

## TRADEMARK ASSIGNMENT COVER SHEET

Electronic Version v1.1  
Stylesheet Version v1.2

ETAS ID: TM482817

<b>SUBMISSION TYPE:</b>	RESUBMISSION
<b>NATURE OF CONVEYANCE:</b>	ASSIGNMENT OF THE ENTIRE INTEREST AND THE GOODWILL
<b>RESUBMIT DOCUMENT ID:</b>	900446993

## CONVEYING PARTY DATA

Name	Formerly	Execution Date	Entity Type
Gamay Food Ingredients, LLC		10/04/2016	Limited Liability Company: WISCONSIN
Gamay Holdco, Inc.		10/04/2016	Corporation: WISCONSIN
Welcome Dairy, LLC		10/04/2016	Limited Liability Company: WISCONSIN

## RECEIVING PARTY DATA

<b>Name:</b>	Welcome Dairy Holdings, LLC
<b>Street Address:</b>	H4489 Maple Road
<b>Internal Address:</b>	PO Box 497
<b>City:</b>	Colby
<b>State/Country:</b>	WISCONSIN
<b>Postal Code:</b>	54421
<b>Entity Type:</b>	Limited Liability Company: WISCONSIN

## PROPERTY NUMBERS Total: 6

Property Type	Number	Word Mark
<b>Serial Number:</b>	86823546	G
<b>Serial Number:</b>	86830483	G GAMAY FOOD INGREDIENTS
<b>Registration Number:</b>	4287821	WIS-CONCENTRATE
<b>Registration Number:</b>	3543941	TASTE YOU'LL TREASURE
<b>Registration Number:</b>	3310253	GAMAY
<b>Registration Number:</b>	2067099	WITHSTAND

## CORRESPONDENCE DATA

Fax Number:

*Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent using a fax number, if provided; if that is unsuccessful, it will be sent via US Mail.*

Phone: 414-298-8351

Email: tmadmin@reinhardt.com

Correspondent Name: Heidi R. Thole

Address Line 1: 1000 N Water St.

**Address Line 4:** Milwaukee, WISCONSIN 53202

**NAME OF SUBMITTER:** Heidi R. Thole

**SIGNATURE:** /hrt/

**DATE SIGNED:** 07/20/2018

**Total Attachments: 79**

source=Gamay Unit Purchase Agreement (REDACTED)#page1.tif  
source=Gamay Unit Purchase Agreement (REDACTED)#page2.tif  
source=Gamay Unit Purchase Agreement (REDACTED)#page3.tif  
source=Gamay Unit Purchase Agreement (REDACTED)#page4.tif  
source=Gamay Unit Purchase Agreement (REDACTED)#page5.tif  
source=Gamay Unit Purchase Agreement (REDACTED)#page6.tif  
source=Gamay Unit Purchase Agreement (REDACTED)#page7.tif  
source=Gamay Unit Purchase Agreement (REDACTED)#page8.tif  
source=Gamay Unit Purchase Agreement (REDACTED)#page9.tif  
source=Gamay Unit Purchase Agreement (REDACTED)#page10.tif  
source=Gamay Unit Purchase Agreement (REDACTED)#page11.tif  
source=Gamay Unit Purchase Agreement (REDACTED)#page12.tif  
source=Gamay Unit Purchase Agreement (REDACTED)#page13.tif  
source=Gamay Unit Purchase Agreement (REDACTED)#page14.tif  
source=Gamay Unit Purchase Agreement (REDACTED)#page15.tif  
source=Gamay Unit Purchase Agreement (REDACTED)#page16.tif  
source=Gamay Unit Purchase Agreement (REDACTED)#page17.tif  
source=Gamay Unit Purchase Agreement (REDACTED)#page18.tif  
source=Gamay Unit Purchase Agreement (REDACTED)#page19.tif  
source=Gamay Unit Purchase Agreement (REDACTED)#page20.tif  
source=Gamay Unit Purchase Agreement (REDACTED)#page21.tif  
source=Gamay Unit Purchase Agreement (REDACTED)#page22.tif  
source=Gamay Unit Purchase Agreement (REDACTED)#page23.tif  
source=Gamay Unit Purchase Agreement (REDACTED)#page24.tif  
source=Gamay Unit Purchase Agreement (REDACTED)#page25.tif  
source=Gamay Unit Purchase Agreement (REDACTED)#page26.tif  
source=Gamay Unit Purchase Agreement (REDACTED)#page27.tif  
source=Gamay Unit Purchase Agreement (REDACTED)#page28.tif  
source=Gamay Unit Purchase Agreement (REDACTED)#page29.tif  
source=Gamay Unit Purchase Agreement (REDACTED)#page30.tif  
source=Gamay Unit Purchase Agreement (REDACTED)#page31.tif  
source=Gamay Unit Purchase Agreement (REDACTED)#page32.tif  
source=Gamay Unit Purchase Agreement (REDACTED)#page33.tif  
source=Gamay Unit Purchase Agreement (REDACTED)#page34.tif  
source=Gamay Unit Purchase Agreement (REDACTED)#page35.tif  
source=Gamay Unit Purchase Agreement (REDACTED)#page36.tif  
source=Gamay Unit Purchase Agreement (REDACTED)#page37.tif  
source=Gamay Unit Purchase Agreement (REDACTED)#page38.tif  
source=Gamay Unit Purchase Agreement (REDACTED)#page39.tif  
source=Gamay Unit Purchase Agreement (REDACTED)#page40.tif  
source=Gamay Unit Purchase Agreement (REDACTED)#page41.tif

source=Gamay Unit Purchase Agreement (REDACTED)#page42.tif  
source=Gamay Unit Purchase Agreement (REDACTED)#page43.tif  
source=Gamay Unit Purchase Agreement (REDACTED)#page44.tif  
source=Gamay Unit Purchase Agreement (REDACTED)#page45.tif  
source=Gamay Unit Purchase Agreement (REDACTED)#page46.tif  
source=Gamay Unit Purchase Agreement (REDACTED)#page47.tif  
source=Gamay Unit Purchase Agreement (REDACTED)#page48.tif  
source=Gamay Unit Purchase Agreement (REDACTED)#page49.tif  
source=Gamay Unit Purchase Agreement (REDACTED)#page50.tif  
source=Gamay Unit Purchase Agreement (REDACTED)#page51.tif  
source=Gamay Unit Purchase Agreement (REDACTED)#page52.tif  
source=Gamay Unit Purchase Agreement (REDACTED)#page53.tif  
source=Gamay Unit Purchase Agreement (REDACTED)#page54.tif  
source=Gamay Unit Purchase Agreement (REDACTED)#page55.tif  
source=Gamay Unit Purchase Agreement (REDACTED)#page56.tif  
source=Gamay Unit Purchase Agreement (REDACTED)#page57.tif  
source=Gamay Unit Purchase Agreement (REDACTED)#page58.tif  
source=Gamay Unit Purchase Agreement (REDACTED)#page59.tif  
source=Gamay Unit Purchase Agreement (REDACTED)#page60.tif  
source=Gamay Unit Purchase Agreement (REDACTED)#page61.tif  
source=Gamay Unit Purchase Agreement (REDACTED)#page62.tif  
source=Gamay Unit Purchase Agreement (REDACTED)#page63.tif  
source=Gamay Unit Purchase Agreement (REDACTED)#page64.tif  
source=Gamay Unit Purchase Agreement (REDACTED)#page65.tif  
source=Gamay Unit Purchase Agreement (REDACTED)#page66.tif  
source=Gamay Unit Purchase Agreement (REDACTED)#page67.tif  
source=Gamay Unit Purchase Agreement (REDACTED)#page68.tif  
source=Gamay Unit Purchase Agreement (REDACTED)#page69.tif  
source=Gamay Unit Purchase Agreement (REDACTED)#page70.tif  
source=Gamay Unit Purchase Agreement (REDACTED)#page71.tif  
source=Gamay Unit Purchase Agreement (REDACTED)#page72.tif  
source=Gamay Unit Purchase Agreement (REDACTED)#page73.tif  
source=Gamay Unit Purchase Agreement (REDACTED)#page74.tif  
source=Gamay Unit Purchase Agreement (REDACTED)#page75.tif  
source=Gamay Unit Purchase Agreement (REDACTED)#page76.tif  
source=Gamay Unit Purchase Agreement (REDACTED)#page77.tif  
source=Gamay Unit Purchase Agreement (REDACTED)#page78.tif  
source=Gamay Unit Purchase Agreement (REDACTED)#page79.tif

UNIT PURCHASE AND CONTRIBUTION AGREEMENT

by and among

GAMAY FOOD INGREDIENTS, LLC,

GAMAY HOLDCO, INC.,

THE SHAREHOLDERS OF GAMAY HOLDCO, INC.,

WELCOME DAIRY, LLC

and

WELCOME DAIRY HOLDINGS, LLC

Dated as of the 4th day of October, 2016.

UNIT PURCHASE AND CONTRIBUTION AGREEMENT

This Unit Purchase and Contribution Agreement (this "**Agreement**"), dated as of the 4th day of October, 2016, is entered into among GAMAY FOOD INGREDIENTS, LLC, a Wisconsin limited liability company (the "**Company**"), GAMAY HOLDCO, INC., a Wisconsin corporation (the "**Seller**"), the undersigned shareholders of Seller (the "**Shareholders**"), WELCOME DAIRY, LLC, a Wisconsin limited liability company ("**Welcome Dairy**"), and WELCOME DAIRY HOLDINGS, LLC, a Wisconsin limited liability company (the "**Buyer**"). The Buyer, the Seller, the Company, Welcome Dairy and the Shareholders are sometimes referred to in this Agreement together as the "**Parties**" or individually as a "**Party**".

**RECITALS:**

A. The Shareholders own all of the issued and outstanding stock of the Seller, thereby benefiting from the transactions contemplated hereby.

B. The Seller owns 100% of the membership interests in the Company, consisting of One Thousand (1,000) issued and outstanding equity membership units (the "**Units**").

C. Buyer desires to purchase from Seller, and Seller desires to sell to Buyer, 84.18% of the Units (the "**Purchased Units**"), subject to the terms and conditions set forth herein.

D. The Seller also wishes to contribute to the Buyer 15.82% of the Units (the "**Contributed Units**") in exchange for the Preferred Units, such that following the consummation of the transactions contemplated herein, the Buyer will own all of the Units of the Company.

**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**:

"**Acquisition Proposal**" has the meaning set forth in **Section 5.03(a)**.

"**Action**" means any claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena or investigation of any nature, civil, criminal, administrative, regulatory or otherwise, whether at law or in equity.

"**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.

"**Audited Financial Statements**" has the meaning set forth in **Section 3.06**.

"**Balance Sheet**" has the meaning set forth in **Section 3.06**.

"**Balance Sheet Date**" has the meaning set forth in **Section 3.06**.

"**Basket**" has the meaning set forth in **Section 8.04(a)**.

"**Benefit Plan**" has the meaning set forth in **Section 3.20(a)**.

"**Business Day**" means any day except Saturday, Sunday or any other day on which commercial banks located in Milwaukee, Wisconsin are authorized or required by Law to be closed for business.

"**Buyer**" has the meaning set forth in the recitals.

"**Buyer Indemnitees**" has the meaning set forth in **Section 8.02**.

"**Buyer Operating Agreement**" means the amended and restated operating agreement of Buyer in substantially the form attached hereto as Exhibit A.

"**Buyer's Accountants**" means [REDACTED].

"**Cap**" has the meaning set forth in **Section 8.04(a)**.

"**Capital Expenditures Credit**" means an amount equal to [REDACTED].

"**CERCLA**" means 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.

"**Closing**" has the meaning set forth in **Section 2.08**.

"**Closing Adjustment**" has the meaning set forth in **Section 2.07(a)(ii)**.

"**Closing Date**" has the meaning set forth in **Section 2.08**.

"**Closing Working Capital**" means: (a) the Current Assets of the Company, less (b) the Current Liabilities of the Company, determined as of the open of business on the Closing Date.

"**Closing Working Capital Statement**" has the meaning set forth in **Section 2.07(b)(i)**.

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

"**Company**" has the meaning set forth in the preamble.

"**Company Intellectual Property**" means all Intellectual Property owned, held or used by the Company, together with all income, royalties, damages and payments due or payable as of the Closing or thereafter (including, without limitation, damages and payments for past, present or future infringements, misappropriations or other violations thereof) and the rights to sue and collect damages for past, present or future infringements, misappropriations or other violations thereof, and any corresponding, equivalent or counterpart rights, title or interest that now exist or may be secured hereafter anywhere in the world, and all copies and tangible embodiments of the foregoing, including, without limitation, the Intellectual Property listed on **Schedule 3.12(a)**.

"**Company IP Agreements**" means all licenses, sublicenses, consent to use agreements, settlements, coexistence agreements, covenants not to sue, permissions and other Contracts (including any right to receive or obligation to pay royalties or any other consideration), relating to Intellectual Property (other than generally available, off-the-shelf software licensed by the Company) to which the Company is a party, a beneficiary or otherwise bound.

"**Company IP Registrations**" means all Company Intellectual Property that is subject to any issuance registration, application or other filing by, to or with any Governmental Authority or authorized private registrar in any jurisdiction, including registered trademarks, domain names and copyrights, issued and reissued patents and pending applications for any of the foregoing.

"**Contracts**" means all contracts, leases, deeds, mortgages, licenses, instruments, notes, commitments, undertakings, indentures, joint ventures and all other agreements, commitments and legally binding arrangements, whether written or oral, in each case where the Company has ongoing rights or obligations as of or after the Closing.

"**Contributed Units**" has the meaning set forth in the recitals.

"**Copyrights**" means all copyrights, whether in published or unpublished works, databases, data collections and rights therein, mask work rights, software, web site content; rights to compilations, collective works and derivative works of any of the foregoing and moral rights in any of the foregoing; registrations and applications for registration for any of the foregoing and any renewals or extensions thereof; and moral rights and economic rights of others in any of the foregoing.

"**Current Assets**" means the categories of current assets included in the determination of Current Assets stated on **Schedule 1.01**, in each case determined in accordance or consistent with **Schedule 1.01**.

"**Current Liabilities**" means the categories of current liabilities included in the determination of Current Liabilities stated on **Schedule 1.01**, in each case determined in accordance or consistent with **Schedule 1.01**.

"**Direct Claim**" has the meaning set forth in **Section 8.05(c)**.

"**Disclosure Schedules**" means the Disclosure Schedules delivered by Seller and Buyer concurrently with the execution and delivery of this Agreement, as the same may be updated pursuant to **Section 5.04(b)**.

"**Disputed Amounts**" has the meaning set forth in **Section 2.07(c)(iii)**.

"**Dollars or \$**" means the lawful currency of the United States.

"**Domain Names**" means Internet electronic addresses, uniform resource locators and alphanumeric designations associated therewith registered with or assigned by any domain name registrar, domain name registry or other domain name registration authority as part of an electronic address on the Internet and all applications for any of the foregoing.

"**Employment Agreements**" means the executive employment agreements, dated as of the date of this Agreement, by and between the Company and each of Terrance M. Schneider and Randall R. Cook, in substantially the forms attached hereto as Exhibit B.

"**Encumbrance**" means any charge, claim, community property interest, pledge, condition, equitable interest, lien (statutory or other), option, security interest, mortgage, easement, encroachment, right of way, right of first refusal, or restriction of any kind, including any restriction on use, voting, transfer, receipt of income or exercise of any other attribute of ownership, except for Permitted Encumbrances.

"**Environmental Claim**" means any Action, Governmental Order, lien, fine, penalty, or, as to each, any settlement or judgment arising therefrom, by or from 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, medical monitoring, penalties, contribution, indemnification and injunctive relief) arising out of, based on or resulting from any actual or alleged non-compliance with any Environmental Law or term or condition of any Environmental Permit.

"**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) or the protection of natural resources, endangered or threatened species, human health or safety, or the environment (including ambient air, soil, surface water or groundwater, or subsurface strata); or (b) concerning the presence of, exposure to, or the management, manufacture, use, containment, storage,



recycling, reclamation, reuse, treatment, generation, discharge, transportation, processing, production, disposal or remediation of any Hazardous Materials. The term "Environmental Law" includes, without limitation, the following (including their implementing regulations and any state analogs): 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.; 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 of 1972, as amended by the Clean Water Act of 1977, 33 U.S.C. §§ 1251 et seq.; the Toxic Substances Control Act of 1976, as amended, 15 U.S.C. §§ 2601 et seq.; the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. §§ 11001 et seq.; the Clean Air Act of 1966, as amended by the Clean Air Act Amendments of 1990, 42 U.S.C. §§ 7401 et seq.; and the Occupational Safety and Health Act of 1970, as amended, 29 U.S.C. §§ 651 et seq.

**"Environmental Notice"** means any written directive, notice of violation or infraction, or notice respecting any Environmental Claim relating to actual or alleged non-compliance with any Environmental Law or any term or condition of any Environmental Permit.

**"Environmental Permit"** means any Permit, letter, clearance, consent, waiver, closure, exemption, decision or other action required under or issued, granted, given, authorized by or made pursuant to Environmental Law.

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

**"ERISA Affiliate"** means all employers (whether or not incorporated) that would be treated together with the Company or any of its Affiliates as a "single employer" within the meaning of Section 414 of the Code.

**"Estimated Closing Working Capital"** has the meaning set forth in **Section 2.07(a)(i)**.

**"Estimated Closing Working Capital Statement"** has the meaning set forth in **Section 2.07(a)(i)**.

**"Financial Statements"** has the meaning set forth in **Section 3.06**.

**"GAAP"** means United States generally accepted accounting principles accepted in the United States of America, applied on a basis consistent with the basis on which the Financial Statements were prepared.

**"Governmental Authority"** means any federal, state, local or foreign government or political subdivision thereof, or any agency or instrumentality of such government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority (to the extent that the rules, regulations or orders of such organization or authority have the force of Law), or any arbitrator, court or tribunal of competent jurisdiction.

**"Governmental Order"** means any order, writ, judgment, injunction, decree, stipulation, determination or award entered by or with any Governmental Authority.

**"Hazardous Materials"** means: (a) any material, substance, chemical, waste, product, derivative, compound, mixture, solid, liquid, mineral or gas, in each case, whether naturally occurring or manmade, that is hazardous, acutely hazardous, toxic, 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 in any form, lead or lead containing materials, urea formaldehyde foam insulation, and polychlorinated biphenyls; provided, Hazardous Materials does not include mold and bacteria.

**"Indebtedness"** means (a) any liability of a Person (i) for borrowed money (including the current portion thereof), or (ii) under any reimbursement obligation relating to a letter of credit, bankers' acceptance or note purchase facility, or (iii) evidenced by a bond, note, letter of credit, bankers' acceptance, debenture or similar instrument (including a purchase money obligation), or (iv) for the payment of money relating to leases that are required to be classified as a capitalized lease obligation in accordance with GAAP, or (v) for all or any part of the deferred purchase price of property or services (other than trade payables), including any "earnout" or similar payments or any non-compete payments, or (vi) under interest rate swap, hedging or similar agreements, (b) any liability of others described in the preceding clause (a) that such Person has guaranteed, that is recourse to such Person or any of its or their assets or that is otherwise its legal liability or that is secured in whole or in part by the assets of such Person, (c) any and all accrued interest, success fees, prepayment premiums, make-whole premiums or penalties and fees or expenses (including attorneys' fees) associated with the prepayment of any Indebtedness, (d) bank account overdrafts and (e) negative cash balances. For avoidance of doubt, **"Indebtedness"** (y) does not include any liability to the extent included in Current Liabilities, and (z) includes a special draw by the Company on its line of credit in the amount of [REDACTED] to pay amounts owed to Terrance M. Schneider and Randall R. Cook pursuant to the Company's Amended and Restated Executive Employee Share Unit Plan dated as of January 1, 1999 and their respective Employment Agreements with the Company, which amount has been specifically excluded from Current Liabilities.

**"Indemnified Party"** has the meaning set forth in **Section 8.05**.

**"Indemnifying Party"** has the meaning set forth in **Section 8.05**.

**"Independent Accountant"** means CliftonLarsonAllen, Minneapolis, MN 55402.

**"Insurance Policies"** has the meaning set forth in **Section 3.16**.

**"Intellectual Property"** means Copyrights, Domain Names, Patents, software, Trademarks and Trade Secrets.

**"Intellectual Property Registrations"** has the meaning set forth in **Section 3.12(b)**.

**"Interim Balance Sheet"** has the meaning set forth in **Section 3.06**.

**"Interim Balance Sheet Date"** has the meaning set forth in **Section 3.06**.

**"Interim Financial Statements"** has the meaning set forth in **Section 3.06**.

**"Knowledge of Buyer"** or **"Buyer's Knowledge"** or any other similar knowledge qualification, means the knowledge of Terry J. Eggebrecht, Brian E. Eggebrecht, or Lea R. Eggebrecht, which is either (a) a person's actual knowledge or (b) information that is readily apparent from a review or receipt of any documents, facts, or other information provided to or otherwise received or obtained by such person in the ordinary and regular course of his or her duties or as a result of his association with Welcome Dairy.

**"Knowledge of Seller"** or **"Seller's Knowledge"** or any other similar knowledge qualification, means the knowledge of any Shareholder, Randall R. Cook, and/or Terrance M. Schneider, which is either (a) a person's actual knowledge or (b) information that is readily apparent from a review or receipt of any documents, facts, or other information provided to or otherwise received or obtained by such person in the ordinary and regular course of his or her duties or as a result of his association with the Company.

**"Law"** means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, other requirement or rule of law of any Governmental Authority.

**"Liabilities"** has the meaning set forth in **Section 3.07**.

**"Losses"** means losses, damages, liabilities, deficiencies, Actions, judgments, interest, awards, penalties, fines, taxes, costs or expenses of whatever kind, including reasonable attorneys' fees and disbursements and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers; *provided, however*, that **"Losses"** shall not include (a) damages that are not a reasonably foreseeable consequence of a breach; (b) special damages; (c) damages that are remote or speculative; or (d) punitive or exemplary damages, except in the case of Fraud (defined in **Section 8.10** below) or to the extent actually awarded to a Governmental Authority or other third party.

**"Material Adverse Effect"** means any event, occurrence, fact, condition or change that is, or could reasonably be expected to become, individually or in the aggregate, materially adverse to (a) the business, results of operations, condition (financial or otherwise) or assets of the Company or Welcome Dairy, as applicable, or (b) the ability of Seller or Buyer, as applicable, 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 the Company or Welcome Dairy, as applicable, operates; (iii) any changes in financial or securities markets in general; (iv) act of war (whether or not declared), armed hostilities or terrorism, or the escalation or worsening thereof; (v) any action required or permitted by this Agreement; (vi) any changes in applicable Laws or accounting rules, including GAAP; or (vii) the public announcement, pendency or completion of the transactions contemplated by this Agreement; *provided further, however*, that any event, occurrence, fact, condition or change referred to in clauses (i) through (iv) immediately above shall be taken into account in determining whether a Material Adverse Effect has occurred or could

reasonably be expected to occur to the extent that such event, occurrence, fact, condition or change has a materially disproportionate effect on the Company or Welcome Dairy, as applicable, compared to other participants in the industries in which the Company or Welcome Dairy, as applicable, conducts its businesses.

"**Material Contracts**" has the meaning set forth in **Section 3.09(a)**.

"**Material Customers**" has the meaning set forth in **Section 3.15(a)**.

"**Material Suppliers**" has the meaning set forth in **Section 3.15(b)**.

"**Units**" has the meaning set forth in the recitals.

"**Multiemployer Plan**" has the meaning set forth in **Section 3.20(c)**.

"**Non-U.S. Benefit Plan**" has the meaning set forth in **Section 3.20(a)**.

"**Organizational Documents**" means (a) in the case of a Person that is a corporation, its articles or certificate of incorporation and its by-laws, regulations or similar governing instruments required by the laws of its jurisdiction of formation or organization; (b) in the case of a Person that is a partnership, its articles or certificate of partnership, formation or association, and its partnership agreement (in each case, limited, limited liability, general or otherwise); (c) in the case of a Person that is a limited liability company, its articles or certificate of formation or organization, and its limited liability company agreement or operating agreement; and (d) in the case of a Person that is none of a corporation, partnership (limited, limited liability, general or otherwise), limited liability company or natural person, its governing instruments as required or contemplated by the laws of its jurisdiction of organization.

"**Patents**" means all patents, industrial and utility models, industrial designs, petty patents, patents of importation, patents of addition, certificates of invention, and any other indicia of invention ownership issued or granted by any Governmental Authority, including all provisional applications, priority and other applications, divisionals, continuations (in whole or in part), extensions, reissues, re-examinations or equivalents or counterparts of any of the foregoing; and moral and economic rights of inventors in any of the foregoing.

"**Permits**" means all permits, licenses, franchises, approvals, authorizations, registrations, certificates, variances and similar rights obtained, or required to be obtained, from Governmental Authorities.

"**Permitted Encumbrances**" has the meaning set forth in **Section 3.10(a)**.

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

"**Post-Closing Adjustment**" has the meaning set forth in **Section 2.07(b)(ii)**.

**"Post-Closing Tax Period"** means any taxable period beginning after the Closing Date and, with respect to any taxable period beginning before and ending after the Closing Date, the portion of such taxable period beginning after the Closing Date.

**"Post-Closing Taxes"** means Taxes of the Company for any Post-Closing Tax Period.

**"Pre-Closing Tax Period"** means any taxable period ending on or before the Closing Date and, with respect to any taxable period beginning before and ending after the Closing Date, the portion of such taxable period ending on and including the Closing Date.

**"Pre-Closing Taxes"** means Taxes of the Company for any Pre-Closing Tax Period.

**"Preferred Units"** means Preferred Units of the Buyer, as such term is more particularly described in the Buyer Operating Agreement.

**"Purchase Price"** has the meaning set forth in **Section 2.03**.

**"Purchased Units"** has the meaning set forth in the recitals.

**"Qualified Benefit Plan"** has the meaning set forth in **Section 3.20(c)**.

**"Real Property"** means the real property owned, leased or subleased by the Company, together with all buildings, structures and facilities located thereon.

**"Release"** means any actual release, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, abandonment, disposing or allowing to escape or migrate into or through the environment (including, without limitation, ambient air (indoor or outdoor), surface water, groundwater, land surface or subsurface strata or within any building, structure, facility or fixture).

**"Representative"** means, with respect to any Person, any and all directors/managing members, managers, officers, employees, consultants, financial advisors, counsel, accountants and other agents of such Person.

**"Resolution Period"** has the meaning set forth in **Section 2.07(c)(ii)**.

**"Restricted Business"** means the sale, marketing, formulation, preparation, manufacture or packaging of (i) dairy flavors, including, but not limited to: enzyme modified cheeses, natural dairy flavors, natural and artificial dairy flavors, dairy flavor compounds and emulsions, and lipolyzed butter oils and creams, but not including [a] concentrated coffee creamer, [b] dairy or non-dairy beverage concentrates or [c] dairy protein concentrates (Sports Nutrition), (ii) dry seasonings, including, but not limited to: dinner seasonings, snack seasonings, flavor seasonings and powders, cheese powders, butter and cream powders and dry mixes for use in the branded retail, private label, food service or any other food use, (iii) pasteurized processed cheeses, pasteurized processed cheese products, pasteurized processed cheese spreads, pasteurized processed cheese foods and pasteurized processed cheese sauces

(including refrigerated, shelf stable and acidified), and (iv) sauces suitable for packaging in pouches or cups, but not including [a] beverage products or [b] Sports Nutrition products in thermoformed packages or formed bottles.

"**Restricted Period**" has the meaning set forth in **Section 5.06(a)**.

"**Review Period**" has the meaning set forth in **Section 2.07(c)(i)**.

"**Seller**" has the meaning set forth in the recitals.

"**Seller Indemnitees**" has the meaning set forth in **Section 8.03**.

"**Seller's Accountants**" means Dwayne Johnson & Associates, Waukesha, WI 53188.

"**Statement of Objections**" has the meaning set forth in **Section 2.07(c)(ii)**.

"**Straddle Period**" has the meaning set forth in **Section 6.03**.

"**Target Working Capital**" has the meaning set forth in **Section 2.07(a)(ii)**.

"**Taxes**" means all federal, state, local, foreign and other taxes on or measured by 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, together with any interest, additions or penalties with respect thereto and any interest in respect of such additions or penalties.

"**Tax Claim**" has the meaning set forth in **Section 6.04**.

"**Tax Return**" means any return, declaration, report, claim for refund, information return or statement or other document relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

"**Territory**" means North America, South America, Europe, Asia, Australia, and Africa.

"**Third Party Claim**" has the meaning set forth in **Section 8.05(a)**.

"**Trade Secrets**" means anything that would constitute a "trade secret" under applicable law.

"**Trademarks**" means trademarks, service marks, fictional business names, trade names, commercial names, certification marks, collective marks, Internet Domain Names and uniform resource locators and alphanumeric designations associated therewith and other proprietary rights to any words, names, slogans, symbols, logos, devices or combinations thereof used to identify, distinguish and indicate the source or origin of goods or services; registrations, renewals, applications for registration, equivalents

and counterparts of the foregoing; and the goodwill of the Company's Business associated with each of the foregoing.

"**Transaction Documents**" means this Agreement and the Buyer Operating Agreement.

"**Undisputed Amounts**" has the meaning set forth in **Section 2.07(c)(iii)**.

"**Union**" has the meaning set forth in **Section 3.21(b)**.

"**WARN Act**" means the federal Worker Adjustment and Retraining Notification Act of 1988, and similar state, local and foreign laws related to plant closings, relocations, mass layoffs and employment losses.

"**Welcome-Gamay Business**" means the business and activities conducted by Welcome Dairy and the Company in connection with that certain Agreement dated January 1, 2004 by and between Welcome Dairy and the Company.

## ARTICLE II PURCHASE AND SALE; CONTRIBUTION

**Section 2.01** [Intentionally Omitted.]

**Section 2.02 Purchase and Sale of Purchased Units.** Subject to the terms and conditions set forth herein, at the Closing, Seller hereby sells to Buyer, and Buyer hereby purchases from Seller, all of Seller's right, title and interest in and to the Purchased Units (constituting 84.18 Units of the Company) (the "**Purchased Units**"), free and clear of all Encumbrances, for the consideration specified in **Section 2.03**.

**Section 2.03 Closing Payments.** At Closing, Buyer shall:

(a) pay to Seller an amount (the "**Closing Payment**") equal to (i) [REDACTED], less (ii) the Contributed Units Value, less (iii) Estimated Indebtedness, plus (iv) [REDACTED] of the Capital Expenditures Credit (the remaining [REDACTED] may be referred to as the "**Remaining Capital Expenditures Credit**"), plus (v) [REDACTED] of the amount of a positive Closing Adjustment (as applicable) (the remaining [REDACTED] of any such positive Closing Adjustment may be referred to as the "**Remaining Closing Adjustment**"), minus (vi) a negative Closing Adjustment (as applicable).

(b) pay or otherwise discharge, on behalf of the Company, all Indebtedness included in the Estimated Indebtedness (including all principal, accrued interest, penalties and premiums thereon through the date on which such Indebtedness is satisfied and extinguished) to such account or accounts specified to the Buyer in the payoff letters referenced in **Section 7.02(p)**.

The payments contemplated by this **Section 2.03** shall be calculated and are subject to adjustment pursuant to **Section 2.07**. The Closing Payment, plus the amount of Indebtedness paid by Buyer pursuant to this Section 2.03, plus the amount of the Final Remaining Closing Adjustment (defined below), as such amounts may be adjusted pursuant to **Section 2.07**, may be referred to as the "**Purchase Price**".

**Section 2.04 Contribution of Contributed Units.** Subject to the terms and conditions set forth herein, at the Closing, Seller hereby contributes to Buyer, and Buyer hereby accepts from Seller, all of Seller's right, title and interest in and to the Contributed Units (constituting 15.82 Units of the Company), free and clear of all Encumbrances, for the consideration specified in **Section 2.05**.

**Section 2.05 Consideration for Contributed Units.** As consideration for the Contributed Units, at the Closing, Buyer shall issue to Seller the Preferred Units, with a capital contribution value of [REDACTED] (the "**Contributed Units Value**"), free and clear of all Encumbrances, other than Encumbrances set forth in the Buyer Operating Agreement.

**Section 2.06 Transactions to be Effected at the Closing.**

(a) At the Closing, Buyer shall deliver to Seller or the applicable third party:

(i) the Closing Payment by wire transfer of immediately available funds to an account of Seller designated in writing by Seller to Buyer no later than two (2) Business Days prior to the Closing Date;

(ii) payment of all Indebtedness included in the Estimated Indebtedness pursuant to **Section 2.03(b)**;

(iii) the Buyer Operating Agreement, duly executed by Buyer and each of the members of Buyer, evidencing Buyer's issuance to Seller of the Preferred Units;

(iv) the Transaction Documents and all other agreements, documents, instruments or certificates required to be delivered by Buyer at or prior to the Closing pursuant to **Section 7.03** of this Agreement; and

(v) a short-term sublease agreement between the Company and DreamPak, LLC for a portion of the facility located at [REDACTED], and termination of the Lease Agreement dated January 5, 2011, by and between GSC Leaseco, LLC and DreamPak, LLC, Wisconsin, in a form reasonably acceptable to the Seller and Buyer, duly executed by the Company (the "**DreamPak Sublease**").

(b) At the Closing, Seller shall deliver to Buyer:

(i) a counterpart signature page to the Buyer Operating Agreement, duly executed by Seller, evidencing Seller's agreement to be bound by the terms and conditions of the Buyer Operating Agreement;



(ii) an amendment to the Lease Agreement dated January 5, 2011, by and between the Company and GSC Leaseco, LLC in form and substance reasonably satisfactory to the Buyer;

(iii) the DreamPak Sublease, duly executed by DreamPak and the Company;

(iv) the other Transaction Documents and all other agreements, documents, instruments or certificates required to be delivered by Seller at or prior to the Closing pursuant to **Section 7.02** of this Agreement;

(v) written resignations, effective as of the Closing Date, of the officers and managers of the Company set forth on **Section 2.06** of the Disclosure Schedules.

**Section 2.07 Purchase Price Adjustment.**

(a) **Closing Adjustment.**

(i) Prior to the Closing, Seller shall prepare and deliver to Buyer a statement setting forth its good faith estimates of [a] Closing Working Capital (the "**Estimated Closing Working Capital**"), and [b] Indebtedness of the Company as of the open of business on the Closing Date ("**Estimated Indebtedness**") (such statement, the "**Estimated Closing Statement**").

(ii) The "**Closing Adjustment**" shall be an amount equal to the Estimated Closing Working Capital minus [REDACTED] (the "**Target Working Capital**"). If the Closing Adjustment is a positive number, the Closing Payment shall be increased as set forth in **Section 2.03(a)**. If the Closing Adjustment is a negative number, the Closing Payment shall be reduced as set forth in **Section 2.03(a)**.

(b) **Post-Closing Adjustment.**

(i) Within sixty (60) days after the Closing Date, Buyer shall prepare and deliver to Seller a statement setting forth its calculation of Closing Working Capital and Indebtedness of the Company as of the open of business on the Closing Date ("**Final Indebtedness**") (such statement, the "**Closing Statement**").

(ii) The "**Post-Closing Adjustment**" will be calculated as follows: An amount equal to the extent to which, in each case as applicable [a] Closing Working Capital exceeds the Estimated Closing Working Capital, and [b] Final Indebtedness is less than Estimated Indebtedness, minus the extent to which, in each case as applicable, [a] Closing Working Capital is less than Estimated Closing Working Capital, and [b] Final Indebtedness is greater than Estimated Indebtedness.

(iii) If the Post-Closing Adjustment is a positive number, the amount of the Post-Closing Adjustment shall be added to the Remaining Closing Adjustment and the Remaining Capital Expenditures Credit, and such sum shall be the "**Final Remaining Closing Adjustment**". If the Post-Closing Adjustment is a negative number, the amount of the Post-Closing Adjustment shall be subtracted from the sum of the Remaining Closing Adjustment and the Remaining Capital Expenditures Credit, and if the result of such calculation is a positive number, such amount shall be the "**Final Remaining Closing Adjustment**", and if the result of such calculation is a negative number, Seller shall pay to Buyer an

amount equal to such negative number (expressed as a positive number). The Final Remaining Closing Adjustment (if any) shall be paid as follows: [a] on the first business day after April 1, 2017, Buyer shall pay to Seller an amount equal to ■■■ of the Final Remaining Closing Adjustment, and [b] on the first business day after June 30, 2017, Buyer shall pay to Seller the remaining unpaid amount of the Final Remaining Closing Adjustment. Any amount owing under this Section 2.07(b)(iii) that is not paid within three (3) business days of the date it is due shall bear interest at the rate of ■■■ per annum until paid.

(c) **Examination and Review.**

(i) Examination. After receipt of the Closing Statement, Seller shall have thirty (30) days (the "**Review Period**") to review the Closing Statement. During the Review Period, Seller and Seller's Accountants shall have full access to the books and records of the Company, the personnel of, and work papers prepared by, Buyer and/or Buyer's Accountants to the extent that they relate to the Closing Statement and to such historical financial information (to the extent in Buyer's possession) relating to the Closing Statement as Seller may reasonably request for the purpose of reviewing the Closing Statement and to prepare a Statement of Objections (defined below), *provided*, that such access shall be in a manner that does not interfere with the normal business operations of Buyer or the Company.

(ii) Objection. On or prior to the last day of the Review Period, Seller may object to the Closing Statement by delivering to Buyer a written statement setting forth Seller's objections in reasonable detail, indicating each disputed item or amount and the basis for Seller's disagreement therewith (the "**Statement of Objections**"). If Seller fails to deliver the Statement of Objections before the expiration of the Review Period, the Closing Statement and the Post-Closing Adjustment, as the case may be, reflected in the Closing Statement shall be deemed to have been accepted by Seller. If Seller delivers the Statement of Objections before the expiration of the Review Period, Buyer and Seller shall negotiate in good faith to resolve such objections within ten (10) days after the delivery of the Statement of Objections (the "**Resolution Period**"), and, if the same are so resolved within the Resolution Period, the Post-Closing Adjustment and the Closing Statement with such changes as may have been previously agreed in writing by Buyer and Seller shall be final and binding.

(iii) Resolution of Disputes. If Seller and Buyer fail to reach an agreement with respect to all of the matters set forth in the Statement of Objections before expiration of the Resolution Period, then any amounts remaining in dispute ("**Disputed Amounts**" and any amounts not so disputed, the "**Undisputed Amounts**") shall be submitted for resolution to the office of the Independent Accountant or, if the Independent Accountant is unable to serve, Buyer and Seller shall appoint by mutual agreement the office of an impartial nationally recognized firm of independent certified public accountants other than Seller's Accountants or Buyer's Accountants who, acting as experts and not arbitrators, shall resolve the Disputed Amounts only and make any adjustments to the Post-Closing Adjustment, as the case may be, and the Closing Statement. The parties hereto agree that all adjustments shall be made without regard to materiality. The Independent Accountant shall only decide the specific items under dispute by the parties and their decision for each Disputed Amount must be within the range of values assigned to each such item in the Closing Statement and the Statement of Objections, respectively.

(iv) Fees of the Independent Accountant. The fees and expenses of the Independent Accountant shall be paid by Seller, on the one hand, and by Buyer, on the other hand, based

upon the percentage that the amount actually contested but not awarded to Seller or Buyer, respectively, bears to the aggregate amount actually contested by Seller and Buyer.

(v) Determination by Independent Accountant. The Independent Accountant shall make a determination as soon as practicable within thirty (30) days (or such other time as the parties hereto shall agree in writing) after its engagement, and its resolution of the Disputed Amounts and its adjustments to the Closing Statement and/or the Post-Closing Adjustment shall be conclusive and binding upon the parties hereto.

(vi) Payments of Post-Closing Adjustment. Except as otherwise provided herein, any payment of the Post-Closing Adjustment shall (A) be due (x) within five (5) Business Days of acceptance of the applicable Closing Statement or (y) if there are Disputed Amounts, then within five (5) Business Days of the resolution described in clause (v) above; and (B) be paid by wire transfer of immediately available funds to such account as is directed by Buyer or Seller, as the case may be. Any amount owed pursuant to this Section 2.07(c)(vi) that is not paid when due shall bear interest from the due date to the date of payment at a rate per annum equal to [REDACTED]. Such interest shall be calculated daily on the basis of a 365 day year and the actual number of days elapsed, without compounding.

(d) **Adjustments for Tax Purposes.** Any payments made pursuant to **Section 2.07** shall be treated as an adjustment to the Purchase Price by the parties for Tax purposes, unless otherwise required by Law.

**Section 2.08 Closing.** The closing of the transactions contemplated by this Agreement (the "**Closing**") will take place concurrent with the execution and delivery of this Agreement by all of the Parties. The day on which the Closing takes place may be referred to as the "**Closing Date**". The Parties agree that the Closing will be deemed effective as of 12:01 a.m. Central Time on the Closing Date. At the Closing, counterparts of executed documents will be exchanged by facsimile transmission or transmission of PDF files.

**Section 2.09 Withholding Tax.** Buyer and the Company shall be entitled to deduct and withhold from the Closing Payment all Taxes that Buyer and the Company may be required to deduct and withhold under any provision of Tax Law. All such withheld amounts shall be treated as delivered to Seller hereunder. If Buyer determines that Tax withholding is required pursuant to this **Section 2.09**, Buyer shall provide notice thereof to Seller promptly following such determination. Such notice shall include the applicable authority under which such withholding is required. In all cases, Buyer shall reasonably cooperate with the Seller to avoid or minimize any Tax withholding from the cash consideration payable pursuant to this Agreement.

### ARTICLE III REPRESENTATIONS AND WARRANTIES OF SELLER

Except as set forth in the correspondingly numbered Section of the Disclosure Schedules, and subject to **Section 3.25**, Seller and the Company, jointly and severally, represent and warrant to Buyer

that the statements contained in this **Article III** are true and correct as of the date hereof or such other date specifically provided in this **Article III**.

**Section 3.01            Organization and Authority of Seller and Shareholders.**

(a)            Seller is a corporation duly incorporated and validly existing under the laws of the State of Wisconsin, has filed its most recent required annual report with the Wisconsin Department of Financial Institutions, and has all requisite corporate power and authority and all authorizations and Permits necessary to carry on the business of the Seller as currently conducted. Seller has full corporate power and authority to enter into this Agreement and the other Transaction Documents to which Seller is a party, to carry out its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery by Seller of this Agreement and any other Transaction Document to which Seller is a party, the performance by Seller of its obligations hereunder and thereunder and the consummation by Seller of the transactions contemplated hereby and thereby have been duly authorized by all requisite corporate action on the part of Seller. This Agreement has been duly executed and delivered by Seller, and (assuming due authorization, execution and delivery by each of the other Parties) this Agreement constitutes a legal, valid and binding obligation of Seller enforceable against Seller in accordance with its terms, except as limited by applicable bankruptcy, insolvency, reorganization, moratorium or other Laws of general application affecting the enforcement of creditors' rights generally, and general principles of equity that restrict the availability of equitable remedies (collectively, the "**Bankruptcy and Equity Exceptions**"). When each other Transaction Document to which Seller is or will be a party has been duly executed and delivered by Seller (assuming due authorization, execution and delivery by each other party thereto), such Transaction Document will constitute a legal and binding obligation of Seller enforceable against it in accordance with its terms, subject to the Bankruptcy and Equity Exceptions.

(b)            The execution and delivery of this Agreement and any other Transaction Document to which a Shareholder is a party, the performance by each Shareholder of his or her obligations hereunder and thereunder and the consummation by each Shareholder of the transactions contemplated hereby and thereby have been duly authorized by all requisite action on the part of each Shareholder. This Agreement has been duly executed and delivered by each Shareholder, and (assuming due authorization, execution and delivery by each other Party) this Agreement constitutes a legal, valid and binding obligation of each Shareholder enforceable against such Shareholder in accordance with its terms, subject to the Bankruptcy and Equity Exceptions. When each other Transaction Document to which a Shareholder is or will be a party has been duly executed and delivered by such Shareholder (assuming due authorization, execution and delivery by each other party thereto), such Transaction Document will constitute a legal and binding obligation of such Shareholder enforceable against him/her in accordance with its terms, subject to the Bankruptcy and Equity Exceptions.

**Section 3.02            Organization, Authority and Qualification of the Company.**

(a)            The Company is a limited liability company duly organized and validly existing under the laws of the State of Wisconsin and has filed its most recent required annual report with the Wisconsin Department of Financial Institutions and has all requisite limited liability company power and

authority and all authorizations and Permits necessary to carry on the business of the Company as now being conducted. The states in which the Company is qualified to do business are set forth in **Section 3.02** of the Disclosure Schedules. The Company has full limited liability company power and authority to enter into this Agreement and the other Transaction Documents to which the Company is a party, to carry out its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery by the Company of this Agreement and any other Transaction Document to which the Company is a party, the performance by the Company of its obligations hereunder and thereunder and the consummation by the Company of the transactions contemplated hereby and thereby have been duly authorized by all requisite limited liability company action on the part of the Company. This Agreement has been duly executed and delivered by the Company, and (assuming due authorization, execution and delivery by each other Party) this Agreement will constitute a legal, valid and binding obligation of the Company enforceable against the Company in accordance with its terms, subject to the Bankruptcy and Equity Exceptions. When each other Transaction Document to which the Company is or will be a party has been duly executed and delivered by the Company (assuming due authorization, execution and delivery by each other party thereto), such Transaction Document will constitute a legal and binding obligation of Company enforceable against it in accordance with its terms, subject to the Bankruptcy and Equity Exceptions.

(b) **[Intentionally Omitted.]**

**Section 3.03 Capitalization.**

(a) The Shareholders are the record owners of and have good and valid title to all of the issued and outstanding stock of Seller, free and clear of all Encumbrances.

(b) Seller is the record owner of and has good and valid title to the Units, free and clear of all Encumbrances. The Units constitute 100% of the total issued and outstanding Units in the Company. The Units have been duly authorized and validly issued, fully-paid and non-assessable. Upon consummation of the transactions contemplated by this Agreement, Buyer shall own all of the Units, free and clear of all Encumbrances.

(c) The Units (i) have been issued in compliance with applicable Laws, (ii) have not been issued in violation of the Organizational Documents of the Company or any other agreement, arrangement or commitment to which Seller or the Company is a party, and (iii) are not subject to or in violation of any preemptive or similar rights of any Person.

(d) There are no outstanding or authorized options, warrants, convertible securities or other rights, agreements, arrangements or commitments of any character relating to any Units in the Company or obligating Seller or the Company to issue or sell any equity units (including the Units), or any other interest, in the Company. Other than the Organizational Documents of the Company, there are no voting trusts, proxies or other agreements or understandings in effect with respect to the voting or transfer of any of the Units.

**Section 3.04 No Subsidiaries.** The Company does not own, or have any interest in any shares or have an ownership interest in, any other Person.

**Section 3.05 No Conflicts; Consents.** The execution, delivery and performance by Seller and each Shareholder of this Agreement and the other Transaction Documents to which any of them is a party, and the consummation of the transactions contemplated hereby and thereby, do not and will not: (a) conflict with or result in a violation or breach of, or default under, any provision of the Organizational Documents of Seller or the Company; (b) conflict with or result in a violation or breach of any provision of any Law or Governmental Order applicable to Seller, a Shareholder, or the Company; (c) except as set forth in **Section 3.05** of the Disclosure Schedules, require the consent of, notice to or other action by any Person under, conflict with, result in a violation or breach of, constitute a default or an event that, with or without notice or lapse of time or both, would constitute a default under, result in the acceleration of or create in any party the right to accelerate, terminate, modify or cancel any Contract to which Seller, a Shareholder, or the Company is a party or by which Seller, a Shareholder, or the Company is bound or to which any of their respective properties and assets are subject (including any Material Contract) or any Permit affecting the properties, assets or business of the Company; or (d) result in the creation or imposition of any Encumbrance on any properties or assets of the Company. No consent, approval, Permit, Governmental Order, declaration or filing with, or notice to, any Governmental Authority is required by or with respect to Seller, a Shareholder, or the Company in connection with the execution and delivery of this Agreement and the other Transaction Documents and the consummation of the transactions contemplated hereby and thereby, except for such filings as may be required under such consents, approvals, Permits, Governmental Orders, declarations, filings or notices which, if not obtained or made, in the aggregate, would not have a Material Adverse Effect.

**Section 3.06 Financial Statements.** Complete copies of the Company's audited financial statements consisting of the balance sheet of the Company as at December 31, in each of the years 2015 and 2014 and the related statements of income and retained earnings, members' equity and cash flow for the years then ended (the "**Audited Financial Statements**"), and unaudited financial statements consisting of the balance sheet of the Company as at August 31, 2016 and the related statements of income and retained earnings, members' equity and cash flow for the six month period then ended (the "**Interim Financial Statements**" and together with the Audited Financial Statements, the "**Financial Statements**") are included in **Section 3.06** of the Disclosure Schedules. The Financial Statements have been prepared in accordance with GAAP applied on a consistent basis throughout the period involved, subject, in the case of the Interim Financial Statements, to normal and recurring year-end adjustments (the effect of which will not be materially adverse) and the absence of notes (that, if presented, would not differ materially from those presented in the Audited Financial Statements). The Financial Statements are based on the books and records of the Company, and fairly present in all material respects the financial condition of the Company as of the respective dates they were prepared and the results of the operations of the Company for the periods indicated. The balance sheet of the Company as of December 31, 2015 is referred to herein as the "**Balance Sheet**" and the date thereof as the "**Balance Sheet Date**" and the balance sheet of the Company as of August 31, 2016 is referred to herein as the "**Interim Balance Sheet**" and the date thereof as the "**Interim Balance Sheet Date**". The Company maintains a standard system of accounting established and administered in accordance with GAAP.

**Section 3.07 Undisclosed Liabilities.** The Company has no liabilities, obligations or commitments of any nature whatsoever, asserted or unasserted, known or unknown, absolute or contingent, accrued or unaccrued, matured or unmatured or otherwise ("**Liabilities**"), except (a) those which are adequately reflected or reserved against in the Balance Sheet as of the Balance Sheet Date, (b) those which have been incurred in the ordinary course of business consistent with past practice since the Balance Sheet Date and which are not, individually or in the aggregate, material in amount, (c) those note required to be disclosed or reflected on financial statements prepared in accordance with GAAP; and (d) those set forth in **Section 3.07** of the Disclosure Schedules.

**Section 3.08 Absence of Certain Changes, Events and Conditions.** Since the Balance Sheet Date, and other than in the ordinary course of business consistent with past practice and as set forth in **Section 3.08** of the Disclosure Schedules, there has not been, with respect to the Company, any:

(a) event, occurrence or development that has had, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect;

(b) amendment of the Organizational Documents of the Company, other than as contemplated by the contribution by the Shareholders of the equity of Gamay Foods, Inc. to Seller and the subsequent conversion of Gamay Foods, Inc. to Gamay Food Ingredients, LLC (the "**Contribution and Conversion**");

(c) split, combination or reclassification of any equity interest in the Company, other than in connection with the Contribution and Conversion;

(d) issuance, sale or other disposition of, or creation of any Encumbrance on, any equity interest in the Company, or grant of any options, warrants or other rights to purchase or obtain (including upon conversion, exchange or exercise) any equity interest in the Company, other than in connection with the Contribution and Conversion;

(e) declaration or payment of any distributions on or in respect of any equity interest in the Company or redemption, purchase or acquisition of any of the Company's outstanding equity interests;

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

(g) incurrence, assumption or guarantee of any indebtedness for borrowed money which has not been repaid in full, except unsecured current obligations and Liabilities incurred in the ordinary course of business consistent with past practice and Indebtedness to be repaid at Closing;

(h) transfer, assignment, sale or other disposition of any of the assets shown or reflected in the Balance Sheet or cancellation of any debts or entitlements, in each case with a value in excess of [REDACTED];

(i) transfer, assignment or grant of any license or sublicense of any material rights under or with respect to any Company Intellectual Property or Company IP Agreements;

- (j) damage, destruction or loss (whether or not covered by insurance) to its property, in each case in excess of [REDACTED];
- (k) any capital investment in, or any loan to, any other Person;
- (l) acceleration, termination, material modification to or cancellation of any material Contract (including, but not limited to, any Material Contract) to which the Company is a party or by which it is bound;
- (m) any capital expenditures in excess of [REDACTED];
- (n) (i) grant of any bonuses, whether monetary or otherwise, or increase in any wages, salary, severance, pension or other compensation or benefits in respect of its current or former employees, officers, managers, independent contractors or consultants, other than as provided for in any written agreements or required by applicable Law, in each case for which the aggregate costs and expenses exceed [REDACTED], (ii) change in the terms of employment for any employee or any termination of any employees for which the aggregate costs and expenses exceed [REDACTED], or (iii) action to accelerate the vesting or payment of any compensation or benefit for any current or former employee, officer, manager, independent contractor or consultant;
- (o) hiring or promoting any person as or to (as the case may be) an officer or hiring or promoting any employee below officer except in the ordinary course of business;
- (p) any loan to (or forgiveness of any loan to), or entry into any other transaction with, any of its members or current or former managers, officers and employees;
- (q) adoption of any plan of merger, consolidation, reorganization, liquidation or dissolution or filing of a petition in bankruptcy under any provisions of federal or state bankruptcy Law or consent to the filing of any bankruptcy petition against it under any similar Law, other than as contemplated by the Contribution and Conversion;
- (r) purchase, lease or other acquisition of the right to own, use or lease any property or assets for an amount in excess of [REDACTED], individually (in the case of a lease, per annum) or [REDACTED] in the aggregate (in the case of a lease, for the entire term of the lease, not including any option term), except for purchases of inventory or supplies in the ordinary course of business consistent with past practice;
- (s) acquisition by merger or consolidation with, or by purchase of a substantial portion of the assets, stock or other equity of, or by any other manner, any business or any Person or any division thereof;
- (t) action by the Company to make, change or rescind any Tax election, amend any Tax Return or take any position on any Tax Return, take any action, omit to take any action, or enter into any other transaction that would have the effect of increasing the Tax liability of Buyer in respect of any Post-Closing Tax Period; or
- (u) any Contract to do any of the foregoing, or any action or omission that would result in any of the foregoing.



**Section 3.09 Material Contracts.**

(a) **Section 3.09(a)** of the Disclosure Schedules lists each of the following Contracts of the Company (such Contracts, together with all Contracts concerning the occupancy, management or operation of any Real Property listed or otherwise disclosed in **Section 3.10(b)** of the Disclosure Schedules and all Company IP Agreements set forth in **Section 3.12(b)** of the Disclosure Schedules, being "**Material Contracts**"):

(i) each Contract of the Company involving aggregate consideration in excess of [REDACTED] and which, in each case, cannot be cancelled by the Company without penalty or without more than ninety (90) days' notice;

(ii) all Contracts that require the Company to purchase its total requirements of any product or service from a third party or that contain "take or pay" provisions;

(iii) all Contracts that provide for the indemnification by the Company of any Person (other than standard product warranties and indemnities made in the ordinary course of business) or the assumption of any Tax, environmental or other Liability of any Person;

(iv) all Contracts that relate to the acquisition or disposition of any business, a material amount of equity or assets of any other Person or any real property (whether by merger, sale of stock or other equity interests, sale of assets or otherwise);

(v) all broker, distributor, dealer, manufacturer's representative, franchise, agency, sales promotion, market research, marketing consulting and advertising Contracts to which the Company is a party, in each case which provides for expenditures or receipts in excess of [REDACTED] per annum;

(vi) all employment agreements and Contracts with independent contractors (not including suppliers or customers) or consultants (or similar arrangements) to which the Company is a party and which are not cancellable without material penalty or without more than ninety (90) days' notice;

(vii) except for Contracts relating to trade receivables, all Contracts relating to Indebtedness (including, without limitation, guarantees) of the Company;

(viii) all Contracts with any Governmental Authority to which the Company is a party;

(ix) all Contracts that limit or purport to limit the ability of the Company to compete in any line of business or with any Person or in any geographic area or during any period of time;

(x) any Contracts to which the Company is a party that provide for any joint venture, partnership or similar arrangement by the Company;

(xi) all Contracts between or among the Company on the one hand and Seller or any Affiliate of Seller (other than the Company) on the other hand; and

(xii) all collective bargaining agreements or Contracts with any Union to which the Company is a party.

(b) Each Material Contract is valid and binding on the Company in accordance with its terms and is in full force and effect. None of the Company or, to Seller's Knowledge, any other party thereto is in breach of or default under (or is alleged to be in breach of or default under) in any material respect, or has provided or received any notice of any intention to terminate, any Material Contract. No event or circumstance has occurred that, with notice or lapse of time or both, would constitute an event of default under any Material Contract or result in a termination thereof or would cause or permit the acceleration or other changes of any right or obligation or the loss of any benefit thereunder. Complete and correct copies of each Material Contract (including all modifications, amendments and supplements thereto and waivers thereunder) have been made available to Buyer.

**Section 3.10 Title to Assets; Real Property.**

(a) The Company has good and valid title to, or a valid leasehold interest in, all Real Property and personal property and other assets reflected in the Audited Financial Statements or acquired after the Balance Sheet Date, other than properties and assets sold or otherwise disposed of in the ordinary course of business consistent with past practice since the Balance Sheet Date. All such properties and assets (including leasehold interests) are free and clear of Encumbrances except for the following (collectively referred to as "**Permitted Encumbrances**"):

- (i) liens for Taxes not yet due and payable;
- (ii) mechanics, carriers', workmen's, repairmen's, warehouse men's, landlords', employees' or other like liens arising or incurred in the ordinary course of business consistent with past practice for amounts that are not delinquent;
- (iii) easements, rights of way, zoning ordinances and other similar encumbrances affecting Real Property which are not, individually or in the aggregate, material to the business of the Company;
- (iv) any liens that are released or otherwise terminated at Closing; or
- (v) liens arising under original purchase price conditional sales contracts and equipment leases with third parties entered into in the ordinary course of business consistent with past practice which are not, individually or in the aggregate, material to the business of the Company.

(b) **Section 3.10(b)** of the Disclosure Schedules lists (i) the street address of each parcel of Real Property; and (ii) if such property is leased or subleased by the Company, the landlord under the lease and a description of the lease (*i.e.*, the parties, name and date of the lease agreement). The Company does not own any Real Property. With respect to leased Real Property, Seller has delivered or made available to Buyer true, complete and correct copies of any leases affecting the Real Property. The Company is not a sublessor or grantor under any sublease or other instrument granting to any other Person any right to the possession, lease, occupancy or enjoyment of any leased Real Property. The use and operation of the Real Property in the conduct of the Company's business do not violate in any material respect any Law, covenant, condition, restriction, easement, license, permit or agreement. No material improvements constituting a part of the Real Property encroach on real property owned or leased by a Person other than the Company or any of its Affiliates. There are no Actions pending nor, to the

Seller's Knowledge, threatened against or affecting the Real Property or any portion thereof or interest therein in the nature or in lieu of condemnation or eminent domain proceedings.

**Section 3.11 Condition And Sufficiency of Assets.** The buildings, plants, structures, furniture, fixtures, machinery, equipment, vehicles and other items of tangible personal property of the Company are structurally sound, are in adequate operating condition and repair for the current conduct of the Company's business, and are adequate for the uses to which they are being put, and none of such buildings, plants, structures, furniture, fixtures, machinery, equipment, vehicles and other items of tangible personal property is in need of maintenance or repairs except for ordinary, routine maintenance and repairs that are not material in nature or cost. Except as set forth in **Section 3.11** of the Disclosure Schedules, the buildings, plants, structures, furniture, fixtures, machinery, equipment, vehicles and other items of tangible personal property currently owned or leased by the Company, together with all other properties and assets of the Company, are sufficient for the continued conduct of the Company's business after the Closing in substantially the same manner as conducted prior to the Closing and constitute all of the rights, property and assets necessary to conduct the business of the Company as currently conducted.

**Section 3.12 Intellectual Property.**

(a) **Section 3.12(a)** of the Disclosure Schedules lists all Company IP Registrations. All required filings and fees related to the Company IP Registrations have been timely filed with and paid to the relevant Governmental Authorities and authorized registrars, and all Company IP Registrations are otherwise in good standing. Seller has provided Buyer with true and complete copies of file histories, documents, certificates, office actions, correspondence and other materials related to all Company IP Registrations.

(b) **Section 3.12(b)** of the Disclosure Schedules lists all Company IP Agreements. Seller has provided Buyer with true and complete copies of all such Company IP Agreements, including all modifications, amendments and supplements thereto and waivers thereunder. Each Company IP Agreement is valid and binding on the Company in accordance with its terms and is in full force and effect. Neither the Company nor, to the Seller's Knowledge, any other party thereto is in breach of or default under (or is alleged to be in breach of or default under). The Company has not provided or received any notice of breach or default of, or any intention to terminate, any Company IP Agreement.

(c) Except as set forth in **Section 3.12(c)** of the Disclosure Schedules, the Company is the sole and exclusive legal and beneficial, and with respect to the Company IP Registrations, record, owner of all right, title and interest in and to the Company Intellectual Property, and has the valid right to use all other Intellectual Property used in or necessary for the conduct of the Company's current business or operations, in each case, free and clear of Encumbrances. All Copyrights and Trade Secrets that constitute Company Intellectual Property and which are material to the Company's business have been documented (which documentation is complete and accurate to the extent necessary to enable the Company's employees to produce the Company's products without the assistance of any of the Shareholders) in an electronic database or physical log books, which database and log books are in the possession of the Company.

(d) The consummation of the transactions contemplated hereunder will not result in the loss or impairment of or payment of any additional amounts with respect to, nor require the consent of any other Person in respect of, the Company's right to own, use or hold for use any Intellectual Property as owned, used or held for use in the conduct of the Company's business or operations as currently conducted.

(e) The Company's rights in the Company Intellectual Property are valid, subsisting and enforceable. The Company has taken all reasonable steps to maintain the Company Intellectual Property and to protect and preserve the confidentiality of all trade secrets included in the Company Intellectual Property.

(f) The conduct of the Company's business as currently and formerly conducted, and the products, processes and services of the Company, have not infringed, misappropriated, diluted or otherwise violated, and do not infringe, dilute, misappropriate or otherwise violate the Intellectual Property or other rights of any Person. To Seller's Knowledge, no Person has infringed, misappropriated, diluted or otherwise violated, or is currently infringing, misappropriating, diluting or otherwise violating, any Company Intellectual Property.

(g) There are no Actions (including any oppositions, interferences or re-examinations) settled, pending or, to Seller's Knowledge, threatened (including in the form of offers to obtain a license): (i) alleging any infringement, misappropriation, dilution or violation of the Intellectual Property of any Person by the Company; (ii) challenging the validity, enforceability, registrability or ownership of any Company Intellectual Property or the Company's rights with respect to any Company Intellectual Property; or (iii) by the Company or any other Person alleging any infringement, misappropriation, dilution or violation by any Person of the Company Intellectual Property. The Company is not subject to any outstanding or prospective Governmental Order (including any motion or petition therefor) that does or would restrict or impair the use of any Company Intellectual Property.

**Section 3.13 Inventory; Quality.** Except as set forth in **Section 3.13** of the Disclosure Schedules, all inventory of the Company, whether or not reflected in the Balance Sheet, consists of a quality and quantity usable and salable in the ordinary course of business, 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 Company free and clear of all Encumbrances, and no inventory is held on a consignment basis. All finished goods inventory of the Company that is intended for human consumption is merchantable and fit for human consumption and in compliance with all applicable federal, state and local laws.

**Section 3.14 Accounts Receivable.** The accounts receivable reflected on the Interim Balance Sheet and the accounts receivable arising after the date thereof (a) have arisen from bona fide transactions entered into by the Company involving the sale of goods or the rendering of services in the ordinary course of business; and (b) except as set forth in **Section 3.14** of the Disclosure Schedules, to the Seller's Knowledge, constitute only valid, undisputed claims of the Company not subject to claims of set-off or other defenses or counterclaims other than normal cash discounts accrued in the ordinary course of business consistent with past practice. The reserve for bad debts shown on the Interim Balance Sheet or,

with respect to accounts receivable arising after the Interim Balance Sheet Date, on the accounting records of the Company have been determined in accordance with GAAP, consistently applied, subject to normal year-end adjustments and the absence of disclosures normally made in footnotes.

**Section 3.15 Customers and Suppliers.**

(a) **Section 3.15(a)** of the Disclosure Schedules sets forth (i) the top ten customers (based on revenues) of the Company for each of the two (2) most recent fiscal years (collectively, the "**Material Customers**"); and (ii) the amount of consideration paid by each Material Customer during such periods. The Company has not received any notice, and Seller does not have any Knowledge, that any of its Material Customers has ceased, or intends to cease after the Closing, to use its goods or services or to otherwise terminate or materially reduce its relationship with the Company.

(b) **Section 3.15(b)** of the Disclosure Schedules sets forth (i) the top ten suppliers (based on amounts paid) of the Company for each of the two (2) most recent fiscal years (collectively, the "**Material Suppliers**"); and (ii) the amount of purchases from each Material Supplier during such periods. The Company has not received any notice, and Seller does not have any Knowledge, that any of its Material Suppliers has ceased, or intends to cease, to supply goods or services to the Company or to otherwise terminate or materially reduce its relationship with the Company.

**Section 3.16 Insurance.** **Section 3.16** of the Disclosure Schedules sets forth a true and complete list of all current policies or binders of fire, liability, product liability, umbrella liability, real and personal property, workers' compensation, vehicular, directors' and officers' liability, fiduciary liability and other casualty and property insurance maintained by the Company and relating to the assets, business, operations, employees, officers and managers of the Company (collectively, the "**Insurance Policies**"). Neither the Seller nor the Company has received any written notice of cancellation of, material premium increase with respect to, or alteration of coverage under, any of such Insurance Policies. All premiums due on such Insurance Policies have either been paid or, if due and payable prior to Closing, will be paid prior to Closing in accordance with the payment terms of each Insurance Policy. All such Insurance Policies (a) are valid and binding in accordance with their terms; (b) are provided by carriers who are financially solvent; and (c) have not been subject to any lapse in coverage. There are no claims related to the business of the Company pending under any such Insurance Policies as to which coverage has been questioned, denied or disputed or in respect of which there is an outstanding reservation of rights. The Company is not in default under, or has otherwise failed to comply with, in any material respect, any provision contained in any such Insurance Policy. The Insurance Policies are sufficient for compliance with all applicable Laws and Contracts to which the Company is a party or by which it is bound.

**Section 3.17 Legal Proceedings; Governmental Orders.**

(a) There are no Actions pending or, to Seller's Knowledge, threatened (a) against or by the Company affecting any of its properties or assets (or by or against Seller relating to the Company); or (b) against or by a Shareholder, the Company, Seller or any Affiliate of Seller that challenges or seeks to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement. To the Seller's

Knowledge, no event has occurred or circumstances exist that would be reasonably likely to give rise to, or serve as a basis for, any such Action.

(b) Without limiting the generality of the foregoing, except as set forth in **Section 3.17(b)** of the Disclosure Schedules, there are no and will not be, and within the past three years there have not been any, investigations or Actions pending against the Company or, to Seller's Knowledge, threatened against the Company by any Person alleging illness, injury, death or damage as a result of the consumption or use of any product produced, handled, or shipped by Company prior to the Closing Date.

(c) There are no outstanding Governmental Orders and no unsatisfied judgments, penalties or awards against or affecting the Company or any of its properties or assets.

### **Section 3.18 Compliance With Laws; Permits.**

(a) Except as set forth in **Section 3.18(a)** of the Disclosure Schedules, at all times within the three years prior to the Closing the Company has complied, and is now complying, in all material respects with all Laws applicable to it or its business, properties or assets.

(b) All Permits required for the Company to conduct its business have been obtained by it and 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. **Section 3.18(b)** of the Disclosure Schedules lists all current Permits issued to the Company, including the names of the Permits and their respective dates of issuance and expiration. To the Seller's Knowledge, 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 set forth in **Section 3.18(b)** of the Disclosure Schedules.

### **Section 3.19 Environmental Matters.**

(a) Except as set forth in **Section 3.19(a)** of the Disclosure Schedules, the Company is currently and, at all times within the five years prior to Closing has been, in compliance in all material respects with all Environmental Laws, and has not received from any Person any: (i) 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) The Company has obtained and is in material compliance with all Environmental Permits (each of which is disclosed in **Section 3.19(b)** of the Disclosure Schedules) necessary for the ownership, lease, operation or use of the business or assets of the Company, and all such Environmental Permits are in full force and effect and shall be maintained in full force and effect by the Company through the Closing Date in accordance with Environmental Law. With respect to any such Environmental Permits, the Company has not received any Environmental Notice or written communication regarding any material adverse change in the status or terms and conditions of the same.

(c) No real property currently or formerly owned, operated or leased by the Company is listed on, or has been proposed for listing on, the National Priorities List (or CERCLIS) under CERCLA, or any similar state list.

(d) Except as set forth in **Section 3.19(d)** of the Disclosure Schedules, there has been no Release of Hazardous Materials in contravention of Environmental Law by the Company, and neither the Company nor Seller has received an Environmental Notice that any real property currently or formerly owned, operated or leased in connection with the business of the Company (including soils, groundwater, surface water, buildings and other structure located on any such real property) has been contaminated with any Hazardous Material which could reasonably be expected to result in an Environmental Claim against, or a violation of Environmental Law or term of any Environmental Permit by, the Company.

(e) There are no active or abandoned aboveground or underground storage tanks owned or operated by the Company.

(f) Neither Seller nor the Company has retained or assumed, by contract or operation of Law, any liabilities or obligations of third parties under Environmental Law.

(g) Seller has provided or otherwise made available to Buyer and listed in **Section 3.19(g)** of the Disclosure Schedules: (i) any and all environmental reports, studies, audits, material records, sampling data, site assessments, risk assessments, economic models and other similar documents prepared within the five years prior to the Closing Date with respect to the business or assets of the Company or any currently or formerly owned, operated or leased real property which are in the possession or control of the Seller or Company related to compliance with Environmental Laws, Environmental Claims or an Environmental Notice or the Release of Hazardous Materials; and (ii) any and all material documents prepared within the five years prior to the Closing Date concerning planned or anticipated capital expenditures required to reduce, offset, limit or otherwise control pollution and/or emissions, manage waste or otherwise ensure compliance with current or future Environmental Laws (including, without limitation, costs of remediation, pollution control equipment and operational changes).

### **Section 3.20 Employee Benefit Matters.**

(a) **Section 3.20(a)** of the Disclosure Schedules contains a true and complete list of each pension, benefit, retirement, compensation, employment, consulting, profit-sharing, deferred compensation, incentive, bonus, performance award, phantom equity or other equity, change in control, retention, severance, vacation, paid time off, welfare, fringe-benefit and other similar agreement, plan, policy, program or arrangement (and any amendments thereto), in each case whether or not reduced to writing and whether funded or unfunded, including each "employee benefit plan" within the meaning of Section 3(3) of ERISA, whether or not tax-qualified and whether or not subject to ERISA, which is or has been maintained, sponsored, contributed to, or required to be contributed to by the Company for the benefit of any current or former employee, officer, manager, retiree, independent contractor or consultant of the Company or any spouse or dependent of such individual, or under which the Company or any of its ERISA Affiliates has or may have any Liability, or with respect to which Buyer or any of its Affiliates would reasonably be expected to have any Liability, contingent or otherwise (as listed on **Section 3.20(a)** of the Disclosure Schedules, each, a "**Benefit Plan**"). The Company has separately identified in **Section 3.20(a)** of the Disclosure Schedules (i) each Benefit Plan that contains a change in control provision and (ii) each Benefit Plan that is maintained, sponsored, contributed to, or required to be contributed to by the

Company primarily for the benefit of employees outside of the United States (a "**Non-U.S. Benefit Plan**").

(b) With respect to each Benefit Plan, Seller has made available to Buyer accurate, current and complete copies of each of the following: (i) where the Benefit Plan has been reduced to writing, the current plan document together with all amendments; (ii) where the Benefit Plan has not been reduced to writing, a written summary of all material plan terms; (iii) where applicable, copies of any trust agreements or other funding arrangements, insurance policies and contracts, and all material service or other agreements; (iv) copies of any summary plan descriptions, summaries of material modifications, employee handbooks and any other material written communications (or a description of any oral communications) relating to any Benefit Plan; (v) in the case of any Benefit Plan that is intended to be qualified under Section 401(a) of the Code, a copy of the most recent determination, opinion or advisory letter from the Internal Revenue Service; (vi) in the case of any Benefit Plan for which a Form 5500 is required to be filed, a copy of the two most recently filed Form 5500, with schedules and financial statements attached; (vii) if applicable, actuarial valuations and reports related to any Benefit Plans with respect to the two most recently completed plan years; (viii) if applicable, the most recent nondiscrimination tests performed under the Code; (ix) copies of material notices, letters or other correspondence from the Internal Revenue Service, Department of Labor, Pension Benefit Guaranty Corporation or other Governmental Authority relating to the Benefit Plan; (x) fidelity bond and fiduciary liability insurance policies; and (xi) all documentation of actions by the fiduciary(ies) to the Benefit Plans, including minutes of meetings of such fiduciaries, reports regarding the performance of service providers or investments maintained in the Benefit Plans, and any governance documents relating to the administration of the Benefit Plans (in each case, with respect to the foregoing items in this subsection (xi), to the extent maintained by or provided to the Company).

(c) Each Benefit Plan and related trust (other than any multiemployer plan within the meaning of Section 3(37) of ERISA (each a "**Multiemployer Plan**") has been established, administered and maintained in accordance with its terms and in compliance with all applicable Laws (including ERISA, the Code, and any applicable local Laws). Each Benefit Plan that is intended to be qualified under Section 401(a) of the Code (a "**Qualified Benefit Plan**") is so qualified and has received a favorable and current determination letter from the Internal Revenue Service, or with respect to a prototype plan, can rely on an opinion letter from the Internal Revenue Service to the prototype plan sponsor, to the effect that such Qualified Benefit Plan 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, and nothing has occurred that could reasonably be expected to adversely affect the qualified status of any Qualified Benefit Plan. Each Qualified Benefit Plan has been amended in good faith to the extent required to comply with any provisions of the Pension Protection Act of 2006 (PPA) and subsequent relevant legislation, and to the extent that any interim amendments have been required, such amendments have been timely adopted. To the Knowledge of Seller, nothing has occurred with respect to any Benefit Plan that has subjected or could reasonably be expected to subject the Company or any of its ERISA Affiliates or, with respect to any period on or after the Closing Date, Buyer or any of its Affiliates, to a penalty under Section 502 of ERISA or to tax or penalty under Section 4975 of the Code. All benefits, contributions and premiums required to be made to or with respect to each Benefit Plan with respect to the service of employees or former employees of the Company as of the Closing Date have been timely



paid in accordance with the terms of such Benefit Plan and all applicable Laws and accounting principles or accrued consistent with GAAP and past custom and practices, and all benefits accrued under any unfunded Benefit Plan have been paid, accrued or otherwise adequately reserved to the extent required by, and in accordance with, GAAP. All Non-U.S. Benefit Plans that are intended to be funded and/or book-reserved are funded and/or book-reserved, as appropriate, based upon reasonable actuarial assumptions. The Company has not attempted to maintain grandfathered health plan status under the Affordable Care Act of any Benefit Plan.

(d) Neither the Company nor any of its ERISA Affiliates has (i) incurred or reasonably expects to incur, either directly or indirectly, any material Liability under Title I or Title IV of ERISA or related provisions of the Code or applicable local Law relating to employee benefit plans; (ii) failed to timely pay premiums to the Pension Benefit Guaranty Corporation; (iii) withdrawn from any Multiemployer Plan under Title IV of ERISA; or (iv) engaged in any transaction which would give rise to liability under Section 4069 or Section 4212(c) of ERISA.

(e) With respect to each Benefit Plan (i) except as set forth in **Section 3.20(e)** of the Disclosure Schedules, no such plan is a Multiemployer Plan, and (A) all contributions required to be paid by the Company or its ERISA Affiliates have been timely paid to the applicable Multiemployer Plan, (B) neither the Company nor any ERISA Affiliate has incurred any withdrawal liability under Title IV of ERISA which remains unsatisfied, and (C) a complete withdrawal from all such Multiemployer Plans at the Effective Time would not result in any material liability to the Company; (ii) no such plan is a "multiple employer plan" within the meaning of Section 413(c) of the Code or a "multiple employer welfare arrangement" (as defined in Section 3(40) of ERISA); (iii) no Action has been initiated by the Pension Benefit Guaranty Corporation to terminate any such plan or to appoint a trustee for any such plan; (iv) no such plan is subject to the minimum funding standards of Section 412 of the Code or Title IV of ERISA, and none of the assets of the Company or any ERISA Affiliate is, or may reasonable be expected to become, the subject of any lien arising under Section 302 of ERISA or Section 412(a) of the Code, and (v) no "reportable event," as defined in Section 4043 of ERISA, has occurred with respect to any such plan.

(f) Each Benefit Plan can be amended, terminated or otherwise discontinued after the Closing in accordance with its terms, without material liabilities to Buyer, the Company or any of their Affiliates other than payment of benefits as may be required by the Benefit Plan or applicable law, and ordinary administrative expenses typically incurred in a termination event. The Company has no commitment or obligation and has not made any representations to any employee, officer, manager, independent contractor or consultant, whether or not legally binding, to adopt, amend, modify or terminate any Benefit Plan or any collective bargaining agreement, in connection with the consummation of the transactions contemplated by this Agreement or otherwise.

(g) Other than as provided in **Section 3.20(g)** of the Disclosure Schedules or as required under Section 601 et. seq. of ERISA or other applicable Law, no Benefit Plan provides post-termination or retiree welfare benefits to any individual for any reason, and neither the Company nor any of its ERISA Affiliates has any Liability to provide post-termination or retiree welfare benefits to any individual or ever represented, promised or contracted to any individual that such individual would be provided with post-termination or retiree welfare benefits.

(h) No event or condition exists with respect to any Benefit Plan that could subject Buyer or the Company to any material tax under Section 4980B of the Code.

(i) There is no pending or, to Seller's Knowledge, threatened Action relating to a Benefit Plan (other than routine claims for benefits), and no Benefit Plan has within the three (3) years prior to the date hereof been the subject of an examination or audit by a Governmental Authority or the subject of an application or filing under or is a participant in, an amnesty, voluntary compliance, self-correction or similar program sponsored by any Governmental Authority. In addition, to Seller's Knowledge, the Company has not received any correspondence or written or verbal notice from the IRS, the U.S. Department of the Treasury, the Employee Benefits Security Administration, any other administrative agency, any participant in, or beneficiary of, a Benefit Plan, or any agent representing any of the foregoing that brings into question the Company's compliance referred to in this Section.

(j) There has been nothing (but not including any of the matters described in subsections (i) through (vi) of the definition of Material Adverse Effect), including, without limitation, an amendment to any Benefit Plan or collective bargaining agreement, that would materially increase the annual expense of maintaining such plan above the level of the expense incurred for the most recently completed fiscal year.

(k) Each Benefit Plan that is subject to Section 409A of the Code has been administered in compliance with its terms and the operational and documentary requirements of Section 409A of the Code and all applicable regulatory guidance (including notices, rulings and proposed and final regulations) thereunder. The Company does not have any obligation to gross up, indemnify or otherwise reimburse any individual for any excise taxes, interest or penalties incurred pursuant to Section 409A of the Code.

(l) Each individual who is classified by the Company as an independent contractor has been properly classified for purposes of participation and benefit accrual under each Benefit Plan.

(m) Except as provided in **Section 3.20(m)** of the Disclosure Schedules, neither the execution of this Agreement nor any of the transactions contemplated by this Agreement will (either alone or upon the occurrence of any additional or subsequent events): (i) entitle any current or former manager, officer, employee, independent contractor or consultant of the Company to severance pay or any other payment; (ii) accelerate the time of payment, funding or vesting, or increase the amount of compensation due to any such individual; (iii) limit or restrict the right of the Company to merge, amend or terminate any Benefit Plan; (iv) increase the amount payable under or result in any other material obligation pursuant to any Benefit Plan; (v) result in "excess parachute payments" within the meaning of Section 280G of the Code; or (vi) require a "gross up" or other payment to any "disqualified individual" within the meaning of Section 280G of the Code.

### **Section 3.21 Employment Matters.**

(a) **Section 3.21(a)** of the Disclosure Schedules contains a list of all persons who are employees, independent contractors or consultants of the Company as of the date hereof, including any employee who is on a leave of absence of any nature, paid or unpaid, authorized or unauthorized, and sets forth for each such individual the following: (i) name; (ii) title or position (including whether full or part

time); (iii) hire date; (iv) current annual base compensation rate; and (v) commission, bonus or other incentive-based compensation.

(b) The Company is not, and has not been for the past ten (10) years, a party to, bound by, or negotiating any collective bargaining agreement or other Contract with a union, works council or labor organization (collectively, "**Union**"), and there is not, and has not been for the past ten (10) years, any Union representing or purporting to represent any employee of the Company, and, to Seller's Knowledge, no Union or group of employees is seeking or has sought to organize employees for the purpose of collective bargaining. Within the past five (5) years, there has not been, nor has there been any threat of, any strike, slowdown, work stoppage, lockout, concerted refusal to work overtime or other similar labor disruption or dispute affecting the Company or any of its employees. The Company has no duty to bargain with any Union.

(c) Except as set forth in **Section 3.21(c)** of the Disclosure Schedules, the Company is and has been in compliance in all material respects with all applicable Laws pertaining to employment and employment practices to the extent they relate to employees of the Company, including all Laws relating to labor relations, equal employment opportunities, fair employment practices, employment discrimination, harassment, retaliation, reasonable accommodation, disability rights or benefits, immigration, wages, hours, overtime compensation, child labor, hiring, promotion and termination of employees, working conditions, meal and break periods, privacy, health and safety, workers' compensation, leaves of absence and unemployment insurance. All individuals characterized and treated by the Company as independent contractors or consultants are properly treated as independent contractors under all applicable Laws. All employees of the Company classified as exempt under the Fair Labor Standards Act and state and local wage and hour laws are properly classified in all material respects. There are no Actions against the Company pending, or to the Seller's Knowledge, threatened to be brought or filed, by or with any Governmental Authority or arbitrator in connection with the employment of any current or former applicant, employee, consultant, volunteer, intern or independent contractor of the Company, including, without limitation, any claim relating to unfair labor practices, employment discrimination, harassment, retaliation, equal pay, wage and hours or any other employment related matter arising under applicable Laws.

(d) The Company has complied in all material respects with the WARN Act and it has no plans to undertake any action in the future that would trigger the WARN Act.

### **Section 3.22 Taxes.**

(a) All Tax Returns required to be filed on or before the Closing Date by the Company have been, or will be, timely filed (determined with regard to any timely extensions). Such Tax Returns are, or will be, true, complete and correct in all material respects. All Taxes due and owing by the Company (whether or not shown on any Tax Return) have been, or will be, timely paid.

(b) The Company has withheld and paid each Tax required to have been withheld and paid in connection with amounts paid or owing to any employee, independent contractor, creditor, customer, member or other party, and complied with all information reporting and backup withholding provisions of applicable Law.

(c) No written claim has been made by any taxing authority in any jurisdiction where the Company does not file Tax Returns that it is, or may be, subject to Tax by that jurisdiction.

(d) No extensions or waivers of statutes of limitations that is currently in force has been given or requested with respect to any Taxes of the Company.

(e) All deficiencies asserted, or assessments made, against the Company as a result of any examinations by any taxing authority have been fully paid.

(f) The Company is not a party to any Action by any taxing authority. There are no pending or, to Seller's Knowledge, threatened Actions by any taxing authority with respect to any Tax Returns filed or Taxes due and owing by the Company.

(g) Seller has delivered to Buyer copies of all federal, state, local and foreign income, franchise and similar Tax Returns, examination reports, and statements of deficiencies assessed against, or agreed to by, the Company for all Tax periods ending after December 31, 2012.

(h) There are no Encumbrances for Taxes (other than for current Taxes not yet due and payable) upon the assets of the Company.

(i) The Company is not a party to, or bound by, any Tax indemnity, Tax-sharing or Tax allocation agreement.

(j) No private letter rulings, technical advice memoranda or similar agreement or rulings have been entered into or issued by any taxing authority in the last five years with respect to the Company.

(k) The Company has not been a member of an affiliated, combined, consolidated or unitary Tax group for Tax purposes. The Company has no Liability for Taxes of any Person (other than the Company) under Treasury Regulations Section 1.1502-6 (or any corresponding provision of state, local or foreign Law), as transferee or successor, by contract or otherwise.

(l) Prior to the Restructuring, the Company made a valid and timely election to be treated as a Subchapter S corporation for US federal income and state tax purposes and had been so treated for more than ten years.

(m) The Company will not be required to include any item of income in, or exclude any item or deduction from, taxable income for any taxable period or portion thereof ending after the Closing Date as a result of:

(i) any change in a method of accounting under Section 481 of the Code (or any comparable provision of state, local or foreign Tax Laws), or use of an improper method of accounting, for a taxable period ending on or prior to the Closing Date;

(ii) an installment sale or open transaction occurring on or prior to the Closing Date;

(iii) a prepaid amount received on or before the Closing Date;

(iv) any closing agreement under Section 7121 of the Code, or similar provision of state, local or foreign Law; or

(v) any election under Section 108(i) of the Code.

(n) Seller is not a "foreign person" as that term is used in Treasury Regulations Section 1.1445-2. The Company is not, nor has it been, a United States real property holding corporation (as defined in Section 897(c)(2) of the Code) during the applicable period specified in Section 897(c)(1)(a) of the Code.

(o) The Company has not been a "distributing corporation" or a "controlled corporation" in connection with a distribution described in Section 355 of the Code.

(p) The Company is not, and has not been, a party to, or a promoter of, a "reportable transaction" within the meaning of Section 6707A(c)(1) of the Code and Treasury Regulations Section 1.6011-4(b).

(q) **Section 3.22(q)** of the Disclosure Schedules sets forth all foreign jurisdictions in which the Company has a permanent establishment and/or has filed a Tax Return for Tax periods ending after December 31, 2012.

The representations and warranties set forth in this Section 3.22, and the representations and warranties set forth in Section 3.20 (insofar as they relate to Taxes and the Code), shall constitute the only representations and warranties by Seller or the Company with respect to Taxes and the Code.

**Section 3.23 Books and Records.** The minute books of the Company have been made available to Buyer. At the Closing, all of those books and records will be in the possession of the Company.

**Section 3.24 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 or any other Transaction Document based upon arrangements made by or on behalf of Seller, the Company, or the Shareholders.

**Section 3.25 Welcome-Gamay Business.** Notwithstanding anything in this Agreement to the contrary, the Parties acknowledge and agree that all representations and warranties contained in this **Article III**, as and to the extent they relate to the Welcome-Gamay Business (including, without limitation, relating to inventory, customers, compliance with law and product safety), shall be deemed to have been made to Seller's Knowledge.

#### **ARTICLE IV REPRESENTATIONS AND WARRANTIES OF BUYER**

Except as set forth in any correspondingly numbered Section of the Disclosure Schedules, and subject to **Section 4.12**, Welcome Dairy and Buyer represent and warrant to Seller and the Shareholders that the statements contained in this **Article IV** are true and correct as of the date hereof.

**Section 4.01 Organization and Authority of Buyer.** Buyer is a limited liability company duly organized and validly existing under the laws of the State of Wisconsin and will have filed its most recent required annual report with the Wisconsin Department of Financial Institutions. Buyer has full limited liability company power and authority to enter into this Agreement and the other Transaction Documents to which Buyer is a party, to carry out its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby as of the Closing. The execution and delivery by Buyer of this Agreement and any other Transaction Document to which Buyer is a party, the performance by Buyer of its obligations hereunder and thereunder and the consummation by Buyer of the transactions contemplated hereby and thereby have been duly authorized by all requisite limited liability company action on the part of Buyer as of the Closing. This Agreement has been duly executed and delivered by Buyer, and (assuming due authorization, execution and delivery by Seller and the other Parties hereto) this Agreement constitutes a legal, valid and binding obligation of Buyer enforceable against Buyer in accordance with its terms, subject to the Bankruptcy and Equity Exceptions. When each other Transaction Document to which Buyer is or will be a party has been duly executed and delivered by Buyer (assuming due authorization, execution and delivery by each other party thereto), such Transaction Document will constitute a legal and binding obligation of Buyer enforceable against it in accordance with its terms, subject to the Bankruptcy and Equity Exceptions.

**Section 4.02 No Conflicts; Consents.** The execution, delivery and performance by Buyer and Welcome Dairy of this Agreement and the other Transaction Documents to which each of them is a party as of the Closing, and the consummation of the transactions contemplated hereby and thereby, do not and will not: (a) conflict with or result in a violation or breach of, or default under, any provision of the Organizational Documents of Buyer or Welcome Dairy; (b) conflict with or result in a violation or breach of any provision of any Law or Governmental Order applicable to Buyer or Welcome Dairy; or (c) require the consent, notice or other action by any Person under any Contract to which Buyer or Welcome Dairy is a party. No consent, approval, Permit, Governmental Order, declaration or filing with, or notice to, any Governmental Authority will be required, as of the Closing, by or with respect to Buyer or Welcome Dairy in connection with the execution and delivery of this Agreement and the other Transaction Documents and the consummation of the transactions contemplated hereby and thereby, except for such filings as may be required under such consents, approvals, Permits, Governmental Orders, declarations, filings or notices which, if not obtained or made, in the aggregate, would not have a Material Adverse Effect.

**Section 4.03 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 or any other Transaction Document based upon arrangements made by or on behalf of Buyer or Welcome Dairy.

**Section 4.04 Capitalization.**

(a) The Preferred Units, upon issuance to Seller, will constitute 100% of the issued and outstanding preferred membership units of the Buyer which possess a distribution and liquidation

preference superior to all other membership units of the Company. As of the Closing, the Preferred Units will have been duly authorized and validly issued, fully-paid and non-assessable. Upon consummation of the transactions contemplated by this Agreement, Seller shall own all of the Preferred Units, free and clear of all Encumbrances, other than Encumbrances set forth in the Buyer Operating Agreement.

(b) The Preferred Units will be issued in compliance with applicable Laws as of the Closing. The Preferred Units will not be issued in violation of the Organizational Documents of the Buyer or any other agreement, arrangement or commitment to which Buyer is a party and will not be subject to or in violation of any preemptive or similar rights of any Person as of the Closing.

(c) Welcome Dairy is a Wisconsin limited liability company of which Buyer owns 100% of the membership interests. There are no outstanding or authorized options, warrants, convertible securities or other rights, agreements, arrangements or commitments of any character relating to any membership units of Welcome Dairy or obligating Buyer or Welcome Dairy to issue or sell any membership units, or any other interest, in Welcome Dairy.

(d) As of the Closing, there will be no outstanding or authorized options, warrants, convertible securities or other rights, agreements, arrangements or commitments of any character relating to any membership units of the Buyer or obligating Buyer to issue or sell any membership units (including the Preferred Units), or any other interest, in the Buyer, except as may be set forth in the Buyer Operating Agreement. Other than the Organizational Documents (including, without limitation, the Buyer Operating Agreement), there will be no voting trusts, proxies or other agreements or understandings in effect as of the Closing with respect to the voting or transfer of any of the Preferred Units.

#### **Section 4.05 Legal Proceedings; Governmental Orders.**

(a) There are no Actions pending or, to Buyer's Knowledge, threatened (a) against or by Welcome Dairy or Buyer affecting any of their respective properties or assets; or (b) against or by Buyer or Welcome Dairy that challenges or seeks to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement. To Buyer's Knowledge, no event has occurred or circumstances exist that would be reasonably likely to give rise to, or serve as a basis for, any such Action.

(b) Without limiting the generality of the foregoing, there are no investigations or Actions pending against Welcome Dairy or, to Buyer's Knowledge, threatened against Welcome Dairy, by any Person alleging illness, injury, death or damage as a result of the consumption or use of any product produced, handled, or shipped by Welcome Dairy prior to the Closing Date.

(c) There are no outstanding Governmental Orders and no unsatisfied judgments, penalties or awards against or affecting Welcome Dairy or any of its properties or assets.

**Section 4.06 Capital Adequacy; Solvency; Adequate Cash.** Immediately after the Closing and the consummation of the transactions contemplated by this Agreement, including the payment of the payments set forth in **Section 2.03**, and the payment of all related fees and expenses, Buyer and its subsidiaries will have a positive net worth (calculated in accordance with GAAP) and will not be insolvent (as defined under the U.S. Bankruptcy Code (the "**Bankruptcy Code**") and in equity). The sale of the Purchased Units and the other transactions contemplated by this Agreement and any

borrowing by the Buyer or its Affiliates (including the incurring of any obligation or granting of any security by Buyer, its subsidiaries or any successor company in connection with such transactions) will not have the effect of hindering, delaying or defrauding any creditors of Buyer or any of its subsidiaries (or any successor company). Upon consummation of the transactions contemplated by this Agreement and within the meaning of Section 548 of the Bankruptcy Code, Buyer and its subsidiaries (and any successor company) (a) will have adequate capitalization, (b) will not have an unreasonably small capital with respect to the business or transactions engaged in or to be engaged in, and (c) will not incur debts that would be beyond the ability of such company or any successor company's ability to pay as such debts mature. At Closing, Buyer will have sufficient cash to pay all of the payments set forth in **Section 2.03** and a positive Post-Closing Adjustment, if any, as required by this Agreement, and to make all other necessary payments in connection with the transactions contemplated by this Agreement and to pay all related fees and expenses.

**Section 4.07 Financial Statements.** Complete copies of Welcome Dairy's audited financial statements consisting of the balance sheet of Welcome Dairy as at December 31, in each of the years 2015 and 2014 and the related statements of income and retained earnings, shareholders' equity and cash flow for the years then ended (the "**Welcome Audited Financial Statements**"), and unaudited financial statements consisting of the balance sheet of Welcome Dairy as at August 31, 2016 and the related statements of income and retained earnings, shareholders' equity and cash flow for the six month period then ended (the "**Welcome Interim Financial Statements**" and together with the Audited Financial Statements, the "**Welcome Financial Statements**") are attached as **Schedule 4.07** hereto. The Welcome Financial Statements have been prepared in accordance with GAAP applied on a consistent basis throughout the period involved, subject, in the case of the Welcome Interim Financial Statements, to normal and recurring year-end adjustments (the effect of which will not be materially adverse) and the absence of notes (that, if presented, would not differ materially from those presented in the Welcome Audited Financial Statements). The Welcome Financial Statements are based on the books and records of Welcome Dairy, and fairly present in all material respects the financial condition of Welcome Dairy as of the respective dates they were prepared and the results of the operations of Welcome Dairy for the periods indicated. The balance sheet of Welcome Dairy as of December 31, 2015 is referred to herein as the "**Welcome Balance Sheet**" and the balance sheet of Welcome Dairy as of August 31, 2016 is referred to herein as the "**Welcome Interim Balance Sheet**".

**Section 4.08 Undisclosed Liabilities.** Immediately prior to Closing, Welcome Dairy has no Liabilities, except (a) those which are adequately reflected or reserved against in the Balance Sheet as of the Balance Sheet Date, (b) those which have been incurred in the ordinary course of business consistent with past practice since the Balance Sheet Date and which are not, individually or in the aggregate, material in amount, and (c) those note required to be disclosed or reflected on financial statements prepared in accordance with GAAP.

**Section 4.09 Absence of Certain Changes, Events and Conditions.** Since the Interim Balance Sheet Date, and other than in the ordinary course of business consistent with past practice, there



has not been, with respect to Welcome Dairy, any event, occurrence or development that has had, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect;

**Section 4.10 Compliance With Laws; Permits.**

(a) At all times within the three years prior to the Closing, Welcome Dairy has complied, and is now complying, in all material respects with all Laws applicable to it or its business, properties or assets.

(b) All Permits required for Welcome Dairy to conduct its business have been obtained by it and 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. To the Buyer's Knowledge, 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 such Permits.

**Section 4.11 Taxes.** All Tax Returns required to be filed on or before the Closing Date by Welcome Dairy have been, or will be, timely filed (determined with regard to any timely extensions). Such Tax Returns are, or will be, true, complete and correct in all respects. All Taxes due and owing by Welcome Dairy (whether or not shown on any Tax Return) have been, or will be, timely paid.

**Section 4.12 Welcome-Gamay Business.** Notwithstanding anything in this Agreement to the contrary, the Parties acknowledge and agree that all representations and warranties of Welcome Dairy and Buyer contained in this **Article IV**, as and to the extent they relate to the Welcome-Gamay Business (including, without limitation, relating to inventory, compliance with law and product safety), shall be deemed to have been made to Buyer's Knowledge.

**Section 4.13 Adequate Information.** Buyer is a sophisticated investor, represented by independent legal and investment counsel with experience in the acquisition and valuation of ongoing businesses, and acknowledges that it has had access to all information which it considers necessary or advisable to enable it to make an informed investment decision concerning its purchase of the Purchased Units and its receipt of the Contributed Units pursuant to this Agreement.

**Section 4.14 Non-Reliance of Buyer; Forecasts.**

(a) Except for the specific representations and warranties expressly made in **Article III** of this Agreement, (a) Buyer acknowledges and agrees that (i) Seller is not making, and Seller has not made, any representation or warranty, express or implied, at law or in equity, in respect of the Company or its businesses, assets, liabilities, operations, prospects, or condition (financial or otherwise), including with respect to merchantability or fitness for any particular purpose of any assets, the nature or extent of any liabilities, the prospects of such businesses, the effectiveness or the success of any operations, or the accuracy or completeness of any confidential information memoranda, documents, projections, material or other information (financial or otherwise) regarding the Company furnished to Buyer and Welcome Dairy or their representatives or made available to Buyer and Welcome Dairy or their representatives in

any "data rooms," "virtual data rooms," management presentations, or in any other form in expectation of, or in connection with, the transactions contemplated by this Agreement, or in respect of any other matter or thing whatsoever, and (ii) no officer, director, owner, agent, representative or employee of the Company or Seller has any authority, express or implied, to make any representations, warranties or agreements not specifically set forth in this Agreement; (b) Buyer specifically disclaims that it is relying upon or has relied upon any such other representations or warranties that may have been made by any Person, and acknowledges and agrees that the Seller has specifically disclaimed and does hereby specifically disclaim any such other representation or warranty made by any Person; (c) Buyer specifically disclaims any obligation or duty by Seller or the Company to make any disclosures of facts not required to be disclosed pursuant to the specific representations and warranties set forth in **Article III** of this Agreement; and (d) Buyer is executing and delivering this Agreement and consummating the transactions contemplated by this Agreement subject only to the specific representations and warranties set forth in **Article III** of this Agreement as further limited by the specifically bargained-for exclusive remedies as set forth herein.

(b) In connection with Buyer's investigation of the Company, Buyer has received certain estimates, forecasts, plans and financial projections of the Company. Buyer acknowledges that there are uncertainties inherent in attempting to make such estimates, forecasts, plans and projections, that Buyer is familiar with such uncertainties, and that Buyer is taking full responsibility for making its own evaluation of the adequacy and accuracy of all estimates, forecasts, plans and projections so furnished to it (including the reasonableness of the assumptions underlying such estimates, forecasts, plans and projections). Accordingly, Buyer acknowledges that none of the Company, Seller or the Shareholders makes any representation or warranty with respect to such estimates, forecasts, plans and projections (including any such underlying assumptions).

## **ARTICLE V COVENANTS**

**Section 5.01 Conduct of Business Prior to the Closing.** From the date hereof until the Closing, except as otherwise provided in this Agreement or consented to in writing by Welcome Dairy or Buyer (which consent shall not be unreasonably withheld or delayed), Seller and the Shareholders shall, and shall cause the Company to, (x) conduct the business of the Company in the ordinary course of business consistent with past practice; and (y) use commercially reasonable efforts to maintain and preserve intact the current organization, business and franchise of the Company and to preserve the rights, franchises, goodwill and relationships of its employees, customers, lenders, suppliers, regulators and others having business relationships with the Company. Without limiting the foregoing, from the date hereof until the Closing Date, Seller and the Shareholders shall:

- (a) cause the Company to preserve and maintain all of its Permits;
- (b) cause the Company to pay its debts, Taxes, and other payment obligations as and when due;

(c) cause the Company to maintain the properties and assets owned, operated or used by the Company in the same condition as they were on the date of this Agreement, subject to reasonable wear and tear;

(d) cause the Company to continue in full force and effect without modification all Insurance Policies, except as required by applicable Law;

(e) cause the Company to comply in all material respects with all Contracts relating to or affecting the Company's properties, assets, or business;

(f) cause the Company to maintain its books and records in accordance with past practice;

(g) cause the Company to comply in all material respects with all applicable Laws; and

(h) cause the Company not to take or permit any action that would cause any of the changes, events or conditions described in **Section 3.08** to occur.

**Section 5.02 Access to Information.** From the date hereof until the Closing, Seller and the Shareholders shall, and shall cause the Company to, (a) afford Welcome Dairy, Buyer and their Representatives full and free access (at reasonable times and with reasonable notice) to and the right to inspect all of the Real Property, properties, assets, premises, books and records, Contracts and other documents and data related to the Company; (b) furnish Welcome Dairy, Buyer and their Representatives with such financial, operating and other data and information related to the Company as Welcome Dairy, Buyer or any of their Representatives may reasonably request; and (c) instruct the Representatives of Seller and the Company to cooperate with Welcome Dairy and Buyer in their investigation of the Company. Any investigation pursuant to this **Section 5.02** shall be conducted in such manner as not to interfere unreasonably with the conduct of the business of the Company.

**Section 5.03 No Solicitation of Other Bids.**

(a) The Shareholders and Seller shall not, and shall not authorize or permit any of their Affiliates (including the Company) or any of its or their Representatives to, directly or indirectly, (i) encourage, solicit, initiate, facilitate or continue inquiries regarding an Acquisition Proposal; (ii) enter into discussions or negotiations with, or provide any information to, any Person concerning a possible Acquisition Proposal; or (iii) enter into any agreements or other instruments (whether or not binding) regarding an Acquisition Proposal. The Shareholders and Seller shall immediately cease and cause to be terminated, and shall cause their Affiliates (including the Company) and all of its and their Representatives to immediately cease and cause to be terminated, all existing discussions or negotiations with any Persons conducted heretofore with respect to, or that could lead to, an Acquisition Proposal. For purposes hereof, "**Acquisition Proposal**" shall mean any inquiry, proposal or offer from any Person (other than Welcome Dairy or any of its Affiliates) concerning (i) a merger, consolidation, liquidation, recapitalization or other business combination transaction involving the Company; (ii) the issuance or acquisition of any equity interests (including, without limitation, the Units) in the Company; or (iii) the sale, lease, exchange or other disposition of any significant portion of the Company's properties or assets.

(b) In addition to the other obligations under this **Section 5.03**, the Shareholders and Seller shall promptly (and in any event within three (3) Business Days after receipt thereof by the Shareholders and/or Seller or their Representatives) advise Buyer orally and in writing of any Acquisition Proposal, any request for information with respect to any Acquisition Proposal, or any inquiry with respect to or which could reasonably be expected to result in an Acquisition Proposal, the material terms and conditions of such request, Acquisition Proposal or inquiry, and the identity of the Person making the same.

(c) The Shareholders and Seller agree that the rights and remedies for noncompliance with this **Section 5.03** shall include having such provision specifically enforced by any court having equity jurisdiction, it being acknowledged and agreed that any such breach or threatened breach shall cause irreparable injury to Welcome Dairy and Buyer and that money damages would not provide an adequate remedy to Welcome Dairy and Buyer.

#### **Section 5.04 Notice of Certain Events.**

(a) From the date hereof until the Closing, Seller shall promptly notify Welcome Dairy and Buyer in writing of:

(i) any fact, circumstance, event or action the existence, occurrence or taking of which (A) has had, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect with respect to the Company, (B) has resulted in, or could reasonably be expected to result in, any representation or warranty made by Seller or the Company hereunder not being true and correct in all material respects or (C) has resulted in, or could reasonably be expected to result in, the failure of any of the conditions set forth in **Section 7.02** to be satisfied;

(ii) any notice or other communication from any Person alleging that the consent of such Person is or may be required in connection with the transactions contemplated by this Agreement;

(iii) any notice or other communication from any Governmental Authority in connection with the transactions contemplated by this Agreement; and

(iv) any Actions commenced or, to Seller's Knowledge, threatened against, relating to or involving or otherwise affecting Seller or the Company that, if pending on the date of this Agreement, would have been required to have been disclosed pursuant to **Section 3.17** or that relates to the consummation of the transactions contemplated by this Agreement.

(b) From and after the date of this Agreement until the Closing Date, Seller may, at its option, supplement or amend the Disclosure Schedule (each, a "**Schedule Supplement**") if Seller becomes aware of any matter arising after the date of this Agreement that, if existing or occurring as of the date of this Agreement would have been required to be set forth or described in the Disclosure Schedule or would otherwise be necessary or appropriate to correct any information in the Disclosure Schedule that has been rendered inaccurate thereby. Each Schedule Supplement shall be in writing and shall be delivered to Buyer in accordance with **Section 10.02**. Such Schedule Supplement shall have the following effects on the rights of the Parties under this Agreement:

(i) any matters disclosed in a Schedule Supplement shall, for purposes of this Agreement (other than for purposes of determining whether the conditions set forth in **Section 7.02(a)** are satisfied), be deemed to have been disclosed as of the date of this Agreement, and all references to the Disclosure Schedule shall include such Schedule Supplement;

(ii) no such Schedule Supplement shall give rise to Buyer's right to terminate this Agreement unless and until this Agreement is terminable by Buyer in accordance with **Section 9.01(b)**; and

(iii) if the matters disclosed in a Schedule Supplement, individually or in the aggregate, would result in non-satisfaction of the conditions set forth in **Section 7.02(a)**, then Buyer shall have the right to either [a] terminate this Agreement by written notice to the Seller within ten days after receipt of the Schedule Supplement but prior to the Closing pursuant to **Section 9.01(b)** (and subject to the cure period therein); or [b] consummate the transactions contemplated by this Agreement (subject to Buyer's other conditions to Closing). If Buyer elects to consummate the transactions contemplated by this Agreement, the Disclosure Schedule shall be deemed amended and supplemented by all information set forth on such Schedule Supplement, and Buyer shall be deemed to have irrevocably waived any breach of or inaccuracy in this Agreement with respect thereto (including for purposes of bringing any claims after the Closing). If Buyer elects to terminate this Agreement pursuant to [a] above, then none of the Company, Seller or any of the Shareholders shall have any liability or obligation to the other with respect to the matter(s) disclosed in the Schedule Supplement.

(c) Between the date of this Agreement and the Closing Date, Buyer will promptly notify Seller in writing if Buyer learns of (i) any fact or condition that causes or constitutes an actual or potential breach or inaccuracy of any of representations and warranties in **Article IV**; (ii) the occurrence after the date of this Agreement of any fact or condition that would (except as contemplated by this Agreement) cause or constitute a breach or inaccuracy of any such representation or warranty had the representation or warranty been made as of the time of occurrence or discovery of the fact or condition; or (iii) any failure or inability, or any anticipated or reasonably likely failure or inability, of Buyer to comply with or satisfy any covenant, condition or agreement to be complied with or satisfied by it under this Agreement, which written notice will include a description reasonably appropriate to fully inform Seller of the nature and extent of the actual or anticipated failure or inability.

**Section 5.05 Confidentiality.** From and after the Closing, Seller and the Shareholders shall, and shall cause their Affiliates to, hold, and shall use their reasonable best efforts to cause its or their respective Representatives to hold, in confidence any and all information, whether written or oral, concerning the Company, except to the extent that Seller can show that such information (a) is generally available to and known by the public through no fault of Seller, any of its Affiliates or their respective Representatives; or (b) is lawfully acquired by a Shareholder, Seller, any of its Affiliates or their respective Representatives from and after the Closing from sources which are not prohibited from disclosing such information by a legal, contractual or fiduciary obligation. If a Shareholder, Seller or any of its Affiliates or their respective Representatives are compelled to disclose any information by judicial or administrative process or by other requirements of Law, such Shareholder or Seller shall promptly notify Buyer in writing and shall disclose only that portion of such information which such Shareholder

or Seller is advised by its counsel in writing is legally required to be disclosed, *provided that* such Shareholder or Seller shall use reasonable best efforts to obtain an appropriate protective order or other reasonable assurance that confidential treatment will be accorded such information.

**Section 5.06 Non-competition; Non-solicitation**

(a) For a period of five (5) years commencing on the Closing Date (the "**Restricted Period**"), neither the Seller nor the Shareholders shall, and shall not permit any of their Affiliates to, directly or indirectly, (i) engage in or assist others in engaging in the Restricted Business in the Territory; (ii) have an interest in any Person that engages directly or indirectly in the Restricted Business in the Territory in any capacity, including as a partner, shareholder, member, employee, principal, agent, trustee or consultant; or (iii) intentionally interfere in any material respect with the business relationships between the Company and customers or suppliers of the Company. Notwithstanding the foregoing, Seller and the Shareholders may own, directly or indirectly, solely as an investment, securities of any Person traded on any national securities exchange if Seller and the Shareholders are not a controlling Person of, or a member of a group which controls, such Person and do not, directly or indirectly, own 5% or more of any class of securities of such Person.

(b) During the Restricted Period, Seller and/or the Shareholders shall not, and shall not permit any of their Affiliates to, directly or indirectly, hire or solicit any employee of the Company or encourage any such employee to leave such employment or hire any such employee who has left such employment, except pursuant to a general solicitation which is not directed specifically to any such employees; *provided*, that nothing in this **Section 5.06(b)** shall prevent Seller or the Shareholders or any of their Affiliates from hiring (i) any employee whose employment has been terminated by the Company or Buyer or (ii) after 180 days from the date of termination of employment, any employee whose employment has been terminated by the employee.

(c) During the Restricted Period, Seller and/or the Shareholders shall not, and shall not permit any of their Affiliates to, directly or indirectly, solicit or entice, or attempt to solicit or entice, any clients or customers of the Company or potential clients or customers of the Company for purposes of diverting their business or services from the Company.

(d) Seller and the Shareholders acknowledge that a breach or threatened breach of this **Section 5.066** would give rise to irreparable harm to Buyer, for which monetary damages would not be an adequate remedy, and hereby agree that in the event of a breach or a threatened breach by Seller or the Shareholders of any such obligations, Buyer shall, in addition to any and all other rights and remedies under this Agreement that may be available to it in respect of such breach, be entitled to equitable relief, including a temporary restraining order, an injunction, specific performance and any other relief that may be available from a court of competent jurisdiction (without any requirement to post bond).

(e) Seller and the Shareholders acknowledge that the restrictions contained in this **Section 5.06** are reasonable and necessary to protect the legitimate interests of Buyer and constitute a material inducement to Buyer to enter into this Agreement and consummate the transactions contemplated by this Agreement. In the event that any covenant contained in this **Section 5.06** should ever be adjudicated to exceed the time, geographic, product or service, or other limitations permitted by

applicable Law in any jurisdiction, then any court is expressly empowered to reform such covenant, and such covenant shall be deemed reformed, in such jurisdiction to the maximum time, geographic, product or service, or other limitations permitted by applicable Law. The covenants contained in this **Section 5.06** and each provision hereof are severable and distinct covenants and provisions. The invalidity or unenforceability of any such covenant or provision as written shall not invalidate or render unenforceable the remaining covenants or provisions hereof, and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such covenant or provision in any other jurisdiction.

(f) During the Restricted Period, if one or more of the Shareholders proposes to develop, manufacture or sell, directly or indirectly, any product(s) that, arguably but not clearly, fall within any of the categories of products described in subsections (i) through (iv) of the definition of Restricted Business (each, a "**Proposed Product**"), the Shareholders may present relevant details regarding the Proposed Product to Buyer, and in such case Buyer agrees that (i) it and its representatives will discuss in good faith with such Shareholders whether, in Buyer's opinion, the Proposed Product falls within the definition of Restricted Business and (ii) in connection with such discussions and the sharing of relevant information, the parties will execute a commercially standard and reasonable mutual non-disclosure and non-use agreement covering such discussions and information.

#### **Section 5.07 Governmental Approvals and Consents**

(a) Each party hereto shall, as promptly as possible, (i) make, or cause or be made, all filings and submissions required under any Law applicable to such party or any of its Affiliates; and (ii) use reasonable best 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 its execution and delivery of this Agreement and the performance of its obligations pursuant to this Agreement and the other Transaction Documents. 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.

(b) Seller, the Shareholders, Welcome Dairy, and Buyer shall use reasonable best efforts to give all notices to, and obtain all consents from, all third parties that are described in **Section 3.05** and **Section 4.02** of the Disclosure Schedules.

(c) Without limiting the generality of the parties' undertakings pursuant to subsections (a) and (b) above, each of the parties hereto shall use all reasonable best efforts to:

(i) respond to any inquiries by any Governmental Authority regarding antitrust or other matters with respect to the transactions contemplated by this Agreement or any Transaction Document;

(ii) avoid the imposition of any order or the taking of any action that would restrain, alter or enjoin the transactions contemplated by this Agreement or any Transaction Document; and

(iii) in the event any Governmental Order adversely affecting the ability of the parties to consummate the transactions contemplated by this Agreement or Transaction Document has been issued, to have such Governmental Order vacated or lifted.

(d) If any consent, approval or authorization necessary to preserve any right or benefit under any Contract to which the Company is a party is not obtained prior to the Closing, Seller shall, subsequent to the Closing, cooperate with Buyer and the Company in attempting to obtain such consent, approval or authorization as promptly thereafter as practicable. If such consent, approval or authorization cannot be obtained, Seller shall use its reasonable best efforts to provide the Company with the rights and benefits of the affected Contract for the term thereof, and, if Seller provides such rights and benefits, the Company shall assume all obligations and burdens thereunder.

(e) 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 Seller or the Company with 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 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.

(f) Notwithstanding the foregoing, nothing in this **Section 5.07** shall require, or be construed to require, Buyer or any of its Affiliates to agree to (i) sell, hold, divest, discontinue or limit, before or after the Closing Date, any assets, businesses or interests of Buyer, the Company or any of their respective Affiliates; (ii) any conditions relating to, or changes or restrictions in, the operations of any such assets, businesses or interests which, in either case, could reasonably be expected to result in a Material Adverse Effect or materially and adversely impact the economic or business benefits to Buyer of the transactions contemplated by this Agreement; or (iii) any material modification or waiver of the terms and conditions of this Agreement.

#### **Section 5.08 Books and Records.**

(a) In order to facilitate the resolution of any claims made against or incurred by Seller prior to the Closing, or for any other reasonable purpose, for a period of seven (7) years after the Closing, Buyer shall:

(i) retain the books and records (including personnel files) of the Company relating to periods prior to the Closing in a manner reasonably consistent with the prior practices of the Company; and



(ii) upon reasonable notice, afford the Representatives of Seller reasonable access (including the right to make, at Seller's expense, photocopies), during normal business hours, to such books and records;

*provided, however,* that any books and records related to Tax matters shall be retained pursuant to the periods set forth in **Article VI**.

(b) In order to facilitate the resolution of any claims made by or against or incurred by Buyer or the Company after the Closing, or for any other reasonable purpose, for a period of seven (7) years following the Closing, Seller and the Shareholders shall:

(i) retain the books and records (including personnel files) of Seller which relate to the Company and its operations for periods prior to the Closing; and

(ii) upon reasonable notice, afford the Representatives of Buyer or the Company reasonable access (including the right to make, at Buyer's expense, photocopies), during normal business hours, to such books and records;

*provided, however,* that any books and records related to Tax matters shall be retained pursuant to the periods set forth in **Article VI**.

(c) Neither Buyer nor Seller shall be obligated to provide the other party with access to any books or records (including personnel files) pursuant to this **Section 5.08** where such access would violate any Law.

**Section 5.09 Closing Conditions** From the date hereof until the Closing, each party hereto shall, and the Shareholders and Seller shall cause the Company to, use reasonable best efforts to take such actions as are necessary to expeditiously satisfy the closing conditions set forth in **Article VII** hereof.

**Section 5.10 Public Announcements.** Unless otherwise required by applicable Law (based upon the reasonable advice of counsel), no party to this Agreement shall make any public announcements in respect of this Agreement or the transactions contemplated hereby or otherwise communicate with any news media without the prior written consent of the other party (which consent shall not be unreasonably withheld or delayed), and the parties shall cooperate as to the timing and contents of any such announcement.

**Section 5.11 Further Assurances.** Following the Closing, each of the parties hereto shall, and shall cause their respective Affiliates to, execute and deliver such additional documents, instruments, conveyances and assurances and take such further actions as may be reasonably required to carry out the provisions hereof and give effect to the transactions contemplated by this Agreement.

**ARTICLE VI**  
**TAX MATTERS**

**Section 6.01 Tax Covenants.**

(a) Without the prior written consent of Buyer (which consent shall not be unreasonably withheld, delayed or conditioned) , Seller (and, prior to the Closing, the Company, its Affiliates and their respective Representatives) shall not, to the extent it may affect, or relate to, the Company, make, change or rescind any Tax election, amend any Tax Return or take any position on any Tax Return, take any action, omit to take any action or enter into any other transaction that would have the effect of increasing the Tax liability of Buyer or the Company in respect of any Post-Closing Tax Period, except to the extent such action or transaction occurs in the ordinary course of business.

(b) Buyer shall not, and shall not allow the Company to, engage in any transaction after the Closing, but on the Closing Date, that is outside of the ordinary course of business and is not contemplated by this Agreement and that will increase the Pre-Closing Taxes.

(c) All transfer, documentary, sales, use, stamp, registration, value added and other such Taxes and fees (including any penalties and interest) incurred in connection with this Agreement and the other Transaction Documents (including any real property transfer Tax and any other similar Tax) shall be borne and paid by Seller when due. Seller shall, at its own expense, timely file any Tax Return or other document with respect to such Taxes or fees (and Buyer shall cooperate with respect thereto as necessary).

(d) Seller shall prepare, or cause to be prepared, all Tax Returns required to be filed by the Company after the Closing Date with respect to taxable period ending on or before the Closing Date. Any such Tax Return shall be prepared in a manner consistent with past practice (unless otherwise required by Law) and without a change of any election or any accounting method and shall be submitted by Seller to Buyer (together with schedules, statements and, to the extent reasonably requested by Buyer, supporting documentation) at least 30 days prior to the due date (including extensions) of such Tax Return. If Buyer objects to any item on any such Tax Return, it shall, within ten days after delivery of such Tax Return, notify Seller in writing that it so objects, specifying with particularity any such item and stating the specific factual or legal basis for any such objection. If a notice of objection shall be duly delivered, Buyer and Seller shall negotiate in good faith and use their reasonable best efforts to resolve such items. If Buyer and Seller are unable to reach such agreement within ten days after receipt by Seller of such notice, the disputed items shall be resolved by the Independent Accountant and any determination by the Independent Accountant shall be final. The Independent Accountant shall resolve any disputed items within twenty days of having the item referred to it pursuant to such procedures as it may require. If the Independent Accountant is unable to resolve any disputed items before the due date for such Tax Return, the Tax Return shall be filed as prepared by Seller and then amended to reflect the Independent Accountant's resolution. The costs, fees and expenses of the Independent Accountant shall be borne equally by Buyer and Seller.

(e) Buyer shall prepare, or cause to be prepared, all Tax Returns required to be filed by the Company after the Closing Date with respect to a Straddle Period. Any such Tax Return shall be prepared in a manner consistent with past practice (unless otherwise required by Law) and without a

change of any election or any accounting method and shall be submitted by Buyer to Seller (together with schedules, statements and, to the extent reasonably requested by Buyer, supporting documentation) at least 30 days prior to the due date (including extensions) of such Tax Return. If Seller objects to any item on any such Tax Return, it shall, within ten days after delivery of such Tax Return, notify Buyer in writing that it so objects, specifying with particularity any such item and stating the specific factual or legal basis for any such objection. If a notice of objection shall be duly delivered, Buyer and Seller shall negotiate in good faith and use their reasonable best efforts to resolve such items. If Buyer and Seller are unable to reach such agreement within ten days after receipt by Buyer of such notice, the disputed items shall be resolved by the Independent Accountant and any determination by the Independent Accountant shall be final. The Independent Accountant shall resolve any disputed items within twenty days of having the item referred to it pursuant to such procedures as it may require. If the Independent Accountant is unable to resolve any disputed items before the due date for such Tax Return, the Tax Return shall be filed as prepared by Buyer and then amended to reflect the Independent Accountant's resolution. The costs, fees and expenses of the Independent Accountant shall be borne equally by Buyer and Seller.

**Section 6.02** [Intentionally Omitted].

**Section 6.03** **Straddle Period.** In the case of Taxes that are payable with respect to a taxable period that begins before and ends after the Closing Date (each such period, a "**Straddle Period**"), the portion of any such Taxes that are treated as Pre-Closing Taxes for purposes of this Agreement shall be:

(a) in the case of Taxes (i) based upon, or related to, income, receipts, profits, wages, capital or net worth, (ii) imposed in connection with the sale, transfer or assignment of property, or (iii) required to be withheld, the amount of Taxes which would be payable if the taxable year ended on the Closing Date, apportioning income, gain, expenses, loss, deductions and credits equitably based on an interim closing of the books as of the Closing Date; and

(b) in the case of other Taxes, the amount of such Taxes for the entire period multiplied by a fraction the numerator of which is the number of days in the period ending on the Closing Date and the denominator of which is the number of days in the entire period.

**Section 6.04** **Contests.** Buyer agrees to give written notice to Seller of the receipt of any notice by the Company, Buyer or any of Buyer's Affiliates which involves any proposed adjustment, the assertion of any claim, or the commencement of any Action, in respect of Taxes of the Company for any Pre-Closing Tax Period or Straddle Period (a "**Tax Claim**"); *provided*, that failure to comply with this provision shall not affect Buyer's right to indemnification hereunder except to the extent Seller is materially prejudiced by such failure. Except with respect to income Tax matters, Buyer shall control the contest or resolution of any Tax Claim; *provided, however*, that Buyer shall keep Seller reasonably informed on the progress of any such Tax Claim, including providing copies of all written communication with any such taxing authority, and shall obtain the prior written consent of Seller (which consent shall not be unreasonably withheld or delayed) before entering into any settlement of a claim or ceasing to defend such claim; and, *provided further*, that Seller shall be entitled to participate in the defense of such

claim and to employ counsel of its choice for such purpose, the fees and expenses of which separate counsel shall be borne solely by Seller. Notwithstanding the preceding sentence, Seller shall have the right to control all audits or proceedings with respect to income Tax matters involving the Company for periods that end on or before the Closing Date; *provided*, that Seller shall keep Buyer reasonably informed on the progress of any such audit or proceedings, including providing copies of all written communication related thereto, and shall obtain the prior written consent of Buyer (which consent shall not be unreasonably withheld or delayed) before entering into any settlement of a claim or ceasing to defend a claim; and, *provided, further*, that Buyer may provide input to Seller regarding the defense of such claim and employ counsel of its choice for such purpose, the fees and expenses of which separate counsel shall be borne solely by Buyer.

**Section 6.05 Cooperation and Exchange of Information.** Seller and Buyer shall provide each other with such cooperation and information as either of them reasonably may request of the other in filing any Tax Return pursuant to this **Article VI** or in connection with any audit or other proceeding in respect of Taxes of the Company. Such cooperation and information shall include signing any Tax Return, amended Tax Return, claims or other documents necessary to settle any Tax controversy, providing copies of relevant Tax Returns or portions thereof, together with accompanying schedules, related work papers and documents relating to rulings or other determinations by tax authorities and making employees available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder. Each Seller and Buyer shall retain all Tax Returns, schedules and work papers, records and other documents in its possession relating to Tax matters of the Company for any taxable period beginning before the Closing Date until the expiration of the statute of limitations of the taxable periods to which such Tax Returns and other documents relate, without regard to extensions except to the extent notified by the other party in writing of such extensions for the respective Tax periods. Prior to transferring, destroying or discarding any Tax Returns, schedules and work papers, records and other documents in its possession relating to Tax matters of the Company for any taxable period beginning before the Closing Date, Seller or Buyer (as the case may be) shall provide the other party with reasonable written notice and offer the other party the opportunity to take custody of such materials.

**Section 6.06 Amendment of Returns and Elections.** From and after Closing, unless otherwise required by Law, none of Buyer, the Company or any Affiliate thereof may amend or cause the amendment of a Tax Return, or file an initial Tax Return of the Company, change an annual accounting period, adopt or change any accounting method or file or amend any Tax election concerning the Company, in each case with respect to any Pre-Closing Tax Period or Straddle Period without the prior written consent of Seller, which consent shall not be unreasonably withheld, delayed, or conditioned.

**Section 6.07 Refunds.** Except to the extent taken into account in determining the Closing Working Capital Statement, any Tax refunds that are received by Buyer or the Company, and any amounts credited against Tax in lieu of a cash refund to which Buyer or the Company are entitled, received by or credited to the Buyer or the Company after the Closing that relate to Pre-Closing Tax

Periods shall be the property of Seller, and Buyer shall pay to Seller such refund or amount of such credit with thirty (30) days of receipt thereof or entitlement thereto.

**Section 6.08 Deductions.** Notwithstanding anything herein to the contrary, the Parties acknowledge and agree that (a) expenses with respect to Indebtedness being paid by or on behalf of the Company in connection with the Closing, and (b) all transaction expenses and payments that are paid by or on behalf of the Company prior to or in connection with the Closing and deductible by the Company for Tax purposes, including transaction bonuses, change-in-control payments, severance payments, retention payments, deferred compensation payments, phantom equity payments, or similar payments made to employees or other service providers of the Company, and fees and expenses of legal counsel, accountants and investment bankers, in each case, shall be for the benefit of Seller and not Buyer and shall be reported on the Company's Tax Return with respect to Pre-Closing Taxes.

**Section 6.09 Income Tax Treatment; Purchase Price Allocation.** The Parties shall treat the transaction for income Tax purposes as a part sale and part contribution by Seller to Buyer as contemplated by Treasury Regulation §1.707-3(f), Ex.1. The Parties agree that the "fair market value" of the assets of the Company for all Tax purposes shall be determined consistent with the methodology set forth on Schedule 6.09 (the "Allocation"). Buyer and Seller agree to (i) make all elections and filings necessary, including IRS Form 8594, to reflect the "fair market value" allocations contemplated herein, (ii) to not voluntarily take any position inconsistent therewith upon examination of any such Tax filing, and (iii) to provide the other party promptly with any other information required to complete IRS Form 8954.

## ARTICLE VII CONDITIONS TO CLOSING

**Section 7.01 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, at or prior to the Closing, of each of the following conditions:

(a) 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.

(b) The Shareholders and Seller shall have received all consents, authorizations, orders and approvals from the Governmental Authorities referred to in **Section 3.05** and Welcome Dairy and Buyer shall have received all consents, authorizations, orders and approvals from the Governmental Authorities referred to in **Section 4.02**, in each case, in form and substance reasonably satisfactory to Welcome Dairy/Buyer and the Shareholders/Seller, and no such consent, authorization, order and approval shall have been revoked.

**Section 7.02 Conditions to Obligations of Buyer.** The obligations of Buyer to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or Buyer's waiver, at or prior to the Closing, of each of the following conditions:

(a) Other than the representations and warranties contained in **Section 3.01, Section 3.02, Section 3.03, Section 3.06** and **Section 3.24**, the representations and warranties of the Seller and the Company contained in this Agreement, the other Transaction Documents and any certificate or other writing delivered pursuant hereto shall be true and correct in all respects (in the case of any representation or warranty qualified by materiality or Material Adverse Effect) or in all material respects (in the case of any representation or warranty not qualified by materiality or Material Adverse Effect) on and as of the date hereof and on 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, the accuracy of which shall be determined as of that specified date in all respects). The representations and warranties of the Seller and the Company contained in **Section 3.01, Section 3.02, Section 3.03, Section 3.06** and **Section 3.24** shall be true and correct in all respects on and as of the date hereof and on 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, the accuracy of which shall be determined as of that specified date in all respects).

(b) The Shareholders and Seller shall have duly performed and complied in all material respects with all agreements, covenants and conditions required by this Agreement and each of the other Transaction Documents to be performed or complied with by it prior to or on the Closing Date; *provided*, that, with respect to agreements, covenants and conditions that are qualified by materiality, the Shareholders and Seller shall have performed such agreements, covenants and conditions, as so qualified, in all respects.

(c) No Action shall have been commenced against Welcome Dairy, Buyer, the Shareholders, Seller or the Company, which would prevent the Closing. No injunction or restraining order shall have been issued by any Governmental Authority, and be in effect, which restrains or prohibits any transaction contemplated hereby.

(d) All approvals, consents and waivers that are listed on **Section 3.05** of the Disclosure Schedules shall have been received, and executed counterparts thereof shall have been delivered to Buyer at or prior to the Closing.

(e) From the date of this Agreement, there shall not have occurred any Material Adverse Effect with respect to the Company, nor shall any event or events have occurred that, individually or in the aggregate, with or without the lapse of time, would reasonably be expected to result in a Material Adverse Effect.

(f) The other Transaction Documents shall have been executed and delivered by the parties thereto (other than Buyer and Welcome Dairy) and true and complete copies thereof shall have been delivered to Buyer.

(g) Buyer shall have received a certificate of the Secretary or an Assistant Secretary (or equivalent officer) of Seller certifying that attached thereto are true and complete copies of all resolutions adopted by the board of directors of Seller authorizing the execution, delivery and performance of this

Agreement and the other Transaction Documents and the consummation of the transactions contemplated hereby and thereby, and that all such resolutions are in full force and effect and are all the resolutions adopted in connection with the transactions contemplated hereby and thereby.

(h) Buyer shall have received a certificate of the Secretary or an Assistant Secretary (or equivalent officer) of Seller certifying the names and signatures of the officers of Seller authorized to sign this Agreement, the Transaction Documents and the other documents to be delivered hereunder and thereunder.

(i) Buyer shall have received resignations of the managers and officers of the Company pursuant to **Section 2.06**.

(j) Seller shall have delivered to Buyer a good standing certificate (or its equivalent) for the Company from the secretary of state or similar Governmental Authority of the jurisdiction under the Laws in which the Company is organized.

(k) Randall R. Cook and Terrance M. Schneider shall have each executed their Employment Agreements.

(l) All obligations of the Company under (i) Amended and Restated Employment Agreement between Gamay Foods, Inc. and Terrance M. Schneider and Randall R. Cook, respectively, both originally dated April 30, 1999 and as amended thereafter, and (ii) the Gamay Foods, Inc. Amended and Restated Executive Employee Share Unit Plan dated as of January 1, 1999, shall have been fully paid, satisfied and terminated, and the beneficiaries thereof shall have executed a release satisfactory to Buyer of all claims they may possess against the Company through the Closing Date.

(m) (i) pay-off letter(s) or other invoice(s) relating to the payment of all Indebtedness of the Company, which payoff letter(s) or invoice(s) will be delivered prior to the Closing Date and will be in a form reasonably acceptable to Buyer, and (ii) commitments to release all Encumbrances related to the assets and properties of the Company, which such commitments will be finalized and held in escrow pending, and shall be subject only to, the receipt by the beneficiary of such Encumbrance of the payment and satisfaction of the corresponding Indebtedness;

(n) Seller shall have delivered to Buyer a certificate pursuant to Treasury Regulations Section 1.1445-2(b) that Seller is not a foreign person within the meaning of Section 1445 of the Code.

(o) The Shareholders and Seller shall have delivered to Buyer such other documents or instruments as Buyer reasonably requests and are reasonably necessary to consummate the transactions contemplated by this Agreement.

**Section 7.03 Conditions to Obligations of Seller.** The obligations of Seller and the Shareholders to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or Seller's waiver, at or prior to the Closing, of each of the following conditions:

(a) Other than the representations and warranties of Buyer contained in **Section 4.01**, **Section 4.02**, **Section 4.03**, **Section 4.04** and **Section 4.06**, the representations and warranties of Buyer contained in this Agreement, the other Transaction Documents and any certificate or other writing delivered pursuant hereto shall be true and correct in all respects (in the case of any representation or

warranty qualified by materiality or Material Adverse Effect) or in all material respects (in the case of any representation or warranty not qualified by materiality or Material Adverse Effect) on and as of the date hereof and on 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, the accuracy of which shall be determined as of that specified date in all respects). The representations and warranties of Buyer contained in **Section 4.01**, **Section 4.02**, **Section 4.03**, **Section 4.04** and **Section 4.06** shall be true and correct in all respects on and as of the date hereof and on and as of the Closing Date with the same effect as though made at and as of such date.

(b) Buyer shall have duly performed and complied in all material respects with all agreements, covenants and conditions required by this Agreement and each of the other Transaction Documents to be performed or complied with by it prior to or on the Closing Date; *provided*, that, with respect to agreements, covenants and conditions that are qualified by materiality, Buyer shall have performed such agreements, covenants and conditions, as so qualified, in all respects.

(c) No injunction or restraining order shall have been issued by any Governmental Authority, and be in effect, which restrains or prohibits any material transaction contemplated hereby.

(d) All approvals, consents and waivers that are listed on **Section 4.02** of the Disclosure Schedules shall have been received, and executed counterparts thereof shall have been delivered to Seller at or prior to the Closing.

(e) The other Transaction Documents shall have been executed and delivered by the parties thereto and true and complete copies thereof shall have been delivered to Seller.

(f) Seller shall have received a certificate of the Secretary or an Assistant Secretary (or equivalent officer) of Buyer certifying that attached thereto are true and complete copies of all resolutions adopted by the board of managers of Buyer authorizing the execution, delivery and performance of this Agreement and the other Transaction Documents and the consummation of the transactions contemplated hereby and thereby, and that all such resolutions are in full force and effect and are all the resolutions adopted in connection with the transactions contemplated hereby and thereby.

(g) Seller shall have received a certificate of the Secretary or an Assistant Secretary (or equivalent officer) of Buyer certifying the names and signatures of the officers of Buyer authorized to sign this Agreement, the Transaction Documents and the other documents to be delivered hereunder and thereunder.

(h) Buyer shall have made the payments set forth in **Section 2.03** by wire transfer in immediately available funds, to an account or accounts designated at least two Business Days prior to the Closing Date by Seller in a written notice to Buyer.

(i) Buyer shall have delivered to Seller such other documents or instruments as Seller reasonably requests and are reasonably necessary to consummate the transactions contemplated by this Agreement.



**ARTICLE VIII**  
**INDEMNIFICATION**

**Section 8.01 Survival.** Subject to the limitations and other provisions of this Agreement, the representations and warranties contained herein shall survive the Closing and shall remain in full force and effect until the date that is eighteen (18) months from the Closing Date; *provided*, that the representations and warranties in (i) **Section 3.01, Section 3.02, Section 3.03, Section 3.24, Section 4.01** and **Section 4.03** shall survive indefinitely, and (ii) **Section 3.19, Section 3.20** and **Section 3.22** shall survive for the full period of all applicable statutes of limitations (giving effect to any waiver, mitigation or extension thereof) plus 60 days. All covenants and agreements of the parties contained herein shall survive the Closing for the applicable statute of limitations or for the period explicitly specified therein. Notwithstanding the foregoing, any claims asserted in good faith with reasonable specificity (to the extent known at such time) and in writing by notice from the non-breaching party to the breaching party prior to the expiration date of the applicable survival period shall not thereafter be barred by the expiration of the relevant representation or warranty and such claims shall survive until finally resolved.

**Section 8.02 Indemnification By the Shareholders and Seller.** Subject to the other terms and conditions of this **Article VIII**, the Shareholders and Seller shall, jointly and severally (but subject to the provisions of **Section 8.06(b)**), indemnify and defend each of Welcome Dairy, Buyer and their Affiliates (including the Company) and their respective Representatives (collectively, the "**Buyer Indemnitees**") against, and shall hold each of them harmless from and against, and shall pay and reimburse each of them for, any and all Losses incurred or sustained by, or imposed upon, the Buyer Indemnitees based upon, arising out of, with respect to or by reason of:

- (a) any inaccuracy in or breach of any of the representations or warranties of the Seller and the Company contained in this Agreement or in any certificate or instrument delivered by or on behalf of Seller or the Shareholders pursuant to this Agreement;
- (b) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by Seller or the Shareholders pursuant to this Agreement; or
- (c) any Pre-Closing Taxes (except for Taxes accrued or reserved for in Closing Working Capital).

**Section 8.03 Indemnification By Buyer.** Subject to the other terms and conditions of this **Article VIII**, Buyer shall indemnify and defend each of Seller, the Shareholders and their Affiliates and their respective Representatives (collectively, the "**Seller Indemnitees**") against, and shall hold each of them harmless from and against, and shall pay and reimburse each of them for, any and all Losses incurred or sustained by, or imposed upon, the Seller Indemnitees based upon, arising out of, with respect to or by reason of:

- (a) any inaccuracy in or breach of any of the representations or warranties of Buyer contained in this Agreement or in any certificate or instrument delivered by or on behalf of Buyer pursuant to this Agreement;

(b) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by Buyer pursuant to this Agreement (other than **Article VI**, it being understood that the sole remedy for any such breach thereof shall be pursuant to **Article VI**); or

(c) Post-Closing Taxes.

**Section 8.04 Certain Limitations.** The indemnification provided for in **Section 8.02** and **Section 8.03** shall be subject to the following limitations:

(a) Subject to **Section 8.04(c)**, neither Seller or the Shareholders shall be liable to the Buyer Indemnitees for indemnification under **Section 8.02(a)** until the aggregate amount of all Losses in respect of indemnification under **Section 8.02(a)** exceeds [REDACTED] [REDACTED] (the "**Basket**"), and then only to the extent that such Losses exceed the Basket. The aggregate amount of all Losses for which Seller and the Shareholders shall be liable pursuant to **Section 8.02(a)** shall not exceed [REDACTED] [REDACTED] (the "**Cap**"). Without affecting the foregoing, the aggregate amount of all Losses for which Seller and the Shareholders shall be liable pursuant to **Section 8.02** shall not exceed the Purchase Price.

(b) Buyer shall not be liable to the Seller Indemnitees for indemnification under **Section 8.03(a)** until the aggregate amount of all Losses in respect of indemnification under **Section 8.03(a)** exceeds the Basket, and then only to the extent that such Losses exceed the Basket. The aggregate amount of all Losses for which Buyer shall be liable pursuant to **Section 8.03(a)** shall not exceed the Cap.

(c) Notwithstanding the foregoing, the limitations set forth in **Section 8.04(a)** and **Section 8.04(b)** shall not apply to Losses based upon, arising out of, with respect to or by reason of any inaccuracy in or breach of any representation or warranty in **Section 3.01**, **Section 3.02**, **Section 3.03**, **Section 3.08(g)**, **Section 3.08(t)**, **Section 3.19**, **Section 3.20**, **Section 3.22**, **Section 3.24**, **Section 4.01**, **Section 4.03**, **Section 4.04** and **Section 4.06**. Notwithstanding the foregoing, the limitations set forth in **Section 8.04(a)** with respect to the Basket shall not apply to Losses based upon, arising out of, with respect to or by reason of any inaccuracy in or breach of any representation or warranty in **Section 3.17(b)** (but, for avoidance of doubt, the Cap shall apply to claims for such Losses).

(d) For purposes of this **Article VIII**, each representation, warranty and covenant in this Agreement will be read without regard and without giving effect to the term(s) "material" or "Material Adverse Effect" or similar qualifiers as if such words and surrounding related words (e.g. "reasonably be expected to," "could have" and similar restrictions and qualifiers) were deleted from such representation, warranty or covenant, but such terms, restrictions and qualifiers shall be included and not deleted for the purposes of determining whether there has been a breach of or inaccuracy in any representation, warranty or covenant in this Agreement.

(e) Each Person's right to indemnification hereunder will be subject to its obligations under applicable Law, including under common law, to mitigate damages. The amount of any Losses for which indemnification is provided under this **Article VIII** will be net of any amounts actually recovered by an indemnified Person under insurance policies or other collateral sources with respect to such Losses in excess of the sum of (i) reasonable, out-of-pocket costs and expenses relating to collection under such policies or other collateral sources, and (ii) any deductibles, co-payments, "retro-premium" obligations or

similar obligations associated therewith to the extent actually paid. The indemnified Persons will use their commercially reasonable efforts to pursue such insurance policies or collateral sources (which efforts will not require the initiation of litigation), and in the event the indemnified Persons receive any recovery, the amount of such recovery will be applied first, to refund any payments made by the indemnifying Parties in respect of indemnification claims pursuant to this **Article VIII** which would not have been so paid had such recovery been obtained prior to such payment, and second, any excess to the indemnified Persons.

(f) The amount of any indemnity by Seller and the Shareholders pursuant this Agreement shall be reduced by an amount equal to the Tax benefit realized or reasonably expected to be realized as a result of the applicable Loss by the Buyer Indemnities.

(g) No Buyer Indemnitee will be entitled to indemnification under this Agreement with respect to any Losses to the extent (and only to the extent) such Losses constitute liabilities in the amounts reserved or accrued for in the calculation of the Closing Working Capital.

**Section 8.05 Indemnification Procedures.** The party making a claim under this **Article VIII** is referred to as the "**Indemnified Party**", and the party against whom such claims are asserted under this **Article VIII** is referred to as the "**Indemnifying Party**".

(a) **Third Party Claims.** If any Indemnified Party receives notice of the assertion or commencement of any Action 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 the Indemnifying Party is obligated to provide indemnification under this Agreement, the Indemnified Party shall give the Indemnifying Party reasonably prompt written notice thereof, but in any event not later than thirty (30) calendar days after receipt of such notice of such Third Party Claim. 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 forfeits rights or defenses by reason of such failure. 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. The 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 the Indemnifying Party's expense and by the Indemnifying Party's own counsel, and the Indemnified Party shall cooperate in good faith in such defense; *provided*, that if the Indemnifying Party is Seller, such Indemnifying Party shall not have the right to defend or direct the defense of any such Third Party Claim that (x) is asserted directly by or on behalf of a Person that is a supplier or customer of the Company, or (y) seeks an injunction or other equitable relief against the Indemnified Party. In the event that the Indemnifying Party assumes the defense of any Third Party Claim, subject to **Section 8.05(b)**, it shall have the right to take such action as it deems necessary to avoid, dispute, defend, appeal or make counterclaims pertaining to any such Third Party Claim in the name and on behalf of the Indemnified Party. The Indemnified Party shall have the right 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. The fees and disbursements of such counsel shall be at the expense of the Indemnified Party,

*provided*, that if in the reasonable opinion of counsel to the 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 exists a conflict of interest between the Indemnifying Party and the Indemnified Party that cannot be waived, the Indemnifying Party shall be liable for the reasonable fees and expenses of counsel to the Indemnified Party 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, fails to promptly notify the Indemnified Party in writing of its election to defend as provided in this Agreement, or fails to diligently prosecute the defense of such Third Party Claim, the Indemnified Party may, subject to **Section 8.05(b)**, pay, compromise, defend such Third Party Claim and seek indemnification for any and all Losses based upon, arising from or relating to such Third Party Claim. Seller and Buyer shall cooperate with each other in all reasonable respects in connection with the defense of any Third Party Claim, including making available (subject to the provisions of **Section 5.05**) records relating to such Third Party Claim and furnishing, without expense (other than reimbursement of actual out-of-pocket expenses) to the defending party, management employees of the non-defending party as may be reasonably necessary for the preparation of the defense of such Third Party Claim.

(b) **Settlement of Third Party Claims.** Notwithstanding any other provision of this Agreement, the Indemnifying Party shall not enter into settlement of any Third Party Claim without the prior written consent of the Indemnified Party, except as provided in this **Section 8.05(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 the 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 fifteen (15) 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 8.05(a)**, it shall not agree to any settlement without the written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

(c) **Direct Claims.** Any Action by an Indemnified Party on account of a Loss which does not result from a Third Party Claim (a "**Direct Claim**") shall be asserted by the Indemnified Party giving the Indemnifying Party reasonably prompt written notice thereof, but in any event not later than thirty (30) days after the Indemnified Party becomes aware of such Direct Claim. 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 forfeits rights or defenses by reason of such failure. 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. The Indemnifying Party shall have thirty (30) days after its receipt of such notice to respond in writing to such Direct Claim. The Indemnified Party shall allow the Indemnifying Party and its professional advisors to

investigate the matter or circumstance alleged to give rise to the Direct Claim, and whether and to what extent any amount is payable in respect of the Direct Claim and the Indemnified Party shall assist the Indemnifying Party's investigation by giving such information and assistance (including access to the Company's premises and personnel and the right to examine and copy any accounts, documents or records) as the Indemnifying Party or any of its professional advisors may reasonably request. If the Indemnifying Party does not so respond within such thirty (30) day period, the Indemnifying Party shall be deemed to have rejected such claim, in which case the Indemnified Party shall be free to pursue such remedies as may be available to the Indemnified Party on the terms and subject to the provisions of this Agreement.

(d) **Tax Claims.** Notwithstanding any other provision of this Agreement, the control of any claim, assertion, event or proceeding in respect of Taxes of the Company (including, but not limited to, any such claim in respect of a breach of the representations and warranties in **Section 3.22** hereof or any breach or violation of or failure to fully perform any covenant, agreement, undertaking or obligation in **Article VI**) shall be governed exclusively by **Article VI** hereof.

#### **Section 8.06 Payments.**

(a) Once a Loss is agreed to by the Indemnifying Party or finally adjudicated to be payable pursuant to this **Article VIII**, the Indemnifying Party shall satisfy its obligations within fifteen (15) Business Days of such final, non-appealable adjudication by wire transfer of immediately available funds. The parties hereto agree that should an Indemnifying Party not make full payment of any such obligations within such fifteen (15) Business Day period, any amount payable shall accrue interest from and including the date of agreement of the Indemnifying Party or final, non-appealable adjudication to but excluding the date such payment has been made at a rate per annum equal to ████. Such interest shall be calculated daily on the basis of a 365 day year and the actual number of days elapsed, without compounding.

(b) Notwithstanding the foregoing or anything in this Agreement to the contrary, Buyer, for itself and on behalf of the Buyer Indemnitees, acknowledges and agrees that, when pursuing any claim for indemnification under this **Article VIII**, the Buyer Indemnitees must seek satisfaction of such claim (i) first, by reducing, on a dollar for dollar basis, effective as of the Closing Date, the deemed capital contribution value of the Preferred Units; (ii) second, if the aggregate capital contribution value of the Preferred Units is not sufficient to cover such claims, from Seller; and (iii) third, if Seller does not promptly satisfy such claim once such claim has been finally resolved, from the Shareholders.

**Section 8.07 Tax Treatment of Indemnification Payments.** All indemnification payments made under this Agreement shall be treated by the parties as an adjustment to the Cash Purchase Price for Tax purposes, unless otherwise required by Law.

**Section 8.08 Knowledge of Buyer.** The representations, warranties and covenants of the Indemnifying Party, and the Indemnified Party's right to indemnification with respect thereto, shall not be affected or deemed waived by reason of any investigation made by or on behalf of the Indemnified Party (including by any of its Representatives) or by reason of the fact that the Indemnified Party or any of its

Representatives knew or should have known that any such representation or warranty is, was or might be inaccurate or by reason of the Indemnified Party's waiver of any condition set forth in **Section 7.02** or **Section 7.03**, as the case may be.

**Section 8.09 Exclusive Remedies.** Subject to **Section 5.06** and **Section 10.11**, the parties acknowledge and agree that their sole and exclusive remedy with respect to any and all claims (other than claims arising from fraud, criminal activity or willful misconduct on the part of a party hereto in connection with the transactions contemplated by this Agreement) 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 this **Article VIII**. In furtherance of the foregoing, 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 the indemnification provisions set forth in this **Article VIII**. Nothing in this **Section 8.09** shall limit any Person's right to seek and obtain any equitable relief to which any Person shall be entitled or to seek any remedy on account of any party's fraudulent, criminal or intentional misconduct.

**Section 8.10 Special Rule for Fraud.** Notwithstanding anything in this **Article VIII** to the contrary (except as set forth in this **Section 8.10**), in the event of actual and intentional misrepresentation that constitute common law fraud under applicable Law ("**Fraud**"), any Party which suffers Losses by reason thereof will be entitled to seek recovery therefor without regard to any limitation set forth in this Agreement (except as set forth in this **Section 8.10**) (whether temporal limitation, dollar limitation or otherwise), except that in the event of Fraud, the aggregate amount of all Losses for which Seller and the Shareholders shall be liable shall not exceed the Purchase Price.

## ARTICLE IX TERMINATION

**Section 9.01 Termination.** This Agreement may be terminated at any time prior to the Closing:

- (a) by the written consent of Seller, the Shareholders, Welcome Dairy, and Buyer;
- (b) by Welcome Dairy or Buyer by written notice to Seller and the Shareholders if:

(i) Welcome Dairy or Buyer is not then in material breach of any provision of this Agreement and there has been a Schedule Supplement disclosing matters constituting a material adverse change to the business or financial condition or affairs of the Company or a breach, inaccuracy in or failure to perform any representation, warranty, covenant or agreement made by Seller or the Company pursuant to this Agreement that would give rise to the failure of any of the conditions specified in **Article VII** and such breach, inaccuracy or failure has not been cured by Seller or the Shareholders within ten

(10) days of Seller's and the Shareholders' receipt of written notice of such breach from Welcome Dairy or Buyer; or

(ii) any of the conditions set forth in **Section 7.01** or **Section 7.02** shall not have been, or if it becomes apparent that any of such conditions will not be, fulfilled by December 31, 2016, unless such failure shall be due to the failure of Welcome Dairy or Buyer to perform or comply with any of the covenants, agreements or conditions hereof to be performed or complied with by them prior to the Closing;

(c) by Seller or the Shareholders by written notice to Welcome Dairy and Buyer if:

(i) Seller and the Shareholders are not then in material breach of any provision of this Agreement and there has been a breach, inaccuracy in or failure to perform any representation, warranty, covenant or agreement made by Welcome Dairy or Buyer pursuant to this Agreement that would give rise to the failure of any of the conditions specified in **Article VII** and such breach, inaccuracy or failure has not been cured by Welcome Dairy or Buyer within ten (10) days of their receipt of written notice of such breach from Seller and the Shareholders; or

(ii) any of the conditions set forth in **Section 7.01** or **Section 7.03** shall not have been, or if it becomes apparent that any of such conditions will not be, fulfilled by December 31, 2016, unless such failure shall be due to the failure of the Shareholders or Seller to perform or comply with any of the covenants, agreements or conditions hereof to be performed or complied with by them prior to the Closing; or

(d) by Welcome Dairy and Buyer or the Shareholders and Seller in the event that (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 9.02 Effect of Termination.** In the event of the termination of this Agreement in accordance with this Article, 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 this **Article IX** and **Section 5.05** and **Article X** hereof; and

(b) that nothing herein shall relieve any party hereto from liability for any willful breach of any provision hereof.

## ARTICLE X MISCELLANEOUS

**Section 10.01 Expenses.** Except as otherwise expressly provided herein, all costs and expenses, including, without limitation, fees and disbursements of counsel, financial 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 the Closing shall have occurred.

**Section 10.02 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 facsimile or 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 10.02**):

If to Seller or the Shareholders: Dr. Aly Gamay  
Gamay Holdco, Inc.  
1102 Mill Ridge  
Mclean, VA 22102

With a copy to: Reinhart Boerner Van Deuren s.c.  
Attn: Lawrence J. Burnett, Esq.  
1000 North Water Street, Suite 1700  
Milwaukee, WI 53202  
Facsimile: (414) 298-8097

If to Welcome Dairy or Buyer: Terry Eggebrecht  
Welcome Dairy Holdings, LLC  
PO Box 497  
H4489 Maple Road  
Colby, WI 54421  
Facsimile: 715-223-3958

With a copy to: Husch Blackwell, LLP  
Attn: Timothy A. Nettesheim, Esq.  
20800 Swenson Drive, Suite 300  
Waukesha, WI 53186-2058  
Facsimile: (414) 223-5000

**Section 10.03 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; and (c) the words "herein," "hereof," "hereby," "hereto" and "hereunder" refer to this Agreement as a whole. Unless the context otherwise requires, references herein: (x) to Articles, Sections, Disclosure Schedules and Exhibits mean the Articles and Sections of, and Disclosure Schedules and Exhibits attached to, this Agreement; (y) 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 (z) 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 Schedules 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 10.04 Headings.** The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

**Section 10.05 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. Except as provided in **Section 5.06(e)**, 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 10.06 Entire Agreement.** This Agreement and the other Transaction Documents constitute the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein and therein, and supersede all prior and contemporaneous 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 and those in the other Transaction Documents, the Exhibits and Disclosure Schedules (other than an exception expressly set forth as such in the Disclosure Schedules), the statements in the body of this Agreement will control.

**Section 10.07 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 party, which consent shall not be unreasonably withheld or delayed, except that Buyer may assign its rights and obligations to any debt financing source providing financing to the Company or any of its Affiliates, for collateral security purposes, and any such debt financing source may exercise all of the rights and remedies of Buyer hereunder, provided that no such assignment shall in any manner limit or impair Buyer's obligations hereunder. No assignment shall relieve the assigning party of any of its obligations hereunder.

**Section 10.08 No Third-party Beneficiaries.** Except as provided in **Article VIII**, 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; provided, that any debt financing source providing financing to the Company related to the

transactions contemplated hereby shall be a third party beneficiary with respect to Section 10.07 and Section 10.10(d) hereof.

**Section 10.09 Amendment and Modification; Waiver.** This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each party hereto. 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. 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.

**Section 10.10 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 Wisconsin without giving effect to any choice or conflict of law provision or rule (whether of the State of Wisconsin or any other jurisdiction).

(b) ANY LEGAL SUIT, ACTION OR PROCEEDING ARISING OUT OF OR BASED UPON THIS AGREEMENT, THE OTHER TRANSACTION DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY MAY BE INSTITUTED IN THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA LOCATED IN THE CITY OF MILWAUKEE, WISCONSIN OR THE COURTS OF THE STATE OF WISCONSIN LOCATED IN THE CITY OF WAUKESHA, WISCONSIN, 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.

(c) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT OR THE OTHER TRANSACTION DOCUMENTS 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, THE OTHER TRANSACTION DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. EACH PARTY TO THIS AGREEMENT CERTIFIES AND ACKNOWLEDGES THAT

(A) 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, (B) SUCH PARTY HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (C) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (D) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 10.10(c).

(d) Notwithstanding anything in this Agreement to the contrary, none of the parties hereto, nor any of their respective Affiliates, solely in their respective capacities as parties to this Agreement, shall have any rights or claims against any debt financing source entering into any agreements pursuant to or related to the transactions contemplated hereby (including any successors and/or assigns of such debt financing sources) in any way relating to this Agreement or any of the transactions contemplated by this Agreement, including any dispute arising out of or relating in any way to any debt financing from such debt financing sources or the performance thereof.

**Section 10.11 Specific Performance.** The parties agree that irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms hereof and that the parties shall be entitled to specific performance of the terms hereof, in addition to any other remedy to which they are entitled at law or in equity.

**Section 10.12 Representation.** In any dispute, claim, demand, cause of action, investigation, suit, action or other proceeding arising under or in connection with this Agreement, including under Article VII, Seller and/or the Shareholders shall have the right, at their election, to retain the firm of Reinhart Boerner Van Deuren s.c. to represent them in such matter and Welcome Dairy and Buyer (and the Company), for themselves and their Affiliates and for their respective successors and assigns, hereby irrevocably waive any objection and consent to any such representation in any such matter. Each of Welcome Dairy and Buyer, for itself and its Affiliates, and their respective successors and assigns, hereby irrevocably acknowledges and agrees that all communications (i) prior to the Closing, between any of Seller, the Company and/or a Shareholder and their counsel, including Reinhart Boerner Van Deuren s.c., made in connection with the negotiation, preparation, execution, delivery and closing of this Agreement or any transaction contemplated thereby, and (ii) after the Closing, between Seller and any Shareholder and such counsel in connection with any claim, demand, cause of action, investigation, suit, action or other proceeding arising under or in connection with this Agreement, or any matter relating to any of the foregoing, are privileged communications, and such privilege belongs solely to the Seller or the applicable Shareholder. None of Welcome Dairy, Buyer, the Company or any Person purporting to act on behalf of or through Welcome, Dairy, Buyer or the Company, will seek to obtain such privilege by any process.

**Section 10.13 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.

*[Signature Page Follows]*

IN WITNESS WHEREOF, the parties hereto have caused this Unit Purchase and Contribution Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

**COMPANY:**

**Gamay Food Ingredients, LLC**

By: Gamay Holdco, Inc., its Manager

By: A. Gamay  
Name: Dr. Aly Gamay  
Title: Chief Executive Officer

**SELLER:**

**Gamay Holdco, Inc.**

By: A. Gamay  
Name: Dr. Aly Gamay  
Title: Chief Executive Officer

**SHAREHOLDERS:**

A. Gamay  
Name: Dr. Aly Gamay

Wafaa Gamay  
Name: Wafaa Gamay

\_\_\_\_\_  
Name: Sara Gamay

\_\_\_\_\_  
Name: Tarick Gamay

\_\_\_\_\_  
Name: Walced Gamay

**WELCOME DAIRY:**

**Welcome Dairy, LLC**

By: \_\_\_\_\_  
Name: Terry J. Eggebrecht  
Title: President and CEO

**BUYER:**

**Welcome Dairy Holdings, LLC**

By: \_\_\_\_\_  
Name: Terry J. Eggebrecht  
Title: Manager

IN WITNESS WHEREOF, the parties hereto have caused this Unit Purchase and Contribution Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

**COMPANY:**

**Gamay Food Ingredients, LLC**

By: Gamay Holdco, Inc., its Manager

By: \_\_\_\_\_  
Name: Dr. Aly Gamay  
Title: Chief Executive Officer

**SELLER:**

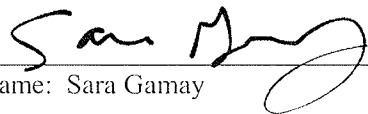
**Gamay Holdco, Inc.**

By: \_\_\_\_\_  
Name: Dr. Aly Gamay  
Title: Chief Executive Officer

**SHAREHOLDERS:**

\_\_\_\_\_  
Name: Dr. Aly Gamay

\_\_\_\_\_  
Name: Wafaa Gamay

  
\_\_\_\_\_  
Name: Sara Gamay

\_\_\_\_\_  
Name: Tarick Gamay

\_\_\_\_\_  
Name: Waleed Gamay

**WELCOME DAIRY:**

**Welcome Dairy, LLC**

By: \_\_\_\_\_  
Name: Terry J. Eggebrecht  
Title: President and CEO

**BUYER:**

**Welcome Dairy Holdings, LLC**

By: \_\_\_\_\_  
Name: Terry J. Eggebrecht  
Title: Manager

IN WITNESS WHEREOF, the parties hereto have caused this Unit Purchase and Contribution Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

**COMPANY:**

**Gamay Food Ingredients, LLC**

By: Gamay Holdco, Inc., its Manager

By: \_\_\_\_\_  
Name: Dr. Aly Gamay  
Title: Chief Executive Officer

**SELLER:**

**Gamay Holdco, Inc.**

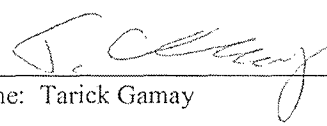
By: \_\_\_\_\_  
Name: Dr. Aly Gamay  
Title: Chief Executive Officer

**SHAREHOLDERS:**

\_\_\_\_\_  
Name: Dr. Aly Gamay

\_\_\_\_\_  
Name: Wafaa Gamay

\_\_\_\_\_  
Name: Sara Gamay

  
\_\_\_\_\_  
Name: Tarick Gamay

\_\_\_\_\_  
Name: Waleed Gamay

**WELCOME DAIRY:**

**Welcome Dairy, LLC**

By: \_\_\_\_\_  
Name: Terry J. Eggebrecht  
Title: President and CEO

**BUYER:**

**Welcome Dairy Holdings, LLC**

By: \_\_\_\_\_  
Name: Terry J. Eggebrecht  
Title: Manager

IN WITNESS WHEREOF, the parties hereto have caused this Unit Purchase and Contribution Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

**COMPANY:**

**Gamay Food Ingredients, LLC**

By: Gamay Holdco, Inc., its Manager

By: \_\_\_\_\_  
Name: Dr. Aly Gamay  
Title: Chief Executive Officer

**SELLER:**

**Gamay Holdco, Inc.**

By: \_\_\_\_\_  
Name: Dr. Aly Gamay  
Title: Chief Executive Officer

**SHAREHOLDERS:**

\_\_\_\_\_  
Name: Dr. Aly Gamay

\_\_\_\_\_  
Name: Wafaa Gamay

\_\_\_\_\_  
Name: Sara Gamay

\_\_\_\_\_  
Name: Tarick Gamay

W. Gamay  
\_\_\_\_\_  
Name: Waleed Gamay

**WELCOME DAIRY:**

**Welcome Dairy, LLC**

By: \_\_\_\_\_  
Name: Terry J. Eggebrecht  
Title: President and CEO

**BUYER:**

**Welcome Dairy Holdings, LLC**

By: \_\_\_\_\_  
Name: Terry J. Eggebrecht  
Title: Manager



IN WITNESS WHEREOF, the parties hereto have caused this Unit Purchase and Contribution Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

**COMPANY:**

**Gamay Food Ingredients, LLC**

By: Gamay Holdco, Inc., its Manager

By: \_\_\_\_\_  
Name: Dr. Aly Gamay  
Title: Chief Executive Officer

**SELLER:**

**Gamay Holdco, Inc.**

By: \_\_\_\_\_  
Name: Dr. Aly Gamay  
Title: Chief Executive Officer

**SHAREHOLDERS:**

\_\_\_\_\_  
Name: Dr. Aly Gamay

\_\_\_\_\_  
Name: Wafaa Gamay

\_\_\_\_\_  
Name: Sara Gamay

\_\_\_\_\_  
Name: Tarick Gamay

\_\_\_\_\_  
Name: Waleed Gamay

**WELCOME DAIRY:**

**Welcome Dairy, LLC**

By:   
By: \_\_\_\_\_  
Name: Terry J. Eggebrecht  
Title: President and CEO

**BUYER:**

**Welcome Dairy Holdings, LLC**

By:   
By: \_\_\_\_\_  
Name: Terry J. Eggebrecht  
Title: Manager

---

**DISCLOSURE SCHEDULES**  
to the  
**UNIT PURCHASE AND CONTRIBUTION AGREEMENT**  
by and among  
**GAMAY FOOD INGREDIENTS, LLC,**  
**GAMAY HOLDCO, INC.,**  
**THE SHAREHOLDERS OF GAMAY HOLDCO, INC.,**  
**WELCOME DAIRY, LLC**  
and  
**WELCOME DAIRY HOLDINGS, LLC**

**Dated as of October 4, 2016.**

---

## GENERAL STATEMENT

These Disclosure Schedules are delivered pursuant to the Unit Purchase and Contribution Agreement (the "Agreement"), entered into as of October 4, 2016, by and among Gamay Food Ingredients, LLC, a Wisconsin limited liability company converted from Gamay Foods, Inc., a Wisconsin corporation (the "Company"), Gamay Holdco, Inc., a Wisconsin corporation ("Seller"), the shareholders of Seller, Welcome Dairy, LLC, a Wisconsin limited liability company converted from Welcome Dairy, Inc., a Wisconsin corporation ("Welcome Dairy"), and Welcome Dairy Holdings, LLC, a Wisconsin limited liability company. All capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Agreement.

Each section hereof is numbered to correspond to the applicable section of the Agreement to which such section refers. Notwithstanding anything to the contrary contained in these Disclosure Schedules or in the Agreement, the information and disclosures contained in any section or subsection of any Schedule shall be deemed disclosed in each other section or subsection of all other Schedules to which an appropriate cross reference is made or in each other section or subsection of all other Schedules to which its relevance is reasonably apparent. These Disclosure Schedules shall qualify the representations and warranties set forth in the Agreement and/or set forth other information required by the Agreement but shall not otherwise vary, change or alter the language of the representations and warranties contained in the Agreement or constitute a separate representation or warranty. The inclusion of any item on any Schedule shall not constitute an admission that a violation, right of termination, default, breach, liability or other obligation of any kind exists with respect to such item, but rather is intended only to qualify certain representations and warranties in the Agreement and/or to set forth other information required by the Agreement.



Headings have been inserted for convenience of reference only and shall in no way have the effect of amending or changing the express description of the corresponding sections as set forth in the Agreement.

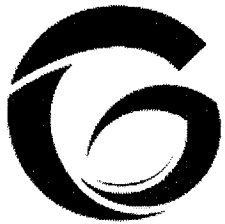

All information contained in these Disclosure Schedules is confidential information and may not be disclosed unless (i) such information is required to be disclosed pursuant to applicable Law (unless such Law permits the Parties to refrain from disclosing the information for confidentiality or other purposes) or (ii) a Party needs to disclose such information in order to enforce or exercise its rights under the Agreement or to a lender or financier or purchaser of assets.


Schedule 3.12(a)


Intellectual Property

1. Trademarks.

Trademark	Reg. No./ Serial No.	Country	Current Owner	Classes
	86823546	United States	Gamay Foods, Inc.	<p>CLASS 029: Processed cheese and dairy products for use in food manufacturing and for use in the food service industries</p> <p>CLASS 030: Food flavorings, dry seasoning blends, and sauces for use in food manufacturing and for use in the food service industries</p> <p>Class 042: Custom formulation and custom manufacturing of food flavorings</p>
	1783673	Canada	Gamay Foods, Inc.	<p>CLASS 029: Processed cheese and dairy products for use in food manufacturing and for use in the food service industries</p> <p>CLASS 030: Food flavorings, dry seasoning blends, and</p>

				<p>sauces for use in food manufacturing and for use in the food service industries</p> <p>Class 042: Custom formulation and custom manufacturing of food flavorings</p>
	Pending (awaiting verification)	Mexico	Gamay Foods, Inc.	<p>CLASS 029: Processed cheese and dairy products for use in food manufacturing and for use in the food service industries</p> <p>CLASS 030: Food flavorings, dry seasoning blends, and sauces for use in food manufacturing and for use in the food service industries</p> <p>Class 042: Custom formulation and custom manufacturing of food flavorings</p>
	86830483	United States	Gamay Foods, Inc.	<p>CLASS 029: Processed cheese and dairy products for use in food manufacturing and for use in the food service industries</p> <p>CLASS 030:</p>

				<p>Food flavorings, dry seasoning blends, and sauces for use in food manufacturing and for use in the food service industries</p> <p>Class 042: Custom formulation and custom manufacturing of food flavorings</p>
	1783674	Canada	Gamay Foods, Inc.	<p>CLASS 029: Processed cheese and dairy products for use in food manufacturing and for use in the food service industries</p> <p>CLASS 030: Food flavorings, dry seasoning blends, and sauces for use in food manufacturing and for use in the food service industries</p> <p>Class 042: Custom formulation and custom manufacturing of food flavorings</p>

	<p>Pending (awaiting)</p>	<p>Mexico</p>	<p>Gamay Foods, Inc.</p>	<p>CLASS 029: Processed cheese and dairy products for use in food manufacturing and for use in the food service industries</p> <p>CLASS 030: Food flavorings, dry seasoning blends, and sauces for use in food manufacturing and for use in the food service industries</p> <p>Class 042: Custom formulation and custom manufacturing of food flavorings</p>
<p>WIS-CONCENTRATE</p>	<p>4287821</p>	<p>United States</p>	<p>Gamay Foods, Inc.</p>	<p>Class 30: Flavoring additives for non-nutritional purposes.</p>
<p>TASTE YOU'LL TREASURE</p>	<p>3543941</p>		<p>Gamay Foods, Inc.</p>	<p>Class 005: Nutritional supplements.</p> <p>CLASS 029: Processed cheese for use in food manufacturing and for use in the food service industries.</p> <p>CLASS 030: Food flavorings and sauces for use in food manufacturing and for use in</p>

				the food service industries.
GAMAY	3310253	United States	Gamay Foods, Inc.	CLASS 029: processed cheese. CLASS 030: food flavorings and sauces.
WITHSTAND	2067099	United States	Gamay Foods, Inc.	CLASS 030: food flavorings.

2. Patents. None.
3. Copyrights. None.
4. Domain Names. [www.gamayfoods.com](http://www.gamayfoods.com)



Schedule 3.12(b)

Company IP Agreements

1. Joint Development Agreement dated February 24, 2004 between the Company and General Mills Operations, Inc.
2. Formulation and Manufacturing Agreement dated June 25, 2013 among the Company, Welcome Dairy and Land O'Lakes, Inc.

Schedule 3.12(c)

Title to Intellectual Property

The items listed on Schedule 3.12(b) are incorporated herein by reference.

34553268v4