

BILL OF SALE AND ASSIGNMENT AND ASSUMPTION

This Bill of Sale and Assignment and Assumption (this "Instrument") is made as of [DATE], between [SELLER], a [State] corporation ("Seller"), and [BUYER], a [State] corporation ("Buyer" and, together with Seller, the "Parties").

RECITALS

Seller desires to sell and assign certain of its assets constituting its [BUSINESS UNIT DESCRIPTION] business (the "Business"), along with certain associated liabilities, to Buyer, and Buyer desires to purchase such assets and assume such liabilities from Seller. Concurrently with the execution and delivery of this Instrument by Buyer and Seller's receipt of the consideration specified herein, Seller shall execute and deliver to Buyer a deed conveying the real estate located at [ADDRESS].

AGREEMENT

In consideration of the foregoing and for other good and valuable consideration, including, without limitation, Seller's receipt from Buyer of \$[Amount] in cash in immediately available funds, the receipt and adequacy of which are hereby acknowledged, the Parties, each intending to be legally bound, hereby agree as follows:

1. Sale and Assignment of Assets. Seller hereby sells, transfers, assigns, conveys and delivers to Buyer, and Buyer hereby purchases, accepts and assumes from Seller, all of Seller's right, title and interest in the following assets (collectively, the "Assets"):

(a) Supplies. All maintenance, repair and operations supply inventory, packaging, ingredients, fuel and other supplies owned by Seller and located on-site at Seller's facilities located at [ADDRESS] (the "Facilities").

(b) Inventory. All inventory, merchandise, goods, work in progress and raw materials related to the Business and maintained, held or stored by or for the Seller at the Facilities.

(c) Fixed Assets. All fixed assets owned by Seller and located at the Facilities, including, without limitation, all machinery and equipment, office furniture and supplies, office and computer equipment (excluding any software), miscellaneous tools and related items owned by Seller and located at the Facilities.

(d) Leases and Contracts. All of Seller's right, title and interest in and to the leases, contracts and other agreements listed on Exhibit A (collectively, the "Contracts"). Notwithstanding the foregoing, if any Contract to be assigned to Buyer pursuant to this Instrument shall require the consent of any party thereto other than any Seller, this Instrument shall not constitute an agreement to assign such Contract, and such Contract shall not be assigned to or assumed by Buyer if an actual or attempted assignment thereof would constitute a breach or default thereunder. Buyer shall use its commercially reasonable efforts to obtain such consents, to the extent required, of such parties to such Contracts. If any such consent cannot be obtained, Seller and Buyer will cooperate in any reasonable arrangement designed to obtain for Buyer all benefits and privileges of the applicable Contract and fully protecting and discharging Seller from continuing liabilities or obligations thereunder, at no additional cost to Buyer.

(e) Licenses, Permits and Orders. To the extent assignable, all licenses and permits of governmental agencies owned by Seller relating exclusively to Seller's operations at the Facilities.

2. Excluded Assets. Notwithstanding anything in Section 1 of this Instrument to the contrary, Seller does not hereby sell, transfer, assign, convey or deliver to Buyer, and Buyer does not hereby purchase, accept or assume, any of Seller's right, title or interest in the following assets (the "Excluded Assets"):

(a) Cash. Any cash and cash equivalents, securities, and negotiable instruments of Seller on hand, in lock boxes, in financial institutions or elsewhere.

(b) Receivables. Any and all accounts receivable, notes and other amounts receivable from third parties, including customers, arising from the conduct of the Business before the Effective Time, whether or not in the ordinary course, together with any unpaid financing charges accrued thereon.

(c) Records. The books of account, general, financial, tax and personnel records, invoices, shipping records, supplier lists, correspondence and other documents, records and files and any rights thereto owned, solely associated with or solely employed by Seller in the conduct of the Business (the "Records").

(d) Goodwill. The goodwill of Seller relating to the Business.

(e) Corporate Documents. The company seal, minute books, charter documents, stock or equity record books and such other books and records as pertain to the organization, existence or capitalization of Seller.

(f) Intellectual Property. Any (i) patents and patent applications, (ii) trademarks, service marks, trade names, trade dress and domain names, together with the goodwill associated exclusively therewith, (iii) copyrights, including copyrights in computer software, (iv) confidential and proprietary information, including trade secrets and know how, and (v) registrations and applications for registration of the foregoing.

3. Obligations and Liabilities Assumed. Buyer hereby assumes and agrees to pay, perform, satisfy and discharge all of the obligations of Seller accruing from and after the effectiveness of this Instrument (the "Effective Time") with respect to the Contracts including, without limitation, reimbursing Seller for any such amounts Seller continues to pay under any Contract after the Effective Time until such time as such Contract is duly assigned to Buyer. If any Contract to be assigned to Buyer pursuant to this Instrument shall require the consent of any party thereto other than any Seller, this Instrument shall not constitute an agreement to assign such Contract, and such Contract shall not be assigned to or assumed by Buyer if an actual or attempted assignment thereof would constitute a breach or default thereunder. Buyer shall use its commercially reasonable efforts to obtain such consents, to the extent required, of such parties to such Contracts. If any such consent cannot be obtained, Seller and Buyer will cooperate in any reasonable arrangement designed to obtain for Buyer all benefits and privileges of the applicable Contract and fully protecting and discharging Seller from continuing liabilities or obligations thereunder, at no additional cost to Buyer.

4. Representations and Warranties. (a) Each Party hereby represents and warrants to the other Party as follows: