

Site: WELLS GSH
Break: 11-12
Other: _____

①

Asset Purchase Agreement

Effective as of the first day of January, 1983 (the "Effective Date"), Beatrice Foods Co., a Delaware corporation ("Seller"), John J. Riley Company, Inc., a Massachusetts corporation (the "Company"), Wildwood Conservation Corporation, a non-profit Massachusetts corporation ("Wildwood"), and John J. Riley, Jr. and Diana W. Riley (the "Rileys"), in consideration of the mutual covenants, agreements, representations and warranties contained herein, hereby agree as follows:

Article I

Definitions

1.01 As used herein, the following terms shall have the meanings set forth below unless the context otherwise requires:

(a) Division: the John J. Riley Co. Division of Beatrice Foods Co.;

(b) Inventory: all of the Division's inventories of raw materials, work-in-process and finished goods as of December 31, 1982. As of November 30, 1982 the Inventory had a net book value of \$441,450.00;

(c) Machinery and Equipment: all of the Division's machinery, equipment, tools, tooling, spare parts and other tangible assets or property used or held for use in connection with the business of the Division as of December 31, 1982 but excluding the Division's Real Property, as hereinafter defined;

(d) Contracts: all of the Division's right, title and interest in, to and under any contract, agreement or commitment which is set forth in the list attached hereto as Exhibit A and made a part hereof and its purchase orders and commitments and sales orders and commitments as of December 31, 1982;

(e) Receivables: all of the Division's accounts receivable, outstanding as of December 31, 1982 as listed in Exhibit B attached hereto and made a part hereof;

(f) Liquid Assets: the cash (including petty cash but excluding central banking cash) and liquid assets of the Division in bank accounts, money market funds or similar demand accounts as of December 31, 1982 as reflected on the books and records of the Division at such date, taking account of transfers to Beatrice between the Effective Date and the Closing Date. The Division's Liquid Assets as of November 30, 1982 are described in Exhibit C attached hereto and made a part hereof

(g) Other Assets: the Division's lists of customers and all of Seller's right, title and interest in and to the name "John J. Riley Company" and the Division's prepaid outside expenses as of December 31, 1982. The Division's prepaid outside expenses as of November 30, 1982 are listed on Exhibit C;

(h) Business Assets: the Inventory, the Machinery and Equipment, the Contracts, the Liquid Assets and the Other Assets;

(i) Real Property: the land, together with the buildings and improvements thereon, described on Exhibit D attached hereto and made a part hereof ("Real Property Parcel I") together with certain appurtenant water rights also described in Exhibit D hereto and the land described on Exhibit E hereto and made a part hereof ("Real Property Parcel II");

(j) Real Property Purchaser: the Pileys with respect to Real Property Parcel I and Wildwood with respect to Real Property Parcel II;

(k) Closing: the actual sale, conveyance, transfer, assignment and delivery of the Business Assets and the Real Property by Seller to, respectively, the Company and the Real Property Purchaser which shall take place at the offices of Nutter, McClennen & Fish,

600 Atlantic Avenue, Boston, Massachusetts 02210 at nine o'clock in the morning on Thursday, January 6, 1983, or on such other date or at such other location as the parties shall mutually agree;

(l) Closing Date: the date of the Closing;

(m) Payables: the accrued expenses and trade and accounts payable of the Division as of December 31, 1982. The accrued expenses and trade and accounts payable of the Division as of November 30, 1982 are listed on Exhibit F attached hereto and made a part hereof;

(n) Base Balance Sheet: the balance sheet of the Division as of November 30, 1982 attached hereto as Exhibit G and made a part hereof;

(o) Closing Balance Sheet: the balance sheet of the Division as of December 31, 1982.

Article II
Assets Being Sold
and Purchased

2.01 Upon the terms and subject to the conditions of this Agreement, on the Closing Date, simultaneously with and contingent upon the purchase and sale described in Section 2.02 hereof, Seller shall sell, assign, convey, transfer and deliver to the Company and the Company shall purchase the Business Assets

from Seller for the consideration set forth in Section 3.01 hereof.

2.02 Upon the terms and subject to the conditions of this Agreement, on the Closing Date, simultaneously with and contingent upon the purchase and sale described in Section 2.01 hereof, Seller shall sell to the Real Property Purchaser and the Real Property Purchaser shall purchase from the Seller the Real Property for the consideration set forth in Section 3.02 hereof.

Article III Consideration

3.01 Upon the terms and subject to the conditions of this Agreement, in consideration of and in exchange for the Business Assets, the Company shall:

(a) pay to Seller, as set forth in Section 3.03 hereof, an amount (the "Business Assets Purchase Price"), equal to:

(i) the net book value (i.e. lower of cost or market on a first-in, first-out basis) of the Inventory as of December 31, 1982; plus

(ii) the net book value of the Machinery and Equipment as of December 31, 1982 plus an additional \$35,000 for the Machinery and Equipment;

plus

(iii) The net book value of the prepaid outside expenses plus \$1.00 for the Other Assets;

plus

(iv) the aggregate amount of the Liquid Assets; minus

(v) the aggregate sum of the Payables assumed by the Company; and

(b) assume, pay, perform and discharge all of the obligations and liabilities of Seller which are assumed by the Company pursuant to Section 3.06(a) hereof.

3.02 Upon the terms and subject to the conditions of this Agreement, in consideration of and in exchange for the Real Property, the Real Property Purchaser shall pay to Seller as set forth in Section 3.05 hereof, an amount (the "Real Property Purchase Price") equal to the sum of (a) the net book value of the land constituting Real Property as reflected on the books of the Division as of December 31, 1982 plus an additional \$15,000 and (b) the net book value of the buildings and improvements constituting Real Property as reflected on the books of the Division as of December 31, 1982 plus an additional \$50,000. One thousand dollars (\$1,000) of the Real

Property Purchase Price is attributable to the Real Property Parcel II.

3.03 At the Closing, the Company shall deliver to Seller (i) a wire transfer of immediately available funds for credit to Seller at a bank account designated by Seller in an amount equal to the Business Assets Purchase Price as estimated based on the Base Balance Sheet and Seller's good faith estimate of changes to the Base Balance Sheet through December 31, 1982 (all as reflected on Exhibit M attached hereto and made a part hereof), less the aggregate amount of the Inventory Note (as hereinafter defined) and (ii) an installment note in substantially the form attached hereto as Exhibit H and made a part hereof in a principal amount equal to the net book value (i.e., lower of cost or market on a first-in, first-out basis) of the Inventory as shown on the Base Balance Sheet (the "Inventory Note").

3.04 The principal amount due under the Inventory Note shall be subject to recalculation and a promissory note in the form of the Inventory Note in a principal amount equal to the Inventory component of the Business Assets Purchase Price as finally determined shall be substituted and exchanged for the Inventory Note as provided in Section 3.08 hereof. The Inventory Note shall be secured by a first lien upon certain stock of Seller owned by John J. Riley, Jr. pursuant to the security agreement attached hereto as Exhibit I (the "Stock Pledge

Agreement").

3.05 At the Closing, the Real Property Purchaser shall deliver to Seller a wire transfer of immediately available funds for credit to Seller at a bank account designated by Seller in an amount equal to the Real Property Purchase Price.

3.06 (a) On the Closing Date the Company shall assume, perform and in due course pay and discharge the debts, obligations and liabilities which have arisen or shall arise (the "Liabilities"):

(i) on behalf of the Division after December 31, 1982 under the Contracts;

(ii) for all expenses of the Division which are incurred, assessed or accrued in the ordinary course of business on or after the Effective Date, including, without limitation, trade accounts payable and income tax, F.I.C.A. and other payroll tax collection and reporting responsibilities under all applicable United States, state and local laws and regulations;

(iii) under any product warranty claim, relating to products of the Division, received on or after the Effective Date;

(iv) for any defective products of the Division which are returned to it, or for which an allowance is requested on or after the Effective Date; and

(v) the Payables.

The Company shall indemnify and hold harmless Seller from any and all loss, cost or expense incurred by Seller arising out of the assertion against it of any of the Liabilities.

(b) The Company shall not assume or pay any debt, obligation or liability of any kind or nature of Seller, except as specifically provided in this Agreement as evidenced by an Assumption Agreement effective as of the Effective Date.

3.07 Seller is not transferring ownership of the Receivables. All of the Receivables will be and remain the property of Seller. By use of normal and usual billing practices, but without being required to bring suit or to refer accounts to collection agencies or attorneys, the Company hereby undertakes to collect the Receivables and will use its best efforts in so doing for and on account of Seller. During the "Collection Period", as hereinafter defined, Seller shall have access during regular business hours to all documentation in the Company's possession relating to the Receivables. Any documentation relating to any particular Receivable shall be

returned to Seller as such Receivable is paid or returned as provided herein. Collections received by the Company from customers common to both the Company and Seller will be applied in a manner consistent with an inter-creditor agreement dated as of the Effective Date by and between the Seller and BayBank Middlesex. The Company agrees to account for and remit to Seller all sums collected with respect to the Receivables within ten (10) business days after the Closing Date and on a weekly basis thereafter until such time as the Company's obligation to collect said sums has terminated. If Seller should receive payment of all or any part of such account directly from the debtor, it will, within two weeks of such receipt, advise the Company in writing of the fact and amount of said payment, and will promptly account for and pay over to the Company any receipts from any customer which, together with amounts accounted for and remitted to Seller hereunder, exceed the amount due to Seller from said customer. Within ten (10) days after the expiration of the Collection Period the Company shall either return to Seller for collection any or all of the Receivables that are uncollected or purchase such Receivables for cash at their face value. As used herein, the "Collection Period" is the period beginning with the Closing Date and ending (a) thirty (30) days after the Closing Date with respect to Receivables that are more than ninety (90) days old as of the Effective Date and (b) sixty (60) days after the Closing Date with respect to Receivables that are less than ninety (90) days old as of the

Effective Date.

3.08 The purchase and sale of the Business Assets shall be effective for accounting purposes as of the close of business on December 31, 1982. All operating expenses of the Division shall be prorated as of that date. Accordingly, notwithstanding anything herein to the contrary, the Company is entitled to the profits of, and other benefits which accrue to, the Division after such date and is responsible for all Liabilities. Promptly after the Closing Date, the Company and Seller shall account to each other and pay any amount owed to the other as a result of profits, benefits and Liabilities attributable to the period between the Effective Date and the Closing Date.

As promptly as practicable after the Closing Date, and, in any event, within thirty (30) days thereafter, Seller shall prepare the Closing Balance Sheet and shall deliver such Closing Balance Sheet to the Company. The Closing Balance Sheet shall be prepared in accordance with Seller's normal internal accounting practices and procedures as historically applied in accounting for the Division. The Company may designate representatives to observe the taking of the Inventory and review the preparation of the Closing Balance Sheet. If either the Company or the Real Property Purchaser (as to the Real Property) disputes Seller's preparation of the Closing Balance Sheet, such party shall submit a statement of its claim in writing to Seller within ten (10) business days after receipt of the

Closing Balance Sheet. If such claim is not settled by the parties within ten (10) days after Seller's receipt of such statement, such claim shall be submitted to arbitration before a single arbitrator in the City of Boston. Any such arbitration shall be governed by the commercial arbitration rules of the American Arbitration Association. The costs of arbitration shall be borne equally by the parties. As soon as practicable after final determination of the Business Assets Purchase Price, and, in any event, within five (5) business days thereafter, (a) the Seller shall return the Inventory Note to the Company and the Company shall execute and deliver to Seller a new promissory note in the same form as the Inventory Note but reflecting the recalculated deferred balance due for the Inventory and (b) to the extent the Business Assets Purchase Price is adjusted based on the Closing Balance Sheet for reasons other than changes with respect to the Inventory, either the Seller or the Company shall promptly pay the other any amount owed as a result of such adjustment. The substitution of the Inventory Note shall not adversely affect the priority of Seller's first lien upon the collateral posted as security for the Inventory Note. In the event a claim is submitted to arbitration and the Inventory Note is paid in full prior to the conclusion of such arbitration, promptly after the conclusion of the arbitration either the Seller or the Company shall pay any amount determined by arbitration to be owed.

3.09 Any and all state and local transfer, stamp, sales or use taxes applicable to, imposed upon or arising out of the transfer to the Company and the Real Property Purchaser of, respectively, the Business Assets and the Real Property shall be borne by Seller.

Article IV
Closing

4.01 (a) The obligations of the Company and the Real Property Purchaser under this Agreement are subject to the condition that as of the Closing Date all representations and warranties made by Seller herein shall be true and correct in all material respects on and as of such date with the same effect as if such representations and warranties had been made on and as of such date, Seller shall have performed and complied with all agreements and covenants on its part required to be performed or complied with on or prior to such date and the Company and the Real Property Purchaser shall have been furnished with a certificate of an officer of Seller, dated the Closing Date, certifying to the fulfillment of the foregoing condition.

(b) The obligations of Seller under this Agreement are subject to the condition that as of the Closing Date all representations and warranties made by the Company and the Real Property Purchaser herein shall

be true and correct in all material respects on and as of such date with the same effect as if such representations and warranties had been made on and as of such date, the Company and the Real Property Purchaser shall have performed and complied with all agreements and covenants on their part required to be performed or complied with on or prior to such date and Seller shall have been furnished with a certificate dated the Closing Date, certifying to the fulfillment of the foregoing condition from the Real Property Purchaser and from the President of the Company.

4.02 At the Closing, Seller shall deliver to the Company and the Real Property Purchaser, as appropriate, the following:

(i) all such bills of sale, deeds, contract assignments and other documents and instruments of sale, assignment, conveyance and transfer to sell, assign, convey and transfer the Business Assets to the Company and the Real Property to the Real Property Purchaser in accordance with the terms of this Agreement;

(ii) the opinion of Winston & Strawn, dated the Closing Date, stating that:

(A) Seller has been duly organized and is validly existing and in good standing under the laws of Delaware.

(B) Seller has the corporate power and authority to enter into and perform this Agreement. The execution, delivery and performance of this Agreement has been duly authorized by all requisite corporate action, and this Agreement has been duly executed and delivered by Seller.

(C) This Agreement is a legal, valid and binding obligation of Seller and is enforceable against Seller in accordance with its terms, except as may be limited by bankruptcy, insolvency or other similar laws affecting the enforcement of creditors' rights in general.

(D) The execution and the delivery of this Agreement and the performance by the Seller of its terms do not conflict with or result in a violation of the Certificate of Incorporation or By-Laws of Seller or of any agreement, instrument, order, writ, judgment or decree known to such counsel to which Seller

is a party or is subject; and

(iii) a Massachusetts release deed or deeds for the Real Property together with a letter of commitment to issue an Owner's title insurance policy dated the Closing Date, on ALTA 1970 Owner's Form B, with extended coverage endorsement guaranteeing over the standard exceptions to title customarily contained in such policies (except as to matters that would require a survey in order to remove the survey exception), and with such other endorsements and provisions as the Real Property Purchaser in its discretion reasonably deems appropriate, covering the Real Property, insuring, as of the Closing Date, the fee simple estate of the Real Property Purchaser in each such parcel of real estate in the amount and subject only to the exceptions set forth in the title insurance policy attached hereto as Exhibit J.

(iv) such other documents as the Company or the Real Property Purchaser or their counsel may reasonably request to carry out the purposes of this Agreement.

4.03 At the Closing, John J. Riley, Jr., the Company or the Real Property Purchaser, as appropriate, shall deliver to Seller the following:

(i) the Inventory Note, the Stock Pledge Agreement, and any related documents required thereby or as otherwise necessary to validly perfect Seller's security interests as therein provided;

(ii) the opinion of Nutter, McClennen & Fish in the form attached hereto as Exhibit L.

(iii) a document evidencing the assumption by the Company of the obligations to be assumed by it under this Agreement.

Article V Covenants

5.01 Seller, the Company and the Real Property Purchaser shall, on request, on or after the Closing Date, cooperate with one another by furnishing any additional information, executing and delivering any additional documents and/or instruments and doing any and all such other things as may be reasonably required by the parties or their counsel to consummate or otherwise implement the transaction contemplated by this Agreement.

5.02 The Seller shall prepare the Closing Balance Sheet in accordance with Seller's normal internal accounting procedures and practices as consistently maintained and historically applied in accounting for the Division.

5.03 During the period of five(5) years following the Closing Date, the Company shall, upon request, process leather for Braude Bros. Tannery, Moran Leather Co. and Amdur Leather Co. on standard commercial terms provided that the quantities thereof to be processed from time to time shall be reasonably within the Company's capacity to produce. Notwithstanding the foregoing, nothing contained herein shall be deemed to require the Company to stay in business or to process leather if, in the opinion of the Company's Board of Directors, it is not economically advantageous for the Company to do so.

5.04 Seller recognizes and acknowledges that the Closing does not relieve the Seller of any liabilities and obligations relating to its ownership and operation of the Division prior to the Closing except to the extent expressly provided in Section 3.06 hereof. Seller agrees to indemnify and hold harmless the Company and the Real Property Purchaser against any loss, damage or expense with respect to all events occurring or conditions created prior to the Closing Date which relate to the Business Assets or the Real Property unless expressly assumed pursuant to this Agreement.

Following the Closing, Seller shall continue to defend the Woburn pollution litigation described in Exhibit K hereto (the "Woburn Litigation"). The Company and the Real Property Purchaser shall cooperate with Seller in its defense of such litigation, and shall make available to Seller such personnel and records as Seller may reasonably request in connection with such matter. In addition, Seller shall have access to the Real Property for the purpose of inspecting the same and conducting whatever soil or other tests it may reasonably deem necessary in connection with the Woburn Litigation. Seller recognizes and agrees that to the extent it would have any liability with respect to the Woburn Litigation absent a sale of the Business Assets and Real Property, Seller shall continue to be responsible for such liability notwithstanding the Closing. Specifically, Seller shall be responsible ~~for any~~ and all monetary damages, including interest and court costs, awarded against it, the Company, the Real Property Purchaser or any other stockholder, officer or director of the John J. Riley Company prior to its merger into the Seller in such matter, for (except as otherwise provided in the following sentence) any court-ordered remedial action required of it or the Company to change or rectify any environmental condition or situation, and all legal fees and other expenses incurred by it, the Company, the Real Property Purchaser or any other stockholder, officer or director of the John J. Riley Company prior to its merger into the Seller in connection with such defense; except that, if any such monetary

award provides, or if it can be reasonably inferred from the manner in which such monetary damages are calculated, that all or any portion thereof is made in respect of, or if court ordered remedial action relates to, events occurring or conditions created or exacerbated after the Closing Date, the Company shall be responsible for that portion of such award as relates to the events occurring or conditions created or exacerbated by the Company after the Closing Date. If any judgment against Seller or the Company in such matter requires that remedial action be taken with respect to the Company's production process or that any device, system, facility or other improvement be installed or made with respect to the Business Assets, the Company shall, at its expense, be responsible for taking such action or installing or making such improvement. The foregoing allocation of responsibility between Seller and the Company shall also be applicable to any other lawsuit or administrative proceeding to which Seller and/or the Company is a party, or are parties, and which is based upon, related to or arises out of the condition or conditions and matter or matters at issue in the Woburn Litigation.

5.05 Pursuant to this Agreement, the Company is assuming the duty, obligation and liability to perform, pay, satisfy and discharge all duties, liabilities and obligations arising from or in connection with the agreement between Local 22 and the Division. The parties acknowledge that, pursuant to the

aforesaid agreement, Seller contributes to the Leather Worker's Union Retirement Fund ("Multiemployer Plan"), a multiemployer plan as defined in Section 4001(a)(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). With respect to the Multiemployer Plan:

(a) The Company shall contribute to the Multiemployer Plan after the Effective Date with respect to the operations of the Division for substantially the same number of contribution base units for which Seller has an obligation to contribute to the Multiemployer Plan with respect to the Division, but only to the extent so required by the agreement between Local 22 and the Division.

(b) The Company shall provide to the Multiemployer Plan for a period of five years, commencing with the first plan year beginning after the Effective Date, a bond issued by a corporate surety company that is an acceptable surety for purposes of Section 412 of ERISA, or an amount to be held in escrow by the Multiemployer Plan, in an amount equal to the greater of (i) the average annual contribution required to be made by Seller with respect to the operations of the Division for the three plan years of the Multiemployer Plan preceding the plan year in which the Effective Date occurs or (ii) the annual contribution Seller was

required to make under the Multiemployer Plan with respect to the operations of the Division for the last plan year prior to the plan year in which the Effective Date occurs. The bond or escrow shall provide for payment to the Multiemployer Plan if the Company withdraws from the Multiemployer Plan in a complete or partial withdrawal (as defined in Sections 4203 and 4205 of ERISA) or fails to make a contribution to the Multiemployer Plan, when due, at any time during the first five plan years beginning after the Effective Date. Seller shall assist in obtaining the aforementioned bond and shall pay any premium due in respect thereof.

(c) If the Company withdraws from the Multiemployer Plan in a complete or partial withdrawal (as defined in Sections 4203 and 4205 of ERISA) with respect to the operations of the Division during the first five plan years beginning after the Effective Date, Seller shall be secondarily liable for any withdrawal liability it would have had to the Multiemployer Plan with respect to the operations of the Division (but for Section 4204 of ERISA) if the liability of the Company with respect to the Multiemployer Plan is not paid.

(d) In the event of the Company's complete or partial withdrawal from the Multiemployer Plan

(i) after the end of the fifth plan year beginning after the Effective Date,

(ii) in connection with the Company's voluntary change of the location of part or all of the business with respect to which the Company contributes to the Multiemployer Plan,

(iii) in connection with any decertification initiated or materially encouraged by the Company or Local 22 or its successor as collective bargaining agent for employees of the Company with respect to whom the Company contributes to the

Multiemployer Plan, or

(iv) in connection with coverage of employees of the Company with respect to whom the Company contributes to the Multiemployer Plan under an employee benefit plan established by the Company, if initiated or materially encouraged by the Company,

the Company shall indemnify Seller for any liability which Seller may incur with respect to a complete or partial withdrawal as described in the foregoing clauses (i) - (iv). In the event of the Company's complete or partial withdrawal from the Multiemployer Plan under circumstances that do not entitle Seller to indemnification under the foregoing sentence, Seller shall

indemnify the Company in the amount of (A) any liability which the Company may incur with respect to such complete or partial withdrawal in excess of the liability the Company would have incurred if Section 4024(b) of ERISA did not apply to the Company, or (B) the liability Seller would have had to the Multiemployer Plan with respect to the operations of the Division (but for Section 4204 of ERISA), whichever is less. The amount described in (B) in the foregoing sentence shall be reduced by the amount of any previous indemnity incurred by Seller pursuant to the foregoing sentence. If the Company becomes aware of any facts which could give rise to an indemnification claim against Seller hereunder, the Company agrees to give Seller prompt notice thereof, and Seller may at its sole cost contest any withdrawal liability on behalf of the Company to the extent the Company does not contest such liability. Indemnification pursuant to this Section 5.05 shall not be limited as provided in Sections 10.06 and 10.07 hereof.

Article VI
Representations and Warranties
of
Seller

Seller hereby represents and warrants to the Company (and, as to the Real Property, to the Real Property Purchaser) as follows:

6.01 Seller is a corporation duly organized, validly existing and in good standing under the laws of Delaware, and is qualified as a foreign corporation to do business in Massachusetts.

6.02 Neither the execution and delivery of this Agreement by Seller nor the consummation of the transaction contemplated hereunder nor the fulfillment by Seller of any of its terms will (a) conflict with or result in a breach by Seller of, or constitute a default by it under, any other terms, conditions or provisions of (i) any indenture, mortgage, lease, deed of trust, pledge, loan or credit agreement or any other contract, arrangement or agreement to which Seller is a party, (ii) its Certificate of Incorporation or By-Laws or (iii) any judgment, order, writ, injunction, decree or demand against Seller of any court or federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, or (b) result in the creation or imposition of any lien, charge or encumbrance or any nature whatsoever upon any of the Business Assets or the Real Property.

6.03 The execution and delivery of this Agreement by Seller and the performance of all acts contemplated to be performed by it hereunder have been duly authorized by all necessary corporate action by Seller. Seller has duly executed and delivered this Agreement and this Agreement constitutes a legal, valid and binding obligation of Seller.

6.04 No consent, approval or authorization of, or filing with, any governmental authority on the part of Seller is required in connection with the execution, delivery and

consummation of this Agreement.

6.05 Seller has good and marketable title to the Business Assets and the Real Property, free and clear of mortgages, pledges, liens, claims, charges, encumbrances or other adverse interest of any kind or nature, except for such imperfections of title and encumbrances, if any, as are not substantial in character, amount or extent and which do not materially detract from the value or materially interfere with the present use of the Business Assets and, except with respect to the Real Property (a) the lien of current taxes not yet due and payable and (b) such imperfections of title, liens and easements as are set forth in the title insurance policy attached hereto as Exhibit J.

6.06 Except as described in the list attached hereto as Exhibit K and made a part hereof, there is no litigation or proceeding before any governmental authority pending or, to Seller's knowledge, threatened against or affecting the business of the Division, the Business Assets or the Real Property.

6.07 Neither Seller nor, to Seller's knowledge, any other person, firm, corporation or entity is in breach of, or default under, any Contract.

6.08 The Base Balance Sheet was prepared in accordance with Seller's normal internal accounting procedures and practices as consistently maintained and historically applied in accounting for the Division.

Article VII
Acknowledgement
Of
the Business Assets Purchaser

7.01 The Company represents to Seller that it has inspected the Inventory and the Machinery and Equipment and knows the condition thereof and is purchasing the same "AS IS and WHERE LOCATED" as a result of such inspection and not because of or in reliance on any representations made by Seller other than those expressly set forth in this Agreement. The Inventory and the Machinery and Equipment shall be sold without any representations or warranties of any kind or nature, expressed or implied, as to physical condition, value or quality, and Seller specifically disclaims any warranty of merchantability, usage or fitness.

Article VIII
Representations and Warranties
Of
the Company

The Company represents and warrants to Seller as follows:

8.01 The Company is duly organized, validly existing

and in good standing under the laws of Massachusetts.

8.02 Neither the execution and delivery of this Agreement or the Inventory Note by the Company nor the consummation of the transaction contemplated hereunder or thereunder nor the fulfillment by the Company of any of the terms hereof or thereof will conflict with or result in a breach by the Company of, or constitute a default by it under, any of the terms, conditions or provisions of (a) any indenture, mortgage, lease, deed of trust, pledge, loan or credit agreement or any other contract, arrangement or agreement to which the Company is a party, (b) its Articles of Organization or By-Laws, or (c) any judgment, order, writ, injunction, decree or demand against the Company of any court or federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality.

8.03 The execution and delivery of this Agreement and the Inventory Note by the Company and the performance of all acts contemplated to be performed by it hereunder have been duly authorized by all necessary corporate action. The Company has duly executed and delivered this Agreement and it constitutes, and when executed and delivered by the Company the Inventory Note will constitute, a legal, valid and binding obligation of the Company.

8.04 No consent, approval or authorization of, or filing with, any governmental authority on the part of the Company is required in connection with the execution, delivery and consummation of this Agreement.

Article IX
Representations and Warranties
of the Real
Property Purchaser

9.01 The Rileys hereby represent and warrant to Seller as follows:

(a) Neither the execution and delivery of this Agreement nor the consummation of the transaction contemplated hereunder nor the fulfillment by the Rileys of any of the terms hereof will conflict with or result in a breach by the Rileys of, or constitute a default by it under, any of the terms, conditions or provisions of (i) any indenture, mortgage, lease, deed of trust, pledge, loan or credit agreement or any other contract, arrangement or agreement to which the Rileys are a party, or (ii) any judgment, order, writ, injunction, decree or demand against the Rileys of any court or federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality.

(b) The Rileys have duly executed and delivered this Agreement and it constitutes the legal, valid and binding obligation of the Rileys.

(c) No consent, approval or authorization of, or filing with, any governmental authority on the part of the Rileys is required in connection with the execution, delivery and consummation of this Agreement.

9.02 Wildwood hereby represents and warrants to Seller as follows:

(a) Wildwood is duly organized, validly existing and in good standing under the laws of Massachusetts.

(b) Neither the execution and delivery of this Agreement nor the consummation of the transaction contemplated hereunder nor the fulfillment by Wildwood of any of the terms hereof will conflict with or result in a breach by Wildwood of, or constitute a default by it under, any of the terms, conditions or provisions of (i) any indenture, mortgage, lease, deed of trust, pledge, loan or credit agreement or any other contract, arrangement or agreement to which Wildwood is a party, (ii) its Articles of Organization or By-laws, or (iii) any judgment, order, writ, injunction, decree or demand against Wildwood of any court or federal, state, municipal or other governmental department, commission,

board, bureau, agency or instrumentality.

(c) The execution and delivery of this Agreement by Wildwood and the performance of all acts contemplated to be performed by it hereunder have been duly authorized by all necessary corporate action. Wildwood has duly executed and delivered this Agreement and it constitutes the legal, valid and binding obligation of Wildwood.

(d) No consent, approval or authorization of, or filing with, any governmental authority on the part of Wildwood is required in connection with the execution, delivery and consummation of this Agreement.

Article X

Indemnification

10.01 Seller shall indemnify and hold harmless the Real Property Purchaser and the Company against any loss, damage or expense (including reasonable attorneys' fees) suffered by either of them resulting from (i) any breach by Seller of this Agreement, (ii) any inaccuracy in or breach of any of the representations, warranties or covenants made by Seller herein or in any document delivered pursuant hereto, (iii) subject to Section 5.04 hereof, any pending or threatened litigation listed on Exhibit K hereto, or (iv) any liabilities and obligations of Seller relating to Seller's ownership and operation of the Division prior to the Closing, except to the

extent expressly provided in Section 3.06 hereof. With respect to any pending or threatened litigation listed on Exhibit K hereto, the Real Property Purchaser and the Company agree, unless they have reasonable cause to request independent counsel, to be represented by Seller's counsel and further agree to cooperate with Seller and its counsel in the defense of such litigation. Notwithstanding anything contained herein to the contrary, the Company and the Real Property Purchaser acknowledge that the Seller's representations and warranties contained in this Agreement are based primarily on information provided to the Seller by John J. Riley, Jr. and that the Seller shall not be obligated to indemnify the Company or the Real Property Purchaser to the extent that John J. Riley, Jr. had actual knowledge prior to the Closing of any inaccuracy or omission with respect to any of Seller's representations or warranties contained herein giving rise to such claim for indemnity.

10.2 The Company shall indemnify and hold harmless Seller against any loss, damage or expense (including reasonable attorneys' fees) suffered by Seller resulting from (i) any breach by the Company of this Agreement or (ii) any inaccuracy in or breach of any of the representations, warranties or covenants made by the Company herein or in any document delivered pursuant hereto.

10.03 The Real Property Purchaser shall indemnify and hold harmless Seller against any loss, damage or expense (including reasonable attorneys' fees) suffered by Seller

resulting from (i) any breach by the Real Property Purchaser of this Agreement or (ii) any inaccuracy in or breach of any of the representations, warranties or covenants made by the Real Property Purchaser herein or in any document delivered pursuant hereto.

10.04 Upon obtaining knowledge thereof, the indemnified party shall promptly notify the indemnifying party of any claim or demand which it has determined has given or could give rise to a right of indemnification under this Agreement. If such claim or demand relates to a claim asserted by a third party, the indemnifying party shall have a reasonable time to contest any such claim or demand and shall have the right to employ counsel acceptable to the indemnified party and the indemnified party shall cooperate in the defense of any such claim or demand.

10.05 Subject to the indemnifying party's right to defend third party claims as set forth above, the indemnifying party shall reimburse the indemnified party promptly upon demand for any payment made or loss suffered by the indemnified party in respect of any liability, loss, damage or expense to which this Article X relates.

10.06 An indemnified party shall not be entitled to assert any right of indemnification under this Article X for any loss, damage or expense suffered by it after the third (3) anniversary of the Closing, except for pollution litigation

which is based upon, related to or arising out of the condition or conditions and matter or matters at issue in the Woburn Litigation and except if there shall then be pending any dispute, claim, proceeding or action under this Agreement, the indemnified party shall continue to have the right to be indemnified with respect to such pending dispute, claim, proceeding or action. The pending or threatened litigation described in Exhibit K hereto shall be deemed to be proceedings pending under this Agreement for purposes of this Section 10.06.

10.07 An indemnified party shall not be entitled to indemnification under this Article X until the aggregate losses, damages or expenses suffered by it exceed \$50,000 ("Threshold"), whereupon the indemnified party shall be entitled to indemnification hereunder by the indemnifying party for any loss, damage or expense in excess of the Threshold. This Section 10.07 shall not limit Seller's obligation to fully indemnify the Company and the Real Property Purchaser with respect to any pending or threatened litigation listed on Exhibit K hereto and any liability for failure to comply with the so-called Bulk Sales laws of any state.

Article XI
Miscellaneous

11.01 The Company and the Real Property Purchaser and Seller represent and warrant that neither this Agreement nor the sale and purchase of the Business Assets or the Real Property

or any other transaction contemplated by this Agreement was induced or procured through any person, firm, corporation or other entity acting on behalf of, or representing, the Company, the Real Property Purchaser or Seller as broker, finder, investment banker, financial advisor or in any similar capacity.

11.02 Each of the parties hereto will pay their own costs and expenses (including attorneys' fees, accountants' fees and other professional fees and expenses) in connection with the negotiation, preparation, execution and delivery of this Agreement and the consummation of the sale of the Business Assets, the Real Property and the other matters contemplated by this Agreement Seller shall pay the cost of the title insurance delivered pursuant to Section 4.02(a)(iii) hereof.

11.03 This Agreement contains the entire agreement between the parties hereto with respect to the transaction contemplated hereunder, and supersedes all negotiations, representations, warranties, commitments, offers, contracts and writings prior to the date hereof. No waiver and no modification or amendment of any provision of this Agreement shall be effective unless specifically made in writing and duly signed by the party to be bound thereby.

11.04 All notices to third parties and other publicity relating to the transaction contemplated by this Agreement shall be jointly planned, coordinated and agreed to by the Company,

the Real Property Purchaser and the Seller. None of the parties hereto shall act unilaterally in this regard without prior written approval of the others; however, such approval shall not be unreasonably withheld.

11.05 The Company hereby waives compliance by Seller with the provisions of the so-called Bulk Sales Law of any state; provided, however, that Seller shall indemnify the Company and hold it harmless from any claims against it, except for obligations assumed by it hereunder, resulting from Seller's non-compliance with any so-called Bulk Sales Law.

11.06 This Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of the parties hereto.

11.07 The validity, interpretation and effect of this Agreement shall be exclusively governed by, and construed in accordance with, the laws of the State of Massachusetts.

11.08 All notices, requests, demands, and other communications under this Agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid,

and properly addressed as follows:

To Seller:

Beatrice Foods Co.
Two North LaSalle Street
Chicago, Illinois 60602
Attention: Corporate Secretary

To the Company or the Real Property Purchaser:

228 Salem Street
Woburn, Massachusetts 01801
Attention: John J. Riley, Jr.

All notices and other communications required or permitted under this Agreement which are addressed as provided in this Section 11.08 shall, if delivered personally, be effective upon delivery and shall, if delivered by mail, be effective upon deposit in the United States Mail, postage prepaid.

Any party may from time to time change its address for the purpose of notices to that party by a similar notice specifying a new address, but no such notice shall be deemed to have been given until it is actually received by the party sought to be charged with the contents.

11.09 Neither the Company nor Seller shall, unless otherwise consented to in writing by the other party, during the period of 10 years following the date hereof, destroy or otherwise dispose of any of the books or records of the Division acquired hereunder (in the case of the Company) or any of the books or records of the Division retained hereunder (in the

case of Seller) without first offering to surrender such books or records or any portion thereof which such party may intend to destroy or dispose of to the other party. The Company and Seller shall allow the other party's representatives, attorneys, and accountants, at the user's own expense, access to such books or records upon reasonable request and during normal business hours for the purpose of examining and copying.

11.10 This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

11.11 This Agreement and all of the obligations and provisions contained herein shall inure to the sole and exclusive benefit of and be binding upon the parties hereto, and their respective successors in title and interest, and no others shall have any legal, equitable or other right, remedy or claim under or by reason of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on January 6, 1983:

CORPORATE SEAL

BEATRICE FOODS CO.

By: [Signature]
Title Assistant Vice-President

SEAL

[Signature]
John J. Riley, Jr.

SEAL

[Signature]
Diana W. Riley, his wife

CORPORATE SEAL

JOHN J. RILEY COMPANY, INC.

By: [Signature]
Its President

CORPORATE SEAL

WILDWOOD CONSERVATION CORPORATION

By: [Signature]
Its President