller contained in this Agreement, without giving effect to any qualifications therein relating to Seller's Knowledge (A) that are not qualified as to materiality or Material Adverse Effect, if not true and correct in all material respects as of the Closing Date, as if made as of such time, shall not have a Material Adverse Effect, and (B) that are qualified as to materiality or Material Adverse Effect shall be true and correct when made and as of the Closing Date, as if made as of such time (except in each case to the extent such representations and warranties shall be expressly made as of a certain date, in which case such representations and warranties shall be true and correct in all material respects or true and correct, as the case may be, as of such earlier date);

(b) no event or circumstance shall have occurred since the date of this Agreement which, independently or together with any other event or circumstance that has so occurred or is reasonably likely to occur, has or is reasonably likely to have imminently a Material Adverse Effect;

(c) all Governmental Requirements necessary in connection with the Contemplated Transactions have been fulfilled in a manner consistent with Section 5.07, except as would not have a Material Adverse Effect;

(d) the Seller shall have obtained the consents required to transfer to the Purchaser or one or more of its Designees its rights, title and interests in the Contracts identified in Section 7.03(d) of the Disclosure Letter to the extent such consents are required by law with respect to the Contemplated Transactions, after giving effect to the Sale Order;

(e) subject to Section 1.04(i), any and all Cure Amounts in respect of Assumed Contracts shall have been paid by the Seller and all such contracts shall have been assumed by the Seller for assignment to the Purchaser; provided, however, that this condition shall not be satisfied if the exclusion of the Assumed Contracts by the Purchaser pursuant to Section 1.04(i), either individually or in the aggregate, would have a Material Adverse Effect on the Business;

(f) the Parmalat Name Rights License shall have become fully effective in all respects and be in full force and effect and all necessary approvals and authorizations to effectuate the same shall have been obtained and evidence thereof delivered to the Purchaser;

(g) the DASI Technology Agreement shall have become fully effective in all respects and be in full force and effect and all necessary approvals and authorizations to effectuate the same shall have been obtained and evidence thereof delivered to the Purchaser;

(h) shared services agreements among the Purchaser and the Seller as provided by Section 1.06(b) reasonably acceptable to the Purchaser and the Seller shall be in full force and effect; and

(i) the Owner's Policy of Title Insurance shall have been issued to Purchaser or its Designee pursuant to and in accordance with the title commitment referred to in Section 5.19.

It is understood and agreed that, if the Purchaser waives the requirements of paragraphs (f) or (g) of this section, and the Closing occurs, then Purchaser shall not thereby attain any right (if any) in or under the Parmalat Name Rights License or the DASI Technology Agreement that it does not already have and will not attain any right (if any) in or with respect to the intellectual property referred to therein that it does not already have and that neither Seller nor any of its Affiliates shall have any liability to Purchaser as a result of the failure of achievement of such requirements at the time of Closing or any subsequent failure to achieve such requirements.

## **ARTICLE VIII**

### **FURTHER AGREEMENTS AND TERMINATION**

Section 8.01 Termination. This Agreement may be terminated and the transactions contemplated hereby may be abandoned at any time prior to the Closing:

- (a) by mutual consent of the Seller and the Purchaser;
- (b) by either of the Seller or the Purchaser (provided that such party is not then in material breach of any provision of this Agreement): if a Governmental Authority shall have issued an order, decree or ruling or taken any other action (which order, decree or ruling the parties hereto shall use their commercially reasonable efforts to lift), in each case permanently restraining, enjoining or otherwise prohibiting the Contemplated Transactions and such order, decree, ruling or other action shall have become final and nonappealable, provided, however, that, if such order, decree, ruling or other action relates to an immaterial portion of the Business, the Purchaser may, at its option by notice given by the Purchaser to the Seller within five Business Days after the exercise by the Seller of such termination rights, elect to forego, without any purchase price adjustment, the acquisition of the Acquired Assets affected by such order, decree, ruling or other action and, in such case, the Seller will not have a right of termination pursuant to this Section 8.01(b) and the Seller's notice of termination pursuant to this Section 8.01(b) shall be void;
- (c) subject to the right to receive the return of the Good Faith Deposit as provided hereby, by either the Seller or the Purchaser in the event that an Alternative Transaction as defined in the Bidding Procedures Order is consummated;
- (d) by the Purchaser (provided that the Purchaser is not then in material breach of this Agreement):
  - (i) if the Bidding Procedures Order in the form attached to this Agreement (unless the Purchaser shall have agreed to all modifications) shall have been revoked or modified in any material respect;
  - (ii) if the Sale Order in the form attached to this Agreement (unless the Purchaser shall have agreed to all modifications) (x) shall not have been entered by the Bankruptcy Court on or before sixty (60) days after the date of this Agreement, and, as of the time of such termination of this Agreement, shall not have been entered by the Bankruptcy Court or (y) shall have been entered by

the Bankruptcy Court, but shall not have become final and non-appealable on or before thirty (30) days after being so entered by the Bankruptcy Court;

(iii) if a material default or material breach shall be made by the Seller with respect to the due and timely performance of any of its covenants or agreements contained herein, or if its representations or warranties contained in this Agreement shall have become inaccurate (without giving effect to any qualifiers relating to Knowledge or any materiality or Material Adverse Effect qualifications or exceptions contained therein) and such inaccuracy has had or would be reasonably likely imminently to have, individually or together with other such inaccuracies, a Material Adverse Effect and such representation or warranty is not made accurate by the Seller before the termination provided by clause (vi) below so as to avoid a Material Adverse Effect;

(iv) if an event or events or circumstance shall have occurred since the date of this Agreement which, independently or together with any other event, events or circumstance that have occurred or are reasonably likely to occur, have or are reasonably likely imminently to have a Material Adverse Effect and such event or events or circumstance is not cured by the Seller before the termination so as to avoid a Material Adverse Effect;

(v) the Seller (x) withdraws or determines not to prosecute the Sale Motion with respect to the Acquired Assets, or (y) files a plan of reorganization or liquidation with the Bankruptcy Court which, if approved by the Bankruptcy Court, would be inconsistent with the transfer and assignment of the Acquired Assets to the Purchaser or its Designees as contemplated by this Agreement; or

(vi) if the Closing shall not have occurred on or before December 1, 2004.

(e) by the Seller (provided that the Seller is not then in material breach of any provision of this Agreement):

(i) if a material default or material breach shall be made by the Purchaser with respect to the due and timely performance of any of its covenants or agreements contained herein, or if its representations or warranties contained in the Agreement shall have become materially inaccurate and such inaccuracy has had or would be reasonably likely to have a material adverse effect on the ability of the Purchaser to consummate the Contemplated Transactions and such representation or warranty is not made accurate by the Purchaser before the termination provided by clause (iii) below so as to avoid such material adverse effect;

(ii) subject to return of the Good Faith Deposit pursuant to Section 1.05(b)(iii), if the Seller accepts a Qualified Bid other than that of the Purchaser; or

(iii) if the Closing shall not have occurred on or before  
December 1, 2004.

Section 8.02 Procedure and Effect of Termination. In the event of termination of this Agreement pursuant to Section 8.01 or abandonment of the Contemplated Transactions by any party hereto, written notice thereof shall forthwith be given to the other parties to this Agreement and, without further action by any of the parties hereto, this Agreement shall thereupon terminate and become null and void and the parties shall thereupon have no Liability or further obligations pursuant to or arising under this Agreement or the termination hereof or with respect to the Contemplated Transactions, except that the provisions of the second sentence of Section 1.05(b) (Consideration), Section 5.08 (Public Announcements), this Section 8.02 (Procedure and Effect of Termination), Article IX (General Provisions) and any definitions of defined terms used therein, shall remain in full force and effect.

Section 8.03 Intentionally Omitted.

## **ARTICLE IX**

### **GENERAL PROVISIONS**

Section 9.01 Notices. All notices, claims, demands, and other communications hereunder shall be in writing and shall be deemed given upon (a) confirmation of receipt of a facsimile transmission, (b) confirmed delivery by a standard overnight carrier or when delivered by hand, or (c) the expiration of three Business Days after the day when mailed by registered or certified mail (postage prepaid, return receipt requested), addressed to the respective parties at the following addresses (or such other address for a party as shall be specified by like notice):

(a) If to the Purchaser, to:

Dean Foods Company  
2515 McKinney Avenue  
Dallas, Texas 75201  
Telecopy: (214) 303-3851  
Attention: General Counsel

with copies to:

Skadden, Arps, Slate, Meagher & Flom LLP  
Four Times Square  
New York, NY 10036  
Telecopy: (212) 735-2000  
Attention: J. Gregory Milmo

and

(b) If to the Seller, to:

Parmalat USA Corp.  
520 Main Ave  
Wallington, NJ 07057  
Tel: 973-249-3800  
Fax: 973-249-3810  
Attention: James Mesterharm

with a copy to:

Farmland Dairies LLC  
520 Main Avenue  
Wallington, New Jersey 07057  
Telecopy: 973-777-7648  
Attention: Anthony Mayzun

with a copy to:

Weil, Gotshal & Manges  
767 Fifth Avenue  
New York, New York 10153  
Telecopy: 212-310-8007  
Attention: Gary T. Holtzer  
And  
Robert L. Messineo

Section 9.02 Descriptive Headings. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

Section 9.03 Entire Agreement; Assignment. This Agreement (including the Disclosure Letter, the other Exhibits attached hereto and the other documents and instruments referred to herein) constitutes the entire agreement and supersedes all other prior agreements and understandings, both written and oral, between the parties, with respect to the subject matter hereof. This Agreement and the rights and obligations may not be assigned by any party hereto, including by operation of law or otherwise except (i) with the written consent of the other parties hereto, (ii) by the Purchaser to one or more of its Designees as provided for in this Agreement or to one or more direct or indirect subsidiaries or other Affiliates of the Purchaser which assignment shall not relieve the Purchaser of any of its obligations hereunder, (iii) that the Seller may assign its rights under Section 5.17 to Citibank or (iv) by the Purchaser to one or more non-Affiliates so long as such assignment does not, in the aggregate with all other such assignments, constitute an assignment of the right to purchase all or substantially all of the Acquired Assets and such assignment does not relieve the Purchaser of its obligations hereunder, require additional Governmental Requirements or delay the Closing.



Section 9.04 Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of New York without regard to the policies, provisions or principles thereof regarding conflict or choice of laws.

Section 9.05 Venue and Retention of Jurisdiction. All actions brought, arising out of, or related to the Contemplated Transactions shall be brought in the Bankruptcy Court, and the Bankruptcy Court shall retain jurisdiction to determine any and all such actions.

Section 9.06 Expenses. Except as otherwise provided herein, whether or not the actions contemplated by this Agreement are consummated, all costs and expenses incurred in connection with this Agreement and the Contemplated Transactions shall be paid by the party incurring such expenses.

Section 9.07 Amendment. Except as otherwise expressly provided herein, this Agreement (including the Disclosure Letter and the other Exhibits) may not be amended except by an instrument in writing signed on behalf of the parties hereto.

Section 9.08 Waiver. At any time prior to the Closing Date, the parties hereto may (a) extend the time for the performance of any of the obligations or other acts of the other parties hereto, (b) waive any inaccuracies in the representations and warranties contained herein or in any document delivered pursuant hereto, and (c) waive compliance with any of the agreements or conditions contained herein. Any agreement on the part of a party hereto to any such extension or waiver shall be valid only if set forth in an instrument in writing signed on behalf of such party.

Section 9.09 Counterparts; Effectiveness. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original but all of which shall constitute one and the same agreement. This Agreement shall become effective when each party hereto shall have received counterparts thereof signed by all the other parties hereto.

Section 9.10 Severability; Validity; Parties in Interest. If any provision of this Agreement or the application thereof to any person or circumstance is held invalid or unenforceable, the remainder of this Agreement, and the application of such provision to other persons or circumstances, shall not be affected thereby, and to such end, the provisions of this Agreement are agreed to be severable. Nothing in this Agreement, express or implied, is intended to confer upon any person not a party to this Agreement (including any creditor or interest holder, or any employee or former employee of a Seller) any rights or remedies of any nature whatsoever under or by reason of this Agreement (except as provided otherwise in Sections 5.17 and 6.02).

Section 9.11 Enforcement of Agreement. The parties hereto agree that irreparable damage would occur in the event that any provision of this Agreement was not performed in accordance with its specific terms or were otherwise breached. It is accordingly agreed that the parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof, this being in addition to all other remedies available at law or in equity.

Section 9.12 Non-survival of Representations, Warranties and Agreements. All representations, warranties and (except as set forth in the following sentences) covenants set forth in this Agreement or in any certificate, document or other instrument delivered in connection herewith shall terminate at the Closing. Only those covenants that contemplate actions to be taken or obligations in effect after the Closing or termination of this Agreement, as the case may be, shall survive in accordance with their terms and to the extent so contemplated. Notwithstanding the foregoing, it is understood that the representations and warranties made by the Seller in Section 3.02, and the warranty of title of Seller in the special warranty deed delivered by Seller at the Closing hereunder with respect to the Real Property, shall survive the Closing and Purchaser shall continue to be entitled after the Closing to the benefits of the Owner's Title Insurance Policy.

Section 9.13 No Other Representation. THE PURCHASER ACKNOWLEDGES AND AGREES THAT, EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT, AND EXCEPT FOR THE SELLER'S WARRANTY OF TITLE IN THE SELLER'S SPECIAL WARRANTY DEED, THE ACQUIRED ASSETS SHALL BE CONVEYED AND TRANSFERRED TO THE PURCHASER "AS IS, WHERE IS, AND WITH ANY AND ALL FAULTS AND PATENT AND LATENT DEFECTS," AND SELLER HAS NOT MADE, DOES NOT MAKE, AND SPECIFICALLY DISCLAIMS ANY REPRESENTATION, PROMISE, COVENANT, AGREEMENT, GUARANTY OR WARRANTY OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW, AS TO THE MERCHANTABILITY, QUANTITY, QUALITY, CONDITION, SUITABILITY, HABITABILITY, OR FITNESS OF ANY OF THE ACQUIRED ASSETS FOR ANY PURPOSE WHATSOEVER, INCLUDING WITHOUT LIMITATION, ANY REPRESENTATION REGARDING SOIL CONDITIONS, AVAILABILITY OF UTILITIES, DRAINAGE, ZONING LAWS, ENVIRONMENTAL LAWS, OR ANY OTHER FEDERAL, STATE OR LOCAL STATUTES, CODES, REGULATIONS OR ORDINANCES. THE PURCHASER ALSO ACKNOWLEDGES AND AGREES THAT THE PROVISIONS IN THIS AGREEMENT FOR THE PURCHASER'S INSPECTION AND INVESTIGATION OF THE ACQUIRED ASSETS ARE ADEQUATE TO ENABLE THE PURCHASER TO MAKE THE PURCHASER'S OWN DETERMINATION WITH RESPECT TO THE SUITABILITY OR FITNESS OF THE LAND, INCLUDING, WITHOUT LIMITATION, WITH RESPECT TO SOIL CONDITIONS, AVAILABILITY OF UTILITIES, DRAINAGE, ZONING LAWS, ENVIRONMENTAL LAWS, AND ANY OTHER FEDERAL, STATE OR LOCAL STATUTES, CODES, REGULATIONS OR ORDINANCES. THE PURCHASER ACKNOWLEDGES THAT THE DISCLAIMERS, AGREEMENTS AND OTHER STATEMENTS SET FORTH IN THIS PARAGRAPH ARE AN INTEGRAL PORTION OF THIS AGREEMENT. THE PROVISIONS CONTAINED IN THIS PARAGRAPH SHALL SURVIVE THE CLOSING HEREUNDER AND THE DELIVERY FROM SELLER TO BUYER OF THE SPECIAL WARRANTY DEEDS AS TO REAL PROPERTY, AND MAY BE REPEATED IN SUCH SPECIAL WARRANTY DEEDS.

Section 9.14 No Personal Liability. In entering into this Agreement, the parties understand, agree and acknowledge that no director, officer, manager, member, employee, shareholder, attorney, accountant, advisor or agent of any of the parties hereto shall be personally liable or responsible to any other party or its Affiliates, directors, officers, managers, members, employees, shareholders, attorneys, accountants, advisors or agents for the performance of any

obligation under this Agreement of any party to this Agreement or the truth, completeness or accuracy of any representation or warranty contained in, or statement made in, this Agreement or any document prepared pursuant hereto and that all obligations hereunder are those of the named parties only (but nothing contained herein shall limit the liability of any person for his or her fraudulent acts).

## ARTICLE X

### DEFINITIONS

Section 10.01 Defined Terms. As used herein, those terms that are defined in other Sections of this Agreement shall have the meanings given to them in those Sections and the terms below shall have the following meanings.

**"Affiliate"** means with, respect to any Person, any other person who, directly or indirectly, controls, is controlled by, or is under common control with that Person.

**"Applicable Law"** means any law, statute, order, rule, ordinance or regulation in any jurisdiction where the Business is conducted.

**"Business"** means the business of producing, selling, marketing, processing or distributing extended shelf life and other processed, mixed and packaged (including co-packaged) dairy products, related fresh milk products, and incidental other products such as juices, as such business is conducted by the Seller through its facilities in Decatur, Alabama (which includes the distribution of such products throughout the United States).

**"Business Day"** means any day that is not a Saturday, Sunday, or other day on which banking institutions in New York, New York are authorized or required by law or executive order to close.

**"Code"** means the Internal Revenue Code of 1986, as amended.

**"Confidentiality Agreement"** means the letter agreement between the Seller and the Purchaser regarding confidential treatment of certain information concerning the Seller and its Affiliates, dated February 14, 2004.

**"Contract"** means each contract, commitment, lease of real and personal property, license, purchase order and any other legally binding arrangement oral or written to which a Seller is a party or to which a Seller or any of the Acquired Assets is subject, and which relate to the Business.

**"Cure Amounts"** means the cure amounts payable (and in the case of any cure amounts in dispute, any potentially additional amounts required to be held in reserve during the pendency of such disputes, in accordance with the Bidding Procedures) to cure any defaults or otherwise effectuate, pursuant to the Bankruptcy Code, the assumption by and assignment to the Purchaser or one or more of its Designees of Assumed Contracts assigned to the Purchaser under the Sale Order; provided, that, for purposes of the proviso to Sections 1.04(i) and 7.03(e), the "Cure Amount" as to any Assumed Contract shall be such amount as determined by the Bankruptcy

Court or, in the absence of such a determination, it shall be the cure amount asserted to be due by the parties to such Assumed Contract other than the Seller.

**"DASI Technology"** means the patents and patent applications identified in Section 10.01(a) of the Disclosure Letter and any hardware, software, inventions or other assets reflecting the processes or systems covered thereby or derivative thereof and any other proprietary information relating thereto used in the conduct of the Business conducted by the Seller in its Alabama operations.

**"DASI Technology Agreement"** means the Agreement Regarding DASI Technology to be effective at the Closing, between the Purchaser (or its Designee) and Parmalat S.p.A., or such Person affiliated or associated therewith as it may designate, substantially in the form of Exhibit F hereto, whereby the Purchaser (or its Designee) shall be entitled to use the DASI Technology in the conduct of the Business after the Closing.

**"Designee"** means any direct or indirect subsidiary or Affiliate of the Purchaser, that the Purchaser may appoint to (i) purchase specified Acquired Assets, (ii) assume specified Assumed Liabilities or any Assumed Contract, (iii) exercise any of the Purchaser's rights hereunder, or (iv) employ specified Transferred Employees on and after the Closing Date, it being understood and agreed that any such right to designate is conditioned upon such Designee being able to demonstrate satisfaction of the requirements of section 365 of the Bankruptcy Code including the provision of adequate assurance for future performance; provided, that the Purchaser must inform the Seller of any such appointment no later than the fifth Business Day prior to the Closing Date.

**"Disclosure Letter"** means the letter attached to this Agreement as Exhibit C.

**"Environmental Laws"** means any and all applicable laws, statutes, rules, regulations, orders, ordinances, codes, legal directives, legal requirements and rules of common law of any Governmental Authority relating to pollution, or protection of the environment in effect at the date hereof or the time of Closing in any and all jurisdictions in which the Seller is conducting or at any time has conducted business or where the Acquired Assets are or were located, and any judicial or administrative interpretation thereof.

**"Equity Securities"** means (i) the shares of capital stock of a corporation, (ii) the general or limited partnership interests in any partnership, (iii) the membership or other ownership interest in any limited liability company, (iv) the equity securities of or other ownership interests or rights in any other legal entity; or (v) any option, warrant or other right to convert into or otherwise receive any of the foregoing; in any such case, whether owned or held beneficially or legally.

**"ERISA"** means the Employee Retirement Income Security Act of 1974, as amended.

**"Farmland"** means Farmland Dairies LLC, D.I.P.

**"Governmental Authority"** means any domestic or foreign national, regional, state, provincial or local court, governmental or quasi-governmental regulatory or other agency,

authority, commission, board or other authority with jurisdiction over the Business (including the Bankruptcy Court).

**"Hazardous Materials"** means: (i) any "hazardous waste," "industrial waste," "hazardous material," "hazardous substance," "toxic substance," "pollutant," or "contaminant" as those or similar terms are defined, identified, or regulated under any Environmental Laws, (ii) any asbestos, polychlorinated biphenyls, or radon; and (iii) any petroleum, petroleum hydrocarbons, petroleum products, crude oil and any components, fractions, or derivatives thereof.

**"include"** and **"including"** mean including without limitation.

**"Indebtedness"** of any Person means, without duplication, (i) the principal of and premium (if any) in respect of (A) indebtedness of such Person for money borrowed and (B) indebtedness evidenced by notes, debentures, bonds or other similar instruments for the payment of which such Person is responsible or liable; (ii) all obligations of such Person issued or assumed as the deferred purchase price of property, all conditional sale obligations of such Person and all obligations of such Person under any title retention agreement (but excluding trade accounts payable and other accrued current liabilities arising in the ordinary course of business); (iii) all obligations of such Person under leases required to be capitalized in accordance with GAAP; (iv) all obligations of such Person for the reimbursement of any obligor on any letter of credit, banker's acceptance or similar credit transaction; (v) all obligations of the type referred to in clauses (i) through (iv) of other Persons for the payment of which such Person is responsible or liable, directly or indirectly, as obligor, guarantor, surety or otherwise, including guarantees of such obligations; and (vi) all obligations of the type referred to in clauses (i) through (v) of other Persons secured by any Lien on any property or asset of such Person (whether or not such obligation is assumed by such Person).

**"Intellectual Property"** means all of the following as they exist in all jurisdictions throughout the world, in each case, owned by the Seller and used in the conduct of the Business as conducted on the date hereof:

(i) patents, patent applications, industrial designs and other patent rights (including any divisionals, continuations, continuations-in-part, substitutions, or reissues thereof, whether or not patents are issued on any such applications and whether or not any such applications are modified, withdrawn, or resubmitted), other than the DASI Technology;

(ii) trademarks, service marks, trade dress, trade names, brand names, designs, logos, or corporate names, whether registered or unregistered, and all registrations and applications for registration thereof, other than the Parmalat Name Rights and any Internet domain names;

(iii) copyright registrations and applications for registration thereof and unregistered copyrights;

(iv) trade secrets, designs, research, processes, procedures, techniques, methods, know-how, data, mask works, inventions, and other confidential information and proprietary rights (whether or not patentable or subject to copyright, mask work, or trade secret protection), other than the DASI Technology;

(v) computer programs, software and databases, in source and object code form, and all documentation therefor and related thereto; and

(vi) all rights under licenses in respect of any of the items identified in clauses (i) through (v) of this definition, it being understood that no license with respect to the use of the Parmalat Name Rights or the DASI Technology is included in the Intellectual Property.

**"IRS"** means the Internal Revenue Service.

**"Knowledge"** with respect to the Seller means the actual, direct and personal knowledge of any of the representatives of the Seller identified in Section 10.01 of the Disclosure Letter and with respect to any individual, or any other Person, as the case may be, such individual's actual, direct and personal knowledge, in each case after reasonable inquiry.

**"Legal Proceeding"** means any judicial, administrative, regulatory or arbitral proceeding, investigation or inquiry or administrative charge or complaint pending at law or in equity before any domestic or foreign governmental or regulatory body or authority.

**"Liability"** means any debt, liability or obligation (whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, or due or to become due), and including all costs and expenses relating thereto.

**"Liens"** means any pledge, option, charge, hypothecation, easement, security interest, lien, right of way, encroachment, mortgage, deed of trust, or other encumbrances or restrictions on transfer and shall also have the meaning ascribed to "lien" in section 101 of the Bankruptcy Code.

**"Material Adverse Effect"** with respect to the Seller or the Business means any one or more events, conditions or circumstances which would result in or would reasonably be expected to result in (i) a material adverse effect on the properties, assets, results of operations or condition (financial or otherwise) of the Business taken as a whole or (ii) a material adverse effect on the ability of the Seller to perform its obligations hereunder, in either case other than an effect resulting from (i) any change in the United States or foreign economies or securities or financial markets in general (including any such change resulting from any natural calamity, act of war, hostilities or act of terrorism); (ii) any change that generally affects any industry in which the Seller operates (including any such change resulting from any natural calamity, act of war, hostilities or act of terrorism); (iii) any action taken by the Purchaser or its Affiliates with respect to the transactions contemplated hereby or with respect to a Seller, including its employees; and (iv) the filing of the Petitions or the pendency of the Bankruptcy Cases or the proceedings relating thereto (except any such proceeding the pendency of which will cause the condition described in Section 7.01(c) not to be satisfied or which, notwithstanding such proceeding, would independently cause another of the conditions of Closing provided by Section 7.01 not to be satisfied).

**"Material Decision"** means any of the following to the extent the same may affect the Acquired Assets, the Assumed Liabilities, or the Business following the Closing: (i) enter into any Contract that involves payments of \$100,000 or more; (ii) terminate, amend or modify or waive any rights in respect of any Assumed Contract; (iii) make any material change in the

Seller's methods of collecting Trade Receivables or any making or agreeing to make any settlement concerning a Trade Receivable in excess of \$100,000; or (iv) a material change in pricing, promotional, marketing, or any other decision that would reduce in any material respect a Seller's customary profit margins.

**"Parmalat Receivables Purchase Agreement"** means the Parmalat Receivables Purchase Agreement, dated as of November 2, 2000, by and among Farmland and the Seller, as the sellers, Eureka Securitisation Plc, as the purchaser, and Citibank, N.A., as the agent, as amended by Amendment No. 1 to the Parmalat Receivables Purchase Agreement, dated as of December 19, 2001, by and among the same parties and adding Mother's Cake & Cookie Company Co. and Archway Cookies, LLC, as sellers, as further amended as of December 19, 2001, by and among the same parties to Amendment No. 1 and as further amended as of February 23, 2004 by and among certain of the parties to Amendment No. 1.

**"Parmalat Name Rights"** means any right, including any license, to use the name "Parmalat" or any derivative thereof in the conduct of the Business, in the conduct of any other business or for any other purpose (including in the name of any company) or in any other manner, anywhere and wherever in the world, including any Internet domain rights associated therewith.

**"Parmalat Name Rights License"** shall mean the license agreement to be effective at the Closing, between the Purchaser (or its Designee) and Parmalat S.p.A., or such Person affiliated or associated therewith as it may designate, substantially in the form of Exhibit E hereto, whereby the Purchaser (or its Designee) shall be entitled to use the Parmalat Name Rights in certain limited respects for a transitional period in the conduct of the Business after the Closing.

**"Parmalat USA"** shall mean Parmalat USA Corporation, D.I.P., a New York corporation.

**"Permits"** means all permits, licenses, franchises, quality certifications, certificates of occupancy, variances, exemptions, orders and other governmental authorizations, consents, waivers, registrations and approvals necessary to conduct the Business as presently conducted.

**"Permitted Encumbrances"** means, with respect to or upon any Acquired Assets, any (1) easement, encroachment, license, right of way, defects or imperfections in title, charges, restrictions, encumbrances or similar reservation or grant or cloud on title; (2) Liens arising prior to the Closing Date with respect to Taxes that are not yet due; (3) Assumed Liabilities; (4) zoning, entitlement and other land use by any Governmental Authority provided that such regulations have not been violated; (5) obligations under Environmental Laws; (6) Liens securing the performance of bids, tenders, leases, contracts (other than for the repayment of debt), statutory obligations, surety, customs and appeal bonds and other obligations of like nature, incurred as an incident to and in the ordinary course of the Business; (7) Liens imposed by law, such as carriers', warehouseman's, mechanics', materialmen's, landlords', laborers', suppliers' and vendors' Liens, incurred in good faith in the ordinary course of the Business and securing obligations (but not including Liens with respect to current Taxes, assessments or other governmental charges, which are addressed in (2) above); (8) extensions, renewals and replacements of Liens referred to in (1), (3), (4) and (5) of this sentence; and (9) extensions, renewals and replacements of Liens referred to in clauses (2), (6) and (7) of this sentence;

provided, that any such extension, renewal or replacement Lien referred to in (8) and (9) of this sentence shall be limited to the property or assets covered by the Lien so extended, renewed or replaced and that the obligations secured by any such extension, renewal or replacement Lien shall be in an amount not greater than the amount of the obligations secured by the original Lien so extended, renewed or replaced. Notwithstanding the foregoing, any encumbrance otherwise included in (1), (4), (5) and (8) of the preceding sentence which, individually or in the aggregate, has a Material Adverse Effect on the Business or on the current use of such Acquired Asset in the operation of the Business, shall not be deemed to be a Permitted Encumbrance hereunder. For purposes hereof, "**Surviving Permitted Encumbrances**" shall mean the categories of Permitted Encumbrances described in the first sentence of this paragraph in clauses (1), (3), (4), (5), (6) and (8), but with respect to clause (5) (and clause (8) to the extent relating to an extension, renewal or replacement of a Lien described in clause (5)) only to the extent of clean up obligations that result from ownership of the real estate included in the Acquired Assets prior to the Closing and with respect to clause (6) only to the extent appearing in subsection (ii) of Section 3.04(b) of the Disclosure Letter and securing future payments on equipment.

"**Person**" means any natural person, firm, partnership, limited liability company, association, corporation, trust, business trust or other entity.

"**Surviving Permitted Encumbrances**" shall mean those Permitted Encumbrances identified as such in the definition of "Permitted Encumbrances."

"**Tax**" or "**Taxes**" means any and all federal, state, county, local, foreign and other taxes, assessments, duties or charges of any kind whatsoever, including corporate, business profits, franchise, income, sales, use, ad valorem, gross receipts, value-added, profits, license, minimum, alternative minimum, environmental, withholding, payroll, employment, excise, property, customs and occupation taxes, and any interest, fine, penalty, addition to tax and other amounts imposed with respect thereto.

"**Taxing Authority**" means any government or political subdivision or territory or possession of any government or any authority or agency therein or thereof having power to tax.

"**Tax Refund**" means any refunds of Taxes applicable to the Business.

"**Tax Returns**" means all federal, state, local, and foreign tax returns, declarations, statements, reports, schedules, forms, and information returns and any amended Tax Returns relating to Taxes.

"**Trade Accounts Payable of the Business**" shall mean the liability of the Seller for trade payables owed to vendors or suppliers for the purchase price of goods or services purchased or acquired in the ordinary course of business of the Seller and remaining unpaid in the ordinary course of business on the Closing Date (including any legally valid and binding retroactive adjustments thereto).

Section 10.02 Table of Definitions. The terms listed below shall have the meanings set forth in the Section listed across from the term.

2003 Management Financial Statements..... Section 3.12



2004 Period Financial Statements.....	Section 3.12
Acquired Assets .....	Section 1.01
Acquired Intellectual Property.....	Section 1.01
Agreement .....	Preamble
Allocation .....	Section 2.04
Assignment and Assumption Agreement .....	Section 2.02(a)(ii)
Assumed Contracts .....	Section 1.01
Assumed Liabilities .....	Section 1.03
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HSR Act .....	Section 3.07
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Potential Claimants .....	Section 5.09(b)(i)
Purchaser .....	Preamble
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Sale Motion .....	Section 5.09(a)(i)
Sale Order .....	Section 5.09(a)(i)
Seller Documents .....	Section 3.02
Seller .....	Preamble
Seller's Representatives .....	Section 6.02
Seller's Taxes .....	Section 1.04
Shared Contracts .....	Section 1.06
Transfer Taxes .....	Section 5.15
Transferred Employee .....	Section 5.16
Transitional Services .....	Section 1.06
Unassignable Contract .....	Section 5.05



IN WITNESS WHEREOF, the Seller and the Purchaser have caused this Agreement to be executed on their behalf by their officers thereunto duly authorized, as of the date first above written.

DEAN FOODS COMPANY

By: /s/ Edward F. Fugger

Name: Edward F. Fugger

Title: Vice President of Corporate Development

MILK PRODUCTS OF ALABAMA, L.L.C.

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

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

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