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U.S. DEPT. OF LABOR
E.O. 12812/FOIA/PUBLIC DISCLOSURE

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617 542 6000
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November 1, 2001

**BY CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Top Hat Plan Exemption
Pension and Welfare Benefits Administration, Room N-5644
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, D.C. 20210

Re: Ken's Foods, Inc. Salary Continuation Plan

Dear Sir/Madam:

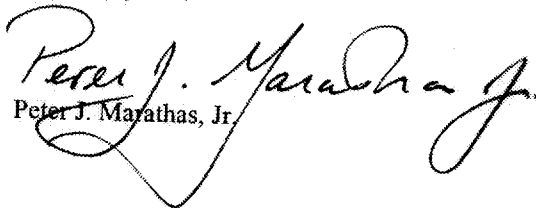
In accordance with Labor Regulations Section 2520.104-23 (29 CFR §2520.104-23) and on behalf of the Plan Administrator, we hereby submit the enclosed Ken's Foods, Inc. Salary Continuation Plan (the "Plan"), effective as of October 1, 2001.

Ken's Foods employer identification number assigned by the IRS is 04-2235187. Ken's Foods maintains the Plan primarily for the purpose of providing deferred compensation to a select group of its management and highly compensated employees. There are approximately 7 participants in the Plan. Ken's Foods employs over 575 employees. The Plan is unfunded and benefits are paid solely from the general assets of the employer. Ken's Foods sponsors no other plan of this type.

This Plan is being filed using the alternative method of compliance with the reporting and disclosure requirements of Part 1 of Title I of ERISA for unfunded pension plans maintained by an employer for a select group of management or highly compensated employees in accordance with Reg. §2520.104-23.

If you have any questions concerning this Plan or this filing please contact the undersigned at (617) 542-6000.

Sincerely yours,


Peter J. Marathas, Jr.

PJM:bb
Enclosure

cc: James Sutherby

TRA 1587846v1

Boston New York Reston Washington

**THE KEN'S FOODS, INC.,
SALARY CONTINUATION PLAN**

THIS KEN'S FOODS, INC. SALARY CONTINUATION PLAN, sponsored by Ken's Foods, Inc., a Massachusetts corporation, with its principal offices and place of business at P.O. Box 849, 1 D'Angelo Drive, Marlborough, Massachusetts, 01752, (hereinafter referred to as the "Corporation") for the benefit of James F. Sutherby, an individual residing at 64 Delwood, Tewksbury, MA (hereinafter referred to as the "Participant") and all other eligible participants, is effective as of October 1st, 2001 (the "Effective Date").

WITNESSETH THAT:

WHEREAS, the Corporation recognizes the valuable services hereto performed for it by the Participant and wishes to encourage his continued employment; and

WHEREAS, the Participant wishes to be assured that he will be entitled to a certain amount of additional compensation for some definite period of time from and after his retirement from active service with the Corporation or other termination of his employment and that his Beneficiary will be entitled to a death benefit from and after his death; and

WHEREAS, the parties hereto wish to provide the terms and conditions upon which the Corporation shall pay such additional compensation to the Participant after his retirement or other termination of his employment or death benefit to his Beneficiary after his death; and

WHEREAS, the parties hereto intend that this Agreement be considered an unfunded arrangement, maintained primarily to provide deferred compensation benefits for the Participant, a member of a select group of management or highly compensated employees of the Corporation, for purposes of the Employee Retirement Income Security Act of 1974, as amended ("ERISA");

NOW THEREFORE, in consideration of the premises and of the mutual promises herein contained, the parties hereto agree as follows:

ARTICLE 1 - DEFINITIONS

- 1.1 **Anniversary Year**: Is the twelve (12) month period which commences on the Participant's employment commencement date and ends 365 days later, and each successive twelve month period thereafter.
- 1.2 **Beneficiary**: Any person or persons designated by the Participant to be his beneficiary on a form authorized by the Plan Administrator. If no such designation has been received by the Corporation from the Participant prior to his death, then the Beneficiary herein shall be deemed to be the Participant's estate.
- 1.3 **Cause**: Cause shall mean that Participant has (i) breached a material provision of his Employment Agreement (if any) with the Corporation; (ii) engaged in an act of disloyalty to the Corporation, including without limitation, fraud, embezzlement, theft, commission of a felony or job-related dishonesty; (iii) disclosed trade secrets or confidential information of the Corporation to persons not entitled to receive such information; (iv) breached any non-competition or non-solicitation agreement between Participant and the Corporation; (v) willfully failed or willfully refused to perform his duties

on behalf of the Corporation or has continuously and grossly neglected his duties, which duties are consistent with the scope and nature of Participant's responsibilities as set forth in his Employment Agreement and which failure, refusal or neglect is not remedied by Participant within twenty (20) days of his receipt of written notice of such alleged violative activities from the Executive Compensation Committee, it being understood and agreed that mere unsatisfactory financial performance of the Corporation or good faith errors in judgment or discretion made by Participant or actions of Participant taken pursuant to directions of the Executive Compensation Committee or its designee shall not constitute Cause; (vi) engaged in such other behavior detrimental to the Corporation as determined by the Executive Compensation Committee or (v) committed any act or omission deemed to constitute cause under applicable state or federal law.

- 1.4 Change of Control: A Change of Control shall occur if the persons who own one hundred percent (100%) of the outstanding shares of common stock of the Corporation as of the effective date of the Participant's employment owns collectively less than fifty percent (50%) of the outstanding shares of common stock of the Corporation; provided, that a Change of Control shall not be deemed to occur if the change in ownership of such shares of common stock is due to the sale or transfer of such stock to any family member of or trust established by any such person or persons.
- 1.5 Early Retirement Date: A date earlier than the Participant's 65th birthday, determined jointly by the Corporation and the participant.
- 1.6 Executive Compensation Committee: The Executive Compensation Committee of the Corporation's Board of Directors.
- 1.7 Effective Date: The Plan's effective date is October 1, 2001.
- 1.8 Non-Compete Agreement: The Confidentiality, Non-competition, Non-Solicitation and Intellectual Property Agreement, entered into by and between the Participant and the Corporation.
- 1.9 Normal Retirement Date: The first day of the month following the Participant's 65th birthday. At the request of the Corporation and if the Participant agrees, service may continue beyond the Participant's Normal Retirement Date. In the event of such continued employment, the date on which the Participant actually retires shall become his Normal Retirement Date.
- 1.10 Participant: The Participant is the individual identified above as the "Participant," who meets the requirements of Section 2.1 below.
- 1.11 Plan: The Ken's Foods, Inc., Salary Continuation Plan, as forth herein and as modified by any amendments hereto.

ARTICLE 2 - PARTICIPATION

- 2.1 Eligibility for Participation: Only Executives eligible for participation in the Corporation's Executive Compensation Program who are designated as Participants in this Plan by the Executive Compensation Committee shall be eligible to participate in the Plan. To be considered a Participant, an Executive must file with the Corporation a written application for participation in a form satisfactory to the Corporation, within 10 business days of the date he is first notified that he is eligible to participate in the Plan. Said application may, at the option of the Corporation, be in the form of an application for

insurance coverage pursuant to Article 4. 2, if the Corporation, in its sole discretion, elects to purchase such insurance. If a form or application is not filed within such 10 day period, the individual who has failed to file the application shall not be a Participant in the Plan and participation thereafter shall not be permitted except with the written approval of the Executive Compensation Committee.

2.2 Coverage: The Participant shall continue to be covered by this Plan until the earliest date on which any of the following events occur: a) the Participant notifies the Corporation in writing that he no longer wishes to participate; or b) termination of employment either on an Early Retirement Date or otherwise, or termination because of the Participant's disability or death. In the event the Participant's participation is terminated pursuant to this Article 2.2, he may not thereafter be covered by the Plan except upon written approval by the Plan Administrator.

2.3 Leave of Absence: In the event the Participant is granted one or more leaves of absence exceeding twelve (12) consecutive months, his employment shall be deemed to have terminated under Article 2.2 on the first date such leave or leaves commence, unless specifically waived by the Plan Administrator.

ARTICLE 3 - BENEFITS

3.1 Supplemental Retirement Benefit: Commencing on the Participant's Normal Retirement Date, the Participant shall be eligible to receive a supplemental retirement benefit in the amount of \$ 100,000 per year for a period of 10 years, payable in equal monthly installments, commencing with the first day of the month following the Normal Retirement Date. At the Plan Administrator's sole discretion, an optional form of benefit may be payable which reasonably approximates the present value of said benefit. The present value calculation will be performed using an annual discount rate, which will be the then Applicable Federal Mid-term Rate ("AFR").

3.2 Early Retirement Benefit: In the event that the Participant voluntarily terminates employment with the Corporation and is granted Early Retirement, the Participant shall be paid an Early Retirement benefit that shall be based on the following formula: the Participant's supplemental retirement benefit determined in accordance with Article 3.1 shall be multiplied by the Participant's vesting percentage. The vesting percentage shall be determined based on the number of full Anniversary Years of service accrued by the Participant with the Corporation after the Effective Date. For each Anniversary Year of service after November 1st, 2000, the Participant's vesting percentage shall be 6.66%, so that after 15 full years of service, the vesting percentage shall be one hundred percent (100%). The vesting percentage shall not be greater than 100. The Participant must be employed on the last day of an Anniversary Year in order to receive one (1) year of vesting credit for that year. No vesting credit shall be awarded for any partial year of service. Termination Benefit payments shall be made on a monthly basis at one-twelfth the annual vested amount and shall commence on the first day of the month following the 65th birthday of the Participant. At the Plan Administrator's sole discretion, an optional form of benefit may be payable which reasonably approximates the present value of said benefit. The present value calculation will be performed using an annual discount rate, which will be the then current AFR.

- 3.3 Forfeiture In the Event of Breach. Notwithstanding any provision of this Plan, including without limitation the vesting provisions of this Plan, all rights to payments provided hereunder shall be immediately forfeited (whether or not payments have begun) if at any time the Employee engages in any activity that would be prohibited by or constitute a breach of the Non-Compete Agreement, whether or not the Non-Compete Agreement is in effect. This provision shall apply and all amounts otherwise due will become immediately forfeited whether or not the Non-Compete agreement is still in effect and without regard to whether the prohibited activity the Participant engages in occurs after the end of the Additional Period (as defined in the Non-Compete Agreement).
- 3.4 Pre-Retirement Death Benefit: If the Corporation has, in its discretion, determined to purchase insurance in accordance with Section 4.2 below and if a Participant has completed all forms and physicals and is the named insured on a life insurance policy purchased in accordance with such Section 4.2, then if the Participant dies while actively employed by the Corporation, his Beneficiary shall receive a lump sum payment of \$1,000,000, and no further payments shall be due hereunder.
- 3.5 Post-Retirement Death Benefit: In the event that the Participant dies prior to receiving all of the payments to which he is entitled under Articles 3.1 or 3.2, any unpaid installment payments will be paid to his Beneficiary, on the same schedule. Notwithstanding the foregoing, at the Plan Administrator's sole discretion, an optional form of benefit may be payable which reasonably approximates the present value of said benefit. The present value calculation will be performed using an annual discount rate, which will be the then current AFR.
- 3.6 Disability Benefit: The Corporation may solely in its discretion provide disability insurance benefits for selected executives, but there are no disability benefits payable under this Plan.
- 3.7 Change of Control: In the event of a Change of Control, the surviving entity or corporation shall assume the obligations hereunder and shall, as of the effective date of such Change of Control, transfer to the Participant all investments described in Article 4, including any life insurance policies on the Participant's life. Concurrently with the transfer of these investments, the Corporation shall also pay an additional bonus to the Participant in an amount equal to the present value of the current premium payable to age sixty-five (65) on such policy. The present value calculation will be performed using an annual discount rate of five percent (5%). The Corporation shall pay an additional bonus to the Participant in cash for the amount of any Federal and State income taxes that the Participant is required to pay, including, without limitation, any income taxes or any taxes or penalties assessed under Internal Revenue Code Sections 280G, 4999 and 162(m), as a result of any provision contained herein, or in any other agreement between the Participant and the Corporation. The present value calculation will be performed using an annual discount rate of five percent (5%).

ARTICLE 4 - FUNDING

- 4.1 Funding. The Plan is an unfunded Plan and the Corporation shall have no obligation to fund the payments available to the Participant as described herein. Payments to the Participant or his Beneficiary shall be made from the assets of the Corporation, which shall continue, for all purposes, to be a part of the general, unrestricted assets of the Corporation; no person shall have nor acquire any interest in any such assets by virtue of the provisions of this Plan. The Corporation's obligations hereunder shall be an unfunded and unsecured promise to pay money in the future. To the extent that the Participant or any person acquires a right to receive payments from the Corporation under the provisions hereof, such right shall be no greater than the right of any unsecured general creditor of the Corporation; no such person shall have nor acquire any legal or equitable right, interest or claim in or to any property or assets of the Corporation.
- 4.2 Insurance Policies: In the event that, in its discretion, the Corporation purchases an insurance policy or policies insuring the life of the Participant (or any other person) as a means of providing the benefits described herein, neither the Participant, his Beneficiary, or any other person shall have nor acquire any rights whatsoever in the policies or in the proceeds therefrom. The Corporation shall be the sole owner and beneficiary of any such policy or policies and, as such, shall possess, and may exercise, all incidents of ownership therein. No such policy, policies, or other property shall be held in any trust for the Participant or any other person nor as collateral security for any obligation of the Corporation hereunder. Any insurer shall not be a party to this Plan and shall be governed and bound only by the terms of insurance contracts issued by it. To the extent the Corporation exercises its discretion to purchase insurance to provide for the benefits described herein, the Participant shall cooperate fully by completing all required insurance applications forms, by undergoing all necessary medical examinations and by submitting such information to the Corporation or the Insurer as may be required.
- 4.3 Beneficiary Designation: Upon applying for participation in the Plan, each Participant shall designate on a form satisfactory to the Corporation a Beneficiary or Beneficiaries for any benefits which may become payable hereunder in the event of his death. Any such Beneficiary can be changed by a Participant upon giving written notice to the Corporation. The Beneficiary will be the person or persons named in the Beneficiary designation most recently filed with the Corporation at the time of the Participant's death.

ARTICLE 5- AMENDMENT AND TERMINATION

- 5.1 Amendment: This Plan may be amended by the Corporation, in its discretion, except that no amendment may alter or modify the Participant's earned and vested benefit, unless such amendment is executed by both the Participant and the Corporation.
- 5.2 Termination: This Plan may be terminated at any time by the Corporation, in its discretion and in the event of such termination only those benefits actually earned and vested hereunder shall be payable to the Participant.

ARTICLE 6 - INUREMENT

- 6.1 This agreement shall be binding upon and inure to the benefit of the Corporation and its successors and assigns, and the Participant his successors, heirs, executors, administrators and beneficiaries.

ARTICLE 7 - ADMINISTRATION OF THE PLAN

- 7.1 Administration. The Plan shall be administered and interpreted by the Plan Administrator which shall be either the Executive Compensation Committee or person or person designated by the Executive Compensation Committee. The Plan Administrator may, subject to the terms of the Plan, establish rules and regulations for the administration of the Plan and shall have full discretionary authority to manage any investment or funding vehicle, if any, and to construe and interpret the terms and provisions of the Plan, to adopt, alter, waive and repeal such administrative rules, guidelines and practices governing the Plan, and to make all factual determinations and perform all acts, including the delegation of its administrative responsibilities, as it shall from time to time deem advisable, and otherwise to supervise the administration of the Plan. All such rules, regulations and interpretations relating to the Plan which are adopted by the Plan Administrator shall be conclusive and binding on all parties, and shall be reviewed, if at all, only using an arbitrary and capricious standard. The Plan Administrator may correct any defect, supply any omission or reconcile any inconsistency in the Plan, in the manner and to the extent it shall deem necessary to carry the Plan into effect.
- 7.2 Claims. A Participant who believes that he is being denied a benefit to which he is entitled under the Plan (hereinafter referred to as a "Claimant") may file a written request for such benefit with the Corporation setting forth his claim. The request must be addressed to the Plan Administrator of the Plan at the Corporation's principal place of business. In the event of a Participant's retirement or death, he or his Beneficiary, as the case may be, should notify the Corporation promptly, and the Corporation will then provide a form for completion which must be returned to the Corporation, together with an official death certificate, if applicable. In the event that any claim hereunder is denied, the Plan Administrator will provide adequate notice in writing to such Participant or Beneficiary, setting forth the specific reason for such denial and, in addition, the Plan Administrator will afford reasonable opportunity for a full and fair review of those reasons.
- 7.3 Claim Decision: Upon receipt of a claim, the Plan Administrator shall respond within sixty (60) days, but may, however, extend the reply period for an addition ninety (90) days for reasonable cause. If the claim is denied in whole or in part, the Plan Administrator shall provide written notice to the Claimant setting forth:
- (1) The specific reason or reasons for such denial;
 - (2) The specific reference to pertinent provisions of this Plan on which such denial is based;
 - (3) A description of any additional material or information necessary for the Claimant to perfect his claim and an explanation why such material or such information is necessary;
 - (4) Appropriate information as the steps to be taken if the claimant wishes to submit the claim for review; and
 - (5) The time limits for requesting a review.
- 7.4 Request for Review: Within sixty (60) days after the receipt by the Claimant of the written notice described above, the Claimant may request in writing that the Corporation review the determination of the Plan Administrator. Such request must be addressed to the President of the Corporation, at its then

principal place of business. The Claimant or his duly authorized representative may, but need not, review the pertinent documents and submit issues and comments in writing for consideration by the Corporation. If the Claimant does not request a review of the Corporation's determination by the within such sixty (60) day period, he shall be barred and stopped from challenging the Corporation's determination.

- 7.5 Review of Decision: Within sixty (60) days after the President's receipt of a request for review, the Executive Compensation Committee shall designate an officer or officers of the Corporation to review the Plan Administrator's decision and such appointee(s) shall review the Plan Administrator's decision on behalf of the Corporation. After considering all materials presented by the Claimant, a decision will be provided in writing, setting forth the specific reasons for the decision and containing specific references to the pertinent provisions of this Plan on which the decision is based. If special circumstances require that the sixty (60) day time period be extended, the Corporation will so notify the Claimant and will render the decision as soon as possible, but no later than one hundred twenty (120) days after receipt of the request for review. The Plan Administrator and the Corporation shall have full discretionary authority to make all such decisions regarding eligibility for participation, benefits and all other matters (factual or otherwise) with respect to the Plan using the claims procedure described herein. It is intended that the corporation's decision under this Article 7.5 shall be final and binding. However, if the Claimant wishes to challenge any such decision in court, he must do so within sixty (60) days of the final decision or shall forever waive such right to do so.

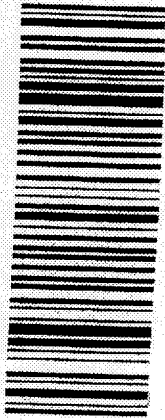
ARTICLE 8- NO CONTRACT OF EMPLOYMENT

- 8.1 General: Nothing contained herein shall be construed to be a contract of employment for any term of years, nor as conferring upon the Participant the right to continue to be employed by the Corporation, in any capacity. It is expressly understood by the parties hereto that this Agreement relates exclusively to additional compensation for the Participant's services, payable after termination of his employment with the Corporation, and its not intended to be an employment contract.

ARTICLE 9 - MISCELLANEOUS

- 9.1 Alienation of Benefits: Benefits under this Plan shall not be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge or encumbrance by any Participant or Beneficiary and any attempt to do so shall be null and void. Benefits under this Plan shall not be subject to or liable for the debts, contracts, liabilities, engagements or torts of any Participant or any Beneficiary, nor may the same be subject to attachment or seizure by any creditor of any Participant of any Beneficiary under any circumstances.
- 9.2 No Trust Created: Nothing contained in this Agreement, and no action taken pursuant to its provisions by either party hereto, shall create, nor be construed to create, a trust of any kind or a fiduciary relationship between the Corporation and the Participant, his designated beneficiary, or any other beneficiary of the Participant or any other person.
- 9.3 Notices: Any notice, consent or demand required or permitted to be given under the provisions of this Agreement shall be in writing, and shall be signed by the party giving or making the same. If such notice, consent or demand is mailed to a party hereto, it shall be sent by United States certified mail,

CERTIFIED MAIL



7099 3400 0016 0302 2277



Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.
One Financial Center
Boston, Massachusetts 02111

PJ Marathas 12993.015

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200 Constitution Avenue, N.W.
Washington, D.C. 20210

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