EXHIBIT B

Reorganization and Subscription Agreement
REORGANIZATION AND SUBSCRIPTION AGREEMENT

by and among

ACON DAIRY INVESTORS, L.L.C.,

LAGUNA DAIRY, S. DE R.L. DE C.V. (f/k/a Laguna Dairy, S.A. de C.V.),

NEW LAGUNA, LLC,

BORDEN DAIRY COMPANY,

BORDEN DAIRY HOLDINGS, LLC

and

THE UNDERSIGNED OWNERS

dated as of

JULY 5, 2017
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EXHIBITS
Exhibit A  - Working Capital Calculation Line Items and Methodologies
Exhibit B  - List of Subsidiaries
Exhibit C  - Form of Tax Sharing Agreement
Exhibit D  - Form of Escrow Agreement
Exhibit E  - Form of LLC Agreement
Exhibit F  - The License Amendment
Exhibit G  - Form of Sale, Distribution and Sub-License Agreement
REORGANIZATION AND SUBSCRIPTION AGREEMENT

This Reorganization and Subscription Agreement (this “Agreement”), dated as of July 5, 2017, is entered into by and among Laguna Dairy, S. de R.L. de C.V., a sociedad de responsabilidad limitada de capital variable duly organized under the laws of Mexico, f/k/a Laguna Dairy, S.A. de C.V. (“Laguna”), each of the undersigned members of Laguna (“Owners”), Borden Dairy Company, a Delaware corporation (the “Company”), Borden Dairy Holdings, LLC, a Delaware limited liability company (“Holdings”), ACON Dairy Investors, L.L.C., a Delaware limited liability company (“Investor”), and New Laguna, LLC, a Delaware limited liability company (“New Laguna”).

RECITALS

WHEREAS, the Company, Holdings, Laguna and the Owners desire to seek an investment for 49% of Holdings and to restructure the Company to accomplish such investment; and

WHEREAS, Investor desires to make an investment in Holdings for 49% of Holdings on the terms and conditions contained in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I
DEFINITIONS

The following terms have the meanings specified or referred to in this Article I:

“Acquired Companies” means Holdings, the Company and the Subsidiaries.

“Affiliate” of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. The term “control” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

“Agreement” has the meaning set forth in the preamble.

“AKK LLP” has the meaning set forth in Section 9.14.

“Balance Sheet” has the meaning set forth in Section 3.10.

“Balance Sheet Date” has the meaning set forth in Section 3.10.

“Benefit Plan” has the meaning set forth in Section 3.20(a).
“Branded Business” means the food and beverage manufacturing, processing, sales, marketing and distribution and other business and operations conducted at any time prior to the date of this Agreement by the Company and its subsidiaries utilizing any of the Branded Marks.

“Branded Business Sale Agreement” means that certain Amended and Restated Reorganization and Membership Interest Purchase Agreement, dated as of August 1, 2016, by and between the Company and LALA U.S., Inc.

“Branded Companies” means Gilsa Real Estate Co., LLC, a Nebraska limited liability company, LALA Branded Products, LLC, a Texas limited liability company (as converted from LALA Branded Products, Inc., a Texas corporation), Promised Land Dairy, LLC, a Delaware limited liability company, and Sinton Dairy Foods Company L.L.C., a Colorado limited liability company.

“Branded Marks” means Frusion®, LaCrème®, Lala®, Nordica®, Promised Land®, Sinton’s®, Skim Plus® and all related marks.

“Business Day” means any day except Saturday, Sunday or any other day on which commercial banks located in either Dallas, Texas or Mexico City are authorized or required by Law to be closed for business.

“Cash” means the cash and cash equivalents of the Acquired Companies as of 11:59 p.m. on the Closing Date, without giving effect to any payments that are made in connection with the Reorganization other than any payments of Cash out of any Acquired Company to any member of the Owner Group (it being agreed and understood that Cash shall be measured as if the Reorganization and the other transactions contemplated hereby had not occurred, other than any payments of Cash out of any Acquired Company to any member of the Owner Group), plus checks presented by the Acquired Companies for deposit but not yet credited to deposit accounts, less the amount at such time of (i) the aggregate balance of all outstanding checks, money orders or similar instruments written against the Acquired Companies’ accounts or for which any Acquired Company is the payor, and (ii) restricted cash or deposits that will remain restricted immediately following the Closing, in each case determined in accordance with GAAP.

“Central States Cash” has the meaning set forth in Section 2.02(a)(i).

“Central States Withdrawal Liability” means the withdrawal liability owing as set forth in that certain settlement agreement, dated as of August 23, 2016, with the Central States, Southeast and Southwest Area Pension Fund as a result of the withdrawal by Borden Dairy Company of Ohio, LLC and Borden Transport Company of Ohio, LLC therefrom and any Mass Withdrawal Liability arising as a result of Borden Dairy Company of Ohio, LLC’s withdrawal from such plan.

“Claim Notice” means a written notification made in good faith which contains (i) a statement that an Indemnified Party is entitled to indemnification under Article VII for Losses, describing with reasonable specificity the basis for such claim, (ii) a description of the Losses
incurred or reasonably expected to be incurred by such Indemnified Party and the Claimed Amount, to the extent known, and (iii) a demand for payment in the amount of such Losses.

“Claimed Amount” means the amount of any Losses incurred or reasonably expected to be incurred in good faith by an Indemnified Party.

“Class A Interests” means Class A Interests in Holdings issued under Section 2.01 and having the rights and terms contained in the LLC Agreement.

“Class B Interests” means Class B Interests in Holdings issued under Section 2.01 and having the rights and terms contained in the LLC Agreement.

“Closing” has the meaning set forth in Section 2.07.

“Closing Adjustment Amount” means (i) Estimated Cash, minus (ii) the Closing Working Capital Adjustment Amount, minus (iii) Estimated Indebtedness. For the avoidance of doubt, “Closing Adjustment Amount” may be expressed as a negative number.

“Closing Working Capital Adjustment Amount” means (i) an amount equal to the Estimated Working Capital Deficiency, if any, or (ii) $0 if there is no Estimated Working Capital Deficiency.

“Closing Cash” has the meaning set forth in Section 2.05(a).

“Closing Date” has the meaning set forth in Section 2.07.

“Closing Indebtedness” has the meaning set forth in Section 2.05(a).

“Closing Working Capital Deficiency” has the meaning set forth in Section 2.05(a).


“Company” has the meaning set forth in the preamble.

“Company Intellectual Property” has the meaning set forth in Section 3.15(b).

“Company Transaction Costs” means (i) all fees, costs and expenses incurred by or on behalf of any Acquired Company or any member of the Owner Group (to the extent payable by an Acquired Company) in connection with the structuring, negotiation or consummation of the transactions contemplated by this Agreement (including the Reorganization) and the other agreements entered into as contemplated hereby, including fees, costs and expenses of any brokers, investment bankers, financial advisors, consultants, accountants, attorneys or other professionals engaged by or on behalf of any Acquired Company or any member of the Owner Group (to the extent payable by an Acquired Company) other than any such expenses incurred in connection with the Debt Financing and (ii) bonuses, change of control payments or similar transaction payments incurred or accrued by any Acquired Company as a result of the transactions contemplated hereby, including the amounts characterized as Company Transaction Costs.
Costs on Section 3.20(m) of the Disclosure Schedule (plus the employer portion of any employment Taxes required to be paid by any Acquired Company with respect thereto).

“Copyrights” has the meaning set forth in Section 3.15(a).

“Current Assets” means, as of 11:59 p.m. on the Closing Date, the sum of all current assets of the Acquired Companies as set forth on Exhibit A attached hereto, as determined in accordance with this Agreement and GAAP applied on a basis consistent with the preparation of the Balance Sheet and Exhibit A attached hereto; provided, however, that Current Assets shall not include, in whole or in part: (a) accounts and obligations owed to an Acquired Company by another Acquired Company, (b) Cash or (c) deferred Tax assets.

“Current Liabilities” means, as of 11:59 p.m. on the Closing Date, the sum of all current liabilities of the Acquired Companies as set forth on Exhibit A attached hereto, as determined in accordance with this Agreement and GAAP applied on a basis consistent with the preparation of the Balance Sheet and Exhibit A attached hereto; provided, however, that Current Liabilities shall not include, in whole or in part: (a) Company Transaction Costs paid on or before the Closing Date, (b) Indebtedness, including the current portion of Indebtedness, and accrued and unpaid interest on Indebtedness, or any costs associated with any refinancing thereof by Investor, (c) deferred Tax liabilities or (d) accounts and obligations owed by an Acquired Company to another Acquired Company.

“Debt Financing” has the meaning set forth in Section 2.01(h).

“Dechert LLP” has the meaning set forth in Section 9.14.

“Deductible” has the meaning set forth in Section 7.04(b).

“Direct Claim” has the meaning set forth in Section 7.05(c).

“Disclosure Schedule” means the Disclosure Schedule delivered by the Company concurrently with the execution and delivery of this Agreement.

“Disclosure Schedule Supplement” has the meaning set forth in Section 5.02.

“Dollars” or “$” means the lawful currency of the United States.

“Domain Names” has the meaning set forth in Section 3.15(a).

“Employees” means those individuals employed by any of the Acquired Companies immediately prior to Closing.

“Encumbrance” means any lien, pledge, mortgage, deed of trust, deed restriction, security interest, charge, claim, easement, encroachment or other similar encumbrance.

“Environmental Claim” means any action, suit, claim, demand, investigation or other legal proceeding by any Person alleging liability of whatever kind or nature (including liability or responsibility for the costs of enforcement proceedings, investigations, cleanup, governmental
response, removal or remediation, natural resources damages, property damages, personal
injuries, penalties, contribution, indemnification and injunctive relief) arising out of, based on or
resulting from: (a) the presence, Release of, or exposure to, any Hazardous Materials in violation
of Environmental Law; or (b) any non-compliance with any Environmental Law or term or
condition of any Environmental Permit.

“Environmental Indemnity” has the meaning set forth in Section 7.02(a)(ix).

“Environmental Law” means any applicable Law, and any Governmental Order or
binding agreement with any Governmental Authority: (a) relating to pollution (or the cleanup
thereof), the protection of natural resources, the environment (including soil, surface water or
groundwater, indoor and ambient air, or subsurface strata), and human health and safety (but not
including worker safety); (b) concerning the management, manufacture, use, containment,
storage, recycling, reclamation, reuse, treatment, generation, discharge, transportation,
processing, production, disposal or remediation of any Hazardous Materials; (c) relating to a
Release or threatened Release of Hazardous Materials; or (d) relating to investigating actual or
threatened Releases, cleaning up Releases, preventing the threat of Releases, or paying the costs
of such clean up, investigation or prevention. The term “Environmental Law” includes, without
limitation, the following (including their implementing regulations and any state analogs as each
has been amended): the Comprehensive Environmental Response, Compensation, and Liability
Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42
U.S.C. §§ 9601 et seq. (“CERCLA”); the Solid Waste Disposal Act, as amended by the
Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid
Waste Amendments of 1984, 42 U.S.C. §§ 6901 et seq.; the Federal Water Pollution Control Act
Planning and Community Right-to-Know Act of 1986, 42 U.S.C. §§ 11001 et seq.; and the Clean
Air Act of 1966, as amended by the Clean Air Act Amendments of 1990, 42 U.S.C. §§ 7401 et
seq.

“Environmental Liabilities” shall mean any Losses based upon, arising out of, with
respect to or by reason of any Environmental Claim, Environmental Notice, or applicable
provision of Environmental Law.

“Environmental Notice” means any written directive, notice of violation or infraction,
or notice respecting any Environmental Claim relating to: (i) actual or alleged non-compliance
with any Environmental Law or any term or condition of any Environmental Permit; or (ii)
actual or alleged liability under any Environmental Law.

“Environmental Permit” means any permit, license, registration, franchise or
authorization required under Environmental Law.

“EPCRS” has the meaning set forth in Section 3.20(b).

“ERISA Affiliate” means any corporation or trade or business, whether or not incorporated, that together with the Acquired Companies would be deemed a “single employer” under Section 414 of the Code or Section 4001 of ERISA.

“Escrow Account” means the non-interest bearing account or accounts established by the Escrow Agent pursuant to the Escrow Agreement to hold the Escrow Amount.

“Escrow Agent” means JP Morgan Chase Bank, N.A.

“Escrow Agreement” has the meaning set forth in Section 2.03.

“Escrow Amount” means the Indemnity Escrow Amount and the Working Capital Escrow Amount, together.

“Estimated Cash” has the meaning set forth in Section 2.04.

“Estimated Indebtedness” has the meaning set forth in Section 2.04.

“Estimated Working Capital Deficiency” has the meaning set forth in Section 2.04.

“Excess Cash” means Cash other than, to the extent included in Cash, any Central States Cash, Farmland Cash and cash equal to the January Amount plus the Holdback Amount. For the avoidance of doubt, in the event that Cash (plus any restricted cash that is included in the Central States Cash pursuant to the terms of this Agreement) is less than (i) the Central States Cash plus (ii) any portion of the Farmland Cash that has not yet been contributed to Farmland pursuant to Section 2.02(a)(iii) plus (iii) the January Amount plus (iv) the Holdback Amount, then Excess Cash shall be a negative number in the amount of such shortfall.

“Farmland” means Farmland Dairies LLC, a Delaware limited liability company.

“Farmland Cash” has the meaning set forth in Section 2.02(a)(iii).

“Farmland Distribution” has the meaning set forth in Section 2.02(a).

“Farmland Pension Plan” has the meaning set forth in Section 2.02(a)(iv).

“Farmland Withdrawal Liability” means the withdrawal liability owed to the Local 338 Retirement Fund as set forth in that certain Notice and Demand for Payment of Withdrawal Liability dated March 3, 2015, as a result of the withdrawal by Farmland from such plan.

“Final Adjustment Amount” means (i) Final Cash, minus (ii) the Final Working Capital Adjustment Amount, minus (iii) Final Indebtedness. For the avoidance of doubt, “Final Adjustment Amount” may be expressed as a negative number.

“Final Working Capital Adjustment Amount” means (i) an amount equal to the Final Working Capital Deficiency, if any, or (ii) $0 if there is no Final Working Capital Deficiency.

“Final Adjustment Deficiency” has the meaning set forth in Section 2.05(c).
“Final Cash” has the meaning set forth in Section 2.05(b).

“Final Indebtedness” has the meaning set forth in Section 2.05(b).

“Final Working Capital Deficiency” has the meaning set forth in Section 2.05(b).

“Financial Statements” has the meaning set forth in Section 3.10.

“Foreign Benefit Plan” has the meaning set forth in Section 3.20(o).

“Fraud” means actual, intentional fraud, and shall expressly exclude constructive fraud.

“GAAP” means United States generally accepted accounting principles in effect from time to time.

“Governmental Authority” means any federal, state, local or foreign government, or any agency or instrumentality of such government, or any arbitrator, court or tribunal of competent jurisdiction, or any receiver or trustee appointed by the foregoing.

“Governmental Order” means any order, writ, judgment, injunction, decree, stipulation, determination, decision, ruling or award entered, issued made or rendered by or with any Governmental Authority.

“Grupo LaLa” means Grupo LaLa S.A.B. de C.V., a sociedad anónima bursátil de capital variable duly organized under the laws of Mexico.

“Hazardous Materials” means: (a) any material, substance, chemical, waste, product, derivative, compound, mixture, solid, liquid, mineral or gas, in each case, that is hazardous, acutely hazardous, toxic, radioactive, a waste, a pollutant, a contaminant, or words of similar import or regulatory effect under Environmental Laws; and (b) any petroleum or petroleum-derived products, radon, radioactive materials or wastes, asbestos and asbestos-containing materials in any form, lead or lead-containing materials, urea formaldehyde foam insulation and polychlorinated biphenyls.

“Holdback Amount” means $15,000,000.

“Holdings” has the meaning set forth in the preamble.

“Houlihan Fee” means $2,854,000.

“HSR Act” means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

“Income Tax” means any federal, state or local income Taxes (including any Tax on or based upon net income, gross income, or income as specially defined, or earnings, profits, or selected items of income, earnings or profits).
“Indebtedness” means, without duplication, except for accounts and obligations owed by any Acquired Company to one or more of the other Acquired Companies, all liabilities of the Acquired Companies under or with respect to: (a) indebtedness for the repayment of borrowed money, whether or not represented by bonds, debentures, notes or similar instruments; (b) other indebtedness evidenced by bonds, debentures, notes or similar instruments; (c) indebtedness guaranteed in any manner (including guarantees in the form of an agreement to repurchase or reimburse and obligations with respect to letters of credit (to the extent drawn)); (d) liabilities under leases that would be considered capitalized leases under GAAP; (e) any indebtedness for the repayment of money borrowed by another Person and secured by an Encumbrance on any Acquired Company’s assets; (f) any interest rate or currency hedging agreements, to the extent payable if terminated at Closing; (g) any obligations to pay the deferred purchase price of property or services, except trade accounts payable and other current liabilities arising in the ordinary course of business; and (h) any accrued and unpaid interest on, and any prepayment premiums, penalties, expenses, fees or similar contractual charges in respect of, any of the foregoing obligations computed as though payment is being made in respect thereof on the Closing Date.

“Indemnified Party” has the meaning set forth in Section 7.04.

“Indemnifying Party” has the meaning set forth in Section 7.04.

“Indemnity Escrow Amount” has the meaning set forth in Section 2.01(g).

“Intellectual Property” has the meaning set forth in Section 3.15(a).

“Investor” has the meaning set forth in the preamble.

“Investor Indemnified Party” or “Investor Indemnified Parties” has the meaning set forth in Section 7.02(a).

“Investor Transaction Expenses” has the meaning set forth in Section 9.01.

“January Amount” means $6,000,000.

“Knowledge of the Company” or “the Company’s Knowledge” or any other similar knowledge qualification, means the actual (and not constructive) knowledge of any of Steve Gorman, Bill White, Luis Campos, Ralph Hallquist, Richard Thomas, Diego Rosenfeldt, Greg Crishi and Kevin Lemmons (the “Knowledge Group”) or such other knowledge as the Knowledge Group would have following a reasonable investigation under the circumstances. For the purposes of the foregoing definition, the parties agree that a “reasonable investigation under the circumstances” will be deemed to have occurred if the member of the Knowledge Group inquires of his or her direct reports having responsibility over the subject matter relating to the particular Section(s) of this Agreement so referenced.

“Laguna” has the meaning set forth in the preamble.

“Laguna Note” has the meaning set forth in Section 2.01(b).
“Law” means any federal, national, state, provincial, local or similar statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, other requirement or rule of law of any Governmental Authority.

“Leases” has the meaning set forth in Section 3.13(a)(iv).

“Licenses” has the meaning set forth in Section 3.15(b).

“Licenses In” has the meaning set forth in Section 3.15(b).

“Licenses Out” has the meaning set forth in Section 3.15(b).

“LLC Agreement” has the meaning set forth in Section 2.06(a)(ii).

“Losses” means all actual losses, damages, liabilities, awards, assessments, judgments, fines, penalties, costs and expenses (including reasonable attorneys’ fees and expenses).

“Mass Withdrawal Liability” means any liability arising under or pursuant to Section 4219(c)(1)(D) of ERISA, the regulations implementing such Section, or any successor provisions thereto.

“Material Adverse Effect” means, with respect to a specified Person, any event, occurrence, fact, condition or change that, alone or in conjunction with any other event, occurrence, fact, condition or change, is or would reasonably be expected to be, materially adverse to (a) the business, results of operations, financial condition, assets or liabilities of such Person, or (b) the ability of such Person to consummate the transactions contemplated hereby on a timely basis; provided, however, that “Material Adverse Effect” shall not include any event, occurrence, fact, condition or change, directly or indirectly, arising out of or attributable to: (i) general economic or political conditions; (ii) conditions generally affecting the industries in which such Person operates; (iii) any changes in financial, banking or securities markets in general, including any disruption thereof and any decline in the price of any security or any market index or any change in prevailing interest rates; (iv) acts of war (whether or not declared), armed hostilities or terrorism, or the escalation or worsening thereof; (v) any action required by this Agreement or any action taken (or omitted to be taken) with the written consent of or at the written request of Investor; (vi) any changes in applicable Laws or accounting rules (including GAAP) or the enforcement, implementation or interpretation thereof; (vii) the announcement, pendency or completion of the transactions contemplated by this Agreement, including losses or threatened losses of, or adverse developments in relationships with, employees, customers, suppliers, distributors or others having relationships with such Person as a direct result of such announcement, pendency or completion; (viii) any natural or man-made disaster or acts of God; (ix) any failure by such Person to meet any internal or published projections, forecasts or revenue or earnings predictions (provided that the underlying causes of such failures (subject to the other provisions of this definition) shall not be excluded); or (x) any adverse change in or effect on the business of such Person that is cured prior to the Closing, unless, in the case of clauses (i)-(iii) such event, occurrence, fact, condition or change materially disproportionately affects such Person relative to others in the same or similar industries.
“Material Contracts” has the meaning set forth in Section 3.13(a).

“Mini-Basket” has the meaning set forth in Section 7.04(b).

“Minimum Working Capital Target” means $31,500,000.

“New Laguna” has the meaning set forth in the preamble.

“Objection Notice” has the meaning set forth in Section 2.05(b).

“Outside Date” has the meaning set forth in Section 8.01(b)(i).

“Owner Group” has the meaning set forth in Section 7.03.

“Owners” has the meaning set forth in the preamble.

“Patents” has the meaning set forth in Section 3.15(a).

“Percentage Interest” means: (a) with respect to New Laguna, the percentage obtained by dividing (i) the initial principal balance of the Rollover Note by (ii) the sum of (1) the initial principal balance of the Rollover Note and (2) the initial principal balance of the Laguna Note; (b) with respect to Laguna, 100% less the Percentage Interest of New Laguna; and, (c) with respect to an Owner (and solely with respect to its obligations under Section 7.09), such Owner’s percentage ownership interest set forth on Section 3.06 of the Disclosure Schedule.

“Permits” means all permits, licenses, certificates, consents, franchises, and authorizations required to be obtained from any Governmental Authority.

“Permitted Encumbrances” has the meaning set forth in Section 3.14(a).

“Person” means an individual, corporation, partnership, joint venture, limited liability company, Governmental Authority, unincorporated organization, trust, association or other entity.

“Pre-Closing Disclosed Environmental Liabilities” means any Environmental Liabilities based upon, arising out of, with respect to, or by reason of any Acquired Companies’ disclosure of actual or potential violations of Environmental Law to any Governmental Authority, including the U.S. Environmental Protection Agency, prior to the Closing Date.

“Pre-Closing Tax Period” means any taxable period ending on or before the Closing Date and, for any Straddle Period, the portion of such taxable period ending on the Closing Date.

“Privileged Materials” has the meaning set forth in Section 9.14.

“Qualified Benefit Plan” has the meaning set forth in Section 3.20(b).

“Real Property” means the real property owned, leased or subleased by any of the Acquired Companies, together with all buildings, structures and facilities located thereon.
“Referee” has the meaning set forth in Section 2.05(b).

“Release” means any release, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injection, escaping, leaching, dumping, abandonment, disposing or allowing to escape or migrate into or through the environment (including, without limitation, surface water, groundwater, land surface or subsurface strata or within any building, structure, facility or fixture).

“Reorganization” has the meaning set forth in Section 2.01.

“Representation and Warranty Policy” means that certain representation and warranty insurance policy underwritten by Euclid Transactional, LLC, which shall be fully bound by Investor as soon as practicable after the date of this Agreement.

“Retailer Withdrawal Liability” means the withdrawal liability owing as set forth in that certain Notice and Demand for Payment of Withdrawal Liability dated January 20, 2016, for the Retail, Wholesale and Department Store International Union and Industry Pension Fund as a result of the withdrawal by Borden Dairy Company of Kentucky, LLC therefrom and any Mass Withdrawal Liability arising as a result of Borden Dairy of Kentucky LLC’s withdrawal from such plan.

“Rollover Note” has the meaning set forth in Section 2.01(b).

“Several Representations” has the meaning set forth in Article III.

“Straddle Period” has the meaning set forth in Section 5.03(a)(iii).

“Subsidiaries” means all of the direct and indirect subsidiaries of the Company, each of which is listed on Exhibit B attached hereto, other than Farmland.

“Tax Contest” has the meaning set forth in Section 5.03(c).

“Tax Indemnity” has the meaning set forth in Section 5.03(b).

“Tax Return” means any return, declaration, report, claim for refund, information return or statement or other document required to be filed with a Governmental Authority with respect to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

“Tax Sharing Agreement” has the meaning set forth in Section 2.01(a).

“Taxes” means all federal, state, local, foreign and other income, gross receipts, sales, use, production, ad valorem, transfer, franchise, registration, profits, license, lease, service, service use, withholding, payroll, employment, unemployment, estimated, excise, severance, environmental, stamp, occupation, premium, property (real or personal), real property gains, windfall profits, customs, duties or other taxes, fees, assessments or charges of any kind whatsoever, whether disputed or not, together with any interest, additions or penalties with respect thereto and any interest in respect of such additions or penalties.
“Third-Party Claim” has the meaning set forth in Section 7.05(a).

“Trade Secrets” has the meaning set forth in Section 3.15(a).

“Trademarks” has the meaning set forth in Section 3.15(a).

“Transaction Proposal” has the meaning set forth in Section 5.10.

“Unaudited Financial Statements” has the meaning set forth in Section 3.10.

“Union” has the meaning set forth in Section 3.21(a).

“USPTO” has the meaning set forth in Section 3.15(b).

“WARN Act” means the federal Worker Adjustment and Retraining Notification Act of 1988, as amended, and similar state, local and foreign Laws related to plant closings, relocations, mass layoffs and employment losses.

“Working Capital” means Current Assets minus Current Liabilities calculated utilizing only the line items and related adjustments set forth on Exhibit A attached hereto. For the purposes of determining Working Capital, no assets or liabilities shall reflect (a) any changes in such assets or liabilities as a result of purchase accounting adjustments or (b) other changes arising from or resulting as a consequence of the transactions contemplated hereby or the Reorganization, including any Tax consequences.

“Working Capital Deficiency” means the amount, if any, by which the Minimum Working Capital Target exceeds the Working Capital.

“Working Capital Escrow Amount” has the meaning set forth in Section 2.01(f).

ARTICLE II
REORGANIZATION AND SUBSCRIPTION

Section 2.01 Reorganization. In order to consummate and give effect to the transactions contemplated by this Agreement, the following shall occur as part of an integrated plan at or prior to the Closing in the following order (such steps, collectively, the “Reorganization”):

(a) The Company shall make a distribution to Laguna in the form of a capital redemption evidenced by a tax receivables agreement in the form of Exhibit C (the “Tax Sharing Agreement”);

(b) The Company shall distribute two intercompany notes to Laguna, each issued by the Company, in the form of a capital redemption, with one intercompany note (the “Rollover Note”) having an aggregate principal amount equal to $46,400,000 and one intercompany note (the “Laguna Note”) having an aggregate principal amount equal to (i) $269,600,000, minus (ii) the Estimated Working Capital Deficiency, if any, minus (iii) Estimated Indebtedness, plus
(iv) Excess Cash, *minus* (v) the amount of all Company Transaction Costs that remain unpaid immediately prior to the Closing (other than the Houlihan Fee payable at the Closing);

(c) Laguna shall contribute to New Laguna the Rollover Note and $5,000,000 in cash;

(d) Concurrently, New Laguna shall contribute the Rollover Note and $5,000,000 in cash to Holdings in exchange for 46,400,000 Class B Interests, and Investor shall contribute $49,600,000 in cash to Holdings in exchange for 44,600,000 Class A Interests;

(e) Holdings shall contribute the Rollover Note and $54,600,000 in cash to the Company in exchange for 100 shares of common stock of the Company and the Company shall cancel the Rollover Note and redeem the outstanding shares of common stock of the Company from Laguna for par value;

(f) New Laguna shall remit to the Escrow Agent an amount of cash equal to $3,000,000 (the “*Working Capital Escrow Amount*”) to be held as security for the obligations under Section 2.05(c) and disbursed by the Escrow Agent pursuant to the Escrow Agreement;

(g) New Laguna shall remit to the Escrow Agent an amount of cash equal to $3,160,000.00 (the “*Indemnity Escrow Amount*”) to be held as security for the indemnification obligations under this Agreement and disbursed by the Escrow Agent pursuant to the Escrow Agreement;

(h) The Company shall borrow from a third-party lender an amount equal to $228,000,000 (the “*Debt Financing*”);

(i) The Company shall repay the Laguna Note; and

(j) The Company shall pay the Houlihan Fee, the Estimated Indebtedness, the Company Transaction Costs that remain unpaid and that portion of the Investor Transaction Expenses that remain unpaid for which the Company has available funds to pay, in such amounts set forth on Schedule 2.01(j), which shall be delivered and completed by the Company and Investor no later than one (1) Business Day prior to the Closing, by wire transfer of immediately available funds to the accounts and in accordance with the instructions set forth on such schedule.

Notwithstanding the lead-in to this Section 2.01, (i) the steps taken in Section 2.01(f) and (g) may occur at the same time, may occur earlier in the Reorganization and may occur concurrently with Section 2.01(h) and (ii) the steps taken in Section 2.01(j) may occur earlier in the Reorganization and may occur concurrently with Section 2.01(i). In the event that the Reorganization steps are not completed on the Closing Date, the responsible Person shall complete such steps on the immediately succeeding Business Day as soon as possible in accordance with the provisions of this Agreement. The Reorganization shall be effected in accordance with the foregoing steps and the agreements, documents, and other instruments that are reasonably satisfactory to Investor and the Company.
Section 2.02 Farmland Distribution.

(a) No later than the time that the Rollover Note is contributed to New Laguna, the Company shall take the following steps related to Farmland (such steps, collectively, the “Farmland Distribution”):

(i) The Company shall establish an account holding at least $30,000,000 in cash (the amount of cash in such account, the “Central States Cash”), which, for the avoidance of doubt, (x) can include any restricted cash that becomes unrestricted at Closing, and (y) can include the cash used to collateralize outstanding Letters of Credit of the Company per the terms and conditions of Section 2.02(c), notwithstanding the fact that such cash is not in such account at Closing;

(ii) The Company shall cause National Dairy, LLC to distribute Farmland to the Company such that it becomes a wholly-owned subsidiary of the Company;

(iii) The Company shall contribute $7,350,000 in cash to Farmland (“Farmland Cash”);

(iv) Farmland shall contribute $7,000,000 in cash to the Farmland Dairy Consolidated Pension Plan (the “Farmland Pension Plan”);

(v) The Company shall distribute Farmland to Laguna; and

(vi) Laguna shall contribute Farmland to New Laguna such that Farmland becomes a wholly-owned subsidiary of New Laguna.

(b) In the event that, at the time the Central States Withdrawal Liability and the Retailer Withdrawal Liability have been discharged in full with respect to the amounts set forth in that certain settlement agreement, dated as of August 23, 2016, with the Central States, Southeast and Southwest Area Pension Fund and that certain Notice and Demand for Payment of Withdrawal Liability dated January 20, 2016, respectively, the Central States Cash (including any earnings on the Central States Cash) is more than the amount of the Central States Withdrawal Liability and the Retailer Withdrawal Liability owed at such time (whether payable currently or in the future, but which shall not include any Mass Withdrawal Liability unless and to the extent such liability has been assessed at such time), any such excess cash shall be paid to Laguna. In the event that the Central States Cash (including any earnings on the Central States Cash) is insufficient to pay the Central States Withdrawal Liability and the Retailer Withdrawal Liability, with respect to the amounts set forth in that certain settlement agreement, dated as of August 23, 2016, and that certain Notice and Demand for Payment of Withdrawal Liability dated January 20, 2016, in each case, with the Central States, Southeast and Southwest Area Pension Fund, then Laguna shall pay the Company the amount of such insufficiency as soon as practicable following notice thereof. Notwithstanding the foregoing, in the event that a “mass withdrawal” occurs with respect to such plans (as contemplated and described in the definitions of Central States Withdrawal Liability and/or Retailers Withdrawal Liability) during the time that the Company still has a portion of the Central States Cash, then no remaining Central States...
Cash shall be released to Laguna to the extent that liability associated with such “mass withdrawal” exceeds the remaining Central States Cash.

(e) Notwithstanding anything to the contrary contained herein, the Company may use approximately $14,000,000.00 of the Central States Cash to collateralize its (and its Subsidiaries’) outstanding Letters of Credit as of the Closing, and such cash shall be deemed included in the amount of Central States Cash for purposes of the requirement in Section 2.02(a)(i). Once replacement Letters of Credit are obtained at or following Closing, such cash will be returned to the account set up pursuant to Section 2.02(a)(i) to hold the Central States Cash.

Section 2.03 Escrow. An escrow agreement in the form attached hereto as Exhibit D, with such changes as may be reasonably requested by the Escrow Agent (the “Escrow Agreement”), shall be entered into by Investor and New Laguna at Closing. The Escrow Agreement shall provide that, on the first anniversary of the Closing Date, the amount of funds in the Escrow Account at such time, less an amount necessary to secure any Claim Notice that has been validly submitted in good faith by such date, shall be released to New Laguna, and New Laguna and Investor will deliver joint written instructions to the Escrow Agent to effect the foregoing within two (2) Business Days after the first anniversary of the Closing Date. Notwithstanding anything to the contrary in this Agreement, if on or prior to the first anniversary of the Closing Date, any Claim Notice has been validly submitted in good faith by such date but has not been finally resolved by such date, a portion of the Indemnity Escrow Amount in an amount equal to the amount remaining in dispute as of such date shall continue to be held in the Escrow Account and shall be released once such dispute has been finally resolved in accordance with this Agreement and the Escrow Agreement. Each of New Laguna and Investor shall be responsible for one-half of all costs and expenses of the Escrow Agent.

Section 2.04 Estimated Working Capital and Excess Cash. No later than three (3) Business Days before the Closing Date, the Company shall deliver to Investor the Company’s good faith estimate of (i) the amount of Working Capital Deficiency, if any, as of the end of the day on the Closing Date (the “Estimated Working Capital Deficiency”), (ii) the amount of Indebtedness as of the end of the day on the Closing Date, which, for the avoidance of doubt, shall exclude the Debt Financing and any Indebtedness incurred under the Laguna Note and the Rollover Note (the “Estimated Indebtedness”), and (iii) the amount of Excess Cash as of the end of the day on the Closing Date (the “Estimated Cash”). The Company shall prepare such estimate in accordance with this Agreement and GAAP applied on a basis consistent with the preparation of the Balance Sheet, except as otherwise contemplated by the definitions of Excess Cash, Current Assets, Current Liabilities, Indebtedness and Working Capital included herein. For the avoidance of doubt, only the categories and line items set forth on Exhibit A attached hereto shall be taken into account in preparing the estimate of Working Capital Deficiency, notwithstanding that GAAP may require additional categories of current liabilities or current assets to be included in a GAAP presentation of working capital.

Section 2.05 Final Working Capital, Indebtedness and Excess Cash.

(a) No later than one hundred twenty (120) days after the Closing, Investor shall cause the Company to, and the Company shall prepare, in good faith, and deliver to Laguna a
calculation of the amount of (x) Working Capital Deficiency, if any ("Closing Working Capital Deficiency"), (y) Excess Cash ("Closing Cash"), and (z) Indebtedness ("Closing Indebtedness"), in each case as of the end of the day on the Closing Date, which, in the case of Indebtedness, shall, for the avoidance of doubt, exclude the Debt Financing and any Indebtedness incurred under the Laguna Note and the Rollover Note. The Company shall prepare such calculation in accordance with this Agreement and GAAP applied in a manner consistent with the preparation of the Balance Sheet, except as otherwise contemplated by the definitions of Current Assets, Current Liabilities, Excess Cash, Indebtedness and Working Capital included herein. For the avoidance of doubt, only the categories and line items set forth on Exhibit A attached hereto shall be taken into account in preparing the calculation of the Closing Working Capital Deficiency, if any, notwithstanding that GAAP may require additional categories of current liabilities or current assets to be included in a GAAP presentation of current liabilities or current assets. Following the delivery of such calculation to Laguna, the Company and Investor shall each afford Laguna and its representatives the opportunity to examine such calculation, and such supporting schedules, analyses, workpapers, including the audit workpapers, and other underlying records or documentation as are reasonably requested by Laguna. Investor and the Company shall reasonably cooperate with Laguna and its representatives in such examination, including providing answers to questions asked by Laguna and its representatives, and Investor and the Company shall promptly make available to Laguna and its representatives, during normal business hours and on reasonable advance notice, any records pertaining to the foregoing under Investor’s or the Company’s reasonable control that are requested by Laguna or its representatives.

(b) If within forty-five (45) days following delivery to Laguna of the calculation of Closing Working Capital Deficiency, Closing Cash and Closing Indebtedness, Laguna has not delivered to Investor written notice of its objections to such calculation (the “Objection Notice”) containing a statement describing in reasonable detail under the circumstances the basis of such objections, then such calculation shall be deemed final and conclusive and shall be “Final Working Capital Deficiency,” if any, “Final Cash” and “Final Indebtedness”. If Laguna delivers an Objection Notice to some, but not all, of the items or amounts included in the calculation of Closing Working Capital Deficiency, Closing Cash or Closing Indebtedness within such forty-five (45)-day period, then Laguna shall be deemed to have agreed with Investor’s calculations solely with respect to the specific items and amounts that were not disputed in such Objection Notice. If Laguna delivers an Objection Notice within such forty-five (45)-day period, then Investor and Laguna shall endeavor in good faith to resolve the objections during a period not to exceed fifteen (15) days from the date of delivery of the Objection Notice. If at the end of such fifteen (15)-day period there are any objections that remain in dispute, then Investor and Laguna shall jointly submit the remaining objections in dispute for resolution to a nationally recognized accounting firm to be selected jointly by Laguna and Investor within the following five (5) days or, if Laguna and Investor are unable to mutually agree within such five (5)-day period, such accounting firm shall be Grant Thornton LLP (such jointly selected accounting firm or Grant Thornton LLP, the “Referee”). The Referee shall determine the disputed portions of Final Working Capital Deficiency, Final Cash and Final Indebtedness within thirty (30) days after the objections that remain in dispute are submitted to it. If any remaining objections are submitted to the Referee for resolution: (i) each party shall furnish to the Referee a report with respect to such party’s positions with respect to
the issues in the Objection Notice, a copy of which shall be delivered to the other party hereto, and no ex parte conferences, oral examinations, testimony, depositions, discovery or other form of evidence gathering or hearings shall be conducted or allowed, provided, that, at the Referee’s request, or as mutually agreed by Investor and Laguna, Investor and Laguna may meet with the Referee as long as representatives of both are present; (ii) to the extent that a value has been assigned to any objection that remains in dispute, the Referee shall not assign a value to such objection that is greater than the greatest value for such objection claimed by either party or less than the smallest value for such objection claimed by either Investor or Laguna; and (iii) the determination by the Referee of Final Working Capital Deficiency, Final Cash and Final Indebtedness as set forth in a written notice delivered to both parties by the Referee, shall be made solely in accordance with the written reports (i.e., not on independent review) and in accordance with this Agreement and shall be binding and conclusive on the parties absent manifest error and shall constitute an arbitral award that is final, binding and unappealable and upon which a judgment may be entered by a court having jurisdiction thereof. Each party shall bear its own fees and expenses with respect to any dispute under this Section 2.05(b); provided, however, that the fees and expenses of the Referee shall be allocated to be paid by Investor, on the one hand, and/or Laguna, on the other hand, based upon the percentage that the portion of the contested amount not awarded to each side bears to the amount actually contested by such side, as determined by the Referee.

(c) To the extent that the Final Adjustment Amount exceeds the Closing Adjustment Amount, the Company shall pay such excess to New Laguna and New Laguna and Investor shall provide the Escrow Agent with joint written instructions in accordance with the Escrow Agreement to deliver an amount equal to the remaining amount of the Working Capital Escrow Amount in the Escrow Account to New Laguna within ten (10) days of the final determination of the amounts comprising the Final Adjustment Amount. To the extent that the Final Adjustment Amount is less than the Closing Adjustment Amount (such deficiency, the “Final Adjustment Deficiency”), New Laguna and Investor shall provide the Escrow Agent with joint written instructions in accordance with the Escrow Agreement to deliver to the Company an amount equal to the Final Adjustment Deficiency from the Working Capital Escrow Amount that is held in the Escrow Account and to release the remaining amount of the Working Capital Escrow Amount in the Escrow Account less the Final Adjustment Deficiency, if any, to New Laguna, in each case within ten (10) days of the final determination of the amounts comprising the Final Adjustment Amount. If the Working Capital Escrow Amount is less than the Final Adjustment Deficiency, New Laguna and Investor shall provide the Escrow Agent with joint written instructions in accordance with the Escrow Agreement to deliver to the Company an amount equal to the Final Adjustment Deficiency less the Working Capital Escrow Amount from the Indemnity Escrow Amount that is held in the Escrow Account within ten (10) days of the final determination of the amounts comprising the Final Adjustment Amount. If the Working Capital Escrow Amount plus the Indemnity Escrow Amount is less than the Final Adjustment Deficiency, New Laguna shall deliver to the Company an amount of cash equal to the Final Adjustment Deficiency less the Working Capital Escrow Amount and less the Indemnity Escrow Amount within ten (10) days of the final determination of the amounts comprising the Final Adjustment Amount.
Section 2.06 Deliveries to be Made at Closing.

(a) At or prior to the Closing, Investor shall deliver (or, in the case of the Debt Financing, cause to be delivered) to the Company the following:

(i) the Escrow Agreement, executed by each of Investor and the Escrow Agent; and

(ii) the limited liability company agreement of Holdings in the form attached hereto as Exhibit E (the “LLC Agreement”), executed by Investor in its capacity as a member of Holdings after the Closing, with a schedule reflecting the Class A Interests and Class B Interests issued to Investor and New Laguna hereunder, which shall be effective at the time of the contributions made in accordance with Section 2.01(d);

(iii) evidence that the Representation and Warranty Policy will be effective as of the Closing; and

(iv) the subscription amounts payable by Investor under Section 2.01 at the time such funds are required by Section 2.01 and the amounts required under the Debt Financing at the times such amounts are required by Section 2.01.

(b) At Closing, the Company shall deliver to Investor the following:

(i) resignations of all individuals who are officers or directors of the Acquired Companies that are not Employees, which resignations will be effective as of the time that the payment required pursuant to Section 2.01(d) is made;

(ii) a copy of the submitted Form 8832 whereby Holdings elects to be treated as a corporation;

(iii) the Escrow Agreement, executed by New Laguna and the Escrow Agent;

(iv) the LLC Agreement, executed by Holdings and New Laguna in its capacity as a member of Holdings after the Closing, with a schedule reflecting the Class A Interests and Class B Interests issued to Investor and New Laguna hereunder;

(v) the Tax Sharing Agreement, executed by the Company and Laguna;

(vi) the amendment to the trademark license agreement in the form of Exhibit F, duly executed by the Company and Comercializadora de Lacteos y Derivados S.A. de C.V.

(vii) customary payoff letters in respect of all Indebtedness and/or customary termination of existing undrawn Indebtedness, which shall include a release of all Encumbrances on the assets and properties of the Acquired Companies with respect to such Indebtedness upon receipt of the amounts indicated therein;
(viii) a properly executed statement, dated as of the Closing Date, conforming to the requirements of Treasury Regulations Section 1.1445-2(c)(3);

(ix) a certificate of the Secretary of the Company, Holdings, and, in the case of (B) and (C), each other Acquired Company, certifying: (A) copies of resolutions of the members and managers of the Company and Holdings authorizing and approving the execution and delivery of this Agreement and the performance by the Company and Holdings of their obligations hereunder; (B) true and complete copies of the organizational documents of each Acquired Company; (C) a good standing certificate (or its equivalent under the Laws of the applicable jurisdiction) for each Acquired Company, dated as of a date within five (5) days of the Closing Date, from the jurisdiction of formation of each Acquired Company; and (D) the name, title, incumbency and signature of the managers or officer(s) of Holdings and the Company individually authorized to execute and deliver this Agreement;

(x) evidence that the Company has established an account containing at least the Central States Cash and cash equal to both the January Amount and the Holdback Amount (which cash (other than cash in excess of such amount) shall not constitute Excess Cash hereunder), which account, for the avoidance of doubt, can include any account containing any restricted cash that becomes unrestricted at Closing; and

(xi) evidence that the Farmland Distribution has been completed to Investor’s reasonable satisfaction.

(c) At or prior to Closing, the Company, Holdings and the applicable members of the Owner Group shall make the various payments and contributions required under Section 2.01, in each case at the time such payments and contributions are required by Section 2.01.

Section 2.07 Closing. Subject to the terms and conditions of this Agreement, including the rights of the parties hereto pursuant to Section 8.01, the reorganization and subscription contemplated hereby shall take place at a closing (“Closing”) to be held at 9:00 a.m., Central Time, no later than two (2) Business Days after the last of the conditions to Closing set forth in Article VI have been satisfied or waived (other than conditions which, by their nature, are to be satisfied at Closing) or at such other time or on such other date as the Company and Investor may mutually agree upon in writing (the day on which Closing takes place being the “Closing Date”). Closing shall take place by exchange of executed documents by PDF or facsimile or in such other manner as the Company and Investor may mutually agree upon.

ARTICLE III
REPRESENTATIONS AND WARRANTIES OF THE COMPANY AND OWNERS

Except as set forth in the Disclosure Schedule, the Company represents and warrants to Investor that the statements contained in this Article III (other than the Several Representations) are true and correct as of the date hereof, and each member of the Owner Group represents and warrants (severally with respect to himself, herself or itself and not jointly and severally with others) to Investor that the statements contained in Section 3.03, Section 3.06 and Section 3.09 (the “Several Representations”) are true and complete as of the date hereof.
Section 3.01 Organization and Authority of the Acquired Companies.

(a) Each of the Acquired Companies is a corporation or limited liability company (or foreign equivalent thereof) duly organized, validly existing and in good standing under the Laws of the jurisdiction of its incorporation or formation, as set forth in Section 3.01 of the Disclosure Schedule, and has the requisite power and authority to own, lease and operate the properties and assets now owned, operated or leased by it and to carry on its business as it is currently conducted. The Company has provided or made available to Investor correct and complete copies of the organizational documents of each of the Acquired Companies.

(b) Each of Holdings and the Company has all requisite power and authority to enter into this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby. The execution and delivery by each of Holdings and the Company of this Agreement, the performance by each of Holdings and the Company of its obligations hereunder and the consummation by each of Holdings and the Company of the transactions contemplated hereby have been duly authorized by all requisite action on the part of Holdings and the Company.

Section 3.02 Execution by and Enforceability Against Holdings and the Company.
This Agreement has been duly executed and delivered by each of Holdings and the Company, and, assuming that this Agreement constitutes the valid and binding agreement of the other parties hereto, this Agreement constitutes the valid and binding agreement of each of Holdings and the Company, enforceable against each of Holdings and the Company in accordance with its terms and conditions, except to the extent enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting creditors’ rights generally or by general principles of equity (regardless of whether enforcement is sought in a proceeding at Law or in equity).

Section 3.03 Owner Group Authority; Enforceability. Such applicable member of the Owner Group has the requisite power and authority to execute and deliver this Agreement and to perform his, her or its obligations hereunder and to consummate the transactions contemplated herein. This Agreement has been duly and validly executed and delivered by such applicable member of the Owner Group and, assuming that this Agreement constitutes the valid and binding agreement of the other parties hereto, constitutes the valid and binding obligations of such applicable member of the Owner Group, enforceable against such applicable member of the Owner Group in accordance with their respective terms and conditions, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting creditors’ rights generally and by general principles of equity (regardless of whether enforcement is sought in a proceeding at law or in equity).

Section 3.04 Qualification of the Acquired Companies. Each of the Acquired Companies is duly licensed or qualified to do business and is in good standing in each jurisdiction in which the properties owned or leased by it or the operation of its business as currently conducted makes such licensing or qualification necessary, except where the failure to be so licensed, qualified or in good standing would not have a Material Adverse Effect on the Acquired Companies.
Section 3.05 Capitalization.

(a) As of immediately following the Closing after giving effect to the transactions contemplated by this Agreement, all of the issued and outstanding equity interests of Holdings (including the Class A Interests) (i) will have been duly authorized and validly issued and free of restrictions on transfer other than applicable state and federal securities Laws and those restrictions contained in the LLC Agreement, and will be owned of record and beneficially as set forth on Section 3.05(a) of the Disclosure Schedule, (ii) will have been offered, issued, sold and delivered in compliance with applicable securities Laws and are not subject to any preemptive rights, (iii) will not have been issued in violation of any agreement, arrangement or commitment to which Holdings, the Company or any of its Affiliates is a party or is subject to or in violation of any preemptive or similar rights of any Person, and (iv) will have the rights, preferences, powers, restrictions and limitations set forth in the LLC Agreement.

(b) Except as set forth in the organizational documents of the Acquired Companies (including the LLC Agreement), as of immediately following the Closing after giving effect to the transactions contemplated by this Agreement: (i) there will be no outstanding or authorized options, warrants, convertible securities or other rights, agreements, arrangements or commitments of any character relating to the capital stock of, or any other interest in, any Acquired Company or obligating any Acquired Company to issue or sell any shares of capital stock of, or any other interest in, such Acquired Company; (ii) none of the Acquired Companies will have any outstanding or authorized stock appreciation, phantom stock, profit participation or similar rights; (iii) there will be no voting trusts, stockholder agreements, proxies or other agreements or understandings in effect with respect to the voting or transfer of any of the equity securities of the Acquired Companies; (iv) there will be no outstanding obligations of Holdings or the Company to repurchase, redeem or otherwise acquire any equity securities of the Acquired Companies; and (v) there will be no rights to have the capital stock of, or any other interest in, any Acquired Company registered for sale to the public in connection with the Laws of any jurisdiction.

Section 3.06 Ownership of Membership Interests. As of immediately prior to the Closing, and without giving effect to the Reorganization, with respect to each Owner, such Owner holds of record, owns beneficially and has valid title to the membership interests in Laguna set forth opposite such Owner’s name on Section 3.06 of the Disclosure Schedule, free and clear of any Encumbrances other than any restrictions on transfer arising under applicable securities Laws.

Section 3.07 Subsidiaries. Other than the ownership of the Subsidiaries, none of the Acquired Companies owns, or has any interest in, any shares or has an ownership interest in any other Person. Each of the Subsidiaries is a direct or indirect wholly-owned subsidiary of the Company and all of the outstanding capital stock or other equity interest in such Subsidiaries are owned beneficially and of record by one or more of the Acquired Companies. The capital stock of each Subsidiary, including the name of the record and beneficial owner of all outstanding equity securities of each Subsidiary, is as set forth on Section 3.07 of the Disclosure Schedule.

Section 3.08 No Conflicts; Consents. The execution, delivery and performance by each of Holdings and the Company of this Agreement, and the consummation of the transactions

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contemplated hereby, do not and will not: (a) result in a violation or breach of any provision of the organizational documents of any Acquired Company; (b) result in a violation or breach of any provision of any Law or Governmental Order applicable to the Acquired Companies; (c) result in the creation or imposition of any Encumbrance other than Permitted Encumbrances on any properties or assets of any Acquired Company; or (d) conflict with, result in a violation or breach of, constitute a default under or result in the acceleration of any Material Contract, except in the cases of clauses (b), (c) and (d), where the violation, breach, Encumbrance, conflict, default or acceleration would not have a Material Adverse Effect on Holdings or the Company. No material consent, approval, Permit, Governmental Order, declaration or material filing with, notice to, or other action by any Person is required by or with respect to any Acquired Company in connection with the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby, except for such filings as may be required under the HSR Act.

Section 3.09 No Owner Group Conflicts; Consents. The execution, delivery and performance by each applicable member of the Owner Group of this Agreement, and the consummation of the transactions contemplated hereby, do not and will not: (a) result in a violation or breach of any provision of the organizational documents of such applicable member of the Owner Group; (b) result in a violation or breach of any provision of any Law or Governmental Order applicable to such applicable member of the Owner Group; or (c) conflict with, result in a violation or breach of, constitute a default under or result in the acceleration of any agreement to which such applicable member of the Owner Group is a party, except in the cases of clauses (b) and (c), where the violation, breach, conflict, default or acceleration would not have a material adverse effect on the ability of such applicable member of the Owner Group to consummate the transactions contemplated hereby. No material consent, approval, Permit, Governmental Order, declaration or material filing with, notice to, or other action by any Person is required by or with respect to such applicable member of the Owner Group in connection with the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby, except for such filings as may be required under the HSR Act.

Section 3.10 Financial Statements. Section 3.10 of the Disclosure Schedule includes a correct and complete copy of the following financial statements (collectively, the “Financial Statements”): (a) the audited consolidated balance sheets of the Company and its subsidiaries as of December 31, 2016 and 2015 and the related audited consolidated statements of operations, comprehensive income (loss), parent’s equity and cash flows of the Company and its subsidiaries for the years then ended, and the related notes to such consolidated financial statements, audited by RSM US LLP, (b) the unaudited consolidated balance sheet of the Company and its subsidiaries as of April 30, 2017 and the related unaudited consolidated statement of operations and cash flows of the Company and its subsidiaries for the four (4) months then ended, (c) the unaudited consolidated balance sheet of the Acquired Companies as of December 31, 2015 and the related unaudited consolidated profit and loss statement of the Acquired Companies for the year then ended, in each case without giving effect to the Branded Business in such financial statements, and (d) the unaudited consolidated balance sheet of the Acquired Companies (the “Balance Sheet”) as of December 31, 2016 (the “Balance Sheet Date”) and April 30, 2017 and the related unaudited consolidated profit and loss statement of the Acquired Companies for the twelve (12) months and four (4) months then ended, respectively, in each case without giving effect to the Branded Business in such financial statements (such Financial Statements described
in subclauses (b), (c) and (d) of this Section 3.10, the “Unaudited Financial Statements”). The Financial Statements referred to in subclauses (a) and (b) have been prepared in accordance with GAAP applied on a consistent basis throughout the period involved, subject, in the case of the Unaudited Financial Statements, to normal and recurring year-end adjustments and the absence of notes. The Financial Statements fairly present in all material respects the financial condition of the entities to which such Financial Statements relate and the results of the operations of the entities to which such Financial Statements relate as of and for the dates and periods indicated therein. The Unaudited Financial Statements referred to in subclauses (c) and (d) exclude all items and amounts (including costs, expenses, cash flows and revenues) related to the three (3) plants conducting the Branded Business that were previously sold to Grupo LaLa. Notwithstanding anything included in this Section 3.10, no representations or warranties are made by the Company or the Owner Group with respect to any financial statements of the Branded Business.

Section 3.11 Undisclosed Liabilities. The Acquired Companies have no liabilities, obligations or commitments of a type required to be reflected on a balance sheet prepared in accordance with GAAP, except (a) those which are adequately reflected or reserved against in the Balance Sheet, (b) those which have been incurred in the ordinary course of business since the Balance Sheet Date, or (c) those which are set forth in Section 3.11 of the Disclosure Schedule. None of the Acquired Companies has any outstanding Indebtedness and none of the Acquired Companies is party to any hedging agreement with respect to any commodity that, as of the date hereof, would reasonably be expected to result in the incurrence of a liability or obligation on the part of any Acquired Company in excess of $100,000.

Section 3.12 Absence of Certain Changes, Events and Conditions. Except as otherwise provided in this Agreement, contemplated in connection with the sale of the Branded Business, contemplated in connection with the Reorganization or the Farmland Distribution or set forth in Section 3.12 of the Disclosure Schedule, since the Balance Sheet Date, the Acquired Companies have operated in the ordinary course of business in all material respects and there has not been, with respect to any Acquired Company, any:

(a) event, occurrence or development that has had a Material Adverse Effect on the Acquired Companies;

(b) amendment of its charter, by-laws or other organizational documents;

(c) split, combination or reclassification of any shares of its capital stock or other equity interests;

(d) issuance, sale or other disposition of any of its capital stock or other equity interests, or grant of any options, warrants or other rights to purchase or obtain (including upon conversion, exchange or exercise) any of its capital stock or other equity interests;

(e) except for distributions of cash between Acquired Companies (other than the Company) and except for distributions of Excess Cash from the Company to Laguna, declaration or payment of any dividends or distributions on or in respect of any of its capital stock or other equity interests;
stock or other equity interests or redemption, purchase or acquisition of its capital stock or other equity interests;

(f) material change in any method of accounting or accounting practice of the Company, except as required by GAAP or applicable Law or as disclosed in the notes to the Financial Statements;

(g) sale or other disposition of any of the assets shown or reflected on the Balance Sheet, except for (i) sales of inventory in the ordinary course of business, or (ii) sales of obsolete or worn out equipment, or other assets, that collectively have an aggregate value of less than $500,000;

(h) increase in the compensation or benefits of its executive-level Employees, other than as provided for in any binding written agreements in effect on the Balance Sheet Date or in the ordinary course of business consistent with past practice;

(i) grant to any executive-level Employee any change of control, severance, retention or termination compensation;

(j) acquisition by merger or consolidation with, or by purchase of a substantial portion of the assets or stock of, or by any other manner, any business or any Person or any division thereof;

(k) adoption of any plan of merger, consolidation, reorganization, liquidation or dissolution or filing of a petition in bankruptcy under any provisions of foreign, federal or state bankruptcy Law or consent to the filing of any bankruptcy petition against it under any similar Law;

(l) other than any investment in the Branded Business that was made on or prior to August 1, 2016, capital investment in, or any loan to, any other Person;

(m) other than any investment in the Branded Business that was made on or prior to August 1, 2016, capital expenditure or commitment in excess of currently budgeted amounts;

(n) promotional sale or discount or other activity with any customer (other than in the ordinary course of business consistent with past practice) that has or would reasonably be expected to have the effect of materially accelerating to pre-Closing periods sales that would otherwise be expected to occur in post-Closing periods;

(o) action regarding the payment of any compensation, sales commission or other payment associated with the sales of any of its various products (other than in the ordinary course of business consistent with past practice) that has or would reasonably be expected to have the effect of delaying to post-Closing periods any payments that would otherwise be expected to have been made in pre-Closing periods;

(p) adoption, change or rescission of any material Tax election, accounting method, practice or period, filing of any amended Tax return, execution of a closing agreement with respect to Taxes, settlement of a material Tax claim or assessment, surrender of any right to
claim a refund of Taxes, or consent to any extension or waiver of the limitation period applicable to any Tax claim or assessment, if any such action would have the effect of increasing the Tax liability of any Acquired Company for any period ending after December 31, 2016 or decreasing any Tax attribute of any Acquired Company existing on December 31, 2016; or

(q) any agreement to do any of the foregoing, or any action or omission that would result in any of the foregoing.

Section 3.13 Material Contracts.

(a) Section 3.13(a) of the Disclosure Schedule lists each of the following contracts and other agreements to which any of the Acquired Companies is subject or bound that is in effect as of the date of this Agreement (collectively, the “Material Contracts”):

(i) each agreement for the purchase of inventory, supplies, goods, products, equipment or other capital expenditures, or the receipt of services, involving a potential commitment of payment by any Acquired Company over the remaining term of such contract in excess of $500,000 which is not cancelable by the applicable Acquired Company without liability for material penalty upon ninety (90) days’ notice or less;

(ii) each agreement for the sale of inventory, supplies, goods, products, equipment, or the furnishing of services, involving aggregate consideration of payment to any Acquired Company over the remaining term of such contract in excess of $500,000 which is not cancelable by the applicable Acquired Company without liability for material penalty upon ninety (90) days’ notice or less;

(iii) all agreements that relate to the sale of any of the Acquired Companies’ assets, other than in the ordinary course of business consistent with past practice, for consideration in excess of $500,000;

(iv) all leases of Real Property (“Leases”);

(v) all agreements entered into during the preceding two (2) years that relate to the acquisition of any business, stock or assets of any other Person or any real property (whether by merger, sale of stock, sale of assets or otherwise);

(vi) all agreements relating to Indebtedness (including, but not limited to, guarantees);

(vii) any written employment, confidentiality, non-competition, severance or termination agreements with Employees or consultants, in each case involving the payment of more than $150,000 per year and which is not terminable or cancellable by the Acquired Company that is a party thereto without penalty on thirty (30) days’ or less notice;

(viii) all agreements that require any Acquired Company to purchase its total requirements, or a minimum quantity, of any product or service from a third party or that contain “take or pay” provisions;

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(ix) each agreement containing a “most favored nation” provision or that obligates any Acquired Company to conduct business on an exclusive basis for a period longer than twelve (12) months with any third party;

(x) each agreement that provides for any joint venture or partnership arrangement by any Acquired Company;

(xi) all agreements prohibiting any Acquired Company from engaging in any business or competing anywhere in the world;

(xii) all collective bargaining agreements or similar agreements with any labor organization, union or association to which any Acquired Company is a party; and

(xiii) all agreements that require any Acquired Company to provide notification to or obtain the consent of a third party upon a change-of-control of the Company.

(b) The Company has provided or made available to Investor a correct and complete copy of each Material Contract. All Material Contracts are binding and enforceable against the applicable Acquired Company and, to the Knowledge of the Company, against the other parties thereto, in accordance with their terms, except to the extent that the enforceability thereof may be affected by bankruptcy, insolvency, or similar Laws affecting creditors’ rights generally or by court-appointed equitable principles. No Acquired Company, nor to the Knowledge of the Company, any party thereto, is in material default under any applicable Material Contract. To the Knowledge of the Company, as of the date of this Agreement, there has not occurred any event that (with the lapse of time or the giving of notice or both) would constitute a material default under any Material Contract by the applicable Acquired Company.

(c) To the Knowledge of the Company, as of the date of this Agreement, there has not been any event, occurrence, fact, condition or circumstance that (with the lapse of time or the giving of notice or both) would, or would reasonably be expected to, give rise to a Loss that, with respect to which, any Acquired Company is required to provide indemnification pursuant to the Branded Business Sale Agreement.

Section 3.14 Title to Assets; Real Property.

(a) Each of the Acquired Companies has good and valid (and, in the case of owned Real Property, good and fee simple) title to, or a valid leasehold interest in, all Real Property, tangible personal property and other tangible assets used in or necessary in connection with its business, other than properties and assets sold or otherwise disposed of in the ordinary course of business since December 31, 2016. All such properties and assets are in good operating condition and repair (reasonable wear and tear excepted) and are adequate and sufficient in all material respects to carry on such business as presently conducted. All such properties and assets are free and clear of Encumbrances, except for the following (collectively referred to as “Permitted Encumbrances”):

(i) those items set forth in Section 3.14(a) of the Disclosure Schedule;
(ii) liens for Taxes (A) not yet due and delinquent or (B) being contested in good faith by appropriate procedures, and as to which appropriate reserves have been established on the applicable Financial Statements in accordance with GAAP;

(iii) mechanics, carriers’, workmen’s, repairmen’s or other like liens arising or incurred in the ordinary course of business;

(iv) easements, rights of way, zoning ordinances and other similar encumbrances affecting Real Property which do not have a material adverse impact on the current use of the Real Property;

(v) all matters of record affecting any Real Property or any standard printed exceptions as would customarily appear on a title insurance policy;

(vi) other than with respect to owned Real Property, liens arising under original purchase price conditional sales contracts and equipment leases with third parties entered into in the ordinary of business;

(vii) liens incurred in connection with worker’s compensation and unemployment insurance or other similar Laws;

(viii) statutory landlords’ or warehouse liens; or

(ix) other imperfections of title or Encumbrances that do not materially detract from the value of, or restrict the use or operation of, the current use of the asset or Real Property subject thereto or affected thereby.

(b) Section 3.14(b) of the Disclosure Schedule lists: (i) the street address and owner of each parcel of Real Property owned by the Acquired Companies; and (ii) any leases, subleases, licenses or other occupancy agreements affecting the use or occupation of such owned Real Property. No Acquired Company is a lessor, sublessor or grantor under any lease, sublease or other instrument granting to any other Person any right to the possession, lease, occupancy or enjoyment of any Real Property.

(c) Section 3.14(c) of the Disclosure Schedule lists the street address and lessee of each parcel of Real Property leased by the Acquired Companies. The Company has provided Investor with true, correct and complete copies of all leases, lease guaranties, licenses, subleases and agreements for the leasing, use or occupancy of, or otherwise granting a right in or relating to the Real Property leased by the Acquired Companies, including all amendments, terminations and modifications thereof.

(d) Each of the Acquired Companies, as the case may be, are in peaceful and undisturbed possession of each parcel of Real Property, and, to the Knowledge of the Company, there are no contractual or legal restrictions that preclude or restrict the ability to use the Real Property for the purposes for which it is currently being used.

(e) To the Knowledge of the Company, there are no condemnation proceedings or eminent-domain proceedings of any kind pending or threatened against any Real Property.
None of the Acquired Companies has entered into any other contract for the sale of any Real Property or any constituent or portion thereof, other than any sale that has been completed.

Except as set forth in Section 3.14(g) of the Disclosure Schedule, (i) no Person other than the Acquired Companies has any right to occupy or use, or is otherwise in possession of, any of the owned Real Property, whether or not by lease, sublease or any other contract or agreement and no Acquired Company has leased, subleased, licensed or otherwise granted any Person the right to use or occupy any leased Real Property or any portion thereof; (ii) all owned Real Property and the current use of all Real Property by any Acquired Company complies with all applicable Laws of any Governmental Authority having jurisdiction thereof; and (iii) none of the Acquired Companies has received any written notice that it has not obtained any Permits, Encumbrances, or rights-of-way, including proof of dedication, required from any Governmental Authority having jurisdiction over any of the Real Property or from private parties to permit the present use of any of the Real Property in accordance with applicable Laws.

The Company has previously made available or delivered to Investor true, complete, correct and accurate copies of the following: (i) the latest title insurance policies in connection with the Acquired Companies’ ownership, acquisition or financing of the Real Property, to the extent they are in any Acquired Company’s possession; (ii) all instruments, documents or agreements referenced in such title insurance policies that create or evidence conditions or exceptions to title affecting such Real Property, to the extent they are in any Acquired Company’s possession; and (iii) the latest surveys in the possession of any Acquired Company in connection with any Acquired Company’s ownership, purchase or refinancing of such Real Property.

The Acquired Companies own or have the right to use all of the material tangible assets necessary to operate the fresh fluid milk business as it is currently conducted. Except pursuant to and in accordance with the Branded Business Sale Agreement, no Real Property, Intellectual Property, tangible personal property or other assets (x) that have been used in or necessary for the conduct of the business of the Acquired Companies at any time in the twelve months prior to the date of this Agreement, or (y) that are otherwise reflected in the unaudited consolidated balance sheet of the Acquired Companies as of December 31, 2016, as set forth in Section 3.10 of the Disclosure Schedule, have been sold, assigned, transferred or otherwise conveyed (i) to the Branded Business in the twelve months prior to the date of this Agreement or (ii) to LaLa U.S., Inc. in connection with the sale of the Branded Business to LaLa U.S., Inc., in each case other than the assets set forth on Section 3.14(i) of the Disclosure Schedule.

Since the date of incorporation of Holdings, Holdings has not conducted any business or operations of any kind or nature or acquired any assets or become subject to any liabilities or obligations of any kind or nature, except as expressly contemplated by this Agreement (including the Reorganization) and except as set forth on Section 3.14(j) of the Disclosure Schedule.


Section 3.15 Intellectual Property.

(a) "Intellectual Property" means any and all of the following in any jurisdiction throughout the world: (i) trademarks, trade names, service marks, trade dress, logos and corporate names, and the goodwill connected with the use of and symbolized by the foregoing ("Trademarks"); (ii) copyrights and copyrightable works ("Copyrights"); (iii) information that an entity keeps confidential for a competitive advantage, including without limitation ideas, research and development, know-how, formulas, compositions, manufacturing and production processes and techniques, methods, schematics, technology, technical data, designs, drawings, flowcharts, block diagrams, specifications, customer and supplier lists, customer data, mailing lists pricing and cost information and business and marketing plans and proposals) and other confidential know-how ("Trade Secrets"); (iv) patents, patent applications, patent disclosures and inventions (whether or not patentable and whether or not reduced to practice) ("Patents"); (v) internet domain name registrations ("Domain Names"); (vi) other intellectual property and related proprietary rights, interests and protections; (vii) the right to sue and recover for past infringements or misappropriations of any of the foregoing; and (viii) registrations, applications, recordings, renewals, continuations, continuations-in-part, divisions, reissues, reexaminations, foreign counterparts, and other legal protections and rights related to any of the foregoing.

(b) Section 3.15(b) of the Disclosure Schedule lists all (i)(A) Patents, and Patent applications pending with the U.S. Patent and Trademark Office ("USPTO"), registered Trademarks and applications for Trademarks pending with the USPTO, registered Copyrights and applications for Copyrights pending with the U.S. Copyright Office and Domain Names owned by any of the Acquired Companies, and (B) all unregistered Trademarks and unregistered Copyrights owned by any of the Acquired Companies and that are material to the conduct of the business of the Acquired Companies as currently conducted (all Patents, Trademarks, Copyrights, Trade Secrets and Domain Names referred to in (i)(A) and (i)(B) and all Trade Secrets owned by any of the Acquired Companies that are material to the conduct of the business of the Acquired Companies as currently conducted, together, the "Company Intellectual Property"), (ii) licenses, sublicenses or other agreements under which any of the Acquired Companies is granted rights to access or use Intellectual Property owned or controlled by any other Person (excluding commercial off-the-shelf software) ("Licenses In"), and (iii) licenses, sublicenses or other agreements under which any of the Acquired Companies has granted any Person rights to access or use any Company Intellectual Property ("Licenses Out" and together with the Licenses In, the "Licenses"). Each of the Acquired Companies owns or has licensed, or otherwise has sufficient and valid rights to use in the manner currently used in connection with its business, and free and clear of all Encumbrances, all of the Intellectual Property used by or on behalf of such Acquired Company in the conduct of its business as currently conducted. Without limiting the foregoing, and except as set forth in Section 3.15(b) of the Disclosure Schedule, one or more of the Acquired Companies owns rights in all of the Company Intellectual Property, all such Company Intellectual Property is subsisting, valid, not expired, and in force, original (as to all Copyrights), and all necessary registration, maintenance and renewal fees associated with each item of the registered Company Intellectual Property have been paid in full when due in a timely manner to the proper Governmental Authority or other Person allocating such Company Intellectual Property, including without limitation the
registrars allocating Domain Names to the Acquired Companies. To the Company’s Knowledge, all of the Licenses are valid, binding and enforceable against all parties thereto in all material respects. Except as set forth in Section 3.15(b) of the Disclosure Schedule, no royalties, license fees, commissions or other amounts are payable by any of the Acquired Companies to any third party (including without any limitation any of the Owners, Grupo LaLa or any of their Affiliates) with respect to any Company Intellectual Property, any Licenses In (other than license and maintenance fees for non-exclusive end user licenses of commercially available software used solely for an Acquired Company’s internal use) or any other Intellectual Property used by or on behalf of such Acquired Company in connection with the conduct of its business as currently conducted.

(c) The Acquired Companies have exclusive, irrevocable rights in all Licenses In granted to the Acquired Companies by Grupo LaLa or any of their Affiliates.

(d) Except as set forth in Section 3.15(d) of the Disclosure Schedule, each of the Acquired Companies has the right to freely assign, sublicense, or otherwise transfer its rights in (i) the Licenses In granted to the Acquired Companies by Grupo LaLa or any of their Affiliates to any Person or (ii) Licenses Out that are based on any such License In to any Person.

(e) To the Company’s Knowledge, other than as described in Section 3.15(e) of the Disclosure Schedule, no Person is infringing, violating or misappropriating any Company Intellectual Property, and no Acquired Company is asserting any pending claims or demands, or bringing any actions, suits, claims or other legal proceedings against any Person alleging that such Person is infringing, violating or misappropriating any Company Intellectual Property.

(f) To the Company’s Knowledge, none of the Company Intellectual Property nor the conduct of the business as currently conducted by or on behalf of the Acquired Companies infringes, violates or misappropriates any Intellectual Property right of any Person. There are no pending or, to the Company’s Knowledge, threatened actions, suits, claims or other legal proceedings (including without limitation arbitrations involving the Trademarks or Domain Names) against any of the Acquired Companies alleging that (i) any activity by or on behalf of any of the Acquired Companies infringes or violates (or in the past infringed or violated) the rights of others in or to any Intellectual Property or constitutes a misappropriation of (or in the past constituted a misappropriation of) any subject matter of any Intellectual Property of any Person or (ii) any of the Company Intellectual Property is invalid or unenforceable.

(g) Except as set forth on Section 3.15(g) of the Disclosure Schedule, to the Company’s Knowledge, the Acquired Companies have not granted a License Out to any Person to use the Company Intellectual Property on an exclusive basis, and no Person that the Acquired Companies have licensed to use any of the Company Intellectual Property pursuant to any License Out is infringing or misappropriating, or has infringed or misappropriated, any Intellectual Property rights of any other Person.

(h) There are no past due, outstanding royalties, debts, or other compensation owed by any Person to the Acquired Companies pursuant to the Licenses Out.
Each of the Acquired Companies has taken reasonable security and protective measures to protect the trade secret status and confidentiality of its material Trade Secrets, and has disclosed such Trade Secrets only pursuant to confidentiality agreements. To the Company’s Knowledge, there has not been a breach of any such confidentiality agreements or other security breach that has compromised the confidentiality of such Trade Secrets.

All current and former employees, contractors and consultants of any of the Acquired Companies who have contributed to the creation, invention or development of any Company Intellectual Property have signed written agreements that (i) validly and effectively assign to such Acquired Company sole ownership of all such Company Intellectual Property and (ii) prohibit such employee, contractor or consultant from using or disclosing any confidential or proprietary information of such Acquired Company, except as authorized by the Acquired Company.

Section 3.16 Insurance. Section 3.16 of the Disclosure Schedule sets forth a list, as of the date hereof, of all material insurance policies maintained by the Acquired Companies or with respect to which any of the Acquired Companies is a named insured or otherwise the beneficiary of coverage (but excluding such policies that constitute a Benefit Plan or provide funding or benefits with respect to any Benefit Plan). Except as set forth in Section 3.16 of the Disclosure Schedule, such insurance policies are in full force and effect. Except as set forth in Section 3.16 of the Disclosure Schedule, all premiums due on such insurance policies have been paid. The Company has provided or made available to Investor a correct and complete copy of each such insurance policy. Except as set forth in Section 3.16 of the Disclosure Schedule, there are no claims related to the business of the Acquired Companies pending under any such insurance policy as to which coverage has been questioned, denied or disputed or in respect of which there is an outstanding reservation of rights.

Section 3.17 Legal Proceedings; Governmental Orders.

(a) Except as set forth in Section 3.17(a) of the Disclosure Schedule, there are no material actions, suits, claims or other legal proceedings pending or, to the Company’s Knowledge, threatened against any of the Acquired Companies or affecting any of their respective properties, assets or businesses, nor, to the Knowledge of the Company, are there any such pending or threatened investigations related thereto. In the last three (3) years none of the Acquired Companies has been a party to any material action, suit or other legal proceeding relating to alleged defects in the products of the Acquired Companies or the failure of any such products to meet the warranty specifications applicable thereto, nor, to the Knowledge of the Company, has there been any such pending or threatened investigation related thereto.

(b) Except as set forth in Section 3.17(a) of the Disclosure Schedule, there are no outstanding Governmental Orders and no unsatisfied material judgments, penalties or awards against or affecting any of the Acquired Companies or any of their respective properties or assets.

(c) There are no actions pending or, to the Knowledge of the Company, threatened against any Acquired Company, Owners or any of their respective Affiliates that challenge or seek to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement.
Section 3.18  Compliance With Laws; Recalls; Permits.

(a) Except as set forth in Section 3.18(a) of the Disclosure Schedule, each of the Acquired Companies is currently, and since January 1, 2014 has been, in compliance in all material respects with all applicable Laws and Governmental Orders. No Acquired Company has received, since January 1, 2014, notice of any material violation or alleged violation of any Law or Governmental Order.

(b) Since January 1, 2014, all food products produced by the Acquired Companies have been purchased, produced, distributed, labeled and sold in compliance in all material respects with all applicable Laws governing the purchase, production, distribution, labeling and sale of food. Except as set forth in Section 3.18(b) of the Disclosure Schedule, since January 1, 2014, no Acquired Company has effected any recall, withdrawal or replacement of any product packaged, manufactured, marketed, distributed or sold by any Acquired Company or experienced any mandated closing of any plant at which any such products are packaged or manufactured, and, to the Knowledge of the Company, no facts or circumstances exist that could reasonably be expected to result in the recall, withdrawal or replacement of a product sold or intended to be sold by an Acquired Company. The Acquired Companies have been in compliance in all material respects with applicable Laws governing facility registration, listing and current good manufacturing practices, and have prepared and maintained all records, studies and other documentation needed to comply with the requirements of any Governmental Authorities under applicable Laws for their current business activities relating to products produced or distributed by the Acquired Companies.

(c) Each Acquired Company has all Permits from all Governmental Authorities and certification organizations necessary for the conduct of their respective businesses and the operations of their facilities used in such businesses. All such material Permits are listed in Section 3.18(c) of the Disclosure Schedule. Except as set forth in Section 3.18(c) of the Disclosure Schedule, all such Permits are valid and in full force and effect. All fees and charges with respect to such Permits as of the date hereof have been paid in full. Except as set forth in Section 3.18(c) of the Disclosure Schedule, to the Knowledge of the Company, no event has occurred that, with or without notice or lapse of time or both, would reasonably be expected to result in the revocation, suspension, lapse or limitation of any Permit listed in Section 3.18(c) of the Disclosure Schedule.

(d) None of the Acquired Companies’ products being manufactured, assembled, sold, leased or delivered by the Acquired Companies requires any material approval of any Governmental Authority for the purpose for which they are being manufactured, assembled, sold, leased or delivered and which approval has not been obtained.

(e) None of the representations and warranties contained in this Section 3.18 shall be deemed to relate to environmental matters (which are governed by Section 3.19), employee benefit matters (which are governed by Section 3.20), labor and employment matters (which are governed by Section 3.21) or tax matters (which are covered by Section 3.22).
Section 3.19  Environmental Matters.

(a) Except as set forth in Section 3.19(a) of the Disclosure Schedule, each of the Acquired Companies is currently, and since January 1, 2014, has been, in compliance in all material respects with all Environmental Laws and has not received from any Person any (i) material Environmental Notice or Environmental Claim, or (ii) written request for information pursuant to Environmental Law, which, in each case, either remains pending or unresolved, or is the source of ongoing obligations or requirements as of the Closing Date.

(b) Each of the Acquired Companies has obtained and is in material compliance with all material Environmental Permits (each of which is disclosed in Section 3.19(b) of the Disclosure Schedule) necessary for the ownership, lease, operation or use of the business or assets of the Acquired Companies.

(c) Except as set forth in Section 3.19(c) of the Disclosure Schedule, there has been no Release of Hazardous Materials in violation of Environmental Laws by any Acquired Company or, to the Knowledge of the Company, by any other Person with respect to the business or assets of the Acquired Companies or any Real Property in an amount, manner or concentration that could reasonably be expected to result in a material Environmental Claim against any of the Acquired Companies, and none of the Acquired Companies has received an Environmental Notice that any Real Property (including soils, groundwater, surface water, buildings and other structures located on any such Real Property) has been contaminated with or contains any Hazardous Material that could reasonably be expected to result in a material: (i) Environmental Claim against, (ii) violation of Environmental Laws by or (iii) termination of the term of any Environmental Permit by, any of the Acquired Companies.

(d) Except as set forth in Section 3.19(d) of the Disclosure Schedule, underground storage tanks have not been owned or operated by the Acquired Companies in a manner which should be reasonably likely to result in a material Environmental Claim.

(e) Except as set forth in Section 3.19(e) of the Disclosure Schedule, none of the Acquired Companies has ever: (i) owned or operated a landfill, surface impoundment or other waste disposal facility; or (ii) owned a facility or conducted operations that required an Environmental Permit for the treatment, storage, or disposal of Hazardous Materials; in each case that could reasonably be expected to result in a material Environmental Claim against, violation of Environmental Laws by or termination of the term of any Environmental Permit by, any of the Acquired Companies.

(f) Except as set forth in Section 3.19(f) of the Disclosure Schedule, no facilities or locations, to which Hazardous Materials for which any of the Acquired Companies may be liable have been shipped, have been placed or proposed for placement on the National Priorities List under CERCLA, and none of the Acquired Companies has received any notice regarding potential liabilities with respect to any such Hazardous Substance disposal facilities.

(g) The Company has provided or made available to Investor any and all environmental reports, studies, audits, site assessments and other similar documents with
respect to the business or assets of the Acquired Companies and any Real Property, to the extent such documents are in the possession of the Acquired Companies.

(h) The representations and warranties set forth in this Section 3.19, together with the representations and warranties set forth in Sections 3.10, 3.13 and 3.16, are the Company’s sole and exclusive representations and warranties regarding environmental matters.

Section 3.20 Employee Benefit Matters.

(a) Section 3.20(a) of the Disclosure Schedule contains a true and complete list of each material Benefit Plan. “Benefit Plan” means each retirement, welfare benefit, bonus, deferred compensation, incentive compensation, stock option, unit option, restricted stock, restricted units, stock appreciation right, unit appreciation right, phantom equity, employment or consulting, change in control, retention, severance pay or benefit, employee savings, medical, life or other similar insurance, cafeteria, profit-sharing, pension benefit, vacation, paid time off and fringe-benefit plan, program, policy, agreement or arrangement, including each “employee benefits plan” within the meaning of Section 3(3) of ERISA, currently in effect and covering one or more Employees, former employees of the Acquired Companies, current or former directors, or other service providers of the Acquired Companies or the beneficiaries or dependents of any such Persons, and is maintained, sponsored or contributed to or required to be contributed to by any of the Acquired Companies or as to which any of the Acquired Companies has, or could reasonably be expected to have, any liability, whether written or oral.

(b) Each Benefit Plan has been operated and administered (provided that with respect to any “multiemployer plan” (as defined in Section 3(37) of ERISA) only to the Knowledge of the Company) in material compliance with all applicable Laws (including ERISA and the Code) and the terms of such Benefit Plan in all material respects (including ERISA and the Code). Each Benefit Plan that is intended to be qualified under Section 401(a) of the Code (a “Qualified Benefit Plan”) (provided that with respect to any “multiemployer plan” (as defined in Section 3(37) of ERISA) only to the Knowledge of the Company) has received a favorable determination letter from the Internal Revenue Service, or with respect to a master/prototype or volume submitter plan, can rely on an opinion or advisory letter from the Internal Revenue Service to the master/prototype or volume submitter plan sponsor, to the effect, that such Qualified Benefit Plan, in form, is so qualified and that the plan and the trust related thereto are exempt from federal income Taxes under Sections 401(a) and 501(a), respectively, of the Code. Nothing has occurred (provided that with respect to any “multiemployer plan” (as defined in Section 3(37) of ERISA) only to the Knowledge of the Company) that could reasonably be expected to adversely affect the qualified status of any Qualified Benefit Plan (or the exempt status of any related trust) or require the filing of a submission under the Internal Revenue Service’s Employee Plans Compliance Resolution System pursuant to IRS Revenue Ruling 2013-12, as modified (“EPCRS”) or the taking of other corrective action by any Acquired Company pursuant to EPCRS in order to maintain such qualified (or exempt) status. No Qualified Benefit Plan (provided that with respect to any “multiemployer plan” (as defined in Section 3(37) of ERISA) only to the Knowledge of the Company) is the subject of any ongoing correction or pending application under EPCRS. Each of the Benefit Plans that is intended to satisfy the requirements of Section 125, 423 or 501(c)(9) of the Code satisfies (provided that
with respect to any “multiemployer plan” (as defined in Section 3(37) of ERISA) only to the Knowledge of the Company) such requirements in all material respects.

(c) Except as set forth in Section 3.20(c) of the Disclosure Schedule, none of the Acquired Companies nor any ERISA Affiliate sponsors a “defined benefit plan” (as defined in Section 3(35) of ERISA) that is subject to Title IV of ERISA. Except as set forth in Section 3.20(c) of the Disclosure Schedule, no liability under Title IV of ERISA has been incurred by any of the Acquired Companies or any ERISA Affiliate that has not been satisfied in full, and no condition exists that presents a material risk to any of the Acquired Companies or any ERISA Affiliate of incurring a liability under such Title other than with respect to (i) premiums not yet due and payable to the Pension Benefit Guaranty Corporation and (ii) contributions to Benefit Plans subject to Title IV of ERISA in the ordinary course of business pursuant to the terms of such Benefit Plans. No Benefit Plan subject to Section 412, 430, 431 or 432 of the Code or Section 302, 303, 304 or 305 of ERISA (provided that with respect to any “multiemployer plan” (as defined in Section 3(37) of ERISA) only to the Knowledge of the Company) (i) is, to the extent applicable, in “at-risk status” (as defined in Section 430(i) of the Code), or (ii) has, as applicable, applied for, or received, a minimum funding waiver pursuant to Section 302 of ERISA or an extension of amortization pursuant to Section 304 of ERISA. None of the assets of any of the Acquired Companies or any ERISA Affiliate are subject to any lien arising under Section 430(k) of the Code or Section 303(k) of ERISA, and no condition exists that presents a material risk of any such lien arising.

(d) No non-exempt “prohibited transaction” (as defined in Section 4975 of the Code) has occurred with respect to any of the Benefit Plans (provided that with respect to any “multiemployer plan” (as defined in Section 3(37) of ERISA) only to the Knowledge of the Company) that would subject any of the Acquired Companies to any material Tax or penalty on prohibited transactions imposed by Section 4975 of the Code. No Acquired Company, ERISA Affiliate, Benefit Plan, or trust created thereunder, or trustee or administrator thereof has engaged (provided that with respect to any “multiemployer plan” (as defined in Section 3(37) of ERISA) only to the Knowledge of the Company) in a transaction (or taken, or failed to take, actions) in connection with any Benefit Plan which could reasonably be expected to subject any such Acquired Company, ERISA Affiliate, Benefit Plan or trust, directly or indirectly (including pursuant to any contractual indemnification or contribution obligation), to any material civil liability or penalty pursuant to Section 406 or 502(c) or (l) of ERISA.

(e) Except as could not reasonably be expected to result in material liability to any Acquired Company, all contributions required to have been made by an Acquired Company under the terms of any Benefit Plan or pursuant to ERISA or the Code with respect thereto have been timely made, and all financial obligations of the Acquired Companies in respect of each Benefit Plan have, to the extent required by GAAP, been properly accrued and reflected in the Financial Statements.

(f) Except as set forth in Section 3.20(f) of the Disclosure Schedule, no Benefit Plan that is subject to Title IV of ERISA and that is sponsored by any Acquired Company had, as of the respective last annual valuation date (as determined pursuant to Section 430(g) of the Code) for such Benefit Plan, any “unfunded benefit liabilities” (within the meaning of Section 4001(a)(18) of ERISA), and there has been no material adverse change in the financial

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condition of any such Benefit Plan since its last such annual valuation date (as determined pursuant to Section 430(g) of the Code). Except as set forth in Section 3.20(f) of the Disclosure Schedule, no “reportable event” under Section 4043 of ERISA for which the reporting requirements have not been waived has occurred within the past twelve (12) months or will occur on or before the Closing Date with respect to any single-employer Benefit Plan subject to the Title IV of ERISA.

(g) Except as set forth in Section 3.20(g) of the Disclosure Schedule, none of the Acquired Companies nor any ERISA Affiliate contributes to, or within the last six (6) years has contributed to or had an obligation to contribute to or incurred any liability in respect of, any “multiemployer plan” (as defined in Section 3(37) or Section 4001(a)(3) of ERISA), a “multiple employer welfare arrangement” (as defined in Section 3(40) of ERISA), or a single employer plan that has two or more contributing sponsors, at least two of whom are not under common control, within the meaning of Section 4063(a) of ERISA.

(h) Except as set forth in Section 3.20(h) of the Disclosure Schedule, with respect to each Benefit Plan that is a “multiemployer plan” (as defined in Section 3(37) of ERISA) subject to Title IV of ERISA, (i) none of the Acquired Companies nor any ERISA Affiliate has made or suffered a “complete withdrawal” or a “partial withdrawal” (as respectively defined in Sections 4203 and 4205 of ERISA), (ii) no condition exists that presents a material risk of a “partial withdrawal” (as defined in Section 4205 of ERISA) therefrom by an Acquired Company or an ERISA Affiliate, (iii) to the Knowledge of the Company, no such Benefit Plan is in endangered status or critical status within the meaning of Section 305 of ERISA, (iv) to the Knowledge of the Company, no “mass withdrawal” (within the meaning of the regulations under Section 4219 of ERISA) has occurred, and (v) none of the Acquired Companies nor any ERISA Affiliate would incur any withdrawal liability if a “complete withdrawal” (as defined in Section 4205 of ERISA) therefrom by the Acquired Companies and the ERISA Affiliates occurred on the date hereof.

(i) With respect to each Benefit Plan that is sponsored by an Acquired Company and that is subject to ERISA, the Company has heretofore delivered to Investor true and complete copies of each of the following documents: (i) the Benefit Plan, the related trust agreement, if any (including all amendments to such Benefit Plan); (ii) the most recent annual reports, actuarial reports, and financial statements, if any; (iii) the most recent summary plan description, together with all summaries of material modifications required under ERISA with respect to such Benefit Plan, and all material employee communications relating to such Benefit Plan within the past 12 months; (iv) the most recent determination letter or opinion letter received from the Internal Revenue Service with respect to each Qualified Benefit Plan; and (v) all material written communications to or from the Internal Revenue Service or any other Governmental Authority relating to each Benefit Plan for the past thirty-six (36) months.

(j) Without giving effect to any agreement to be provided at the Closing at the direction of Investor, no payment or benefit paid or provided, or to be paid or provided, to Employees, former employees, current or former directors, or other service providers of or to any Acquired Company (including pursuant to this Agreement or the consummation of the transactions contemplated hereby) will fail to be deductible for federal income tax purposes under Section 280G of the Code. Each Person who performs services for any of the Acquired Companies would be able to deduct the payments or benefits that are paid or provided.
Companies has been, and is, properly classified by the Company as an employee or independent contractor.

(k) Except as set forth in Section 3.20(k) of the Disclosure Schedule or as required under Section 4980B of the Code or other applicable Law, no Benefit Plan provides retiree or post-employment medical or life insurance coverage to any former employee, director or other service provider of an Acquired Company.

(l) There are no material pending (provided that with respect to any “multiemployer plan” (as defined in Section 3(37) of ERISA) only to the Knowledge of the Company) or, to the Company’s Knowledge, threatened claims, litigation, governmental or administrative proceedings, investigations, audits or other actions (other than routine claims for benefits) relating to any Benefit Plan or its assets, or against any of the Acquired Companies or any ERISA Affiliate with respect to any Benefit Plan.

(m) Except as set forth in Section 3.20(m) of the Disclosure Schedule, neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby will (either alone or in conjunction with any other event, but excluding any contract or agreement required pursuant to this Agreement to be entered into by any Acquired Company prior to Closing or entered into at or after Closing by Investor or an Acquired Company) result in, or cause (i) any Employee, former employee, current or former director, or other service provider of or to any of the Acquired Companies becoming entitled to severance pay or any similar payment, (ii) the accelerated vesting, payment, funding or delivery of, or an increase in the amount or value of, any payment or benefit to any Employee, former employee, current or former director, or other service provider of or to any of the Acquired Companies or any ERISA Affiliate, or (iii) the renewal or extension of the term of any agreement regarding the compensation of any Employee, former employee, current or former director, or other service provider of or to any of the Acquired Companies or any ERISA Affiliate.

(n) Each Benefit Plan that provides deferred compensation subject to Section 409A of the Code complies in all material respects with Section 409A(a)(2)–(4) of the Code, except as would not result in a material liability to the Company.

(o) Each Benefit Plan subject to any Law other than U.S. federal, state or local Law (“Foreign Benefit Plan”) that is intended to comply with the requirements of any Tax Laws of such foreign jurisdiction in order for contributions thereto or benefits thereunder to receive intended tax benefits or favorable tax treatment complies in all material respects with such Laws. Except as set forth in Section 3.20(o) of the Disclosure Schedule (i) each Foreign Benefit Plan intended to be funded or insured is fully funded (or book-reserved) or fully insured on an ongoing basis (determined using reasonable actuarial assumptions), and (ii) the fair market value of the assets held under each Foreign Benefit Plan that is a pension plan or that is funded on an actuarial basis is sufficient so as to permit such Benefit Plan to meet its current obligations with respect to payment of benefits due and payable.
Section 3.21 Employment Matters.

(a) Except as set forth in Section 3.21(a) of the Disclosure Schedule: (i) there is no, and during the past three (3) years there has not been, any labor strike, picketing of any nature, labor dispute, slowdown or any other concerted interference with normal operations, stoppage or lockout pending or, to the Knowledge of the Company, threatened against or affecting the business of any of the Acquired Companies; (ii) no claims or demands to represent any Employees have been made by any union or labor organization or other person purporting to act as exclusive bargaining representative (“Union”) of any Employees; (iii) there are no Union organizational campaigns in progress with respect to any of the Employees; and (iv) there is no collective bargaining agreement or other contract with any Union, or work rules or practices agreed to with any Union, that are binding on any of the Acquired Companies or being negotiated with respect to the operations of any of the Acquired Companies or any Employee.

(b) Except as set forth in Section 3.21(b) of the Disclosure Schedule: (i) each of the Acquired Companies is currently, and since January 1, 2014 has been, in compliance in all material aspects with all applicable Laws respecting labor, employment, fair employment practices, workplace safety and health, layoffs, immigration and naturalization, whistleblowing, terms and conditions of employment and wages and hours, including payment of minimum wages and overtime; (ii) there are no material written grievances, complaints, claims or charges with respect to employment or labor matters (including allegations of employment discrimination, retaliation, unpaid wages or benefits, or unfair labor practices) pending or, to the Knowledge of the Company, threatened against any of the Acquired Companies, including in any judicial, regulatory or administrative forum, nor have any such material written grievances, complaints, claims or charges been made in the past three (3) years; (iii) to the Knowledge of the Company, none of the Acquired Companies’ employment practices or policies has been audited or investigated by any Governmental Authority since January 1, 2014; and (iv) each of the Acquired Companies has paid in full all wages, salaries, overtime, commissions, bonuses, leave, benefits and other compensation due to or on behalf of any Employee other than such compensation that is accrued and unpaid as of the date hereof and as of the Closing or otherwise deferred pursuant to a Benefit Plan.

(c) Except as set forth in Section 3.21(c) of the Disclosure Schedule, none of the Acquired Companies has experienced a “plant closing,” “business closing,” or “mass layoff” as defined in the WARN Act or any similar state, local or foreign Law or regulation affecting any site of employment of the Acquired Companies or one or more facilities or operating units within any site of employment or facility of the Acquired Companies, and, during the ninety (90)-day period preceding the date hereof, no Employee has suffered an “employment loss,” with respect to the Acquired Companies as defined in the WARN Act.

(d) Except as set forth in Section 3.21(d) of the Disclosure Schedule, there is no material charge or proceeding with respect to any violation of any occupational safety or health standards that has been asserted or is now pending or, to the Knowledge of the Company, threatened with respect to the Acquired Companies.
Section 3.22 Taxes.

(a) Except as set forth in Section 3.22 of the Disclosure Schedule:

(i) The Acquired Companies have timely filed (taking into account any valid extensions) all Tax Returns for Income Taxes and material other Tax Returns required to be filed on or before the date hereof. Such Tax Returns are correct and complete in all material respects. All material Taxes due and owing (whether or not shown on such Tax Returns) by the Acquired Companies have been paid, or accrued on the Acquired Companies’ Balance Sheet in accordance with GAAP, and no such Taxes are delinquent.

(ii) No extensions or waivers of statutes of limitations have been given or requested with respect to any material Taxes of any of the Acquired Companies.

(iii) There are no pending, threatened in writing or ongoing actions, audits, suits, claims, investigations or other legal proceedings by any Governmental Authority against, or with respect to, any of the Acquired Companies, and the Acquired Companies have not received any written notification that such an audit, suit, claim, investigation or other legal proceeding may be commenced, or any written notice of a deficiency or assessment for any Tax. No written claim has been made by any Governmental Authority in any jurisdiction where an Acquired Company does not file Tax Returns that it is or may be subject to Tax by, or required to file Tax Returns in, such jurisdiction.

(iv) No Acquired Company is a party to any Tax-sharing, Tax indemnity, Tax allocation or similar agreement (other than contracts entered into in the ordinary course of business, the principal purpose of which is not related to Taxes), and no Acquired Company has any liability for the Taxes of any Person as a transferee or successor by contract, operation of Law, or otherwise.

(v) All material Taxes which any of the Acquired Companies is obligated to withhold from amounts owing to any independent contractor, equity holder, executive-level Employee, creditor or other third party have been withheld, and to the extent required to have been paid, have been timely paid to the appropriate Governmental Authority. None of the Acquired Companies has received any written notice that it is in violation of any applicable Law relating to the payment or withholding of Taxes.

(vi) No Acquired Company is now or has at any time been a member of any affiliated group required to join in the filing of consolidated federal income or other Tax Returns on a consolidated, combined or unitary group basis, other than a group consisting solely of the Acquired Companies.

(vii) No Acquired Company has been a “United States real property holding corporation” within the meaning of Code Section 897(c)(2) during the applicable period specified in Code Section 897(c)(1)(A)(ii).

(viii) No Acquired Company has distributed stock or equity interests of another Person, or has had its stock or equity interests distributed by another Person, in a transaction in
the two (2) years prior to the date of this Agreement that was purported or intended to be governed in whole or in part by Code Section 355 or Code Section 361.

(i) None of the Acquired Companies will be required to include any item of income in, or to exclude any item of deduction from, taxable income in any taxable period (or portion thereof) ending after the Closing Date as a result of any (i) change in method of accounting pursuant to Code Section 481, (ii) closing agreement described in Code Section 7121 executed on or prior to the Closing Date, (iii) intercompany transaction or excess loss account described in Treasury Regulations promulgated under Code Section 1502 (or any similar provision of state, local or foreign Law), (iv) installment sale or open transaction disposition made on or prior to the Closing Date, (v) prepaid amount received on or prior to the Closing Date, or (vi) election under Code Section 108(i) made on or prior to the Closing Date.

(x) There are no liens for Taxes upon the assets of any Acquired Company other than Permitted Encumbrances.

(xi) No Acquired Company has requested, received or is subject to a private letter ruling or similar written ruling or determination of a taxing authority or has entered into any written agreement with a taxing authority with respect to any Taxes.

(xii) No Acquired Company is liable for Taxes of any other Person (except for the Acquired Companies) under Treasury Regulations Section 1.1502-6 (or any similar provision of state, local or foreign Law).

(xiii) No Acquired Company has been a party to a transaction that is or is substantially similar to a “listed transaction,” within the meaning of Treasury Regulations Section 1.6011-4.

(xiv) The Company is classified as an association taxable as a corporation for federal Income Tax purposes (within the meaning of Treasury Regulations Section 301.7701-3).

(b) (i) The Reorganization will not cause or otherwise require Investor or any of the Acquired Companies to include any item of income in, or to exclude any item of deduction from, taxable income in any Tax period that begins after the Closing Date, (ii) the Company has sufficient Tax attributes (including, but not limited to, any net operating losses) to offset any federal income taxable gain arising from the sale of the Branded Business to LaLa U.S., Inc., and (iii) the Reorganization will not result in the Acquired Companies recognizing taxable gain.

(c) In June 2013, the stock of the Company was distributed by Grupo LaLa to shareholders of Grupo LaLa in a tax-free transaction governed by Section 355 of the Code.

Section 3.23 Related Party Transactions. Except as set forth in Section 3.23 of the Disclosure Schedule, no Employee or officer, director, manager, member or holder of securities of any of the Acquired Companies, and no Affiliate of or spouse or direct lineal descendent to any such Person, is a party to any agreement or contract with, has any interest in any property or asset used by, or has any liabilities or obligations owing to or from, any of the Acquired Companies. None of the Acquired Companies has any liability to any other Acquired Company.
or any Affiliate of any Acquired Company under or with respect to the items, obligations or other types of liabilities and arrangements set forth in clauses (a) through (h) of the definition of Indebtedness.

Section 3.24 Customers and Suppliers. Section 3.24 of the Disclosure Schedule sets forth a correct and complete list of the top ten (10) customers by revenue and suppliers by amount spent of the Acquired Companies, taken as a whole, for calendar year 2016. Except as set forth in Section 3.24 of the Disclosure Schedule, since January 1, 2016, no such customer or supplier has canceled or otherwise terminated its relationship with any Acquired Company, or, to the Knowledge of the Company, materially and adversely modified its relationship with any Acquired Company (other than modifications in the ordinary course of business of the Acquired Companies). To the Knowledge of the Company, no such customer or supplier has threatened to cancel or otherwise terminate or materially and adversely modify (other than modifications in the ordinary course of business of the Acquired Companies) its relationship with any Acquired Company.

Section 3.25 Accounts Receivable. All of the accounts receivable reflected on the Unaudited Financial Statements and all accounts receivable that have arisen since the Balance Sheet Date (a) resulted from sales in the ordinary course of business of the Acquired Companies and represent bona fide transactions; (b) to the Knowledge of the Company, were not, and are not, subject to any claim, counterclaim, offset or deduction; (c) represent valid obligations owing to the applicable Acquired Company by account debtors that are not Affiliates of any Acquired Company, which are enforceable in accordance with their respective terms; (d) except as set forth in Section 3.25 of the Disclosure Schedule, are not currently more than 180 days’ past due; and (e) are owned by the applicable Acquired Company free and clear of all Encumbrances (other than Permitted Encumbrances).

Section 3.26 Inventory. All inventory of the Acquired Companies, whether or not reflected in the Financial Statements, consists of a quality and quantity usable and salable in the ordinary course of business consistent with past practice, except for obsolete, damaged, defective or slow-moving items that have been written off or written down to fair market value or for which adequate reserves have been established. All such inventory is owned by the Acquired Companies free and clear of all Encumbrances (other than Permitted Encumbrances), and no inventory is held on a consignment basis. For purposes of the valuations in the Financial Statements, all such inventory has been valued at the lower of cost or market value.

Section 3.27 Brokers. Except for Houlihan Lokey, no broker, finder or investment banker is entitled to any brokerage, finder’s or other fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of any Owner, any Acquired Company or any of their respective Affiliates.

Section 3.28 No Other Representations and Warranties.

(a) EXCEPT AS EXPRESSLY SET FORTH IN THIS ARTICLE III, NEITHER THE COMPANY, LAGUNA, NEW LAGUNA NOR ANY OWNER MAKES OR HAS MADE ANY REPRESENTATION OR WARRANTY OF ANY KIND OR NATURE, EXPRESS OR IMPLIED, AT LAW OR IN EQUITY, IN CONNECTION WITH THE
TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT OR WITH RESPECT TO THE ACQUIRED COMPANIES OR THEIR RESPECTIVE BUSINESSES, ASSETS, LIABILITIES, OPERATIONS OR PROSPECTS. EACH OF THE COMPANY AND OWNERS HEREBY EXPRESSLY DISCLAIMS ANY OTHER REPRESENTATION OR WARRANTY OF ANY KIND OR NATURE, EXPRESS OR IMPLIED, AT LAW OR IN EQUITY.

(b) WITHOUT LIMITING THE GENERALITY OF SECTION 3.28(A) AND NOTWITHSTANDING THE DELIVERY OR DISCLOSURE TO INVESTOR OR ITS REPRESENTATIVES OF ANY DOCUMENTATION, MATERIALS OR OTHER INFORMATION (INCLUDING, BUT NOT LIMITED TO, ANY DOCUMENTATION, MATERIALS OR INFORMATION (A) PROVIDED BY OR ON BEHALF OF OWNERS, THE ACQUIRED COMPANIES OR HOULIHAN LOKEY OR (B) MADE AVAILABLE TO INVESTOR OR ITS REPRESENTATIVES IN ANY DATA ROOM, MANAGEMENT PRESENTATION OR THE LIKE) WITH RESPECT TO THE CONDITION, VALUE OR QUALITY OF THE ACQUIRED COMPANIES’ BUSINESSES, ASSETS, LIABILITIES, OPERATIONS OR PROSPECTS, EXCEPT AS EXPRESSLY SET FORTH IN THIS ARTICLE III, NEITHER THE COMPANY, LAGUNA, NEW LAGUNA NOR ANY OWNER MAKES OR HAS MADE ANY REPRESENTATION OR WARRANTY (I) OF MERCHANTABILITY, USAGE, SUITABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE WITH RESPECT TO SUCH ASSETS, ANY PART THEREOF, THE WORKMANSHIP THEREOF, AND THE ABSENCE OF ANY DEFECTS THEREIN, WHETHER LATENT OR PATENT, IT BEING UNDERSTOOD THAT SUCH ASSETS ARE BEING ACQUIRED “AS IS, WHERE IS” AT THE CLOSING AND IN THEIR PRESENT CONDITION, (II) WITH RESPECT TO ANY ESTIMATES, PROJECTIONS OR OTHER FORECASTS AND PLANS (INCLUDING, WITHOUT LIMITATION, WITH RESPECT TO THE REASONABLENESS OF THE ASSUMPTIONS UNDERLYING SUCH ESTIMATES, PROJECTIONS AND FORECASTS), AND (III) WITH RESPECT TO THE ACCURACY AND COMPLETENESS OF ANY SUCH DOCUMENTATION, MATERIALS OR INFORMATION, AND, WITH RESPECT TO EACH SUCH REPRESENTATION OR WARRANTY, EACH OF THE COMPANY, LAGUNA, NEW LAGUNA AND OWNERS HEREBY EXPRESSLY DISCLAIMS SUCH REPRESENTATION OR WARRANTY.

ARTICLE IV
REPRESENTATIONS AND WARRANTIES OF INVESTOR

Investor represents and warrants to the Company, Laguna, New Laguna and Owners that the statements contained in this Article IV are true and correct as of the date hereof.

Section 4.01 Organization and Authority of Investor. Investor is a limited liability company duly organized, validly existing and in good standing under the Laws of the State of Delaware. Investor has all necessary limited liability company power and authority to enter into this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby. The execution and delivery by Investor of this Agreement, the performance by Investor of its obligations hereunder and the consummation by Investor of the transactions contemplated hereby have been duly authorized by all requisite limited liability company action on the part of Investor.
Section 4.02 Execution by and Enforceability Against Investor. This Agreement has been duly executed and delivered by Investor, and, assuming that this Agreement constitutes the valid and binding agreement of the other parties hereto, this Agreement constitutes the valid and binding agreement of Investor, enforceable against Investor in accordance with its terms and conditions, except to the extent enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting creditors’ rights generally or by general principles of equity (regardless of whether enforcement is sought in a proceeding at Law or in equity).

Section 4.03 No Conflicts; Consents. The execution, delivery and performance by Investor of this Agreement, and the consummation of the transactions contemplated hereby, do not and will not: (a) result in a violation or breach of any provision of the organizational documents of Investor; (b) result in a violation or breach of any provision of any Law or Governmental Order applicable to Investor; (c) result in the creation or imposition of any Encumbrance other than Permitted Encumbrances on any properties or assets of Investor; or (c) conflict with, result in a violation or breach of, constitute a default under or result in the acceleration of any agreement to which Investor is a party, except in the cases of clauses (b), (c) and (d), where the violation, breach, conflict, default or acceleration would not have a material adverse effect on the ability of Investor to consummate the transactions contemplated hereby. No material consent, approval, Permit, Governmental Order, declaration or material filing with, notice to, or other action by any Person is required by or with respect to Investor in connection with the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby, except for such filings as may be required under the HSR Act.

Section 4.04 Investment Purpose. Investor is acquiring the Class A Interests solely for its own account for investment purposes and not with a view to, or for offer or sale in connection with, any distribution thereof. Investor acknowledges that the Class A Interests are not registered under the Securities Act of 1933, as amended, or any other applicable securities Laws, and that the Class A Interests may not be transferred or sold except pursuant to the registration provisions of the Securities Act of 1933, as amended or pursuant to an applicable exemption therefrom and subject to applicable securities Laws. Investor is able to bear the economic risk of holding the Class A Interests for an indefinite period (including total loss of its investment), and has sufficient knowledge and experience in financial and business matters so as to be capable of evaluating the merits and risk of its investment.

Section 4.05 Independent Investigation. Investor has conducted its own independent investigation, review and analysis of the business, results of operations, prospects, condition (financial or otherwise) or assets of the Acquired Companies, and acknowledges that it has been provided adequate access to the personnel, properties, assets, premises, books and records and other documents and data of the Acquired Companies for such purpose. Investor has been given the opportunity to ask questions of the Acquired Companies in connection with its due diligence investigation and, to Investor’s knowledge, such questions have been answered to Investor’s satisfaction.

Section 4.06 Brokers. No broker, finder or investment banker is entitled to any brokerage, finder’s or other fee or commission in connection with the transactions contemplated
by this Agreement based upon arrangements made by or on behalf of Investor or an Affiliate of Investor.

Section 4.07 Legal Proceedings. There are no actions, suits, claims, investigations or other legal proceedings pending or, to Investor’s knowledge, threatened against Investor or any Affiliate of Investor that challenge or seek to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement.

ARTICLE V
COVENANTS

Section 5.01 Conduct of Business Prior to Closing. From the date hereof until Closing, except as otherwise provided in this Agreement, contemplated in connection with the sale of the Branded Business, contemplated in connection with the Reorganization or the Farmland Distribution, set forth in Section 5.01 of the Disclosure Schedule or consented to in writing by Investor, each of Holdings and the Company shall, and the Company shall cause its Subsidiaries to: (a) conduct the business of the Acquired Companies in all material respects in the ordinary course of business consistent with past practice; and (b) use commercially reasonable efforts to maintain and preserve intact the current organization and business of the Acquired Companies and to preserve the rights, franchises, goodwill and relationships of its employees, customers, insurers, suppliers, regulators and others having business relationships with the Acquired Companies. Except as set forth in Section 5.01 of the Disclosure Schedule, from the date hereof until Closing, except as consented to in writing by Investor and except as contemplated by the Reorganization or the Farmland Distribution and except as otherwise expressly contemplated by this Agreement, neither Holdings nor the Company shall take or cause or permit the Company’s Subsidiaries to take any action that would cause any of the changes, events or conditions described in Section 3.12 to occur. Nothing in this Section 5.01 is intended to result in the Owners ceding control to Investor of the Acquired Companies’ basic ordinary course of business and commercial decisions prior to the Closing.

Section 5.02 Supplement to Disclosure Schedule. From time to time prior to Closing, the Company shall have the right (but not the obligation) to supplement or amend the Disclosure Schedule hereto with respect to any matter hereafter arising (each a “Disclosure Schedule Supplement”). Any disclosure in any such Disclosure Schedule Supplement shall not be deemed to have cured any inaccuracy in or breach of any representation or warranty contained in this Agreement, including for purposes of the indemnification or termination rights contained in this Agreement or of determining whether or not the conditions set forth in Section 6.02 have been satisfied; provided, however, that if Investor has the right to, but does not elect to, terminate this Agreement because any disclosure in the Disclosure Schedule Supplement causes the condition in Section 6.02(a) to not be satisfied and Closing occurs, then Investor shall be deemed to have irrevocably waived any right to terminate this Agreement with respect to such matter and, further, shall have irrevocably waived its right to indemnification under Section 7.02 with respect to such matter.
Section 5.03 Taxes.

(a) The following provisions shall govern the allocation of responsibility and payment of Taxes as between Investor, on the one hand, and Laguna and New Laguna, on the other hand, for certain Tax matters after the Closing Date:

(i) Between the date of this Agreement and the Closing Date, the Company shall prepare and file, on a timely basis and on a basis consistent with past practice, all Tax Returns that are required to be filed by any of the Acquired Companies (taking account of extensions) prior to the Closing Date and shall cause the Acquired Companies, as applicable, to pay all Taxes with respect thereto.

(ii) Laguna shall prepare or cause to be prepared and file or cause to be filed all Tax Returns for the Acquired Companies relating to a Pre-Closing Tax Period that are required to be filed after the Closing Date relating to a Pre-Closing Tax Period. Any such Tax Return shall be submitted (with copies of any relevant schedules, work papers and other documentation then available) to Investor for Investor’s review and comment, which Laguna shall consider in good faith, not less than thirty (30) days prior to the due date for the filing of such Tax Return.

(iii) For purposes of this Section 5.03, in the case of any Taxes that are imposed on a periodic basis and are payable for a Tax period that includes (but does not end on) the Closing Date (a “Straddle Period”), the portion of such Tax which relates to the portion of such Tax period ending on the Closing Date shall (A) in the case of any Taxes other than Taxes based upon or related to income, gains or receipts, or employment or payroll Taxes, be deemed to be the amount of such Tax for the entire Tax period multiplied by a fraction, the numerator of which is the number of days in the Tax period ending on and including the Closing Date and the denominator of which is the number of days in the entire Tax period, and (B) in the case of any Tax based upon or related to income, gains or receipts (including sales and use Taxes), or employment or payroll Taxes, be deemed equal to the amount which would be payable if the relevant Tax period ended on the Closing Date. All determinations necessary to give effect to the foregoing allocations shall be made in a manner consistent with reasonable prior practice of the Acquired Companies, unless otherwise required by applicable Law.

(iv) Investor, Laguna, the Company and New Laguna agree that by Law, any deductions relating to the payment of bonuses, option cancellation payments, repayment of Indebtedness, any other Company Transaction Costs or (to the extent complying with the safe harbor set forth in Rev. Proc. 2011-29) success-based fees in respect of the transactions contemplated by this Agreement shall be included as deductions of the Acquired Companies in the relevant Tax Returns for Pre-Closing Tax Periods. Any refunds (or credits for overpayment) of Taxes, including any interest received from a taxing authority thereon, attributable to any Pre-Closing Tax Period of the Acquired Companies shall be for the account of Laguna. The amount of any refund of Taxes, including any interest received from a taxing authority thereon, of the Acquired Companies for any Tax period beginning after the Closing Date shall be for the account of the Acquired Companies. The amount of any refund of Taxes, including any interest received from a taxing authority thereon, of the Acquired Companies for any Straddle Period shall be equitably apportioned between the relevant Acquired Company and Laguna in
accordance with the principles set forth in Section 5.03(a)(iii). Promptly upon any Acquired Company’s (or any of its Affiliates’) receipt of any such refund (or use of a credit for overpayment), the relevant Acquired Company or Affiliate shall pay over, by wire transfer of immediately available funds, any such refund (or the amount of any such credit so used) to Laguna; provided that (A) such amounts shall be repaid to the relevant Acquired Company or Affiliate to the extent they are subsequently disallowed or reduced, and (B) payments to Laguna under this Section 5.03(a)(iv) shall be net of any out-of-pocket costs associated in obtaining such refund or credit of Taxes. Investor shall take any action reasonably necessary for the Acquired Companies to promptly claim refunds attributable to any Pre-Closing Tax Period.

(b) Subject only to the specific limitations of this Section 5.03(b) and Section 7.04 hereof, each of Laguna and New Laguna, severally, but not jointly in accordance with its Percentage Interest, agrees to indemnify and hold harmless Investor from and against, and to reimburse and pay Investor as incurred with respect to, any and all Losses attributable to liabilities of the Acquired Companies for Taxes attributable to Tax periods (or portions thereof) ending on or before the Closing Date, including such Taxes attributable to the Reorganization; provided, however, that (i) Laguna shall have no liability for any Taxes or Losses with respect to Taxes that are attributable to any transaction outside the ordinary course of business of the Acquired Companies entered into by the Acquired Companies with the consent, or at the direction, of Investor on the Closing Date (but excluding anything entered into in connection with the Reorganization) that occurs after the Closing and (ii) Laguna shall have no liability to Investor for any Taxes with respect to any tax period or portion of a Tax period that begins after the Closing Date, except to the extent related to each such party’s direct or indirect equity ownership of the Acquired Companies. The indemnification obligations under this Section 5.03(b) are referred to herein as the “Tax Indemnity.”

(c) Investor shall inform Laguna of the commencement of any audit, examination or proceeding (“Tax Contest”) relating in whole or in part to Taxes for which Investor may be entitled to indemnity from Laguna and New Laguna hereunder. With respect to any such Tax Contest, Laguna shall be entitled to control, in good faith, all proceedings taken in connection with such Tax Contest at the sole cost and expense of Laguna; provided, however, that (i) Laguna shall promptly notify Investor in writing of its intention to control such Tax Contest, (ii) Investor shall be entitled to participate in such Tax Contest at its sole cost and expense and, in the case of a Tax Contest relating to Taxes of any of the Acquired Companies for a Tax period beginning before and ending after the Closing Date, Laguna and Investor shall jointly control all proceedings taken in connection with any such Tax Contest, and (iii) if any Tax Contest could reasonably be expected to have an adverse effect on Investor or any of the Acquired Companies in any Tax period beginning after the Closing Date, the Tax Contest shall not be settled or resolved without Investor’s prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed. Investor and the Company shall use commercially reasonable efforts to provide Laguna with such assistance as may be reasonably requested by Laguna in connection with a Tax Contest controlled solely or jointly by Laguna.

(d) Except as required by applicable Laws and subject to Section 5.03(a)(iv), without the prior written consent of Laguna (which consent shall not be unreasonably withheld, conditioned or delayed), none of Investor, the Acquired Companies, or any Affiliate of Investor
shall file any amended Tax Return with respect to any Tax period ending on or before the Closing Date.

Section 5.04 Director and Officer Indemnification and Insurance.

(a) Investor agrees that all rights to indemnification, advancement of expenses and exculpation by the Acquired Companies now existing in favor of each Person who is now, or has been at any time prior to the date hereof or who becomes prior to the Closing Date, an officer, director or manager of any of the Acquired Companies, as provided in the certificate of incorporation, by-laws or other similar governing documents of the applicable Acquired Company, in each case as in effect on the date of this Agreement, or pursuant to any other agreements in effect on the date hereof and disclosed in Section 5.04(a) of the Disclosure Schedule, shall survive the Closing Date and shall continue in full force and effect in accordance with their respective terms.

(b) The Company shall maintain, through the Closing Date, the Company’s current policies of directors’ and officers’ liability insurance and employment practices liability insurance in full force and effect without reduction of coverage. Not later than the Closing Date, the Company shall obtain “tail” insurance policies with a claims period of six (6) years from the Closing Date with at least the same coverage and amounts, and containing terms and conditions that are not less advantageous to the directors and officers of the Company, in each case with respect to claims arising out of or relating to events which occurred on or prior to the Closing Date (including in connection with the transactions contemplated by this Agreement). The cost of securing such “tail” insurance policy shall be borne one-half by Laguna (which amount shall be deemed a Company Transaction Cost) and one-half by Investor.

(c) The obligations of Investor and the Company under this Section 5.04 shall not be terminated or modified in such a manner as to adversely affect any officer, director or manager to whom this Section 5.04 applies without the consent of such affected officer, director or manager (it being expressly agreed that the officers, directors and managers to whom this Section 5.04 applies shall be third-party beneficiaries of this Section 5.04, each of whom may enforce the provisions of this Section 5.04).

(d) In the event Investor, the Company or any of their respective successors or assigns (i) consolidates with or merges into any other Person and shall not be the continuing or surviving corporation or entity in such consolidation or merger or (ii) transfers all or substantially all of its properties and assets to any Person, then, and in either such case, proper provision shall be made so that the successors and assigns of Investor or the Company, as the case may be, shall assume all of the obligations set forth in this Section 5.04.

Section 5.05 Governmental Approvals and Other Third-Party Consents.

(a) Each party hereto shall, as promptly as possible, use commercially reasonable efforts to obtain, or cause to be obtained, all consents, authorizations, orders and approvals from all Governmental Authorities that may be or become necessary for the performance of its obligations pursuant to this Agreement. Each party shall cooperate fully with the other party and its Affiliates in promptly seeking to obtain all such consents, authorizations, orders and
approvals. The parties hereto shall not willfully take any action that will have the effect of delaying, impairing or impeding the receipt of any required consents, authorizations, orders and approvals. If required by the HSR Act, each party hereto agrees to make an appropriate filing pursuant to the HSR Act with respect to the transactions contemplated by this Agreement within five (5) Business Days after the date hereof, which filing shall request early termination of the applicable waiting period under the HSR Act, and to supply as promptly as practicable to the appropriate Governmental Authority any additional information and documentary material that may be requested pursuant to the HSR Act. All filing fees under the HSR Act (whether imposed on Investor, Holdings, the Company, Owners or any other Persons pursuant to the HSR Act) shall be borne and paid exclusively by Investor.

(b) All analyses, appearances, meetings, discussions, presentations, memoranda, briefs, filings, arguments, and proposals made by or on behalf of either party before any Governmental Authority or the staff or regulators of any Governmental Authority, in connection with the transactions contemplated hereunder (but, for the avoidance of doubt, not including any interactions between the Acquired Companies or Investor and Governmental Authorities in the ordinary course of business, any disclosure which is not permitted by Law or any disclosure containing confidential information) shall be disclosed to the other party hereunder or its legal counsel in advance of any filing, submission or attendance, it being the intent that the parties will consult and cooperate with one another, and consider in good faith the views of one another, in connection with any such analyses, appearances, meetings, discussions, presentations, memoranda, briefs, filings, arguments, and proposals. Each party shall give notice to the other party with respect to any meeting, discussion, appearance or contact with any Governmental Authority or the staff or regulators of any Governmental Authority, with such notice being sufficient to provide the other party with the opportunity to attend and participate in such meeting, discussion, appearance or contact.

(c) The Company shall use commercially reasonable efforts to give all notices to, and obtain all consents from, all third parties that are listed in Section 3.08 of the Disclosure Schedule; provided, however, that neither the Company, Holdings nor any Owner shall be obligated to pay any consideration therefor to any third party from whom consent or approval is requested.

Section 5.06 Confidentiality; Public Announcements. No party hereto or its respective Affiliates, employees, agents and representatives shall disclose to any third party the existence of this Agreement or the subject matter or terms hereof without the prior consent of the other party hereto; provided, however, that the parties hereto shall be permitted to disclose such information (a) to their attorneys, advisors, representatives, members, financing sources or investors who are reasonably required to receive such information, (b) in connection with enforcing their rights under this Agreement or any other agreement entered into in connection with this Agreement, (c) as required by Law or by this Agreement and (d) that becomes publicly available without breach of this Section 5.06. Investor and the Company shall cooperate prior to Closing to prepare a mutually agreeable press release to be issued upon Closing by Investor and the Company.
Section 5.07    Releases; Confidentiality.

(a)    Effective as of Closing, each Owner and Laguna, on his, her or its own behalf and on behalf of his, her or its past, present and future agents, attorneys, administrators, heirs, executors, spouses, trustees, beneficiaries, representatives, successors and assigns claiming by or through such Owner (but in no event including Grupo LaLa or any of its subsidiaries or any of its or their employees, officers, directors or agents), hereby absolutely, unconditionally and irrevocably RELEASES and FOREVER DISCHARGES each of the Acquired Companies, and their respective past, present and future representatives, successors and assigns, from the following: all claims (including any derivative claim on behalf of any Person), actions, causes of action, suits, arbitrations, proceedings, debts, liabilities, obligations, sums of money, accounts, covenants, contracts, controversies, agreements, promises, damages, fees, expenses, judgments, executions, indemnification rights, claims and demands arising out of, relating to, against or in any way connected with any of the Acquired Companies, in respect of any and all agreements, liabilities or obligations entered into or incurred on or prior to the Closing Date, or in respect of any event occurring or circumstances existing on or prior to the Closing Date, whether or not relating to claims pending on, or asserted after, the Closing Date; provided, however, that the foregoing release does not extend to, include, restrict or limit in any way such Owner’s right (a) to pursue (or cause or permit to be pursued by Laguna) any and all claims, actions or rights that such Owner may now or in the future have solely on account of rights of such Owner under this Agreement, the Escrow Agreement or any other documents entered into in connection with the transactions contemplated hereby (including rights pursuant to the Reorganization), (b) to receive the payments, distributions and other amounts contemplated by this Agreement, the LLC Agreement and the Tax Sharing Agreement, (c) to any other claim that may arise in the future based on events or circumstances occurring in the future, (d) to be indemnified under the certificate of incorporation, by-laws or other similar governing documents of an Acquired Company and (e) to any claim for any breach of any representation, warranty, covenant, agreement or obligation of Investor set forth herein or otherwise relating to the subject matter of this Agreement or the LLC Agreement.

(b)    Unless this Agreement shall have been terminated pursuant to Article VIII, each Owner and Laguna agrees to, and agrees to use commercially reasonable efforts to cause its agents, representatives, Affiliates, employees, officers, stockholders, managers and directors (but in no event including Grupo Lala or any of its subsidiaries or any of its or their employees, officers, directors or agents) to: (i) treat and hold as confidential (and not make use of, disclose or provide access to any Person) all Company Intellectual Property and information relating to product development, price, distributors, customer lists, pricing and marketing plans, policies and strategies, details of client and consultant contracts, operations methods, product development techniques, business acquisition plans, new personnel acquisition plans and all other confidential information with respect to the Acquired Companies or their respective businesses, except for such information as may be required to be disclosed by applicable Law, in which event each Owner and Laguna agrees to, and agrees to use commercially reasonable efforts to cause its agents, representatives, Affiliates, employees, officers and directors to, furnish only that portion of such confidential information which it reasonably believes is legally required to be provided and exercise commercially reasonable efforts to obtain assurances that confidential treatment will be afforded such information, and (ii) in the event that such Owner,
Laguna or any of their respective agents, representatives, Affiliates, employees, officers, managers or directors becomes legally compelled to disclose any such information, provide Investor with prompt written notice of such requirement (to the extent permissible) so that Investor may, at the expense of Investor, seek a protective order or other remedy. This Section 5.07(b) shall not apply to any information that, at the time of disclosure, is known to the receiving party before disclosure thereof, is independently developed by the receiving party, is or becomes publicly available through no fault of any Owner or Laguna, is obtained by the receiving party from a third party not known by the receiving party to be under any obligation not to disclose such information and which the receiving party has no reason to believe is not otherwise publicly available or is reasonably necessary in order for such Owner or Laguna to litigate any claim against Investor pursuant to this Agreement. Notwithstanding the foregoing, each Owner and Laguna, with the consent of Investor (which consent shall not be unreasonably withheld, delayed or conditioned), may make such disclosures in connection with defending any claim brought against such Owner, Laguna or any of their Affiliates by any third person as may be reasonably necessary in order for such Owner or Laguna to conduct its defense thereof; provided, however, that such Owner or Laguna agrees to, and agrees to cause its agents, representatives, Affiliates, employees, officers and directors to, exercise commercially reasonable efforts to obtain assurances that confidential treatment will be afforded such information and to seek a protective order or other remedy to preserve the confidentiality of such information. Notwithstanding the foregoing, each Owner, Laguna and each of their agents, representatives, Affiliates, employees, officers, stockholders, managers and directors may disclose to any of their respective tax and accounting advisors, as is necessary for purposes of obtaining Tax advice or Tax preparation services, the Tax treatment and Tax structure of the transactions contemplated hereby and all materials of any kind (including opinions or other Tax analyses) that are provided to such Owner or Laguna relating to such Tax treatment and Tax structure.

Section 5.08 Non-Reliance and Disclaimers. INVESTOR ACKNOWLEDGES AND AGREES THAT: (A) IN MAKING ITS DECISION TO ENTER INTO THIS AGREEMENT AND TO CONSUMMATE THE TRANSACTIONS CONTEMPLATED HEREBY, INVESTOR HAS RELIED SOLELY UPON ITS OWN INDEPENDENT INVESTIGATION AND THE EXPRESS REPRESENTATIONS AND WARRANTIES OF THE COMPANY AND OWNERS SET FORTH IN Article III (INCLUDING THE RELATED PORTIONS OF THE DISCLOSURE SCHEDULE) AND IS NOT RELYING ON THE ACCURACY OR COMPLETENESS OF ANY OTHER INFORMATION, MATERIALS, REPRESENTATIONS OR WARRANTIES PROVIDED BY OR ON BEHALF OF THE COMPANY, LAGUNA OR OWNERS; AND (B) NONE OF THE COMPANY, OWNERS, LAGUNA, NEW LAGUNA OR ANY OTHER PERSON HAS MADE ANY REPRESENTATION OR WARRANTY AS TO THE ACQUIRED COMPANIES, EXCEPT AS EXPRESSLY SET FORTH IN Article III (INCLUDING THE RELATED PORTIONS OF THE DISCLOSURE SCHEDULE). INVESTOR FURTHER ACKNOWLEDGES AND EXPRESSLY CONFIRMS THAT INVESTOR HAS RECEIVED FROM THE COMPANY CERTAIN PROJECTIONS, INCLUDING PROJECTED INCOME STATEMENTS, BALANCE SHEETS, STATEMENTS OF CASH FLOWS, WORKING CAPITAL SCHEDULES, DEPRECIATION SCHEDULES, DEBT SCHEDULES AND COSTS OF GOODS SOLD ANALYSES FOR THE YEARS ENDING ON DECEMBER 31, 2016, 2017, 2018, 2019, 2020 AND 2021 AND CERTAIN
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BUSINESS PLAN INFORMATION FOR SUCH YEARS. INVESTOR ACKNOWLEDGES THAT (I) THERE ARE UNCERTAINTIES INHERENT IN ATTEMPTING TO MAKE SUCH ESTIMATES, PROJECTIONS AND OTHER FORECASTS AND PLANS, (II) INVESTOR IS FAMILIAR WITH SUCH UNCERTAINTIES, (III) INVESTOR IS TAKING FULL RESPONSIBILITY FOR MAKING ITS OWN EVALUATION OF THE ADEQUACY AND ACCURACY OF ALL ESTIMATES, PROJECTIONS AND OTHER FORECASTS AND PLANS (INCLUDING THE REASONABLENESS OF THE ASSUMPTIONS, UNDERLYING ESTIMATES, PROJECTIONS AND FORECASTS FURNISHED TO IT), AND (IV) INVESTOR SHALL HAVE NO CLAIM AGAINST ANY OWNER, LAGUNA OR NEW LAGUNA WITH RESPECT THERETO. NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH IN THIS Section 5.08, NOTHING IN THIS Section 5.08 SHALL BE DEEMED TO LIMIT OR RESTRICT INVESTOR’S RIGHT OR ABILITY TO BRING OR PURSUE A CLAIM FOR FRAUD (AS DEFINED IN THIS AGREEMENT) IN THE MAKING OF THE REPRESENTATIONS AND WARRANTIES SET FORTH IN ARTICLE III OF THIS AGREEMENT AGAINST ANY THIRD PARTY, INCLUDING ANY OWNER.

Section 5.09 Closing Conditions. From the date hereof until the Closing, each party hereto shall, and the Company shall cause the Acquired Companies to, use commercially reasonable efforts to take such actions as are necessary to expeditiously satisfy the closing conditions set forth in Article VI hereof (other than Section 6.02(a) or Section 6.03(a)).

Section 5.10 Exclusivity. From the date hereof until the earlier of the Closing Date or the date that this Agreement is terminated, neither any Owner, Laguna, Holdings nor the Company shall, and the Owners, Laguna, Holdings and the Company shall cause the Acquired Companies not to, and the Owners, Laguna, Holdings and the Company shall not authorize or permit any Acquired Company’s or Owner’s officers, directors, stockholders, consultants, employees, members, Affiliates, investment bankers, attorneys, advisors, auditors, representatives or agents to, directly or indirectly, (a) solicit, initiate or encourage the submission of inquiries, proposals or offers from any Person or group of Persons relating to any acquisition or purchase of all or substantially all of the assets of, or any equity interest in, any Acquired Company, or any tender or exchange offer, merger, consolidation, business combination, recapitalization, restructuring, spin-off, liquidation, dissolution or similar transaction involving, directly or indirectly, any Acquired Company (each a “Transaction Proposal”), (b) participate in any discussions or negotiations regarding any Transaction Proposal or furnish information about any Acquired Company to any Person except to (i) lenders and other parties to agreements with the Acquired Companies (for the specific purpose set forth in such agreements, which in no event shall include a Transaction Proposal) and (ii) Investor or its Affiliates and representatives, (c) otherwise cooperate in any way with, or assist or participate in, facilitate or encourage, any effort or attempt by any other Person to make or enter into a Transaction Proposal, or (d) accept, approve or authorize, or enter into any agreement concerning any Transaction Proposal or dispose of any equity interest in any Acquired Company, in each case, except pursuant to this Agreement. The Owners, Laguna, Holdings and the Company shall, and shall cause the Acquired Companies to, use their respective reasonable best efforts to cause each of the Acquired Company’s, Laguna’s and Owner’s shareholders, members, agents, officers, directors, investment bankers, advisors, representatives and Affiliates to abide by the terms of this Section 5.10. In the event that any
Owner, Laguna, Holdings or the Company receives or becomes aware of any Transaction Proposal, or any inquiry that could reasonably be expected to result in a Transaction Proposal, unless prohibited by applicable Law, the Company shall promptly (and in any event within three (3) Business Days after receipt thereof by any Owner, the Company, Holdings, Laguna or their respective representatives) notify Investor in writing of any such communication related thereto and keep Investor informed of any subsequent developments in connection therewith.

Section 5.11 Certain Agreements with Grupo LaLa. Prior to the Closing, the Company shall enter into a sale, distribution and sub-license agreement with Grupo LaLa in the form set forth on Exhibit G. Notwithstanding anything to the contrary contained herein, the entry into such agreement by the Company or another Acquired Company in the manner permitted hereby shall not constitute a breach of any covenant, representation or warranty contained herein and shall be deemed disclosed on the Disclosure Schedule.

Section 5.12 Access. From the date hereof until Closing, the Company shall, and shall cause its Subsidiaries to (a) afford Investor and its representatives reasonable access, during normal business hours and upon reasonable notice at mutually agreed times, to the offices, properties, plants, other facilities, books and records of the Acquired Companies and to those representatives of the Acquired Companies who have any knowledge relating to any Acquired Company, to the extent required by the providers of the Debt Financing, the underwriters of the Representation and Warranty Policy or to the extent not previously provided, and (b) furnish to Investor and its representatives such 2017 financial and operating data and other information relating to the Acquired Companies as such Persons may reasonably request.

ARTICLE VI
CONDITIONS TO CLOSING

Section 6.01 Conditions to Obligations of All Parties. The obligations of each party to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment of each of the following conditions:

(a) No Pending Legal Proceedings. No action, suit, claim, investigation or other legal proceeding shall be pending at Closing which would reasonably be expected to result in any Governmental Order that has the effect of, and no Governmental Authority shall have enacted, issued, promulgated, enforced or entered any Governmental Order which is in effect and has the effect of, making the transactions contemplated by this Agreement illegal, otherwise restraining or prohibiting consummation of such transactions or causing any of the transactions contemplated hereunder to be rescinded following completion thereof.

Section 6.02 Conditions to Obligations of Investor. The obligations of Investor to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or Investor’s waiver of each of the following conditions:

(a) Representations and Warranties. The representations and warranties of the Acquired Companies and each member of the Owner Group contained in Article III, without regard to any materiality, Material Adverse Effect or similar qualifiers contained therein, shall be true and correct in all respects on the date hereof and on the Closing Date with the same
effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, which shall be true and correct in all respects as of that specified date), except where the failure of such representations and warranties to be true and correct would not have a Material Adverse Effect on the Acquired Companies.

(b) **Covenants.** Each of the Company, Holdings, Laguna and Owners shall have duly performed and complied in all material respects with all agreements, covenants and conditions required by this Agreement to be performed or complied with by it prior to or on the Closing Date.

(c) **Officer’s Certificate.** Investor shall have received a certificate, dated as of the Closing Date and signed by a duly authorized officer of the Company, with respect to the Company, and Laguna, with respect to the Owner Group and Holdings, certifying that each of the conditions set forth in **Section 6.02(a), Section 6.02(b) and Section 2.06(b)(x)** has been satisfied.

(d) **No Material Adverse Effect.** There shall not have occurred since the date hereof any Material Adverse Effect on the Acquired Companies.

(e) **Reorganization.** The Reorganization contemplated by **Section 2.01(a) through (e)** (excluding the Investor contribution contemplated by **Section 2.01(d)**) shall have been completed to Investor’s reasonable satisfaction.

(f) **Financing.** The Debt Financing shall have been consummated in an amount necessary to make the payments contemplated by the Reorganization.

**Section 6.03 Conditions to Obligations of Owners, the Company, Holdings and Laguna.** The obligation of Owners, Laguna, Holdings and the Company to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or waiver by the Company, of each of the following conditions:

(a) **Representations and Warranties.** The representations and warranties of Investor contained in **Article IV** shall be true and correct in all respects as of the date hereof and as of the Closing Date with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, which shall be true and correct in all respects as of that specified date) except where the failure of such representations and warranties to be true and correct would not have a material adverse effect on Investor’s ability to consummate the transactions contemplated hereby.

(b) **Covenants.** Investor shall have duly performed and complied in all material respects with all agreements, covenants and conditions required by this Agreement to be performed or complied with by it prior to or on the Closing Date.

(c) **Officer’s Certificate.** The Company and Laguna shall have received a certificate, dated as of the Closing Date and signed by a duly authorized officer of Investor, certifying that each of the conditions set forth in **Section 6.03(a) and Section 6.03(b)** has been satisfied.
ARTICLE VII
INDEMNIFICATION

Section 7.01 Survival. Subject to the limitations and other provisions of this Agreement, the representations and warranties contained herein shall survive Closing and shall remain in full force and effect until the first anniversary of Closing, provided, however, that the Several Representations shall survive Closing and shall remain in full force and effect until the close of business on the date that is the expiration of the applicable statute of limitations, the Environmental Indemnity shall survive Closing and remain in full force and effect until the third anniversary of the Closing and the representations and warranties contained in Sections 3.01, 3.02, 3.05, 3.07, 3.15 and 3.22(b) shall survive Closing and shall remain in full force and effect until the third anniversary of the Closing. None of the covenants or other agreements contained in this Agreement shall survive the Closing Date other than those which by their terms contemplate performance after the Closing Date, and each such surviving covenant and agreement shall survive Closing for the period contemplated by its respective terms (including the indemnification provisions set forth in this Article VII, which shall survive indefinitely, except for those indemnification provisions that relate to representations, warranties or covenants that have a shorter survival period contemplated by this Section 7.01) or, if no such survival period is specified, until the expiration of the applicable statute of limitations; provided, however, that the covenants in Section 5.01 shall remain in full force and effect until the first anniversary of Closing. No claim may be made for indemnification hereunder for breach of any representations, warranties, covenants or other agreements contained in this Agreement after the expiration of the survival period applicable thereto as set forth above.

Section 7.02 Indemnification By Laguna and New Laguna.

(a) Subject to the other terms and conditions of this Article VII, each of New Laguna and Laguna (on an individual basis, and not jointly and severally with others, based on such Person’s Percentage Interest), shall indemnify Investor, the Acquired Companies and each of their respective representatives and Affiliates (each an “Investor Indemnified Party” and collectively, the “Investor Indemnified Parties”), against, and shall hold Investor Indemnified Parties harmless from and against, any and all Losses incurred or sustained by, or imposed upon, Investor Indemnified Parties based upon, arising out of, with respect to or by reason of:

(i) any breach of any of the representations or warranties of Holdings or the Company contained in this Agreement or in any certificate or instrument delivered by or on behalf of Holdings or the Company pursuant to this Agreement as of the date such representation or warranty was made or as if such representation or warranty was made on and as of the Closing Date (except for representations and warranties that expressly relate to a specified date, the breach of which will be determined with reference to such specified date), but excluding in any event any Losses relating to the Environmental Indemnity;

(ii) any breach of or failure to perform any covenant, agreement or obligation to be performed by Holdings or the Company prior to the Closing pursuant to this Agreement (including the covenants, agreements or obligations to be performed at or prior to the Closing in connection with the Reorganization);
(iii) any Company Transaction Costs (other than the amount of the Houlihan Fee to be paid pursuant to Section 2.01(j)) or Indebtedness that remain unpaid following the Closing, but only to the extent that such amounts were not reflected in the calculation of principal amount of the Laguna Note or the adjustments contemplated by Section 2.05;

(iv) any claims made against an Acquired Company under the following sections of the Branded Business Sale Agreement: Section 8.02(a)(i), Section 8.02(a)(ii) (solely with respect to breaches of covenants prior to the Closing), Section 8.02(a)(v) (solely with respect to Indebtedness of the Branded Companies), Section 8.02(a)(vi) (solely with respect to Item 3 in Annex G of the Branded Business Sale Agreement), and Section 8.02(a)(vii);

(v) any failure of Farmland to pay the Farmland Withdrawal Liability when due;

(vi) any liabilities relating to the Farmland Distribution, the Farmland Pension Plan or any other liabilities of Farmland (other than the Farmland Withdrawal Liability) and any liabilities resulting from the dissolution of Farmland or the distribution of the Farmland Cash or other assets of Farmland to members of New Laguna prior to the discharge of all liabilities with respect to the Farmland Pension Plan and the Farmland Withdrawal Liability;

(vii) (i) any liabilities arising from the failure to pay all Central States Withdrawal Liability or all Retailers Withdrawal Liability when due, or (ii) any breach of the covenant contained in the penultimate sentence of Section 2.02(b);

(viii) Any breach of the representations and warranties contained in Section 3.15 and 3.22(b);

(ix) Any Pre-Closing Disclosed Environmental Liabilities and any breach of the representations and warranties contained in Section 3.19, but only to the extent that the aggregate Losses in respect of such Pre-Closing Disclosed Environmental Liabilities and any such breach exceed $1,000,000, in which event Laguna shall only be required to pay or be liable for such Losses in excess of $1,000,000 (the “Environmental Indemnity”); and

(x) any demand, claim, suit, action, cause of action, proceeding or assessment brought by any current or former member, owner, partner or stockholders of Laguna to the extent arising at or prior to the Closing (including in connection with the Reorganization).

(b) Subject to the other terms and conditions of this Article VII, each applicable member of the Owner Group (on an individual basis, and not jointly and severally with others) shall indemnify Investor Indemnified Parties against, and shall hold Investor Indemnified Parties harmless from and against, any and all Losses incurred or sustained by, or imposed upon, any Investor Indemnified Party based upon, arising out of, with respect to or by reason of:

(i) any breach of the Several Representations of such applicable member of the Owner Group as of the date such representation or warranty was made or as if such representation or warranty was made on and as of the Closing Date (except for representations...
and warranties that expressly relate to a specified date, the breach of which will be determined with reference to such specified date); and

(ii) any breach of any covenant, agreement or obligation to be performed by such applicable member of the Owner Group pursuant to this Agreement.

Section 7.03 Indemnification By Investor. Subject to the other terms and conditions of this Article VII, Investor shall indemnify the Owners, Laguna, New Laguna and their respective representatives and Affiliates (collectively, the “Owner Group”), the Company and Holdings against, and shall hold the Owner Group, Holdings and the Company harmless from and against, any and all Losses incurred or sustained by, or imposed upon, the Owner Group, Holdings or the Company based upon, arising out of, with respect to or by reason of:

(a) any breach of any of the representations or warranties of Investor contained in this Agreement or in any certificate or instrument delivered by or on behalf of Investor pursuant to this Agreement as of the date such representation or warranty was made or as if such representation or warranty was made on and as of the Closing Date (except for representations and warranties that expressly relate to a specified date, the breach of which will be determined with reference to such specified date); and

(b) any breach of or failure to perform any covenant, agreement or obligation by Investor pursuant to this Agreement.

Section 7.04 Certain Limitations. The party making a claim under this Article VII is referred to as the “Indemnified Party,” and the party against whom such claims are asserted under this Article VII is referred to as the “Indemnifying Party.” The indemnification obligations set forth in the Tax Indemnity and this Article VII shall be subject to the following limitations:

(a) Except as otherwise expressly provided in this Section 7.04, other than recourse against the Escrow Amount pursuant to the terms of this Agreement and the Escrow Agreement, the sole source of indemnification of Investor Indemnified Parties pursuant to Section 7.02(a)(i) and (ii) and the Tax Indemnity shall be the Representation and Warranty Policy. Except for such extended survival periods as provided in Section 7.01 and except for Fraud in the making of the representations and warranties in this Agreement, the obligations of Laguna and New Laguna pursuant to Section 7.02(a)(i) and (ii) and the Tax Indemnity shall terminate upon the earlier to occur of (i) the first anniversary of the Closing Date and (ii) such time that the Escrow Account has a balance equal to zero. Notwithstanding anything to the contrary contained in this Agreement (except the proviso in this sentence), in no event shall the aggregate of all indemnification amounts paid by the Owner Group under Section 7.02(a)(i) and (ii) and the Tax Indemnity exceed the amount of the Indemnity Escrow Amount, which shall serve as the sole source of funding for the indemnification obligations of the Owner Group set forth in Section 7.02(a)(i) and (ii) and the Tax Indemnity; provided, however, that (i) (A) Losses resulting from liability of any member of the Owner Group to Investor for Fraud regarding the representations and warranties made in this Agreement and (B) Losses resulting from the indemnification provisions of Section 7.02(b)(i) and Section 7.02(b)(ii), in each case, shall not be satisfied from the Escrow Account but instead Investor may only seek to recover such Losses directly against
the offending member of the Owner Group (severally, and not jointly and severally with others), and (ii) Losses resulting from the indemnification provisions of Section 7.02(a)(i), solely with respect to any breach of the representations and/or warranties of the Company set forth in Section 3.01, Section 3.02, Section 3.05 and Section 3.07, and Sections 7.02(a)(iii) and (x) may be satisfied from the Escrow Account or directly from Laguna or New Laguna (severally, and not jointly, with others based on such Person’s Percentage Interest), provided, further, that no recovery shall be made against the applicable member of the Owner Group directly with respect to such matters under clauses (i) and (ii) of this sentence unless and until, to the extent applicable, Investor has pursued recovery against the Representation and Warranty Policy and the policy limit has been exhausted or the matter is not covered by the Representation and Warranty Policy (including to the extent, but only to the extent, such matter is being applied to the retention under the Representation and Warranty Policy). Any claims under Sections 7.02(a)(iv) through Section 7.02(a)(x) shall be satisfied first from the funds in the Escrow Account, secondarily against the Representation and Warranty Policy until the policy limit has been exhausted or the matter is not covered by the Representation and Warranty Policy (including to the extent, but only to the extent, such matter is being applied to the retention under the Representation and Warranty Policy) and finally against Laguna and New Laguna (severally, and not jointly, with others based on such Person’s Percentage Interest).

(b) Absent Fraud in the making of the representations and warranties in this Agreement, Laguna, New Laguna and each Owner shall not be liable to Investor Indemnified Parties for indemnification under Section 7.02(a)(i) until the aggregate amount of all Losses in respect of indemnification thereunder exceeds $3,160,000.00 (the “Deductible”), in which event Laguna and New Laguna shall only be required to pay or be liable for Losses in excess of the Deductible; provided, however, that no individual claim by Investor Indemnified Parties shall be asserted under Section 7.02(a)(i) unless and until the aggregate amount of Losses that would be payable pursuant to such claim (or series of related claims) exceeds an amount equal to $100,000 (the “Mini-Basket”) (it being understood that any such individual claims (or series of related claims) for amounts less than the Mini-Basket shall be ignored in determining whether the Deductible has been exceeded and thereafter). For purposes of computing the amount of Losses incurred by any Indemnified Party hereunder, any qualifications in the applicable representations and warranties with respect to a Material Adverse Effect, materiality, material or similar terms (except for the defined term “Material Contract”) shall be disregarded and shall not have any effect with respect to the calculation of the amount of such Losses attributable to a breach of any applicable representation or warranty.

(c) Absent Fraud in the making of the representations and warranties in this Agreement, Laguna’s, New Laguna’s and Owners’ maximum aggregate liability hereunder for any indemnification claims under Section 7.02(a), Section 7.02(b) and the Tax Indemnity shall not, when aggregated with all other indemnification obligations hereunder, exceed an amount equal to $316,000,000, without duplication of the Escrow Amount that is paid to Investor. Laguna’s and New Laguna’s maximum liability hereunder for any indemnification claims under Section 7.02(a)(viii) (with respect to breaches of representations and warranties contained in Section 3.15) shall be limited to $30,000,000 (and shall be payable solely to Investor and not any Acquired Company and shall be limited to the Loss incurred, directly or indirectly, by Investor) and Laguna’s and New Laguna’s maximum liability hereunder for any
indemnification claims under Section 7.02(a)(viii) (with respect to breaches of representations and warranties contained in Section 3.22(b)) shall be limited to $44,600,000 (and shall be payable solely to Investor and not any Acquired Company and shall be limited to the Loss incurred, directly or indirectly, by Investor). In no event shall any Owner be liable for the Tax Indemnity and/or Section 7.02(a) except pursuant to, and subject to the additional limitations contained in, Section 7.09.

(d) Payments by an Indemnifying Party pursuant to the Tax Indemnity or Article VII in respect of any Loss shall be limited to the amount of any liability or damage that remains after deducting therefrom any insurance proceeds and any indemnity, contribution or other similar payment or reimbursement received by an Indemnified Party or its Affiliates in respect of any such Loss (net of any related costs and expenses, including collection expenses and any related increases in insurance premium payments). Each Indemnified Party shall use commercially reasonable efforts to recover under insurance, indemnity, contribution or other similar agreements, or collect other reimbursements, for any Losses (which, for the avoidance of doubt, shall not require the Indemnifying Party to commence or pursue a legal proceeding in connection therewith), and in the event that an Indemnified Party receives any recovery, the amount of such recovery (net of any related costs and expenses, including collection expenses and any related increases in insurance premium payments) shall be paid to the Indemnifying Party solely to the extent necessary to refund any payments made by the Indemnifying Party in respect of indemnification claims pursuant to the Tax Indemnity or this Article VII which would not have been so paid had such recovery been obtained prior to such payment.

(e) Payments by an Indemnifying Party pursuant to the Tax Indemnity or Article VII in respect of any Loss shall be reduced by an amount equal to any Tax benefit actually received by the Indemnified Party as a result of such Loss within one (1) year following the date upon which Investor, the Company or any of their Affiliates first reports such Loss on a Tax Return. For purposes hereof, “Tax benefit” shall be calculated as (i) the amount by which federal, state and local Income Taxes that Investor, the Company or any of their respective Affiliates would have been required to pay, but for such Losses, during the applicable Tax period, exceeds (ii) the amount of federal, state and local Income Taxes actually payable by Investor, the Company or any of their Affiliates, as applicable, for the same Tax period.

(f) In the event that a Tax benefit is actually received by an Indemnified Party as a result of a Loss within one (1) year following the date upon which Investor, the Company or any of their Affiliates first reports such Loss on a Tax Return, in each case with respect to any Loss with respect to which such Indemnified Party has already received an indemnification payment from an Indemnifying Party, then a refund equal to the amount of such recovery shall be made promptly to the Indemnifying Party solely to the extent necessary to refund any payments made by the Indemnifying Party in respect of indemnification claims pursuant to the Tax Indemnity or this Article VII which would not have been so paid had such recovery been obtained prior to such payment.

(g) Each Indemnified Party shall take, and cause its Affiliates to take, all reasonable steps to mitigate any Loss upon becoming aware of any event or circumstance that would be reasonably expected to, or does, give rise thereto, including incurring costs only to the minimum extent necessary to remedy the breach that gives rise to such Loss.
(h) Notwithstanding anything contained elsewhere in this Agreement, no member of the Owner Group shall have any liability with respect to either Fraud or a breach of any of the Several Representations by any other member of the Owner Group, and Investor agrees not to seek recovery against any member of the Owner Group with respect to either Fraud or a breach of the Several Representations by another member of the Owner Group.

(i) Notwithstanding anything contained elsewhere in this Agreement, the amount of any Loss subject to indemnification under Section 7.02 (i) shall be calculated net of any amount that was specifically reserved for as a liability with respect to such Loss in the most recent Financial Statements of the Acquired Companies, (ii) shall in no event be deemed to include punitive damages (unless paid in connection with a Third-Party Claim) and (iii) shall not include any amount of such Loss that was specifically included in calculating Working Capital and taken into account in determining the amount of the principal amount of the Laguna Note.

(j) If an Indemnified Party is entitled to indemnification under more than one clause or subclause of this Agreement with respect to Losses, then such Indemnified Party shall be entitled to only one indemnification or recovery for such Losses to the extent it arises out of the same set of circumstances and events; it being understood that this Section 7.04(j) is solely to preclude a duplicate recovery by an Indemnified Party or recovery in excess of actual damages.

(k) In no event shall any Person have any liability for indemnification for the applicable portion of the Central States Withdrawal Liability or Retailers Withdrawal Liability to the extent, and only to the extent, that a portion of the Central States Cash is used for a purpose other than payment of the Central States Withdrawal Liability or Retailers Withdrawal Liability (including retaining such cash rather than paying the liability when due) and such use of the Central States Cash is approved by at least one representative of the Board of Managers of Holdings appointed by Investor. In addition, in no event shall any Person have any liability for indemnification for such liabilities relating to any “mass withdrawal” unless such Person is promptly given written notice of the assessment (or proposed assessment) of such liability and given a reasonable opportunity to review such assessment and present to the Company any challenges (which challenges the Company shall not unreasonably deny, delay or condition) to all or any portion of such assessment, with any such challenges to be presented by the Company in a timely manner to the applicable plan and to be reasonably resolved by the Company; provided that the failure to give or delay in giving such prompt written notice shall not, however, relieve such Person of its indemnification obligations, except and only to the extent that such Person is disadvantaged by such failure or delay, forfeits rights or defenses, or otherwise incurs or becomes subject to liabilities or obligations by reason of such failure or delay.

(l) Notwithstanding anything to the contrary herein, in no event shall Laguna or New Laguna be required to indemnify, defend, hold harmless, pay or reimburse Investor Indemnified Party under Section 7.02(a)(ix) or for any Environmental Liabilities to the extent such Losses are caused by any invasive or subsurface environmental investigation or sampling that is both initiated after the Closing Date and conducted with the consent of, or at the direction of, Investor (including any individual appointed to the Board of Managers of Holdings by Investor), unless such investigation or sampling (i) is required by applicable Environmental Laws or a Governmental Authority; (ii) is related to bona fide construction, demolition,
renovation or other legitimate development projects, or (iii) would be undertaken by a reasonably prudent business person in the course of the Acquired Companies’ normal operations without consideration of the benefit of any indemnification provided by Laguna.

Section 7.05 Indemnification Procedures.

(a) Third-Party Claims. If any Indemnified Party receives notice of the assertion or commencement of any action, suit, claim or other legal proceeding made or brought by any Person who is not a party to this Agreement or an Affiliate of a party to this Agreement or a representative of the foregoing (a “Third-Party Claim”) against such Indemnified Party with respect to which an Indemnifying Party may be obligated to provide indemnification under this Agreement, such Indemnified Party shall promptly (and in any event within ten (10) Business Days after receiving notice of such Third-Party Claim) give such Indemnifying Party written notice thereof. The failure to give such prompt written notice shall not, however, relieve the Indemnifying Party of its indemnification obligations, except and only to the extent that the Indemnifying Party is disadvantaged by such failure or delay or forfeits rights or defenses by reason of such failure or delay. Such notice by the Indemnified Party shall describe the Third-Party Claim in reasonable detail, shall include copies of all material written evidence thereof and shall indicate the estimated amount, if reasonably practicable, of the Loss that has been or may be sustained by the Indemnified Party. Any Indemnifying Party shall have the right to participate in or, by giving written notice to the Indemnified Party, to assume the defense of any Third-Party Claim at such Indemnifying Party’s expense and by such Indemnifying Party’s own counsel, and the Indemnified Party shall cooperate in good faith in such defense; provided, however, that an Indemnifying Party may only assume the defense of any Third-Party Claim if (i) the Indemnifying Party covenants to indemnify, defend and hold harmless the Indemnified Party from and against the entirety of any Losses, subject to the limitations on indemnification contained in this Article VII, which the Indemnified Party may suffer resulting from, arising out of, relating to, or caused by such Third-Party Claim, (ii) the Third-Party Claim involves only money damages and does not seek an injunction or other equitable relief against the Indemnified Party, and (iii) the Third-Party Claim does not relate to or otherwise arise in connection with any criminal or regulatory enforcement action. If an Indemnifying Party elects to defend against, negotiate, settle or otherwise deal with any Third-Party Claim, it shall within thirty (30) days after receipt of notice of such Third-Party Claim notify the Indemnified Party of its intent to do so. In the event that the Indemnifying Party assumes the defense of a Third-Party Claim, subject to Section 7.05(b), it shall have the right to take such action as it deems necessary to avoid, dispute, defend, appeal or make counterclaims pertaining to such Third-Party Claim in the name and on behalf of the Indemnified Party. The Indemnified Party shall have the right, at its own cost and expense, to participate in the defense of any Third-Party Claim with counsel selected by it, subject to the Indemnifying Party’s right to control the defense thereof; provided, however, that if in the reasonable opinion of counsel for such Indemnified Party, (A) there are legal defenses available to an Indemnified Party that are different from or additional to those available to the Indemnifying Party, or (B) there is a reasonable likelihood of a conflict of interest between the Indemnifying Party and the Indemnified Party, the Indemnifying Party shall be responsible for the reasonable fees and expenses of one counsel to such Indemnified Party in connection with such defense in each jurisdiction for which the Indemnified Party determines counsel is required. If the
Indemnifying Party elects not to compromise or defend such Third-Party Claim or fails to notify the Indemnified Party in writing of its assumption of the defense thereof within thirty (30) days as provided in this Agreement, the Indemnified Party may, subject to Section 7.05(b), pay, compromise or defend such Third-Party Claim and seek indemnification from the Indemnifying Party for any and all Losses based upon, arising from or relating to such Third-Party Claim. Laguna and Investor shall cooperate with each other in all reasonable respects in connection with the defense of any Third-Party Claim, including making available records relating to such Third-Party Claim and furnishing, without expense (other than reimbursement of actual out-of-pocket expenses) to the defending party, employees of the non-defending party as may be reasonably necessary for the defense of such Third-Party Claim.

(b) Settlement of Third-Party Claims. Notwithstanding any other provision of this Agreement, an Indemnifying Party shall not agree to any settlement of a Third-Party Claim without the prior written consent of the Indemnified Party (which consent shall not be unreasonably withheld, conditioned or delayed), except as provided in this Section 7.05(b). If a firm offer is made to settle a Third-Party Claim without leading to liability or the creation of a financial or other obligation on the part of any Indemnified Party and provides, in customary form, for the unconditional release of each Indemnified Party from all liabilities and obligations in connection with such Third-Party Claim, and the Indemnifying Party desires to accept and agree to such offer, the Indemnifying Party shall give written notice to that effect to the Indemnified Party. If the Indemnified Party fails to consent to such firm offer within twenty (20) days after its receipt of such notice, the Indemnified Party may continue to contest or defend such Third-Party Claim and in such event, the maximum liability of the Indemnifying Party as to such Third-Party Claim shall not exceed the amount of such settlement offer. If the Indemnified Party fails to consent to such firm offer and also fails to assume defense of such Third-Party Claim, the Indemnifying Party may settle the Third-Party Claim upon the terms set forth in such firm offer to settle such Third-Party Claim. If the Indemnified Party has assumed the defense pursuant to Section 7.05(a), it shall not agree to any settlement of such Third-Party Claim without the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld, conditioned or delayed).

(c) Direct Claims. Any claim by an Indemnified Party on account of a Loss which does not result from a Third-Party Claim (a “Direct Claim”) shall be asserted in good faith by the Indemnified Party giving the Indemnifying Party prompt written notice thereof. The failure to give such prompt written notice shall not, however, relieve the Indemnifying Party of its indemnification obligations, except and only to the extent that the Indemnifying Party is disadvantaged by such failure or delay or forfeits rights or defenses by reason of such failure or delay. Such notice by the Indemnified Party shall describe the Direct Claim in reasonable detail, shall include copies of all material written evidence thereof and shall indicate the estimated amount, if reasonably practicable, of the Loss that has been or may be sustained by the Indemnified Party.

(d) Survival. For the avoidance of doubt, no Indemnified Party may seek indemnity against any Indemnifying Party for any Loss unless such Indemnified Party delivers written notice pursuant to Section 7.05(a) or Section 7.05(c), as applicable, on or before the applicable survival period set forth in Section 7.01.
Section 7.06 Exclusive Remedies. Subject to Section 9.11, absent Fraud in the making of the representations and warranties in this Agreement, the parties acknowledge and agree that their sole and exclusive remedy against each other with respect to any and all claims for any breach of any representation, warranty, covenant, agreement or obligation set forth herein or otherwise relating to the subject matter of this Agreement, shall be pursuant to the indemnification provisions set forth in the Tax Indemnity and this Article VII. In furtherance of the foregoing, absent Fraud in the making of the representations and warranties in this Agreement, each party hereby waives, to the fullest extent permitted under Law, any and all rights, claims and causes of action for any breach of any representation, warranty, covenant, agreement or obligation set forth herein or otherwise relating to the subject matter of this Agreement it may have against the other parties hereto and their Affiliates and each of their respective representatives arising under or based upon any Law, except pursuant to Section 9.11 or the indemnification provisions set forth in the Tax Indemnity and this Article VII. Without limiting the generality of the preceding sentence, absent Fraud in the making of the representations and warranties in this Agreement, no legal action sounding in tort, statute or strict liability may be maintained by any party. Nothing in this Section 7.06 shall limit the recourse of the Owner Group pursuant to Section 9.11 or limit any Person’s right to seek and obtain any equitable relief to which such Person shall be entitled pursuant to Section 9.11.

Section 7.07 Manner of Payment.

(a) Any indemnification owed by Investor to any member of the Owner Group pursuant to Section 7.03 shall be effected by wire transfer of immediately available funds from Investor to an account designated in writing by the applicable member of the Owner Group, within fifteen (15) days after the determination thereof. Any indemnification owed by the Owner Group to Investor Indemnified Parties pursuant to Section 7.02(a) shall be satisfied from the Escrow Account in all cases and may only be satisfied from the funds then remaining in the Escrow Account, except as otherwise provided in Section 7.04. If the Owner Group fails to make any cash indemnification payment within thirty (30) days after the date on which such indemnification payment was first required (it being understood and agreed that the date such indemnification payment was first required shall be the earlier of (i) the date the Owner Group expressly agrees in writing that such payment is required and (ii) the date any Investor Indemnified Party secures an order, judgment or decree of a Governmental Authority stating that such payment is required and such order, judgment or decree is final and nonappealable, and such payment is not limited to the Escrow Amount pursuant to the terms of Section 7.04), then the Investor Indemnified Parties may, in their sole discretion, but only after providing an Equity Remedy Notice (as defined in the LLC Agreement) to the Owner Group, (x) cause New Laguna or any of its Affiliates or transferees that holds Class B Interests or any other equity securities of Holdings to transfer to Investor or its designated Affiliate, pursuant to the terms of Section 7.07(b) and Article VII of the LLC Agreement, Class B Interests or any other equity securities of Holdings as determined in accordance with Article VII of the LLC Agreement (and subject to the limitations contained therein), or (y) set off any amounts due or payable to any of Investor Indemnified Parties by any member of the Owner Group pursuant to this Article VII against any other amounts otherwise due and payable by the Company or any of its Affiliates to any member of the Owner Group or any Affiliate of any member of the Owner Group pursuant to that certain Tax Sharing Agreement.
(b) Each member of the Owner Group on behalf of itself and its Affiliates and transferees hereby consents to the provisions of Section 7.07(a) and Article VII of the LLC Agreement. If at any time Class B Interests or other equity securities are transferred to Investor by a member of the Owner Group or its Affiliates or transferees pursuant to this Section 7.07(b), Holdings shall be entitled, without any further action on the part of any member of the Owner Group or any of its Affiliates or transferees, to amend the Member Schedule to the LLC Agreement to reflect the transfer of Class B Interests or other equity securities held by such member of the Owner Group or any of its Affiliates or transferees. Each member of the Owner Group and any of its Affiliates and transferees will take such further action (including the execution and delivery of such further instruments and documents) as Investor Indemnified Parties reasonably may request to effectuate any such transfer of Class B Interests or other equity securities to Investor pursuant to Section 7.07(a) and Article VII of the LLC Agreement.

(c) For the avoidance of doubt, to the extent the Loss is experienced by an Acquired Company (and not directly by Investor), any claims made by Investor against the Class B Interests (or otherwise) shall be limited to Investor’s share of the applicable Loss based on Investor’s economic ownership of Holdings (rather than 100% of the Loss).

Section 7.08 Representation and Warranty Policy. Investor shall cause the Representation and Warranty Policy to expressly provide that the insurer thereunder (a) waives, and agrees not to pursue, directly or indirectly, any subrogation rights against Owners, Holdings or the Company (other than in connection with Fraud by Owners, Holdings or the Company) with respect to any claim made by any insured thereunder and (b) agrees that Investor Indemnified Parties shall have no obligation to pursue any claim against Owners, Holdings or the Company (other than in connection with Fraud by Owners, Holdings or the Company) in connection with any Loss. The cost of securing the Representation and Warranty Policy shall be an Investor Transaction Expense. In the event that any claim for indemnification under any provision of Section 7.02 or the Tax Indemnity may be brought against the Owner Group directly and such claim may also be made as a breach of representation and warranties under Section 7.02, Investor shall first pursue such claim as a breach of a representation or warranty (or under the Tax Indemnity) against the Escrow Account, second against the Representation and Warranty Policy and only finally against the Owner Group in accordance with Article VII and subject to the limitations contained Article VII.

Section 7.09 Owner Guaranty. Each Owner, severally in accordance with its Percentage Interest, hereby guarantees the payment obligations of the Owner Group under Section 7.02(a) and the Tax Indemnity subject to the terms and conditions of this Section 7.09. The Owners agree that no formal change, amendment, modification or waiver of any terms or condition of this Agreement, no extension in whole or in part of the time for the performance by Laguna or New Laguna of any of its obligations under this Agreement, and no settlement, compromise, release, surrender, modification or impairment of, or exercise or failure to exercise any claim, right or remedy of any kind or nature in connection with this Agreement, shall affect, impair or discharge, in whole or in part, the liability of the Owners for the full, prompt and unconditional performance of the payment obligations of Laguna and New Laguna under Section 7.02(a) and the Tax Indemnity, on a several, but not joint, basis (based on their respective Percentage Interest) but subject to the other terms and conditions of this Section 7.09. The obligations of the Owners are absolute and unconditional, irrespective of any circumstance
which might otherwise constitute a legal or equitable discharge of a surety or guarantor. The liability of the Owners shall be direct and not conditional or contingent on the pursuit of remedies against Laguna or New Laguna; provided that no Investor Indemnified Party may proceed against the Owners to collect any amount owed hereunder by Laguna or New Laguna without first having (a) made commercially reasonable efforts to collect such amount directly from Laguna or New Laguna and (b) filed a suit against Laguna or New Laguna, as appropriate, in accordance with Section 9.10. The guarantee of the Owners shall be a continuing guarantee, and the above consent and waiver of the Owners shall remain in full force and effect until the obligations of Laguna and New Laguna under Section 7.02(a) and the Tax Indemnity are discharged and paid in full. The Owners agree to pay all costs, fees and expenses (including reasonable attorneys' fees and all disbursements) incurred by Investor Indemnified Parties in collecting or enforcing the Owners' obligations hereunder. In no event shall any Owner be liable under this Section 7.09 for any Losses in excess of the amounts distributed to it by Laguna or New Laguna together with any distributions to any of its Permitted Transferees (as defined in the LLC Agreement) as if they were a party thereto, but without duplication of any payments made to the other Owner (to the extent one Owner would be considered a Permitted Transferee of another). Notwithstanding the foregoing, in the event that (i) Laguna transfers ownership of New Laguna, or (ii) the Owners cause or permit Laguna or New Laguna to transfer or otherwise divest or deplete substantially all of their assets, in each case of (i) and (ii) in any manner that would avoid the obligations under this Section 7.09, the Owners shall remain liable for their obligations hereunder whether or not the Owners receive any funds from Laguna or New Laguna unless the Person acquiring the ownership or assets of Laguna or New Laguna provides a guaranty of the Owners’ obligations that is reasonably acceptable to Investor. For the avoidance of doubt, each Owner shall have the benefit of all of the limitations on liability set forth in this Agreement applicable to Laguna and/or New Laguna and in no event shall any Owner have any obligations to indemnify pursuant to Section 7.02(a) or the Tax Indemnity except in accordance with this Section 7.09.

ARTICLE VIII
TERMINATION

Section 8.01 Termination. This Agreement may be terminated at any time prior to Closing:

(a) by the mutual written consent of the Company and Investor;

(b) by Investor by written notice to the Company if:

(i) Investor is not then in material breach of any provision of this Agreement and there has been a material breach, inaccuracy in or failure to perform any representation, warranty, covenant or agreement made by any member of the Owner Group, Holdings or the Company pursuant to this Agreement that would give rise to the failure of any of the conditions specified in Article VI and such breach, inaccuracy or failure cannot be cured by such member of the Owner Group, Holdings or the Company by July 10, 2017 (the “Outside Date”); or

(ii) any of the conditions set forth in Section 6.01 or Section 6.02 shall not have been fulfilled by the Outside Date (other than those conditions, which, by their nature, are
to be satisfied on the Closing Date), unless such failure shall be due to the failure of Investor to perform or comply with any of the covenants, agreements or conditions hereof to be performed or complied with by it prior to Closing.

(c) by the Company or Laguna by written notice to Investor if:

(i) the Company, Holdings and the members of the Owner Group are not then in material breach of any provision of this Agreement and there has been a material breach, inaccuracy in or failure to perform any representation, warranty, covenant or agreement made by Investor pursuant to this Agreement that would give rise to the failure of any of the conditions specified in Article VI and such breach, inaccuracy or failure cannot be or has not been cured by Investor by the Outside Date; or

(ii) any of the conditions set forth in Section 6.01 or Section 6.03 shall not have been fulfilled by the Outside Date (other than those conditions, which, by their nature, are to be satisfied on the Closing Date), unless such failure shall be due to the failure of the Company, Holdings or any member of the Owner Group to perform or comply with any of the covenants, agreements or conditions hereof to be performed or complied with by it prior to Closing; or

(d) by Investor or the Company by written notice to the other parties hereto if:

(i) there shall be any Law that makes consummation of the transactions contemplated by this Agreement illegal or otherwise prohibited; or

(ii) any Governmental Authority shall have issued a Governmental Order restraining or enjoining the transactions contemplated by this Agreement, and such Governmental Order shall have become final and non-appealable.

Section 8.02 Effect of Termination. In the event of the termination of this Agreement in accordance with this Article VIII, this Agreement shall forthwith become void and there shall be no liability on the part of any party hereto except:

(a) as set forth in Article IX and this Article VIII; and

(b) that nothing herein shall (i) relieve or release any party to this Agreement for liability for Losses arising out of such party’s willful and intentional breach of any provision of this Agreement or (ii) impair the right of any party hereto to compel specific performance by the other party or parties, as the case may be, of such party’s post-termination obligations under this Agreement.

ARTICLE IX
MISCELLANEOUS

Section 9.01 Expenses. Except as otherwise expressly provided herein, all costs and expenses, including, without limitation, fees and disbursements of counsel, advisors and accountants, incurred in connection with this Agreement and the transactions contemplated
hereby shall be paid by the party incurring such costs and expenses, whether or not Closing shall have occurred; provided, however, that (a) Investor shall be responsible for all filing and other similar fees payable in connection with any filings or submissions under the HSR Act, (b) each of Investor and Laguna shall be responsible for one-half of the cost of the “tail” insurance policy described in Section 5.04(b), (c) all such costs and expenses of Investor (the “Investor Transaction Expenses”) may, at Investor’s election, be paid by the Company in the event that Closing occurs, and (d) any unpaid Company Transaction Costs as of Closing may be paid by the Company upon Closing provided that any such payments shall reduce the amount of the Laguna Note, as set forth in the definition thereof.

Section 9.02 Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given: (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipient; or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this Section 9.02):

If to the Company: Borden Dairy Company
8750 N. Central Expressway, Suite 400
Dallas, TX 75231
Attention: Bill White
E-mail: bill.white@bordendairy.com

with a copy before Closing to: Andrews Kurth Kenyon LLP
1717 Main Street, Suite 3700
Dallas, TX 75201
Attention: Mark S. Solomon, Esq.
E-mail: mark.solomon@andrewskurth.com
with a copy after Closing to: Arnold & Porter Kaye Scholer LLP
601 Massachusetts Avenue, NW
Washington, DC 20001
Attention: Kevin J. Lavin, Esq.
J. Matthew Owens, Esq.
E-Mail: Kevin.Lavin@apks.com
Matthew.Owens@apks.com

And

Dechert LLP
1095 Avenue of the Americas
New York, NY 10036
Attention: Howard M. Kleinman, Esq.
Bernardo L. Piereck, Esq.
E-mail: howard.kleinman@dechert.com
bernardo.piereck@dechert.com

And

Andrews Kurth Kenyon LLP
1717 Main Street, Suite 3700
Dallas, TX  75201
Attention: Mark S. Solomon, Esq.
E-mail: marksoomon@andrewskurth.com

If to Investor: ACON Dairy Investors, L.L.C.
1133 Connecticut Avenue, Suite 700
Washington, DC 20036
Attention: Aron Schwartz
Teresa Bernstein
E-Mail: aschwartz@aconinvestments.com
tbernstein@aconinvestments.com
with a copy to: Arnold & Porter Kaye Scholer LLP
601 Massachusetts Avenue, NW
Washington, DC 20001
Attention: Kevin J. Lavin, Esq.
J. Matthew Owens, Esq.
E-Mail: Kevin.Lavin@apks.com
Matthew.Owens@apks.com

With to any member of the Owner Group:
c/o Laguna Dairy, S. de R.L. de C.V.
Calzada Carlos Herrera Araluce 185
Parque Industrial Carlos A Herrera Araluce
Gomez Palacio, Durango 35079
United Mexican States
Attention: Frine Galvan
E-mail: frine.galvan@grupolala.com

with a copy to: Andrews Kurth Kenyon LLP
1717 Main Street, Suite 3700
Dallas, TX 75201
Attention: Mark S. Solomon, Esq.
E-mail: marksoolomon@andrewskurth.com

And

Dechert LLP
1095 Avenue of the Americas
New York, NY 10036
Attention: Howard M. Kleinman, Esq.
Bernardo L. Piereck, Esq.
E-mail: howard.kleinman@dechert.com
bernardo.piereck@dechert.com

Section 9.03 Interpretation. For purposes of this Agreement: (a) the words “include,” “includes” and “including” shall be deemed to be followed by the words “without limitation”; (b) the word “or” is not exclusive; (c) the words “herein,” “hereof,” “hereby,” “hereto” and “hereunder” refer to this Agreement as a whole; (d) words in the singular include the plural and vice versa; and (e) the use in this Agreement of a pronoun in reference to a party hereto includes the masculine, feminine or neuter, as the context may require. Unless the context otherwise requires, references herein: (i) to Articles, Sections, the Disclosure Schedule and Exhibits mean the Articles of, Sections of, the Disclosure Schedule delivered with, and Exhibits attached to this Agreement, respectively; (ii) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof; and (iii) to a statute means such statute as
amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The Disclosure Schedule and Exhibits referred to herein shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein.

Section 9.04  Headings. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

Section 9.05  Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

Section 9.06  Entire Agreement. This Agreement, including the Exhibits hereto and the Disclosure Schedule, constitutes the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein, and supersedes all prior and contemporaneous representations, warranties, understandings and agreements, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements in the body of this Agreement, the Exhibits and Disclosure Schedule (other than an exception expressly set forth as such in the Disclosure Schedule), the statements in the body of this Agreement will control.

Section 9.07  Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. Neither party may assign its rights or obligations hereunder without the prior written consent of the other parties, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, that Investor may transfer or assign this Agreement or any right or obligation hereunder to any lenders or administrative agent for a group of lenders, and any Affiliate at any time prior to or after the Closing, provided that Investor, jointly and severally with its assignee, remains primarily liable for the full and timely performance of all of Investor’s obligations under this Agreement. No assignment shall relieve the assigning party of any of its obligations hereunder. Any assignment of this Agreement in violation of this Agreement shall be null and void ab initio.

Section 9.08  No Third-Party Beneficiaries. Except as provided in Section 5.04(e) and Article VII, this Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement. Notwithstanding anything to the contrary in the foregoing, any provider of the Debt Financing shall be a third-party beneficiary to this Section 9.08 and Sections 9.09, 9.10, and 9.13.

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Section 9.09 Amendment and Modification; Waiver. This Agreement may only be amended, modified or supplemented by an agreement set forth in writing and signed by Investor, Holdings, the Company and Laguna; provided, however, that any such amendment, modification or supplement to this Agreement that would have a disproportionate effect on one or more Owners as compared to the other Owners must be set forth in writing and signed by Investor, Holdings, the Company, Laguna and all of the affected Owners. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving, except that Laguna may waive provisions of this Agreement on behalf of all members of the Owner Group; provided, however, that any such waiver that would have a disproportionate effect on one or more Owners as compared to the other Owners must be set forth in writing and signed by all of the affected Owners. No waiver by any party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. Notwithstanding anything to the contrary in the foregoing, neither this Section 9.09 nor Sections 9.08, 9.10 nor 9.13 may be amended, restated, supplemented or modified in any manner adverse to the provider of the Debt Financing without the prior written consent of such provider of the Debt Financing.

Section 9.10 Governing Law; Submission to Jurisdiction; Waiver of Jury Trial.

(a) This Agreement shall be governed by and construed in accordance with the internal Laws of the State of Texas without giving effect to any choice or conflict of law provision or rule and all claims or causes of action (whether in contract or in tort, in Law or in equity) that may be based upon, arise out of or relate to this Agreement, or the negotiation, execution or performance of this Agreement (including any representation or warranty made in or in connection with this Agreement or as an inducement to enter into this Agreement) shall be determined and adjudicated under the Laws of the State of Texas. Notwithstanding anything to the contrary in the foregoing, each of the parties agrees that all disputes and proceedings (in contract, in equity, in tort or otherwise) arising out of or relating to the Debt Financing shall be governed by and construed in accordance with the laws of the State of New York without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of New York.

(b) ANY LEGAL SUIT, ACTION OR PROCEEDING ARISING OUT OF, RELATING TO OR BASED UPON THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER IN CONTRACT OR IN TORT, IN LAW OR IN EQUITY) MAY BE INSTITUTED IN THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA OR THE COURTS OF THE STATE OF TEXAS, IN EACH CASE LOCATED IN THE CITY OF DALLAS AND COUNTY OF DALLAS, TEXAS, AND EACH PARTY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS IN ANY SUCH SUIT, ACTION OR PROCEEDING. SERVICE OF PROCESS, SUMMONS, NOTICE OR OTHER DOCUMENT BY MAIL TO SUCH PARTY’S ADDRESS SET FORTH
HEREIN SHALL BE EFFECTIVE SERVICE OF PROCESS FOR ANY SUIT, ACTION OR OTHER PROCEEDING BROUGHT IN ANY SUCH COURT. THE PARTIES IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY OBJECTION TO THE LAYING OF VENUE OF ANY SUIT, ACTION OR ANY PROCEEDING IN SUCH COURTS AND IRREVOCABLY WAIVE AND AGREE NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE FOREGOING, EACH OF THE PARTIES HERETO AGREES THAT IT WILL NOT BRING OR SUPPORT ANY ACTION, SUIT OR PROCEEDING OF ANY KIND OR DESCRIPTION, WHETHER IN LAW OR IN EQUITY, WHETHER IN CONTRACT OR IN TORT OR OTHERWISE, AGAINST ANY PROVIDER OF THE DEBT FINANCING IN ANY WAY RELATED TO THIS AGREEMENT OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY IN ANY FORUM OTHER THAN THE SUPREME COURT OF THE STATE OF NEW YORK, OR IF UNDER APPLICABLE LAW EXCLUSIVE JURISDICTION IS VESTED IN THE FEDERAL COURTS, THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK (AND APPELLATE COURTS THEREOF).

(c) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY. EACH PARTY TO THIS AGREEMENT CERTIFIES AND ACKNOWLEDGES THAT (I) NO REPRESENTATIVE OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION, (II) SUCH PARTY HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (III) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY AND (IV) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 9.10(C).

Section 9.11 Specific Performance. Except as otherwise expressly provided herein, all rights and remedies of each of the parties under this Agreement will be cumulative, and the exercise of one or more rights or remedies will not preclude the exercise of any other right or remedy available under this Agreement, applicable Law or otherwise. Without limiting the foregoing, the parties acknowledge that irreparable damages would occur if any of the provisions of this Agreement were not performed, or threatened not to be performed, in accordance with their specific terms or were otherwise breached and that money damages or other legal remedies would not be adequate for any such damages. It is accordingly agreed that, subject in all respects to the rights of the parties hereto pursuant to Section 8.01, Investor, Laguna (on behalf of Owner Group after Closing) or the Company (on behalf of the Owner Group before Closing) shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement. The parties hereto further agree that no party shall be required to obtain, furnish or post any bond or similar instrument in connection
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with or as a condition to obtaining any remedy referenced in this Section 9.11 and the parties waive any objection to the imposition of such relief or any right it may have to require the obtaining, furnishing or posting of any such bond or similar instrument; provided, however, to the extent any such bond or similar instrument is required by applicable Law or Governmental Order, the parties expressly agree and intend that a bond or similar instrument in the amount of $100 shall be sufficient and reasonable.

Section 9.12 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

Section 9.13 Non-Recourse. This Agreement may only be enforced against, and any claim, action, suit or other legal proceeding based upon, arising out of, or related to this Agreement, or the negotiation, execution or performance of this Agreement, may only be brought against, the Persons that are expressly named as parties hereto and then only with respect to the specific obligations set forth herein with respect to such party. No past, present or future director, officer, employee, incorporator, manager, member, partner, stockholder, Affiliate, agent, attorney or other representative of any party hereto or of any Affiliate of any party hereto, or any of their successors or permitted assigns, shall have any liability for any obligations or liabilities of any party hereto under this Agreement or for any claim or action based on, in respect of or by reason of the transactions contemplated hereby. Notwithstanding anything herein to the contrary, the Company, Holdings, Laguna, New Laguna and each Owner (i) hereby acknowledges and agrees that none of such party shall have any rights or claims against any provider of the Debt Financing or their Affiliates or representatives in connection with this Agreement or the Debt Financing, or the transactions contemplated hereby or thereby, whether at law or in equity, in contract, in tort or otherwise, and (ii) agrees not to commence any action or proceeding against any provider of the Debt Financing or their Affiliates or representatives in connection with this Agreement or the Debt Financing, or the transactions contemplated hereby or thereby (including any action or proceeding relating to the Debt Financing).

Section 9.14 Conflicts. Each of the parties hereto acknowledges and agrees, on its own behalf and on behalf of its representatives and Affiliates, that the Company is the client of Andrews Kurth Kenyon LLP (“AKK LLP”) and that Laguna is a client of Dechert LLP (“Dechert LLP”). After Closing, it is possible that AKK LLP and/or Dechert LLP will represent one or more members of the Owner Group in connection with a variety of matters, including matters adverse or potentially adverse to the interests of Investor and/or the Acquired Companies. Each of the parties to this Agreement hereby agrees that AKK LLP (or any successor) and/or Dechert LLP may serve as counsel to all or a portion of the Owner Group, in connection with any such matter arising after the date hereof. Each of the parties hereto consents to such representation, and waives any conflict of interest arising therefrom. Each of the parties hereto acknowledges that such consent and waiver is voluntary, that it has been carefully considered, and that the parties have consulted with counsel or have been advised they should do so in connection herewith. Each of the parties further agrees that all privileged communications and materials between AKK LLP and/or Dechert LLP, on the one hand, and the Acquired Companies (or any representative of the Acquired Companies), or a member of the Owner Group, on the other hand, shall remain privileged and confidential.

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Group, on the other hand, prior to Closing made in connection with the negotiation, preparation, execution, delivery and performance under, or any dispute or proceeding arising out of or relating to, this Agreement, or the transactions contemplated hereby (collectively, “Privileged Materials”) are the property of the Owner Group (as a group) and that Investor and the Company cannot obtain copies of, or access to, any such Privileged Materials without a waiver from Laguna. Each of the parties expressly agrees that, at and after Closing (and continuing indefinitely thereafter), any privilege related to any of the Privileged Materials shall be solely controlled by the Owner Group acting collectively through Laguna. Investor further agrees that it will not and that it will not permit the Acquired Companies to seek to obtain any such Privileged Materials, including by way of review of any electronic communications or documents or by seeking to have the Owner Group waive the attorney-client privilege, or by otherwise asserting that Investor has the right to waive the attorney-client privilege. Notwithstanding the foregoing, in the event that applicable Law permits recovery of the Privileged Materials as a result of an underlying legal matter (and not as a result of the fact that Privileged Materials are considered privileges of the Acquired Companies and not the Owner Group), then Investor and/or the Acquired Companies shall be permitted to exercise such rights under applicable Law.

In the event that any of Investor or the Acquired Companies is required by Governmental Order or otherwise to access or obtain a copy of such Privileged Materials, Investor shall immediately (and, in any event, within two (2) Business Days) notify Laguna in writing (including by making specific reference to this Section 9.14) so that Laguna can seek a protective order and Investor agrees to use commercially reasonable efforts to assist therewith.

Section 9.15 Further Assurances. At all times before and after the Closing, the parties hereto shall each perform such acts, execute and deliver such instruments and documents and do all such other things consistent with the terms of this Agreement as may be reasonably necessary to accomplish the transactions contemplated in this Agreement or to otherwise carry out the purpose of this Agreement.

ARTICLE X
REPRESENTATIVE

Section 10.01 Authorization.
(a) The Owners and New Laguna hereby appoint Laguna as its attorney in fact and authorizes and empowers Laguna:

(i) to act on behalf of the Owners and New Laguna as specified in this Agreement, including, without limitation:

A. to make and receive any deliveries, notifications, objections, investigations, negotiations, prosecutions, defenses, resolutions and settlements;

B. to resolve all questions, disputes, conflicts and controversies;

C. to file, assert or institute any proceeding;
D. to investigate, defend, contest or litigate any proceeding; receive process on behalf of such Person in any proceeding; and give receipts, releases and discharges with respect to any such proceeding; and

E. to file and prosecute appeals from any decision, judgment or award rendered in any proceedings;

(ii) to direct New Laguna to enter into the Escrow Agreement and to deposit the Escrow Amount with the Escrow Agent; to direct New Laguna to withhold, retain and disburse escrow funds in accordance with this Agreement and the Escrow Agreement; to directly or indirectly through New Laguna file, assert, institute, investigate, defend, contest or litigate any proceeding relating to the Escrow Agreement; to receive process on behalf of such member of the Owner group in any such proceeding; to compromise or settle any such proceeding; and to give receipts, releases and discharges with respect to any proceeding;

(iii) to employ or engage such counsel, advisors and accountants and to delegate authority to such counsel, advisors and accountants as Laguna, in its reasonable discretion, deems to be in the best interest of the Owner Group; and

(iv) to make, execute, acknowledge and deliver all such other agreements, guarantees, orders, receipts, endorsements, notices, requests, instructions, certificates, membership interest powers, letters and other writings, and, in general, to do any and all things and to take any and all action that Laguna may consider necessary, proper or convenient in connection with exercising its powers and performing its obligations under this Agreement and, indirectly through New Laguna, the Escrow Agreement.

(b) Investor, Holdings and the Company shall be entitled to rely on the authority granted to Laguna hereunder and to rely exclusively upon the communications of Laguna, but only as it relates to the foregoing, as the communications of the Owner Group, and Investor, Holdings and the Company shall have no liability for any such reliance. Neither Investor, Holdings nor the Company shall be held liable or accountable in any manner for any act or omission of Laguna in such capacity. Laguna acknowledges and agrees that Investor shall have no responsibility or liability for any costs, expenses or other Losses incurred by Laguna in connection with the discharge of its responsibilities pursuant to this Agreement.

(c) The parties acknowledge and agree that Laguna may not, on behalf of the Owner Group, enter into any amendments of this Agreement or grant any waivers under this Agreement, except in accordance with Section 9.09.

(d) The grant of authority contained in this Section 10.01 is: (i) irrevocable and coupled with an interest; (ii) being granted, in part, as an inducement to the Owner Group and Investor to enter into this Agreement; and (iii) binding on each member of the Owner Group and his, her or its successors, assigns, heirs and representatives.

(e) If Laguna resigns as its capacity as the representative under this Section 10.01, Banco Nacional de México, S.A., Integrante del Grupo Financiero Banamex, División
Fiduciaria, acting as trustee under Trust Agreement No. 16837-6, will appoint a replacement representative and will notify Investor of the identity of such replacement representative.

**Section 10.02 Compensation; Exculpation; Indemnity.**

(a) Except as may otherwise be agreed upon by the Owners, Laguna shall not be entitled to any fee, commission or other compensation for the performance of its service hereunder.

(b) In exercising its powers and performing its obligations hereunder and, indirectly through New Laguna, under the Escrow Agreement, Laguna shall be entitled to rely on the advice of counsel, public accountants or other independent experts experienced in the matter at issue, and any error in judgment or other act or omission pursuant to such advice shall not subject Laguna to liability to any member of the Owner Group except to the extent caused by the gross negligence or willful misconduct of Laguna. Laguna, in its role as representative of Owner Group, shall have no liability whatsoever to the Company, Holdings or Investor in connection with the exercise by Laguna of its powers hereunder or performance of its obligations hereunder.

[SIGNATURE PAGE FOLLOWS]
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

**INVESTOR:**

**ACON DAIRY INVESTORS, L.L.C.**

By: 
Name: Aron Schwartz  
Title: Managing Director

**LAGUNA:**

**LAGUNA DAIRY, S. DE R.L. DE C.V. (f/k/a Laguna Dairy, S.A. de C.V.)**

By: 
Name: Jesús Manuel García Lesprón  
Title: Manager and Attorney in Fact

**COMPANY:**

**BORDEN DAIRY COMPANY**

By: 
Name: William G. White  
Title: Executive Vice President and Chief Financial Officer

**HOLDINGS:**

**BORDEN DAIRY HOLDINGS, LLC**

By: 
Name: Florentino Rivero Rodríguez  
Title: Authorized Signatory

[Signature Page to Reorganization and Subscription Agreement]
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

INVESTOR:

ACON DAIRY INVESTORS, L.L.C.

By: ____________________________
Name: Aron Schwartz
Title: Managing Director

LAGUNA:

LAGUNA DAIRY, S. DE R.L. DE C.V. (f/k/a Laguna Dairy, S.A. de C.V.)

By: ____________________________
Name: Jesús Manuel García Lesprón
Title: Manager and Attorney in Fact

COMPANY:

BORDEN DAIRY COMPANY

By: ____________________________
Name: William G. White
Title: Executive Vice President and Chief Financial Officer

HOLDINGS:

BORDEN DAIRY HOLDINGS, LLC

By: ____________________________
Name: Florentino Rivero Rodríguez
Title: Authorized Signatory

[Signature Page to Reorganization and Subscription Agreement]
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

INVESTOR:

ACON DAIRY INVESTORS, L.L.C.

By:                                     
Name: Aron Schwartz 
Title: Managing Director

LAGUNA:

LAGUNA DAIRY, S. DE R.L. DE C.V. (f/k/a Laguna Dairy, S.A. de C.V.)

By:                                     
Name: Jesús Manuel García Lesprón 
Title: Manager and Attorney in Fact

COMPANY:

BORDEN DAIRY COMPANY

By:                                      
Name: William G. White 
Title: Executive Vice President and Chief Financial Officer

HOLDINGS:

BORDEN DAIRY HOLDINGS, LLC

By:                                     
Name: Florentino Rivero Rodríguez 
Title: Authorized Signatory

[Signature Page to Reorganization and Subscription Agreement]
NEW LAGUNA:

NEW LAGUNA, LLC

By:  

Name: Florentino Rivero Rodriguez
Title: Authorized Signatory

[Signature Page to Reorganization and Subscription Agreement]
OWNERS:

BANCO NACIONAL DE MÉXICO, S.A.,
INTEGRANTE DEL GRUPO FINANCIERO
BANAMEX, DIVISIÓN FIDUCIARIA,
ACTING AS TRUSTEE UNDER TRUST
AGREEMENT NO. 16837-6

By: 
Name: Frimé Galván
Title: Delegado Fiduciario

BANCO NACIONAL DE MÉXICO, S.A.,
INTEGRANTE DEL GRUPO FINANCIERO
BANAMEX, DIVISIÓN FIDUCIARIA,
ACTING AS TRUSTEE UNDER TRUST
AGREEMENT NO. 16885-6

By: 
Name: Frimé Galván
Title: Delegado Fiduciario

[Signature Page to Reorganization and Subscription Agreement]
SCHEDULE 2.01(J)

The Company shall pay the following amounts, to the following recipients, by wire transfer of immediately available funds to the accounts and in accordance with the instructions set forth below:

<table>
<thead>
<tr>
<th>PAYEE / RECIPIENT</th>
<th>AMOUNT</th>
<th>WIRE INSTRUCTIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Houlihan Fee:</strong></td>
<td></td>
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<tr>
<td>Houlihan Lokey</td>
<td>$2,854,000</td>
<td>ABA: 026009593&lt;br&gt;Acct #: 1453120593&lt;br&gt;Acct Name: Houlihan Lokey Capital, Inc.&lt;br&gt;Bank: Bank of America&lt;br&gt;Swift: BOFAUS3N</td>
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<tr>
<td><strong>Estimated Indebtedness:</strong></td>
<td>$0</td>
<td>N/A</td>
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<tr>
<td><strong>Company Transaction Costs:</strong></td>
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<td></td>
</tr>
<tr>
<td>Willis Towers Watson (D&amp;O)</td>
<td>$57,505.50</td>
<td>ABA: 021000021&lt;br&gt;Acct #: 144810563&lt;br&gt;Acct Name: Willis of New York, Inc.&lt;br&gt;Bank: JP Morgan Chase Bank</td>
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<tr>
<td><strong>Investor Transaction Expenses:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Arnold &amp; Porter Kaye Scholer LLP</td>
<td>$1,925,000</td>
<td>ABA: 1210000248&lt;br&gt;Acct #: 4127865475&lt;br&gt;Acct Name: Arnold &amp; Porter Kaye Scholer LLP&lt;br&gt;Bank: Wells Fargo Bank NA&lt;br&gt;Ref: Reference Client/Matter # 0101344.00003</td>
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<td>Willis Towers Watson</td>
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<td>ABA: 021000021&lt;br&gt;Acct #: 144810563&lt;br&gt;Acct Name: Willis of New York, Inc.&lt;br&gt;Bank: JP Morgan Chase Bank&lt;br&gt;Ref: M&amp;A/ACONINV-01</td>
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<tr>
<td>PricewaterhouseCoopers LLP</td>
<td>$349,992.00</td>
<td>ABA: 021000089&lt;br&gt;Acct #: 30408437&lt;br&gt;Acct Name: PricewaterhouseCoopers LLP&lt;br&gt;Bank: Citibank NA, New York, NY</td>
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<tr>
<td>Willis Towers Watson (D&amp;O)</td>
<td>$57,505.50</td>
<td>ABA: 021000021&lt;br&gt;Acct #: 144810563&lt;br&gt;Acct Name: Willis of New York, Inc.&lt;br&gt;Bank: JP Morgan Chase Bank</td>
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<tr>
<td>Firm</td>
<td>Amount</td>
<td>Ref: M&amp;A/ACONINV-01</td>
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<tr>
<td>-------------------------------------</td>
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<td>---------------------</td>
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<tr>
<td>Porter Wright Morris &amp; Arthur</td>
<td>$7,171.25</td>
<td>ABA: 044000024</td>
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<td></td>
<td></td>
<td>Acct #: 01891706583</td>
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<tr>
<td></td>
<td></td>
<td>Acct Name: Porter Wright Morris &amp; Arthur, LLP</td>
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<td></td>
<td></td>
<td>Bank: Huntington National Bank</td>
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<tr>
<td></td>
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<td>Swift: HUNTUS33</td>
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<tr>
<td>K&amp;L Gates LLP</td>
<td>$12,000.00</td>
<td>ABA: 043000261</td>
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<td>Acct #: 127-2657</td>
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<td>Acct Name: K&amp;L Gates LLP AIS Account</td>
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<tr>
<td></td>
<td></td>
<td>Bank: The Bank of New York Mellon</td>
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<tr>
<td></td>
<td></td>
<td>BIC Code: IRVTUS3N</td>
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<tr>
<td>Wyatt, Tarrant &amp; Combs</td>
<td>$5,000.00</td>
<td>ABA: 083000108</td>
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<td>Acct #: 3000059241</td>
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<td>Acct Name: Wyatt, Tarrant &amp; Combs, LLP</td>
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<td></td>
<td></td>
<td>Bank: PNC Bank, National Association</td>
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<tr>
<td>ACON Equity Management, L.L.C.</td>
<td>$1,163,916.36</td>
<td>ABA: 121000248</td>
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<td>(out-of-pocket expenses)</td>
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<td>Acct #: 2000059299488</td>
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<td>Acct Name: ACON Equity Management, LLC</td>
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<td></td>
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<td>Bank: Wells Fargo Bank NA</td>
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## Working Capital Calculation Line Items

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<tr>
<th>$'000</th>
<th>@ 6/30/17</th>
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<tbody>
<tr>
<td>Current assets</td>
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<tr>
<td>Accounts receivable</td>
<td></td>
</tr>
<tr>
<td>Allow-specific doubtful accts</td>
<td></td>
</tr>
<tr>
<td>Allow-uncommitted dbfl accts</td>
<td></td>
</tr>
<tr>
<td>Allow sales deductions/discounts</td>
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</tr>
<tr>
<td>Total accounts receivable (net of allowance)</td>
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</tr>
<tr>
<td>Inventory</td>
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</tr>
<tr>
<td>Prepaid expenses</td>
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</tr>
<tr>
<td>Total current assets</td>
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</tr>
<tr>
<td>Current liabilities</td>
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</tr>
<tr>
<td>Accounts payable</td>
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</tr>
<tr>
<td>Due to milk producers</td>
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</tr>
<tr>
<td>Trade payables</td>
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<tr>
<td>Employee payroll withholdings</td>
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<tr>
<td>Total accounts payable</td>
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<tr>
<td>Accrued expenses</td>
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<tr>
<td>Accrued payroll</td>
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<tr>
<td>Accrued employer portion payroll taxes</td>
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<tr>
<td>Accrued vacation pay</td>
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<tr>
<td>Accrued marketing</td>
<td></td>
</tr>
<tr>
<td>Accrued item allowance</td>
<td></td>
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<tr>
<td>Accrued rebates</td>
<td></td>
</tr>
<tr>
<td>Accrued utilities</td>
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<tr>
<td>Accrued property tax</td>
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<tr>
<td>Accrued general insurance</td>
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<tr>
<td>Accrued health insurance</td>
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<tr>
<td>Accrued management incentives</td>
<td></td>
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<tr>
<td>Accrued legal &amp; audit</td>
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<tr>
<td>Accrued post ret. benefits</td>
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<tr>
<td>Accrued other</td>
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<tr>
<td>Total accrued expenses</td>
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<tr>
<td>Total current liabilities</td>
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<tr>
<td>Defined WC</td>
<td></td>
</tr>
</tbody>
</table>

### Adjustments to Defined WC

1. One month lag in milk credit accrual
2. Over/under milk accrual
3. Normalization of monthly insurance expense
4. Normalization of bonuses
5. Net debt accounts (KPMG definition)
6. Farm stores commercial litigation
7. Non FFM milk accrual
8. BDC NWC impact

### Total adjustments to Defined WC

### Adjusted WC
EXHIBIT B

Subsidiaries

National Dairy, LLC
Claims Adjusting Services, LLC
Georgia Soft Serve Delights, LLC
NDH Transport, LLC
Borden Dairy Company of Alabama, LLC
Borden Dairy Company of Louisiana, LLC
Borden Dairy Company of South Carolina, LLC
Borden Dairy Company of Kentucky, LLC
Borden Dairy Company of Cincinnati, LLC
Borden Transport Company of Cincinnati, LLC
Borden Dairy Company of Texas, LLC
Borden Dairy Company of Ohio, LLC
Borden Transport Company of Ohio, LLC
Borden Dairy Company of Madisonville, LLC
RGC, LLC
Borden Dairy Company of Florida, LLC
TAX RECEIVABLE AGREEMENT

between

BORDEN DAIRY COMPANY,

and

LAGUNA DAIRY, S. DE R.L. DE C.V.

Dated as of July __, 2017
This TAX RECEIVABLE AGREEMENT (as amended from time to time, this “Agreement”), dated as of July ____, 2017, is hereby entered into by and between Borden Dairy Company, a Delaware corporation (“Borden”), and Laguna Dairy, S. de R.L. de C.V., a sociedad de responsabilidad limitada de capital variable duly organized under the laws of Mexico (“Laguna”).

RECITALS

WHEREAS, Borden is classified as an association taxable as a corporation for U.S. federal income tax purposes and is a wholly-owned subsidiary of Laguna;

WHEREAS, pursuant to that certain Reorganization and Subscription Agreement, dated July 5, 2017, by and among Laguna, Borden, ACON Dairy Holdings, LLC, a Delaware limited liability company, certain owners of Laguna, ACON Dairy Investors, L.L.C., a Delaware limited liability company (“Investor”), and New Laguna, LLC, a Delaware limited liability company (the “Subscription Agreement”), Investor will purchase from ACON Dairy Holdings, LLC Class A Interests representing 49% of the issued and outstanding equity interests of ACON Dairy Holdings, LLC;

WHEREAS, pursuant to Section 2.01(a) of the Subscription Agreement, Borden and Laguna are entering into this Agreement to make certain arrangements with respect to the Tax Benefit (as hereinafter defined) in respect of a Post-Closing Taxable Year (as hereinafter defined);

NOW, THEREFORE, in consideration of the foregoing and the respective covenants and agreements set forth herein, and intending to be legally bound hereby, the parties hereto agree as follows:

ARTICLE I
DEFINITIONS

Section 1.01 Definitions.

(a) Capitalized terms used herein and not otherwise defined shall have the meaning assigned to such term in the Subscription Agreement.

(b) The following terms shall have the following meanings for the purposes of this Agreement:

“Actual Tax Liability” means, with respect to a Post-Closing Taxable Year, the liability for federal Taxes of Borden after taking into account any NOLs (as determined pursuant to Section 2.02 of this Agreement), subject to the applicable rules of the Code and the Treasury Regulations, and, if applicable, determined in accordance with a Determination.

“Borden Tax Return” means any federal Tax Return of Borden filed with respect to a Post-Closing Taxable Year.
“Capped NOL” means, with respect to each Post-Closing Taxable Year, $15,000,000 of NOLs that are attributable to Pre-Closing Taxable Years.


“Determination” shall have the meaning ascribed to such term in Section 1313(a) of the Code, or any other event (including the execution of IRS Form 870-AD) that finally and conclusively establishes the amount of any liability for Tax and shall also include the acquiescence of Borden to the amount of any assessed liability for Tax.

“Excess NOL” means, with respect to each Post-Closing Taxable Year, an NOL that is attributable to a Pre-Closing Taxable Year and that is not a Capped NOL.

“Hypothetical Tax Liability” means, with respect to a Post-Closing Taxable Year, the liability for federal Taxes of Borden without taking into account any NOLs.

“IRS” means the U.S. Internal Revenue Service.

“Members” means a member of Laguna who holds more than a 30% direct ownership interest in Laguna.

“NOL” means a net operating loss of Borden within the meaning of Code Section 172.

“Post-Closing NOL” means an NOL that is attributable to a Post-Closing Taxable Year.

“Post-Closing Taxable Year” means a taxable year (or portion thereof) of Borden as defined in Section 441(b) of the Code which begins after the Closing Date. For purposes of this Agreement, in the case of any federal Taxes that are imposed on a periodic basis and are payable for a taxable year that includes (but does not end on) the Closing Date, the portion of such Tax which relates to the Pre-Closing Taxable Year and the Post-Closing Taxable Year shall be determined applying the principles of Section 5.03(a)(iii) of the Subscription Agreement.

“Pre-Closing Taxable Year” means a taxable year (or portion thereof) of Borden as defined in Section 441(b) of the Code which begins on or before the Closing Date.

“Tax Benefit” means, for a Post-Closing Taxable Year, the amount, if any, by which the Hypothetical Tax Liability exceeds the Actual Tax Liability. For the avoidance of doubt, the Tax Benefit for each Post-Closing Taxable Year is intended to measure the cash Tax benefit to Borden attributable to the use of its NOLs, determined using a “with and without” methodology. If in any Post-Closing Taxable Year the Actual Tax Liability increases or decreases as a result of an audit by a Taxing Authority, such increase or decrease shall not be included in determining the Tax Benefit unless and until there has been a Determination.
“Tax Benefit Payment” means the payment of a Tax Benefit that is attributable to Excess NOLs as determined pursuant to Section 2.02 of this Agreement, as shown on the Tax Benefit Schedule for the relevant Post-Closing Taxable Year. For the avoidance of doubt, the Tax Benefit attributable to Post-Closing NOLs and Capped NOLs shall be for the sole benefit of Borden.

“Taxing Authority” shall mean any domestic, federal, national, state, county or municipal or other local government, any subdivision, agency, commission or authority thereof, or any quasi-governmental body exercising any taxing authority or any other authority exercising Tax regulatory authority.

“Treasury Regulations” means the final and temporary regulations under the Code promulgated from time to time (including corresponding provisions and succeeding provisions) as in effect for the relevant taxable year.

Other Definitional and Interpretative Provisions. The words “hereof”, “herein” and “hereunder” and words of like import used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. The captions herein are included for convenience of reference only and shall be ignored in the construction or interpretation hereof. References to Articles and Sections are to Articles and Sections of this Agreement unless otherwise specified. Any singular term in this Agreement shall be deemed to include the plural, and any plural term the singular. Whenever the words “include”, “includes” or “including” are used in this Agreement, they shall be deemed to be followed by the words “without limitation”, whether or not they are in fact followed by those words or words of like import. “Writing”, “written” and comparable terms refer to printing, typing and other means of reproducing words (including electronic media) in a visible form. References to any statute shall be deemed to refer to such statute as amended from time to time and to any rules or regulations promulgated thereunder. References to any agreement or contract are to that agreement or contract as amended, modified or supplemented from time to time in accordance with the terms hereof and thereof. References to any Person include the successors and permitted assigns of that Person. References from or through any date mean, unless otherwise specified, from and including or through and including, respectively.

ARTICLE II
SHARING OF NET OPERATING LOSSES

Section 2.01 Effective Date. This Agreement shall govern the payment of any Tax Benefits to one or more parties or their assignees following the date hereof, until terminated pursuant to Section 6.10.

Section 2.02 Use of NOLs.

(a) Following the date hereof, the following ordering shall be used solely for purposes of calculating the amount of the Tax Benefit:
(i) First, Borden shall offset its taxable income with an amount of NOLs that does not exceed its available Post-Closing NOLs.

(ii) Second, Borden shall offset its taxable income with an amount of NOLs that does not exceed the available Capped NOLs for that Post-Closing Taxable Year.

(iii) Third, Borden shall offset its taxable income with any available Excess NOLs.

Section 2.03 Tax Benefit Schedule. Within 60 days after the filing of a Borden Tax Return for any Post-Closing Taxable Year in which Borden offsets its taxable income with Post-Closing NOLs, Capped NOLs and/or Excess NOLs, the board of directors of Borden (the “Board”), in consultation with all of the Members, shall provide a schedule to Laguna, or its assignee, showing, in reasonable detail, the methodology used to calculate the Tax Benefit (the “Tax Benefit Schedule”). Such Tax Benefit Schedule shall be reasonably determined consistent with this Agreement. Any dispute shall be resolved under Section 6.03 of this Agreement.

ARTICLE III
TAX BENEFIT PAYMENTS

Section 3.01 Payments.

(a) Within 30 calendar days following the earliest of (i) the date on which each Tax Benefit Schedule is required to be delivered by Borden to Laguna, or its assignee, pursuant to Section 2.03 hereof, pursuant to this Agreement, and (ii) the date such Tax Benefit schedule is actually delivered to Laguna, Borden shall pay to Laguna, or its assignee, 65% of the Tax Benefit Payment for the relevant Post-Closing Taxable Year (the “65% Tax Benefit Payment”). 35% of the Tax Benefit Payment for the relevant Post-Closing Taxable Year (the “35% Tax Benefit Payment”) shall not be paid under this Agreement but shall be paid pursuant to and in accordance with the LLC Agreement. Each 65% Tax Benefit Payment shall be made by wire transfer of immediately available funds to the bank account previously designated by Laguna, or its assignee, to Borden or as otherwise agreed by Borden and Laguna, or its assignee. For the avoidance of doubt, any Tax Benefit Payment that has accrued prior to the date of termination (as determined pursuant to Section 6.10 of this Agreement) shall be paid at the time such Tax Benefit Payment would have been made had this Agreement not been terminated.

(b) The right to receive each 65% Tax Benefit Payment pursuant to this Agreement shall be freely assignable by Laguna, or its assignee, at any point prior to the date on which such 65% Tax Benefit Payment is made, provided that written notice of such assignment is provided to Borden at least 30 calendar days prior to the date that such 65% Tax Benefit Payment is required to be made.

(c) If, as a result of a Determination, the Board, in consultation with all of the Members, reasonably determines in a manner consistent with this Agreement that a Tax Benefit Payment (based on 100% and not 65% or 35% of such Tax Benefit Payment)
previously made with respect to any Post-Closing Taxable Year should be (i) increased, then 100% of the amount of such increase shall be paid by Borden to Laguna, or its assignee that received the 65% Tax Benefit Payment, within 60 calendar days of such determination by the Board, by wire transfer of immediately available funds to the bank account previously designated by Laguna, or its assignee that received the 65% Tax Benefit Payment, to Borden or as otherwise agreed by Borden and Laguna, or its assignee that received the 65% Tax Benefit Payment, or (ii) decreased, then 100% of the amount of such decrease shall either (1) be offset against any subsequent Tax Benefit Payment due and owing pursuant to the terms of this Agreement, or (2) repaid to Borden by Laguna, or its applicable assignee that received the 65% Tax Benefit Payment, within 60 calendar days of such determination by the Board, by wire transfer of immediately available funds to the bank account designated by Borden to Laguna, or its applicable assignee that received the 65% Tax Benefit Payment, or as otherwise agreed by Borden and Laguna, or its assignee that received the 65% Tax Benefit Payment.

ARTICLE IV
SUBORDINATION AND LATE PAYMENTS

Section 4.01 Subordination. Notwithstanding any other provision of this Agreement to the contrary, any Tax Benefit Payment required to be made by Borden to Laguna, or its assignee, under this Agreement shall rank subordinate and junior in right of payment to any principal, interest or other amounts due and payable in respect of any obligations in respect of indebtedness for borrowed money of Borden and its subsidiaries (“Senior Obligations”) and shall rank pari passu with all current or future unsecured obligations of Borden that are not Senior Obligations. The foregoing shall not restrict payment of any Tax Benefit Payment when due, or the distribution of the 35% Tax Benefit Payment under the LLC Agreement, as long as Borden and its subsidiaries are not in payment default or in breach of any financial covenant on or with respect to the Senior Obligations and would not be in payment default or breach of any financial covenant of or with respect to the Senior Obligations if Borden were to make such payment.

ARTICLE V
TAX MATTERS; CONSISTENCY; COOPERATION

Section 5.01 Participation in Borden’s Tax Matters. Except as otherwise provided herein or provided in the Subscription Agreement (as if such provisions apply to a Post-Closing Taxable Year), Borden shall have full responsibility for, and sole discretion over, all Tax matters concerning Borden, including the preparation, filing or amending of any Tax Return and defending, contesting or settling any issue pertaining to Taxes. Notwithstanding the foregoing, except as otherwise provided in the Subscription Agreement (as if such provisions apply to a Post-Closing Taxable Year), Borden shall notify Laguna, or its assignee, of, and keep Laguna, or its assignee, reasonably informed with respect to, the portion of any audit of Borden by a Taxing Authority the outcome of which is reasonably expected to affect the rights and obligations of Laguna, or its assignee, under this Agreement.

Section 5.02 Tax Treatment; Consistency. Borden and Laguna, or its assignee, agree to report and cause to be reported for all purposes, including federal, state and local Tax purposes and financial reporting purposes, all Tax-related items payable under this Agreement
(including each Tax Benefit Payment payable under this Agreement) as a contractual agreement and not reported or treated as debt or equity for any purpose, unless required by a Determination to do so.

Section 5.03  Cooperation. Each of Borden and Laguna, or its assignee, shall (a) make itself available to the other party and its representatives to provide explanations of documents and materials, and (b) reasonably cooperate in connection with any such matter.

ARTICLE VI
MISCELLANEOUS

Section 6.01  Notices. All notices, requests and other communications to any party hereunder shall be in writing (including facsimile transmission and electronic mail (“e-mail”) transmission, so long as a receipt of such e-mail is requested and received) and shall be given to such party as set forth below, or pursuant to such other instructions as may be designated in writing by the party to receive such notice:

If to Borden, to:

Borden Dairy Company
8750 N. Central Expressway, Suite 400
Dallas, TX 75231
Attention: Bill White
E-mail: bill.white@bordendairy.com

with a copy (which shall not constitute notice to Borden, or its assignee) to:

Arnold & Porter Kaye Scholer LLP
601 Massachusetts Avenue, NW
Washington, DC 20001
Attention: Kevin J. Lavin, Esq.
J. Matthew Owens, Esq.
E-Mail: Kevin.Lavin@apks.com
Matthew.Owens@apks.com

If to Laguna, or its assignee, to:

Calzada Carlos Herrera Araluce 185
Parque Industrial Carlos A Herrera Araluce
Gomez Palacio, Durango 35079
United Mexican States
Attention: Frine Galvan
E-mail: frine.galvin@grupolala.com

with a copy (which shall not constitute notice to Laguna) to:
Andrews Kurth Kenyon LLP
1717 Main Street, Suite 3700
Dallas, TX  75201
Attention:   Mark S. Solomon, Esq.
E-mail:  marksolomon@andrewskurth.com

And

Dechert LLP
1095 Avenue of the Americas
New York, NY 10036
Attention:   Howard M. Kleinman, Esq.
Bernardo L. Piereck, Esq.
E-mail:   howard.kleinman@dechert.com
bernardo.piereck@dechert.com

All such notices, requests and other communications shall be deemed received on
the date of receipt by the recipient thereof if received prior to 5:00 p.m. on a Business Day in
the place of receipt. Otherwise, any such notice, request or communication shall be deemed to
have been received on the next succeeding Business Day in the place of receipt.

Section 6.02  Binding Effect; Benefit; Assignment. The provisions of this
Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their
respective successors and assigns. No provision of  this Agreement is intended to confer any
rights, benefits, remedies, obligations or liabilities hereunder upon any Person other than the
parties hereto and their respective successors and assigns.

Section 6.03  Resolution of Disputes.

(a) Any and all disputes which cannot be settled amicably, including
any ancillary claims of any party, arising out of, relating to or in connection with the validity,
negotiation, execution, interpretation, performance or non-performance of this Agreement
(including the validity, scope and enforceability of this arbitration provision) (each a
“Dispute”) shall be finally settled by arbitration conducted by a single arbitrator in Dallas,
Texas in accordance with the then-existing Rules of Arbitration of the International Chamber of
Commerce. If the parties to the Dispute fail to agree on the selection of an arbitrator within ten
calendar days of the receipt of the request for arbitration, the International Chamber of
Commerce shall make the appointment. The arbitrator shall be a lawyer admitted to the practice
of law in the State of Texas and shall conduct the proceedings in the English language.
Performance under this Agreement shall continue if reasonably possible during any arbitration
proceedings.

(b) ANY LEGAL SUIT, ACTION OR PROCEEDING ARISING
OUT OF, RELATING TO OR BASED UPON THIS AGREEMENT OR THE
TRANSACTIONS CONTEMPLATED HEREBY (WHETHER IN CONTRACT OR IN TORT, IN LAW OR IN EQUITY) MAY BE INSTITUTED IN THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA OR THE COURTS OF THE STATE OF TEXAS, IN EACH CASE LOCATED IN THE CITY OF DALLAS AND COUNTY OF DALLAS, TEXAS, AND EACH PARTY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS IN ANY SUCH SUIT, ACTION OR PROCEEDING. SERVICE OF PROCESS, SUMMONS, NOTICE OR OTHER DOCUMENT BY MAIL TO SUCH PARTY’S ADDRESS SET FORTH HEREIN SHALL BE EFFECTIVE SERVICE OF PROCESS FOR ANY SUIT, ACTION OR OTHER PROCEEDING BROUGHT IN ANY SUCH COURT. THE PARTIES IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY OBJECTION TO THE LAYING OF VENUE OF ANY SUIT, ACTION OR ANY PROCEEDING IN SUCH COURTS AND IRREVOCABLY WAIVE AND AGREE NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

Section 6.04 Counterparts. This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. Until and unless each party has received a counterpart hereof signed by the other party hereto, this Agreement shall have no effect and no party shall have any right or obligation hereunder (whether by virtue of any other oral or written agreement or other communication).

Section 6.05 Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter of this Agreement and supersedes all prior agreements and understandings, both oral and written, between the parties with respect to the subject matter of this Agreement. Nothing in this Agreement shall create any third-party beneficiary rights in favor of any Person or other party hereto.

Section 6.06 Severability. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction or other Governmental Authority to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such a determination, the parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby are consummated as originally contemplated to the fullest extent possible.

Section 6.07 Amendment. No provision of this Agreement may be amended unless such amendment is approved in writing by Borden and Laguna (or their assignees). No provision of this Agreement may be waived unless such waiver is in writing and signed by the party against whom the waiver is to be effective.

Section 6.08 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, without regard to the conflicts of law rules of such State that would result in the application of the laws of any other State.
Section 6.09  **Withholding.** Borden shall be entitled to deduct and withhold from any payment payable pursuant to this Agreement such amounts as Borden is required to deduct and withhold with respect to the making of such payment under the Code or any provision of state, local or foreign Tax Law. To the extent that amounts are so withheld and paid over to the appropriate Taxing Authority by Borden, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to Laguna, or its assignee. Notwithstanding the foregoing, the parties acknowledge and agree that they are not aware of any basis for withholding and if Borden later determines that there is a basis for withholding, the parties agree to discuss such withholding in good faith.

Section 6.10  **Termination.** This Agreement shall terminate upon the earlier of: (a) the date on which there is an ownership change of Borden, if any, under Code Section 382, or (b) the unanimous written agreement of the parties hereto (or their successors or assigns).

Section 6.11  **Confidentiality.** Laguna, or its assignee, acknowledges and agrees that the information of Borden is confidential and, except as required by law or legal process shall keep and retain in the strictest confidence and shall not disclose to any Person all information or confidential matters, acquired pursuant to this Agreement or otherwise, of Borden. This Section 6.11 shall not apply to any information that has been made publicly available by Borden, becomes public knowledge (except as a result of an act of Laguna, or its assignee, in violation of this Agreement).
IN WITNESS WHEREOF, the parties set forth below have duly executed this Agreement as of the date first written above.

Laguna:

LAGUNA DAIRY, S. DE R.L. DE C.V.

By: ________________________________
Name: Jesús Manuel García Lesprón
Title: Manager and Attorney in Fact

Borden:

BORDEN DAIRY COMPANY

By: ________________________________
Name: William G. White
Title: Executive Vice President and Chief Financial Officer
ESCROW AGREEMENT

THIS ESCROW AGREEMENT (this “Agreement”) is entered into as of July 6, 2017, by and among ACON Dairy Investors, L.L.C., a Delaware limited liability company (“Investor”), New Laguna, LLC, a Delaware limited liability company (“New Laguna”, and together with Investor, sometimes referred to individually as “Party” and collectively as the “Parties”), and JPMorgan Chase Bank, N.A. (the “Escrow Agent”).

RECITALS

A. Investor and New Laguna, among others, have entered into a Reorganization and Subscription Agreement dated July 5, 2017 (the “Reorganization and Subscription Agreement”) whereby Investor has agreed to make a forty nine percent (49%) investment in Borden Dairy Holdings, LLC, a Delaware limited liability company, on the terms and conditions contained therein. Unless the context otherwise requires, terms used in this Agreement that are capitalized and not otherwise defined in context will have the meanings given to them in the Reorganization and Subscription Agreement; provided however, for purposes of this Agreement, only the terms capitalized herein shall be applicable to the Escrow Agent as defined in this Agreement.

B. Pursuant to the terms of the Reorganization and Subscription Agreement, New Laguna has agreed to deposit certain funds into an escrow account to be held as security for the obligations under Section 2.05(c) and the indemnification obligations under Article VII, in each case, of the Reorganization and Subscription Agreement; provided however, for purposes of this Agreement, only the terms capitalized herein shall be applicable to the Escrow Agent as defined in this Agreement.

AGREEMENT

NOW, THEREFORE, the Parties and the Escrow Agent agree as follows:

1. Appointment. The Parties hereby appoint the Escrow Agent as their escrow agent for the purposes set forth herein, and the Escrow Agent hereby accepts such appointment under the terms and conditions set forth herein.

2. Fund; Investment.

   (a) New Laguna agrees to deposit with Escrow Agent an aggregate amount equal to $6,160,000.00 (the “Escrow Amount”), consisting of (i) $3,000,000.00 (such deposit, plus all interest, dividends and other distributions and payments and proceeds thereon received by the Escrow Agent, less any property and/or funds distributed or paid in accordance with this Agreement, the “Working Capital Escrow Fund”), and $3,160,000.00 (such deposit, plus all interest, dividends and other distributions and payments and proceeds thereon received by the Escrow Agent, less any property and/or funds distributed or paid in accordance with this Agreement, the “Indemnity Escrow Fund”), in each case via bank wire transfer of immediately available funds and the Escrow Agent shall hold the Escrow Amount in two (2) separate demand deposit accounts (each an “Escrow Account” and, collectively, the “Escrow Accounts”), and shall remain uninvested during the term of this Agreement. The Working Capital Escrow Fund and the Indemnity Escrow Fund are referred to together herein as the “Funds”).

The Parties hereby represent to Escrow Agent that no tax reporting of any kind is required given the underlying transaction giving rise to this Agreement.

3. Disposition and Termination. The Escrow Agent shall not disburse or release the Funds except as provided in this Section 3. For the avoidance of doubt, the Escrow Agent shall have no liability with respect to any provisions of this Agreement which set forth obligations or limitations of liability that the other Parties to this Agreement have to each other, without regard to any action to be taken by or refrained from by the Escrow Agent. The Escrow Agent shall have no obligation to investigate, inquire, examine or assist in any manner whatsoever, the Parties' compliance with the terms of this Agreement that incorporate by reference provisions of the Reorganization
and Subscription Agreement that apply to the other Parties' obligations or limitations of liability to each other that do not relate to obligations of the Escrow Agent under this Agreement.

(a) Distribution of Working Capital Escrow Fund.

(i) New Laguna and Investor agree that upon the final determination of any adjustment pursuant to Section 2.05(c) of the Reorganization and Subscription Agreement, New Laguna and Investor shall provide the Escrow Agent with joint written instructions executed by an Authorized Representative of each of the Parties substantially in the form of Exhibit A annexed hereto ("Joint Written Instructions") instructing the Escrow Agent to disburse the Working Capital Escrow Fund as determined in accordance with Section 2.05(c) of the Reorganization and Subscription Agreement. Upon receipt of any Joint Written Instructions with respect to the Working Capital Escrow Fund, the Escrow Agent shall promptly, but in any event within five (5) Business Days after receipt thereof, disburse all or part of the Working Capital Escrow Fund in accordance with such Joint Written Instructions.

(ii) Notwithstanding any other provision of this Agreement, the Working Capital Escrow Fund (or a portion thereof) shall only be released by the Escrow Agent pursuant to (A) Joint Written Instructions executed by both Parties or (B) by final, non-appealable order of a court or arbitrator (expressly including the Referee) of competent jurisdiction, which shall be attached to a written instruction from the Authorized Representative of the instructing Party and accompanied by a written certification from counsel for the instructing Party attesting that such order is final and not subject to further proceedings or appeal. The Escrow Agent shall be entitled conclusively to rely upon any such certification and instruction and shall have no responsibility to review the order to which such certification and instruction refers or to make any determination as to whether such order is final. For purposes of this Section 3, "final, non-appealable" means that such order, judgment or decree has not been reversed, stayed, modified or amended and, as to which (1) the time to appeal, petition for certiorari, or move for reconsideration, reargument or rehearing has expired and no timely appeal, petition for certiorari, or motion for reconsideration, reargument or rehearing is pending, (2) any right to appeal, petition for certiorari, or move for reconsideration, reargument or rehearing has been waived in writing, or (3) if an appeal, petition for certiorari, or motion for reconsideration, reargument or rehearing thereof has been denied, the time to take any further appeal or to further petition for certiorari or move for further reconsideration, reargument or rehearing has expired.

(b) Claims for Losses from the Indemnity Escrow Fund. The Parties may at any time execute and deliver Joint Written Instructions to the Escrow Agent setting forth detailed payment instructions for amounts to be distributed from the Indemnity Escrow Fund pursuant to the terms and conditions of the Reorganization and Subscription Agreement in connection with certain indemnification obligations to the extent owed to an Investor Indemnified Party under Article VII of the Reorganization and Subscription Agreement. Upon receipt of any Claim Notice (as defined in the Reorganization and Subscription Agreement), Investor and New Laguna shall provide the Escrow Agent with Joint Written Instructions directing the Escrow Agent on the agreed manner to disburse Funds related thereto. Upon receipt of Joint Written Instructions with respect to the Indemnity Escrow Fund, the Escrow Agent shall promptly, but in any event within five (5) Business Days (hereinafter defined) after receipt of such Joint Written Instructions, disburse all or part of the Indemnity Escrow Fund in accordance with such Joint Written Instructions. Notwithstanding any other provision of this Agreement, (i) the Indemnity Escrow Fund (or a portion thereof) shall only be released by the Escrow Agent pursuant to (A) Joint Written Instructions executed by both Parties or (B) by final, non-appealable order of a court or arbitrator (expressly including the Referee) of competent jurisdiction, which shall be attached to a written instruction from the Authorized Representative of the instructing Party and accompanied by a written certification from counsel for the instructing Party attesting that such order is final and not subject to further proceedings or appeal and (ii) the Working Capital Escrow Fund shall be held and disbursed solely as set forth in Section 3(a), and shall not be disbursed in connection with the satisfaction of any indemnification obligations pursuant to Article VII of the Reorganization and Subscription Agreement. With respect to subsection (i), the Escrow Agent shall be entitled conclusively to rely upon any such certification and instruction and shall have no responsibility to review the order to which such certification and instruction refers or to make any determination as to whether such order is final.
(c) Scheduled Distribution of the Funds; Termination.

(i) Unless otherwise disbursed in accordance with this Section 3, within two (2) Business Days after July 6, 2018 (the “Release Date”), Investor and New Laguna shall provide the Escrow Agent with Joint Written Instructions directing the Escrow Agent to pay and deliver to New Laguna the amount of funds remaining in the Escrow Accounts at such time, by bank wire transfer of immediately available funds to an account or accounts designated in writing by New Laguna, less an amount necessary to secure any Claim Notice (as defined in the Reorganization and Subscription Agreement) that has been validly submitted in good faith by such date, it being understood that a portion of the Indemnity Escrow Fund in an amount equal to the amounts remaining in dispute, if any, as of such date shall continue to be held in the Indemnity Escrow Fund and shall be released once such dispute has been finally resolved. Once a Claim Notice (as defined in the Reorganization and Subscription Agreement) has been resolved, Investor and New Laguna shall provide the Escrow Agent with Joint Written Instructions directing the Escrow Agent on the agreed manner to disburse Funds related to such claim.

(iii) This Agreement will automatically terminate when the entire amount of the Funds have been distributed in accordance with this Section 3.

Notwithstanding anything to the contrary set forth in Section 8, any instructions setting forth, claiming, objecting to, or in any way related to the transfer or distribution of the Funds, must be in writing executed by the appropriate Party or Parties as evidenced by the signatures of the person or persons signing this Agreement or one of their designated persons as set forth on the Designation of Authorized Representatives attached hereto as Schedules 1-A and 1-B (each an “Authorized Representative”). Each Designation of Authorized Representatives shall be signed by the Secretary, any Assistant Secretary or other duly authorized officer of the named Party. No such instruction shall be deemed delivered and effective unless the Escrow Agent actually shall have received it on a Business Day by facsimile or as a Portable Document Format (“PDF”) attached to an email at the fax number or email address set forth in Section 8 and as evidenced by a confirmed transmittal to the Party’s or Parties’ transmitting fax number or email address and the Escrow Agent has been able to satisfy any applicable security procedures as may be required hereunder. The Escrow Agent shall not be liable to any Party or other person for refraining from acting upon any instruction for or related to the transfer or distribution of the Funds if delivered to any other fax number or email address, including but not limited to a valid email address of any employee of Escrow Agent.

(d) The Parties each acknowledge that Escrow Agent is authorized to use the following funds transfer instructions to disburse any funds due to Investor and/or New Laguna, respectively, without a verifying call-back as set forth in Section 3(e) below:

<table>
<thead>
<tr>
<th></th>
<th>Investor</th>
<th>New Laguna</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bank Name</td>
<td>Wells Fargo Bank NA</td>
<td>Citibank, N.A.</td>
</tr>
<tr>
<td>Bank Address</td>
<td>-</td>
<td>111 Wall St., New York, NY 10043</td>
</tr>
<tr>
<td>ABA Number</td>
<td>121000248</td>
<td>021000089</td>
</tr>
<tr>
<td>Credit A/C Name</td>
<td>ACON Dairy Investors, L.L.C.</td>
<td>NEW LAGUNA LLC</td>
</tr>
<tr>
<td>Credit A/C Number</td>
<td>4619990435</td>
<td>31060233</td>
</tr>
</tbody>
</table>

It is understood and agreed that if multiple disbursements are provided for under this Agreement pursuant to the above funds transfer instructions, the date, amount and/or description of payments may change without requiring a verifying callback.

The Parties agree that any other repetitive funds transfer instructions may be given to the Escrow Agent for one (1) or more beneficiaries where only the date, amount of funds to be transferred, and/or the description of the requested payment may change (“Standing Instructions”). Any such Standing Instructions shall be set up in writing in advance of any actual transfer request and shall contain complete funds transfer information (as set forth above) for the beneficiary. Any such set-up of Standing Instructions and any changes in existing set-up, shall be confirmed by means of a verifying callback to an Authorized Representative. Standing Instructions will continue to be followed until cancelled by the Parties jointly in a writing signed by an Authorized Representative and delivered to the Escrow Agent in accordance with this Section. Once set up as provided herein, the Escrow Agent may rely solely
upon such Standing Instructions and all identifying information set forth therein for each beneficiary. Each Party agrees that any Standing Instructions shall be effective as the funds transfer instructions of such Party or the Parties, as applicable, without requiring a verifying callback, as set forth in Section 3(e) below.

(e) In the event any funds transfer instructions other than those described in Section 3(d) above are set forth in a permitted instruction from a Party or the Parties in accordance with Section 3(a), the Escrow Agent is authorized to confirm such instructions by a telephone call-back to one of the Authorized Representatives, and Escrow Agent may rely upon the confirmation of anyone purporting to be that Authorized Representative. The persons designated as Authorized Representatives and telephone numbers for same may be changed only in a writing executed by an Authorized Representative or other duly authorized officer of the applicable Party setting forth such changes and actually received by the Escrow Agent via facsimile or as a PDF attached to an email. Except as set forth in Section 3(d) above, no funds will be disbursed until an Authorized Representative is able to confirm such instructions by telephone callback.

(f) The Escrow Agent and other financial institutions, including the beneficiary’s bank, may rely upon the identifying number of the beneficiary, the beneficiary’s bank or any intermediary bank included in a funds transfer instructions, even if it identifies a person different from the beneficiary, the beneficiary’s bank or intermediary bank identified by name.

(g) As used in this Section 3, “Business Day” shall mean any day other than a Saturday, Sunday or any other day on which the Escrow Agent located at the notice address set forth below is authorized or required by law or executive order to remain closed. The Parties acknowledge that the security procedures set forth in this Section 3 are commercially reasonable. Upon delivery of the Funds in full by the Escrow Agent pursuant to this Section 3, this Agreement shall terminate and the related account(s) shall be closed, subject to the provisions of Section 6.

4. Escrow Agent. The Escrow Agent shall have only those duties as are specifically and expressly provided herein, and no other duties, including but not limited to any fiduciary duty, shall be implied. The Escrow Agent has no knowledge of, nor any obligation to comply with, the terms and conditions of any other agreement between the Parties, nor shall the Escrow Agent be required to determine if any Party has complied with any other agreement. The Escrow Agent may conclusively rely upon any written notice, document, instruction or request delivered by the Parties believed by it to be genuine and to have been signed by an Authorized Representative(s), as applicable, without inquiry and without requiring substantiating evidence of any kind and the Escrow Agent shall be under no duty to inquire into or investigate the validity, accuracy or content of any such document, notice, instruction or request. The Escrow Agent shall not be liable for any action taken, suffered or omitted to be taken by it in good faith except to the extent that the Escrow Agent’s gross negligence or willful misconduct was the cause of any direct loss to either Party. The Escrow Agent may execute any of its powers and perform any of its duties hereunder directly or through affiliates or agents. In the event the Escrow Agent shall be uncertain, or believes there is some ambiguity, as to its duties or rights hereunder, or receives instructions, claims or demands from any Party hereto which in the Escrow Agent’s judgment conflict with the provisions of this Agreement, or if the Escrow Agent receives conflicting instructions from the Parties, the Escrow Agent shall be entitled either to: (a) refrain from taking any action until it shall be given (i) a joint written direction executed by Authorized Representatives of the Parties which eliminates such conflict or (ii) a court order issued by a court of competent jurisdiction (it being understood that the Escrow Agent shall be entitled conclusively to rely and act upon any such court order and shall have no obligation to determine whether any such court order is final); or (b) file an action in interpleader. The Escrow Agent shall have no duty to solicit any payments which may be due it or the Funds, including, without limitation, the Escrow Amount nor shall the Escrow Agent have any duty or obligation to confirm or verify the accuracy or correctness of any amounts deposited with it hereunder. The Parties grant to the Escrow Agent a lien and security interest in the Funds in order to secure any indemnification obligations of the Parties or obligation for fees or expenses owed to the Escrow Agent hereunder. Anything in this Agreement to the contrary notwithstanding, in no event shall the Escrow Agent be liable for special, incidental, punitive, indirect or consequential loss or damage of any kind whatsoever (including but not limited to lost profits), even if the Escrow Agent has been advised of the likelihood of such loss or damage and regardless of the form of action; provided, however, that the foregoing shall not apply to the extent such loss or damage is caused by fraud on the part of the Escrow Agent.
5. **Succession.** The Escrow Agent may resign and be discharged from its duties or obligations hereunder by giving not less than thirty (30) days’ advance notice in writing of such resignation to the Parties, or may be removed, with or without cause, by the Parties at any time after giving not less than thirty (30) days’ prior joint written notice to the Escrow Agent. The Escrow Agent’s sole responsibility after such applicable sixty (60) day notice period expires shall be to hold the Funds (without any obligation to reinvest the same) and to deliver the same to a designated substitute escrow agent, if any, appointed by the Parties, or such other person designated by the Parties, or in accordance with the directions of a final court order, at which time the Escrow Agent’s obligations hereunder shall cease and terminate. If, prior to the effective resignation or removal date, the Parties have failed to appoint a successor escrow agent, or to instruct the Escrow Agent to deliver the Funds to another person as provided above, or if such delivery is contrary to applicable law, at any time on or after the effective resignation date, the Escrow Agent either (a) may interplead the Funds with a court located in the State of Texas and the costs, expenses and reasonable attorney’s fees which are incurred in connection with such proceeding may be charged against and withdrawn from the Funds; or (b) appoint a successor escrow agent of its own choice. Any appointment of a successor escrow agent shall be binding upon the Parties and no appointed successor escrow agent shall be deemed to be an agent of the Escrow Agent. The Escrow Agent shall deliver the Funds to any appointed successor escrow agent, at which time the Escrow Agent’s obligations under this Agreement shall cease and terminate. Any entity into which the Escrow Agent may be merged or converted or with which it may be consolidated, or any entity to which all or substantially all of the escrow business may be transferred, shall be the Escrow Agent under this Agreement without further act.

6. **Compensation; Acknowledgment.**

   (a) The Parties agree to pay the Escrow Agent upon execution of this Agreement and from time to time thereafter reasonable compensation for the services to be rendered hereunder, which unless otherwise agreed in writing, shall be as described in Schedule 2.

   (b) Each of the Parties further agrees to the disclosures and agreements set forth in Schedule 2.

7. **Indemnification.** The Parties agree severally to indemnify and hold harmless the Escrow Agent and its agents, employees, officers and directors (the “Indemnities”) from and against any and all losses, damages, claims, liabilities, costs or expenses (including reasonable attorneys’ fees) (collectively “Losses”), resulting directly or indirectly from (a) the Escrow Agent’s performance of this Agreement, except to the extent that such Losses are determined by a court of competent jurisdiction to have been caused by the gross negligence, bad faith or willful misconduct of such Indemnitee; and (b) the Escrow Agent’s following, accepting or acting upon any instructions or directions, whether joint or singular, from the Parties received in accordance with this Agreement. The Parties hereby grant Escrow Agent a right of set-off against the Funds for the payment of any claim for indemnification, fees, expenses and amounts owing to Escrow Agent or an Indemnitee. As between the Parties, the indemnification obligations hereunder shall be borne one-half by Investor and one-half by New Laguna. The obligations set forth in this Section 7 shall survive the resignation, replacement or removal of the Escrow Agent or the termination of this Agreement.

8. **Notices.** Except as otherwise expressly required in Section 3, all communications hereunder shall be in writing or set forth in a PDF attached to an email, and shall be delivered by facsimile, email or overnight courier only to the appropriate fax number, email address, or notice address set forth for each party as follows:

   **If to Investor:**
   
   ACON Dairy Investors, L.L.C.
   1133 Connecticut Avenue, NW, Suite 700
   Washington, DC 20036
   Attention: Aron Schwartz
   Teresa Bernstein
   Email Address: aschwartz@aconinvestments.com
   tbernstein@aconinvestments.com

   **With a copy to:**
   
   Arnold & Porter Kaye Scholer LLP
   601 Massachusetts Avenue, NW
   Washington, DC 20001
9. **Compliance with Court Orders.** In the event that a legal garnishment, attachment, levy, restraining notice or court order is served with respect to any of the Funds, or the delivery thereof shall be stayed or enjoined by an order of a court, the Escrow Agent is hereby expressly authorized, in its sole discretion, to obey and comply with all such orders so entered or issued, and in the event that the Escrow Agent obeys or complies with any such order it shall not be liable to any of the Parties hereto or to any other person by reason of such compliance notwithstanding such order be subsequently reversed, modified, annulled, set aside or vacated.

10. **Miscellaneous.**

   (a) The provisions of this Agreement may be waived, altered, amended or supplemented only by a writing signed by the Escrow Agent and the Parties. Neither this Agreement nor any right or interest hereunder may be assigned by any Party without the prior consent of Escrow Agent and the other Party. This Agreement shall be governed by and construed under the laws of the State of Texas. Each Party and the Escrow Agent irrevocably waives any objection on the grounds of venue, forum non-conveniens or any similar grounds and irrevocably consents to service of process by mail or in any other manner permitted by applicable law and consents to the jurisdiction of the courts located in the State of Texas. To the extent that in any jurisdiction either Party may now or hereafter be entitled to claim for itself or its assets, immunity from suit, execution, attachment (before or after judgment) or other legal process, such Party shall not claim, and hereby irrevocably waives, such immunity. The Escrow Agent and the Parties further hereby waive any right to a trial by jury with respect to any lawsuit or judicial proceeding arising or relating to this Agreement.
(b) No party to this Agreement is liable to any other party for losses due to, or if it is unable to perform its obligations under the terms of this Agreement because of, acts of God, fire, war, terrorism, floods, strikes, electrical outages, equipment or transmission failure, or other causes reasonably beyond its control. This Agreement and any joint instructions from the Parties may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument or instruction, as applicable. This Agreement may be executed and transmitted by facsimile or as a PDF attached to an email or may be electronically signed and each such execution shall be of the same legal effect, validity and enforceability as a manually executed, original, et-inked signature. If any provision of this Agreement is held to be illegal, invalid, or unenforceable, the validity of the remaining portions of this Agreement shall not be affected. The Parties each represent, warrant and covenant that (i) each document, notice, instruction or request provided by such Party to the Escrow Agent shall comply with applicable laws and regulations; (ii) such Party has full power and authority to enter into, execute and deliver this Agreement and to perform all of the duties and obligations to be performed by it hereunder; and (iii) the person(s) executing this Agreement on such Party’s behalf and certifying Authorized Representatives in the applicable Schedule 1 have been duly and properly authorized to do so, and each Authorized Representative of such Party has been duly and properly authorized to take the actions specified for such person in the applicable Schedule 1. Except as expressly provided in Section 7 above, nothing in this Agreement, whether express or implied, shall be construed to give to any person or entity other than the Escrow Agent and the Parties any legal or equitable right, remedy, interest or claim under or in respect of the Funds or this Agreement.
IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth above.

ACON DAIRY INVESTORS, L.L.C.,
As Investor

By:______________________________
Name: Aron Schwartz
Title: Managing Director

NEW LAGUNA, LLC,
As New Laguna

By:______________________________
Name: Friné Galván
Title: Vice President and Secretary

JPMORGAN CHASE BANK, N.A.,
As Escrow Agent

By:______________________________
Name:____________________________
Title:____________________________
EXHIBIT A

Form of Escrow Release Notice – Joint Instructions

JPMorgan Chase Bank, N.A.
Escrow Services
712 Main Street, 14th Floor North
Houston, Texas 77002
Attn: Susie Becvar
Fax No.: (713) 216-6927
Email Address: sw.escrow@jpmorgan.com

Date:

Re: ACON Dairy Investors, L.L.C./New Laguna, LLC – Escrow Agreement dated [  ]
[Indemnity Escrow Fund #528223824][Working Capital Fund #528223816]

Dear Sir/Madam:

We refer to an escrow agreement dated [  ] between ACON Dairy Investors, L.L.C., New Laguna, LLC and
JPMorgan Chase Bank, N.A., as Escrow Agent (the “Escrow Agreement”).

Capitalized terms in this letter that are not otherwise defined shall have the same meaning given to them in the
Escrow Agreement.

The Parties instruct the Escrow Agent to release the [Indemnity Escrow Fund] [Working Capital Escrow Fund], or
the portion specified below, to the specified party as instructed below.

Amount: $
Beneficiary:

US Instructions:

Bank Name:
Bank Address:
ABA Number:
Credit A/C Name:
Credit A/C #:
Credit A/C Address:
If Applicable:
    FFC A/C Name:
    FFC A/C #:
    FFC A/C Address:

International Instructions:

Bank Name:
Bank Address
SWIFT Code:
US Pay Through ABA:
Credit A/C Name:
Credit A/C # (IBAN #):
Credit A/C Address:
If Applicable:
  FFC A/C Name:
  FFC A/C # (IBAN #):
  FFC A/C Address:

FOR AND ON BEHALF OF INVESTOR:

_________________________________
Name:
Date:
Title:

FOR AND ON BEHALF OF NEW LAGUNA:

_________________________________
Name:
Date:
Title:
Schedule 1-A

ACON DAIRY INVESTORS, L.L.C.

DESIGNATION OF AUTHORIZED REPRESENTATIVES

The undersigned, Aron Schwartz, being the duly elected, qualified and acting Managing Director of ACON Dairy Investors, L.L.C. (“Investor”), does hereby certify:

1. That each of the following persons is at the date hereof an Authorized Representative, as such term is defined in the Escrow Agreement, dated ________________, 2017, by and among Investor, New Laguna and the Escrow Agent (the “Escrow Agreement”), that the signature appearing opposite each person’s name is the true and genuine signature of such person, and that each person’s contact information is current and up-to-date at the date hereof. Each of the Authorized Representatives is authorized to issue instructions, confirm funds transfer instructions by callback and effect changes in Authorized Representatives, all in accordance with the terms of the Escrow Agreement.

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<th>TELEPHONE &amp; CELL NUMBERS</th>
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<tr>
<td>Aron Schwartz</td>
<td></td>
<td>202-386-9768</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(cell) 917-623-8350</td>
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<tr>
<td>Teresa Y. Bernstein</td>
<td></td>
<td>202-386-9771</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(cell) 202-680-0087</td>
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<tr>
<td>Kwame Lewis</td>
<td></td>
<td>202-454-1100</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(direct) 202-386-9783</td>
</tr>
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2. That pursuant to Investor’s governing documents, as amended, the undersigned has the power and authority to execute this Designation of Authorized Representatives (“Designation”) on behalf of Investor, and that the undersigned has so executed this Designation this _____ day of ______, 2017.

Signature: _____________________________
Name:       Aron Schwartz
Title:         Managing Director

FOR YOUR SECURITY, PLEASE CROSS OUT ALL UNUSED SIGNATURE LINES ON THIS SCHEDULE 1-A

All instructions, including but not limited to funds transfer instructions, whether transmitted by facsimile or set forth in a PDF attached to an email, must include the signature of the Authorized Representative authorizing said funds transfer on behalf of such Party.
Schedule 1-B

NEW LAGUNA, LLC

DESIGNATION OF AUTHORIZED REPRESENTATIVES

The undersigned, ________________________, being the duly elected, qualified and acting ________________________ of ______________________ ("New Laguna"), does hereby certify:

1. That each of the following persons is at the date hereof an Authorized Representative, as such term is defined in the Escrow Agreement, dated ________________, 2017, by and among Investor, New Laguna and Escrow Agent (the "Escrow Agreement"), that the signature appearing opposite each person’s name is the true and genuine signature of such person, and that each person’s contact information is current and up-to-date at the date hereof. Each of the Authorized Representatives is authorized to issue instructions, confirm funds transfer instructions by callback and effect changes in Authorized Representatives, all in accordance with the terms of the Escrow Agreement.

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2. That pursuant to New Laguna’s governing documents, as amended, the undersigned has the power and authority to execute this Designation of Authorized Representatives ("Designation") on behalf of New Laguna, and that the undersigned has so executed this Designation this _____ day of ______, 2017.

Signature: ________________________
Name: ________________________
Title: ________________________

FOR YOUR SECURITY, PLEASE CROSS OUT ALL UNUSED SIGNATURE LINES ON THIS SCHEDULE 1-B

All instructions, including but not limited to funds transfer instructions, whether transmitted by facsimile or set forth in a PDF attached to an email, must include the signature of the Authorized Representative authorizing said funds transfer on behalf of such Party.
Account Acceptance Fee .......................... $0.00
Encompassing review, negotiation and execution of governing documentation, opening of the account, and completion of all due diligence documentation. Payable upon closing.

Annual Administration Fee .......................... $0.00
The Administration Fee covers our usual and customary ministerial duties, including record keeping, distributions, document compliance and such other duties and responsibilities expressly set forth in the governing documents for each transaction. Payable upon closing and annually in advance thereafter, without pro-ration for partial years.

Additional Fees and Expenses
The Escrow Agent or any of its affiliates may receive compensation with respect to any Alternative Investment directed hereunder including without limitation charging any applicable agency fee or trade execution fee in connection with each transaction. Any additional services beyond our standard services as specified above, and all reasonable out-of-pocket expenses including attorney’s or accountant’s fees and expenses, will be billed at the Escrow Agent's then standard rate. The Escrow Agent may impose, charge, pass-through and modify fees and/or charges for any account established and services provided by the Escrow Agent, including but not limited to, transaction, maintenance, balance-deficiency, and service fees, agency or trade execution fees, and other charges, including those levied by any governmental authority. Payment of each invoice is due upon receipt.

Investment:
The Escrow Amount shall be uninvested during the term of this Agreement.

Disclosures and Agreements

Taxes. The Parties shall duly complete such tax documentation or other procedural formalities necessary for Escrow Agent to complete required tax reporting and for the relevant Party to receive interest or other income without withholding or deduction of tax in any jurisdiction. Should any information supplied in such tax documentation change, the Parties shall promptly notify Escrow Agent. Escrow Agent shall withhold any taxes it deems appropriate in the absence of proper tax documentation or as required by law, and shall remit such taxes to the appropriate authorities.

Representations Relating to Section 15B of the Securities Exchange Act of 1934 (Rule 15Ba1-1 et seq.) (the “Municipal Advisor Rule”). Each Party represents and warrants to the Escrow Agent that for purposes of the Municipal Advisor Rules, none of the funds (if any) currently invested, or that will be invested in the future, in money market funds, commercial paper or treasury bills under this Agreement constitute or contain (i) proceeds of municipal securities (including investment income therefrom and monies pledged or otherwise legally dedicated to serve as collateral or a source or repayment for such securities) or (ii) municipal escrow investments (as each such term is defined in the Municipal Advisor Rule). Each Party also represents and warrants to the Escrow Agent that the person providing this certification has access to the appropriate information or has direct knowledge of the source of the funds to be invested to enable the foregoing representation to be made. Further, each Party acknowledges that the Escrow Agent will rely on this representation until notified in writing otherwise.
Patriot Act Disclosure. Section 326 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 ("USA PATRIOT Act") requires Escrow Agent to implement reasonable procedures to verify the identity of any person that opens a new account with it. Accordingly, you agree to provide Escrow Agent with and consent to Escrow Agent obtaining from third parties any such identifying information required as a condition of opening an account with or using any service provided by the Escrow Agent.

OFAC Disclosure. Escrow Agent is required to act in accordance with the laws and regulations of various jurisdictions relating to the prevention of money laundering and the implementation of sanctions, including but not limited to regulations issued by the U.S. Office of Foreign Assets Control. Escrow Agent is not obligated to execute payment orders or effect any other transaction where the beneficiary or other payee is a person or entity with whom the Escrow Agent is prohibited from doing business by any law or regulation applicable to Escrow Agent, or in any case where compliance would, in Escrow Agent’s opinion, conflict with applicable law or banking practice or its own policies and procedures. Where Escrow Agent does not execute a payment order or effect a transaction for such reasons, Escrow Agent may take any action required by any law or regulation applicable to Escrow Agent including, without limitation, freezing or blocking funds. Transaction screening may result in delays in the posting of transactions.

Abandoned Property. Escrow Agent is required to act in accordance with the laws and regulations of various states relating to abandoned property, escheatment or similar law and, accordingly, shall be entitled to remit dormant funds to any state as abandoned property in accordance with such laws and regulations. Without limitation of the foregoing, notwithstanding any instruction to the contrary, Escrow Agent shall not be liable to any Party for any amount disbursed from an account maintained under this Agreement to a governmental entity or public official in compliance with any applicable abandoned property, escheatment or similar law.

Information. Escrow Agent agrees to take customary and reasonable measures to maintain the confidentiality of the Parties' confidential information. The Parties authorize the Escrow Agent to disclose information with respect to this Agreement and the account(s) established hereunder, the Parties, or any transaction hereunder if such disclosure is: (i) necessary in the Escrow Agent’s opinion, for the purpose of allowing the Escrow Agent to perform its duties and to exercise its powers and rights hereunder; (ii) to a proposed assignee of the rights of Escrow Agent; (iii) to a branch, affiliate, subsidiary, employee or agent of the Escrow Agent or to their auditors, regulators or legal advisers or to any competent court; (iv) to the auditors of any of the Parties; or (v) required by applicable law, regardless of whether the disclosure is made in the country in which each Party resides, in which the escrow account is maintained, or in which the transaction is conducted. The Parties agree that such disclosures by the Escrow Agent and its affiliates may be transmitted across national boundaries and through networks, including those owned by third parties.

Demand Deposit Account Disclosure. Escrow Agent is authorized, for regulatory reporting and internal accounting purposes, to divide an escrow demand deposit account maintained in the U.S. in which the Funds are held into a non-interest bearing demand deposit internal account and a non-interest bearing savings internal account, and to transfer funds on a daily basis between these internal accounts on Escrow Agent’s general ledger in accordance with U.S. law at no cost to the Parties. Escrow Agent will record the internal accounts and any transfers between them on Escrow Agent’s books and records only. The internal accounts and any transfers between them will not affect the Funds, any investment or disposition of the Funds, use of the escrow demand deposit account or any other activities under this Agreement, except as described herein. Escrow Agent will establish a target balance for the demand deposit internal account, which may change at any time. To the extent funds in the demand deposit internal account exceed the target balance, the excess will be transferred to the savings internal account, unless the maximum number of transfers from the savings internal account for that calendar month or statement cycle has already occurred. If withdrawals from the demand deposit internal account exceed the available balance in the demand deposit internal account, funds from the savings internal account will be transferred to the demand deposit internal account up to the entire balance of available funds in the savings internal account to cover the shortfall and to replenish any target balance that Escrow Agent has established for the demand deposit internal account. If a sixth transfer is needed during a calendar month or statement cycle, it will be for the entire balance in the savings internal account, and such funds will remain in the demand deposit internal account for the remainder of the calendar month or statement cycle.
MMDA Disclosure and Agreement. If MMDA is the investment for the escrow amount as set forth above or anytime in the future, you acknowledge and agree that U.S. law limits the number of pre-authorized or automatic transfers or withdrawals or telephonic/electronic instructions that can be made from an MMDA to a total of six (6) per calendar month or statement cycle or similar period. Escrow Agent is required by U.S. law to reserve the right to require at least seven (7) days’ notice prior to a withdrawal from a money market deposit account.

Unlawful Internet Gambling. The use of any account to conduct transactions (including, without limitation, the acceptance or receipt of funds through an electronic funds transfer, or by check, draft or similar instrument, or the proceeds of any of the foregoing) that are related, directly or indirectly, to unlawful Internet gambling is strictly prohibited.
BORDEN DAIRY HOLDINGS, LLC

AMENDED AND RESTATED
LIMITED LIABILITY COMPANY AGREEMENT

DATED EFFECTIVE AS OF JULY [__], 2017

THE MEMBERSHIP INTERESTS REPRESENTED BY THIS AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT, AS THE SAME MAY BE AMENDED FROM TIME TO TIME, HAVE NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED, OR UNDER ANY OTHER APPLICABLE SECURITIES LAWS. SUCH INTERESTS MAY NOT BE SOLD, ASSIGNED, PLEDGED OR OTHERWISE DISPOSED OF AT ANY TIME WITHOUT EFFECTIVE REGISTRATION UNDER SUCH ACT AND LAWS OR EXEMPTION THEREFROM, AND COMPLIANCE WITH THE OTHER RESTRICTIONS ON TRANSFERABILITY SET FORTH HEREIN.
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AMENDED AND RESTATED
LIMITED LIABILITY COMPANY AGREEMENT
OF BORDEN DAIRY HOLDINGS, LLC

A Delaware Limited Liability Company

THIS FIRST AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT is adopted, executed and entered into effective as of July [ ], 2017, by and among Borden Dairy Holdings, LLC, a Delaware limited liability company (the “LLC”), ACON Dairy Investors, L.L.C. (together with its Affiliates that are Members hereunder, the “ACON Member”), New Laguna, LLC, a Delaware limited liability company (the “Laguna Member”), and those other Members (as defined below) whose names are set forth on the Member Schedule.

WHEREAS, the LLC was formed as Laguna U.S. Investment, LLC on March 21, 2017 by the filing of a certificate of formation of the LLC with the secretary of state of Delaware;

WHEREAS, the name of the LLC was changed to Borden Dairy Holdings, LLC on June 27, 2017, by the filing of a certificate of amendment to the LLC’s certificate of formation with the secretary of state of Delaware;

WHEREAS, as of the date hereof and prior to the execution of this Agreement, (i) the LLC is governed pursuant to that certain Limited Liability Company Agreement of the LLC dated as of March 21, 2017, as amended on June 26, 2017 (the “Original LLC Agreement”), and (ii) the Laguna Member is the sole member of the LLC;

WHEREAS, pursuant to the closing of the transactions contemplated by that certain Reorganization and Subscription Agreement, dated as of July 5, 2017, by and among the LLC, the ACON Member and certain affiliates of the Laguna Member (the “Reorganization Agreement”), among other things, (a) the ACON Member purchased 44,600,000 Class A Interests of the LLC in exchange for an initial Capital Contribution of $49,600,000 and (b) the Laguna Member purchased 46,400,000 Class B Interests of the LLC in exchange for an initial Capital Contribution of $51,400,000;

WHEREAS, the initial Capital Contribution by each of the ACON Member and the Laguna Member includes a special contribution to the LLC of $5,000,000 (each, a “Special Contribution”) in each case in exchange for the preferential rights granted to the Class A Members and the Class B Members as set forth in Section 4.01(a)(ii) of this Agreement;

WHEREAS, pursuant to the Original LLC Agreement, the Original LLC Agreement must be amended and restated in connection with the admission of new members to provide for the relative rights, obligations and privileges of the Members; and

WHEREAS, the Members wish to amend and restate the Original LLC Agreement in its entirety;
NOW THEREFORE, in consideration of the mutual covenants and agreements herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Members, hereby intending to be legally bound, agree to amend and restate the Original LLC Agreement in its entirety to read agree as follows:

Article I. DEFINITIONS

Section 1.01. Definitions. As used in this Agreement, the following terms have the following meanings:

“ACON Fund” means ACON Equity Partners IV, L.P., together with any other entity managed by ACON Equity Management, L.L.C. or any of its Affiliates.

“ACON Management Agreement” means that certain Portfolio Company Management Services and Expense Reimbursement Agreement, dated as of the date hereof, by and between the LLC and an Affiliate of the ACON Member.

“ACON Managers” has the meaning set forth in Section 5.02(a).

“ACON Member” has the meaning set forth in the Preamble.

“Act” means the Delaware Limited Liability Company Act, Title 6, §§ 18-101, et seq., and any successor statute, as amended from time to time.

“Affiliate” of, or a Person “Affiliated” with, a specified Person means a Person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the Person specified, where control means the possession, directly or indirectly, of the power to direct the management and policies of a Person whether through the ownership of voting securities, by contract or otherwise.

“Agreement” means this First Amended and Restated Limited Liability Company Agreement, as executed, and as it may be amended, modified, supplemented or restated from time to time, as provided herein.

“Alternative Funding Sources” means (i) cash and cash equivalents of the LLC and its Subsidiaries available on such entities’ balance sheet that may be classified, in accordance with GAAP, as “unrestricted” cash or cash equivalent, (ii) any available undrawn commitments under then-existing loan and credit facilities of the LLC and its Subsidiaries, and (iii) third-party debt financing. Alternative Funding Sources shall not include any Central States Cash (as defined in the Reorganization Agreement).

“Applicable Multiple” means (i) with respect to a Transfer (including Limited Indirectly) to any Person other than a Permitted Transferee of the ACON Member contemplated by clauses (i) and (ii) of Section 9.01(a), a number equal to 1.005, and (ii) with respect to a Transfer (including Limited Indirectly) to any Permitted Transferee of the ACON Member contemplated by clauses (i) and (ii) of Section 9.01(a), a number equal to 1.000.
“Business Day” means a day other than a Saturday, Sunday or other day on which commercial banks in either New York or Mexico City are authorized or required to close.

“Capital Contribution” means, as of any date, with respect to any Member, the aggregate amount of cash, cash equivalents or Fair Market Value of other property that such Member contributed or is deemed to have contributed to the LLC pursuant to Article III (net of liabilities assumed by the LLC from such Member and liabilities to which any such contributed property is subject) as of the date in question. Set forth on the Member Schedule is the aggregate amount of cash, cash equivalents or Fair Market Value of other property that each Member contributed or is deemed to have contributed to the LLC.

“Cause” means any of the following: (a) such Manager’s repeated failure to perform substantially his or her duties as a Manager, which failure, whether committed willfully or negligently, has continued unremedied for more than thirty (30) days after the LLC or the Laguna Member has provided written notice thereof; (b) such Manager’s fraud or embezzlement; (c) such Manager’s breach of fiduciary duty against the LLC or any of the LLC Subsidiaries (to the extent not waived hereunder); (d) such Manager’s willful misconduct or gross negligence that is injurious to the LLC or any of the LLC Subsidiaries, including any material breach of the confidentiality, non-competition and non-solicitation provisions herein; (e) any conviction of, or the entering of a plea of guilty or nolo contendere to, a crime that constitutes a felony (or any state-law equivalent), or any willful or material violation by such Manager of any federal, state or foreign securities laws; (f) any conviction of any other criminal act by such Manager that has a material adverse effect on the property, operations, business or reputation of the LLC or any of the LLC Subsidiaries; or (g) the unlawful use (including being under the influence) or possession of illegal drugs by such Manager on the premises of the LLC or any of the LLC Subsidiaries while performing any duties or responsibilities with the LLC or any of the LLC Subsidiaries.

“Certificate” means the Certificate of Formation of the LLC as filed, and as the same may be amended from time to time, with the Secretary of State of the State of Delaware.

“Class A Interest” means an Interest representing a fractional part of the ownership of the LLC and having the rights and obligations specified with respect to Class A Interests in this Agreement.

“Class A Member” means a Member that holds Class A Interests.

“Class B Interest” means an Interest representing a fractional part of the ownership of the LLC and having the rights and obligations specified with respect to Class B Interests in this Agreement.

“Class B Managers” shall have the meaning set forth in Section 5.02(a).

“Class B Member” means a Member that holds Class B Interests.

“Class C Interest” means an Interest representing a fractional part of the ownership of the LLC and having the rights and obligations specified with respect to Class C Interests in this Agreement.
“Class C Member” means a Member that holds Class C Interests.

“Class D Interest” means an Interest representing a fractional part of the ownership of the LLC and having the rights and obligations specified with respect to Class D Interests in this Agreement.

“Class D Member” means a Member that holds Class D Interests.

“Code” means the Internal Revenue Code of 1986, as amended from time to time.

“Covered Asset” means (a) any equity security of any Person other than the LLC and its Subsidiaries (or any option, warrant, convertible security or other right, agreement, arrangement or commitments of any character relating to the acquisition of such equity securities in any other Person other than the LLC and its Subsidiaries), and (b) a majority of the assets of any business, business unit, division or other business line of any Person other than the LLC and its Subsidiaries.

“Designated ACON Manager” means a person designated from time to time in writing by the ACON Member to the LLC and the Laguna Member, with such designation to be effective as of the date of delivery of such written designation to the LLC and the Laguna Member or such later date as specified in such written designation. The initial Designated ACON Manager shall be Aron Schwartz, who shall serve in such capacity until he is removed and his successor is duly designated by the ACON Member.

“Distribution” means a distribution made by the LLC to a Member, whether in cash, property or securities of the LLC and whether by liquidating distribution or otherwise; provided that none of the following shall be a Distribution: (a) any redemption or repurchase by the LLC or any Member of any Interests, (b) any recapitalization or exchange of securities of the LLC, (c) any subdivision (by Interest split or otherwise) or any combination (by reverse Interest split or otherwise) of any outstanding Interests, (d) any fees or remuneration paid to any Member in such Member’s capacity as an employee, officer, consultant or other provider of services to the LLC, or, with respect to the ACON Member or the Laguna Member, any payments or proceeds paid pursuant to the ACON Management Agreement or the Laguna Management Agreement.

“Employee Interest” means a Class C Interest, or a Class D Interest, as applicable.

“Employee Member” means a Class C Member, or a Class D Member, as applicable.

“Encumbrance” means any lien (statutory or other), claim, charge, security interest, mortgage, deed of trust, pledge, hypothecation, assignment, conditional sale or other title retention agreement, preference, priority or other security agreement or preferential arrangement of any kind, and any easement, encroachment, covenant, restriction, right of way, defect in title or other encumbrance of any kind.

“Equity Interest” means a Class A Interest, or a Class B Interest, as applicable.

“Equity Member” means a Class A Member, or a Class B Member, as applicable.
“Equity Preferred Yield” means the amount accruing with respect to an Equity Interest from and after its date of initial issuance, on a daily basis, at the rate of 9.0% per annum, compounded annually, on (a) the Unreturned Capital of such Equity Interest, plus (b) the Unpaid Equity Preferred Yield thereon for all prior periods. In calculating the amount of any Distribution to be made during a Fiscal Year, an Equity Interest’s Equity Preferred Yield for such portion of such period elapsing before such Distribution is made shall be included as part of such Interest’s Equity Preferred Yield. Further, for purposes of Section 4.01(a)(vii) only, the rate in the first sentence of this definition shall be 17.5% per annum rather than 9.0%. For the avoidance of doubt, no Equity Preferred Yield shall accrue on or be payable in respect of any Special Contribution.

“Excluded Issuance” means an issuance or sale of any Interests in connection with: (a) a grant of Employee Interests to any existing or prospective Managers, officers or other employees of the LLC or any LLC Subsidiary pursuant to any equity-based plans or other compensation agreement; (b) the conversion or exchange of any securities of the LLC into Interests, or the exercise of any warrants or other rights to acquire Interests, but only to the extent that such securities, warrants or other rights are outstanding as of the date of this Agreement or are subsequently issued in compliance with the terms and conditions of this Agreement (including, without limitation, Section 9.02 hereof); (c) any acquisition by the LLC or any LLC Subsidiary of any equity interests, assets, properties or business of any Person that is approved by the Board; (d) any merger, consolidation or other business combination involving the LLC or any LLC Subsidiary that is approved by the Board; (e) the commencement of any IPO or any transaction or series of related transactions involving a Sale of the LLC; (f) any subdivision of Interests (by a split of Interests or otherwise), reclassification, reorganization or any similar recapitalization; (g) any private placement of warrants to purchase Interests to lenders or other institutional investors (excluding the Members and any Affiliate of the Members) in any arm’s length transaction that is approved by the Board in which such lenders or investors provide debt financing to the LLC or any LLC Subsidiary; (h) a joint venture, strategic alliance or other commercial relationship with any Person (including Persons that are customers, suppliers and strategic partners of the LLC or any LLC Subsidiary but excluding the Members and any Affiliate of the Members) that is approved by the Board relating to the operation of the LLC’s or any LLC Subsidiary’s business and not for the primary purpose of raising equity capital; or (i) any office lease or equipment lease or similar equipment financing transaction that is approved by the Board in which the LLC or any LLC Subsidiary obtains from a lessor or vendor the use of such office space or equipment for its business.

“Fair Market Value” of any asset at any time means the fair market value (together with all accrued and unpaid yield thereon) of any Interests or asset in question, as determined in the good faith judgment of the Board, which determination shall be made consistent with the ACON Fund’s existing process for SEC-reported valuations of its portfolio companies, which shall be performed at least quarterly, in good faith (taking into account all aspects and economics of the provisions set forth in Section 4.01(a)).

“Fiscal Year” means the accounting year beginning January 1 and ending December 31, or such other annual accounting period as may be established by the Board.
“GAAP” means U.S. generally accepted accounting principles, as in effect from time to time.

“Incapacity” or “Incapacitated” means (a) with respect to a natural person, the bankruptcy, death, incompetency or insanity of such individual and (b) with respect to any other Person, the bankruptcy, liquidation, dissolution or termination of such Person.

“Indirect Members” means (i) each entity controlled, directly or indirectly, by the ACON Fund, that holds a direct or indirect interest in the ACON Member or any Subsequent ACON Member (but, for the avoidance of doubt, excluding the ACON Fund), and (ii) each entity controlled, directly or indirectly, by any other similar pooled investment vehicle (including a private equity fund) that charges its limited partners a management fee and/or carried interest in connection with the management of the pooled funds (provided such entity does not hold, directly or indirectly, securities of any Person other than the LLC and its Subsidiaries), and that holds a direct or indirect interest in the ACON Member or any Subsequent ACON Member (but, for the avoidance of doubt, excluding such similar pooled investment vehicle (including any such private equity fund)).

“Interest” means an ownership interest in the LLC representing a fractional part of the entire ownership interest in the LLC; provided, that any class or group of Interests issued shall have the relative rights, powers and duties set forth in this Agreement.

“IPO” means an underwritten initial public offering of the LLC’s (or a successor entity of the LLC) equity securities pursuant to an effective registration statement under the Securities Act.

“January Amount” means $6,000,000.

“January Amount Member” means the Class B Members pro rata according to their proportionate ownership of Class B Interests.

“Laguna Competitor” means each of Chobani, LLC, Dean Foods Company, Dairy Farmers of America, Danone S.A., The WhiteWave Foods Company and General Mills, Inc. and any Affiliate of any such Person, and any successor or assign of any of the foregoing; provided, that a successor or assign of such Person shall not include (and such successor or assign shall not be a “Laguna Competitor” hereunder) any successor or assign that (after giving effect to any transaction pursuant to which such successor or assign becomes a successor or assign of such listed Person) derives less than twenty-five percent (25%) of the revenue of such successor or assign, on a consolidated basis together with its Subsidiaries and direct and indirect parent entities, from the yogurt business lines or assets acquired from such listed Person in such transaction; and provided, further, that no portfolio company of any private equity fund (or any similar investment vehicle) shall be deemed to be a “Laguna Competitor” solely because such Person is an Affiliate of any Laguna Competitor or any successor to a Laguna Competitor.

“Laguna Management Agreement” means that certain Portfolio Company Management Services and Expense Reimbursement Agreement, dated as of the date hereof, by and between the LLC and the Laguna Member.
“Laguna Member” shall have the meaning set forth in the Preamble.

“Limited Indirectly” means any Transfer (provided that for purposes of this definition only, the clause “or Limited Indirectly,” shall be deemed deleted from the definition of Transfer, mutatis mutandis) by any of (i) the ACON Fund, (ii) any Indirect Member, (iii) any direct equityholder of the ACON Member or any transferee, successor or assign of the ACON Member (and any subsequent transferee, successor or assign of such Person), (iv) any direct equityholder of any Subsequent ACON Member or any transferee, successor or assign of any Subsequent ACON Member (and any subsequent transferee, successor or assign of such Person), or (v) any transferee, successor, or assign of any Person described in clauses (iii) or (iv) of this definition or this clause (v) of this definition (each of the persons described in clauses (i)-(v) of this definition, a “Limited Indirect Holder” and collectively, the “Limited Indirect Holders”). “Limited Indirect” and “Limited Indirectly”, when used as an adverb or adjective, shall have a correlative meaning.

“LLC” has the meaning set forth in the Preamble.

“Majority of Voting Interests” means (a) greater than 50% of the Class A Interests, (b) greater than 50% of the Equity Interests, and (c) greater than 50% of the Class B Interests.

“Majority Vote” means approval of a majority of the Board, including at least the Designated ACON Manager, provided, however, that with respect to matters subject to Section 9.05(h), “Majority Vote” means the approval of the Required ROFR Managers.

“Manager” means each Person serving on the Board.

“Manager Alternates” means each of Drew Scielzo, David Winter, Adam Brown and Shawn Canter.

“Member” means each Person identified on the Member Schedule as of the date hereof who has executed this Agreement or a counterpart hereof, and each Person who is hereafter admitted as a Member in accordance with the terms of this Agreement and the Act, in each case so long as such Person is shown on the LLC’s books and records as the owner of one or more Interests. The Members shall constitute the “members” (as that term is defined in the Act) of the LLC. Except as expressly provided herein, the Members shall constitute a single class or group of members of the LLC for all purposes of the Act and this Agreement.

“Passive Investor” means a Person who owns, directly or Limited Indirectly, any equity interest in the ACON Member (or any successor, assign or transferee of the ACON Member), provided, however, that such Person does not: (i) have, directly or indirectly, any blocking, consent, veto, or similar contractual or legal right (whether vested, contingent, springing, or otherwise) to block the ACON Member from taking any action in connection with the LLC or the ACON Member’s (and its transferees’) rights and obligations under this Agreement; (ii) have any contractual or other legal right to cause the ACON Member to take any action with respect to the LLC and the ACON Member’s (and its transferee’s) ownership of any Interests, including with respect to the exercise of any right or the fulfilment of any obligation under this Agreement; and (iii) have any right to appoint any director, manager, observer, or officer, to the board (or similar governing body) of the ACON Member.
“Percentage Interest” means, with respect to any Class A Member, Class B Member, Class C Member or Class D Member, the percentage that such Members’ Class A Interests, Class B Interests, Class C Interests or Class D Interests represent as a portion of the aggregate number of Class A Interests, Class B Interests, Class C Interests or Class D Interests held by all Class A Members, Class B Members, Class C Members or Class D Members, respectively. The sum of the Class A Members’, Class B Members’, Class C Members’ and Class D Members’ Percentage Interests at all times shall be 100%.

“Person” means a natural person, partnership (whether general or limited), limited liability company, trust, estate, association, corporation, custodian, nominee or any other individual or entity in its own or any representative capacity.

“Pre-emptive Pro Rata Portion” means, for any Equity Member as of any particular time, a fraction determined by dividing (a) the number of Equity Interests owned by such Equity Member immediately prior to such time by (b) the aggregate number of Equity Interests owned by all of the Equity Members immediately prior to such time. Notwithstanding the foregoing, with respect to the Laguna Member, from the date of this Agreement until the earlier of (i) the date the Laguna Member no longer owns Class B Interests that represent at least 51% of the Percentage Interest of the Equity Interests, (ii) the Protection Expiration Date, and (iii) the date of the closing of any issuance by the LLC of New Interests to which the Laguna Member does not purchase its full Pre-emptive Pro Rata Portion, the Laguna Member’s “Pre-emptive Pro Rata Portion” shall not be less than 51% of the value of the New Interests to be issued.

“Protection Expiration Date” shall mean the earlier of (i) the date that is three years and one day following the date hereof and (ii) the date that an “ownership change” of Borden Dairy Company under Section 382 of the Code occurs (or is finally determined to have occurred) other than as a result of any breach by the LLC, the ACON Member or any of its Transferees or Affiliates, or any Subsequent ACON Member or any of its Transferees or Affiliates, of Section 9.01(b), Section 9.01(e), Section 9.01(f), Section 9.02, Section 9.03, Section 9.04, or Section 9.05.

“Reorganization Agreement” has the meaning set forth in the recitals.

“Sale of the LLC” means either (i) the sale, lease, transfer, conveyance, license or other disposition, in one transaction or a series of related transactions, of all or substantially all of the assets of the LLC, or (ii) a transaction or series of transactions (including by way of merger, consolidation, recapitalization, reorganization or sale of interests) the result of which is that the Members that are the “beneficial owners” (as such term is defined in Rule 13d-3 and Rule 13d-5 promulgated under the Securities Exchange Act) of the LLC immediately prior to such transaction are (after giving effect to such transaction) no longer, in the aggregate, the “beneficial owners” (as such term is defined in Rule 13d-3 and Rule 13d-5 promulgated under the Securities Exchange Act), directly or indirectly through one or more intermediaries or Affiliates, of more than 50% of the voting power of the outstanding voting securities of the LLC.

“Securities Act” means the Securities Act of 1933, as amended from time to time.

“Special Contribution” has the meaning set forth in the Preamble.

“Special Preferred Yield” means, with respect to an Equity Interest, from and after its date of initial issuance, the amount accruing on such Interest solely with respect to the Special Contribution made by the Class A Member or Class B Member, as applicable, on a daily basis, at the rate of 17.0% per annum, compounded annually, on (a) such Interest’s Unreturned Special Contribution Amount, plus (b) the Unpaid Special Preferred Yield thereon for all prior periods. In calculating the amount of any Distribution to be made during a Fiscal Year, a Special Contribution’s Special Preferred Yield for such portion of such period elapsing before such Distribution is made shall be included as part of such Special Contribution’s Special Preferred Yield. For the avoidance of doubt, no Special Preferred Yield shall accrue on or be payable in respect of any Capital Contribution that is not a Special Contribution.

“Subsidiary” means, with respect to any Person, any corporation, limited liability company, partnership, association or business entity of which (i) if a corporation, a majority of the total voting power of shares of stock entitled to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof; or (ii) if a limited liability company, partnership, association or other business entity (other than a corporation), a majority of partnership or other similar ownership interest thereof is at the time owned or controlled, directly or indirectly, by any Person or one or more Subsidiaries of that Person or a combination thereof. For purposes hereof, a Person or Persons shall be deemed to have a majority ownership interest in a limited liability company, partnership, association or other business entity (other than a corporation) if such Person or Persons shall be allocated a majority of limited liability company, partnership, association or other business entity gains or losses or shall be or control any managing director or general partner of such limited liability company, partnership, association or other business entity.

“Tag-along Pro Rata Portion” means, for any Selling Member or Tag-along Member and for any particular class or series of Tag-along Interests as of any particular time, a fraction determined by dividing (a) the number of Tag-along Interests owned by such Member immediately prior to such time by (b) the aggregate number of Tag-along Interests owned by the Selling Member and all of the Tag-along Members timely electing to participate in the applicable Tag-along Sale pursuant to Section 9.04(d)(i) immediately prior to such time. For purposes of this definition, all Equity Interests (including, for the avoidance of doubt, all Class A Interests and Class B Interests) shall be deemed to be one class or series of classes such that a proposed sale of any class of Equity Interest shall trigger the Tag-along Sale rights with respect to each other Equity Interest, in each case, as a single class.

“Tax” or “Taxes” means any federal, state, local or foreign income, gross receipts, franchise, estimated, alternative minimum, add-on minimum, sales, use, transfer, registration, value added, excise, natural resources, severance, stamp, occupation, premium, windfall profit, environmental, customs, duties, real property, personal property, capital stock, social security, unemployment, disability, payroll, license, employee or other withholding, or other tax, of any
kind whatsoever, including any interest, penalties or additions to tax or additional amounts in respect of the foregoing.

“Taxable Year” means the LLC’s taxable year ending December 31 (or part thereof, in the case of the LLC’s last taxable year).

“Tax Receivable Agreement” means that certain Tax Receivable Agreement, by and between Borden Dairy Company and Laguna Dairy, S. de R.L. de C.V., a sociedad de responsabilidad limitada de capital variable duly organized under the laws of Mexico, dated as of July [__], 2017, as the same may be amended from time to time pursuant to the terms thereof.

“Transfer” means: (i) as applied to any Member other than the ACON Member or any Subsequent ACON Member, to, directly or indirectly (including any transfer of any economic consequences of ownership and any Transfer of an equity interest in any Member or in any equityholder of any Member), sell, transfer, assign, pledge, encumber, hypothecate or similarly dispose of, either voluntarily or involuntarily, by operation of law or otherwise, or to enter into any contract, option or other arrangement or understanding with respect to the sale, transfer, assignment, pledge, encumbrance, hypothecation or similar disposition of, any Interests owned by a Person; and (ii) as applied to the ACON Member, any Subsequent ACON Member, or any of its or their direct or Limited Indirect Holders (or any successor, assign or transferee of the foregoing), to, directly or Limited Indirectly, sell, transfer, assign, pledge, encumber, hypothecate or similarly dispose of, either voluntarily or involuntarily, by operation of law or otherwise, or to enter into any contract, option or other arrangement or understanding with respect to the sale, transfer, assignment, pledge, encumbrance, hypothecation or similar disposition of, any Interests owned by a Person. “Transfer”, when used as a noun, shall have a correlative meaning.

“Unpaid Equity Preferred Yield” means, with respect to any Equity Interest, an amount equal to (a) the aggregate amount of Equity Preferred Yield accrued with respect to such Equity Interest, minus (b) the aggregate amount of prior Distributions made by the LLC that constitute payment of Equity Preferred Yield on such Equity Interest pursuant to Section 4.01(a)(v)(B), Section 4.01(a)(vi) and Section 4.01(a)(vii).

“Unpaid Special Preferred Yield” means, with respect to any Equity Interest, an amount equal to (a) the aggregate amount of Special Preferred Yield accrued with respect to such Equity Interest, minus (b) the aggregate amount of prior Distributions made by the LLC that constitute payment of Special Preferred Yield on such Equity Interest pursuant to Section 4.01(a)(ii).

“Unreturned Capital” means, with respect to any Equity Interest, an amount equal to (a) the aggregate amount of Capital Contributions made with respect to or on account of such Equity Interest by a Member with respect to such Equity Interest, or any predecessor of such Member, minus (b) the aggregate amount of any Special Contributions made with respect to or on account of such Equity Interest by a Member, or any predecessor of such Member, minus (c) the aggregate amount of prior Distributions made by the LLC that constitute a return of the Capital Contributions (excluding returns of any Special Contributions) with respect to such Equity Interest pursuant to Section 4.01(a)(iii) or Section 4.01(a)(iv). In the event any Equity Interest in the LLC is transferred in accordance with the terms of this Agreement, the transferee shall
succeed to the Unreturned Capital of the transferor to the extent it relates to the transferred Equity Interest in the LLC.

“Unreturned Special Contribution Amount” means, with respect to any Special Contribution, an amount equal to (a) $5,000,000, minus (b) the aggregate amount of prior Distributions made by the LLC that constitute a return of such Special Contribution pursuant to Section 4.01(a)(ii). If any Class A Interests or Class B Interests are transferred in accordance with the terms of this Agreement, the transferee of such Interests shall succeed to the Unreturned Special Contribution Amount of the transferor to the extent the Unreturned Special Contribution Amount relates to the Interests so transferred.

Section 1.02. Other Definitions. The terms set forth below are defined in the following sections of this Agreement:

382 Fee..........................................................................................Section 3.04(d)(iii)
Acceptance Notice ........................................................................Section 9.05(e)
ACON Purchase Notice ..............................................................Section 3.04(d)(ii)
ACON Purchase Right ...............................................................Section 3.04(d)(ii)
Acquisition ..................................................................................Section 3.04(d)(i)
Additional Interests .......................................................................Section 3.04(a)
Agreement of Liability ..............................................................Section 7.01(a)
Assignee .......................................................................................Section 9.06(a)(i)
Assignor .......................................................................................Section 9.06(a)(i)
Binding Offer ..............................................................................Section 9.05(a)
Board ............................................................................................Section 5.01
Board Opportunity .......................................................................Section 6.09(a)
Certificated Interests .................................................................Section 9.08
Company-Required Indemnity ...............................................Section 7.01(a)
Company Exercise Notice .........................................................Section 9.05(d)
Company Opportunity ..............................................................Section 6.09(c)
Company Option Period ............................................................Section 9.05(d)
Competitive Business ...............................................................Section 6.10(a)(iv)
Confidential Information .............................................................Section 12.15
Contractual Appraisal Rights .....................................................Section 2.01
Diligence Cap ..............................................................................Section 9.05(f)
Diligence Expenses .......................................................................Section 9.05(f)
Equity Remedy Notice ..............................................................Section 7.01(a)
Equity Transfer ............................................................................Section 5.02(a)(ii)
Escrow Agent ..............................................................................Section 7.02
Escrow Agreement .................................................................Section 7.02
Escrow Event ..............................................................................Section 7.02
Escrow Funds ..............................................................................Section 7.02
Excluded Asset ............................................................................Section 3.04(d)(ii)
Excluded Entity .............................................................................Section 6.10(a)(i)
Final Order ..................................................................................Section 7.01(a)
First Offer ...................................................................................Section 9.05(b)
First Offeree ................................................................................Section 9.05(b)
First Offeror ................................................................................Section 9.05(a)
Fully Electing Tag-along Member ...............................................Section 9.04(d)(ii)
Fully Exercising Pre-emptive Member .....................................Section 9.02(d)
Funding Resolution ............................................................... Section 3.04(d)(i)
Grant Agreement ................................................................. Section 3.03(b)(i)
Improper Appointee ............................................................... Section 5.02(a)(ii)
Indemnified Person ............................................................... Section 11.01(a)
Indemnifying Member ............................................................. Section 12.07
Initial Offer ........................................................................ Section 9.03(g)
Initiating Member ............................................................... Section 9.03(a)
Initiating Notice .................................................................. Section 9.03(a)
Interim Order .......................................................................... Section 7.02
Issuance Notice .................................................................. Section 9.02(b)
Laguna Exercise Notice ...................................................... Section 9.05(e)
Laguna Option Period ......................................................... Section 9.05(e)
Liquidity Notice .................................................................. Section 9.03(d)
Maximum Price ..................................................................... Section 9.05(b)
Member Schedule ............................................................... Section 3.01(a)
New Interests ...................................................................... Section 9.02(a)
Non-Compete Period .................................................... Section 6.10(a)(iii)
Offer Price .......................................................................... Section 9.05(b)
Offered Interests ................................................................ Section 9.05(b)
Other Business ................................................................. Section 6.09(c)
Over-allotment Exercise Period ......................................... Section 9.02(d)
Over-allotment Notice ....................................................... Section 9.02(d)
Pre-emptive Exercise Period ........................................... Section 9.02(c)
Pre-emptive Member ............................................................. Section 9.02(a)
Preliminary Notice ............................................................... Section 3.04(d)(ii)
Process ............................................................................... Section 9.03(d)
Prospective Purchaser.......................................................... Section 9.02(b)
Remaining New Interests ................................................... Section 9.02(d)
Remaining Tag-along Interests .......................................... Section 9.04(e)(i)
Remaining Tag-along Interests Notice ................................ Section 9.04(e)(i)
Required ROFO Managers ................................................. Section 9.05(h)
ROFO Liquidity Offer .......................................................... Section 9.03(b)
ROFR Closing ........................................................................ Section 9.05(g)
ROFR Fee ........................................................................... Section 9.05(f)
ROFR Fee Cap ..................................................................... Section 9.05(f)
Selling Member .................................................................. Section 9.04(a)
Subsequent ACON Member ................................................ Section 9.01(b)
Tag-along Exercise Notice .............................................. Section 9.04(d)(i)
Tag-along Exercise Period ................................................. Section 9.04(d)(i)
Tag-along Interests ............................................................... Section 9.04(a)
Tag-along Member ............................................................... Section 9.04(a)
Tag-along Notice ................................................................. Section 9.04(c)
Tag-along Sale ................................................................. Section 9.04(a)
Third Party Offeror ............................................................. Section 9.03(g)
Threshold Amount .............................................................. Section 9.05(h)
TRA Distribution ............................................................ Section 4.01(a)(i)
Vacancy Period .............................................................. Section 5.02(a)(ii)
Section 1.03. **Construction; Interpretation.** Whenever the context requires, the gender of all words used in this Agreement includes the masculine, feminine and neuter, and the singular number includes the plural number and vice versa. All references to Articles and Sections refer to articles and sections of this Agreement, and all references to Schedules are to Schedules attached hereto, each of which is made a part hereof for all purposes. The parties hereto have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

Section 1.04. **Including.** Reference in this Agreement to “including,” “includes” and “include” shall be deemed to be followed by “without limitation.”

**Article II. ORGANIZATION**

Section 2.01. **Formation.** The LLC was organized as a Delaware limited liability company by the execution and filing the Certificate on March 21, 2017, with the Secretary of State of the State of Delaware by an authorized person (within the meaning of the Act) under and pursuant to the Act. The rights, powers, duties, obligations and liabilities of the Members are determined pursuant to the Act and this Agreement. To the extent that the rights, powers, duties, obligations and liabilities of any Member are different by reason of any provision of this Agreement than what they would be in the absence of such provision, this Agreement shall, to the extent permitted by the Act, control; it being understood that in no event shall Section 18-210 of the Act (entitled “Contractual Appraisal Rights”) apply or be incorporated into this Agreement.

Section 2.02. **Name.** The name of the LLC shall be “Borden Dairy Holdings, LLC”. The Board in its sole discretion may change the name of the LLC at any time and from time to time. The LLC’s business may be conducted under its name and/or any other name or names deemed advisable by the Board.

Section 2.03. **Registered Office; Registered Agent; Principal Office; Other Offices.** The registered office of the LLC required by the Act to be maintained in the State of Delaware shall be the office of the initial registered agent named in the Certificate or such other office (which need not be a place of business of the LLC) as the Board may designate from time to time in the manner provided by law. The registered agent of the LLC in the State of Delaware shall be the initial registered agent named in the Certificate or such other Person or Persons as the Board may designate from time to time in the manner provided by law. The principal office of the LLC shall be at such place as the Board may designate from time to time, which need not be in the State of Delaware, and the LLC shall maintain records there. The LLC may have such other offices as the Board may designate from time to time.

Section 2.04. **Purpose.** The purpose and business of the LLC shall be (i) to perform such obligations and duties as are imposed upon the LLC under this Agreement, (ii) to exercise all rights and powers granted to the LLC and (iii) to engage in any other lawful act or
activities as the Board deems necessary or advisable for which limited liability companies may be organized under the Act.

Section 2.05. Term. The term of the LLC commenced on the date the Certificate was filed with the office of the Office of the Secretary of State of Delaware and shall continue until dissolution as determined under Section 10.01.

Section 2.06. Tax Classification of the LLC. It is intended that the LLC be classified as an association taxable as a corporation for Federal income tax purposes. The Board is authorized to file an election on U.S. Internal Revenue Service Form 8832 (Entity Classification Election) pursuant to U.S. Treasury Regulations Section 301.7701-3(c) for the LLC to be classified as an association taxable as a corporation for Federal income tax purposes. Where required by the laws of any state of the United States from which the LLC has income, a corresponding election to be classified as an association taxable as a corporation shall be filed by the Board on behalf of the LLC. No election described in this Section 2.06 shall be revoked by the LLC. All Distributions made pursuant to Section 4.01 shall be treated in accordance with Subchapter C of the Code.

Article III.
MEMBERSHIP; CAPITAL CONTRIBUTIONS; ADDITIONAL INTERESTS; RIGHTS AND PREFERENCES OF INTERESTS

Section 3.01. Members.

(a) Names, etc. The name, residence, and business or mailing address of each Member, along with the Capital Contribution of each Member and the Percentage Interest of each Member shall be maintained by the Board (as defined below) on a separate schedule (the “Member Schedule”) and shall be kept with the books and records of the LLC, and shall be amended from time to time in accordance with the terms of this Agreement. Any reference in this Agreement to the Member Schedule shall be deemed to be a reference to the Member Schedule as amended and in effect from time to time. Each Person listed on the Member Schedule, upon (i) his, her or its execution of this Agreement or a counterpart hereto, with respect to the Equity Members, or execution of a joinder to this Agreement, with respect to the Employee Members, and (ii) receipt (or deemed receipt) by the LLC of such Person’s Capital Contribution (if any) as set forth on the Member Schedule, is hereby admitted to the LLC as a Member. Upon any change in a Member’s ownership of its Interests, the Board shall (or shall cause an officer of the LLC to) amend the Member Schedule to properly reflect such change, including any change to the Percentage Interests of the Members, and the Board shall (or shall cause an officer of the LLC to) deliver a copy of the Member Schedule, as so amended, to each Equity Member.

(b) Representations and Warranties of Members. Each Member hereby severally represents and warrants to the other Members and the LLC and acknowledges, as to itself only, that:
such Member has such knowledge and experience in financial and business matters and is capable of evaluating the merits and risks of an investment in the LLC and making an informed investment decision with respect thereto;

such Member is able to bear the economic and financial risk of an investment in the LLC for an indefinite period of time;

such Member is acquiring interests in the LLC for investment only and not with a view to, or for resale in connection with, any distribution to the public or public offering thereof;

the interests in the LLC have not been registered under the securities laws of any jurisdiction and cannot be disposed of unless they are subsequently registered and/or qualified under applicable securities laws and the provisions of this Agreement have been complied with;

the execution, delivery and performance by such Member of this Agreement have been duly authorized by such Member and do not require such Member to obtain any consent or approval that has not been obtained and do not contravene or result in a default in any material respect under any provision of any law or regulation applicable to such Member or other governing documents or any agreement or instrument to which such Member is a party or by which such Member is bound;

except as otherwise set forth in any purchase agreement governing such purchase, the determination of such Member to purchase interests in the LLC has been made by such Member independently of any other Member and independently of any statements or opinions as to the advisability of such purchase or as to the properties, business, prospects or condition (financial or otherwise) of the LLC and its Subsidiaries that may have been made or given by any other Member or by any agent or employee of any other Member; and

this Agreement is valid, binding and enforceable against such Member in accordance with its terms, except as may be limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws of general applicability relating to or affecting creditors’ rights or general equity principles (regardless of whether considered at law or in equity).

Section 3.02. No Liability of Members.

(a) No Liability. Except as otherwise required by applicable law and as expressly set forth in this Agreement, no Member shall have any personal liability whatsoever in such Member’s capacity as a Member, to the LLC, to the creditors of the LLC or to any other third party, for the debts, liabilities, commitments or any other obligations of the LLC or for any losses of the LLC. Each Member’s liability to the LLC shall be limited to making such Member’s Capital Contribution to the LLC, if any, and the other payments provided expressly herein, if any.

(b) Distribution. In accordance with the Act and the laws of the State of Delaware, a member of a limited liability company may, under certain circumstances, be
required to return amounts previously distributed to such member. It is the intent of the Members that no Distribution to any Member pursuant to Article IV and/or Article X shall be deemed a return of money or other property paid or distributed in violation of the Act. The payment of any such money or distribution of any such property to a Member shall be deemed to be a compromise within the meaning of the Act, and the Member receiving any such money or property shall not be required to return to any Person any such money or property. However, if any court of competent jurisdiction holds that, notwithstanding the provisions of this Agreement, any Member is obligated to make any such payment, such obligation shall be the obligation of such Member and not of any other Member.

Section 3.03. Authorized Interests.

(a) Authorized Interests. The LLC shall have the authority to issue four classes of Interests, to be called “Class A Interests,” “Class B Interests,” “Class C Interests” and “Class D Interests.” The relative rights, preferences, privileges and restrictions granted to or imposed upon the respective classes and series of the Interests or the Members holding such Interests are as set forth herein.

(b) Treatment of Employee Interests.

(i) The Board shall have the authority to issue Employee Interests to one or more key employees, Managers or consultants of the LLC or its Subsidiaries, in each case, other than to Florentino Rivero Rodriguez, Jose Antonio Tricio Haro, Aron Schwartz or any other employee of the ACON Member, the Laguna Member or of their respective Affiliates. Unless otherwise set forth herein, all such Employee Interests issued to Employee Members shall be issued pursuant to an interest grant agreement (a “Grant Agreement”) entered into between the LLC and such Employee Member and shall in all cases be subject to repurchase pursuant to the terms of such Grant Agreement (including, in each case, a right of the LLC to repurchase such Interests upon the termination or other separation of such Employee Member’s employment with the LLC or its Subsidiaries), on such form as approved by the Board. Each such Grant Agreement shall provide for the vesting terms (if any) of such Employee Interests and all other pertinent terms and conditions. In connection with any issuance of Employee Interests to an Employee Member hereunder, such Employee Member shall execute a counterpart to this Agreement, accepting and agreeing to be bound by all terms and conditions hereof, and shall enter into such other documents and instruments with respect thereto as may be required by the Board. Upon the issuance of any such Employee Interests to an Employee Member, the Percentage Interests of the other Employee Members may be subject to pro rata reduction and/or dilution at the discretion of the Board, and the Board shall amend the Member Schedule, and the books and records of the LLC reflecting the Percentage Interests, as necessary, to reflect such Person as a Member and the Percentage Interest of such Member, and any related reduction or dilution, without the necessity for any further vote, act or consent of any other Person(s). Employee Interests shall be administered by the Board, and the Board shall have full discretionary authority to construe and interpret the terms and conditions of the applicable Grant Agreements and to adopt such rules and procedures as it determines necessary or appropriate for the administration of Employee Interests.
Neither the LLC nor any Member shall deduct any amount (as wages, compensation, or otherwise) with respect to the receipt of Employee Interests by an Employee Member.

**Section 3.04. Issuance of Additional Interests; Additional Members.**

(a) **Additional Interests.** Subject to the other provisions of this Agreement, including this Section 3.04(a), Section 3.04(d), Section 6.05(b), Section 9.02 and Section 12.03, the Board may, from time to time, in its sole discretion, authorize and cause the LLC to issue or sell to any Person (including Members and Affiliates of Members) any of the following (which, for purposes of this Agreement, shall be “Additional Interests”):

(i) additional Interests or other interests in the LLC (including new classes or series thereof having different rights);

(ii) securities or interests convertible into or exchangeable for Interests or other interests in the LLC; and

(iii) warrants, options or other rights to purchase or otherwise acquire Interests or other interests in the LLC.

The Board shall, subject to Section 6.05(b) and Section 12.03, determine the terms and conditions governing the issuance of such Additional Interests, including the designation and, if applicable, the Percentage Interest of such Additional Interests, the preference (with respect to Distributions, in liquidation or otherwise) over any other Interests and any contributions required in connection therewith. Each Member acknowledges and agrees that Section 4.01 may be amended or modified by the Board without the consent or approval of any other Person (including any Member) in connection with and in furtherance of the Board’s approval of the issuance and/or sale of Additional Interests permitted to be issued hereunder (together with any other sections, including those in Article IX, where such amendment would be reasonably necessary to ensure that the applicable rights and restrictions of this Agreement are applied to such Additional Interests consistent with the application of such rights and restrictions to the existing Interests), provided such issuance and/or sale complies in all respects with the terms and conditions set forth in this Agreement, including, without limitation Section 9.02.

(b) **Additional Members and Interests.** In order for a Person to be admitted as a Member of the LLC with respect to an Additional Interest: (i) the Board shall have, subject to Section 6.05(b) and Section 12.03, authorized such Additional Interest, (ii) such Person shall execute a counterpart to this Agreement, accepting and agreeing to be bound by all terms and conditions hereof, and shall deliver such documents and instruments as the Board determines to be necessary or appropriate in connection with the issuance of such Additional Interest to such Person or to effect such Person’s admission as a Member; and (iii) the Board shall amend the Member Schedule, and the books and records of the LLC reflecting the Percentage Interests, as necessary, without the further vote, act or consent of any other Person to reflect such new Person as a Member.

(c) **Additional Capital Contributions.** No Member shall be required to make any Capital Contributions in excess of the amounts agreed to by such Members in separate
subscription agreements with the LLC without the consent of such Member. At such time as any Member makes an additional Capital Contribution to the LLC (to the extent approved by the Board), or at such time as any other Person makes a Capital Contribution to the LLC and is admitted as a Member pursuant to the terms and conditions of this Agreement, the Interests of the other Members of the same class shall be reduced accordingly on a pro rata basis, and the Member Schedule and the books and records of the LLC reflecting such Interests shall be amended as necessary to reflect such Capital Contribution.

(d) Issuances on or Prior to the Protection Expiration Date.

(i) Notwithstanding anything in this Agreement to the contrary, from the date of this Agreement until the Protection Expiration Date, in connection with the issuance or sale to any Person (including Members and Affiliates of Members) of any Additional Interests in connection with or for the purpose of funding the acquisition (whether structured as a merger, asset acquisition, licensing arrangement, or otherwise), directly or indirectly, in one or a series of related transactions, by the LLC or any of its Subsidiaries, of any Covered Asset (any such acquisition, however structured, an “Acquisition”), (x) the Board shall first consider (and cause the LLC to consider), in good faith and using the commercially reasonable judgment of each Manager, (i) the terms and conditions of the Acquisition, and (ii) whether Alternative Funding Sources (individually or in any combination of one or more Alternative Funding Sources) are available to the LLC and its Subsidiaries on terms and in amounts that are no less favorable to the LLC and its Subsidiaries, taken as a whole, than financing such Acquisition through the issuance and sale of Additional Interests, and (y) the Board shall be free, in the sole discretion of a majority of its Managers (following the good faith considerations required by clause (x)), to adopt a resolution that approves the funding of such Acquisition pursuant to the issuance and sale of Additional Interests (such resolution, the “Funding Resolution”). In evaluating and adopting the Funding Resolution, the Board shall consider (1) the availability of Alternative Funding Sources, including the commercial terms associated with incurring Indebtedness offered by the Alternative Funding Sources described in clauses (ii) and (iii) of the definition of Alternative Funding Sources, (2) the working capital and cash reserve needs and requirements of the LLC and its Subsidiaries, and (3) such other factors as the Board may in good faith consider in the exercise of its commercially reasonable judgment. For the avoidance of doubt, the acquisition solely of tangible property, plant and/or equipment from any Person without the concurrent acquisition (whether structured as a merger, asset acquisition, licensing arrangement, or otherwise) by the LLC or any of its Subsidiaries of (a) any trademark, brand, product formulation, customer list, or other intellectual property, (b) any employees or (c) any revenue-producing operation, in each case, from such Person (or any Affiliate of such Person or any operator of any such relevant asset or facility) shall not be deemed to be an Acquisition.

(ii) At any time within thirty (30) days following the adoption of a Funding Resolution by the Board, the Board may either (x) deliver to the Laguna Member a notice (“Preliminary Notice”) (a) stating that the Board intends to finance such Acquisition (in whole or in part) through the issuance and sale of Additional Interests, (b) setting forth in reasonable details the proposed terms of such Additional Interests, and (c) setting forth the Board’s good faith estimate of the amount of Additional Interests proposed to be issued (which may be stated as a range) or (y) deliver to the Equity Members (including the Laguna Member) an Issuance Notice pursuant to Section 9.02. Within seven (7) days following the earlier delivery
by the Board to the Laguna Member of a Preliminary Notice or an Issuance Notice (issued in connection with the Acquisition described in the Funding Resolution), the Laguna Member shall notify the ACON Member, in writing, whether the Laguna Member intends to exercise its pre-emptive rights pursuant to Section 9.02 in connection with the issuance of the Additional Interests described in the Preliminary Notice or Issuance Notice. If the Laguna Member informs the ACON Member that the Laguna Member will not exercise its pre-emptive rights pursuant to Section 9.02, or if the Laguna Members fails to provide the written notice required by the first sentence of this Section 3.04(d)(ii) within such seven (7) day period, then (notwithstanding anything in this Agreement to the contrary) the ACON Managers shall have the right, exercisable from the day immediately following the receipt of such notice and ending on the seventh (7th) day thereafter, to cause the LLC to not issue an Issuance Notice pursuant to Section 9.02(b) or to withdraw any Issuance Notice that may have been issued in connection with such Funding Resolution (provided that the LLC shall not have issued any New Interests to any Person (including any Member) in connection with such Issuance Notice). If the ACON Managers cause the LLC to withdraw such Issuance Notice pursuant to the preceding sentence, or if no Issuance Notice has been issued as a result of the Laguna Member providing notice that it will not exercise its pre-emptive rights pursuant to Section 9.02, then the ACON Member and its Affiliates (other than the LLC and its Subsidiaries) shall have the right (the “ACON Purchase Right”) to purchase the Covered Assets described in the applicable Funding Resolution directly through the ACON Member or one or more of its Affiliates (at no cost or expense to the LLC or its Subsidiaries) at a price for the Covered Assets that is not less than that which was made available to the LLC and its Subsidiaries (considered by the Board in adopting the Funding Resolution); provided, however, that if the ACON Member and its Affiliates elect not to exercise the ACON Purchase Right, and instead an Issuance Notice is issued in connection with the Funding Resolution, the Laguna Member will retain the right to exercise its pre-emptive rights pursuant to, and in accordance with the terms and conditions of, Section 9.02 during the applicable Pre-emptive Exercise Period with respect thereto. If the acquisition by the ACON Member or its Affiliates of the Covered Asset and the operation of the business of such Covered Asset as of the date of the Funding Resolution would have been restricted by the terms of Section 6.10 (such restricted asset, an “Excluded Asset”), the acquisition by the ACON Member or its Affiliates of and the operation of the business of such Excluded Asset shall not be subject to the restrictions set forth in Section 6.09 or Section 6.10. For the avoidance of doubt, if the conduct of the business of such Covered Asset by the ACON Member as of the date of the Funding Resolution would not have been restricted by the terms of Section 6.10, then (i) such Covered Asset shall not be an “Excluded Asset” and (ii) the operation of the business of such Covered Asset by the ACON Member following the acquisition of such Covered Asset shall continue to be subject to the terms and conditions set forth in Section 6.10. The ACON Member may exercise the ACON Purchase Right by delivering to the LLC, with a concurrent copy to the Laguna Member, a notice (the “ACON Purchase Notice”) stating that the ACON Member is exercising the ACON Purchase Right; provided, that the consummation of the transaction subject to the ACON Purchase Notice is closed within 150 days after the delivery by the ACON Member of the ACON Purchase Notice. In the event the ACON Member or its Affiliates have not consummated the transaction described in the ACON Purchase Notice within such 150-day period, any such acquisition shall become subject to Section 6.09 and Section 6.10.

(iii) If at any time on or after the date of this Agreement (A) the LLC issues or sells to any Person (including Members and Affiliates of Members) any Additional
Interests in connection with or for the purpose of funding, directly or indirectly, any Acquisition, (B) such issuance or sale is subject to the pre-emptive rights set forth in Section 9.02 but the Laguna Member does not exercise its pre-emptive rights pursuant to Section 9.02 in connection with such issuance or sale of Additional Interests, and (C) such issuance or sale causes or results in an “ownership change” of Borden Dairy Company under Section 382 of the Code (and it is the first “ownership change” of Borden Dairy Company under Section 382 of the Code to have occurred following the date hereof), then the ACON Member shall promptly (but in no case later than ten (10) Business Days following the first to occur of (x) the issuance of a final, nonappealable determination by a Governmental Authority (as defined in the Reorganization Agreement) (which, for the avoidance of doubt may include a final, nonappealable determination by a court of competent jurisdiction with respect to an action that has been commenced by the Laguna Member to determine its rights pursuant to this Section 3.04(d)), or (y) the execution of an agreement in writing by the ACON Member, in each case, that an “ownership change” of Borden Dairy Company under Section 382 of the Code has occurred as a result of the issuance or sale of Additional Interests contemplated by this Section 3.04(d)(iii)) pay to the Laguna Member or its designees an amount equal to $10,000,000.00 (the “382 Fee”); provided, however, that following the date that is three years following the date hereof, no 382 Fee shall be due and payable in the event the Laguna Member has Transferred any of its Equity Interests to any Person (other than the Permitted Transferees of the Laguna Member contemplated by clauses (i) and (ii) of Section 9.01(a)) prior to any issuance or sale of Additional Interests contemplated by this Section 3.04(d)(iii) that causes or results in an “ownership change” of Borden Dairy Company under Section 382 of the Code. In the event the 382 Fee becomes due and payable in connection with an issuance or sale of Additional Interests occurring more than three years following the date hereof, the amount of the 382 Fee shall not be $10,000,000, but instead shall be an amount equal to the lesser of (1) $10,000,000, and (2) (x) the amount of the remaining Excess NOLs (as defined in the Tax Receivable Agreement) multiplied by (y) the prevailing federal corporate income tax rate applicable to Borden Dairy Company, in each case as of the date of the applicable issuance or sale of Additional Interests. The parties hereto acknowledge and agree that any payment of the 382 Fee described in this Section 3.04(d)(iii) is not a penalty but is liquidated damages in a reasonable amount that will fully compensate the Laguna Member and its Affiliates in the circumstances in which such fee is payable for the loss of payments accruing to the Laguna Member pursuant to the Tax Receivable Agreement and Section 4.01(a)(i) due to the loss of the availability of Excess NOLs (as defined in the Tax Receivable Agreement), which amount would otherwise be impossible to calculate with precision. For the avoidance of doubt, the 382 Fee shall be payable to the Laguna Member not more than once. In the event that the Laguna Member or its designee shall receive payment of the 382 Fee, neither the Laguna Member nor any of its Affiliates or designees shall be entitled to bring or maintain any claim, action or proceeding against the ACON Member or any of its Affiliates arising out of any “ownership change” of Borden Dairy Company under Section 382 of the Code caused by the sale or issuance of Additional Interests contemplated by this Section 3.04(d).
Section 3.05. Certification of Interests. Interests shall not be certificated, unless the Board shall determine otherwise.

Article IV. DISTRIBUTIONS

Section 4.01. Distributions.

(a) Any Distributions shall be made, when and as declared by the Board in its discretion (except in the case of Section 4.01(a)(i), which Distribution shall be declared by the Board promptly following the determination that any 65% Tax Benefit Payment (as defined in the Tax Receivable Agreement) is payable pursuant to the Tax Receivable Agreement and not otherwise prohibited pursuant to Section 4.01 of the Tax Receivable Agreement), in each case, to the extent permitted under the Act (provided, that if at any time a Distribution under Section 4.01(a)(i) is not permitted to be made under the Act, such Distribution shall be made as soon as permitted by the Act and no Distributions pursuant to Section 4.01(a)(ii) – (viii) shall be made unless and until any such pending Distributions pursuant to Section 4.01(a)(i) have been made in full), to the Members in the following order and priority:

(i) First, to the extent a 65% Tax Benefit Payment is payable pursuant to the Tax Receivable Agreement and not otherwise prohibited pursuant to Section 4.01 of the Tax Receivable Agreement, an amount equal to the corresponding 35% Tax Benefit Payment (as defined in the Tax Receivable Agreement) to the Class B Members, pro rata in accordance with their respective Percentage Interests; (any distribution paid under this Section 4.01(a)(i), a “TRA Distribution”);

(ii) Second,

(A) 50% to the Class A Members (in the proportion that each Class A Member’s share of Unpaid Special Preferred Yield with respect to its Class A Interests outstanding immediately prior to such Distribution bears to the aggregate Unpaid Special Preferred Yield with respect to all Class A Interests outstanding immediately prior to such Distribution), until each Class A Member has received cumulative Distributions pursuant to this Section 4.01(a)(ii)(A) in an amount equal to (x) such Class A Member’s outstanding Unpaid Special Preferred Yield, plus (y) such Class A Member’s outstanding Unreturned Special Contribution Amount;

(B) 50% to the Class B Members (in the proportion that each Class B Member’s share of Unpaid Special Preferred Yield with respect to its Class B Interests outstanding immediately prior to such Distribution bears to the aggregate Unpaid Special Preferred Yield with respect to all Class B Interests outstanding immediately prior to such Distribution), until each Class B Member has received cumulative Distributions pursuant to this Section 4.01(a)(ii)(B) in an amount equal to (x) such Class B Member’s outstanding Unpaid Special Preferred Yield, plus (y) such Class B Member’s outstanding Unreturned Special Contribution Amount; and
(C) no Distribution or any portion thereof shall be made pursuant to Section 4.01(a)(iii) through Section 4.01(a)(viii) until the amount required by this Section 4.01(a)(ii) has been paid in full;

(iii) Third, to the Class A Members, an amount equal to the aggregate Unreturned Capital with respect to their Class A Interests outstanding immediately prior to such Distribution (in the proportion that each Class A Member’s share of Unreturned Capital with respect to its Class A Interests outstanding immediately prior to such Distribution bears to the aggregate Unreturned Capital with respect to all Class A Interests outstanding immediately prior to such Distribution) until each such Class A Member has received cumulative Distributions with respect to its Class A Interests pursuant to this Section 4.01(a)(iii) in an amount equal to the aggregate Unreturned Capital with respect to its Class A Interests outstanding immediately prior to such Distribution, and no Distribution or any portion thereof shall be made under Section 4.01(a)(iv) through Section 4.01(a)(viii) until the entire amount of the Unreturned Capital with respect to the Class A Interests outstanding immediately prior to such Distribution has been paid in full;

(iv) Fourth, to the Class B Members, an amount equal to the aggregate Unreturned Capital with respect to their Class B Interests outstanding immediately prior to such Distribution (in the proportion that each Class B Member’s share of Unreturned Capital with respect to its Class B Interests outstanding immediately prior to such Distribution bears to the aggregate Unreturned Capital with respect to all Class B Interests outstanding immediately prior to such Distribution) until each such Class B Member has received cumulative Distributions with respect to its Class B Interests pursuant to this Section 4.01(a)(iv) in an amount equal to the aggregate Unreturned Capital with respect to its Class B Interests outstanding immediately prior to such Distribution, and no Distribution or any portion thereof shall be made under Section 4.01(a)(v) through Section 4.01(a)(viii) until the entire amount of the Unreturned Capital with respect to the Class B Interests outstanding immediately prior to such Distribution has been paid in full;

(v) Fifth, (A) thirty percent (30%) to the January Amount Member and (B) seventy percent (70%) to the Equity Members (in the proportion that each Equity Member’s share of Unpaid Equity Preferred Yield with respect to such Equity Interests bears to the aggregate Unpaid Equity Preferred Yield with respect to all Equity Interests outstanding immediately prior to such Distribution), until the January Amount Member has received cumulative Distributions pursuant to this Section 4.01(a)(v) in an amount equal to the January Amount, and no Distribution or any portion thereof shall be made pursuant to Section 4.01(a)(vi) through Section 4.01(a)(viii) until the amount required by this Section 4.01(a)(v) has been paid in full;

(vi) Sixth, to the Equity Members, an amount, if any, equal to the aggregate Unpaid Equity Preferred Yield with respect to their Equity Interests outstanding immediately prior to such Distribution (in the proportion that each Equity Member’s share of Unpaid Equity Preferred Yield with respect to such Equity Interests bears to the aggregate Unpaid Equity Preferred Yield with respect to all Equity Interests outstanding immediately prior to such Distribution), until each such Equity Member has received cumulative Distributions with respect to its Equity Interests pursuant to Section 4.01(a)(v)(B) and this Section 4.01(a)(vi) in an
amount equal to the aggregate Unpaid Equity Preferred Yield with respect to such Member’s Equity Interests outstanding immediately prior to such Distribution, and no Distribution or any portion thereof shall be made pursuant to Section 4.01(a)(vii) through Section 4.01(a)(viii) until the amounts required by this Section 4.01(a)(vi) have been paid in full;

(vii) Seventh, to the Equity Members and Class C Members pro rata in accordance with their respective Percentage Interests until each Class A Member has received cumulative Distributions with respect to its Class A Interests pursuant to Section 4.01(a)(v), Section 4.01(a)(vi) and this Section 4.01(a)(vii) in an amount equal to the Unpaid Equity Preferred Yield (applying a 17.5% rate per annum in lieu of a 9% rate per annum) with respect to such Member’s Class A Interests outstanding immediately prior to such Distribution, and no Distribution or any portion thereof shall be made pursuant to Section 4.01(a)(viii) until the entire amount of the Unpaid Equity Preferred Yield (applying a 17.5% rate per annum) with respect to the Class A Interests outstanding immediately prior to such Distribution has been paid in full; and

(viii) Eighth, to the Class A Members, Class B Members, Class C Members and Class D Members pro rata in accordance with their respective Percentage Interests.

(b) Each Employee Member acknowledges and agrees that the Percentage Interest attributable to the Employee Interests held by such Employee Member is subject to reduction and/or dilution pursuant to the terms of the Grant Agreement entered into by such Employee Member and the LLC. Each Employee Member further acknowledges and agrees that the Percentage Interest attributable to the Employee Interests held by such Employee Member is subject to pro rata reduction and/or dilution, in the discretion of the Board, to the extent additional Employee Interests are issued to new or existing Employee Members.

(c) The LLC shall not make any Distribution unless such Distribution is permitted under the LLC’s agreements with its lenders.

(d) Notwithstanding anything herein to the contrary, no proceeds or payments paid to the ACON Member (or its Affiliates) or the Laguna Member (or its Affiliates) under the ACON Management Agreement or the Laguna Management Agreement shall be included in, or otherwise impact the calculation of, the ACON Member’s Distributions or the Laguna Member’s Distributions under this Article IV.

Article V.
MANAGEMENT

Section 5.01. Management by the Board of Managers. Except for cases in which the approval of the Members is expressly required by this Agreement or by nonwaivable provisions of applicable law, and subject to the provisions of Section 6.05(b) and Section 9.05(h), the powers of the LLC shall be exercised by or under the authority of, and the business and affairs of the LLC, including overseeing management of the LLC Subsidiaries, shall be managed solely under the direction of, a board of managers constituted in accordance with this Agreement (the “Board”), and the Board shall have authority to make all decisions
regarding the operation and management of the LLC and its Subsidiaries, except as specifically delegated to an officer of the LLC by Majority Vote of the Board.

**Section 5.02. Board Composition.**

(a) Each Member shall vote all of his, her or its Interests and any other voting securities of the LLC over which such Member has voting control and shall take all other necessary or desirable actions, within his, her or its control (whether in his, her or its capacity as a Member, Manager, member of a committee or officer of the LLC or any equivalent positions of any Subsidiary of the LLC or otherwise, and including, without limitation, attendance at meetings in person or by proxy for purposes of obtaining a quorum and execution of written consents in lieu of meetings), and the LLC shall take all necessary and desirable actions within its control (including, without limitation, calling special Board and Member meetings), so that (subject to clauses (i) - (iii) below) the Board shall consist of five Managers, three of whom shall be designated by a majority of the Class B Interests (the “Class B Managers”), and two of whom shall be designated by the ACON Member (the “ACON Managers”). The Class B Managers initially appointed to the Board by the Laguna Member, which holds all of the Class B Interests as of the date hereof shall be: Florentino Rivero Rodriguez; Jose Antonio Tricio Haro; and Adam Kriger. The ACON Managers initially appointed to the Board by the ACON Member as of the date hereof shall be: Aron Schwartz and Harold Strunk.

(i) Upon Board approval, the Board may increase its size from five Managers to seven Managers. Upon such an increase, the Laguna Member shall appoint one of the additional Managers and the ACON Member shall appoint the other additional Manager. Each such additional Manager shall be deemed a Class B Manager and an ACON Manager, respectively, for all purposes hereunder.

(ii) For so long as the Laguna Member owns more Equity Interests than the ACON Member, Mr. Kriger (and his direct or indirect successor) may only be removed for Cause, and in the event that a vacancy is created on the Board at any time due to the death, disability, retirement, resignation or removal of Mr. Kriger or the individual (directly or indirectly) succeeding him on the Board, the Laguna Member (on behalf of all Class B Members) shall within ten Business Days appoint to the Board one of the Manager Alternates, provided that if none of the Manager Alternates agrees (or is available) to serve on the Board, then the ACON Member shall promptly provide the Laguna Member in writing with the names of at least four additional individuals that would be acceptable to the ACON Member to be appointed by the Laguna Member to the Board, and within ten Business Days following receipt of such names the Laguna Member shall appoint one of those individuals to the Board. For the avoidance of doubt, the Laguna Member (on behalf of all Class B Members) may only replace Mr. Kriger (or the person directly or indirectly succeeding him) (i) with a Manager Alternate (or if no Manager Alternate agrees (or is available) to serve on the Board, one of the persons identified in writing by the ACON Member pursuant to the immediately preceding sentence) or (ii) with such other individual approved in writing by the ACON Member. For so long as the Laguna Member owns more Equity Interests than the ACON Member, the Board shall take no action on behalf of the LLC or any LLC Subsidiary, nor shall it convene any meetings, unless and until Mr. Kriger (or his direct or indirect successor, as applicable) has been duly replaced in
accordance with this Section 5.02(a)(ii). If the Laguna Member (on behalf of all Class B Members) appoints any person to replace Mr. Kriger (or his direct or indirect successor) in violation of this Section 5.02(a)(ii) (an “Improper Appointee”), then any such Manager appointed in violation of this Section 5.02(a)(ii) shall be deemed automatically removed from the Board. If a replacement Manager is not nominated and elected to the Board in accordance with this Section 5.02(a)(ii) within 30 days following the delivery of written notice from the ACON Member to the Laguna Member requesting that the Laguna Member (on behalf of all Class B Members) nominate and elect a replacement Manager to the Board in accordance with this Section 5.02(a)(ii), in which notice the ACON Member informs the Laguna Member that one of the Manager Alternates, or such other individual acceptable to the ACON Member, is available and willing to serve as a Manager (the “Vacancy Period”), then the ACON Member shall have the right (but not the obligation) to purchase from the Laguna Member (and/or any of its Affiliates that own Equity Interests) that number of Equity Interests required such that immediately thereafter the ACON Member will hold 51% of all issued and outstanding Equity Interests (the “Equity Transfer”). The ACON Member may exercise this right any time within 60 days following the expiration of the Vacancy Period by delivering written notice to the Laguna Member of its intention to purchase such Equity Interests from the Laguna Member (and/or its Affiliates). The purchase price per interest for each such Equity Interest will equal the lesser of (A) Fair Market Value of one unit of such Equity Interest and (B) $1.107759. The parties will use their commercially reasonable efforts to consummate any Equity Transfer (which shall be free and clear of any liens and encumbrances other than those imposed by this Agreement and applicable securities laws) promptly following the ACON Member’s exercise hereunder, but in no event later than 15 Business Days thereafter (subject to any reasonable extensions required to obtain necessary governmental authority approvals and to release any liens or other encumbrances). Further, the Laguna Member will provide reasonable and customary representations and warranties solely as to title to such Interests being sold, and the Laguna Member’s power, authority and right to enter into the pertinent transaction without contravention of law or material contracts, in each case solely to the ACON Member in the purchase agreement executed and delivered by the parties in connection therewith, provided, further, that such purchase agreement shall not provide for indemnification of the ACON Member or any other person for any reason in an amount in excess of the price paid for the Equity Interests transferred thereby. Each Class B Member hereby agrees that the Laguna Member shall have sole power and authority on behalf of all Class B Members to exercise the rights and obligations of the Class B Members pursuant to this Section 5.02(a)(ii) and each Class B Member hereby appoints the Laguna Member as its attorney, with full power of substitution, in the name and on behalf of each Class B Member to execute and deliver all documents and instruments and take all steps, in each case, to the extent necessary to exercise the rights and obligations of the Class B Members pursuant to this Section 5.02(a)(ii). The ACON Member and the LLC shall be entitled to rely on the authority granted to the Laguna Member pursuant to this Section 5.02(a)(ii) and to rely exclusively upon the communications of the Laguna Member with respect to the rights and obligations of the Class B Members pursuant to this Section 5.02(a)(ii), as the communications of the Class B Members, and the ACON Member and the LLC shall have no liability for any such reliance. Neither the ACON Member nor the LLC shall be held liable or accountable in any manner for any act or omission of the Laguna Member in such capacity.
(iii) Notwithstanding the above, in the event that the Laguna Member owns fewer Equity Interests than the ACON Member for any reason (including, without limitation, pursuant to an Equity Transfer, Article VII or otherwise) then immediately as of such date, and without any further action taken by any party hereto, the Class B Members shall have the right to designate only two Managers and the ACON Member shall have the right to designate three Managers (or, if the Board had been expanded pursuant to clause (i) above, the ACON Manager shall then have the right to designate four Managers), and Section 5.02(a) shall be deemed amended accordingly. In furtherance of the foregoing, the Class B Members will immediately remove one of the Class B Managers on such date.

(b) Subject to clause (a)(ii) above: (i) the removal at any time from the Board (with or without cause) of any Manager shall be at the written direction of the Person or Persons entitled to designate such Manager to the Board at such time; and (ii) in the event of any removal of any Manager from the Board, the Member(s) entitled to appoint such Manager shall be entitled to appoint a new Manager to fill such vacancy, to the extent applicable.

c) At all times, the composition of any board of managers or directors of any LLC Subsidiary shall be as solely determined by the Board, provided that for so long as the Laguna Member owns more Equity Interests than the ACON Member, (i) the Laguna Member shall have the right (but not the obligation) to appoint at least one director to the board of managers or directors of any LLC Subsidiary to the extent an ACON Manager has been appointed to any such board, and (ii) the Laguna Member shall receive and have access to the same information with respect to business of such LLC Subsidiary (including information relating to the meetings and actions of any such boards) that the ACON Member receives or to which it has access.

d) In connection with any Equity Transfer pursuant to Section 5.02(a) or Section 9.06, and solely for the purpose of enforcing the ACON Member’s rights under Section 5.02(a) or Section 9.06, the Laguna Member hereby appoints the ACON Member as its attorney, with full power of substitution, in the name and on behalf of the Laguna Member to execute and deliver all documents and instruments and take all steps, in each case solely to give effect to such Equity Transfer and to establish a binding contract of purchase and sale between ACON Member and Laguna Member to complete the Equity Transfer, subject to the limitations set forth herein. Such appointment, being coupled with an interest, is irrevocable by the Laguna Member and shall not be revoked by the insolvency, bankruptcy, death, incapacity, dissolution, liquidation or other termination of the existence of the Laguna Member. The Laguna Member agrees that it shall ratify and confirm all acts that the ACON Member may do or cause to be done pursuant to the foregoing provided it is consistent with the ACON Member’s rights pursuant to this Agreement. The Laguna Member consents to any transfer of Interests made pursuant to the foregoing. The Laguna Member hereby agrees not to take any action in the future which would result in the termination of this power of attorney.

Section 5.03. Resignation. A Manager may resign from the Board by delivering his, her or its written resignation to the LLC at the LLC’s principal office. Said resignation shall be effective upon receipt thereof unless it is specified to be effective at some other time or upon the happening of some other event. In the event of any resignation of any Manager from the Board, subject to Section 5.02(a)(ii) above, the Member entitled to appoint
such Manager shall be entitled to appoint a new Manager to fill such vacancy, to the extent applicable.

Section 5.04. Meetings of and Actions by the Board.

(a) A majority of the total number of Managers designated pursuant to Section 5.02, including the Designated ACON Manager, shall constitute a quorum for the transaction of business of the Board. Each Manager shall have one vote on all matters submitted to the Board or any committee thereof. All Board actions and decisions require a Majority Vote unless otherwise expressly provided in this Agreement.

(b) The LLC shall pay the reasonable out-of-pocket expenses incurred by each Manager in connection with attending meetings of the Board and any committee thereof. Except for reimbursement of reasonable out of pocket expenses incurred in connection with attending meetings of the Board, Managers that are employees of the LLC or its Subsidiaries shall not be compensated for their services as Managers. Managers other than Florentino Rivero Rodriguez, Jose Antonio Tricio Haro, Aron Schwartz or any other employee of the ACON Member, the Laguna Member or their respective Affiliates may be entitled to receive, if and only if determined by the Board, reasonable compensation for their services as Managers that is customary for managers serving on the boards of comparable entities.

(c) Regular meetings of the Board shall be held at such times and places as shall be designated from time to time by Majority Vote of the Board.

(d) Special meetings of the Board may be called by any two Managers (always including at least the Designated ACON Manager) at any time on at least 24 hours actual notice to each other Manager. Such notice need not state the purpose or purposes of, nor the business to be transacted at, such meeting, except as may otherwise be required by law or provided for in this Agreement.

(e) Attendance of a Manager at a meeting shall constitute a waiver of notice of such meeting, except where a Manager attends a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

Section 5.05. Committees. The Board may form one or more committees, each committee to consist of one or more Managers, but must in each case include at least one ACON Manager and one Class B Manager, unless such right is waived in writing by the ACON Member and the Laguna Member (on behalf of all Class B Members), respectively. Subject to the foregoing, the Board shall determine which Managers serve on any such committee. Any such committee, to the extent provided in an applicable resolution of the Board, shall have and may exercise all of the powers and authority of the Board. Meetings of any committee shall be held on at least 24 hours actual prior notice to each committee member and each other Person entitled to receive notice of such meetings. At every meeting of any such committee, the presence of a majority of all members thereof plus at least one ACON Manager shall constitute a quorum, and the affirmative vote of a majority of Managers present plus at least
one ACON Manager shall be necessary for the adoption of any resolution. The Board may
dissolve any committee at any time.

Section 5.06. Action by Written Consent or Telephone Conference.

(a) Any action permitted or required by the Act, the Certificate or this
Agreement to be taken at a meeting of the Board (or any committee of the Board) may be taken
without a meeting if a consent in writing, setting forth the action to be taken, is signed by
Managers representing a Majority Vote. Such consent shall have the same force and effect as a
vote at a meeting where a quorum was present and may be stated as such in any document or
instrument filed with the Secretary of State of Delaware. Promptly following the taking of any
action by written consent that is other than unanimous, the LLC shall provide notice of such
action to all of the Managers.

(b) Subject to the requirements of the Act, the Certificate or this Agreement
for notice of meetings, the Managers or members of any committee of the Board may
participate in and hold a meeting of the Board or any committee, as the case may be, by means
of a conference telephone or similar communications equipment by means of which all Persons
participating in the meeting can hear each other, and participation in such meeting shall
constitute attendance and presence in person at such meeting, except where a person
participates in the meeting for the express purpose of objecting to the transaction of any
business on the ground that the meeting is not lawfully called or convened.

Section 5.07. Appointment of Officers. The Board may, from time to
time, delegate to one or more individuals such authority and duties as the Board deems
advisable. In addition, the Board may assign titles (including, without limitation, chairman of
the board, chief executive officer, president, chief operating officer, chief financial officer, vice
president, secretary, assistant secretary, treasurer or assistant treasurer) to any individuals and
delegate to such individuals certain authority and duties. Any number of titles may be held by
the same individuals. The salaries or other compensation, if any, of such individuals shall be
fixed from time to time by the Board. Any delegation pursuant to this Section 5.07 may be
revoked at any time by the Board, in its sole and absolute discretion. As of the date hereof, the
officers of the LLC are as follows, each of whom is elected to the office set forth opposite his or
her name to serve until his or her resignation or earlier removal by the Board:

<table>
<thead>
<tr>
<th>Name</th>
<th>Title(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aron Schwartz</td>
<td>Vice President</td>
</tr>
<tr>
<td>Adam Kriger</td>
<td>Vice President</td>
</tr>
<tr>
<td>Ricardo Ortega</td>
<td>Vice President</td>
</tr>
<tr>
<td>Friné Galván</td>
<td>Vice President</td>
</tr>
</tbody>
</table>
For the avoidance of doubt, all other persons who were, prior to the execution and delivery of this Agreement, an officer of the LLC is hereby removed from such position effective as of the date hereof.

**Article VI.**

**RIGHTS AND OBLIGATIONS OF MEMBERS**

**Section 6.01.** **Performance of Duties.** In performing a Member’s or a Manager’s duties hereunder, a Person shall be entitled to rely in good faith on the provisions of this Agreement and on information, opinions, reports or statements (including financial statements and information, opinions, reports or statements as to the value or amount of the assets, liabilities, profits or losses of the LLC or any facts pertinent to the existence and amount of assets from which Distributions might properly be paid) of the following other Persons or groups: one or more employees of the LLC or its Subsidiaries, any attorney, independent accountant, appraiser or other expert or professional employed or engaged by or on behalf of the LLC or its Subsidiaries, the Board or any committee of the Board, or any other Person who has been selected with reasonable care by or on behalf of the LLC, the Board or any committee of the Board, in each case as to matters which such relying Person reasonably believes to be within such other Person’s competence. The preceding sentence shall in no way limit any Person’s right to rely on information to the extent provided in Section 18-406 of the Act. No Member or Manager shall be personally liable under any judgment of a court, or in any other manner, for any debt, obligation or liability of the LLC, whether that liability or obligation arises in contract, tort or otherwise, solely by reason of being a Member or a Manager.

**Section 6.02.** **Meetings.** Meetings of the Members may be called by (a) a Majority Vote, or (b) Members holding a Majority of Voting Interests upon ten days’ notice to all Members in writing or by telephone or facsimile. No business shall be acted upon at a special meeting that is not stated in the notice of the meeting. Meetings of Members may be held by telephone or any other communications equipment by means of which all participating Members can simultaneously hear each other during the meeting.

**Section 6.03.** **Quorum.** Subject to Section 6.05(b), no action may be taken at a meeting of Members unless a quorum consisting of the Members holding at least the Majority of Voting Interests is present.

**Section 6.04.** **Action by Written Consent.** Subject to Section 6.05(b), any action that may be taken by the Equity Members under this Agreement may be taken without a meeting if consents in writing setting forth the action so taken are signed by Members holding a Majority of Voting Interests. All Equity Members who do not participate in taking the action by written consent shall be given written notice thereof by the LLC promptly after such action has been taken.

**Section 6.05.** **Voting Rights; Required Vote.**

(a) **General.** Except as otherwise required by law, only Equity Members shall have voting rights. Except as otherwise required by law, Employee Members shall not be entitled to a vote for their respective Employee Interests. There shall be no cumulative voting.
(b) **Approval by the Equity Members.** Subject to Section 6.05(a), any actions proposed to be taken by or on behalf of the LLC or any LLC Subsidiary that require the approval of the Members under Delaware law and that are not permitted to be delegated to the Board, shall require the consent of the requisite Members required by Delaware law, in each case, the ACON Member, in order to approve, and prior to the taking of, any such action.

**Section 6.06. Waivers of Notice.** Whenever the giving of any notice to Members is required by statute or this Agreement, a waiver thereof, in writing and delivered to the LLC signed by the Person or Persons entitled to said notice, whether before or after the event as to which such notice is required, shall be deemed equivalent to notice. Attendance of a Member at a meeting or execution of a written consent to any action shall constitute a waiver of notice of such meeting or action, unless such Member participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

**Section 6.07. Lack of Authority.** No Member (other than a Manager or an authorized officer of the LLC) has the authority or power to act for or on behalf of the LLC, to do any act that would be binding on the LLC or to make any expenditures on behalf of the LLC.

**Section 6.08. Limited Liability.** Except as otherwise provided by the Act, the debts, obligations and liabilities of the LLC, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the LLC, and no Member or Manager shall be obligated personally for any such debt, obligation or liability of the LLC solely by reason of being a Member or Manager.

**Section 6.09. Investment Opportunities and Conflicts of Interest.**

(a) Subject to the restrictions on Competitive Businesses described below, to the fullest extent permitted by law, the doctrine of corporate opportunity shall not apply to the Equity Members or Managers, or any of its or their respective Affiliates; provided, however, that, subject to Section 3.04(d)(ii), the doctrine of corporate opportunity shall apply to, and no Member nor any of its Affiliates may pursue or participate in (without prior Board approval, which may be granted or withheld in the Board’s sole discretion), any business opportunity that is presented to the Board (a “Board Opportunity”).

(b) Subject to the restrictions on Competitive Businesses described below and the proviso in Section 6.09(a), the LLC renounces any interest or expectancy of the LLC in being offered an opportunity by any Equity Member or Manager or any of its or their respective Affiliates, to participate in business opportunities that are from time to time presented to such Persons, but does not renounce any interest or expectancy of the LLC in being offered an opportunity by any other Member or employee of the LLC, or any of such Persons’ Affiliates, to participate in business opportunities that are from time to time presented to such Persons that directly relate to the LLC’s business. No Equity Member nor any Manager nor any of its or their respective Affiliates, shall have any duty to communicate knowledge of or offer any potential transaction, agreement, arrangement or other matter that may be an opportunity for the LLC to the LLC other than with respect to a Competitive
Business or Board Opportunity, and no Equity Member nor any Manager nor any of its or their respective Affiliates, shall be liable to the LLC or to the other Members for breach of any fiduciary or other duty solely by reason of the fact that such Person directs such opportunity (that is not a Competitive Business or Board Opportunity) to another Person or does not communicate such opportunity or information to the LLC. No amendment or repeal of this Section 6.09 shall apply to or have any effect on the liability or alleged liability of any Equity Member or Manager nor any of its or their respective Affiliates, for or with respect to any opportunities (that are not a Competitive Businesses or Board Opportunities) of which they become aware prior to such amendment or repeal.

(c) Each Member and the LLC, expressly acknowledge and agree that, except with respect to a Competitive Business or Board Opportunity: (i) each of the ACON Member and Laguna Member, and their respective Affiliates, are permitted to have, and may presently or in the future have, investments or other business or strategic relationships, ventures, agreements or other arrangements with entities other than the LLC or any LLC Subsidiary that are engaged in the business of the LLC or any LLC Subsidiary, or that are or may be competitive with the LLC or any LLC Subsidiary (any such other investment or relationship, an “Other Business”); (ii) neither the ACON Member, the Laguna Member, nor their respective Affiliates will be prohibited by virtue of such Member’s investment in the LLC from pursuing and engaging in any Other Business; (iii) neither the ACON Member, the Laguna Member, nor their respective Affiliates will be obligated to inform the LLC or any Other Member of any opportunity, relationship or investment in any Other Business (a “Company Opportunity”) or to present any Company Opportunity to the LLC, and the LLC hereby renounces any interest in any Company Opportunity and any expectancy that a Company Opportunity will be offered to it; (iv) nothing contained herein shall limit, prohibit or restrict any ACON Manager or Class B Manager from serving on the board of directors or other governing body or committee of any Other Business; and (v) no other Member will acquire, be provided with an option or opportunity to acquire, or be entitled to any interest or participation in any Other Business as a result of the participation therein of the ACON Member, the Laguna Member, or their respective Affiliates. The parties hereto expressly authorize and consent to the involvement of the ACON Member, the Laguna Member and/or their respective Affiliates in any Other Business, which, for purposes of clarity, shall not include a Competitive Business or Board Opportunity. The parties hereto expressly waive, to the fullest extent permitted by applicable law, any rights to assert any claim that such involvement breaches any fiduciary or other duty or obligation owed to the LLC or any Member or to assert that such involvement constitutes a conflict of interest by such Persons with respect to the LLC or any Member.

Section 6.10. Noncompetition and other Restrictive Obligations.

(a) Noncompetition.

(i) Each Member on behalf of itself and its Affiliates hereby represents and warrants to the LLC and the other Members that he, she or it has agreed to be bound by the provisions of this Section 6.10 (A) with the intention of causing the effective preservation of the goodwill of the LLC’s business, and (B) to provide assurance to the LLC that, except as otherwise set forth herein, each Member shall take no action that could frustrate or
interfere with such preservation or otherwise impair such goodwill. Without limiting the
generality of the foregoing or any other provision of this Agreement, it is the intention of the
parties hereto that the covenants set forth in this Section 6.10 shall be enforceable and enforced
to the fullest extent permissible under applicable law. Notwithstanding anything in this
Section 6.10 or any other provision of this Agreement to the contrary, Grupo LALA, S.A.B. de
C.V., any of its Subsidiaries, or any of its or their successors or assigns (each an “Excluded
Entity” and collectively, the “Excluded Entities”) shall not be deemed to be Affiliates of any
Member for purposes of this Section 6.10. For the avoidance of doubt, at no time shall the
Laguna Member or any of its non-public Affiliates (including each Owner (as defined in the
Reorganization Agreement), but excluding at all times Grupo LALA, S.A.B. de C.V. and its
successors or assigns, even in the event where any such entity becomes a private company) be
deemed to be an “Excluded Entity” hereunder.

(ii) Each Member hereby covenants and agrees with the LLC and other Members that, during the Non-Compete Period (as defined below) such Member shall not, and each Member that is not a natural person shall cause (through contractual obligation or otherwise) each of its Affiliates (including its Affiliates as of the date hereof and any third parties that become Affiliates following the date hereof, but in each case, excluding any Excluded Entity) not to, do the following, directly or indirectly, acting alone or as a member of a partnership or other business entity or as a holder of any security of any class (provided, however, that nothing herein shall prohibit a Member from holding any interest in the LLC, any interest in any Excluded Entity, any interest in any Excluded Asset acquired in compliance with Section 3.04(d)(ii) (but subject to the terms and conditions of Section 3.04(d)(ii)) or less than 5% of the outstanding amount of any security of any other Person as a passive investor):

(A) engage in any Competitive Business (where “engage” shall be deemed to include owning, managing, operating, controlling, financing or participating in, or participating in the ownership, management, operation, control or financing of, or being connected as an owner, investor, licensor, partner, joint venturer, director, limited liability company manager, employee, independent contractor, consultant or other agent of, any Competitive Business);

(B) request, induce or attempt to influence any Person who is or was a customer or client of the LLC (or any Subsidiary thereof) to limit, curtail or cancel its business with the LLC (or any Subsidiary thereof), or any successor thereto; or

(C) request, induce, solicit, encourage, support or attempt to influence any current (as of the date of this Agreement) or future (as of the date of termination of the Member or the Member ceasing to be a Member (as applicable)) employee, consultant, agent or representative of the LLC (or any Subsidiary thereof), to terminate his, her or its employment or business relationship with the LLC (or any Subsidiary or Affiliate thereof), other than any general solicitation not targeting any future employee or consultant.

(iii) For the purposes of this Section 6.10, the “Non-Compete Period” means, the period ending on the first anniversary of the earlier to occur of (A) to the extent applicable, the termination of such Member’s employment with the LLC or any of its Subsidiaries, and (B) the date that such Member ceases to be a Member; provided, however, that
such period will be extended by and for the duration of any period of time during which such Member is in violation of any provision of this Section 6.10.

(iv) The provisions of Section 6.10 are separate and distinct commitments independent of each of the other such clauses; provided, however, that the modification of the definition of Affiliates set forth in Section 6.10(a)(i) and the provisions of Section 6.10(e) shall apply throughout all provisions of Section 6.10. For the purposes of this Section 6.10, “Competitive Business” means any business other than (i) the LLC and its Subsidiaries or (ii) any Excluded Entity that (A) engages in the production, manufacturing, processing, marketing, distribution and/or sale of fresh fluid milk in the United States (B) engages in the production, manufacturing, processing, marketing, distribution and/or sale of any milk, including milks in ESL (Extended-Shelf-Life) or UHT (Ultra High Temperature) formats (including without limitation skimmed, whole-milk, fat free, etc.) in the States where the LLC and its Subsidiaries have sold milk in the twelve-month period preceding the date hereof, or (C) owns, licenses, sublicenses or otherwise enjoys the right to produce, manufacture, process, market, distribute and/or sell any products that use in any way the trademarks for the name or associated images/logos for “Borden” or “Elsie the Cow” in the United States, irrespective of whether such business is using such trademarks or associated logos.

(b) Each Member agrees that the LLC has no adequate remedy at law for any breach or threatened or attempted breach by him, her or it of the covenants and agreements set forth in this Section 6.10 and, accordingly, such Member also agrees that the LLC (and any Subsidiary thereof) may, in addition to the other remedies that may be available to it under this Agreement or at law, commence proceedings in equity for an injunction temporarily or permanently enjoining such Member from breaching or threatening or attempting any such breach of such covenants and agreements, seeking specific performance, or seeking any other remedy available in equity, and for purposes of any such proceeding in equity, it shall be presumed that the remedies at law available to the LLC (or any Subsidiary thereof) would be inadequate and that it would suffer irreparable harm as a result of the violation of any provision hereof by such Member.

(c) All of the parties hereto agree that the scope and duration of the covenants set forth in this Section 6.10 are reasonable. Notwithstanding the foregoing, each Member agrees that if the scope or duration of any covenant set forth in this Section 6.10 is deemed by any court to be overly broad, the court may reduce the scope or duration thereof to that which it deems reasonable under the circumstances; provided, however, that as set forth above, it is the intention of the parties that such covenant be enforced and enforceable to the fullest extent permissible under applicable law. If any one or more provisions of this Section 6.10 shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, then to the maximum extent permitted by law, such invalidity, illegality or unenforceability shall not affect any other provision of this Section 6.10.

(d) Each Member agrees that the covenants and agreements of such Member set forth in this Section 6.10 are independent of all other covenants, representations, warranties and agreements of the parties set forth in this Agreement, and no default, breach or failure to perform by any party to the Agreement shall constitute an excuse or other justification for each Member to fail to observe fully its covenants and agreements under this Section 6.10. No
course of dealing between the LLC (or any Subsidiary thereof), on the one hand, and any Member, on the other hand, and no delay by the LLC (or any Subsidiary thereof) in exercising any right, power or remedy under this Section 6.10, in equity or at law, shall constitute a waiver of, or otherwise prejudice, any such right, power or remedy.

(e) The LLC and the ACON Member hereby acknowledge and agree that none of the provisions in this Section 6.10 shall directly or indirectly, or in any way, restrict the ownership, business or operations (whether existing now or in the future) of any Excluded Entity and that the Laguna Member and its Affiliates shall not be required to take any action (contractual or otherwise) to restrict such ownership, business or operation of any Excluded Entity.

Section 6.11. Tax Receivable Dividends. Notwithstanding anything in this Agreement to the contrary, the Equity Members shall (and shall cause their Managers appointed by such Equity Member to), promptly following the determination that any TRA Distribution is payable pursuant to Section 4.01(a)(i), cause Borden Dairy Company (and any other subsidiary of the LLC that is a direct or indirect equityholder of Borden Dairy Company) to declare and pay a distribution to the LLC (or, as applicable, such subsidiary of the LLC that is a direct or indirect equityholder of Borden Dairy Company) in an amount equal to such TRA Distribution (or in such aggregate amount as such applicable entity has received as a distribution or dividend in respect of the amount payable in connection with such TRA Distribution from such entity’s subsidiaries), in each case, to the extent permitted under applicable law. If at any time that a TRA Distribution becomes payable, the declaration or payment of any dividend or distribution required to be made pursuant to this Section 6.11 is not permitted to be made by applicable law or Section 4.01 of the Tax Receivable Agreement, such distribution or dividend shall be made (and the Equity Members shall cause such distributions or dividends to be made) as soon as permitted by applicable law and/or the Tax Receivable Agreement, as applicable, and no Distributions pursuant to Sections 4.01(a)(ii) - (viii) of this Agreement shall be payable unless and until all such distributions and dividends shall have been made in full.

Article VII.
REORGANIZATION AGREEMENT INDEMNIFICATION FAILURE

Section 7.01. Equity Remedy.

(a) If (x) (i) the Laguna Member (or an Affiliate thereof that is party to the Reorganization Agreement) expressly agrees in writing (any such express written agreement, an “Agreement of Liability”) that the Laguna Member (or an Affiliate thereof that is party to the Reorganization Agreement) is obligated to indemnify any Investor Indemnified Party (as defined in the Reorganization Agreement) pursuant to Section 7.02 of the Reorganization Agreement or the Tax Indemnity (as defined in the Reorganization Agreement), or (ii) any Investor Indemnified Party (as defined in the Reorganization Agreement) secures an order, judgment or decree of a Governmental Authority (as defined in the Reorganization Agreement) stating that any such indemnity is required to be paid by the Laguna Member (or an Affiliate thereof that is party to the Reorganization Agreement) pursuant to Section 7.02 of the Reorganization Agreement or the Tax Indemnity (as defined in the Reorganization Agreement) and such order, judgment or decree is final and nonappealable (a “Final Order”), and (y) such
indemnification payment is not limited to the Escrow Amount pursuant to the terms of Section 7.04 of the Reorganization Agreement, then the ACON Member may deliver to the Laguna Member a written notice (an “Equity Remedy Notice”) stating that it intends to exercise its rights under this Article VII. If the Laguna Member fails to make (or cause to be made) the entire payment required by any Agreement of Liability or any Final Order, including any cash indemnification payment, to, as applicable, the LLC, the ACON Member or any of their respective Affiliates within thirty (30) days from the date on which an Equity Remedy Notice with respect to such Agreement of Liability or Final Order was first delivered to the Laguna Member, then the ACON Member shall be entitled (but not obligated) to receive from the Laguna Member (and/or any of its Affiliates that own Equity Interests), and the Laguna Member (and/or any of its Affiliates that own Equity Interests) shall be required to Transfer to the ACON Member, for no additional consideration (other than the satisfaction in part or in full of such obligations pursuant to the terms hereof), that number of Equity Interests (free and clear of all liens and encumbrances other than those imposed by this Agreement and applicable securities laws) whose value is equal to, in the aggregate, the amount of the payment required pursuant to such applicable Agreement of Liability or Final Order (it being agreed and understood that if such outstanding payment was due and owing to the LLC (a “Company-Required Indemnity”), the amount of Equity Interests to be Transferred to the ACON Member shall be that number of Equity Interests whose value is equal to, in the aggregate, the ACON Member’s beneficial interest (based on the ACON Member’s Percentage Interest of the LLC in proportion to all Members as of such time) in such outstanding payment), provided that each such Interest will be valued at Fair Market Value as of the date of consummation of such Transfer. In the event the Fair Market Value of all such Equity Interests transferred to the ACON Member is less than the amount of the payment required pursuant to such applicable Agreement of Liability or Final Order (it being agreed and understood that if such outstanding payment was due and owing to the LLC (a “Company-Required Indemnity”), the amount of Equity Interests to be Transferred to the ACON Member shall be that number of Equity Interests whose value is equal to, in the aggregate, the ACON Member’s beneficial interest (based on the ACON Member’s Percentage Interest of the LLC in proportion to all Members as of such time) in such outstanding payment), provided that each such Interest will be valued at Fair Market Value as of the date of consummation of such Transfer. In the event the Fair Market Value of all such Equity Interests transferred to the ACON Member is less than the amount of the payment required pursuant to such applicable Agreement of Liability or Final Order, and such payment is not required as part of a Company-Required Indemnity (which is subject to reduction pursuant to Section 7.01(c)), the Laguna Member’s liability to the Investor Indemnified Parties with respect to such payment shall be reduced by the Fair Market Value of all such Equity Interests transferred to the ACON Member.

(b) In connection with any Transfer of Equity Interests pursuant to this Article VII and solely for the purpose of enforcing the ACON Member’s rights under hereunder, the Laguna Member hereby appoints the ACON Member as its attorney, with full power of substitution, in the name and on behalf of the Laguna Member to execute and deliver all documents and instruments and take all steps, in each case solely to give effect to such Transfer contemplated by this Article VII and to establish a binding contract between the Laguna Member and the ACON Member to complete such Transfer, subject to the limitations set forth herein. Such appointment, being coupled with an interest, is irrevocable by the Laguna Member and shall not be revoked by the insolvency, bankruptcy, death, Incapacity, dissolution, liquidation or other termination of the existence of the Laguna Member. The Laguna Member agrees that it shall ratify and confirm all acts that the ACON Member may do or cause to be done pursuant to the foregoing provided it is consistent with the ACON Member’s rights pursuant to this Agreement. The Laguna Member consents to any Transfer of Equity Interests made pursuant to the foregoing. The Laguna Member hereby agrees not to take any action in the future which would result in the termination of this power of attorney.
(c) Each of the Members and the LLC acknowledge and agree, on behalf of itself and its and their Affiliates, that in connection with any Transfer of Interests to the ACON Member in connection with a Company-Required Indemnity described in this Article VII, the Laguna Member’s remaining liability to the LLC, if any, shall be reduced to an aggregate amount equal to the product of (a) (i) one (1) minus (ii) the quotient of (x) the aggregate Fair Market Value of all Interests Transferred to the ACON Member as of the day of such Transfer divided by (y) the product of (A) the amount of the payment required pursuant to such applicable Agreement of Liability or Final Order multiplied by (B) the ACON Member’s Percentage Interest of the LLC in proportion to all Members as of such time, multiplied by (b) the amount of the payment required pursuant to such applicable Agreement of Liability or Final Order. Each Member and the LLC hereby covenants to execute such waivers and other documents as shall be required to give effect to the reduction of liability to the LLC contained in any such Agreement of Liability or Final Order provided for in the immediately preceding sentence.

(d) The Laguna Member will provide reasonable and customary representations and warranties solely as to title to such Interests being sold, and the Laguna Member’s power, authority and right to enter into the pertinent transaction without contravention of law or material contracts, in each case solely to the ACON Member in the purchase agreement executed and delivered by the parties in connection therewith, provided, further, that such purchase agreement shall not provide for indemnification of the ACON Member or any other person for any reason in an amount in excess of the Fair Market Value of the Equity Interests transferred thereby.

Section 7.02. Escrow Upon Sale. In the event that both (A) (i) the LLC makes any Distributions pursuant to Section 4.01(a)(ii) – (viii) or Section 10.02, (ii) any payment becomes due and owing to the Laguna Member as a result of a Transfer of any of its Equity Interests to any Person other than one or more of the Permitted Transferees of the Laguna Member contemplated by clauses (i) and (ii) of Section 9.01(a), or (iii) any payment becomes due and owing with respect to the Equity Interests or the Laguna Member as a result of a Sale of the LLC to a third party other than the Laguna Member or any of its Affiliates (any event in the foregoing clauses (i), (ii) and (iii), a “Payment Event”) and (B) at the time of any Payment Event, (x) there shall have been issued an order, judgment or decree of a Governmental Authority (as defined in the Reorganization Agreement) (other than any Final Order) of competent jurisdiction (any such order, judgment or decree that is not a Final Order, an “Interim Order”) in favor of any Investor Indemnified Party (as defined in the Reorganization Agreement), (y) such Interim Order has not been vacated, nullified, or otherwise rescinded as of the date of such Payment Event, and (z) the Laguna Member and its Affiliates shall not have fully and finally fulfilled their payment obligations pursuant to such Interim Order as of the date of such Payment Event, then, the proceeds payable to the Laguna Member (and/or any of its Affiliates that own Equity Interests) in connection with such Payment Event shall be subject to the provisions of this Section 7.02. At the time of such Payment Event, under the circumstances described in item (B) of the immediately preceding sentence (an “Escrow Event”), the ACON Member and the Laguna Member shall enter into an escrow
agreement in form and substance consistent with this Section 7.02 and reasonably acceptable to
the ACON Member and the Laguna Member (the “Escrow Agreement”) with an escrow agent in
the United States reasonably acceptable to the ACON Member and the Laguna Member (the
“Escrow Agent”). Concurrently with the payment of any amounts payable to the Laguna
Member (and/or any of its Affiliates that own Equity Interests) in connection with any Payment
Event that is an Escrow Event, the LLC and the Laguna Member shall cause such amounts to be
deposited with the Escrow Agent (in lieu of payment to the Laguna Member) into an escrow
account to be held and paid pursuant to the Escrow Agreement an amount up to (together with all
other amounts previously deposited into escrow pursuant to this Section 7.02) the aggregate
amounts awarded in such Interim Order in favor of any Investor Indemnified Party (as defined in
the Reorganization Agreement), pursuant to Section 7.02 of the Reorganization Agreement or the
Tax Indemnity (as defined in the Reorganization Agreement), solely out of the proceeds
otherwise payable to the Laguna Member (and/or any of its Affiliates that own Equity Interests)
in connection with such Payment Event (such deposited amount, the “Escrow Funds”) (provided
that in connection with any Company-Required Indemnity, the amount deposited into escrow
shall equal the amount of the Escrow Funds multiplied by the ACON Member’s Percentage
Interest of the LLC in proportion to all Members as of such time). The Escrow Funds shall be
held by the Escrow Agent until the entry of a Final Order or the execution of an Agreement of
Liability with respect to the matters in the applicable Interim Order. Upon the entry of such
Final Order or the execution of such Agreement of Liability, as applicable, the Laguna Member
and the ACON Member shall deliver a joint written instruction to the Escrow Agent directing the
Escrow Agent to pay (i) to the applicable Investor Indemnified Party (as defined in the
Reorganization Agreement) the amounts, if any, payable to such Investor Indemnified Party (as
defined in the Reorganization Agreement) pursuant to such Final Order or Agreement of
Liability and (ii) to the Laguna Member, the amount, if any, remaining in the Escrow Funds after
payment to the Investor Indemnified Party (as defined in the Reorganization Agreement) of the
amounts payable pursuant to clause (i) of this sentence. The fees and expenses of the Escrow
Agent under the Escrow Agreement shall be borne 50% by the ACON Member and 50% by the
Laguna Member.

Article VIII.
BOOKS, LLC FUNDS, REPORTS AND OTHER COVENANTS

Section 8.01. Maintenance of Books. The LLC shall keep books and
records of accounts in accordance with GAAP and shall keep minutes of the proceedings of its
Members, Managers and each committee.

Section 8.02. Fiscal Year. The Fiscal Year shall be the accounting year
of the LLC for financial reporting purposes.

Section 8.03. LLC Funds. The LLC may not commingle the LLC’s
funds with the funds of any Member or the funds of any Affiliate of any Member.

Section 8.04. Reserves. The Board may from time to time establish such
cash reserves as it shall determine is necessary or advisable.
Section 8.05. Maintaining Records; Access to Properties and Inspections. The LLC shall keep, and shall cause each Subsidiary of the LLC to keep, proper books of record and account for all transactions in relation to its business and activities. The LLC shall permit the representatives of any Member holding at least thirty percent (30%) of the outstanding Equity Interests, from time to time during normal business hours upon reasonable notice and at such Member’s expense (unless such expense obligation is waived by the Board), to (i) visit and inspect any of the LLC’s or its Subsidiary’s offices or properties or any other place where its assets are located to inspect the assets and/or to examine or audit all of its books of account, records, reports and other papers, (ii) make copies and extracts therefrom, and (iii) discuss its business, operations, prospects, properties, assets and liabilities with its officers and independent public accountants (and by this provision such officers and accountants are authorized to discuss the foregoing).

Section 8.06. Affiliate Transactions. Neither the LLC nor any of its Subsidiaries shall enter into or consummate any transaction of any kind with any of their respective Affiliates other than: (i) salary, bonus, employee stock option and other compensation and employment arrangements with Managers (other than Florentino Rivero Rodriguez, Jose Antonio Tricio Haro, Aron Schwartz or any other employee of the ACON Member, the Laguna Member or their respective Affiliates) or officers in the ordinary course of business; (ii) Distributions and equity issuances permitted hereunder; (iii) guaranties of the obligations of its Subsidiaries; (iv) the ACON Management Agreement (provided that any amendment to the ACON Management Agreement following the date hereof that amends the economic terms thereof shall require the consent of the Board, including a majority of the Class B Managers); (v) the Laguna Management Agreement (provided that any amendment to the Laguna Management Agreement following the date hereof that amends the economic terms thereof shall require the consent of the Board, including a majority of the ACON Managers); and (vi) the making of payments permitted under and pursuant to a written agreement entered into by and between the LLC or any of its Subsidiaries and one or more of its respective Affiliates that both reflects and constitutes a transaction on overall terms at least as favorable to the LLC or LLC Subsidiary as would be the case in an arm’s-length transaction between unrelated parties of equal bargaining power; provided, however, that nothing contained in this Section 8.06 shall prohibit:

(a) issuances of Interests in compliance with the terms of this Agreement (i) to the ACON Member or the Laguna Member or any Affiliate thereof or (ii) to managers, officers and employees of the LLC and the LLC Subsidiaries pursuant to employee benefit plans, employment agreements or other employment arrangements approved by the Board;

(b) the payment by the LLC and the LLC Subsidiaries of reasonable compensation and benefits to its managers, officers and employees; or

(c) upon Board approval, transactions with the ACON Member, as lender, pursuant to which the ACON Member (or any of its Affiliates) would provide debt financing to the LLC; provided, however, the Laguna Member shall have the right (but not the obligation) to participate as a lender on a pro rata basis (corresponding to the respective Percentage Interests held by the ACON Member and the Laguna Member) with, and on substantially the same terms as, the ACON Member to provide part of such debt financing to the LLC; provided further, however, that if the Board determines that it is in the best interests of the LLC because
of the needs of the LLC, then, the LLC may comply with the provisions of this Section 8.06(c) by affording the Laguna Member the opportunity to participate as lender on a pro rata basis (corresponding to the respective Percentage Interests held by the ACON Member and the Laguna Member) in such debt financing promptly, and in no event later than 30 days, after the ACON Member consummates any such debt financing (it being understood that such opportunity may be provided by having the ACON Member transfer the applicable portion of the debt financing to the Laguna Member, in exchange for the applicable consideration, rather than the LLC issuing additional debt to the Laguna Member), but only to the extent that such debt, if issued prior to the Protection Expiration Date, is not convertible into equity of the LLC, provided further, however, that no such debt financing prior to the Protection Expiration Date shall include the issuance of any Additional Interests (it being understood that all issuances of Additional Interests shall be subject to the provisions of Section 9.02 and any conflict between this Section 8.06 and Section 9.02 shall be resolved in favor of Section 9.02).

Article IX.
TRANSFERS OF MEMBERSHIP INTERESTS AND OTHER EVENTS

Section 9.01. General Restrictions on Transfers by Certain Members.

(a) No Equity Member other than the ACON Member shall Transfer any Interest prior to the consummation of an IPO, provided that the restrictions of this clause (a) shall not apply to a Transfer by a Member (i) to a trust under which the distribution of Interests may be made only to such Member, (ii) to an Affiliate of such Member, (iii) that is approved by the Board in its sole discretion, (iv) pursuant to Section 9.03 or Section 9.04, or (v) that is pursuant to an Equity Transfer; in each case, only if such transferee becomes a party to, and agrees to be bound by the terms and conditions of, this Agreement in accordance with the terms hereof (each of the transferees referred to in the Transfers described in items (i)-(iv) and subject to compliance with Section 9.01(c), a “Permitted Transferee”). Notwithstanding anything to the contrary contained in this Agreement, Employee Interests may not be Transferred except (w) to a trust under which the distribution of Interests may be made only to such Member, (x) pursuant to Section 9.03, (y) pursuant to a Transfer contemplated and/or permitted pursuant to contractual rights providing for the repurchase of Interests by the LLC (or its assignee) set forth in the Reorganization Agreement, Grant Agreements or any equity incentive plan or award agreement, as applicable, between such Member and the LLC, or (z) if such transfer has been approved by the Board.

(b) Notwithstanding anything to the contrary in this Agreement the ACON Member (excluding any of its Affiliates that become Members following the date hereof through the purchase of Additional Interests from the LLC (any such Affiliate, a “Subsequent ACON Member”)) covenants and agrees that from the date of this Agreement until the date it no longer owns any Equity Interests, (i) the ACON Member (excluding any Subsequent ACON Member) will at all times be majority owned, directly or indirectly, and controlled by the ACON Fund, (ii) any Subsequent ACON Member will at all times be controlled by the ACON Fund, and (iii) the ACON Fund, together with its limited partners, will at all times own and control, directly or indirectly, a majority of the Equity Interests owned by the ACON Member and any Subsequent ACON Member collectively. The ACON Member shall, for so long as the ACON Member is a Member of the LLC, take all actions necessary to prohibit its direct and
Limited Indirect Holders from transferring equity securities in any manner that would breach the restrictions set forth in this Section 9.01(b) or Section 9.01(e). Upon becoming a Member of the LLC, each Subsequent ACON Member shall covenant and agree to be bound by the covenants made by the ACON Member in this Section 9.01(b).

(c) In the event any Transfer is permitted pursuant to this Section 9.01, such Transfer by a Member shall be made in strict accordance with the restrictions, conditions and procedures described in the other provisions of this Article IX.

(d) Each Member restricted by Section 9.01(a) shall, for so long as such Member is restricted by Section 9.01(a), take all actions necessary to prohibit any indirect Transfer of such Member’s Interests, including prohibiting each of its direct and indirect holders of its equity securities from transferring such equity securities in any manner that would breach the restrictions set forth in Section 9.01(a). No Member restricted by Section 9.01(a) shall issue, grant or sell any additional equity securities of such Member (other than to the existing equityholders and Affiliates of such Member), or grant of any options, warrants or other rights to purchase or obtain (including upon conversion, exchange or exercise) any of its equity securities, without first obtaining prior written consent of the Board, including a majority of the Class B Managers.

(e) From the date of this Agreement until the Protection Expiration Date, none of (i) the ACON Member, (ii) any direct equityholder of the ACON Member, (iii) any transferee of the ACON Member or any of its direct equityholders (or any subsequent transferee of any such Person), or (iv) any Limited Indirect Holder, shall Transfer (including Limited Indirectly) any Interests, or any equity securities of the ACON Member, to any Person, unless the aggregate purchase price paid to the transferor in such transaction is greater than or equal to the product of (i) the Applicable Multiple multiplied by (ii) the purchase price paid to the LLC or the ACON Member for all such Interests directly or indirectly represented by such transferred securities, subject to such Transfer. The ACON Member shall, for so long as such Member is restricted by this Section 9.01(e), take all actions necessary to prohibit any Transfer (including Limited Indirectly) of such Member’s equity interests or any Interest, including prohibiting each of its direct and Limited Indirect holders from transferring such equity securities except to the extent in compliance with the requirements of this Section 9.01(e). Subject to the last sentence of this clause (e), neither the ACON Member nor any Indirect Member shall issue, grant or sell any additional equity securities of such Person, or grant any options, warrants or other rights to purchase or obtain (including upon conversion, exchange or exercise) any of its equity securities, unless the purchase price paid for such equity securities is at greater than or equal to the product of (i) 1.005 multiplied by (ii) the purchase price paid to the LLC for all Interests indirectly represented by such new securities. For the avoidance of doubt, the terms and conditions of this Agreement, including the terms and conditions of this Section 9.01(e), shall not apply to, and neither the ACON Member nor any of its direct or indirect equityholders shall have any restriction with respect to, issuances, grants or sales of equity securities in the ACON Member or any of its direct or indirect equityholders to the extent such issuances, grants or sales of equity securities are consummated in connection with or for the purpose of funding the acquisition of any new equity securities being issued, granted or sold by the LLC pursuant to, and in compliance with, the terms and conditions of this Agreement.
(f) Notwithstanding anything to the contrary in this Agreement, the ACON Member shall not Transfer (subject to the exception for indirect Transfers that satisfy all of the requirements provided for in clauses (i), (ii) and (iii) of this sentence) any of its Interests to a Laguna Competitor (and the ACON Member shall prohibit the Limited Indirect Holders from selling, transferring, assigning or similarly disposing of any of the equity securities of the ACON Member to a Laguna Competitor, unless (i) the Laguna Competitor holds such equity securities as a Passive Investor, (ii) the Laguna Competitor is not provided Confidential Information other than (A) financial information related to the results of operations of the LLC and its Subsidiaries that is reasonable and customary for an investor to receive (which in no event shall include any budget, business plan, or operational information unless any such information is permitted by clause (B) of this sentence), or (B) information that the ACON Member or the ACON Fund is required by applicable law or regulation to provide to the ACON Member’s equityholders or that the ACON Member is contractually required to provide to its lenders, and (iii) the ACON Member remains in compliance with the terms and conditions of Section 9.01(b)), except in connection with a Transfer (i) pursuant to Section 9.03 or (ii) pursuant to which, concurrently with (and as a condition to) the consummation of such Transfer, the terms and conditions of this Agreement shall be amended (and the Laguna Member shall vote in favor of any such amendment) to provide that the Laguna Member shall have the right to freely Transfer any or all of its Interests without the approval of the Board or any other Member, provided that such Transfer remains subject to the terms and conditions of Section 9.04 (which shall expressly provide that the Laguna Member shall be entitled to be a Selling Member without any such consent).

Section 9.02. Pre-Emptive Rights.

(a) Issuance of New Interests. The LLC hereby grants to each Equity Member (each, a “Pre-emptive Member”) a separate right to purchase its Pre-emptive Pro Rata Portion (subject to its over-allotment option in Section 9.02(d) below) of any (i) new Interests (including any Additional Interests) other than Employee Interests, (ii) any securities or interests convertible into or exchangeable for new Interests (including any Additional Interests) other than Employee Interests, (iii) any warrants, options or other rights to purchase or otherwise acquire new Interests (including any Additional Interests) other than Employee Interests, and (iv) any other rights convertible or exchangeable into any new Interests (including any Additional Interests) other than Employee Interests (each of (i) through (iv) inclusive, the “New Interests”) that the LLC may from time to time propose to issue or sell to any party; provided, that, from the date of this Agreement until the Protection Expiration Date, the provisions of this Section 9.02(a) shall apply to the sale or issuance of any Employee Interests to the extent that the aggregate Percentage Interest represented by such Employee Interests, after giving effect to any such proposed issuance, would equal or exceed ten percent (10%); provided further, however, that the provisions of this Section 9.02(a) shall not apply to any Excluded Issuance following the Protection Expiration Date.

(b) Additional Issuance Notices. The LLC shall give written notice (an “Issuance Notice”) of any proposed issuance or sale of New Interests described in Section 9.02(a) to the Pre-emptive Members within thirty (30) days following any meeting of the Board at which any such issuance or sale is approved. The Issuance Notice shall, if applicable, be accompanied by a written offer from any prospective purchaser seeking to
purchase the applicable New Interests (a “Prospective Purchaser”) and shall set forth the material terms and conditions of the proposed issuance or sale, including:

(i) the number and description of New Interests proposed to be issued;

(ii) the proposed issuance date, which shall be at least 20 Business Days from the date of the Issuance Notice;

(iii) the proposed purchase price per share of New Interests; and

(iv) if the consideration to be paid by the Prospective Purchaser includes non-cash consideration, the Fair Market Value thereof.

(c) Exercise of Pre-emptive Rights. Each Pre-emptive Member shall for a period of 20 Business Days following the receipt of an Issuance Notice (the “Pre-emptive Exercise Period”) have the right to elect irrevocably to purchase all or any portion of its Pre-emptive Pro Rata Portion of any New Interests on the terms and conditions, including the purchase price, set forth in the Issuance Notice by delivering a written notice to the LLC specifying the number of New Interests it desires to purchase up to its Pre-emptive Pro Rata Portion. The delivery of such notice by a Pre-emptive Member shall be a binding and irrevocable offer by such Member to purchase the New Interests described therein. The failure of a Pre-emptive Member to deliver notice by the end of the Pre-emptive Exercise Period shall constitute a waiver of its rights under Section 9.02(c) with respect to the purchase of such New Interests, but shall not affect its rights with respect to any future issuances or sales of New Interests.

(d) Over-allotment. If the Pre-emptive Members do not elect to purchase all of such remaining New Interests, then no later than ten Business Days following the expiration of the Pre-emptive Exercise Period, the LLC shall give written notice (the “Over-allotment Notice”) to each Pre-emptive Member exercising its rights to purchase its Pre-emptive Pro Rata Portion of the New Interests in full (a “Fully Exercising Pre-emptive Member”) specifying the aggregate number of remaining New Interests, if any, not elected to be purchased by the Pre-emptive Members (the “Remaining New Interests”). Each Fully Exercising Pre-emptive Member shall have a right of over-allotment to purchase all or any portion of its pro rata portion of the Remaining New Interests, based on the relative Pre-emptive Pro Rata Portions of all Fully Exercising Pre-emptive Members. Each Fully Exercising Pre-emptive Member may elect to purchase its allotment of Remaining New Interests by giving written notice to the LLC specifying the number of Remaining New Interests it desires to purchase within five Business Days of receipt of the Over-allotment Notice (the “Over-allotment Exercise Period”).

(e) Sales to the Prospective Purchaser. Following the expiration of the Pre-emptive Exercise Period and, if applicable, the Over-allotment Exercise Period, the LLC shall be free to complete the proposed issuance or sale of New Interests described in the Issuance Notice with respect to which Pre-emptive Members declined to exercise the pre-emptive right set forth in this Section 9.02 on terms no less favorable to the LLC than those set forth in the Issuance Notice (except that the amount of New Interests to be issued or sold by the LLC may
be reduced pro rata among the Prospective Purchaser and each participating Pre-emptive Members); provided, that: (i) such issuance or sale is closed within 150 days after the expiration of the Pre-emptive Exercise Period and, if applicable, the Over-allotment Exercise Period; and (ii) for the avoidance of doubt, the price at which the New Interests are sold to the Prospective Purchaser is at least equal to or higher than the purchase price described in the Issuance Notice. In the event the LLC has not sold such New Interests within such time period, the LLC shall not thereafter issue or sell any New Interests without first again offering such securities to the Pre-emptive Members in accordance with the procedures set forth in this Section 9.02.

(f) **Closing of the Issuance.** The closing of any purchase by any Pre-emptive Member shall be consummated concurrently with the consummation of the issuance or sale described in the Issuance Notice. Upon the issuance or sale of any New Interests in accordance with this Section 9.02, the Member Schedule shall be updated by the LLC to properly reflect the consummation of such issuance or sale, and the Board shall (or shall cause an officer of the LLC to) deliver a copy of the Member Schedule, as so amended, to each Equity Member. Any New Interest issued pursuant to this Section 9.02 shall be free and clear of any liens (other than those arising hereunder and those attributable to the actions of the purchasers thereof), and the LLC shall so represent and warrant to the purchasers thereof, and further represent and warrant to such purchasers that such New Interests shall be, upon issuance thereof to such purchasers and after payment therefor, duly authorized, validly issued, fully paid and non-assessable. Each Pre-emptive Member shall deliver to the LLC the purchase price for the New Interests purchased by it by certified or bank check or wire transfer of immediately available funds. Each party to the purchase and sale of New Interests shall take all such other actions as may be reasonably necessary to consummate the purchase and sale including, without limitation, entering into such additional agreements as may be necessary or appropriate.

(g) **Exceptions to Timing.** Notwithstanding anything to the contrary set forth in this Section 9.02, with respect to any offer or issuance of New Interests that occurs following the third anniversary of the date of this Agreement, if the Board determines that compliance with the time periods described in this Section 9.02 would not be in the best interests of the LLC because of the needs of the LLC, then, in lieu of providing notice and/or offering any New Interests to the Pre-emptive Members at the time such New Interests are otherwise being issued or sold, the LLC may comply with the provisions of this Section 9.02 by making an offer to sell to the Pre-emptive Members their Pre-emptive Pro Rata Portion of such New Interests promptly, and in no event later than 30 days, after a sale to any Prospective Purchaser is consummated (it being understood that such sale may be effected at the election of the LLC by the Prospective Purchaser transferring securities to the Pre-emptive Members rather than by the LLC issuing additional securities). In such event, for all purposes of this Section 9.02, each Pre-emptive Member’s Pre-emptive Pro Rata Portion shall be determined taking into consideration the actual number of securities sold and any and all distributions made in respect of such securities so as to achieve the same economic effect as if such offer would have been made prior to such sale.

(h) **Termination.** This Section 9.02, and the covenants contained herein, shall terminate on the consummation of an IPO.
Section 9.03. Sale of the LLC Right.

(a) Initiating Member to Give Initiating Notice. Subject to Section 9.03(b) at any time after the date hereof, the ACON Member (the “Initiating Member”) shall have the right, upon written notice (an “Initiating Notice”) to the LLC and each other Equity Member, to advise the LLC and the other Equity Members that the Initiating Member wishes to have the LLC undertake and effect a Sale of the LLC, provided that the ACON Member shall have no right to deliver an Initiating Notice pursuant to this Section 9.03 or to initiate a Process (as defined in Section 9.03(d) below) from the date hereof until the Protection Expiration Date unless the proceeds payable to each Equity Member following a Sale of the LLC effected by this Section 9.03 prior to such Protection Expiration Date would exceed two and a half times (2.5x) such Equity Member’s Capital Contribution.

(b) Rights of the Laguna Member Upon Receipt of Initiating Notice. Within 30 days from the receipt of the Initiating Notice, the Laguna Member shall have the right (but not the obligation) to make an offer (a “ROFO Liquidity Offer”) to the Initiating Member to purchase all of the Interests held by all of the Members (including the Initiating Member) where the entire consideration for such Interests is payable in cash. The Initiating Member shall have 15 Business Days beyond the end of such 30-day period to accept such ROFO Liquidity Offer, by notice to the LLC and the Laguna Member. If the Initiating Member accepts the ROFO Liquidity Offer within such specified time period, then the purchase and sale of the Interests shall be completed in accordance with the ROFO Liquidity Offer, and the terms and conditions of Section 9.03(h) that would otherwise be applicable in the event the ROFO Liquidity Offer was deemed to be the Initial Offer for purposes of Section 9.03(h), on the 60th day (or such other day as agreed between the Initiating Member and the Laguna Member) after the Initiating Member has agreed that it will sell its Interests pursuant to such ROFO Liquidity Offer.

(c) Rejection by Initiating Member of ROFO Liquidity Offer. If the Initiating Member does not provide the notice accepting a ROFO Liquidity Offer within the 15 Business Day period provided in Section 9.03(b), then the Initiating Member shall be deemed to have rejected such ROFO Liquidity Offer at the expiration of such period, and such ROFO Liquidity Offer shall terminate and be of no further force or effect at the expiration of such 15 Business Day period (or, if earlier, at the time the Initiating Member otherwise provides a written notice stating that it is rejecting such offer).

(d) Right of Initiating Member to Give Liquidity Notice. If no ROFO Liquidity Offer is made, or if the Initiating Member does not accept a ROFO Liquidity Offer that is made, then the Initiating Member shall have the right, exercisable by giving written notice (a “Liquidity Notice”) to the LLC within 20 Business Days of the rejection (or deemed rejection) of the ROFO Liquidity Offer (or, if no ROFO Liquidity Offer was made, within 20 Business Days of the expiration of the 30 day period during which a ROFO Liquidity Offer could have been made), to cause the LLC to initiate a corporate sale process, with the intended objective of receiving the highest possible offer for the LLC (a “Process”). The LLC shall promptly give a copy of such Liquidity Notice to each of the Members. Each Member (including each Affiliate of each Member) shall, unless otherwise agreed in writing by the
Initiating Member, be prohibited from submitting any offer to purchase, and shall be prohibited from purchasing, Interests pursuant to the Process.

(e) **Appointment of Recognized Industry Advisor.** In the event that a Liquidity Notice has been given to the LLC, the Board shall select a recognized industry advisor to assist with the Process who is acceptable to the Initiating Member, acting reasonably. The LLC shall be responsible for and pay all costs incurred in connection with such engagement.

(f) **Proceeds to be Greater than Price in ROFO Liquidity Offer.** The LLC and the Members shall cooperate as necessary to take such action as shall reasonably be required to achieve a Sale of the LLC resulting in proceeds available to all Members in respect of their Interests on closing (on a per Interest basis) in an amount equal to or greater than the price set forth in any ROFO Liquidity Offer (or in an amount acceptable to the Initiating Member, if no ROFO Liquidity Offer was made), including:

1. soliciting offers for a Sale of the LLC by any prudent means, including by way of tender, auction or otherwise;

2. retaining investment bankers, brokers or dealers and counsel (each of whom shall be acceptable to the Initiating Member, acting reasonably), at market rates and on customary terms, for and on behalf of the LLC, to assist and advise it in connection with a Sale of the LLC (provided that the fees of any such advisors and agents shall be paid by the LLC);

3. delivering to prospective offerors such information, including confidential information and documentation, as is necessary or desirable to effectively solicit offers and consummate a Sale of the LLC, provided that such prospective offeror executes a confidentiality agreement in favor of the LLC containing terms and conditions satisfactory to the LLC, acting reasonably; and

4. doing all such other things and acts as the Initiating Member may deem necessary or desirable in connection with any of the foregoing, including voting in favor of (and causing their respective Manager nominees, if any, to vote in favor of) such Sale of the LLC.

(g) **Acceptance, Rejection or Negotiation of Initial Offer.** Upon receipt of a bona-fide offer for a Sale of the LLC which is in compliance with all applicable laws, which is higher than the ROFO Liquidity Offer, if made and which is acceptable to the Initiating Member, acting reasonably, from an unaffiliated third party (the “Third Party Offeror”) (the “Initial Offer”), the LLC shall deliver to each Member a copy of the Initial Offer. The Initiating Member shall instruct the LLC on whether to accept, reject or otherwise negotiate the terms of the Initial Offer.

(h) **Initial Offer that Exceeds Highest Priced ROFO Liquidity Offer.** If there is an Initial Offer that satisfies the definition of Sale of the LLC in an amount that equals or exceeds the price (on a per Interest basis) set forth in the highest priced ROFO Liquidity Offer (or in an amount acceptable to the Initiating Member, if no ROFO Liquidity Offer was made), the LLC and the Members shall do all things reasonably necessary to complete the Sale of the LLC.
LLC proposed by the Initial Offer, including attending any meetings when required to do so, providing relevant information regarding the LLC as may be requested from time to time and permitting the Third Party Offeror to conduct due diligence and make such investigations and inquiries with respect to the affairs of the LLC as may be required by the Third Party Offeror in order to complete the Sale of the LLC proposed by the Initial Offer; provided, however, that the Third Party Offeror executes a confidentiality agreement in favor of the LLC containing terms and conditions acceptable to the LLC, acting reasonably; provided further, however, that each Member shall receive in exchange for the Interests held by such Member the same portion of the aggregate consideration from such Sale of the LLC that such Member would have received if such aggregate consideration had been distributed by the LLC pursuant to the terms of Section 4.01(a). Upon receipt of instructions from the Initiating Member to accept the Initial Offer, the other Members will consent to and raise no objections to the Initial Offer, and the Members will take such other actions reasonably necessary or desirable to cause the consummation of the Sale of the LLC on the terms of the final Initial Offer. Without limiting the foregoing, if the Sale of the LLC is structured as a sale of assets or a merger, consolidation, recapitalization, or reorganization, each other Member will (i) vote (in person, by proxy or by written consent, as requested) all of its voting securities (including any voting Interests) in favor of the Sale of the LLC (and any related actions necessary to consummate such sale) and otherwise consent to and raise no objection to such Sale of the LLC and such related actions, (ii) refrain from taking any actions to exercise, and shall take all actions to waive, any dissenters’, appraisal or other similar rights that it may have in connection with such transaction, and (iii) vote and/or instruct its respective Managers to vote and otherwise cause the LLC Subsidiaries to take any appropriate action and use commercially reasonable efforts to effectuate such Sale of the LLC. Without limiting the foregoing, if the Sale of the LLC is structured as or involves a sale or redemption of Interests, each of the other Members shall sell its Interests on the terms and conditions approved by the Initiating Member (including, as applicable, any rollover of up to 20% of such Member’s Interests into equity interests in the resulting or acquiring entity as long as such roll-over is pro-rata among all Members). Each other Member shall execute the applicable purchase agreement (and any related ancillary agreements) entered into by the Initiating Member in connection with the Sale of the LLC and make or provide the same representations, warranties, covenants, indemnities, purchase price adjustments (on pro rata basis), escrows and other obligations as the Initiating Member makes or provides in connection with the Sale of the LLC. In no event shall any Member be liable for indemnification in any Sale of the LLC in excess of the net proceeds received by such Member and in no event shall this Section 9.03 be construed as requiring any Member to sign a non-compete in connection with aSale of the LLC unless the ACON Member has agreed to sign a non-compete, in which case each Member may be required to sign a non-compete on the same terms as the ACON Member, provided that the terms and conditions of such non-compete are no more restrictive than those contained in this Agreement, including, for the avoidance of doubt, that the duration of such non-compete shall not be longer than the Non-Compete Period defined herein. Each Member shall take all actions as may be reasonably necessary to consummate the Sale of the LLC, including, without limitation, entering into agreements and delivering certificates and instruments, in each case, consistent with the agreements being entered into and the certificates being delivered by the Initiating Member.

(i) Termination of Process. If there are no Initial Offers in cash that satisfy the definition of Liquidity Event in an amount that equals or exceeds the price (on a per
Interest basis) set forth in the highest priced ROFO Liquidity Offer (or, if no ROFO Liquidity Offer was made, none of the Initial Offers are acceptable to the Initiating Member) or if no Initial Offer is received within 210 days of the Liquidity Notice, then the Process shall be promptly terminated and the ACON Member shall not be permitted to deliver another Initiating Notice for a period of three months from the date the Process is formally terminated by the LLC. In addition, if the Process has not otherwise been terminated and if no Sale of the LLC is completed from the later of 270 days (which shall automatically be extended to 330 days in the event a definitive agreement with respect to such Sale of the LLC has been executed as of such 270th day) after the Liquidity Notice and 210 days after the receipt of the Initial Offer, the Process shall be terminated. If the Process is terminated, no Sale of the LLC may be made in accordance with this Section 9.03 without delivering another Initiating Notice and complying with the provisions of this Section 9.03 as if the Process had not otherwise been started.

(j) Expenses. The fees and expenses of the Initiating Member incurred in connection with a Sale of the LLC and for the benefit of all Members, including, without limitation, fees and expenses incurred in connection with a transaction that is not consummated, to the extent not paid or reimbursed by the LLC or the Third Party Offeror, shall be shared by the Members on a pro rata basis, based on the aggregate consideration received by each such Member, or, if the transaction is not consummated, then by the LLC.

(k) Appointment as Attorney. In connection and in accordance with a completion of a sale transaction under the procedures of this Section 9.03, and for the sole purpose of enforcing this Section 9.03, each Member hereby appoints the Initiating Member as its attorney, with full power of substitution, in the name and on behalf of each Member to (i) accept the Initial Offer and (ii) execute and deliver all documents and instruments and take all steps, in each case to give effect to such acceptance, to establish a binding contract of purchase and sale between each Member and the Third Party Offeror with respect to all of the Interests owned by the Members, to complete the purchase and sale contemplated thereunder, and otherwise effect or permit completion of the Sale of the LLC pursuant to the terms and conditions of this Section 9.03. Such appointment, being coupled with an interest, is irrevocable by each Member and shall not be revoked by the insolvency, bankruptcy, death, Incapacity, dissolution, liquidation or other termination of the existence of each Member. Each Member agrees that it shall perform all obligations of such Member under the agreement resulting from acceptance of the Initial Offer in accordance with its terms and shall ratify and confirm all acts that the Initiating Member may do or cause to be done pursuant to the foregoing provided it is consistent with the Initiating Member’s rights pursuant to this Agreement, subject in each case to the terms and conditions of this Section 9.03. Each Member consents to any transfer of Interests made pursuant to the foregoing. Each Member hereby agrees not to take any action in the future which would result in the termination of this power of attorney.

Section 9.04. Tag-Along Right. Participation on Sale of Equity Interests. At any time prior to the consummation of an IPO, and subject to the terms and conditions specified in Section 9.05 and this Section 9.04, if any Equity Member (the “Selling Member”) proposes to Transfer, directly or indirectly (including through a sale of equity interests of such Member or of any direct or indirect equityholder of such Member) any of its Equity Interests (the “Tag-along Interests”) to any Person, each other Equity Member (each, a
“Tag-along Member”) shall be permitted to participate in such sale (a “Tag-along Sale”) on the terms and conditions set forth in this Section 9.04. Notwithstanding the foregoing, no Equity Member other than the ACON Member shall have the right to Transfer Equity Interests as a “Selling Member” pursuant to this Section 9.04 without the prior consent of the Board.

(b) **Tag-along Sale Exceptions.** Notwithstanding anything herein to the contrary, the provisions of this Section 9.04 shall not apply to any Transfer of Tag-along Interests that is:

(i) made to a Permitted Transferee (it being agreed and understood that the ACON Member shall be deemed for all purposes under this Agreement to have Permitted Transferees to the same extent as any other Member);

(ii) permitted by and made in accordance with Section 9.03;

(iii) made pursuant to an IPO or;

(iv) made by a direct or indirect equity holder of the ACON Member (but not by the ACON Member or any transferee of the ACON Member) and, after giving effect to such Transfer, the ACON Member would continue to be controlled and majority owned, directly or indirectly, by the ACON Fund.

(c) **Tag-along Notice.** The Selling Member shall deliver to the LLC and each other Tag-along Member a written notice (a “Tag-along Notice”) of the proposed Tag-along Sale within 20 Business Days prior to the consummation of any Tag-along Sale. The Tag-along Notice shall make reference to the Tag-along Members’ rights hereunder and shall describe in reasonable detail:

(i) The aggregate number of Tag-along Interests the Selling Member proposes to Transfer;

(ii) The identity of the prospective Transferee(s);

(iii) The proposed date, time and location of the closing of the Tag-along Sale, which shall not be less than 60 days from the date of the Tag-along Notice;

(iv) The purchase price per Interest for the Tag-along Interests (which shall be payable solely in cash) and the other material terms and conditions of the Transfer; and

(v) A copy of any form of agreement proposed to be executed in connection therewith.

(d) **Exercise of Tag-along Right.**

(i) Each Tag-along Member may exercise its right to participate in the Tag-along Sale on the terms described in the Tag-along Notice by delivering to the Selling Member a written notice (a “Tag-along Exercise Notice”) stating its election to do so no later than 10 Business Days after receipt of the Tag-along Notice (the “Tag-along Exercise Period”).

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The election of each Tag-along Member set forth in a Tag-along Exercise Notice shall be irrevocable, and, to the extent the offer in the Tag-along Notice is accepted, such Tag-along Member shall be bound and obligated to consummate the Transfer on the terms and conditions set forth in this Section 9.04. If one or more Tag-along Members elects pursuant to a Tag-along Exercise Notice and this Section 9.04(d)(i) to participate in the Tag-along Sale, the number of Tag-along Interests that the Selling Member may sell in the Tag-along Sale shall be correspondingly reduced in accordance with Section 9.04(d)(ii).

(ii) The Selling Member and each Tag-along Member timely electing to participate in the Tag-along Sale pursuant to Section 9.04(d)(i) shall have the right to Transfer in the Tag-along Sale the number of Tag-along Interests set out in the applicable Tag-along Notice, equal to the product of (A) the aggregate number of Tag-along Interests set out in the applicable Tag-along Notice and (B) such Member’s Tag-along Pro Rata Portion for the Tag-along Interests. Any Tag-along Member may elect to sell in the Tag-along Sale less than the number of Tag-along Interests calculated pursuant to this Section 9.04(d)(ii), in which case the Selling Member and each Tag-along Member timely electing to sell its full Tag-along Pro Rata Portion of the Tag-along Interests in the Tag-along Sale pursuant to this Section 9.04(d)(ii) (each, a “Fully Electing Tag-along Member”) shall have the right, pursuant to Section 9.04(e), to sell the Tag-along Interests not elected to be sold by a Tag-along Member.

(e) Remaining Tag-along Interests.

(i) If any Tag-along Member either declines to exercise its right to participate in any Tag-along Sale under Section 9.04(d) or elects to exercise such right with respect to less than its full Tag-along Pro Rata Portion, the Selling Member shall deliver a written notice (a “Remaining Tag-along Interests Notice”) to each of the Fully Electing Tag-along Members within five Business Days following the expiration of the Tag-along Exercise Period, informing each Fully Electing Tag-along Member of the aggregate number of Tag-along Interests that the Tag-along Members have not elected to sell (the “Remaining Tag-along Interests”). The Selling Member and each Fully Electing Tag-along Member shall be entitled to Transfer in the Tag-along Sale, in addition to any applicable Tag-along Interests already being Transferred by such Member pursuant to this Section 9.04, a number of Remaining Tag-along Interests held by it equal to the product of (A) the number of Remaining Tag-along Interests owned by such Member, by (2) a fraction determined by dividing (1) the number of Remaining Tag-along Interests owned by such Member, by (2) the aggregate number of Remaining Tag-along Interests owned by the Selling Member and all of the Fully Electing Tag-along Members.

(ii) Each Fully Electing Tag-along Member shall exercise its right to sell Remaining Tag-along Interests in accordance with Section 9.04(e)(i) by delivering to the Selling Member a written notice stating its election to do so and specifying the number of additional Remaining Tag-along Interests held by it to be included in the Tag-along Sale pursuant to Section 9.04(e)(ii), no later than five Business Days after receipt of the Remaining Tag-along Interests Notice.

(iii) The election of each Fully Electing Tag-along Member set forth in its exercise notice shall be irrevocable, and, to the extent the offer in the Tag-along Notice is accepted, such Fully Electing Tag-along Member shall be bound and obligated to consummate
the Transfer of the additional Tag-along Interests allocable to it on the terms and conditions set forth in this Section 9.04.

(f) Waiver. Each Tag-along Member who does not deliver a Tag-along Exercise Notice in compliance with Section 9.04(d)(i) and each Fully Electing Tag-along Member who does not deliver a notice in compliance with Section 9.04(e) shall be deemed to have waived all of such Tag-along Member’s and all such Fully Electing Tag-along Member’s rights to participate in the Tag-along Sale, and the Selling Member shall (subject to the rights of any other participating Tag-along Member or Fully Electing Tag-along Member) thereafter be free to sell to the prospective Transferee the Tag-along Interests or Remaining Tag-along Interests, as applicable, identified in the Tag-along Notice or the Remaining Tag-along Interests Exercise Notice, as applicable, at a per Interest price that is no greater than the applicable per Interest price set forth in the Tag-along Notice and on other terms and conditions which are not in the aggregate materially more favorable to the Selling Member than those set forth in the Tag-along Notice, without any further obligation to the non-accepting Tag-along Members or Fully Electing Tag-along Members, as applicable.

(g) Conditions of Sale.

(i) Each Equity Member participating in the Tag-along Sale shall receive the same form and amount (per Interest) of consideration, after deduction of such Member’s proportionate share of the related expenses in accordance with Section 9.04(i) below. In addition, no Transfer of any Tag-along Interests by the Selling Member in the Tag-along Sale shall occur unless the prospective Transferee simultaneously purchases the Tag-along Interests elected to be sold by the Tag-along Members pursuant to Section 9.04(d)(i) and Section 9.04(e) and if any such Transfer is in violation of this Section 9.04, it shall be null and void.

(ii) Each Tag-along Member shall execute the applicable purchase agreement, if any, and shall make or provide the same representations, warranties, covenants and indemnities as the Selling Member makes or provides in connection with the Tag-along Sale; provided, that, in addition to any representations and warranties related to the LLC and its business, each Tag-along Member shall only be obligated to make representations and warranties that relate specifically to a Member with respect to the Tag-along Member’s title to and ownership of the applicable Tag-along Interests, authorization, execution and delivery of relevant documents, enforceability of such documents against the Tag-along Member, and other similar representations and warranties made by the Selling Member, and shall not be obligated to make any of the foregoing representations and warranties with respect to any other Member or their Tag-along Interests; provided, further, that all indemnities and other obligations shall be made by the Selling Member and each Tag-along Member severally and not jointly and severally (A) with respect to breaches of representations, warranties and covenants made by the Selling Member and the Tag-along Members relating to the LLC and its business, if any, pro rata based on the aggregate consideration received by the Selling Member and each Tag-along Member in the Tag-along Sale, and (B) in an amount not to exceed for the Selling Member or any Tag-along Member, the aggregate consideration received by the Selling Member and each such Tag-along Member.
(h) **Cooperation.** Subject to Section 9.04(g)(ii), each Tag-along Member shall take all actions as may be reasonably necessary to consummate the Tag-along Sale, including, without limitation, entering into agreements and delivering certificates and instruments (including membership interest certificates evidencing the applicable Tag-along Interests, duly endorsed in blank or accompanied by stock powers or other instruments of transfer duly executed in blank), in each case, consistent with the agreements being entered into and the certificates and instruments being delivered by the Selling Member.

(i) **Expenses.** The fees and expenses of the Selling Member incurred in connection with a Tag-along Sale and for the benefit of all Tag-along Members (it being understood that costs incurred by or on behalf of a Selling Member for its sole benefit will not be considered to be for the benefit of all Tag-along Members), to the extent not paid or reimbursed by the LLC or the prospective Transferee, shall be shared by the Selling Member and all the participating Tag-along Members on a pro rata basis, based on the aggregate consideration received by each such Member; provided, that no Tag-along Member shall be obligated to make any out-of-pocket expenditure prior to the consummation of the Tag-along Sale.

(j) **Consummation of Sale.** Subject to the requirements and conditions of this Section 9.04, and the other applicable provisions of this Agreement, the Selling Member shall have 180 days following the expiration of the Tag-along Exercise Period in which to consummate the Tag-along Sale, on terms not more favorable to the Selling Member than those set forth in the Tag-along Exercise Notice (which 180-day period may be extended for a reasonable time not to exceed 90 days to the extent reasonably necessary to obtain required approvals or consents from any governmental authority). If at the end of such period the Selling Member has not completed the Tag-along Sale, the Selling Member may not then effect a Transfer that is subject to this Section 9.04 without again fully complying with the provisions of this Section 9.04. At the closing of the Tag-along Sale, each of the Tag-along Members timely electing to participate in the Tag-along Sale pursuant to Section 9.04(d)(i) shall enter into the agreements and deliver the certificates and instruments, in each case, required by Section 9.04(g) and Section 9.04(h) against payment therefor directly to the Tag-along Member of the portion of the aggregate consideration to which each such Tag-along Member is entitled in the Tag-along Sale in accordance with the provisions of this Section 9.04.

(k) **Termination.** This Section 9.04, and the covenants contained herein, shall terminate on the consummation of an IPO.

**Section 9.05. Right of First Refusal.**

(a) **Subject to Section 9.01 and Section 9.04,** if at any time from the date of this Agreement until the Protection Expiration Date (x) (i) the ACON Member (or any Permitted Transferees of the ACON Member contemplated by clauses (i) and (ii) of Section 9.01(a)), (ii) any Subsequent ACON Member (or any Permitted Transferees of any Subsequent ACON Member contemplated by clauses (i) and (ii) of Section 9.01(a)), or (iii) any direct or Limited Indirect Holder, in each case, proposes to Transfer all or any portion of its Interests, any equity securities of the ACON Member or any Subsequent ACON Member, or any equity securities of any Indirect Member (any such Person referred to in this clause (x) proposing to Transfer,
directly or Limited Indirectly, such securities is referred to herein as a “First Offeror”), that such First Offeror owns as of the date of such proposed Transfer, pursuant to a written offer (binding on the parties thereto, subject to the First Offeror’s obligations under this Section 9.05) (the “Binding Offer”), and (y) the difference of (A) the price per Interest (calculated on an indirect pass-through basis to the extent the securities to be Transferred are any equity securities of the ACON Member or any Indirect Member) to be paid for such Interests in such proposed transaction, minus (B) the amount of any Unpaid Special Preferred Yield with respect to such Interest as of the date of the proposed Transfer as set forth in Section 4.01(a)(ii), is less than the price per such Interest on the date hereof or on the date of grant (if such Interest is a New Interest acquired pursuant to Section 9.02) then, in each case, the First Offeror shall comply with all provisions of this Section 9.05. Such Transfer shall also be subject to the provisions of Section 9.01, Section 9.04 and Section 9.06 and nothing set forth herein is intended to modify the restrictions set forth therein.

(b) The First Offeror shall deliver to the Laguna Member and the LLC an offer (the “First Offer”) to Transfer the applicable Interests upon the terms set forth in the Binding Offer and this Section 9.05, including (A) the number and type of Interests to which the First Offer relates (the “Offered Interests”) and the name of the First Offeror, (B) the name and address of the proposed offeree (the “First Offeree”), (C) the amount of cash consideration per Offered Interest (the “Offer Price”), (D) the terms and conditions of payment offered by the First Offeror and (E) all documentation related to the offer. In the event of a proposed Limited Indirect transfer of any Interests that is subject to this Section 9.05, the ACON Member and any Subsequent ACON Member shall use commercially reasonable efforts to ensure that the Offered Interests shall in all cases be the underlying Interests (calculated on a pass-through basis based on the number of equity interests of the ACON Member or such other applicable Person to be transferred and the number of Interests held by the ACON Member or any Subsequent ACON Member, as applicable); provided, however, that (i) if the applicable First Offer involves the Transfer (including any Limited Indirect transfer) of the Threshold Amount (as defined below) or higher of Interests, then the Offered Interests shall in all cases be the underlying Interests and (ii) if (a) the applicable First Offer involves the Transfer (including any Limited Indirect transfer) of less than the Threshold Amount (as defined below) and (b) treating the underlying Interests as the Offered Interests would result in an adverse Tax consequence for the ACON Member or any of its Limited Indirect Holders, then the Offered Interests shall be the equity securities being Transferred by the First Offeror (whether they be Interests or equity securities in the ACON Member, any Subsequent ACON Member or any Indirect Member). In addition, the First Offeror shall deliver notice to the Laguna Member and the LLC as soon as reasonably practicable (but in no event less than twenty-eight (28) days prior to the delivery of any First Offer to the Laguna Member or the LLC) following the time that the First Offeror initiates discussions with a third party with respect to a possible Binding Offer, which notice shall (i) state the number of Interests (which may be stated as a range, with the range being no larger than twenty percent (20%) of the total number of Interests held by the ACON Member as of the date of such notice) proposed to be Transferred directly or Limited Indirectly, and (ii) state the price on a per-Interest basis (which may be stated as a range, provided that the highest price listed shall not be greater than the product of (x) 1.2 multiplied by (y) the lowest price listed on such notice (such resulting price, the “Maximum Price”) (the “Initial Notice”).
Upon receipt of the First Offer (which, for the avoidance of doubt, shall not be delivered until at least twenty-eight (28) days following the delivery of an Initial Notice), the LLC and the Laguna Member shall have the right, but not the obligation, to purchase, in the aggregate, all, but not less than all, of the Offered Interests on the terms and conditions set forth in the First Offer in the following order of priority: first, the LLC shall have the right to purchase all or any portion of the Offered Interests in accordance with the procedures set forth in Section 9.05(d), and thereafter, the Laguna Member shall have the right to purchase all of the remaining Offered Interests, in accordance with the procedures set forth in Section 9.05(e), to the extent the LLC does not fully exercise its right pursuant to Section 9.05(d). For the avoidance of doubt, if the LLC and the Laguna Member do not exercise their rights to collectively purchase all of the Offered Interests, then the LLC and the Laguna Member shall not have the right to purchase any of the Offered Interests pursuant to this Section 9.05 and the sale by the First Offeror to the First Offeree shall proceed in accordance with the terms of the Binding Offer.

The LLC’s right to purchase the Offered Interests pursuant to this Section 9.05 shall be exercisable by the LLC’s delivery of a written notice to the First Offeror and the Laguna Member by 5:00 p.m. New York City time on the date that is seven (7) days after the LLC’s receipt of the First Offer (the “Company Option Period,” provided that if the First Offer sets forth an Offer Price that is higher than the Maximum Price included in the Initial Notice, the Company Option Period will instead expire on the date that is thirty-five (35) days after the LLC’s receipt of the First Offer), which notice shall contain an affirmative statement that the LLC irrevocably elects to purchase Offered Interests (which statement shall also specify the number of Offered Interests that the LLC is electing to purchase) at the Offer Price and on the other terms and conditions set forth in the First Offer (the “Company Exercise Notice”). A Company Exercise Notice shall be binding upon delivery and irrevocable by the LLC. The failure of the LLC to deliver a Company Exercise Notice by the end of the Company Option Period shall constitute a waiver of its rights under this Section 9.05 with respect to the Transfer of Offered Interests, but shall not affect its rights under this Section 9.05 with respect to any future Transfers subject to this Section 9.05.

If the LLC does not deliver a Company Exercise Notice with respect to all of the Offered Interests or only delivers a Company Exercise Notice with respect to a portion (but not all of) the Offered Interests, in each case prior to expiration of the Company Option Period, the Laguna Member shall have the right to purchase all of the remaining Offered Interests pursuant to this Section 9.05, on the terms and conditions set forth herein. Until 5:00 p.m. New York City time on the date that is five (5) Business Days following expiration of the Company Exercise Period (such period, the “Laguna Option Period”), the Laguna Member shall have the right, but not the obligation, to irrevocably elect to purchase all of the remaining Offered Interests by delivering a written notice to the LLC and the First Offeror specifying that it desires to purchase all of the remaining Offered Interests at the Offer Price and on the other terms and conditions set forth in the First Offer (a “Laguna Exercise Notice” and together with a Company Exercise Notice, an “Acceptance Notice”). In the event that the Laguna Member exercises its right of first refusal pursuant to this Section 9.05, the Laguna Member may designate any of its Affiliates or Permitted Transferees as the purchaser of all or part of the Offered Interests in any transaction hereunder. The failure of the Laguna Member to deliver a Laguna Exercise Notice by the end of the Laguna Option Period shall constitute a waiver of its rights under this Section 9.05 with respect to the Transfer of Offered Interests, but shall not
affect its rights under this Section 9.05 with respect to any future Transfers subject to this Section 9.05.

(f) Upon delivery by the LLC or the Laguna Member of an Acceptance Notice, the result of which is the purchase by the LLC and/or the Laguna Member, in aggregate, of all of the Offered Securities, the Laguna Member shall (i) pay to the First Offeree an amount equal to the Diligence Expenses up to the Diligence Cap, and (ii) pay to the First Offeree an amount equal to the ROFR Fee up to the ROFR Fee Cap, in each case by wire transfer of immediately available funds. The Laguna Member’s obligation to pay the First Offeree the Diligence Expenses shall be limited to the actual reasonable out-of-pocket expenses supported by invoices delivered to the Laguna Member concurrently with the delivery of the First Offer. For purposes of this Agreement, the term “Diligence Expenses” shall mean an amount identified in writing by the ACON Member to the Laguna Member concurrently with the delivery of the First Offer of all or some portion of the First Offeree’s reasonable and documented out-of-pocket costs and expenses incurred prior to the date of the Acceptance Notice in connection with such First Offeree’s due diligence review of the LLC and related negotiation in connection with its proposed purchase of the Offered Interest (such costs and expenses, the “Diligence Expenses”). For purposes of this Agreement, the term “Diligence Cap” shall mean $1,000,000. For purpose of this Agreement, the term “ROFR Fee” shall mean an amount identified in writing by the ACON Member to the Laguna Member concurrently with the delivery of the First Offer. For purposes of this Agreement the term “ROFR Fee Cap” shall mean $250,000. Notwithstanding the foregoing, in no event will the Laguna Member be obligated to pay (i) Diligence Expenses to one or more First Offerees in an aggregate amount in excess of the Diligence Cap and (ii) ROFR Fees to one or more First Offerees in an aggregate amount in excess of the ROFR Fee Cap pursuant to this Section 9.05(f).

(g) The closing of any purchase of the Offered Interests by the Laguna Member or the LLC (the “ROFR Closing”) shall be held at the offices of Dechert LLP, 1095 Avenue of the Americas, New York, New York 10036 at 11:00 A.M. local time on a Business Day chosen by the LLC or the Laguna Member, as applicable (upon at least five (5) days’ notice to the other parties to the transaction), which date shall be no later than ninety (90) days following the delivery of the last delivered Acceptance Notice (except to the extent additional time may be required pursuant to any regulatory requirement); provided, that such closing may be held at such other time and place as the parties to the transaction may agree. At such closing the First Offeror shall deliver such instruments, executed by it and in form and substance reasonably satisfactory to the LLC or the Laguna Member, as applicable, as shall be necessary to transfer, assign and convey the Offered Interests to the LLC and the Laguna Member, as applicable, which shall be Transferred free and clear of all liens and encumbrances other than those imposed by this Agreement and applicable securities laws, against payment of the purchase price therefor. Any Offered Interests purchased by the LLC shall be deemed cancelled. The First Offeror will provide reasonable and customary representations and warranties solely as to title to such Offered Interests being sold, and the First Offeror’s power, authority and right to enter into the pertinent transaction without contravention of law or material contracts, in each case solely to the Laguna Member in the purchase agreement executed and delivered by the parties in connection therewith, provided, further, that such purchase agreement shall not provide for indemnification of the Laguna Member or any other Person for any reason in an amount in excess of the Offer Price paid in connection therewith.
(h) Notwithstanding anything in this Agreement to the contrary (including, without limitation, Article V), following a delivery of a First Offer to the LLC, the rights and obligations of the LLC pursuant to this Section 9.05 shall be exercised, performed and enforced at the direction of the Required ROFR Managers and the acts and decisions directed or approved by the Required ROFR Managers with respect to the exercise of such rights and obligations shall be deemed approved by the Board for all purposes under this Agreement. Without limiting the generality of the foregoing, following the delivery of a First Offer, the Required ROFR Managers shall have the sole power and authority: (i) to exercise or waive the LLC’s rights under this Section 9.05; (ii) to negotiate on behalf of the LLC with the Laguna Member (or any Affiliate of the Laguna Member) or any third party lender for any debt financing required to pay any portion of the purchase price payable by the LLC pursuant to this Section 9.05 and to cause the LLC to consummate such debt financing; and (iii) to cause the LLC to issue any New Interests pursuant to (and in compliance with) Section 9.02, to the extent required to pay any portion of the purchase price pursuant to this Section 9.05. For purposes of this Agreement, the term “Required ROFR Managers” shall mean either: (A) the approval or written consent of a majority of the Class B Managers if the number of Offered Interests proposed to be sold by the First Offeror in the applicable First Offer (together with all other Offered Interests previously Transferred by the ACON Member and its Permitted Transferees contemplated by clauses (i) and (ii) of Section 9.01(a) prior to the date of such applicable First Offer) is equal to or greater than the product of (i) seventy percent (70%) multiplied by (ii) the sum of (x) the number of Class A Interests held by the ACON Member as of the date of this Agreement, plus (y) the number of New Interests acquired by the ACON Member and its Permitted Transferees following the date hereof (the product of (i) multiplied by (ii), the “Threshold Amount”); or (B) the approval or written consent of all Managers (including all Class B Managers and all ACON Managers) if the number of Offered Interests proposed to be sold by the First Offeror in the applicable First Offer (together with all other Offered Interests previously Transferred by the ACON Member and its Permitted Transferees contemplated by clauses (i) and (ii) of Section 9.01(a) prior to the date of such applicable First Offer) is less than the Threshold Amount.

Section 9.06. Assignments Generally; Substituted Member.

(a) Permitted Transfers. To the extent a Transfer is permitted under this Article IX, such Transfer shall be valid only if:

(i) The transferring Member (the “Assignor”) and the recipient (the “Assignee”) each execute and deliver to the LLC such documents and instruments of conveyance as may be reasonably requested by the Board to effect such Transfer and to confirm the agreement of the Assignee to be bound by the provisions of this Agreement.

(ii) The Assignor and Assignee provide to the Board any information reasonably necessary to permit the LLC to file all required federal and state tax returns and other legally required information statements or returns (including the Assignee’s taxpayer identification number). Without limiting the generality of the foregoing, the LLC shall not be required to make any Distribution otherwise provided for in this Agreement with respect to any Interest transferred until the Board has received such information.
(iii) Other than in the case of a Transfer by a Member to an Affiliate, the Assignor furnishes to the LLC an opinion of counsel, which counsel and opinion shall be reasonably satisfactory to the Board (and which opinion may be waived, in whole or in part, in the Board’s discretion), dated as of a date immediately prior to the proposed Transfer that:

(A) the Transfer will not cause the LLC to be deemed to be an “investment company” under the Investment Company Act of 1940, as amended, and

(B) either the Interest Transferred has been registered under the Securities Act and any applicable state securities laws or the Transfer is exempt from all applicable registration requirements and will not violate any federal securities laws, state or provincial “blue sky” laws or other laws applicable to the LLC or the Interest and securities being transferred.

In all cases, the LLC shall be reimbursed by the Assignor and/or Assignee for all costs and expenses that the LLC reasonably incurs in connection with the Transfer. Upon the completion of any Transfer permitted under this Article IX, the Board shall amend the Member Schedule to reflect the applicable Assignee as a Member, without the necessity for any further vote, act or consent of any other Person(s).

(b) Rights and Obligations of Assignees and Assignors.

(i) A Transfer by a Member or other Person shall not itself dissolve the LLC or entitle the Assignee to become a Member or exercise any rights of a Member.

(ii) A Transfer by a Member shall eliminate the Assignor’s power and right to vote (in proportion to the extent of the Interest Transferred) on any matter submitted to the Members, and, for voting purposes, such Interest shall not be counted as outstanding in proportion to the extent of the Interest Transferred, provided that the Assignee who receives the Interest Transferred shall be entitled to vote such Interest once the Assignee has properly been admitted to the LLC as a Member pursuant to the terms of this Agreement. A Transfer shall also eliminate the Member’s right to participate in the issuance of Additional Interests pursuant to Section 9.02 to the extent of the Interest Transferred. A Transfer shall not cause a Member to be released from any liability to the LLC solely as a result of the Transfer.

(c) Admission of Assignee as Member. Subject to the other provisions of this Article IX, an Assignee may be admitted to the LLC as a Member only upon (x) the prior written consent of the Board (which consent may be given or withheld at the Board’s sole discretion) unless such Assignee is a Permitted Transferee, in which case the Board’s consent shall not be required, and (y) satisfaction of all of the following conditions, upon which consent and satisfaction the Assignee shall have, to the extent assigned, the rights and powers, and be subject to the restrictions and liabilities, of a Member under the Act and this Agreement, shall be liable for any obligations of the Assignor to make future Capital Contributions, but shall not be obligated with respect to other liabilities reasonably unknown to the Assignee at the time the Assignee becomes a Member:

(i) The Assignee becomes a party to this Agreement as a Member by executing a counterpart signature page to this Agreement and executing such documents and
instruments as the Board may reasonably request as necessary or appropriate to confirm such Assignee as a Member in the LLC and such Assignee’s agreement to be bound by the terms and conditions of this Agreement;

(ii) The Assignee pays or reimburses the LLC for all reasonable legal, filing and other costs that the LLC incurs in connection with the admission of the Assignee as a Member;

(iii) Except with respect to an assignee that is an Affiliate of the Laguna Member, the Assignee certifies that he, she or it is not a nonresident alien individual, foreign corporation, foreign partnership, foreign trust or foreign estate as such terms are defined by the Code; and

(iv) Other than in the case of Transfers by a Member to an Affiliate, if the Assignee is not a natural person of legal majority, the Assignee provides the LLC with evidence reasonably satisfactory to the Board of the authority of the Assignee to become a Member and to be bound by the terms and conditions of this Agreement.

Section 9.07. Void Assignment. Any Transfer by any Member in contravention of this Agreement shall be null and void ab initio and otherwise ineffectual and shall not bind or be recognized by the LLC or any other party. In the event of any Transfer in contravention of this Agreement, the purported transferee shall have no right to any Distributions of the LLC or any other rights of a Member. If the Laguna Member (and/or any of its Affiliates that own Equity Interests) Transfers any of its Equity Interests (other than to any of its Affiliates or other Permitted Transferees) in violation of the terms of this Agreement, then (i) the size of the Board shall be automatically increased by two Managers, both of whom shall be designated as ACON Managers, (ii) Section 5.02(a)(ii) of this Agreement shall immediately become null and void immediately upon the ACON Member’s appointment of ACON Managers to fill the two newly created Manager positions on the Board, and (iii) Section 5.02 shall be deemed amended to reflect such expansion of the Board and the deletion of Section 5.02(a)(ii), in each case, mutatis mutandis.

Section 9.08. Legend. In the event that certificates representing Interests are issued (“Certificated Interests”), such certificates shall bear the following legend:

THE INTEREST REPRESENTED BY THIS CERTIFICATE WAS ORIGINALLY ISSUED ON __________, 20__, HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), AND MAY NOT BE SOLD OR TRANSFERRED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR AN EXEMPTION FROM REGISTRATION THEREUNDER. THE INTEREST REPRESENTED BY THIS CERTIFICATE IS ALSO SUBJECT TO ADDITIONAL RESTRICTIONS ON TRANSFER AND CERTAIN OTHER AGREEMENTS SET FORTH IN THE AMENDED AND RESTATED LIMITED LIABILITY
COMPANY AGREEMENT BY AND AMONG BORDEN DAIRY HOLDINGS, LLC AND ITS MEMBERS DATED EFFECTIVE AS OF _______ __, 2017, AS AMENDED AND MODIFIED FROM TIME TO TIME. A COPY OF SUCH AGREEMENT SHALL BE FURNISHED BY THE LLC TO THE HOLDER HEREOF UPON WRITTEN REQUEST AND WITHOUT CHARGE.

Section 9.09. Effective Date. Any Transfer and any related admission of a Person as a Member in compliance with this Article IX shall be deemed effective on such date that the transferee or successor in interest complies with the requirements of this Agreement.

Section 9.10. Effect of Incapacity. Except as otherwise provided herein, the Incapacity of a Member shall not dissolve or terminate the LLC. In the event of such Incapacity, the executor, administrator, guardian, trustee or other personal representative of the Incapacitated Member shall be deemed to be the assignee of such Member’s Interest and may, subject to the terms and conditions set forth in Section 9.06, become a substituted Member.

Section 9.11. Registration Rights. The LLC and each Member acknowledge and agree that no registration rights have been granted to any Person to request or participate in the registration of Interests or any other equity securities of the LLC or any of its Subsidiaries, or any securities convertible or exchangeable into or exercisable for such securities.

Section 9.12. No Appraisal Rights. No Member shall be entitled to any appraisal rights with respect to such Member’s Interests, whether individually or as part of any class or group of Members, in the event of a liquidation, dissolution, merger, consolidation, Sale of the LLC or other transaction involving the LLC, any Subsidiary, or any of its or their securities, unless such rights are expressly provided by the agreement of merger, agreement of consolidation or other document effectuating such transaction.

Section 9.13. Covenant Not to Withdraw. Each Member hereby covenants and agrees that he, she or it has entered into this Agreement based on its expectation that all Members will continue as Members and carry out the duties and obligations undertaken by them hereunder and that, except pursuant to a Transfer of all of such Member’s Interests in accordance with the terms of this Agreement, such Member hereby covenants and agrees not to withdraw or attempt to withdraw from the LLC.

Article X.
DISSOLUTION, LIQUIDATION AND TERMINATION

Section 10.01. Dissolution. The LLC shall be dissolved, and its affairs shall be wound up on the first to occur of:

(a) a resolution by the Board to such effect, including the approval of the Designated ACON Manager and a majority of the Class B Managers;

(b) the entry of a decree of judicial dissolution of the LLC under Section 18-802 of the Act; or
(c) upon the written request of Members holding a Majority of Voting Interests.

The death, retirement, resignation, expulsion or Incapacity of a Member, or the occurrence of any other event that terminates the continued membership of a Member in the LLC, shall not cause a dissolution of the LLC, and the LLC shall continue in existence subject to the terms and conditions of this Agreement.

Section 10.02. Liquidation and Termination. Upon dissolution of the LLC, the Board or such other or additional Member or Members as may be designated by the Board shall act as liquidator(s). The liquidator(s) shall proceed diligently to wind up the affairs of the LLC and make final Distributions as provided herein and in the Act. The costs of liquidation shall be borne as an expense of the LLC. Until final Distribution, the liquidator(s) shall continue to operate the LLC properties with all of the power and authority of the Board and of the Members, subject to the power of the Board to remove and replace such liquidator(s). The steps to be accomplished by the liquidator(s) are as follows:

(a) As promptly as possible after dissolution and again after final liquidation, the liquidator(s) shall cause a proper accounting to be made by a recognized firm of certified public accountants of the LLC’s assets, liabilities and operations through the last day of the calendar month in which the dissolution occurs or the final liquidation is completed, as applicable.

(b) The liquidator(s) shall pay, satisfy or discharge from LLC funds all of the debts, liabilities and obligations of the LLC (including, without limitation, all expenses incurred in liquidation) or otherwise make adequate provision for payment and discharge thereof (including, without limitation, the establishment of a cash fund for contingent liabilities in such amount and for such term as the liquidator(s) may reasonably determine).

(c) All remaining assets of the LLC shall be distributed to the Members in accordance with Section 4.01(a) by the end of the Taxable Year of the LLC during which the liquidation of the LLC occurs (or, if later, 90 days after the date of the liquidation).

(d) The liquidator(s) shall cause only cash, evidences of indebtedness and other securities to be distributed in any liquidation. The Distribution of cash and/or property to a Member in accordance with the provisions of this Section 10.02 constitutes a complete return to such Member of his, her or its Capital Contributions and a complete Distribution to such Member of his, her or its interest in the LLC and all the LLC’s property and constitutes a compromise to which all Members have consented within the meaning of the Act. To the extent that a Member returns funds to the LLC, such Member has no claim against any other Member for those funds.
Section 10.03. Cancellation of Certificate. On completion of the Distribution of the LLC’s assets as provided herein, the LLC shall be terminated, and shall file articles of cancellation with the Secretary of State of the State of Delaware, cancel any other filings made pursuant to Section 2.01 and take such other actions as may be necessary to terminate the LLC.

Article XI.
INDEMNIFICATION; STANDARDS OF ACTION; AND EXCULPATION

Section 11.01. Indemnification.

(a) The LLC hereby agrees to indemnify and hold harmless each Member and any Manager (each an “Indemnified Person”), to the fullest extent permitted under the Act, as the same now exists or may hereafter be amended, substituted or replaced (but, in the case of any such amendment, substitution or replacement only to the extent that such amendment, substitution or replacement permits the LLC to provide broader indemnification rights than the LLC is providing immediately prior to such amendment), against all expenses, liabilities and losses (including attorney fees, judgments, fines, excise taxes or penalties) reasonably incurred or suffered by such Indemnified Person (or one or more of such Indemnified Person’s Affiliates) by reason of the fact that such Indemnified Person is or was a Member or a Manager or is or was serving at the request of the LLC as a representative, officer, director, principal, member, employee or agent of another corporation, partnership, joint venture, limited liability company (including without limitation the LLC), trust or other enterprise; provided, that (unless the Board otherwise consents) no Indemnified Person shall be indemnified for any expenses, liabilities and losses suffered that are attributable to such Indemnified Person’s or its Affiliates’ fraud, gross negligence, willful misconduct or knowing violation of law or for any present or future breaches of any representations, warranties or covenants by such Indemnified Person or its Affiliates contained herein or in any other agreement with the LLC or for losses incurred by the LLC. Expenses, including attorneys’ fees, incurred by any such Indemnified Person in defending such a proceeding shall be paid by the LLC in advance of the final disposition of such proceeding, including any appeal therefrom, upon receipt of an undertaking by or on behalf of such Indemnified Person to repay such amount if it shall ultimately be determined that such Indemnified Person is not entitled to be indemnified by the LLC.

(b) The right to indemnification and the advancement of expenses conferred in this Section 11.01 shall not be exclusive of any other right which any Person may have or hereafter acquire under any statute, agreement, vote or otherwise.

(c) The LLC may (but is not obligated to) maintain insurance, at its expense, to protect any Indemnified Person against any expense, liability or loss described in Section 11.01(a) whether or not the LLC would have the power to indemnify such Indemnified Person against such expense, liability or loss under the provisions of this Section 11.01.

(d) Notwithstanding anything contained herein to the contrary (including in this Section 11.01), any indemnity by the LLC relating to the matters covered in this Section 11.01 shall be provided out of and to the extent of LLC assets only and no Member (unless such Member otherwise agrees in writing) shall have personal liability on account...
thereof or shall be required to make additional Capital Contributions to help satisfy such
indemnity of the LLC.

(e) If this Section 11.01 or any portion thereof shall be invalidated on any
ground by any court of competent jurisdiction, then the LLC shall nevertheless indemnify and
hold harmless each Indemnified Person pursuant to this Section 11.01 to the fullest extent
permitted by any applicable portion of this Section 11.01 that shall not have been invalidated
and to the fullest extent permitted by applicable law.

Section 11.02. Standards of Action. No Duties. Notwithstanding
anything in this Agreement or at law or in equity to the contrary, no Member, Manager or
officer, or their respective Affiliates, shall have any duty (including fiduciary duty applicable
to such Person), or any liability for breach of duty (including fiduciary duty applicable to such
Person), to the LLC, any Member, any other Manager, officer or any other Person (including
any creditor of the LLC) and no implied duties, covenants or obligations shall be read into this
Agreement against any such Member, Manager or officer. Without limiting the generality of
the preceding sentence, to the extent that, at law or in equity, any Member, Manager or officer
would otherwise have duties (including fiduciary duties) and liabilities relating thereto to the
LLC, any Member, any Manager, officer or any other Person, such Member, Manager or
officer shall not be liable to the LLC, any Member, any other Manager, officer or any other
Person, for breach of duty (including fiduciary duty applicable to such Person) for its good
faith reliance on the provisions of this Agreement, and the provisions of this Agreement, to the
extent that they restrict or eliminate the duties (including fiduciary duties) and liability of such
Member, Manager or officer otherwise existing at law or in equity, are agreed by the LLC and
each Member to replace such other duties and liabilities of such Member, Manager or officer.

(b) Board Discretion. Whenever in this Agreement or any other agreement
contemplated herein or to which the LLC is a party the Board (or any committee thereof) is
permitted or required to take any action or to make a decision or determination, the Board (or
such committee) shall take such action or make such decision or determination in its sole
discretion, unless another standard is expressly set forth herein or therein. Whenever in this
Agreement or any other agreement contemplated herein the Board (or any committee thereof)
is permitted or required to take any action or to make a decision or determination in its "sole
discretion" or "discretion," with "complete discretion" or under a grant of similar authority or
latitude, each Manager shall be entitled to consider such interests and factors as such Manager
desires (including, the interests of such Manager's Affiliates, employer, partners and their
Affiliates).

(c) Good Faith and Other Standards. Whenever in this Agreement or any
other agreement contemplated herein or to which the LLC is a party the Board (or any
committee thereof) is permitted or required to take any action or to make a decision or
determination in its "good faith" or under another express standard, each Manager shall act
under such express standard and, to the extent permitted by applicable law, shall not be subject
to any other or different standards imposed by this Agreement or any other agreement
contemplated herein or to which the LLC is a party, and, notwithstanding anything contained
herein to the contrary, so long as such Manager does not with such action breach the implied
covenant of good faith and fair dealing (in each case, as determined by a final judgment, order
or decree of an arbitrator or a court of competent jurisdiction (which is not appealable or with respect to which the time for appeal therefrom has expired and no appeal has been perfected), the resolution, action or terms so made, taken or provided by the Board (or any committee thereof) shall not constitute a breach of this Agreement or any other agreement contemplated herein or impose liability upon such Manager or any of such Manager's Affiliates, employees, agents or representatives and shall be final, conclusive and binding on the LLC and the Members. With respect to any action taken or decision or determination made by any Manager or the Board (or any committee thereof), it shall be presumed that each Manager and the Board (or such committee thereof) acted in good faith and in compliance with this Agreement and the laws of the State of Delaware and any Person bringing, pleading or prosecuting any claim with respect to any action taken or decision or determination made by the Board (or any committee thereof) shall have the burden of overcoming such presumption by clear and convincing evidence; provided that for the avoidance of doubt, this sentence shall not be deemed to increase or place any duty (including any fiduciary duty) on the Board or its Manager.

Section 11.03. **Persons Entitled to Indemnity.** Any Person who is within the definition of “Indemnified Person” at the time of any action or inaction in connection with the business of the LLC shall be entitled to the benefits of this Article XI as an “Indemnified Person” with respect thereto, regardless of whether or not such Person continues to be within the definition of “Indemnified Person” at the time of such Indemnified Person’s claim for indemnification or exculpation hereunder.

Section 11.04. **Procedure Agreements.** The LLC may enter into an agreement with any of its Members or Managers, setting forth procedures consistent with applicable law and this Agreement for implementing the indemnities provided in this Article XI.

Section 11.05. **Amendment.** The provisions of this Article XI may be amended or repealed in accordance with Section 12.03; provided, however, that no amendment or repeal of such provisions that adversely affects the rights of any Indemnified Person under this Article XI with respect to such Indemnified Person’s acts or omissions at any time prior to such amendment or repeal shall apply to any Indemnified Person without such Indemnified Person’s prior written consent.

Section 11.06. **Survival.** The provisions of this Article XI shall survive any termination of this Agreement.

Section 11.07. **No Inconsistent Amendments to Certificate.** No amendments to the Certificate shall be made to the extent such amendments are contrary to, or not consistent with, the provisions of this Article XI.

**Article XII. MISCELLANEOUS PROVISIONS**

**Section 12.01. Notices.**

(a) Except as expressly set forth to the contrary in this Agreement, all notices, requests or consents provided for or permitted to be given under this Agreement must be in writing and must be given either by depositing that writing in the United States mail, addressed
to the recipient, postage paid, and registered or certified with return receipt requested or by
delivering that writing to the recipient in person, by courier, or by facsimile electronic mail (e-
mail) or other electronic transmission; and a notice, request, or consent given under this
Agreement is effective upon receipt against the Person who receives it.

(b) All notices, requests and consents to be sent to a Member must be sent to
or made at the address (or facsimile number or email address) given for that Member on the
Member Schedule, or such other address (or facsimile number or email address) as that
Member may specify by notice to the other Members. Any notice, request or consent to the
LLC or the Board must be given to the Board or, if appointed, the secretary of the LLC at the
LLC’s chief executive offices. Whenever any notice is required to be given by law or this
Agreement, a written waiver thereof, signed by the Person entitled to notice, whether before or
after the time stated therein, shall be deemed equivalent to the giving of such notice.

Section 12.02. Effect of Waiver or Consent. A waiver or consent,
express or implied, of or to any breach or default by any Person in the performance by that
Person of such Person’s obligations hereunder or with respect to the LLC is not a consent or
waiver to or of any other breach or default in the performance by such Person of the same or any
other obligations of such Person hereunder or with respect to the LLC. Failure on the part of a
Person to complain of any act of any Person or to declare any Person in default hereunder or with
respect to the LLC, irrespective of how long that failure continues, does not constitute a waiver
by such Person of such Person’s rights with respect to that default until the applicable statute-of-
limitations period has run.

Section 12.03. Amendment or Modification. Except as otherwise
provided in Section 3.04(a), this Agreement and any provision hereof may be amended or
modified from time to time only by a written instrument adopted by (a) the Board and (b)
Members holding a Majority of Voting Interests; provided, however, that the consent of the
Members shall not be required to amend this Agreement as necessary to reflect a valid Transfer
made in accordance with the provisions hereof or to effect the admission of a Member of the
LLC with respect to an Additional Interest in accordance with Section 3.04 hereof (e.g., to
update the Member Schedule or other similar administrative changes); provided further,
however, that no such amendment (including any amendment permitted by Section 3.04) may
(by merger, amendment, consolidation or otherwise), except as otherwise herein provided,
without the consent of such affected Member (i) adversely affect a Member’s Percentage Interest
in any manner that is different from the other Members of such affected Member’s class (in such
other Members’ capacity as members of such class), (ii) adversely affect any payments to which
a Member or a former Member has become entitled pursuant to this Agreement in any manner
that is different from the other Members of such affected Member’s class (in such other Members’
capacity as members of such class), or (iii) adversely affect the right of a Member
pursuant to any provisions of Article IX in any manner that is different from the other Members
of such affected Member’s class (in such other Members’ capacity as members of such class);
provided further, however, that prior to the occurrence of an “ownership change” of Borden
Dairy Company under Section 382 of the Code (which is the first “ownership change” of Borden
Dairy Company under Section 382 of the Code to have occurred following the date hereof), no
such amendment (including any amendment permitted by Section 3.04) may (by merger,
amendment, consolidation or otherwise), except with the prior written consent of the Laguna
Member, create or allow to exist (whether through the creation or issuance of any Additional Interest or otherwise) any distribution that is payable senior to, prior to, or with a payment preference senior to, the payment to the Class B Members of the TRA Distributions under Section 4.01(a)(i). All amendments to this Agreement shall be in writing and signed by the Company and the Members whose consent is required in accordance with the preceding sentence. Notwithstanding anything herein to the contrary, the only right that any Member shall have with respect to any amendment made in connection with the creation, authorization or issuance of any Additional Interest in accordance with Section 3.04(a) shall be the right, if any, of such Member to purchase such Additional Interests in accordance with Section 9.02.

Section 12.04. Binding Effect. Subject to the Transfers permitted by the terms of this Agreement and the restrictions thereon, this Agreement is binding on and shall inure to the benefit of the Members and their respective heirs, legal representatives, successors and permitted assigns.

Section 12.05. Further Assurances. In connection with this Agreement and the transactions contemplated hereby, each Member shall execute and deliver any additional documents and instruments and perform any additional acts that may be necessary or appropriate to effectuate and perform the provisions of this Agreement and those transactions.

Section 12.06. Waiver of Certain Rights. Each Member irrevocably waives any right to demand any Distributions or withdrawal of property from the LLC or to maintain any action for dissolution (except pursuant to Section 18-802 of the Act) of the LLC or for partition of the property of the LLC.

Section 12.07. Indemnification and Reimbursement for Payments on Behalf of a Member. If the LLC is obligated to pay any amount to a governmental agency (or otherwise makes a payment) because of a Member’s status or otherwise specifically attributable to a Member (including, without limitation, federal, state or local withholding taxes imposed with respect to any issuance of Interests to an Employee Member or any payments to an Employee Member, federal withholding taxes with respect to foreign Persons, state personal property taxes, state unincorporated business taxes, etc.), then such Member (the “Indemnifying Member”) shall indemnify the LLC in full for the entire amount paid (including, without limitation, any interest, penalties and expenses associated with such payments). At the option of the Board, either:

(a) promptly upon notification of an obligation to indemnify the LLC, the Indemnifying Member shall make a cash payment to the LLC equal to the full amount to be indemnified (provided that the amount paid shall not be treated as a Capital Contribution), or

(b) the LLC shall reduce Distributions that would otherwise be made to the Indemnifying Member, until the LLC has recovered the amount to be indemnified (provided that the amount of such reduction shall be deemed to have been distributed for all purposes of this Agreement).

An Indemnifying Member’s obligation to make contributions to the LLC under this Section 12.07 shall survive the termination, dissolution, liquidation and winding up of the LLC.
and, for purposes of this Section 12.07, the LLC shall be treated as continuing in existence. The LLC may pursue and enforce all rights and remedies it may have against each Indemnifying Member under this Section 12.07, including instituting a lawsuit to collect such contribution with interest.

Section 12.08. Notice to Members of Provisions. By executing this Agreement, each Member acknowledges that he, she or it has actual notice of (a) all of the provisions hereof (including, without limitation, the restrictions on Transfer set forth in Article IX) and (b) all of the provisions of the Certificate.

Section 12.09. Governing Law; Severability. THIS AGREEMENT IS GOVERNED BY, AND SHALL BE CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF DELAWARE EXCLUDING ANY CONFLICT-OF-LAWS RULE OR PRINCIPLE THAT MIGHT REFER THE GOVERNANCE OR THE CONSTRUCTION OF THIS AGREEMENT TO THE LAW OF ANOTHER JURISDICTION. In the event of a direct conflict between the provisions of this Agreement and any provision of the Certificate or any mandatory provision of the Act, the applicable provision of the Certificate or the Act shall control.

Section 12.10. Interests Owned by Affiliates. For purposes of applying all provisions of this Agreement, the Interests owned by any Affiliate(s) or Permitted Transferees of a Member contemplated by clauses (i) and (ii) of Section 9.01(a) shall be deemed to be owned by such Member.

Section 12.11. Counterparts. This Agreement may be executed in multiple counterparts with the same effect as if all signing parties had signed the same document. All counterparts shall be construed together and constitute the same instrument.

Section 12.12. Headings. The headings used in this Agreement are for the purpose of reference only and do not otherwise affect the meaning or interpretation of any provision of this Agreement.

Section 12.13. Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect under applicable law or rule in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision or any other jurisdiction, but this Agreement shall be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable provision had never been contained herein.

Section 12.14. No Right to Jury Trial. ALL PARTIES HEREBY IRREVOCABLY WAIVE, AND AGREE NOT TO ASSERT, BY WAY OF MOTION, AS A DEFENSE, COUNTERCLAIM OR OTHERWISE, IN ANY ACTION OR PROCEEDING WITH RESPECT TO THIS AGREEMENT ANY RIGHT TO A TRIAL BY JURY.

Section 12.15. Confidentiality; Other Business Activity. Each Member acknowledges that during the term of this Agreement, it, he or she will have access to and become acquainted with trade secrets, proprietary information and confidential information
belonging to the LLC, the LLC Subsidiaries and their Affiliates that are not generally known to the public, including, but not limited to, information concerning business plans, financial statements and other information provided pursuant to this Agreement, operating practices and methods, expansion plans, strategic plans, marketing plans, contracts, customer lists or other business documents which the LLC or any LLC Subsidiary treats as confidential, in any format whatsoever (including oral, written, electronic or any other form or medium) (collectively, “Confidential Information”). In addition, each Member acknowledges that: (i) the LLC has invested, and continues to invest, substantial time, expense and specialized knowledge in developing its Confidential Information; (ii) the Confidential Information provides the LLC and LLC Subsidiaries with a competitive advantage over others in the marketplace; and (iii) the LLC and LLC Subsidiaries would be irreparably harmed if the Confidential Information were disclosed to competitors or made available to the public. Without limiting the applicability of any other agreement to which any Member is subject, no Member shall, directly or indirectly, disclose or use (other than solely for the purposes of such Member monitoring and analyzing its investment in the LLC) at any time any Confidential Information of which such Member is or becomes aware. Each Member in possession of Confidential Information shall take all appropriate steps to safeguard such information and to protect it against disclosure, misuse, espionage, loss and theft. Nothing contained herein shall prevent any Member from disclosing Confidential Information: (i) upon the order of any court or administrative agency; (ii) upon the request or demand of any regulatory agency or authority having jurisdiction over such Member; (iii) to the extent compelled by legal process or required or requested pursuant to subpoena, interrogatories or other discovery requests; (iv) to the extent necessary in connection with the exercise of any remedy hereunder; (v) to other Members; (vi) to such Member’s representatives who, in the reasonable judgment of such Member, need to know such Confidential Information and agree to be bound by these provisions as if a Member; (vii) as part of such Member’s normal reporting or review procedure, or in connection with such Member’s or such Member’s Affiliates’ normal fund raising, marketing, informational or reporting activities; or (viii) to any potential Permitted Transferee in connection with a proposed Transfer of Equity Interests permitted by this Agreement, as long as such Transferee agrees to be bound by these provisions. For the avoidance of doubt, the Laguna Member shall not disclose or provide any Confidential Information to any Excluded Entity or any employee, officer, manager or director of any Excluded Entity unless such Excluded Entity executes a non-disclosure agreement with the LLC in the form attached hereto as Exhibit A or such other non-disclosure agreement with the LLC on such other form and in substance reasonably acceptable to the ACON Member, providing that only such employee, officer, manager or director identified in such non-disclosure agreement shall have access to such Confidential Information. These restrictions shall not apply to Confidential Information that: (i) is or becomes generally available to the public other than as a result of a disclosure by a Member in violation of this Agreement; (ii) is or becomes available to a Member or any of its representatives on a non-confidential basis prior to its disclosure to the receiving Member or any of its representatives in compliance with this Agreement; (iii) is or has been independently developed or conceived by such Member without use of Confidential Information; or (iv) becomes available to the receiving Member or any of its representatives on a non-confidential basis from a source other than the LLC, any other Member or any of their respective Affiliates or representatives.
*****

[Signature Pages Follow]
IN WITNESS WHEREOF, the LLC and the Members have executed this Agreement as of the date first written above.

LLC:

Borden Dairy Holdings, LLC

By: ______________________________
Name: Adam M. Kriger
Title: Vice President

EQUITY MEMBERS:

CLASS A MEMBER:

ACON Dairy Investors, L.L.C.

By: ______________________________
Name: Aron Schwartz
Title: Managing Director

CLASS B MEMBER:

New Laguna, LLC

By: ______________________________
Name: Florentino Rivero Rodriguez
Title: Authorized Signatory
MEMBER SCHEDULE

Maintained by the Board and kept with the books and records of the LLC.
Borden Dairy Holdings, LLC

Member Schedule

(As of July [__], 2017)

<table>
<thead>
<tr>
<th>Class A Members</th>
<th>Aggregate Capital Contribution</th>
<th>Number of Class A Interests</th>
<th>Aggregate Percentage Interest</th>
</tr>
</thead>
</table>
| ACON Dairy Investors, L.L.C.  
1133 Connecticut Avenue, NW, Suite 700  
Washington, DC 20036  
Attention: Aron Schwartz  
Teresa Bernstein  
E-Mail: aschwartz@aconinvestments.com  
tbernstein@aconinvestments.com | $49,600,000 | 44,600,000 | 49.01% |

Class A Total: $49,600,000  
44,600,000  
49.01%

<table>
<thead>
<tr>
<th>Class B Members</th>
<th>Aggregate Capital Contribution</th>
<th>Number of Class B Interests</th>
<th>Aggregate Percentage Interest</th>
</tr>
</thead>
</table>
| New Laguna, LLC  
c/o Laguna Dairy, S. de R.L. de C.V.  
Calzada Carlos Herrera Araluce 185  
Parque Industrial Carlos A Herrera Araluce  
Gomez Palacio, Durango 35079  
United Mexican States  
Attention: Frine Galvan  
E-mail: frine.galvan@grupolala.com | $51,400,000 | 46,400,000 | 50.99% |

Class B Total: $51,400,000  
46,400,000  
50.99%
EXHIBIT A
FORM OF NDA

Attached.
CONFIDENTIALITY AND NONDISCLOSURE AGREEMENT

CONFIDENTIALITY AND NONDISCLOSURE AGREEMENT (“Agreement”), dated as of _________________, 201__, by and between Borden Dairy Holdings, LLC (the “Company”) and [_________________] (the “Excluded Entity”). Each of the Company and the Excluded Entity may be referred to herein as a “Party” and together as the “Parties.”

WHEREAS, those persons listed on Annex A hereto (each, a “Recipient”) are advisors to one or more members of the Company (the “Applicable Members”) and therefore may reasonably require information about the Company to advise the Applicable Members with respect to their investment in the Company, including with respect to the management of the business and affairs of the Applicable Members related to the Company and the exercise of the Applicable Members’ rights and obligations under the LLC Agreement (collectively, the “Advisor Services”);

WHEREAS, in connection with a Recipient’s provision of Advisor Services, such Recipient may have requested or received, and/or may in the future request or receive, certain Confidential Information (as defined below) from the Company; and

NOW, THEREFORE, as an inducement to the Company to furnish Confidential Information to each Recipient, the Parties hereby agree as follows:

1. Confidential Information. As used herein, “Confidential Information” includes all trade secrets, proprietary information and confidential information belonging to the Company and its subsidiaries and affiliates that are not generally known to the public, including, but not limited to, information concerning business plans, financial statements and other information provided to the Applicable Members or any Recipient pursuant to the amended and restated limited liability company agreement of Borden Dairy Holdings, LLC, dated as of [•], 2017 (as amended, modified or supplemented from time to time, the “LLC Agreement”), operating practices and methods, expansion plans, strategic plans, marketing plans, contracts, customer lists or other business documents which the Company or any of its subsidiaries treats as confidential, in any format whatsoever (including oral, written, electronic or any other form or medium). Confidential Information shall not include information that: (i) is or becomes generally available to the public other than as a result of a disclosure by a Recipient or the Applicable Members in violation of this Agreement or the LLC Agreement; (ii) is or becomes available to the Applicable Members, any Recipient or any of their respective Representatives on a non-confidential basis prior to its disclosure to the Applicable Members, any Recipient or any of their respective employees, agents, independent contractors, attorneys, financial advisors and other representatives (“Representatives”) on a non-confidential basis prior to its disclosure to the Applicable Members, any Recipient or any of their respective Representatives in compliance with the LLC Agreement or this Agreement; (iii) is or has been independently developed or conceived by the Applicable Members or any Recipient without use of Confidential Information; (iv) becomes available to the Applicable Members, any Recipient or any of their respective Representatives on a non-confidential basis from a source other than the Company, any member of the Company (other than the Applicable Members) or any of their respective affiliates or Representatives; or (v) was available to the Excluded Entity, the Applicable Members, any Recipient or any of their respective representatives.
respective affiliates or Representatives on or before June \[\] \(^1\), 2017. For the avoidance of doubt, nothing in this Agreement shall limit or constitute a waiver of any Excluded Entity’s obligations of confidentiality pursuant to other existing contractual arrangements binding on such Excluded Entity.

2. Non-Disclosure/Non-Use of Confidential Information. The Excluded Entity hereby agrees that it will not (and will cause each Recipient not to) (a) disclose to any third party any of the Confidential Information previously or hereafter received or obtained by Recipient from the Company or any of its Representatives without the prior written consent of the Board of Managers of the Company, or (b) use the Confidential Information for any purpose other than with respect to the provision of the Advisor Services, and in any event not in connection with any activities that are competitive with the business of, or used to solicit the employees or officers of, the Company and its subsidiaries (such activities, “Prohibited Activities”). Any such Confidential Information may, however, be disclosed by Recipient to (i) third-party attorneys, accountants, financial advisors and other external representatives of the Applicable Members or the Excluded Entity that are not employed by, or officers or directors of, the Excluded Entity or any other Excluded Entity (as such term is defined in the LLC Agreement) and that have a need to know such Confidential Information for any reasonable purpose other than a Prohibited Activity, and (ii) any person with whom Confidential Information may be shared by the Applicable Members pursuant to the LLC Agreement. The Excluded Entity (a) shall use commercially reasonable efforts to cause anyone with whom it shares Confidential Information to comply with the obligations set forth herein applicable to the Excluded Entity hereunder and (b) shall be responsible for any breach of such obligations by any such recipient with respect to Confidential Information received by such person from any Recipient. The Company acknowledges and agrees that disclosure of Confidential Information to any Recipient shall not alone constitute disclosure to the Excluded Entity under this Agreement or the LLC Agreement, and the Excluded Entity acknowledges and agrees that, other than through the receipt or use of Confidential Information by the Recipients in connection with the provision of Advisor Services, it shall have no right to receive or use Confidential Information pursuant to this Agreement as a result of disclosure to, or disclosure by, any Recipient of Confidential Information. For the avoidance of doubt, if any Recipient shares any information with another employee, manager, officer, or agent of the Excluded Entity that is not a Recipient, then such disclosure shall constitute a disclosure to the Excluded Entity and will be a violation of the terms of this Agreement.

3. Equitable Relief. The Excluded Entity recognizes and acknowledges the competitive value and confidential nature of all Confidential Information previously or hereafter furnished to any Recipient and the damage that could result to the Company if any Confidential Information is disclosed to any third party except as permitted herein or pursuant to the LLC Agreement. The Excluded Entity recognizes and acknowledges the damage that could result if any Confidential Information is disclosed by any Recipient in breach of such Recipient’s obligations hereunder. Without prejudice to the rights and remedies otherwise available to the Company, the Excluded Entity agrees that monetary damages may be inadequate to redress a

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\(^1\) Note to Draft: Insert the date of execution of the LLC Agreement.
breach of a Recipient’s obligations under Section 2 of this Agreement and that the Company shall be entitled to seek equitable relief by way of an injunction in the event of any such breach.

4. **List of Recipients.** The Excluded Entity shall have the right to supplement, amend or modify the list of Recipients set forth on Annex A hereto, at any time and from time to time, to include additional Recipients that the Excluded Entity reasonably determines have a need to know such Confidential Information for the purpose of assisting in properly administering the Advisor Services, such supplement, amendment or modification to become effective upon the Company’s receipt of a written notice thereof from the Excluded Entity or any Recipient that identifies such additional Recipients (the “Recipient Notice”). In no event shall the list of Recipients set forth on Annex A hereto, as supplemented (after giving effect to the removal of any Recipient therefrom) by any Recipient Notice, exceed ten (10) individuals.

5. **Limited Authorization to Execute.** Unless this Agreement has been executed on behalf of the Company by an officer of the Company that is not also an employee, officer or director of the Applicable Member or any of its Affiliates, it shall not be deemed duly authorized and no Recipient shall be entitled to receive any information regarding the Company. Notwithstanding the foregoing, a Recipient Notice shall not require countersignature by the Company to be effective.

6. **Permitted Disclosure.** Nothing contained herein shall prevent any Recipient from disclosing Confidential Information: (i) upon the order of any court or administrative agency; (ii) upon the request or demand of any regulatory agency or authority having jurisdiction over such Recipient; (iii) to the extent compelled by legal process or required or requested pursuant to subpoena, interrogatories or other discovery requests; (iv) to the extent necessary in connection with the exercise of any remedy hereunder; or (v) to any other person to whom Confidential Information may be disclosed by the Applicable Members pursuant to the LLC Agreement; provided, in the case of clauses (i), (ii) and (iii), that such Recipient, to the extent practicable and not prohibited by law, provides the Company with written notice thereof so that the Company may seek (at its sole cost and expense) a protective order or other appropriate remedy.

7. **Miscellaneous Provisions.**

a) **No Assignment.** This Agreement will not be assignable or transferable by any Party without the prior written consent of each other Party. This Agreement will inure to the benefit of and be binding on the successors and assigns of each Party.

b) **Amendments; No Waiver.** All additions or modifications to this Agreement must be made in writing and must be signed by all Parties. The failure of a Party to enforce at any time or for any period of time any of the provisions of this Agreement shall not constitute a waiver of such provisions or the right of that Party to enforce each and every provision.

c) **Governing Law.** THIS AGREEMENT IS GOVERNEYED BY, AND SHALL BE CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF DELAWARE EXCLUDING ANY CONFLICT-OF-LAWS RULE OR PRINCIPLE THAT MIGHT REFER THE GOVERNANCE OR THE
CONSTRUCTION OF THIS AGREEMENT TO THE LAW OF ANOTHER JURISDICTION.

d) **Severability.** To the extent that any provision is deemed unenforceable by a court of law, such a clause will be considered separable and will not affect any other provision of this Agreement.

e) **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original copy of this Agreement and all of which, when taken together, shall be deemed to constitute one and the same Agreement.

f) **No Agency, Partnership or Joint Venture.** The Parties hereto agree that this Agreement is for the purposes of protecting the Company’s Confidential Information only. This Agreement does not create any agency or partnership relationship. This Agreement is not a joint venture or other such business arrangement; and any agreement between the Parties as to any existing or future business activities is or will be set forth in other or subsequent written agreements, respectively.

g) **Entire Agreement.** This Agreement contains the entire agreement among the Parties with respect to the subject matter contained herein and supersedes any previous understandings, commitments or agreements, oral or written, with respect to the subject matter contained herein.

[Remainder of This Page Intentionally Left Blank]
IN WITNESS WHEREOF, this Agreement has been duly executed and delivered by each of the Parties as of the date first above written.

BORDEN DAIRY HOLDINGS, LLC

By: _________________________
Name: _________________________
Title: _________________________
Address: _________________________

[______________________]

By: _________________________
Name: _________________________
Title: _________________________
Address: _________________________
ANNEX A

List of Recipients
EIGHTH AMENDMENT TO TRADEMARK LICENSE AGREEMENT

This Eighth Amendment to the Trademark License Agreement ("Eighth Amendment") dated September 4, 1997 is entered into ___________, 2017 (the "Effective Date") by and among Comercializadora de Lacteos y Derivados, S.A. de C.V. ("COMLADE" or "Licensor"), a Mexican sociedad anónima de capital variable having a principal place of business at Calzada Lázaro Cárdenas No. 185, Parque Industrial Lagunero, Gómez Palacio, Durango, México 35077, on the one hand, and Borden Dairy Company, a Delaware corporation having a principal place of business at 8750 North Central Expressway, Suite 400, Dallas, Texas 75231 ("Borden" or "Licensee"), on the other hand.

WHEREAS, through their predecessors-in-interest, COMLADE and Borden are parties to a Trademark License Agreement made effective September 4, 1997, which was amended and otherwise modified effective September 4, 2000, April 25, 2001, January 1, 2004, April 13, 2009, June 1, 2006, January 1, 2010, April 25, 2011, June 27, 2012 and October 1, 2012 (collectively, the "Trademark License Agreement");

WHEREAS, Licensor and Licensee have agreed to amend the Trademark License Agreement further, as reflected in this Eighth Amendment;

WHEREAS, capitalized terms used but not otherwise defined herein shall have the meaning ascribed to such terms in the Trademark License Agreement;

WHEREAS, Grupo LALA, S.A.B. de C.V. ("Grupo LALA"), as the parent corporation of COMLADE, and its subsidiary LALA U.S., Inc. ("LALA U.S.") agrees to assume certain rights, but not the obligations, of COMLADE as set forth in this Eighth Amendment.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. The definition of “Additional Appendix C Products” in Section 1.1 of the Trademark License Agreement is hereby amended to add the following italicized words so that the definition reads as follows: “Additional Appendix C Products” shall mean, collectively, milk or other dairy products or fruit juices not specifically listed on Appendix C that are currently or have been manufactured or processed by Holdings or any other subsidiaries or affiliates of Licensee during the Term of the Trademark License Agreement, including without limitation any entity that was a subsidiary or affiliate of Licensee prior to the execution of this Eighth Amendment.” For the avoidance of doubt, Additional Appendix C Products do not include those products listed on Schedule A, which reflect products exclusively licensed to third parties as of the Effective Date of this Agreement; provided, however, that Licensor acknowledges and agrees that Dairy Farmers of America, Inc. ("DFA") has received an exclusive trademark license from Licensor and has granted an exclusive sublicense to Licensee for those products listed in Schedule B. For as long as the foregoing exclusive sublicense persists, Licensor shall treat such products listed in Schedule B as though Licensor has itself licensed them to Licensee and subject them to the same treatment as those products listed in Appendix C Additional Products.
2. Section 1.1 of the Trademark License Agreement is hereby amended to delete the definitions of “Initial Term,” “Renewal Period,” and “Term” to reflect the parties’ agreement that the Trademark License Agreement shall be perpetual and irrevocable.

3. Appendix A of the Trademark License Agreement (Licensed Trademarks) is hereby deleted in its entirety and the “Amended and Restated Appendix A,” attached hereto and made a part hereof, is hereby substituted therefor to update the U.S. Patent and Trademark Office (“USPTO”) records for the Licensed Trademarks listed in Appendix A. For purposes of clarification, Amended and Restated Appendix A is a list of specific marks which Licensee may use in connection with the Products and Additional Products licensed under the Trademark License Agreement. To the extent Licensee claims rights arising from specific registrations listed in Amended and Restated Appendix A, such rights are limited to Products and Additional Products. Subject to Article IX. herein, Licensee may not claim any rights arising from registrations to the extent such registrations cover products not licensed under this Trademark License Agreement.

4. The list of “Products” in Appendix C of the Trademark License Agreement is hereby deleted in its entirety and the “Amended and Restated Appendix C,” attached hereto and made a part hereof, is hereby substituted therefor to reflect: (a) the deletion of “fresh yogurts” and “frozen yogurts of all flavors” and (b) the reinstatement (following the August 1, 2016 termination of the license grant to Licensee) of ultra-pasteurized, shelf stable, aseptically packaged fluid fresh milk (“UHT milk”) among the Products. To the extent that LALA U.S. currently holds any rights to use the Licensed Trademarks in the United States for UHT milk from Licensor or otherwise, Licensor agrees that it shall terminate, or cause to be terminated, those licensed rights on or before the Effective Date of this Eighth Amendment. As of the Effective Date, Licensor has exclusively licensed a right to extended shelf life (“ESL”) dairy products, other than eggnog, to DFA, which has subsequently and exclusively sublicensed that right to Licensee. In the event that DFA’s license rights to ESL dairy products in the United States terminate, Licensor shall license the same rights to Licensee on an exclusive, irrevocable basis, subject to the same rights and obligations under the Trademark License Agreement.

5. The preamble in Section 2.1(a) of the Trademark License Agreement, preceding Subsection 2.1(a)(i) of the Trademark License Agreement, is hereby deleted in its entirety to reflect the parties’ agreement that the Trademark License Agreement shall be perpetual and irrevocable, and the following language is substituted therefor: “Subject to the terms and conditions herein, Licensor hereby grants to Licensee the following rights and licenses, which shall be perpetual and irrevocable, and exclusive even as to Licensor, to Grupo LALA, to its subsidiary LALA U.S., and to any of their other subsidiaries and affiliates in the United States:”

6. The Trademark License Agreement is hereby amended by adding the following new Subsection 2.1(a)(ii): “in the event that any license or sublicense rights in the United States to use the Licensed Trademarks granted to Dean Foods or DFA terminate or expire, Licensee shall automatically be granted a trademark license or sublicense, as appropriate, to use those rights, on an exclusive, irrevocable basis, subject to the same rights and obligations under the Trademark License Agreement. This Subsection 2.1(a)(ii) shall not apply with respect to rights for products consisting of or containing yogurt.”
7. Subsequent subsections of 2.1(a) are renumbered to reflect the addition of new Subsection 2.1(a)(ii).

8. The Trademark License Agreement is hereby amended by adding the following new Subsection 2.1(b): “Notwithstanding anything to the contrary herein:

(i) In calendar year 2017, Licensee may exclusively continue to market, sell and distribute the cottage cheese and sour cream products listed in the Amended and Restated Appendix C under the Licensed Trademarks listed in Amended and Restated Appendix A Licensed Trademarks, but only in Licensee’s distribution area ("Borden Dairy’s Area"), which encompasses customers of Licensee and its affiliates in 2017 and the service area served by Licensee’s thirteen (13) facilities in the United States. In the remainder of the United States, Licensee’s license rights hereunder for cottage cheese and sour cream products shall otherwise be non-exclusive in calendar year 2017.

(ii) In January 2018, Licensee shall make a payment by check or wire transfer, as Licensor instructs in writing, to Grupo LALA or such other affiliate of Licensor as directed by Licensor, equal to the “Gross Profit” after distribution expense and direct commissions derived from Licensee’s sale of cottage cheese and sour cream products as listed in the Amended and Restated Appendix C, and only for such cottage cheese and sour cream products that Licensee sells from the Effective Date to December 31, 2017. “Gross Profit” shall mean Licensee’s Net Sales of cottage cheese and sour cream products branded under the Licensed Trademarks minus the Cost of Goods Sold (defined below) for cottage cheese and sour cream products branded under the Licensed Trademarks. “Net Sales” is Gross Sales less trade spend and other sales deductions customarily recorded by Licensee in the preparation of its GAAP compliant financials. “Cost of Goods Sold” means the cost to purchase such items FOB producing plant plus the inbound transportation expense to move the product to Licensee’s plant. The parties agree that neither party owes the others any monetary amounts with respect to the trademark rights granted in this Trademark License Agreement and amendments thereto, other than Licensee’s payment obligation for the 2017 license for sour cream and cottage cheese products and the annual Administrative Fee described in Subsection 2.6.

(iii) In calendar year 2017 only, LALA U.S., Inc. will be permitted to manufacture, distribute and sell cottage cheese and sour cream products under the Licensed Trademarks in those regions of the United States outside of Borden Dairy’s Area. This right will terminate at 11:59 pm on December 31, 2017.

(iv) Commencing January 1, 2018, Licensee’s exclusive rights as granted herein shall resume and Licensee shall continue to have the perpetual and exclusive U.S. license to use the Licensed Trademarks listed in Amended and Restated Appendix A for cottage cheese and sour cream products, as set forth in Subsection 2.1(a), which rights shall be exclusive even as to Licensor, to Grupo LALA, to its subsidiary LALA U.S., and to any of their other subsidiaries and affiliates.
(v) Commencing January 1, 2018, if Licensee seeks to outsource the manufacture of its cottage cheese and/or sour cream products, Grupo LALA shall have the right of first offer to produce cottage cheese or sour cream products branded under the Licensed Trademarks for Licensee to sell within the Territory at a price based upon the following general terms: the sum of (1) Grupo LALA’s direct labor and historical overhead allocation multiplied by 1.10; plus (2) material costs; plus (3) shipping costs to Licensee’s designated dairy plants; provided, however, that Licensee is only obligated to accept such offer at this price if it is the most competitive option available to Licensee from a price standpoint, and Licensee is free to purchase cottage cheese and/or sour cream products from a third party that makes a more competitive offer to produce such products.”

(vi) Licensee shall not use the Licensed Trademarks, or any variations of the BORDEN or ELSIE trademarks, in connection with yogurt products of any kind, regardless of whether it possesses license rights or sublicense rights to do so, without the prior written consent of Licensor, which it may withhold within its sole discretion. Licensee shall also not license or sublicense rights to use the Licensed Trademarks, or any variations of the BORDEN or ELSIE trademarks, in connection with yogurt products of any kind, to its subsidiaries, affiliates or any other third parties without the prior written consent of Licensor, which it may withhold within its sole discretion.

(vii) Licensor shall not use the Licensed Trademarks, or any variations of the BORDEN or ELSIE trademarks, in the United States in connection with any products other than yogurt products of any kind, regardless of whether it possesses ownership rights or license rights or sublicense rights to do so, without the prior written consent of Licensee, which Licensee may withhold within its sole discretion. Licensor shall also not license or sublicense rights to use the Licensed Trademarks, or any variations of the BORDEN or ELSIE trademarks, in the United States in connection with products other than yogurt products, to its subsidiaries, affiliates or any other third parties without the prior written consent of Licensee, which Licensee may withhold within its sole discretion. Notwithstanding the foregoing sentence, the proscription as to licenses or sublicenses shall not apply to any licenses or sublicenses in force as of the Effective Date.

9. Subsection 2.1(b) of the Trademark License Agreement is hereby renumbered as Subsection 2.1(c).

10. Section 2.4 of the Trademark License Agreement is hereby revised to delete Subsections 2.4(i) (prohibition on use of Licensed Trademarks in connection with any products or services other than those currently sold under the Licensed Trademarks) and Subsection 2.4(vi) (prohibition on use of the Licensed Trademarks for shelf stable eggnog, which is now added to the Appendix C Products). Subsections 2.4(ii), (iii), (iv) and (v) shall be renumbered 2.4 (i), (ii), (iii) and (iv), respectively. Notwithstanding the foregoing provisions, Licensee’s rights in shelf stable eggnog are subject to the existing exclusive rights of Sokol and Company (“Sokol”) to use the Licensed Trademarks for shelf stable eggnog. If Sokol’s rights are terminated, notwithstanding any rights that Licensor may have to assign its rights as Licensor of
the Licensed Trademarks with respect to shelf stable eggnog in the United States to a third party, it shall not exercise those rights, and instead, Licensor shall automatically, exclusively and irrevocably license rights in the United States in the Licensed Trademarks for shelf-stable eggnog to Licensee pursuant to the terms of this Trademark License Agreement.

11. The Trademark License Agreement is hereby amended by adding the following new Subsection 2.6: “Licensee shall pay to Licensor a non-refundable, annual administrative fee (“Administrative Fee”) of one-hundred and fifty thousand U.S. dollars (US $150,000) payable in advance. For the year 2017, the Administrative Fee will be due February 1, 2017. For each year thereafter, the Administrative Fee shall be readjusted using the U.S. Consumer Price Index as a measure of inflation and shall be due on the first business day of each new calendar year.”

12. Section 4.3 of the Trademark License Agreement is hereby prefaced with the following language: “Subject to Article V. herein,”

13. Article V of the Trademark License Agreement is hereby deleted in its entirety and the following Article shall be substituted therefor to reflect the parties’ agreement that Borden shall be the “Brand Manager” of the Licensed Trademarks in the United States:

“ARTICLE V.
BRAND MANAGEMENT BY LICENSEE

5.1 Licensee shall be the “Brand Manager” of the Licensed Trademarks in the United States. As such, Licensee will have the sole right to determine and evolve the look of the Licensed Trademarks in the United States. Licensor is familiar with and approves of the high quality of Licensee’s products heretofore sold under the Licensed Trademarks, and Licensee shall maintain this high quality. As Brand Manager, Licensee shall control the quality of the Products and Additional Products sold under this Trademark License Agreement in the United States. Each year, Licensee shall provide Licensor with one specimen for each variation of the Licensed Trademarks used by Licensee. Further, if licensees of other U.S. rights subject to Licensee’s control as Brand Manager use the Licensed Trademarks in manners distinct from that of Licensee, Licensee shall provide to Licensor one specimen for each variation of Licensed Trademarks used by the other licensees of Licensed Trademarks in the United States.

5.2 Upon receipt of specimens pursuant to Section 5.1, Licensor may make a reasonable request in writing that Licensee alter the appearance of the Licensed Trademarks as used by Licensee. Licensee shall thereafter take reasonable steps to make such alterations, provided that Licensor’s requested alterations do not constitute material alterations of the Licensed Trademarks as previously used by Licensee. Licensor and Licensee shall act in good faith to determine mutually agreeable depictions of the Licensed Trademarks. Notwithstanding the foregoing, if Licensor does not request alterations to the marks within five (5) business days of receipt of specimens pursuant to Section 5.1, Licensor’s silence shall be deemed approval of Licensee’s depiction of the Licensed Trademarks, and Licensor’s right to require alterations shall be waived.
5.3 Within five (5) business days of Licensee’s receipt of notice from any government agency as to health or safety issues involving Products or Additional Products sold or offered under the Licensed Trademarks, Licensee shall provide written notice to Licensor regarding such health or safety issues. Licensee’s obligation to notify Licensor also extends to involuntary recall of Products or Additional Products sold or offered under the Licensed Trademarks and to the filing of any health- or safety-related lawsuits by third parties against Licensee arising from the sale or offering of Products or Additional Products under the Licensed Trademarks. Should Licensee be required to notify Licensor under this Section 5.3, Licensee shall thereafter, but no later than 30 days from the transmission of such notice, inform Licensor of the steps it has taken and will take to address all such health- and safety-related issues or product recalls, and shall periodically update Licensor as to resolution of such health and safety-related issues or product recalls until the issues are resolved. Should Licensee fail to meet its notice requirements under this Section 5.3, Licensor reserves the right to intervene as Brand Manager, which includes all relevant rights and obligations, with respect to the particular Products or Additional Products and Licensed Trademarks at issue. Should Licensee fail to take the steps set forth in its corrective plan to address the health or safety issues or involuntary product recalls, and provides no reasonable explanation for such failure, Licensor may intervene as Brand Manager with respect to the particular Products or Additional Products and Licensed Trademarks at issue until such health or safety issue has been resolved and no longer present a threat to the public. In the event Licensor intervenes, Licensee’s rights as Brand Manager with respect to these Products or Additional Products and Licensed Trademarks will resume upon Licensor’s written satisfaction that Licensee again meets Licensor’s high standards of quality.

5.4 Upon Licensee’s reasonable request, and notwithstanding anything to the contrary in that sublicense agreements between Licensee and DFA dated June 10, 2002 (either or both sublicenses, the “Borden/DFA Sublicense(s)”), Licensor shall seek registration with the USPTO of any new look of any of the Licensed Trademarks and shall state in its USPTO applications that these trademarks are being used under license by Licensee. Licensee shall provide reasonable assistance to Licensor in applying to register these trademarks and in maintaining such registrations. Licensee shall pay all reasonable out-of-pocket costs that Licensor incurs for seeking and maintaining such registrations. Licensee’s rights under this Section 5.4 shall not apply to applications for marks that cover Products listed in Schedule A.

5.5 To the extent that Section 2 of a particular Borden/DFA Sublicense would not allow Borden to exercise quality control over DFA’s use of the trademarks sublicensed in that agreement, then Licensor shall exercise such quality control as directed by Licensee, at Licensor’s own expense, with respect to enforcing quality standards on DFA pursuant to that Borden/DFA Sublicense. In addition, notwithstanding the language in Section 7 and/or Section 8 of the Borden/DFA Sublicenses, if Borden receives a license to use additional trademarks in the future consisting of or incorporating “BORDEN”, “ELSIE”, and/or the image of ELSIE the cow, Licensor shall not consent to an extension of that license or sublicense to DFA.

14. Section 6.3 of the Trademark License Agreement is hereby deleted in its entirety and the following substituted therefor:
“Licensor shall not license any third party to use the Licensed Trademarks on the Products or the Additional Products in the territories for which the grant of license for such Products or Additional Products is exclusive to Licensee, including the United States, and will not itself sell Products or Additional Products identified by the Licensed Trademarks in the territories for which the grant of license for such Products or Additional Products is exclusive to Licensee, including the United States. Licensor may use the Licensed Trademarks on Products or Additional Products it sells anywhere in the world outside the United States or in any other territories for which the grant of license for such Products or Additional Products is nonexclusive to Licensee, other than as contemplated in Section 2.1(b) during 2017.”

15. To reflect the parties’ agreement that Licensee shall have the sole right and ability to enforce the proprietary rights in the Licensed Trademarks in the United States, Section 6.7 of the Trademark License Agreement is hereby deleted in its entirety and the following substituted therefor:

“On Licensee’s own behalf, and on behalf of Licensor as U.S. Brand Manager of the Licensed Trademarks, and subject to any provision in the pre-existing license or sublicense to the Licensed Trademarks or similar marks between Licensor and DFA dated December 31, 1997 as amended, Licensee shall have the exclusive right to initiate enforcement actions as to the Licensed Trademarks in the United States. Upon Licensee’s reasonable request and at Licensee’s expense, Licensor shall act to enforce breaches by pre-existing licensees and sublicensees (such as Dean Foods Company) of the Licensed Trademarks in violation of their licenses with Licensor, provided, however, that such breaches occur on or after the Effective Date. Licensee shall also have the exclusive right to enforce the Licensed Trademarks against third party infringers and potential infringers in the United States, provided that Licensee shall notify Licensor in writing of any such enforcement within thirty (30) days of commencing such action. Licensee shall bear the expenses of, have complete control over, and recover all proceeds, settlements and damages with respect to any such enforcement action. Licensor shall join in any such enforcement action initiated by Licensee at Licensee’s reasonable request and expense.”

16. To reflect the parties’ agreement that the indemnification provisions shall be parallel, Section 7.1 shall be amended by striking “Licensor will hold Licensee harmless” and replacing this phrase with the following: “Licensor hereby indemnifies and undertakes to defend and hold Licensee harmless from and against any and all claims, suits, losses, damages, fines, penalties, and/or expenses, including, but not limited to, attorneys’ fees, arising out of “. The remainder of Section 7.1, beginning with “all suits, claims, or actions by third parties” shall remain the same as is currently stated in Section 7.1., except that the following sentence shall be added: “Under no circumstances shall Licensor be responsible for consequential damages under this Section 7.1.”

17. Section 7.2. of the Trademark License Agreement is hereby amended by adding the following new Subsection 7.2(c): “(c) any act or omission of Licensee as Brand Manager
under Article 5 of the Trademark License Agreement or”. Subsections 7.2(c) and 7.2(d) shall be renumbered 7.2(d) and 7.2(e), respectively.

18. To reflect the parties’ agreement that the Trademark Licensing Agreement shall be perpetual and irrevocable, Article IX of the Trademark License Agreement (Term and Termination) is hereby deleted in its entirety.

19. A new Article IX is hereby inserted into the Trademark License Agreement to reflect the parties’ agreement that Licensee may, without prior approval from Licensor and Grupo LALA, seek to purchase license and sublicense rights Licensed Trademarks, as follows:

“ARTICLE IX.
LICENSEE’S RIGHT OF FIRST ACQUISITION AND NON-INTERFERENCE BY LICENSOR

Licensor acknowledges and agrees that Licensee shall be preapproved to acquire third party trademark license and sublicense rights in the United States for the Licensed Trademarks. Licensee may acquire these rights from third parties including, without limitation, DFA, Dean Foods Company, and Eagle Family Foods Group LLC. Licensee shall have the exclusive right to acquire these third party rights without payment to, or condition imposed upon Licensee by Licensor unless Licensor is prohibited from doing so by law or by reason of a written agreement, in existence as of December 1, 2016, that (a) promises a third party that it can acquire such trademark license or sublicense rights; (b) obligates Licensor to prevent others from acquiring such trademark license or sublicense rights, either of which would effectively prevent Licensor from assigning or approving the transfer of any such trademark license and sublicense rights to Licensee; or (c) provides that Licensor will not withhold, delay or condition consent to the assignment of trademark license or sublicense rights to a third party. Licensee shall notify Licensor in writing of all efforts to acquire third party trademark license and sublicense rights for the Licensed Trademarks within 30 days of initiating negotiations for such rights, to the extent that Licensee is not prohibited from making this notification to Licensor (either orally or in writing) by a non-disclosure agreement relating to the subject acquisition, and Licensee shall subsequently notify Licensor in writing of the acquisition within 30 days of the acquisition of such rights. Licensor shall not object to Licensee’s acquisition of third party license or sublicense rights in the Licensed Trademarks in countries outside of the United States except in the following countries and territories: Mexico; Colombia; Spain; Argentina; Peru; Venezuela; Chile; Ecuador; Guatemala; Belize, Bolivia; Dominican Republic; Honduras; Paraguay; El Salvador; Nicaragua; Costa Rica; Panama; Uruguay; Brazil; Guyana; Falkland Islands, French Guiana, South Georgia and the South Sandwich Islands, Suriname and Equatorial Guinea, Antigua and Barbuda, the Bahamas, Barbados, Cuba, Dominica, Grenada, Haiti, Jamaica, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Trinidad and Tobago, Anguilla, Aruba, British Virgin Islands, Cayman Islands, Curacao, Montserrat, Navassa Island, Saint Barthelemy, Collectivity of Saint Martin, Sint Maarten and Turks and Caicos Islands. Notwithstanding the foregoing, Licensor shall not be obligated to unreasonably prevent, obstruct, delay or deny consent for the acquisition by a third party, other than COMLADE’s affiliates or subsidiaries, of third party license or sublicense rights in the United States for the Licensed Trademarks. Only in the event that
Borden chooses not to acquire such third party trademark license rights in the United States, and only in the event that Borden or ACON Investments LLC informs COMLADE of this decision in writing, would COMLADE’s affiliates or subsidiaries be free to acquire those rights.

20. To reflect the parties’ agreement that Licensee, and not Licensor, may freely assign or sublicense its rights hereunder, Article X of the Trademark License Agreement is hereby deleted in its entirety and the following language is hereby substituted therefor:

“ARTICLE X
ASSIGNMENT AND SUBLICENSES

10.1 Licensee may assign its rights and/or obligations under this Trademark License Agreement, in whole or in part, to any third party upon the prior written approval of Licensor, which may be withheld in Licensor’s sole discretion. From and after such assignment, the assignee shall be deemed to be a licensee under this Trademark License Agreement. Licensee may freely sublicense its rights and/or obligations under this Trademark License Agreement, in whole or in part, to any third party at any time.

10.2 Licensee may terminate any rights that it has sublicensed or may sublicense under this Trademark License Agreement at any time. Upon such termination, all such rights shall revert to Licensee in accordance with any such sublicense agreement.

10.3 Licensor may assign its rights and/or obligations under this Trademark License Agreement, in whole or in part, to any third party upon the prior written approval of Licensee, which may be withheld in Licensee’s sole discretion. From and after such assignment, the assignee shall be deemed to be the licensor under this Trademark License Agreement.

10.4 Corporate restructurings and changes in ownership of the Licensor or the Licensee are not assignments for purposes of Article X.”

21. The Notice provision, Article XI of the Trademark License Agreement, is hereby updated to substitute the below contact information for Licensor and its trademark counsel, to add contact information for Grupo LALA, and to add contact information for ACON Investments and its trademark counsel as follows:

“If to Licensor:   Comercializadora de Lacteos y Derivados, S.A. de C.V.
Calzada Carlos Herrera Araluce No. 185
Parque Industrial Carlos A. Herrera Araluce
Gómez Palacio, Durango, México 35079
Attn: General Counsel

With copies to:   LALA Administración y Control, S.A. de C.V.
Calzada Carlos Herrera Araluce No. 185
Parque Industrial Carlos A. Herrera Araluce
Gómez Palacio, Durango, México 35079

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22. Section 12.5 of the Trademark License Agreement, which references the “suspension, expiration or termination of this Agreement” is hereby deleted, so as to reflect the parties’ agreement that the Trademark License Agreement is perpetual and irrevocable.

[Signature Page Follows]
IN WITNESS WHEREOF, the parties have caused this Eighth Amendment to Trademark License Agreement to be executed as of the Effective Date written above, by their duly authorized representatives as indicated below.

Comercializadora de Lacteos y Derivados, S.A. de C.V.  Borden Dairy Company

By: _____________________________  By: _____________________________
Name: ___________________________  Name: ___________________________
Title: _____________________________  Title: ____________________________
Date: _____________________________  Date: _____________________________

[Signature Page to Eighth Amendment to Trademark License Agreement]
**AMENDED AND RESTATED APPENDIX A**

**Licensed Trademarks**

* Denotes registration that may encompass at least one product which is exclusively held by Licensor or licensed to a third party. See Schedule A for list of excluded products and Schedule B for those products for which Borden Inc. has received an exclusive trademark sublicense to use.

<table>
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<tr>
<th>Owner</th>
<th>Trademark</th>
<th>Country / State</th>
<th>Status</th>
<th>Application No.</th>
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<th>Registration Date</th>
<th>Class</th>
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<td>N/A</td>
<td>N/A</td>
<td>25 (clothing, namely, shirts, pants, shorts, t-shirts, sweaters, sweatshirts, sweatpants, tops, skirts, blouses, dresses, belts, jackets, coats, hats, gloves, ties) 29 (Dairy products excluding ice cream, ice milk and frozen yogurt) 30 (Ice-cream, ice milk and frozen yogurt) 32 (Fruit juices and fruit drinks; bottled water)</td>
<td></td>
</tr>
</tbody>
</table>
AMENDED AND RESTATED APPENDIX C - PRODUCTS

MILKS

Fluid fresh homogenized milk
Fluid fresh 1% and 2% low fat milk
Fluid fresh nonfat skimmed milk
Fluid fresh 1% and 2% chocolate milk
Fluid fresh whole chocolate milk
Fresh skim chocolate milk
Fresh buttermilk
Lactose reduced & lactose free fresh milk
Ultra - pasteurized, shelf stable, aseptically packaged fluid fresh milk

BUTTER

“Country Store” butter (in quarters)
Spreadable light butter

EGGNOGS

Regular fresh eggnog
Light fresh eggnog
Fat free fresh eggnog

CREAMS

Fresh heavy cream
Fresh light cream
Fresh half & half cream
Fresh fat free cream

ICE CREAMS AND SHERBETS
Frozen ice cream - full fat
Frozen ice cream - fat free
Frozen ice cream - low fat
Frozen confections - Juice pops on sticks
Frozen confections - Regular ice cream pops on sticks
Frozen confections - Reduced sugar ice cream pops
Frozen confections - ice cream bars
Frozen confections - ice cream sandwiches
Frozen confections - ice cream cups
Frozen confections - ice cream cones containing bulk
                  Ice cream packed inside a foil container
Frozen sherbets or sorbets in various flavors

COTTAGE CHEESES

Regular fresh cottage cheese
Low fat fresh cottage cheese
Fat free fresh cottage cheese

SOUR CREAMS

Regular fresh sour cream
Low fat fresh sour cream
Fat free fresh sour cream

CREAM CHEESES

Regular cream cheese
Reduced fat cream cheese

FRUIT JUICES - From 100% Concentrate

Orange, apple and a variety of other flavors
SCHEDULE A
-Product Rights Exclusively Held by Licensor or Licensed by Licensor to Third Parties-

COMLADE

- Yogurt products of any kind

DFA

- All refrigerated dairy products that are not shelf stable including dairy products that are sold under Refrigeration either 1) as required by the Food and Drug Administration (FDA) or other governmental agency; or 2) to maintain product safety and quality for a period in excess of nine (9) months determined as to any specific Product; the foregoing excluding the products listed in Amended and Restated Appendix C. These non-shelf-stable refrigerated dairy products include, but are not limited to:
  - Extended shelf life milk
  - Combination products made primarily of dairy products (e.g., yogurt snacks, cottage cheese and fruit)
  - Dairy-based snack bars (e.g., cream cheese-based snack bars)
  - Hand-held dairy snacks not excluded by Amended and Restated Appendix C (e.g., pudding snacks)
  - Whipped cream (e.g., aerosol, tub)
  - Dairy-based meal replacements and nutritional products (e.g., refrigerated nutritional diet drinks of the type currently sold under the brand name Slim Fast®)
  - Dips (e.g., cream cheese-based fruit dips, yogurt dips, sour cream dips);
  - Dairy-based beverages (e.g., yogurt drinks, milk shakes, beverages of the type currently sold under the brand name Smoothies®), dairy/coffee drinks (e.g., coffee beverages of the type currently sold under the brand name Frappuccino®)
  - Butter products not excluded by Amended and Restated Appendix C (e.g., honey butter, sprayable butter)
  - Dairy-based, liquid dressings for salads or condiments (e.g., blue cheese, butter milk ranch)
  - Flavored creams (e.g., French vanilla coffee cream)
  - Flavored cream cheese
  - Quark-based products

- Processed cheese
- Natural cheese
- Combination products where the primary ingredient is cheese, including, for example, toaster cheese sandwiches

1 COMLADE acknowledges that DFA has sublicensed rights for several of these products to Borden as of the Effective Date and, pursuant to Section 1, shall treat such products as though they are included in Additional Appendix C Products even though COMLADE is not licensing rights for these products in this agreement. However, this acknowledgement specifically excludes yogurt products or products containing yogurt.
• Whey
• Whey blends
• Whey protein concentrates
• Whey protein isolates
• Delactose whey
• Lactose
• Lactic acid
• Whey permeates
• Demineralized whey
• Fractionated whey protein
• Whey minerals
• Reduced minerals whey
• Reduced lactose
• Beverages where the primary dairy ingredient is whey (e.g., beverages of the type currently sold under the brand name Yoohoo®)
• Nutritional bars where the primary ingredient is whey

Eagle Family Foods Group

• Condensed milk or evaporated milk products, however packaged
• Liquid or frozen pie filling, whether or not shelf-stable, and whether canned or otherwise packaged
• Dairy-based shelf-stable mixes for the preparation of brownies, cakes, cookies and pies

TreeHouse

• Liquid or powdered non-dairy coffee creamer products (including flavored products)

Sokol

• Shelf-stable eggnog, whether canned, in “brick pack” packages or in any other aseptic form of packaging
SCHEDULE B

Product Rights Sublicensed Exclusively to Borden, Inc. by Dairy Farmers of America, Inc.

- Combination products made primarily of dairy products (but not of cheese or whey) (e.g. cottage cheese and fruit)
- Cottage cheese and fruit
- Dairy-based snack bars (e.g., cream cheese based snack bars) but not yogurt based bars
- Hand-held dairy snacks (not solid yogurt based bars, other yogurt snacks, or pudding)
- Whipped cream
- Dairy-based meal replacements and nutritional products
- Dips (dairy, but excluding yogurt dips)
- Dairy-based beverages (but not yogurt beverages)
- Dairy-based liquid
- Dairy-based liquid dressings for salads or condiments
- Flavored creams
- Quark-based products
SALE, DISTRIBUTION AND SUB-LICENSE AGREEMENT

THIS SALE, DISTRIBUTION AND SUB-LICENSE AGREEMENT (this “Agreement”) is made as of July [__], 2017 (the “Effective Date”), by and among Borden Dairy Company, a Delaware Corporation (“Borden”) and Lala U.S., Inc., a Delaware Corporation (“Lala U.S.”). Each of Borden and Lala U.S. are referred to herein as a “Party” and collectively as the “Parties”.

The Parties agree as follows:

1. SUPPLY OF MATERIALS AND DELIVERY OF PRODUCT

1.1 Delivery of Resale Products. During the Term, Lala U.S. and certain of its affiliates shall deliver to Borden the following products as requested by Borden from time to time: Lala® branded drinkable yogurt, blended yogurt, sour cream, UHT milk and Art® branded gelatin and Promised Land® branded ESL (Extended Shelf Life) milk (collectively, the “Resale Products”) for resale by Borden. The cost to Borden of such Resale Products shall be: (a) 110% of Lala U.S.’s reasonable material and production costs; plus (b) the reasonable cost of shipping such products to Borden.

1.2 Co-packing and Delivery of Cultured Product Materials. During the Term, Borden shall deliver, at no cost, to Lala U.S., from time to time as requested by Lala U.S., the instructions, and suitable artwork for labeling as reasonably required by Lala U.S. to make the Cultured Products as herein contemplated (the “Cultured Product Materials”). All other services, ingredients and items relating to the making of the Cultured Products, including the manufacturing, packaging, and labeling of the Cultured Products, shall be solely the responsibility of, and shall be performed by, Lala U.S., at no cost to Borden, provided that Lala U.S. agrees that (a) all ingredients, art work, labeling, and other materials supplied by Borden to Lala U.S. are the sole property of Borden; and (b) Borden reserves the right to monitor and control the quality, marketing and labeling of the Cultured Products. As used in this Agreement, “Cultured Products” means Borden® and Elsie® branded cottage cheese and sour cream.

1.3 Delivery of the Cultured Products. As requested by Borden from time to time, Lala U.S. shall manufacture, co-pack and deliver to Borden the Cultured Products. The cost to Borden of such Cultured Products shall be: (a) Lala U.S.’ reasonable material costs; plus (b) 110% of Lala U.S.’ reasonable direct labor costs and historical overhead allocation, in each case with respect to such Cultured Products; plus (c) the reasonable cost of shipping such products to Borden. Lala U.S. shall ensure that the quality of all Cultured Products as delivered is consistent with the pre-approved standards of Borden.

1.4 Product Specifications. Lala U.S. shall manufacture and produce the Cultured Products hereunder in accordance with the product standards and specification (the “Product Specifications”) set forth in Exhibit A attached hereto. The Product Specifications contain specific requirements related to the packaging, handling, formulation, storage, refrigeration and other similar matters concerning the Cultured Products. Borden may make reasonable changes to the Product Specifications upon reasonable prior written notice to Lala U.S., provided that any modifications resulting in a material adverse change in costs, product quality, product safety or
similar changes that fall outside of Lala U.S.’s normal manufacturing processes will be agreed to by both Parties in writing before being instituted.

2. GRANT OF DISTRIBUTORSHIP

2.1 Non-Exclusive Distributorship. Subject to and upon the terms and conditions set forth herein, Lala U.S. appoints Borden as Lala U.S.’ non-exclusive distributor for the sale and promotion of the Resale Products within the United States. Borden acknowledges and agrees that Lala U.S. reserves the right to grant to others distributorship rights with respect to the Resale Products.

3. PRICES AND PAYMENT

3.1 Pricing. The Resale Products and Sub-licensed Products (as defined below) shall be sold by Borden to retailers and/or wholesalers at prices established by Borden, it being expressly understood that Lala U.S. reserves no rights with respect thereto.

3.2 Terms of Payment. Borden shall pay Lala U.S. for Resale Products and Cultured Products supplied by Lala U.S. to Borden at the cost set forth in Section 1.1 and Section 1.3, respectively, and per terms of invoices from Lala U.S. on net 30 terms. Borden shall pay Lala U.S. the Royalty (as defined below) on a yearly basis and net 60 terms.

4. LIMITATION OF LIABILITY; CERTIFICATES OF INSURANCE

Lala U.S. acknowledges and agrees that the liability of Borden with respect to the manufacturing and packaging of the Cultured Products shall be limited solely to: (a) the Cultured Product Materials, (b) defects contained in the Product Specifications (excluding, for the avoidance of doubt, the manufacturing and packaging of the Cultured Products by Lala U.S. in accordance with Section 1.4), and (c) Borden’s handling, storage, distribution and sale of the Cultured Products following delivery to Borden facilities. All other liability with respect to the manufacturing and packaging of Cultured Products shall be the sole and exclusive responsibility of Lala U.S. Lala U.S. shall from time to time supply Borden with certificates of insurance and such other information as Borden may require to evidence that Lala U.S. is maintaining comprehensive general liability insurance for $1,000,000.00 single limit for bodily injury and property damage and umbrella coverage for $2,500,000.00 for each occurrence, with a $3,000,000.00 aggregate.

5. USE OF NAME AND TRADEMARKS

5.1 Resale Products. During the Term, Borden may indicate, in signs, advertising, publicity of other sales and/or marketing media or materials, that it is an authorized distributor of the Resale Products. However, Borden shall not use the name, trademarks, trade names or logo of Lala U.S. that include the name “Lala” or any derivative thereof in Borden’s own name, in any fictitious business name or otherwise to identify Borden, it being acknowledged and agreed by Borden that by entering into this Agreement, Borden is not acquiring and shall not use, the name, trademarks, trade names or logo of Lala U.S. that include the name “Lala” or any derivative thereof except with respect to such uses in connection with the sale of the Resale Products pursuant to this Agreement.
5.2 Cultured Products. During the Term, Lala U.S. may use certain trademarks and logos of Borden contained in the Cultured Product Materials solely with respect to packaging the Cultured Products pursuant to this Agreement. However, Lala U.S. shall not use the name, trademarks, trade names or logo of Borden in its own name, in any fictitious business name or otherwise to identify Lala U.S., it being acknowledged and agreed by Lala U.S. that by entering into this Agreement, Lala U.S. is not acquiring and shall not use, the name, trademarks, trade names or logo of Borden, including, but not limited to, the name “Borden” or any derivative thereof except: (a) with respect to such uses in connection with the packaging of the Cultured Products pursuant to this Agreement, or (b) with respect to any other rights that Lala U.S. may have outside of the United States (or within the United States as it pertains to yogurt or yogurt-based products) as licensee of the Borden and Elsie trademarks under other licensing arrangements with the owner of such marks.

5.3 Sub-licensed Products. Lala U.S. hereby grants to Borden, and Borden accepts from Lala U.S., the limited, non-exclusive right, sub-license and privilege of utilizing the “Lala” brand and all associated trademarks, trade names, trade dress, service marks and logos (the “Sub-licensed Mark”) solely and only for the purposes of manufacturing, selling and distributing fresh fluid milk within the United States (the “Sub-license”) for the duration of one year from the Effective Date, subject to sufficient and reasonable quality control by Comercializadora de Lacteos y Derivados, S.A. de C.V., owner of the Sub-licensed Mark. To exercise such quality control, Comercializadora de Lacteos y Derivados, S.A. de C.V. shall have the right to request that Borden submit to Comercializadora de Lacteos y Derivados, S.A. de C.V., or to Lala U.S. on its behalf, a sample of the use of the Sub-licensed Mark and the products made under the Sub-licensed Mark, which shall be in accordance with quality standards and specifications as may be reasonably required by Comercializadora de Lacteos y Derivados, S.A. de C.V. In return for granting such Sub-license, Borden shall pay to Lala U.S. a royalty equal to 4% of Borden’s net sales of Sub-licensed Products (the “Royalty”). As used in this Agreement, “Sub-licensed Products” means such fresh fluid milk sold under the “Lala” brand.

6. TERM AND CANCELLATION

6.1 Term. The term of this Agreement shall commence on the Effective Date and shall continue in full force and effect indefinitely (the “Term”).

6.2 Cancellation. Either Party may cancel its obligations under this Agreement for any reason by giving the other Party at least ninety (90) days prior written notice of such cancellation.

7. MISCELLANEOUS

7.1 Limitations on Liability. Neither Party shall be liable for consequential damages of any kind, whether as a result of a loss of present or prospective profits, anticipated sales, expenditures, investments, commitments made in connection with this Agreement, or on account of any other reason or cause whatsoever. Neither Party shall be liable to the other Party for any loss, damage, detention, delay or failure to perform, in whole or in part, resulting from causes beyond their control, including, but not limited to, fires, strikes, insurrections, riots, embargoes, shortages of motor vehicles, delays in transportation, inability to obtain supplies of raw
materials, or requirements or regulations of the United States or Mexican governments or any other civil or military authority.

7.2 **Assignment.** Neither Party may transfer or assign this Agreement or any part thereof or delegate any of its duties or responsibilities hereunder without the prior written approval of the other Party. This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and permitted assigns.

7.3 **Governing Law.** This Agreement and all questions with respect to the construction of this Agreement and the rights and liabilities of the Parties shall be governed by the laws of the State of Texas.

7.4 **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Any facsimile or electronically signed or transmitted copies of this Agreement or signature(s) hereon shall, for all purposes, be deemed originals.

[Signature page follows]
IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

BORDEN:

BORDEN DAIRY COMPANY

By: ________________________________
Name: William G. White
Title: Executive Vice President and Chief
       Financial Officer

LALA U.S.:

LALA U.S., INC.

By: ________________________________
Name: ______________________________
Title: ______________________________
EXHIBIT A

Product Specifications

The Product Specifications are detailed in the Borden Technical Manual, a copy of which has been provided to Lala U.S. prior to the execution of this Agreement. The Borden Technical Manual is incorporated in the Agreement by this reference. The Borden Technical Manual contains the following elements that will be updated as often as necessary to reflect the actual process and specifications, and Borden may make such updates and any other changes to the Borden Technical Manual from time to time upon reasonable notice to Lala U.S.:

1. Formulation
2. Ingredients and Packaging: Authorized Vendors
3. Product Specifications: Sensory, Microbiological, Physicochemical and Finished product attributes
4. Process and Flow Charts
5. Kosher Certifications

All milk and cream used by Lala U.S. in producing the Cultured Products hereunder shall be rBST free.