

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON D. C. 20549

FORM 10-Q

X QUARTERLY REPORT PURSUANT TO SECTION 13 or 15(d) OF THE SECURITIES EXCHANGE  
- - - ACT OF 1934

For the quarterly period ended June 30, 1997

Commission file number 1-71

BORDEN, INC.

New Jersey

13-0511250

(State or other jurisdiction of  
incorporation or organization)

(I.R.S. Employer  
Identification No.)

180 East Broad Street, Columbus, OH 43215

(Address of principal executive offices)

(614) 225-4000

(Registrant's telephone number, including area code)

Not Applicable

(Former name, former address and former fiscal year,  
if changed since last report.)

Indicate by check mark whether the registrant (1) has filed all reports required  
to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during  
the preceding 12 months (or for such shorter period that the registrant was  
required to file such reports) and (2) has been subject to such filing  
requirements for the past 90 days. Yes X No  
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Number of shares of common stock, \$0.01 par value, outstanding as of the close  
of business on August 14, 1997: 198,974,994

## BORDEN, INC.

## Introduction

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The following filing with the Securities and Exchange Commission ("SEC") by Borden, Inc. ("the Company") presents four separate financial statements: Borden, Inc. Consolidated Financial Statements, Borden, Inc. and Affiliates Combined Financial Statements, the Financial Statements of Wise Holdings, Inc. ("Wise Holdings") and the Financial Statements of Borden Foods Holdings Corporation ("Foods Holdings"). The consolidated statements present the Company after the effect of the sales of (i) the Company's former salty snacks business ("Wise") to Wise Holdings and its subsidiaries and (ii) the Company's former domestic and international foods business ("Foods") to Foods Holdings and its subsidiaries, as explained in Note 1 to the consolidated and combined financial statements. The Company, Wise Holdings, and Foods Holdings are controlled by BW Holdings, LLC ("BWHLLC"). The consolidated financial statements are those of the Company, which is the SEC Registrant.

The Borden, Inc. and Affiliates ("the Combined Companies") combined financial statements are included herein to present the Company on a combined historical basis, including the financial position, results of operations and cash flows of Wise and Foods. The Combined Companies financial statements are included because management of the Company continues to control significant financial and managerial decisions with respect to Wise Holdings and Foods Holdings. The Combined Companies financial statements do not reflect push-down accounting and therefore present financial information on a basis consistent with that on which credit was originally extended to the Company. Also, in accordance with rule 3-10 of Regulation S-X, the financial statements of Wise Holdings and Foods Holdings are included in Part II of this Quarterly Report on Form 10-Q because Wise Holdings and Foods Holdings are guarantors of the Company's credit facility and all of the Company's outstanding publicly held debt.

## BORDEN, INC.

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 CONSOLIDATED STATEMENTS OF OPERATIONS (UNAUDITED)

BORDEN, INC.

(In millions, except per share data)	Three Months Ended June 30,	
	1997	1996
Net sales	\$ 488.6	\$ 776.0
Cost of goods sold	353.6	539.3
	-----	-----
Gross margin	135.0	236.7
	-----	-----
Distribution expense	19.1	37.8
Marketing expense	41.2	103.7
General & administrative expense	35.8	65.3
	-----	-----
Operating income	38.9	29.9
	-----	-----
Interest expense	24.3	28.9
Affiliated interest income	(6.4)	
Other income	(4.2)	(2.2)
	-----	-----
Income from continuing operations		
Before income tax	25.2	3.2
Income tax expense	8.0	9.5
	-----	-----
Income (loss) from continuing operations	17.2	(6.3)
	-----	-----
Discontinued operations:		
Income from operations, net of tax	4.9	0.8
	-----	-----
Net income (loss)	22.1	(5.5)
Preferred stock dividends	(18.4)	(18.4)
	-----	-----
Net income (loss) applicable to common stock	\$ 3.7	\$ (23.9)
	=====	=====

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 CONSOLIDATED STATEMENTS OF OPERATIONS (UNAUDITED) (continued)

BORDEN, INC.

(In millions, except per share data)	Three Months Ended June 30,	
	1997	1996
-----		
Per Share Data		
-----		
Income (loss) from continuing operations	\$ 0.09	\$ (0.03)
Discontinued operations:		
Income from operations	0.02	-----
	-----	-----
Net income (loss)	0.11	(0.03)
Preferred stock dividends	(0.09)	(0.09)
	-----	-----
Net income (loss) per common share	\$ 0.02	\$ (0.12)
	=====	=====
Dividends per common share	\$ 0.06	
Dividends per preferred share	\$ 0.75	\$ 0.75
Average number of common shares outstanding		
During the period	199.0	199.0

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 See Notes to Consolidated and Combined Financial Statements

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 CONSOLIDATED STATEMENTS OF OPERATIONS (UNAUDITED)

BORDEN, INC.

(In millions, except per share data)	Six Months Ended June 30,	
	1997	1996
Net sales	\$ 946.0	\$ 1,522.0
Cost of goods sold	692.8	1,068.9
Gross margin	253.2	453.1
Distribution expense	36.2	74.9
Marketing expense	75.5	205.2
General & administrative expense	83.7	93.0
Net (gain) on divestitures		(66.2)
Operating income	57.8	146.2
Interest expense	47.8	55.4
Affiliated interest income	(11.4)	
Other income	(12.7)	(8.4)
Income from continuing operations before income taxes	34.1	99.2
Income tax expense	15.6	58.7
Income from continuing operations	18.5	40.5
Discontinued operations: Income (loss) from operations, net of tax	8.9	(1.6)
Net income	27.4	38.9
Preferred stock dividends	(36.9)	(36.9)
Net (loss) income applicable to common stock	\$ (9.5)	\$ 2.0

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 CONSOLIDATED STATEMENTS OF OPERATIONS (UNAUDITED) (continued)

BORDEN, INC.

(In millions, except per share data)	Six Months Ended June 30,	
	1997	1996
-----		
Per Share Data		
-----		
Income from continuing operations	\$ 0.09	\$ 0.20
Discontinued operations:		
Income from operations	0.05	-----
	-----	-----
Net income	0.14	0.20
Preferred stock dividends	(0.19)	(0.19)
	-----	-----
Net (loss) income per common share	\$ (0.05)	\$ 0.01
	=====	=====
Dividends per common share	\$ 0.13	
Dividends per preferred share	\$ 1.50	\$ 1.50
Average number of common shares outstanding during the period	199.0	199.0

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 See Notes to Consolidated and Combined Financial Statements

## CONSOLIDATED BALANCE SHEETS (UNAUDITED)

BORDEN, INC.

(In millions)

		June 30, ----- 1997	December 31, ----- 1996
<b>ASSETS</b>			
-----			
<b>CURRENT ASSETS</b>	Cash and equivalents	\$ 97.5	\$ 125.0
	Accounts receivable (less allowance for doubtful accounts of \$18.4 and \$15.7, respectively)	328.2	355.1
	Inventories:		
	Finished and in-process goods	133.6	142.3
	Raw materials and supplies	66.2	77.4
	Deferred income taxes	134.8	179.6
	Other current assets	42.1	45.9
	Net assets of discontinued operation	172.9	-----
		----- 975.3	----- 925.3
-----			
<b>INVESTMENTS AND OTHER ASSETS</b>	Investments in affiliated companies	108.5	106.8
	Deferred income taxes	159.7	213.4
	Other assets	70.0	89.0
	Assets sold under contractual arrangement (net of allowance of \$873.2 and \$866.0)	676.3	701.0
		----- 1,014.5	----- 1,110.2
-----			
<b>PROPERTY AND EQUIPMENT</b>	Land	27.6	54.3
	Buildings	146.3	267.5
	Machinery and equipment	742.4	934.3
		----- 916.3	----- 1,256.1
	Less accumulated depreciation	(440.8)	(693.7)
		----- 475.5	----- 562.4
-----			
<b>INTANGIBLES</b>	Intangibles resulting from business acquisitions	61.5	114.3
		-----	-----
-----			
<b>TOTAL ASSETS</b>		\$ 2,526.8 =====	\$ 2,712.2 =====
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See Notes to Consolidated and Combined Financial Statements



## CONSOLIDATED BALANCE SHEETS (UNAUDITED)

BORDEN, INC.

(In millions)

		June 30, ----- 1997	December 31, ----- 1996
<hr/>			
LIABILITIES AND SHAREHOLDERS' EQUITY			
<hr/>			
CURRENT	Debt payable within one year	\$ 108.6	\$ 414.0
LIABILITIES	Accounts and drafts payable	200.1	254.9
	Income taxes	245.2	282.8
	Other current liabilities	436.2	477.2
		-----	-----
		990.1	1,428.9
		-----	-----
<hr/>			
OTHER	Liabilities sold under contractual arrangement	434.7	442.9
	Long-term debt	914.0	567.8
	Non-pension post-employment benefit obligations	251.0	285.9
	Other long-term liabilities	93.2	126.6
		-----	-----
		1,692.9	1,423.2
		-----	-----
	Commitments and Contingencies		
<hr/>			
SHAREHOLDERS'	Preferred stock - Issued 24,754,751	614.4	614.4
EQUITY	Common stock - \$0.01 par value		
	Authorized 300,000,000 shares		
	Issued 198,974,994	2.0	2.0
	Paid in capital	382.1	379.9
	Receivable from parent	(443.6)	(443.6)
	Accumulated translation adjustment	(36.2)	(27.2)
	Minimum pension liability and other	(109.2)	(109.2)
	Retained deficit	(565.7)	(556.2)
		-----	-----
		(156.2)	(139.9)
		-----	-----
<hr/>			
TOTAL LIABILITIES AND SHAREHOLDERS' EQUITY		\$ 2,526.8	\$ 2,712.2
		=====	=====

See Notes to Consolidated and Combined Financial Statements

## CONSOLIDATED STATEMENTS OF CASH FLOWS (UNAUDITED)

BORDEN, INC.

(In Millions)	Six Months Ended	
	1997	1996
CASH FLOWS (USED IN) FROM OPERATING ACTIVITIES:		
Net income	\$ 27.4	\$ 38.9
Adjustments to reconcile net income to net cash from operating activities:		
Depreciation and amortization	22.2	45.1
Gain on divestiture, net		(66.2)
Unrealized gain on interest rate swap	(2.7)	(11.7)
Loss on net assets sold under contractual arrangement	4.5	
Restructuring	(1.7)	(6.4)
Net change in assets and liabilities:		
Trade receivables	(37.0)	(36.7)
Inventories	(7.7)	3.2
Trade payables	16.1	4.4
Current and deferred taxes	9.8	28.2
Other assets	6.8	15.1
Other liabilities	(41.1)	3.0
Discontinued operations, working capital, cash and non cash charges	(11.4)	14.8
	(14.8)	31.7
CASH FLOWS FROM INVESTING ACTIVITIES		
Capital expenditures	(63.5)	(110.0)
Divestiture of businesses	53.9	135.9
Investment in affiliates	(7.6)	
	(17.2)	25.9
CASH FLOWS FROM (USED IN) FINANCING ACTIVITIES		
Increase (decrease) in short-term debt	26.0	(35.9)
Borrowings of long-term debt	362.4	5.7
Repayment of long-term debt	(347.0)	
Increase in minority interest		9.3
Interest received from parent	25.5	
Common stock dividends paid	(25.5)	
Preferred stock dividends paid	(36.9)	(36.9)
	4.5	(57.8)

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 CONSOLIDATED STATEMENTS OF CASH FLOWS (UNAUDITED) (continued)

BORDEN, INC.

(In millions)	Six Months Ended June 30,	
	1997	1996
Decrease in cash and equivalents	\$ (27.5)	\$ (0.2)
Cash and equivalents at beginning of period	125.0	146.2
	-----	-----
Cash and equivalents at end of period	\$ 97.5	\$ 146.0
	=====	=====
-----		
SUPPLEMENTAL DISCLOSURES OF CASH FLOW INFORMATION	Cash paid:	
	Interest	\$ 25.2
	Income taxes	\$ 11.7
	Non-cash activity:	
	Capital contribution by parent	12.2
	Reclassification of note from long-term to short-term	
		296.7

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 See Notes to Consolidated and Combined Financial Statements

CONSOLIDATED STATEMENT OF SHAREHOLDERS' EQUITY (UNAUDITED)  
BORDEN, INC.

(In millions)

	Preferred Stock	Common Stock	Paid-in Capital	Receivable from Parent	Accumulated Translation Adjustment	Minimum Pension Liability And Other	Accumulated Deficit	Total
Balance, December 31, 1996	\$ 614.4	\$ 2.0	\$ 379.9	\$ (443.6)	\$ (27.2)	\$ (109.2)	\$ (556.2)	\$ (139.9)
Net Income							27.4	27.4
Cash dividends - preferred							(36.9)	(36.9)
Translation adjustments					(9.0)			(9.0)
Interest accrued on notes from parent			15.5					15.5
Cash dividends - common stock			(25.5)					(25.5)
Capital contribution from parent			12.2					12.2
Balance, June 30, 1997	\$ 614.4	\$ 2.0	\$ 382.1	\$ (443.6)	\$ (36.2)	\$ (109.2)	\$ (565.7)	\$ (156.2)

See Notes to Condensed Consolidated and Combined Financial Statements

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 COMBINED STATEMENTS OF OPERATIONS (UNAUDITED)

BORDEN, INC. AND AFFILIATES

(In millions)	Three Months Ended June 30,	
	1997	1996
Net sales	\$ 995.3	\$1,227.2
Cost of goods sold	655.3	823.2
Gross margin	340.0	404.0
Distribution expense	50.0	64.3
Marketing expense	171.5	226.9
General & administrative expense	67.6	76.0
Operating income	50.9	36.8
Interest expense	24.6	29.7
Other income	(0.5)	(4.9)
Income from continuing operations before income taxes	26.8	12.0
Income tax expense	11.4	4.6
Income from continuing operations	15.4	7.4
Discontinued operations: Income from operations, net of tax	4.9	3.8
Net income	20.3	11.2
Preferred stock dividends	(18.4)	(18.4)
Net income (loss) applicable to common stock	\$ 1.9	\$ (7.2)

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 See Notes to Consolidated and Combined Financial Statements

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 COMBINED STATEMENTS OF OPEATIONS (UNAUDITED)

BORDEN, INC AND AFFILIATES

(In millions)	Six Months Ended June 30,	
	1997	1996
Net sales	\$1,935.1	\$2,435.3
Cost of goods sold	1,289.1	1,639.6
	-----	-----
Gross margin	646.0	795.7
	-----	-----
Distribution expense	95.7	127.9
Marketing expense	346.6	468.3
General & administrative expense	143.8	142.2
Gain on divestiture		(82.9)
	-----	-----
Operating income	59.9	140.2
	-----	-----
Interest expense	48.4	57.2
Other income	(20.1)	(12.6)
	-----	-----
Income from continuing operations before income taxes	31.6	95.6
Income tax expense	14.3	46.1
	-----	-----
Income from continuing operations	17.3	49.5
	-----	-----
Discontinued operations:		
Income from operations	8.9	6.1
	-----	-----
Net income	26.2	55.6
Preferred stock dividends	(36.9)	(36.9)
	-----	-----
Net (loss) income applicable to common stock	\$ (10.7)	\$ 18.7
	=====	=====

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 See Notes to Consolidated and Combined Financial Statements

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 COMBINED BALANCE SHEETS (UNAUDITED)  
 BORDEN, INC. AND AFFILIATES

(In millions)

		June 30, ----- 1997	December 31, ----- 1996
-----			
ASSETS			
-----			
CURRENT ASSETS	Cash and equivalents	\$ 113.9	\$ 160.2
	Accounts receivable (less allowance For doubtful accounts of \$26.0 and \$23.0 respectively)	510.2	549.9
	Inventories:		
	Finished and in-process goods	286.2	286.5
	Raw materials and supplies	125.4	142.3
	Deferred income taxes	165.2	202.3
	Other current assets	75.5	82.4
	Net assets of discontinued operation	172.9	
		-----	-----
		1,449.3	1,423.6
		-----	-----
-----			
INVESTMENTS AND OTHER ASSETS	Investments in affiliated companies	108.5	106.8
	Deferred income taxes	251.1	267.9
	Other assets	86.3	106.9
		-----	-----
		445.9	481.6
		-----	-----
-----			
PROPERTY AND EQUIPMENT	Land	48.7	75.9
	Buildings	317.9	441.0
	Machinery and equipment	1,316.8	1,504.3
		-----	-----
		1,683.4	2,021.2
	Less accumulated depreciation	(879.4)	(1,116.1)
		-----	-----
		804.0	905.1
		-----	-----
-----			
INTANGIBLES	Intangibles resulting from business acquisitions	435.6	495.7
		-----	-----
-----			
TOTAL ASSETS		\$ 3,134.8 =====	\$ 3,306.0 =====

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 See Notes to Consolidated and Combined Financial Statements

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 COMBINED BALANCE SHEETS (UNAUDITED)

BORDEN, INC. AND AFFILIATES

(In millions)

		June 30, ----- 1997	December 31, ----- 1996
-----			
LIABILITIES AND SHAREHOLDERS' EQUITY			
-----			
CURRENT LIABILITIES	Debt payable within one year	\$ 121.3	\$ 421.8
	Accounts and drafts payable	342.4	412.5
	Income taxes	248.9	304.0
	Other current liabilities	621.3	646.1
		-----	-----
		1,333.9	1,784.4
		-----	-----
-----			
OTHER	Long-term debt	927.9	582.4
	Non-pension post-employment benefit obligations	273.4	308.2
	Other long-term liabilities	141.0	135.6
		-----	-----
	Commitments Contingencies	1,342.3	1,026.2
		-----	-----
-----			
SHAREHOLDERS' EQUITY	Preferred stock - Issued 24,574,751	614.4	614.4
	Common stock - \$0.01 par value		
	Authorized 300,000,000 shares		
	Issued 198,974,994	2.0	2.0
	Paid in capital	685.3	683.1
	Receivable from parent	(443.6)	(443.6)
	Affiliate's interest in subsidiary	87.6	87.9
	Accumulated translation adjustment	(149.2)	(121.2)
	Minimum pension liability and other	(109.2)	(109.2)
	Retained deficit	(228.7)	(218.0)
		-----	-----
		458.6	495.4
		-----	-----
-----			
TOTAL LIABILITIES AND SHAREHOLDERS' EQUITY		\$ 3,134.8	\$ 3,306.0
		=====	=====
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 See Notes to Consolidated and Combined Financial Statements



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 COMBINED STATEMENTS OF CASH FLOWS (UNAUDITED)

BORDEN, INC. AND AFFILIATES

		Six Months Ended June 30,	
(In millions)		1997	1996
-----		-----	-----
CASH FLOWS	Net income	\$ 26.2	\$ 55.6
(USED IN) FROM	Adjustments to reconcile net income to net		
OPERATING	cash from operating activities:		
ACTIVITIES	Depreciation and amortization	51.2	68.7
	(Gain) on divestiture		(82.9)
	Unrealized (gain) on interest rate swap	( 2.7)	(11.7)
	Restructuring	(1.7)	(6.5)
	Net change in assets and liabilities:		
	Trade receivables	(23.2)	(23.9)
	Inventories	(10.5)	(25.9)
	Trade payables	(4.1)	5.8
	Current and deferred taxes	(13.2)	27.6
	Other assets	19.2	12.6
	Other liabilities	(59.1)	(9.4)
	Discontinued operations, working capital, cash and non cash charges	(11.4)	21.7
		----- (29.3)	----- 31.7
-----			
CASH FLOWS	Capital expenditures	( 79.5)	(110.0)
(USED IN) FROM	Divestiture of businesses	53.9	135.9
INVESTING		-----	-----
ACTIVITIES		(25.6)	25.9
		-----	-----
-----			
CASH FLOWS	Increase (decrease) in short-term debt	30.8	(35.9)
FROM (USED IN)	Borrowings of long-term debt	361.7	5.7
FINANCING	Repayment of long-term debt	(347.0)	
ACTIVITIES	Increase in minority interest		9.3
	Interest received from parent	25.5	
	Common stock dividends paid	(25.5)	
	Preferred stock dividends paid	(36.9)	(36.9)
		-----	-----
		8.6	(57.8)
		-----	-----
-----			

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 COMBINED STATEMENTS OF CASH FLOWS (UNAUDITED) (continued)

BORDEN, INC.

(In millions)	Six Months Ended June 30,	
	1997	1996
Decrease in cash and equivalents	\$ (46.3)	(0.2)
Cash and equivalents at beginning of period	160.2	146.2
	-----	-----
Cash and equivalents at end of period	\$ 113.9	\$ 146.0
	=====	=====
-----		
SUPPLEMENTAL DISCLOSURES OF CASH FLOW INFORMATION	Cash paid:	
	Interest	\$ 35.1
	Income taxes	\$ 33.2
	Non-cash activity:	
	Capital contribution by parent	12.2
	Reclassification of note from long-term to short-term	296.7

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 See Notes to Consolidated and Combined Financial Statements

COMBINED STATEMENT OF SHAREHOLDERS' EQUITY (UNAUDITED)  
BORDEN, INC. AND AFFILIATES

(In millions)

	Preferred Stock	Common Stock	Paid-in Capital	Receivable From Parent	Affiliate's Interest in Subsidiary	Accumulated Translation Adjustment	Minimum Pension Liability And Other	Accumulated Deficit	Total
Balance, December 31, 1996	\$ 614.4	\$ 2.0	\$ 683.1	\$ (443.6)	\$ 87.9	\$ (121.2)	\$ (109.2)	\$ (218.0)	\$ 495.4
Net Income								26.2	26.2
Cash dividends - preferred								(36.9)	(36.9)
Translation adjustments						(28.0)			( 28.0)
Interest accrued on notes from parent			15.5						15.5
Cash dividends - common stock			(25.5)						(25.5)
Capital contribution from parent			12.2						12.2
Affiliate's interest in subsidiary					( 0.3)				(0.3)
Balance, June 30, 1997	\$ 614.4	\$ 2.0	\$ 685.3	\$ (443.6)	\$ 87.6	\$ (149.2)	\$ (109.2)	\$ (228.7)	\$ 458.6

See Notes to Condensed Consolidated and Combined Financial Statements

## NOTES TO CONDENSED CONSOLIDATED AND COMBINED FINANCIAL STATEMENTS

(Dollars in millions except per share amounts and as otherwise indicated)

## 1. Basis of Presentation

Borden, Inc. (the "Company") conducts operations in the following businesses: adhesives and resins ("Chemical"), fresh dairy products ("Dairy"), decorative products and wallcoverings ("Decorative Products") and consumer adhesives and business services ("Other"). Borden, Inc. and Affiliates (the "Combined Companies") includes the financial condition and results of operations of the Company with the financial condition and results of operations of the Company's former international and domestic food operations ("Foods") and former salty snacks business ("Wise"). As explained in Note 4, the Company has signed a definitive agreement to sell its Dairy business.

The Company's principal lines of business formerly included Foods and Wise. Subsidiaries of BWHLLC, an affiliate of the Company's parent, together with subsidiaries of Wise Holdings, Inc. ("Wise Holdings") and subsidiaries of Borden Foods Holdings Corporation ("Foods Holdings"), purchased Wise and Foods on July 2, 1996 and October 1, 1996, respectively. As a result of these sales, Wise and Foods, as of their respective sale dates, are no longer legally part of Borden, Inc. (the "Registrant") on a consolidated basis. However, management of the Registrant continues to exercise significant operating and financial control over Wise and Foods. In addition, Wise Holdings and Foods Holdings provide financial guarantees to obligations under the Company's credit facility and all of the Company's outstanding publicly held debt. Because of the aforementioned control and guarantees, the Company has included, supplementally in this filing, the Combined Companies financial condition and results of operations and cash flows. The Combined Companies present financial information on a basis consistent with that upon which credit was originally extended to the Company.

The accompanying unaudited interim consolidated and combined financial statements contain all adjustments, consisting only of normal adjustments, which in the opinion of management are necessary for a fair statement of the results for the interim periods. Results for the interim periods are not necessarily indicative of results for the full years.

## 2. Summary of Significant Accounting Policies

**ASSETS AND LIABILITIES HELD UNDER CONTRACTUAL ARRANGEMENTS** - Because management of the Company exercises significant control over Wise and Foods, the assets and liabilities of Wise and Foods, as of their respective sale dates, are classified as "sold under contractual arrangements" in the consolidated financial statements. In addition, any future losses incurred by Wise and Foods will be recorded in the consolidated financial statements to the extent of the Company's net investment in Wise and Foods. At June 30, 1997 the Company's net investment in Wise and Foods was \$6.8 and \$234.8, respectively. The Company recorded losses totaling \$1.4 for Wise and \$3.1 for Foods through June 30, 1997. The losses are recorded as a non-operating item in the consolidated results of operations.

The Combined Companies continue to report Wise and Foods at the Company's historical values since they remain a member of the controlled group and since in management's best estimate, future operating cash flows from Wise and Foods are expected to exceed the historical carrying value of the business.

**RECENTLY ISSUED ACCOUNTING STATEMENTS** - The Financial Accounting Standards Board has recently issued two new accounting standards, Statement 130, Reporting Comprehensive Income and Statement 131, Disclosures about Segments of an Enterprise and Related Information. These statements will affect the disclosure requirement

for the 1998 annual financial statements. The Company is currently evaluating the effect of these new statements.

RECLASSIFICATION - Certain prior year amounts have been reclassified to conform with the 1997 presentation.

### 3. ASSET WRITE-DOWNS AND BUSINESS REALIGNMENT

In December 1996, management approved the closure of certain domestic pasta plants in 1997 in order to reduce its product line complexity and manufacturing capacity. Accordingly, the Combined Company provided 27.8 million in 1996 to write down the facilities to their net realizable value. Management anticipates certain additional costs to be incurred in 1997 related to these plant closures; such charges totaled \$3.3 million for the six month period ended June 30, 1997. On July 11, 1997 operations at two of these plants were ceased.

In March 1997, Foods announced its intention to sell certain businesses from its current portfolio which are considered not to be aligned with its "grain-based meal solution" strategy. Among the businesses to be sold are milk powder, processed cheese, sweetened condensed milk and reconstituted lemon juice. The method of disposition, timing and estimated proceeds are currently being evaluated. Management expects the proceeds from such dispositions to exceed their current carrying cost.

### 4. DISCONTINUED OPERATIONS

On May 22, 1997, the Company announced a definitive agreement for the sale of its Dairy business to Mid-America Dairymen, Inc. for cash proceeds of \$435 million, subject to adjustments. The transaction is expected to close in the third quarter of 1997. The after tax gain on the transaction is expected to be in excess of \$120 million. Proceeds from the transaction will be used by the Company to pay down debt and invest in its businesses. The Dairy operations are a segment of the Company's business as defined in APB 30 and as such the results of the Dairy operations have been reclassified to discontinued operations. The gain on the sale will be recorded in discontinued operations once the transaction is completed. Net assets of \$172.9 related to the discontinued operation have been segregated in the June 30, 1997 balance sheets. This amount consists of the assets and liabilities of the business to be sold.

On October 1, 1996, the Company sold Foods to Foods Holdings and its subsidiaries for \$550.0 less assets transferred and liabilities assumed of \$22.9. Proceeds consisted of \$354.8 of receivables and accrued interest from the Company's parent recorded as a reduction of shareholders' equity, a note receivable from Foods Holdings for \$167.0, and cash of \$5.3. The purchase price of the business was determined based upon a valuation by an investment banking firm. Foods management is realigning its current portfolio of businesses. In connection with this process the valuation and the purchase price may be reevaluated. A loss on disposal of \$330.7 (\$263.5 pretax) has been recorded as a loss on discontinued operations in the consolidated financial statements in the third quarter of 1996.

Since Foods remains a member of the controlled group and because management's best estimate of future operating cash flows from Foods is expected to exceed the historical carrying value of the business, no loss was incurred in the Combined Companies' financial statements.

The results indicated below for Dairy and Foods have been reported separately as discontinued operations in the consolidated statements of operations. Dairy is included in the 1997 and 1996 results while Foods is included in the 1996 results only.

	1997	1996
-----		
Net Sales:		
Quarter Ended June 30	210.4	681.0
Year-to-date June 30	414.2	1,365.4
Income (loss) before income taxes		
Quarter ended June 30	8.5	
Year-to-date June 30	15.0	(9.4)
Income tax expense		
Quarter ended June 30	3.5	(0.8)
Year-to-date June 30	6.1	(7.8)
Income (loss) from discontinued operations		
Quarter ended June 30	4.9	0.8
Year-to-date June 30	8.9	(1.6)
-----		

The results indicated below for Dairy have been reported separately as discontinued operations in the combined statements of operations.

	1997	1996
-----		
Net sales:		
Quarter ended June 30	210.4	229.8
Year-to-date June 30	414.2	452.2
Income before taxes		
Quarter ended June 30	8.5	7.8
Year-to-date June 30	15.0	11.0
Income tax expense		
Quarter ended June 30	3.5	4.0
Year-to-date June 30	6.1	4.9
Income from discontinued operations		
Quarter ended June 30	4.9	3.8
Year-to-date June 30	8.9	6.1
-----		

#### 5. COMMITMENTS AND CONTINGENCIES

ENVIRONMENTAL MATTERS - The Company, like others in similar businesses, is subject to extensive Federal, state and local environmental laws and regulations. Although Company environmental policies and practices are designed to ensure compliance with these laws and regulations, future developments and increasingly stringent regulation could require the Company to make additional unforeseen environmental expenditures.

Environmental accruals are routinely reviewed on an interim basis as events and developments warrant and are subjected to a comprehensive review annually during the fiscal fourth quarter.

LEGAL MATTERS - The Company has recorded liabilities for environmental remediation costs in amounts which it believes are probable and reasonably estimable. Based on currently available information and analysis, the Company believes that it is reasonably possible that costs associated with such sites may exceed current reserves by amounts that may prove insignificant or by amounts, in the aggregate, up to \$30 million. In addition, the Company may be held responsible for certain environmental liabilities incurred at Borden Chemicals and Plastics Limited Partnership ("BCP") facilities which were previously owned by the Company. The Company is in litigation with the Internal Revenue Service on proposed adjustments to the utilization of certain capital losses in the Company's tax returns for the period 1989 to 1993. The Company is also in litigation in connection with the 1994 sale of its Brazilian pasta business to Quaker Oats Company. The lawsuit alleges that the Company made misrepresentations and omissions of significant information in connection with the sale. The Company believes, based upon the information it currently possesses, and taking into account its established reserves for estimated liability and its insurance coverage, that the ultimate outcome of the foregoing proceedings and actions is unlikely to have a material adverse effect on the Company's financial position or operating results.

OTHER COMMITMENTS - BCP Management, Inc., a wholly owned subsidiary of the Company, is general partner of BCP and has certain fiduciary responsibilities to BCP's unitholders. The Company believes that such responsibilities will not have a material adverse effect on its financial statements.

BCP has entered into an agreement to convert existing ownership interests in the partnership into shares of a newly formed corporation. Conversion to corporate form is subject to unitholder approval. If this conversion is approved, a subsidiary of the Company will no longer be the general partner of BCP. Recent tax legislation will permit BCP to continue to be taxed as a partnership and not as a corporation as would have been the case prior to the legislation's enactment. The board of directors of BCP's general partner will consider the effects of this legislation in their decision whether BCP should convert to corporate form or to remain a master limited partnership.

## PART I FINANCIAL INFORMATION

## Item 2: MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

Following is a comparison of sales and operating income by business unit:

(Dollars in millions)

SALES	THREE MONTHS ENDED JUNE 30 1997	1996	SIX MONTHS ENDED JUNE 30 1997	1996
Chemical	\$ 328.1	\$ 293.3	\$ 646.4	\$ 570.2
Decorative Products	101.6	93.1	197.3	190.7
Other	31.1	28.5	48.9	44.6
Subtotal	460.8	414.9	892.6	805.5
Business held for sale (1)	27.8	361.1	53.4	716.5
CONSOLIDATED NET SALES	488.6	776.0	946.0	1,522.0
Foods	435.0	451.2	853.6	913.3
Wise (2)	71.7	73.5	135.5	144.1
Combining Adjustments (3)		(73.5)		(144.1)
COMBINED NET SALES	\$ 995.3	\$1,227.2	\$1,935.1	\$2,435.3

OPERATING INCOME	THREE MONTHS ENDED JUNE 30 1997	1996	SIX MONTHS ENDED JUNE 30 1997	1996
Chemical	\$ 34.3	\$ 36.0	\$ 65.0	\$ 68.5
Decorative Products	11.4	8.6	18.5	17.9
Other	2.6	5.3	3.7	7.8
Corporate	(9.9)	(27.4)	(31.5)	43.6
Subtotal	38.4	22.5	55.7	137.8
Business held for sale (1)	0.5	7.4	2.1	8.4
CONSOLIDATED OPERATING INCOME	38.9	29.9	57.8	146.2
Foods	12.5	(9.8)	3.9	(22.7)
Wise(2)	(0.5)	(2.0)	(1.8)	(6.1)
Combining Adjustments(3)		18.7		22.8
COMBINED OPERATING INCOME	\$ 50.9	\$ 36.8	\$ 59.9	\$ 140.2

- (1) Includes Wise results prior to sale to affiliate on July 2, 1996.  
(2) Represents 100% of Wise results for the applicable period presented  
(3) Represents an adjustment to exclude the Wise results included with consolidated results.



CONSOLIDATED AND COMBINED QUARTER ENDED JUNE 30, 1997  
VERSUS QUARTER ENDED JUNE 30, 1996

Consolidated net sales from continuing operations for the three months ended June 30, 1997 decreased \$287.4 million to \$488.6 million. This 37.0% decrease was mainly the result of businesses divested in 1996, which are included in 1996 sales. Excluding the effect of these divested businesses, consolidated sales rose from \$414.9 million in 1996 to \$460.8 million in 1997, an 11.1% increase. Operating income for the three months ended June 30, 1997 was \$38.9 million, an increase of \$9.0 million from 1996 operating income of \$29.9 million. This change was primarily the result of a \$16.7 million loss on the sale of Wise in 1996. This loss was partially offset in 1996 by higher income from businesses held for sale, which were later divested in 1996.

Chemical sales increased \$34.8 million or 11.9% in the second quarter of 1997. The increase was due mainly to volume increases in Forest Products. Forest Products and Foundry & Industrial Products have both experienced increases in raw materials costs in 1997 which were only partly passed on to customers. The resulting margin declines, as well as infrastructure investments, have more than offset the profits on increased volume in 1997 and have contributed to a \$1.7 million decline in operating income.

Decorative Products sales increased \$8.5 million or 9.1% in the second quarter of 1997. The increase is largely due to increased wallcoverings sales in the US and into Eastern Europe offset partially by a reduction in sales in the UK. Sales for the flexible films and sheeting business improved in 1997 mainly because of increased volume in the pool liner and industrial film lines. Operating income increased \$2.8 million or 32.6% primarily due to reduced selling expenses and improving manufacturing efficiencies in the North America operation.

Corporate operating expenses for the second quarter improved from \$27.4 million in the second quarter of 1996 to \$9.9 million in 1997. This change was due to a \$16.7 million one-time charge for the loss on the sale of Wise to an affiliate of the Company in the second quarter of 1996.

Food sales decreased \$16.2 million or 3.6% from the second quarter of 1996. Sales for the pasta business decreased due to the rationalization of unprofitable sales volume. Cheese sales were also down as a result of lower spending on promotions when compared to 1996. Operating income improved from a loss of \$9.8 million in the second quarter of 1996 to income of \$12.5 million in the second quarter of 1997. The improvement was due mainly to favorable raw materials costs and reduction of unprofitable volume in the pasta business, trade spending reductions and improved margins in the Signature Flavors business, and favorable raw material costs in the International Foods business.

Wise sales decreased \$1.8 million or 2.4% from the second quarter of 1996. The lower sales resulted from the continued program to eliminate unprofitable promotional pricing on potato chips. Increased volume of Cheez Doodles helped to mitigate the potato chip decline. Operating results improved from a loss of \$2.0 million in the second quarter of 1996 to a loss of \$0.5 million in 1997. The earnings improvement was the result of decreased marketing expenditures and ongoing manufacturing cost savings.

CONSOLIDATED AND COMBINED SIX MONTHS ENDED JUNE 30, 1997  
VERSUS SIX MONTHS ENDED JUNE 30, 1996

Consolidated net sales from continuing operations for the six months ended June 30, 1997 decreased \$576.0 million or 37.8% to \$946.0 million from \$1,522.0 million in 1996 primarily as a result of businesses divested in 1996. Sales for the Company's ongoing operations rose \$87.1 million from \$892.6 million to \$805.5 million for the first six months of 1997. Consolidated operating income totaled \$57.8 million, down \$88.4 million from the 1996 total of \$146.2 million. The decrease in operating income is due mainly to the recognition of an \$82.9 million gain on the sale of a Spanish food company in the first quarter of 1996.

Chemical sales for the six months ended June 30, 1997 have increased 13.3%. The majority of the volume increase took place in Forest Products. Income from higher volume was more than offset by infrastructure investments and by lower margins due to higher materials costs and competitive pressures. These factors contributed to a year-to-date decrease of \$3.5 million of operating income.

Decorative Products year-to-date sales for 1997 increased 3.5% from 1996. The increase is largely due to increased wallcoverings sales into Eastern Europe offset partially by lower sales in the US and UK domestic markets. Sales for the flexible films and sheeting business improved in 1997 mainly because of increased volume in the pool liner and industrial film lines. Year-to-date operating income increased \$0.6 million in 1997 primarily due to reduced selling expenses in the North American operation.

Corporate operating expenses were \$31.5 million for the first six months of 1997, compared to income of \$43.6 million in the comparable period in 1996. This change is due mainly to the \$82.9 million gain on the sale of a Spanish food company in the first quarter of 1996, partially offset by the \$16.7 million loss on the sale of Wise to an affiliate of the Company in the second quarter of 1996.

Food sales decreased \$59.7 million or 6.5% from the first six months of 1996. Sales for the pasta business decreased due to the rationalization of unprofitable sales volume. Cheese sales were also down as a result of lower spending on promotions in 1997. Operating income improved \$26.6 million to \$3.9 million through the second quarter of 1997 from a loss of \$22.7 million through the second quarter of 1996. The improvement was due mainly to favorable raw materials costs and reduction of unprofitable volume in the pasta business, trade spending reductions and improved margins in the Signature Flavors business, and favorable raw material costs in the International Foods business.

Wise sales decreased \$8.6 million or 6.0% from the first half of 1996. The lower sales resulted from the continued program to eliminate unprofitable promotional pricing on potato chips. Increased volume of Cheez Doodles helped to mitigate the potato chip decline. Operating results improved \$4.3 million, from a loss of \$6.1 million in the first half of 1996 to a loss of \$1.8 million in 1997. The earnings improvement was the result of decreased marketing expenditures and ongoing manufacturing cost savings.

Following is a comparison of other non-operating expenses and income tax expense for the Company and the Combined Companies:

(Dollars in millions)

	THREE MONTHS ENDED JUNE 30			
	CONSOLIDATED		COMBINED	
	1997	1996	1997	1996
Other non-operating expense	\$ 13.7	\$ 26.7	\$ 24.1	\$ 24.8
Income tax expense	8.0	9.5	11.4	4.6

  

	SIX MONTHS ENDED JUNE 30			
	CONSOLIDATED		COMBINED	
	1997	1996	1997	1996
Other non-operating expense	\$ 23.7	\$ 47.0	\$ 28.3	\$ 44.6
Income tax expense	15.6	58.7	14.3	46.1

Consolidated other non-operating expense for the three months ended June 30, 1997 decreased to \$13.7 million from \$26.7 million for the comparable period in 1996. The \$13.0 million improvement was caused primarily by the recognition in 1997 of \$6.4 million of affiliated interest income from Foods related to the 1996 loan agreement between the Company and Foods. The remainder of the fluctuation was caused by an adjustment to the Company's continuing investment in the foods business.

Consolidated other non-operating expense was \$23.7 million for the six months ended June 30, 1997. The decrease of \$23.3 million from the 1996 total of \$47.0 million was due mainly to the recognition of affiliated interest from the Foods borrowings.

#### LIQUIDITY AND CAPITAL RESOURCES

##### OPERATING ACTIVITIES

Consolidated and combined operating activities used cash of \$14.8 million and \$29.3 million in 1997, respectively, compared to \$31.7 million generated in 1996. The use of cash is primarily as a result of the working capital changes in inventory and receivables.

##### INVESTING ACTIVITIES

The 1997 consolidated investing activities used cash of \$17.2 million compared to \$25.9 million generated in 1996. The 1997 cash flows consisted of the receipt of a \$40 million nonrefundable deposit for the pending sale of the dairy business and the collection of a receivable associated with the 1996 sale of a Spanish food company. Consolidated investing activities also used \$7.6 million in cash associated with an increase in loans to the Company's foods and salty snacks businesses that were divested in 1996. These inflows were partially offset by \$63.5 million in 1997 capital expenditures. The 1997 capital expenditures were \$46.5 million greater than 1996 capital expenditures as a result of the sale of businesses during 1996. In addition, proceeds from the sale of a Spanish food company amounted to \$139.9 million in 1996.

Combined investing activities used cash of \$25.6 million. The difference between Combined and Consolidated is the inclusion of Foods and Wise capital expenditures for 1997. Because the foods and salty snacks businesses are included in the 1997 combined financial statements, the investments in these businesses are eliminated.

The Company anticipates closing the sale of the dairy business in the third quarter of 1997. Upon closing the Company expects to receive \$395 million in cash, the balance of the transaction. The additional proceeds will be used to pay down bank debt and invested into continuing businesses.

## FINANCING ACTIVITIES

1997 financing activities generated \$4.5 million on a consolidated basis and \$8.6 million on a combined basis. Financing activity consisted of approximately \$45 million in short and long term bank borrowings used to fund working capital. In addition, the Company received \$25.5 million of interest on a note receivable from the Company's parent, funded by \$25.5 million in common stock dividends. The Company paid \$36.9 million in preferred dividends.

In July 1997 the Company amended and restated its \$1.2 billion credit facility. The facility was restructured into a \$950 million five year revolver (maturing July 1, 2002) and a \$50 million 364 day convertible revolver. Current pricing under the LIBOR based borrowing option was reduced from LIBOR plus 125 basis points to LIBOR plus 60 basis points. The commitment fee on the unused portion of the facility, previously 37.5 basis points, was reduced to 20 basis points for the five year revolver and 10 basis points for the 364 days revolver. Future pricing will vary based on a grid tied to the Combined Company's leverage at the end of each fiscal quarter. In addition, certain covenants were changed to provide the company with greater flexibility to complete divestitures and acquisitions.

## PART II

## Item 1: LEGAL PROCEEDINGS

The Company is involved in litigation throughout the United States which is considered to be in the ordinary course of the Company's business.

The Company believes, based upon the information it presently possesses, and taking into account its established reserves for estimated liability and its insurance coverage, that the ultimate outcome of the foregoing proceedings and actions is unlikely to have a material adverse effect on the Company's financial position or operating results.

## Item 6: EXHIBITS, FINANCIAL STATEMENT SCHEDULES, AND REPORT ON FORM 8-K

## a. Exhibits

- (10) (i) Stock Purchase and Merger Agreement dated as of May 22, 1997 among Mid-America Dairymen, Inc., BDH Two, Inc. and Borden, Inc.
- (ii) Credit agreement dated as of December 15, 1994 amended and restated as of July 14, 1997.
- (iii) 364-Day credit agreement dated as of July 14, 1997.
- (27) Financial Data Schedule

## b. Financial Statement Schedules

Included are the separate financial statements of Foods Holdings and Wise Holdings filed in accordance with rule 3-10 of Regulation S-X. Foods Holdings and Wise Holdings are guarantors of the Company's credit facility and all of the Company's outstanding publicly held debt.

## c. Report on Form 8-K.

On May 28, 1997, Borden, Inc. and Mid-America Dairymen, Inc. (Mid-Am) announced a definitive agreement for Mid-Am to acquire Borden/Meadow Gold Dairies, Inc.

## SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

BORDEN, INC.

Date: August 14, 1997

By/

-----  
 William H. Carter  
 Executive Vice President and  
 Chief Financial Officer  
 (Principal Financial Officer and  
 Principal Accounting Officer)

BORDEN FOODS HOLDINGS CORPORATION  
 STATEMENTS OF OPERATIONS (UNAUDITED)  
 FOR THE THREE MONTHS AND SIX MONTHS ENDED JUNE 30, 1997 AND 1996

(\$ IN 000'S, EXCEPT PER SHARE DATA)	THREE MONTHS ENDED JUNE 30,		SIX MONTHS ENDED JUNE 30,	
	1997	1996	1997	1996
NET TRADE SALES	\$435,040	\$451,200	\$853,624	\$913,238
COSTS AND EXPENSES				
Cost of goods sold	260,901	283,566	517,188	569,666
Selling, general and administrative	135,874	149,077	283,094	309,926
Distribution expense	24,234	26,451	46,584	53,067
OPERATING INCOME (LOSS)	14,031	(7,894)	6,758	(19,421)
Interest expense, net	5,460	3,960	9,453	7,505
Other expense (income), net	15	741	(670)	933
INCOME (LOSS) BEFORE INCOME TAXES	8,556	(12,595)	(2,025)	(27,859)
Income tax provision (benefit)	1,470	(5,674)	(2,130)	(11,848)
NET INCOME (LOSS)	\$7,086	(\$6,921)	\$105	(\$16,011)

PER SHARE INFORMATION:

Net income (loss) per common share	\$70,860	(\$69,210)	\$1,050	(\$160,110)
Average number of common shares outstanding during the period	100	100	100	100

See accompanying notes to the condensed financial statements

## BORDEN FOODS HOLDINGS CORPORATION

## BALANCE SHEETS (UNAUDITED)

AS OF JUNE 30, 1997 AND DECEMBER 31, 1996

ASSETS (\$ IN 000'S)	JUNE 30, 1997	DECEMBER 31, 1996
<b>CURRENT ASSETS</b>		
Cash and equivalents	\$15,467	\$33,234
Accounts receivable (net of allowance for doubtful accounts of \$5,974 and \$5,944)	137,508	153,654
Other receivables	17,409	17,332
Inventories:		
Finished and in-process goods	148,271	140,452
Raw materials and supplies	55,178	59,523
Deferred income taxes	19,897	17,559
Loans due from affiliates	4,925	9,349
Other amounts due from affiliates	4,315	24,972
Other current assets	29,000	32,435
	431,970	488,510
<b>OTHER NON CURRENT ASSETS</b>	9,484	10,329
<b>PROPERTY AND EQUIPMENT</b>		
Land	22,842	23,147
Buildings and improvements	81,510	82,568
Machinery and equipment	246,644	243,212
	350,996	348,927
Less: accumulated depreciation	(79,572)	(66,606)
	271,424	282,321
<b>INTANGIBLES</b>		
Goodwill	158,821	161,296
Trademarks and other intangibles	201,079	203,987
	359,900	365,283
	\$1,072,778	\$1,146,443

See accompanying notes to the condensed financial statements

## BORDEN FOODS HOLDINGS CORPORATION

## BALANCE SHEETS (UNAUDITED)

AS OF JUNE 30, 1997 AND DECEMBER 31, 1996

LIABILITIES & SHAREHOLDER'S EQUITY (\$ IN 000'S)	JUNE 30, 1997	DECEMBER 31, 1996
<b>CURRENT LIABILITIES</b>		
Debt payable within one year	\$19,501	\$15,707
Loans due to affiliates	67,019	56,396
Accounts and drafts payable	126,764	145,363
Other amounts due to affiliates	10,234	32,527
Accrued customer allowances	63,275	72,447
Other current liabilities	103,246	116,568
	390,039	439,008
<b>LONG-TERM LIABILITIES</b>		
Long-term debt payable to Borden	166,990	166,990
Other long-term debt	7,035	6,701
Deferred income taxes	40,937	41,527
Non-pension postemployment obligations	12,636	12,906
Other noncurrent liabilities	10,831	11,053
Minority interest	3,684	3,540
	242,113	242,717
<b>COMMITMENTS AND CONTINGENCIES</b>		
<b>SHAREHOLDER'S EQUITY</b>		
Common stock (\$.01 par; 100 shares authorized, issued and outstanding)	-	-
Shareholder's investment in affiliate	87,586	87,859
Paid-in capital	343,391	349,475
Accumulated translation account	7,216	25,056
Retained earnings from October 1, 1996	2,433	2,328
	440,626	464,718
	\$1,072,778	\$1,146,443

See accompanying notes to the condensed financial statements



BORDEN FOODS HOLDINGS CORPORATION  
 STATEMENTS OF CASH FLOWS (UNAUDITED)  
 FOR THE SIX MONTHS ENDED JUNE 30, 1997 AND 1996

(\$ IN 000'S)	SIX MONTHS ENDED JUNE 30,	
	1997	1996
<b>CASH FLOW FROM OPERATING ACTIVITIES:</b>		
Net loss	105	(16,011)
Adjustments to reconcile net income (loss) to net cash provided by (used for) operating activities:		
Depreciation and amortization	22,818	22,061
Change in assets and liabilities:		
Accounts receivable	16,146	15,663
Other receivables	(77)	(2,897)
Inventories	(3,474)	(29,118)
Deferred income taxes	(2,338)	
Other current assets	3,435	(2,515)
Accounts payable	(18,599)	1,429
Accrued customer allowances	(9,172)	5,074
Other current liabilities	(13,322)	5,317
Other net amounts due to / from affiliates	(12,684)	
Long-term assets and liabilities	(93)	5,094
Other, net	(9,931)	(41)
Net cash provided by (used for) operating activities	(27,186)	4,056
<b>CASH FLOWS FROM INVESTING ACTIVITIES:</b>		
Capital expenditures	(13,617)	(17,600)
Net cash used for investing activities	(13,617)	(17,600)
<b>CASH FLOWS FROM FINANCING ACTIVITIES:</b>		
Other changes in owner's investment		29,988
Increase (decrease) in long term debt	334	(7,107)
Increase in net loans due to / from affiliates	18,908	
Increase in debt payable within one year	3,794	(3,543)
Net cash provided by financing activities	23,036	19,338
Change in cash and equivalents	(17,767)	5,794
Cash and equivalents at beginning of year	33,234	49,538
Cash and equivalents at end of year	\$15,467	\$55,332
<b>SUPPLEMENTAL DISCLOSURES OF CASH FLOW INFORMATION:</b>		
<b>CASH RECEIVED (PAID) DURING THE YEAR FOR:</b>		
Interest, net	(25,663)	1,791
Income taxes, foreign	(5,471)	(5,387)

See accompanying notes to the condensed financial statements

BORDEN FOODS HOLDINGS CORPORATION  
 NOTES TO THE CONDENSED FINANCIAL STATEMENTS  
 (\$ IN 000'S)

1. BACKGROUND AND NATURE OF OPERATIONS

In September 1994, Borden, Inc. ("Borden") entered into a merger agreement providing for the acquisition of all of Borden's outstanding common stock by affiliates of Kohlberg Kravis Roberts & Co. ("KKR"). The acquisition was completed on March 14, 1995. Borden, a public registrant as a result of public debt that was outstanding prior to the acquisition, elected not to apply push down accounting in its consolidated financial statements and as such, Borden's financial statements (including Borden Foods through October 1, 1996) are reported on Borden's historical cost basis. As discussed in the basis of presentation, the accompanying financial statements have been prepared on a purchase accounting basis from the date of KKR's acquisition of Borden.

In 1996, Borden Foods Corporation ("BFC") was formed for the purposes of acquiring and operating certain of Borden's food businesses ("Borden Foods"). Borden Foods Holdings Corporation ("Holdings"), a wholly owned subsidiary of Borden Foods Holdings, LLC (the "LLC"), owns approximately 98% of BFC; the remaining interest in BFC is owned directly by the LLC. The LLC is controlled by KKR. BFC Investments L.P. (the "Investments LP"), which is owned 30% by the LLC and 70% by BFC, was formed for the purposes of acquiring, holding and sub-licensing certain trademarks associated with the operation of Borden Foods. In certain circumstances, allocation of income and gains may differ from the ownership percentages indicated.

Effective October 1, 1996, Borden, in a taxable transaction, sold Borden Foods and certain trademarks to BFC and the Investments L.P., respectively, for \$550,000 less assets transferred and liabilities assumed of \$22,909. In connection with this sale, BFC issued long-term notes to Borden of \$166,990 (see Note 4). The purchase price was based on an independent valuation of Borden Foods. There was no change in the book basis of Borden Foods' assets and liabilities as of October 1, 1996 because the sale was between related parties and Borden's principal stockholder will continue to control BFC. Borden will continue to exercise significant operating and financial control over BFC. Holdings has fully and unconditionally guaranteed obligations under Borden's Credit Facility and all of Borden's publicly held debt on a pari passu basis. In connection with this guarantee, Holdings charges Borden an annual fee of \$1,050.

BFC is a manufacturer and distributor of a variety of food products worldwide, including pasta, milk powder, processed cheese, sweetened condensed milk, concentrated lemon juice and bouillon. BFC's operations include 34 production facilities, 15 of which are located in the United States. The remaining facilities are located primarily in Europe and Latin America.

The accompanying unaudited condensed financial statements contain all adjustments, consisting only of normal adjustments, which in the opinion of management are necessary for the fair presentation of operating results for the interim period. Results for the interim period are subject to significant seasonal variations and are not necessarily indicative of results for the full year.

2. BASIS OF PRESENTATION

As a result of the financial guarantee and in accordance with Regulation S-X rule 3-10, Borden is required to include in its filings with the Securities and Exchange Commission separate condensed financial statements for Holdings as if it were a registrant. The accompanying condensed financial statements for the three months and six months ended June 30, 1997 and 1996 were prepared on a purchase accounting basis which allocated approximately \$750 million, plus cash retained, less debt assumed, of the December 1994 KKR purchase price to Holdings. The purchase price was allocated to tangible and intangible assets and liabilities of Borden Foods based on independent appraisals and management estimates.

Prior to October 1, 1996, Borden Foods was managed as a division of Borden. Under this structure, Borden incurred various costs related to Borden Foods which included corporate and administrative expenses (see Note 4). The allocation of these costs, as well as intercompany purchases and sales, cash infusions and withdrawals and other transactions, were reflected in an Owner's Investment account through September 30, 1996. In connection with the formation of Holdings and the October 1, 1996 sale, the net assets of Borden Foods have been recapitalized to reflect the resulting capital structure.

The condensed financial statements include the accounts of Holdings after elimination of material intercompany accounts and transactions. Minority interest reflects the consolidation of international operations in which BFC owns more than a 50% interest but less than a 100% interest. The portion of BFC and the Investment LP directly owned by the LLC is recorded in Shareholder's Investment in Affiliate as of October 1, 1996.

During 1996, the LLC sold equity interests to certain members of BFC's management for \$5,323, resulting in an ownership interest in the LLC of approximately 2%.

### 3. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

**USE OF ESTIMATES** - The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. The most significant estimates in the accompanying financial statements are the accruals for trade promotions, unfavorable litigation and general insurance. Actual results could differ from those estimates.

**INCOME TAXES** - Income taxes are accounted for using the liability method in accordance with SFAS No. 109 "Accounting for Income Taxes". Subsequent to October 1, 1996, Holdings is not included in the domestic consolidated tax return for Borden and deferred income taxes are recorded to recognize the future effects of temporary differences which arise between financial statement assets and liabilities and their bases for income tax reporting purposes. Prior to October 1, 1996, the domestic operations of Borden Foods were included in Borden's consolidated tax return and, accordingly, income tax assets and liabilities were included in an Owner's Investment account. Taxes related to foreign operations have been provided for in accordance with SFAS No. 109.

Income tax benefits for the interim periods have been recorded in accordance with APB No. 28, "Interim Financial Reporting," which prescribes that each interim period is an integral part of the annual period and that interim tax provisions be computed under the effective rate approach.

**RECENTLY ISSUED FINANCIAL ACCOUNTING STANDARDS** - In June 1997, the Financial Accounting Standards Board issued Statement of Financial Accounting Standards No. 130 (FAS No. 130), "Reporting Comprehensive Income," which requires adoption in periods beginning after December 15, 1997. The new statement establishes standards for reporting and display of comprehensive income and its components in a full set of general-purpose financial statements. Adoption of the new standard by Holdings is expected in 1998.

In addition, in June 1997, the Financial Accounting Standards Board issued Statement of Financial Accounting Standards No. 131 (FAS No. 131), "Disclosures about Segments of an Enterprise and Related Information," which requires adoption in periods beginning after December 15, 1997. The statement establishes standards for the way that business enterprises report information about operating segments in annual financial statements. It also establishes standards for related disclosures about products and services, geographical areas and major customers. Adoption of the new standard by Holdings is expected in 1998.

## 4. RELATED PARTIES

BFC is engaged in various transactions with Borden and its affiliates in the ordinary course of business. Subsequent to January 1, 1996, a subsidiary of Borden has provided certain administrative services to BFC at negotiated fees. These services include: processing of payroll and active and retiree group insurance claims, administration of workers compensation claims, and securing insurance coverage for catastrophic claims. BFC reimburses the Borden subsidiary for payments for general disbursements, and general and group insurance and postemployment benefit claims. The amount owed by BFC for reimbursement of payments and for services was \$5,700 and \$11,678 as of June 30, 1997 and December 31, 1996, respectively.

BFC is generally self-insured for general insurance claims and postemployment benefits other than pensions. The liabilities for these obligations are included in Holdings' financial statements. By agreement, Borden has retained the obligation for active group insurance claims incurred in 1996 and paid in 1997.

Employee pension benefits are provided under the Borden domestic pension plans to which BFC contributes. The U.S. employees participate in the Borden retirement savings plan. Borden also provides certain health and life insurance benefits for eligible employees. BFC has recognized expenses associated with these benefits, certain of which are determined and allocated by Borden's actuary. BFC has assumed an actuarially-determined portion of Borden's U.S. net pension liability, however this amount is considered to be an amount due to affiliate since Borden retains the legal obligation for these benefits.

Subsequent to January 1, 1996, BFC has managed its own receipts, disbursements and net cash position. Cash balances in international businesses which are not repatriated to the U.S. can be loaned to other Borden affiliates at a variable rate (currently LIBOR plus 0.75%) for generally a 30 day period. Net lendings or borrowings by international businesses subsequent to October 1, 1996 are included in amounts due from or to affiliates. Net loans due to international affiliates were \$17,094 and \$22,687 at June 30, 1997 and December 31, 1996, respectively.

During 1996, BFC entered into a loan agreement (the "Loan Agreement") to borrow funds from Borden under a revolving loan facility and term loans. The revolving loan facility, which terminates on December 31, 1997, provides for borrowings up to \$100 million. Effective February 3, 1997, the interest rate on the revolving loan facility was changed such that borrowings with three days notice and which are outstanding at least 30 days will bear interest at a spread over LIBOR; currently LIBOR plus 1.50%. Same day borrowings will bear interest at a spread over prime; currently prime plus 0.50%. A commitment fee of 0.375% is paid on the unused portion of the revolving loan facility. The outstanding balance under the revolving loan facility was \$45,000 and \$24,360 at June 30, 1997 and December 31, 1996, respectively. Commitment fees charged on the unused portion of the revolving facility were \$137 and \$330 for the three month and six month periods ended June 30, 1997, respectively.

The loan agreement contains certain restrictions on the activities of BFC, including restrictions on liens, the incurrence of indebtedness, mergers and consolidations, sales of assets, investments, payments of dividends, changes in nature of business, prepayments of certain indebtedness, transactions with affiliates, capital expenditures, changes in control of BFC and the use of proceeds from asset sales.

As an affiliated guarantor, Holdings' aggregate liability shall not exceed the greater of its outstanding affiliated borrowings or 95% of its adjusted net assets while Borden or any other obligated parties have obligations outstanding. Borden's outstanding credit facility and public borrowings amounted to approximately \$940 million at June 30, 1997.

In connection with the October 1, 1996 transaction, BFC issued \$166,990 in long-term notes to Borden at a fixed 12% interest rate due on November 30, 1999. Effective January 1, 1997, the interest rate on the long-term notes to Borden was changed to 10.25%.

Interest expense on the long-term notes was \$4,278 and \$8,556 for the three month and six month periods ended June 30, 1997, respectively. By agreement with Borden, interest charges and commitment fees under the Loan Agreement were calculated as if the borrowings under the Loan Agreement were outstanding as of January 1, 1996. Amounts payable for such charges were \$4,534 and \$20,849 as of June 30, 1997 and December 31, 1996, respectively.

BFC performs certain administrative services on behalf of other Borden affiliates. These services include sales administration, promotion, purchasing, and research and development. BFC charged these affiliates \$1,611 and \$2,188 for such services for the three month period ended June 30, 1997 and 1996, respectively, and \$3,492 and \$4,438 for the six month periods ended June 30, 1997 and 1996, respectively. \$1,584 and \$1,261 were receivable at June 30, 1997 and December 31, 1996, respectively. BFC also sells certain merchandise to Borden affiliates, for which \$2,731 and \$12,984 were receivable at June 30, 1997 and December 31, 1996, respectively.

Borden continues to provide executive, financial and strategic management to BFC for which it charges a quarterly fee of \$250.

#### 5. ASSET WRITE-DOWNS AND BUSINESS REALIGNMENT

In December 1996, management approved the closure of certain domestic pasta plants in 1997 in order to reduce its product line complexity and manufacturing capacity. Accordingly, \$27,817 was provided in 1996 to write down the facilities to their net realizable value. Management anticipates certain additional costs to be incurred in 1997 related to these plant closures; such charges totaled \$3,345 for the three month period ended June 30, 1997. On July 11, 1997 operations at two of these plants were ceased

In March 1997, BFC announced its intention to sell certain businesses from its current portfolio which are considered not to be aligned with its "great tasting, wholesome, grain-based meal solution" strategy. Among the businesses to be sold are milk powder, processed cheese, sweetened condensed milk and reconstituted lemon juice. The method of disposition, timing and estimated proceeds are currently being evaluated. Management expects the proceeds from such dispositions to exceed their current carrying cost.

#### 6. COMMITMENTS AND CONTINGENCIES

In July 1995, a Fresno, California jury returned a verdict against BFC for wrongful termination of a tomato packing agreement, for which \$14.5 million was previously provided. In granting the award for lost profits to Helm Tomatoes, Inc., the jury found that while the business had a legal right to terminate the agreement, it was estopped from doing this by an oral representation made by a former employee. BFC is contesting the verdict.

BFC is involved in certain other legal proceedings arising through the normal course of business. Other than that mentioned above, management is of the opinion that the final outcomes of such proceedings should not have a material impact on BFC's results of operations or financial position.

[WISE HOLDINGS, INC. AND SUBSIDIARIES LOGO]

CONDENSED CONSOLIDATED FINANCIAL STATEMENTS  
FOR SIX MONTHS ENDED JUNE 30, 1997 AND 1996

CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS (UNAUDITED)  
 WISE HOLDINGS, INC. AND SUBSIDIARIES

(Dollars in thousands)	Three Months Ended June 30,	
	1997	1996
Net sales	\$ 71,695	\$ 73,523
Cost of goods sold	39,720	43,339
Gross margin	31,975	30,184
Distribution expense	6,657	6,488
Marketing expense	20,364	21,997
General & administrative expense	5,135	3,786
Operating loss	(181)	(2,087)
Interest expense	238	338
Other expense	60	110
Loss before income taxes	(479)	(2,535)
Income tax benefit	(218)	(744)
Net loss	\$ (261)	\$ (1,791)
Per Share Data		
Net loss	\$ (2.61)	\$ (17.91)
Average number of common shares outstanding during the period	100	100

See Notes to Condensed Consolidated Financial Statements

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 CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS (UNAUDITED)  
 WISE HOLDINGS, INC. AND SUBSIDIARIES

	Six Months Ended June 30,	
(Dollars in thousands)	1997	1996
-----		
Net sales	\$ 135,451	\$ 144,070
Cost of goods sold	76,996	85,273
	-----	-----
Gross margin	58,455	58,797
Distribution expense	12,873	12,942
Marketing expense	37,849	44,485
General & administrative expense	9,231	7,786
	-----	-----
Operating loss	(1,498)	(6,416)
Interest expense	503	647
Other (income) expense	(95)	58
	-----	-----
Loss before income taxes	(1,906)	(7,121)
Income tax benefit	(760)	(1,791)
	-----	-----
Net loss	\$ (1,146)	\$ (5,330)
	=====	=====
Per Share Data		
-----		
Net loss	\$ (11.46)	\$ (53.30)
Average number of common shares outstanding during the period	100	100

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 See Notes to Condensed Consolidated Financial Statements



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 CONDENSED CONSOLIDATED BALANCE SHEETS (UNAUDITED)  
 WISE HOLDINGS, INC. AND SUBSIDIARIES

(Dollars in thousands, except per share amounts)

		June 30, 1997	December 31, 1996
ASSETS			
-----			
CURRENT ASSETS	Cash and cash equivalents	\$ 5,321	\$ 3,027
	Accounts receivable (less allowance for doubtful accounts of \$1,618 and \$1,345, respectively)	27,003	23,771
	Affiliated receivables	1,629	1,251
	Inventories:		
	Finished and in-process goods	4,345	3,744
	Raw materials and supplies	4,024	5,339
	Prepays and other current assets	4,568	4,807
		-----	-----
		46,890	41,939
		-----	-----
-----			
PROPERTY AND EQUIPMENT	Land	1,331	1,331
	Buildings and improvements	4,851	4,583
	Machinery and equipment	36,805	35,178
		-----	-----
		42,987	41,092
	Less: Accumulated depreciation	14,302	11,524
		-----	-----
		28,685	29,568
		-----	-----
-----			
INTANGIBLES AND OTHER ASSETS	Trademarks (net of accumulated amortization of \$1,175 and \$940 respectively)	17,630	17,865
	Other assets	1,103	1,307
		-----	-----
		18,733	19,172
		-----	-----
-----			
TOTAL ASSETS		\$94,308	\$90,679
		=====	=====
-----			

See Notes to Condensed Consolidated Financial Statements

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 CONDENSED CONSOLIDATED BALANCE SHEETS (UNAUDITED)  
 WISE HOLDINGS, INC. AND SUBSIDIARIES

(Dollars in thousands, except per share amounts)

LIABILITIES AND SHAREHOLDER'S EQUITY		June 30, 1997	December 31, 1996
-----		-----	-----
CURRENT	Accounts and drafts payable	\$ 15,604	\$ 15,924
LIABILITIES	Affiliated payables	2,167	2,163
	Accrued liabilities	18,712	14,415
		-----	-----
		36,483	32,502
		-----	-----
-----			
OTHER	Affiliated long-term debt	10,145	10,145
	Post-employment benefits other than pensions	10,269	9,928
	Other long-term liabilities	1,906	1,472
	Minority interest	702	683
		-----	-----
		23,022	22,228
		-----	-----
	Commitments and Contingencies		
-----			
SHAREHOLDER'S	Common stock - (\$0.01 par value		
EQUITY	100 shares authorized, issued		
	and outstanding)		
	Paid in capital	34,200	34,200
	Retained earnings (from July 2, 1996)	603	1,749
		-----	-----
		34,803	35,949
		-----	-----
-----			
TOTAL LIABILITIES AND SHAREHOLDER'S EQUITY		\$94,308	\$90,679
		=====	=====
-----			

See Notes to Condensed Consolidated Financial Statements

CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS (UNAUDITED)  
WISE HOLDINGS, INC. AND SUBSIDIARIES

		Six Months Ended June 30,	
(Dollars in thousands)		1997	1996
CASH FLOWS FROM (USED IN) OPERATING ACTIVITIES	Net loss	\$ (1,146)	\$(5,330)
	Adjustments to reconcile net loss to net cash from (used in) operating activities:		
	Minority interests' share in income	(21)	
	Depreciation	3,120	2,858
	Amortization	235	235
	Other non-cash	206	201
	Net change in assets and liabilities:		
	Accounts receivables	(3,505)	(4,003)
	Affiliated receivables	(378)	
	Inventories	714	1,689
	Prepays and other current assets	239	(1,077)
	Other assets	204	34
	Accounts and drafts payable	(320)	2,799
	Affiliated payables	4	
	Accrued liabilities	4,297	1,388
	Post-employment benefits other than pensions	341	(171)
	Other long-term liabilities	434	926
		----- 4,424	----- (451)
CASH FLOWS USED IN INVESTING ACTIVITIES	Capital expenditures	(2,424)	(1,458)
	Proceeds from sales of equipment	254	219
		----- (2,170)	----- (1,239)
CASH FLOWS FROM FINANCING ACTIVITIES	Other increase in owner's investment		1,813
	Minority interests' equity contribution	40	
	Borrowings under affiliated revolving loan agreement	11,700	
	Repayments under affiliated revolving loan agreement	(11,700)	
		----- 40	----- 1,813
	Increase in cash and equivalents	2,294	123
	Cash and equivalents at beginning of period	3,027	601
	Cash and equivalents at end of period	\$ 5,321 =====	\$ 724 =====
SUPPLEMENTAL DISCLOSURES OF CASH FLOW INFORMATION	Cash paid:		
	Interest	\$ 630	\$ 44
	Taxes	-	-

See Notes to Condensed Consolidated Financial Statements

WISE HOLDINGS, INC. SUBSIDIARIES  
 NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS  
 (Dollars in thousands, except for per share information)

1. BACKGROUND AND NATURE OF OPERATIONS:

Wise Holdings, Inc. ("Wise") is a leading producer and distributor of salty snacks in the eastern United States. Wise's product line includes potato chips, cheese flavored baked and fried corn snacks, pretzels, tortilla chips, corn chips, onion rings, pork rinds and other assorted snacks. Wise markets its products under the brand names of WISE(R), CHEEZ DOODLES(R), QUINLAN(R), NEW YORK DELI(R), KRUNCHERS!(R), BRAVOS(R), MOORE'S(R) AND WISE CHOICE(TM) and conducts its business through three principal divisions: Wise, Moore's and Caribbean Snacks. The Wise and Moore's divisions manufacture and distribute primarily in the eastern United States. Caribbean Snacks, located in Puerto Rico, serves as a distribution center throughout Puerto Rico and the Caribbean. Wise's products are distributed through both independent and company-owned distribution networks.

In September 1994, Borden, Inc. ("Borden") entered into a merger agreement, culminating in December 1994, that provided for the acquisition of all of Borden's outstanding common stock by affiliates of Kohlberg Kravis Roberts & Co. ("KKR"). Borden, a public registrant as a result of public debt that was outstanding prior to the acquisition, elected not to apply push down accounting in its consolidated financial statements and as such, Borden's financial statements (including Wise) are reported on Borden's historical cost basis. As discussed in the "Basis of Presentation," Wise's financial statements have been prepared on a purchase accounting basis from the date of KKR's acquisition of Borden. The effective date of the merger agreement was January 1, 1995 for accounting and financial statement presentation purposes.

Effective July 2, 1996, in a taxable transaction (the "Incorporation"), Borden sold its salty snacks business ("Wise operations") to BWHLLC, a KKR affiliate, for \$45 million. The purchase price was based on an independent valuation of the business. There was no change in the financial reporting basis of the assets and liabilities as of July 2, 1996 from that described below under "Basis of Presentation" because Borden's principal stockholder continues to exercise significant financial control over Wise. Wise will fully and unconditionally guarantee obligations under Borden's credit facility and all of Borden's publicly held debt on a pari passu basis. In connection with this guarantee, Wise will receive an annual fee of \$210.

The accompanying unaudited interim consolidated financial statements contain all adjustments, consisting only of normal adjustments, which in the opinion of management are necessary for a fair statement of the results for the interim periods. Results for the interim periods are not necessarily indicative of results for the full years.

2. BASIS OF PRESENTATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Basis of Presentation

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As a result of the financial guarantee and in accordance with Regulation S-X rule 3-10, Borden is required to include in its filings with the Securities and Exchange Commission separate financial statements for Wise as if it were a registrant. The financial statements subsequent to the purchase by KKR have been prepared on a purchase accounting basis which allocates approximately \$51 million of the original KKR purchase price of Borden to the salty snacks business. The purchase price has been allocated to tangible and intangible assets and liabilities of Wise based on the fair values at the date of acquisition.

The condensed consolidated financial statements of Wise include the financial position of Wise Holdings, Inc. and subsidiaries as of June 30, 1997 and December 31, 1996. These financial statements also include the statements of operations of Wise for the three- and six-month periods ended June 30, 1997, and the salty snacks business of Borden, Inc. for the three- and six-month periods ended June 30, 1996. In addition, these financial statements include the statements of cash flow of Wise for the six month period ended June 30, 1997 and the salty snacks business of Borden, Inc. for the six month period ended June 30, 1996.

Prior to the July 2, 1996 sale, Wise operated as a profit center of Borden. Under this structure, Borden incurred various costs in connection with the operation of Wise's business which included corporate controlled expenses, such as accounting, legal, tax, credit and informational services departments and executive management, which have been included in the consolidated financial statements of Wise. Costs for these services have been allocated to Wise based on usage of resources such as personnel and data processing equipment. Management believes these amounts in the accompanying financial statements have been allocated in a reasonable and consistent manner in order to depict balance sheets, statements of operations and cash flows of Wise on a stand-alone basis.

Reclassification

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Certain prior year amounts have been reclassified to conform with the 1997 presentation.

## Income Taxes

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Wise accounts for income taxes pursuant to Statement of Financial Accounting Standard (FAS) No. 109, Accounting for Income Taxes, which uses the liability method to calculate deferred income taxes. Subsequent to July 2, 1996, deferred income taxes are recorded to recognize the future effects of temporary differences which arise between financial statement assets and liabilities and their basis for income tax reporting purposes. Prior to July 2, 1996, Wise was included in Borden's consolidated tax return, and accordingly, income tax liabilities and assets determined on a separate return basis were included in Owner's Investment.

## Per Share Information

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Net loss per common share at June 30, 1997 is computed by dividing net loss by the weighted average number of common shares outstanding during the period ended June 30, 1997. Net loss per common share at June 30, 1996 is computed assuming that the shares were outstanding from July 2, 1996 to December 31, 1996.

## Use of Estimates

- - - - -

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting periods. The most significant estimates in Wise's financial statements are related to allowance for doubtful accounts, accruals for trade promotions, general and group insurance, income taxes, post-retirement benefits, asset lives and corporate allocations. Actual results could differ from those estimates.

## Recently Issued Accounting Statements

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The Financial Accounting Standards Board has recently issued two new accounting standards, Statement No. 130, Reporting Comprehensive Income and Statement No. 131, Disclosures about Segments of an Enterprise and Related Information. These statements may affect disclosure requirements for the 1998 annual financial statements. Wise is currently evaluating the effects of these new statements.

## 3. AFFILIATED LONG-TERM DEBT

In conjunction with the Incorporation, Wise entered into a long-term loan agreement (the "Loan Agreement") to borrow funds from Borden. The Loan Agreement provides for a revolving loan facility of up to \$10 million maturing in December 1997, at a variable interest rate equal to Borden's cost of similar borrowings at 1/2% above a given bank's "base rate", and a \$10.145 million term loan maturing in 1999 with a fixed interest rate of 11% and 12% in 1997 and 1996, respectively. Effective February 3, 1997, an additional interest rate option was added to the credit facility. Under this new option, borrowings with three days notice and which are outstanding at least 30 days will bear interest at Borden's cost of funds for similar borrowings plus .25%; currently Libor plus 1.50%. A commitment fee of .375% is paid on the unused portion of the revolving loan. Wise did not have any borrowings under the revolving agreement at June 30, 1997 or December 31, 1996. By agreement with Borden, interest charges and commitment fees under the term loan were calculated as if the borrowings were outstanding from January 1, 1996.

The Loan Agreement contains certain restrictions on the activities of Wise and its subsidiaries, including restrictions on liens, the incurrence of indebtedness, mergers and consolidations, sales of assets, investments, payment of dividends, changes in nature of business, prepayments of certain indebtedness, transactions with affiliates, capital expenditures, changes in control of the Company and the use of proceeds from asset sales.

As an affiliate guarantor, Wise has guaranteed Borden's credit facility and all of Borden's outstanding publicly held debt on a pari passu basis. Wise's aggregate liability under this guarantee shall not exceed the greater of its outstanding affiliated borrowings, or 95% of its adjusted net assets while Borden or any other obligated parties have obligations outstanding.

## 4. COMMITMENTS AND CONTINGENCIES

## Environmental Contingencies

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Wise, like others in similar businesses, is subject to extensive Federal, state and local environmental laws and regulations. Although Wise's environmental policies and practices are designed to ensure compliance with these laws and regulations, future developments and increasingly stringent regulation could require Wise to make additional unforeseen environmental expenditures.

Environmental accruals are routinely reviewed on an interim basis as events and developments warrant and are subject to an annual comprehensive review.

#### Litigation

- - - - -

Wise is subject to various investigations, claims and legal proceedings covering a wide range of matters in the ordinary course of its business activities. Each of these matters are subject to various uncertainties and some of these matters may be resolved unfavorably to Wise. Wise has established accruals for matters that are probable and reasonably estimable. Management believes that any liability that may ultimately result from the resolution of these matters in excess of amounts provided will not have a material adverse effect on the financial statements of Wise.

#### 5. RELATED PARTIES

In addition to affiliated debt and lease agreements, Wise is engaged in various transactions with Borden and its affiliated companies in the ordinary course of business. A subsidiary of Borden provides certain administrative services to Wise at negotiated fees. These services include: processing of payroll and active and retiree group insurance claims, administration of workers' compensation claims and securing insurance coverage for catastrophic claims. Wise reimburses the Borden subsidiary for payments for general disbursements, and general and group insurance and retirement benefit claims. The amount owed by Wise for these services is included in affiliated payables and was \$1,100 and \$703 at June 30, 1997 and December 31, 1996, respectively.

The following table summarizes the charges to Wise for these costs in the six months ended June 30, 1997 and 1996:

	SIX MONTHS ENDED JUNE 30,	
	1997	1996
Employee benefits	\$ 1,033	\$ 785
Group and general insurance	2,783	3,084
Information services	100	-
Corporate staff departments and overhead	756	804
	-----	-----
	\$ 4,672	\$ 4,673
	=====	=====

Wise is generally self-insured for post-employment benefits other than pensions. In addition, Wise has insurance policies to cover potential losses and liabilities relating to general insurance. Many of these policies have deductibles of \$100 and in some cases higher amounts. Losses are accrued for the estimated aggregate liability for claims incurred using certain actuarial assumptions followed in the insurance industry and Wise's experience. By agreement, Borden has retained the obligation for active group insurance claims incurred in 1996 and paid in 1997.

Wise also invests excess cash with Borden in one-day investments which totaled \$4,300 and \$1,800 at June 30, 1997 and December 31, 1996, respectively.

#### 6. SUBSEQUENT EVENT

On July 31 1997, for a purchase price of \$1.9 million Wise acquired certain assets (accounted for under the purchase method) of Quality Foods of North Carolina, an independent distributor of Wise products and other snack food products throughout North and South Carolina. As of the purchase date, Wise intends to continue to use the acquired assets for the purpose of distribution of snack foods.

## STOCK PURCHASE AND MERGER AGREEMENT

DATED AS OF MAY 22, 1997

AMONG

MID-AMERICA DAIRYMEN, INC.,  
BORDEN/MEADOW GOLD DAIRIES HOLDINGS, INC.,  
BDH TWO, INC.  
AND  
BORDEN, INC.

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## STOCK PURCHASE AND MERGER AGREEMENT

STOCK PURCHASE AND MERGER AGREEMENT dated as of May 22, 1997 among MID-AMERICA DAIRYMEN, INC., a Kansas cooperative marketing association ("Parent"), BORDEN/MEADOW GOLD DAIRIES HOLDINGS, INC., a Delaware corporation ("Holdings"), BDH TWO, INC., a Delaware corporation ("BDH"), and BORDEN, INC., a New Jersey corporation ("Borden, Inc."; together with BDH, "Borden").

## W I T N E S S E T H :

WHEREAS, Borden owns 14,754,429 shares of Holdings' Common Stock, par value \$0.01 per share (the "Common Stock"), and 3,400,000 shares of Holdings' Preferred Stock, par value \$0.01 per share (the "Preferred Stock"), and Parent desires to purchase (the "Stock Purchase") from Borden such shares (the "Borden Shares") pursuant to this Agreement;

WHEREAS, immediately after the Stock Purchase, Parent intends to effect the merger of a newly formed wholly owned subsidiary of Parent (referred to herein as "Acquisition") with and into Holdings in accordance with the General Corporation Law of the State of Delaware (the "GCL") and the provisions of this Agreement (the "Merger"), pursuant to which the other holders of shares of Common Stock shall receive the merger consideration set forth herein and Holdings will become a wholly owned subsidiary of Parent;

NOW, THEREFORE, in consideration of the mutual terms, conditions and other agreements set forth herein and intending to be legally bound hereby, the parties hereto hereby agree as follows:

## ARTICLE I

## THE STOCK PURCHASE AND MERGER

1.1 Stock Purchase. (a) In consideration of Borden, Inc. entering into this Agreement, on the date hereof, Parent shall pay to Borden, Inc. by wire transfer in immediately available funds \$40,000,000. Except as provided in Section 9.11(b), such amount shall be non-refundable regardless of whether or not any of the transactions contemplated by this Agreement is consummated but, upon the consummation of the Stock Purchase, shall be credited towards the amounts payable to Borden, Inc. pursuant to Section 1.1(b).

(b) Upon the terms and subject to the conditions of this Agreement, at the Closing (as defined below) and prior to the Effective Time (as defined below), Borden shall sell to Parent, and Parent shall purchase from Borden, the Borden Shares. In consideration for the sale and transfer of the Borden Shares and, in part, for the right to license certain trademarks from Borden pursuant to the Trademark License Agreement (as defined herein), and upon the terms and subject to the conditions of this Agreement, on the Closing Date, Parent shall pay or cause to be paid to Borden by wire transfer in immediately available funds (in full satisfaction of Parent's obligations to Borden, Inc. and BDH Two, Inc. under this Section 1.1) (subject to the credit described in Sections 1.1(a) and 4.3(f)), (x) for each share of Preferred Stock (a "Preferred Share"), an amount equal to \$25, plus the amount of accrued and unpaid dividends on such share to and including the Closing Date, and (y) for each share of Common

Stock (a "Common Share") owned by Borden, an amount equal to the Common Share Consideration (as defined below). On the Closing Date, upon the terms and subject to the conditions of this Agreement, Borden shall deliver to Parent certificates representing the Borden Shares, duly endorsed, or accompanied by stock powers duly executed, with all necessary stock transfer stamps attached thereto and cancelled. The "Common Share Consideration" shall be determined in accordance with the following formula:

$$\text{CSC} = \frac{\$435,000,000 - (\$25 \times \text{PS}) - [(\text{CSC} \times \text{OPT}) - (\$5 \times \text{OPT})]}{\text{CS}}$$

where

CS	=	Number of Common Shares outstanding on the Closing Date
CSC	=	Common Share Consideration
OPT	=	Number of Options outstanding on the Closing Date
PS	=	Number of Preferred Shares outstanding on the Closing Date

1.2 The Merger. At the Effective Time, and subject to the terms and conditions of this Agreement and the GCL, Parent shall cause the Merger of Acquisition with and into Holdings to occur, the separate corporate existence of Acquisition shall thereupon cease, and Holdings shall be the surviving corporation in the Merger. Holdings hereinafter sometimes is referred to as the "Surviving Entity". Notwithstanding anything to the contrary in this Agreement, but subject to Section 8.1(a) and the receipt of Borden, Inc.'s prior written consent, which consent shall not be unreasonably withheld, the Merger may be structured so that Acquisition is the Surviving Entity, and Borden, Inc. and BDH

agree to enter into such amendment to this Agreement as shall be required to effect such change to the structure of the Merger; provided that Borden, Inc. may withhold its consent to any such change to the structure of the Merger if such change would have an adverse tax or other consequence to Borden, Inc. or any of its affiliates.

1.3 Surviving Entity. At the Effective Time, the Surviving Entity shall continue its corporate existence under the laws of the State of Delaware. The Merger shall have the effects set forth in the GCL. Without limiting the generality of the foregoing, and subject thereto, at the Effective Time, all the properties, rights, privileges, powers and franchises of a public as well as of a private nature of Holdings and Acquisition shall vest in the Surviving Entity, and all debts, liabilities and duties of Holdings and Acquisition shall become the debts, liabilities and duties of the Surviving Entity. The name of the Surviving Entity shall be such name as shall be set forth in the Certificate of Merger (as defined below) by Parent, with the prior written consent of Borden, Inc., which consent shall not be unreasonably withheld if such name does not include the word "Borden" or any name similar thereto or derivative thereof.

1.4 Closing. Unless this Agreement shall have been terminated and the transactions herein contemplated shall have been abandoned pursuant to Section 9.1, and subject to the satisfaction or waiver of the conditions set forth in Article V, the closing of the Stock Purchase and the Merger (the "Closing") will take place at 10:00 a.m. on the 28th day (or, if such day is



not a business day, the immediately succeeding business day) following the date on which the last to be satisfied or waived of the conditions set forth in Article V hereof shall be satisfied or waived in accordance with this Agreement (the "Closing Date"), at the offices of Simpson Thacher & Bartlett, New York, New York, unless another date, time or place is agreed to in writing by the parties hereto.

1.5 Effective Time. On the Closing Date, immediately after the consummation of the Stock Purchase, Parent shall file, or shall cause the filing of, a certificate of merger (the "Certificate of Merger") with the Secretary of State of the State of Delaware, and shall make or cause to be made all other filings or recordings required by the GCL in connection with the Merger. The Merger shall become effective at such time as the Certificate of Merger is duly filed with the Secretary of State of the State of Delaware, or at such later time as shall be specified in the Certificate of Merger with the prior written consent of Borden, Inc. (the "Effective Time").

1.6 Certificate of Incorporation and By-Laws. (a) The Certificate of Incorporation of Acquisition in effect at the Effective Time shall be attached to the Certificate of Merger as an amendment to the Certificate of Incorporation of Holdings, with the effect that such Certificate of Incorporation shall become the Certificate of Incorporation of the Surviving Entity, until thereafter amended as provided therein and under the GCL.

(b) The By-laws of Acquisition in effect at the Effective Time shall be the By-laws of the Surviving Entity until thereafter amended in accordance with applicable law.

1.7 Directors. The directors of Acquisition at the Effective Time shall be the initial directors of the Surviving Entity, each to hold office in accordance with the Certificate of Incorporation and By-laws of the Surviving Entity and until his or her successor is duly elected and qualified.

1.8 Officers. The officers of Acquisition at the Effective Time shall be the initial officers of the Surviving Entity, each to hold office in accordance with the Certificate of Incorporation and By-laws of the Surviving Entity and until his or her successor is duly appointed and qualified.

## ARTICLE II

### STATUS AND CONVERSION OF SECURITIES

2.1 Conversion of Securities. At the Effective Time, by virtue of the Merger and without any action on the part of Acquisition, Holdings or the holders of any of the following securities:

(a) Each Common Share issued and outstanding immediately prior to the Effective Time (other than Common Shares to be cancelled pursuant to Section 2.1(b) hereof and Dissenting Shares (as hereinafter defined)) shall be converted into the right to receive in cash an amount equal to the Common Share Consideration (the "Merger Consideration"), without any interest thereon, upon the surrender of the certificate representing such Common Share.

(b) Each Share (as defined below) which is held in the treasury of Holdings or its Subsidiaries (as defined below) or which is held by Parent or any of its subsidiaries (including the Borden Shares purchased by Parent pursuant to Section 1.1(b)) shall be cancelled and retired and no payment shall be made with respect thereto. Preferred Shares and Common Shares are herein together referred to as the "Shares".

(c) Each share of common stock of Acquisition issued and outstanding immediately prior to the Effective Time shall be converted into one share of common stock, par value \$0.01 per share, of the Surviving Entity.

(d) Notwithstanding anything in this Agreement to the contrary, Shares outstanding immediately prior to the Effective Time and held by a holder who has not voted in favor of the Merger and who has demanded appraisal for such Shares in accordance with the GCL, if the GCL provides for appraisal rights for such Shares in the Merger ("Dissenting Shares"), shall not be converted into a right to receive the Merger Consideration unless such holder fails to perfect or withdraws or otherwise loses such holder's right to appraisal. If, after the Effective Time, such holder fails to perfect or withdraws or loses such holder's right to appraisal, such Dissenting Shares shall be treated as if they had been converted as of the Effective Time into the right to receive the Merger Consideration without interest thereon.

2.2 Stock Options and Related Matters. On the Closing Date, immediately prior to the Effective Time, Holdings shall notify Parent of the amount of, and Parent shall pay to Holdings,

the Option Settlement Amount (as defined below) and immediately thereafter each holder of a then outstanding option (an "Option") to purchase Common Shares granted under the 1996 Stock Purchase and Option Plan of Holdings (the "Option Plan") will be entitled (whether such Option is immediately exercisable or not) to receive in settlement thereof a cash payment from Holdings in an amount equal to the excess of the Common Share Consideration (as determined pursuant to Section 1.1(b)) over the exercise price of \$5.00 per Share for each such Option, multiplied by the number of Common Shares covered by such Option (the "Option Settlement Amount"), net of any applicable withholding Taxes (as defined below). Holdings, acting through its Board of Directors or a duly authorized committee thereof, shall take all required action under each Option and the Option Plan so that, at the Effective Time, any Options with respect to which the holder thereof has not consented to cancellation in exchange for the receipt of the Option Settlement Amount will be converted into, and thereafter represent only the right to receive, the Option Settlement Amount. All such Options shall be cancelled upon the payment of such cash in settlement thereof. Immediately following the Effective Time, the Option Plan will be terminated and no further stock awards, stock options or stock appreciation rights will be granted thereunder subsequent to the Effective Time.

2.3 Exchange of Certificates. (a) Promptly upon the surrender of any certificate representing Common Shares entitled to payment pursuant to Section 2.1, Parent shall pay the holder of such certificate the Merger Consideration multiplied by the

number of Common Shares formerly represented by such certificate, in exchange therefor, and such Share certificate shall forthwith be cancelled. Until so surrendered and exchanged, each such certificate (other than certificates representing Dissenting Shares or shares held by Parent, Acquisition or Holdings, or any direct or indirect subsidiary thereof) shall represent solely the right to receive the Merger Consideration. If the Merger Consideration (or any portion thereof) is to be paid to a person other than the holder in whose name the certificate representing Common Shares surrendered in exchange therefor is registered, it shall be a condition of such exchange that the certificate so surrendered shall be properly endorsed or otherwise in proper form for transfer and that the person requesting such exchange shall pay to Parent any transfer or other Taxes required by reason of the payment of the Merger Consideration to a person other than the registered holder of the Common Shares formerly represented by the certificate surrendered, or shall establish to the satisfaction of Parent that such Tax has been paid or is not applicable. Notwithstanding the foregoing, neither Parent nor any party hereto shall be liable to a holder of Shares for any Merger Consideration delivered pursuant hereto to a public official pursuant to applicable abandoned property laws.

(b) Promptly following the date which is six months after the Effective Time, Parent shall return to the Surviving Entity all cash, certificates and other instruments in its possession relating to the transactions described in this Agreement, and Parent's duties under this Section 2.3 shall

terminate. Thereafter, each holder of a certificate formerly representing a Common Share may surrender such certificate to the Surviving Entity and (subject to applicable abandoned property, escheat and similar laws) receive in exchange therefor the Merger Consideration, without any interest thereon, but shall have no greater rights against the Surviving Entity than may be accorded to general creditors of the Surviving Entity under Delaware law.

(c) The right of any holder of a certificate representing Common Shares to receive the Merger Consideration shall be subject to and reduced by the amount of any required Tax withholding obligation.

(d) Promptly after the Effective Time, Parent shall mail or deliver to each record holder of certificates which immediately prior to the Effective Time represented Common Shares a form of letter of transmittal and instructions for use in surrendering such certificates and receiving the Merger Consideration in exchange therefor.

(e) After the Effective Time, there shall be no transfers on the stock transfer books of the Surviving Entity of any Common Shares. If, after the Effective Time, certificates previously representing Common Shares are presented to the Surviving Entity or Parent, they shall be cancelled and exchanged for the Merger Consideration as provided in this Article II, subject to applicable law in the case of Dissenting Shares.

(f) Notwithstanding any other provision in this Section 2.3 to the contrary, Parent shall cause the Merger Consideration to be paid in immediately available funds on the

date of the Effective Time with respect to any certificates representing Common Shares which are surrendered to Parent prior to or at the Effective Time, and Parent will not be required to comply with Section 2.3(d) with respect to such Shares.

### ARTICLE III

#### REPRESENTATIONS AND WARRANTIES

3.1 Representation and Warranties of Borden. Borden represents and warrants to Parent as follows:

(a) Due Organization and Power of Borden. Each of Borden, Inc. and BDH is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization and has all requisite corporate power and authority to enter into this Agreement and to perform its obligations hereunder.

(b) Authorization and Validity of Agreement. The execution, delivery and performance by Borden of this Agreement and the consummation by them of the transactions contemplated hereby have been duly authorized by their respective Boards of Directors, and no other corporate action on the part of Borden is necessary for the execution, delivery and performance by Borden of this Agreement and the consummation by them of the transactions contemplated hereby. This Agreement has been duly executed and delivered by Borden and is a legal, valid and binding obligation of Borden, enforceable against Borden in accordance with its terms, except to the extent that its enforceability may be limited by bankruptcy, insolvency,

reorganization, moratorium or other laws relating or affecting creditors' rights generally and by general equity principles.

(c) No Conflict. Except as set forth on Schedule 3.1(c) hereto, except as would not have a Material Adverse Effect (as defined in Section 3.2(a)) and except as would not prevent, materially hinder or materially delay the ability of Borden to perform their obligations under this Agreement or to consummate the transactions contemplated hereby, the execution, delivery and performance by Borden of this Agreement and the consummation by them of the transactions contemplated hereby: (i) will not violate any provision of law, rule or regulation, order, judgment or decree applicable to Borden; (ii) will not require any consent or approval of, or filing with or notice to, any governmental or regulatory authority under any provision of law applicable to Borden, except for the requirements of Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "Antitrust Improvements Act"), and the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and except for any consent, approval, filing or notice requirements which become applicable solely as a result of the specific regulatory status of Parent or its affiliates or which Parent or its affiliates are otherwise required to obtain; (iii) will not violate any provision of the Certificate of Incorporation or Bylaws of Borden; and (iv) will not require any consent, approval or notice under, and will not conflict with, or result in the breach or termination of, or constitute a default under, or result in the acceleration of the performance by Borden under, any indenture,



mortgage, deed of trust, lease, license, franchise, contract, agreement or other instrument to which Borden is a party or by which any of them, or any of their assets are bound or encumbered.

(d) Ownership of the Borden Shares. Borden is and will be on the Closing Date the record and beneficial owner and holder of the Borden Shares, free and clear of all liens, claims, charges, security interests, options, other legal or equitable encumbrances, agreements, voting trusts, proxies or other arrangements or restrictions whatsoever. All of the Borden Shares have been duly authorized and validly issued and are fully paid and nonassessable. Upon transfer of the Borden Shares to Parent on the Closing Date in accordance with Section 1.1(b), Parent will receive good and marketable title to the Borden Shares, free and clear of all liens, claims, charges, security interests, options or other legal or equitable encumbrances.

3.2 Representations and Warranties of Holdings. Holdings represents and warrants to Parent as follows:

(a) Due Organization of Holdings and Subsidiaries. Each of Holdings and its Subsidiaries (as defined in Section 3.2(c)) is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization. Holdings has all requisite corporate power and authority to enter into this Agreement and to perform its obligations hereunder. Each of Holdings and its Subsidiaries (i) has all requisite corporate power and authority to own its properties and assets and to carry on its business as it is now being conducted and (ii) is in good

standing and is duly qualified to transact business in each jurisdiction set forth on Schedule 3.2(a)(ii), which are all of the jurisdictions in which the failure to so qualify would have a material adverse effect on the business or financial condition of Holdings and its Subsidiaries taken as a whole (a "Material Adverse Effect"). Complete and correct copies of Holdings' Certificate of Incorporation and Bylaws, as amended to date, have been made available to Parent.

(b) Authorization and Validity of Agreement. The execution, delivery and performance by Holdings of this Agreement and the consummation by it of the transactions contemplated hereby have been duly authorized by its Board of Directors, and no other corporate action on the part of Holdings or its stockholders is necessary for the execution, delivery and performance by Holdings of this Agreement and the consummation by it of the transactions contemplated hereby. This Agreement has been duly executed and delivered by Holdings and is a legal, valid and binding obligation of Holdings, enforceable against Holdings in accordance with its terms, except to the extent that its enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other laws relating to or affecting creditors' rights generally and by general equity principles.

(c) Subsidiaries. Holdings has no entities in which it directly or indirectly owns 50% or more of the effective voting power or equity interest except as set forth in Schedule 3.2(c) hereto (the "Subsidiaries"). Complete and correct copies of the Certificate of Incorporation and Bylaws of each Subsidiary

of Holdings, as amended to date, have been made available to Parent. None of Holdings or its Subsidiaries is a party to any partnership agreement or joint venture agreement with any other person.

(d) Capitalization. The authorized capital stock of Holdings consists of 30,000,000 shares of Common Stock and 5,000,000 shares of Preferred Stock, of which 14,995,000 Common Shares and 3,400,000 Preferred Shares are outstanding as of the date hereof. Except as set forth on Schedule 3.2(d)(i) hereto, all of the outstanding shares of capital stock or other equity interests of each of the Subsidiaries have been validly issued and are fully paid and nonassessable and are owned by Holdings and/or one or more of its Subsidiaries free and clear of all liens, claims, charges, security interests, options or other legal or equitable encumbrances. Except as indicated in Schedule 3.2(d)(ii) hereto, (i) there are no outstanding options, warrants or other rights of any kind relating to the sale, issuance or voting of any shares of capital stock of any class of, or other ownership interests in, Holdings or of any of its Subsidiaries which have been issued, granted or entered into by Holdings or any of its Subsidiaries or any securities convertible into or evidencing the right to purchase any shares of capital stock of any class of, or other ownership interests in, Holdings or any of its Subsidiaries; (ii) no shares of the capital stock of Holdings or any of its Subsidiaries are reserved for any purpose other than for the issuance of shares upon the exercise of the Options; (iii) there are no preemptive or similar rights with respect to

the issuance, sale or other transfer (whether present, past or future) of the capital stock of Holdings or its Subsidiaries; and (iv) there are no agreements or other obligations (contingent or otherwise) which may require Holdings or its Subsidiaries to repurchase or otherwise acquire any shares of its capital stock other than as described in Section 2.2. All dividends on the Preferred Shares have been declared and paid on or as of the dates when such dividends are required to be declared and paid in accordance with the terms of the Preferred Shares.

(e) No Conflict. Except as set forth on Schedule 3.2(e) hereto, except as specifically contemplated in this Agreement and except as would not have a Material Adverse Effect, the execution, delivery and performance by Holdings of this Agreement and the consummation by it of the transactions contemplated hereby: (i) will not violate any provision of law, rule or regulation, order, judgment or decree applicable to Holdings or any of its Subsidiaries; (ii) will not require any consent or approval of, or filing with or notice to, any governmental or regulatory authority under any provision of law applicable to Holdings or its Subsidiaries, except for the Antitrust Improvements Act and the Exchange Act and except for any consent, approval, filing or notice requirements which become applicable solely as a result of the specific regulatory status of Parent or its affiliates or which Parent or its affiliates are otherwise required to obtain; (iii) will not violate any provision of the Certificate of Incorporation or Bylaws of Holdings or any of its Subsidiaries; (iv) will not require any

consent, approval or notice under, and will not conflict with, or result in the breach or termination of, or constitute a default under, or result in the acceleration of the performance by Holdings or any of its Subsidiaries under, any indenture, mortgage, deed of trust, lease, license, franchise, contract, agreement or other instrument to which Holdings or any of its Subsidiaries is a party or by which any of them, or any of their assets are bound or encumbered; or (v) will not entitle any employee of Holdings or its Subsidiaries to severance or other related payments, or create any other material change in control related obligations to employees.

(f) Financial Statements. Attached as Schedule 3.2(f)(i) are an unaudited balance sheet of Holdings and its Subsidiaries at December 31, 1996 and a statement of Holdings' and its Subsidiaries' earnings before income taxes for the year ended December 31, 1996, together with the notes thereto (collectively, the "Financial Statements"). The Financial Statements were prepared in accordance with Holdings' accounting practices and present fairly in all material respects the financial position and earnings before income taxes of Holdings and its Subsidiaries at and for the year ended December 31, 1996. Set forth on Schedule 3.2(f)(ii) hereto are the material differences between generally accepted accounting principles and Holdings' accounting practices. Except as set forth on the Financial Statements or in Schedule 3.2(f)(iii), except for those that would not have a Material Adverse Effect and except for liabilities and obligations incurred in the ordinary course of

business since December 31, 1996, neither Holdings nor any of its Subsidiaries has any liabilities or obligations of any nature (whether accrued, absolute, contingent or otherwise) required to be set forth on the Financial Statements under Holdings' accounting practices.

(g) Books and Records. The minute books of Holdings and each of its Subsidiaries contain substantially accurate and complete records of all meetings held of, and corporate action taken by, the stockholders, the Boards of Directors and the committees of the Boards of Directors of Holdings and each of its Subsidiaries, and no meeting of any such stockholders, Board of Directors or committee has been held in which substantive corporate action was taken and for which minutes have not been prepared and are not contained in such minute books. At the Closing, all of those books and records will be in the possession of Holdings and its Subsidiaries.

(h) Absence of Material Adverse Change. Except as a result of the execution and delivery of this Agreement or as expressly contemplated hereby (including, without limitation, by clause (iii) of Section 4.6(a) or by clause (C) of Section 4.6(d)(ii)) and except as set forth on Schedule 3.2(h), from December 31, 1996 to the date of this Agreement, and from December 31, 1996 to the Closing Date, Holdings and its Subsidiaries have conducted or will conduct business only in the ordinary course, and except as would not, individually or in the aggregate, have a Material Adverse Effect, none of Holdings or any of its Subsidiaries has or will have:

(i) redeemed or purchased, directly or indirectly, any shares of its capital stock or declared or paid any dividends or distributions with respect to any shares of its capital stock, except for dividends due during such period with respect to the Preferred Shares, except for other dividends the amount of which is referred to in clause (i) of Section 4.6(a) or clause (A) of Section 4.6(d)(ii) and except for repurchases of Common Shares held by employees of Holdings or its Subsidiaries pursuant to the respective Management Stockholder's Agreements between Holdings and such employees;

(ii) except for issuances of Shares of Common Stock upon the exercise of outstanding Options, issued, sold or transferred any of its equity securities, securities convertible into its equity securities or warrants, options or other rights to acquire its equity securities, or any bonds or other securities issued by it;

(iii) borrowed or become liable as a guarantor for any amount in excess of \$1,000,000 in the aggregate, except for current liabilities incurred in the ordinary course of business and liabilities under contracts entered into in the ordinary course of business;

(iv) discharged or satisfied any lien or encumbrance in excess of \$1,000,000, other than in the ordinary course of business;

(v) mortgaged, pledged or subjected to any lien, charge or any other encumbrance, any of its properties or

assets, except liens for current property taxes or assessments not yet due and payable and those arising in the ordinary course of business;

(vi) sold, assigned or transferred any of its material tangible assets, except in the ordinary course of business, or canceled without reasonable consideration any material debts owing to or held by it;

(vii) sold, assigned or transferred any patents, trademarks, trade names, copyrights, trade secrets or other intangible assets, other than any of the foregoing which is not material; provided that neither Borden, Holdings nor any of its Subsidiaries has sold, assigned or transferred, for use in connection with the Products (as defined in the Trademark License Agreement (as defined below)) or in connection with any of the other products of Holdings or its Subsidiaries, any of the intangible assets subject to the Trademark License Agreement or otherwise used in connection with the products of Holdings or its Subsidiaries;

(viii) made or granted any bonus or any wage or salary increase to any employee or group of employees other than in the ordinary course of business in accordance with past practice, or made or granted any increase in any employee benefit plan or arrangement, or amended or terminated any existing employee benefit plan or arrangement or adopted any new employee benefit plan or arrangement;

(ix) other than as reflected in Holdings' 1997 capital budget (a copy of which has been furnished to



Parent), made capital expenditures or commitments therefor that aggregate in excess of \$500,000;

(x) made any loans or advances to, or guarantees for the benefit of, any person, including Borden and its affiliates (other than loans or advances made to employees in the ordinary course or made to Borden, Inc. and for which Holdings or its Subsidiaries are entitled to repayment);

(xi) amended or otherwise altered any contracts or other agreements to which it is a party or waived any rights or obligations thereunder, except in the ordinary course of business in accordance with past practice;

(xii) entered into any other transaction or agreement in excess of \$100,000 other than in the ordinary course of business; or

(xiii) suffered any material adverse change in the financial condition or business of Holdings and its Subsidiaries taken as a whole (except as may be disclosed in this Agreement or in the Schedules hereto and except for changes affecting the economy generally, the dairy industry generally or the dairy industry within any of the jurisdictions in which Holdings or its Subsidiaries is operating).

(i) Absence of Undisclosed Liabilities. As of the Closing, none of Holdings or its Subsidiaries will have any obligations or liabilities (whether accrued, absolute, contingent, unliquidated or otherwise, whether due or to become due and regardless of when or by whom asserted) arising out of

transactions entered into prior to the Closing Date, or any action or inaction prior to the Closing Date, except (i) obligations under Material Contracts (as hereinafter defined) or under contracts and commitments entered into in the ordinary course of business as permitted by Section 3.2(h), (ii) liabilities reflected on the balance sheet of Holdings and its Subsidiaries at December 31, 1996 and the notes thereto, included in the Financial Statements (the "December 31, 1996 Balance Sheet"), (iii) liabilities which in the aggregate would not have a Material Adverse Effect and (iv) obligations and liabilities otherwise expressly disclosed (or within any materiality threshold contained in any other representation) in this Agreement or the Schedules hereto.

(j) Real Property Ownership. Schedule 3.2(j) lists all real property (by street address) owned by each of Holdings and its Subsidiaries as of the date hereof. With respect to each parcel of real property (a "Parcel") listed in Schedule 3.2(j), except as would not, individually or in the aggregate, have a Material Adverse Effect:

(i) except as disclosed on Schedule 3.2(j) hereto, the entity owning such Parcel has marketable title to such Parcel, free and clear of all mortgages, pledges, security interests, encumbrances, charges or other liens, easements and other restrictions, other than (A) installments of special assessments not yet delinquent, (B) Taxes not yet due and payable, or (C) encumbrances, encroachments and recorded easements, covenants and restrictions, including

exceptions listed on any title insurance policy, or deeds or other documents of record relating to such Parcel, copies of which have been delivered to Parent prior to the date hereof, which do not impair the current use, occupancy or value of the property subject thereto;

(ii) except as disclosed on Schedule 3.2(j) hereto, there are no pending or, to the knowledge of Holdings or its Subsidiaries, threatened condemnation proceedings or litigation or administrative actions relating to any Parcel;

(iii) except as disclosed on Schedule 3.2(j) hereto, there are no subleases, licenses, concessions or other agreements, written or oral, granting to any party the right of use or occupancy of any portion of any Parcel;

(iv) except as disclosed on Schedule 3.2(j) hereto, there are no outstanding options or rights of refusal to purchase any Parcel, any portion thereof or interest therein;

(v) there are no parties (other than one or more of Holdings and any of its Subsidiaries) in possession of any Parcel, other than tenants under any leases disclosed on Schedule 3.2(j) who are in possession of space to which they are entitled; and

(vi) Holdings and its Subsidiaries have sufficient title to such easements or rights of way or other rights appurtenant to each Parcel to access public roads or rights of way.

(k) Real Property Leases. Schedule 3.2(k) contains a complete and accurate list of all real property leased by Holdings and its Subsidiaries as of the date hereof pursuant to any real property leases (the "Leases"). Except as would not, individually or in the aggregate, have a Material Adverse Effect, with respect to each Lease: (i) such Lease is pursuant to a written Lease which has been executed and is in full force and effect; (ii) neither Holdings or any of its Subsidiaries, as applicable, which is a party to such Lease nor, to the knowledge of Holdings or its Subsidiaries, any other party to such Lease, is in breach or default, and no event has occurred which, with notice or lapse of time or both, would constitute such a breach or default or permit termination, modification or acceleration, under such Lease; (iii) such Lease will continue to be binding in accordance with its terms following the Closing, except as may result from actions that may be taken by Parent or its affiliates following the Closing; (iv) to Holdings or any of its Subsidiaries' knowledge, no party to such Lease has repudiated any provision thereof; and (v) to Holdings or its Subsidiaries' knowledge, there are no oral agreements or delayed payment programs in effect as to such Lease.

(l) Condition of Properties. Except as would not, individually or in the aggregate, have a Material Adverse Effect, (i) Holdings and its Subsidiaries own or lease under valid leases all buildings, machinery, equipment and other tangible assets used in or necessary for the conduct of their business as presently conducted (except for assets and properties of Borden

and its affiliates (other than Holdings and its Subsidiaries) used to provide services to Holdings and its Subsidiaries) and (ii) the buildings, fixtures and equipment owned or leased by Holdings or its Subsidiaries are in sufficiently good operating condition and repair to permit their use in the continuing operations of Holdings or its Subsidiaries as such operations are presently conducted, subject to normal wear and tear, and are not in need of maintenance or repairs except for ordinary, routine maintenance.

(m) Tax Matters. (i) Certain Defined Terms. For purposes of this Agreement, the following definitions shall apply:

(A) The term "Borden Corporation" shall mean one of the group of corporations consisting of Holdings and its Subsidiaries. Any reference to a Borden Corporation refers to that entity only and does not refer to the group of corporations of which such Borden Corporation is a member.

(B) The term "Group" shall mean, individually and collectively, (1) Holdings, (2) its Subsidiaries and (3) any individual, trust, corporation, partnership or any other entity as to which Holdings or any of its Subsidiaries are liable for Taxes incurred by such individual or entity either as a transferee, pursuant to Treasury Regulations Section 1.1502-6 or pursuant to any other provision of federal, territorial, state, local or foreign law or regulations.

(C) The term "Taxes" shall mean all taxes, however denominated, including any interest, penalties or other additions to tax that may become payable in respect thereof, imposed by any federal, territorial, state, local or foreign government or any agency or political subdivision of any such government, which taxes shall include, without limiting the generality of the foregoing, all income or profits taxes (including, but not limited to, federal income taxes and state income taxes), real property gains taxes, payroll and employee withholding taxes, unemployment insurance taxes, social security taxes, sales and use taxes, ad valorem taxes, excise taxes, franchise taxes, gross receipts taxes, business license taxes, occupation taxes, real and personal property taxes, stamp taxes, environmental taxes, transfer taxes, workers' compensation, governmental charges, and other obligations of the same or of a similar nature to any of the foregoing, which the Borden Corporations are required to pay, withhold or collect.

(D) The term "Returns" shall mean all reports, estimates, declarations of estimated Tax, information statements and returns relating to, or required to be filed in connection with, any Taxes, including information returns or reports with respect to backup withholding and other payments to third parties.

(ii) Returns Filed and Taxes Paid. All material Returns required to be filed by or on behalf of the Borden Corporations have been duly filed on a timely basis and such

Returns are true, complete and correct in all material respects. All Taxes shown to be payable on the Returns or on subsequent assessments with respect thereto have been paid in full on a timely basis, and no other Taxes are payable by the Borden Corporations with respect to items or periods covered by such Returns (whether or not shown on or reportable on such Returns) or with respect to any period prior to the date of this Agreement. Each of the Borden Corporations has withheld and paid over all material Taxes required to have been withheld and paid over, and complied with all information reporting and backup withholding requirements, including maintenance of required records with respect thereto, in connection with material amounts paid or owing to any employee, creditor, independent contractor or other third party. There are no liens on any of the assets of any of the Borden Corporations with respect to Taxes, other than liens for Taxes not yet due and payable or for Taxes that a member of the Group is contesting in good faith through appropriate proceedings and for which appropriate reserves have been established.

(iii) Returns Furnished. Parent has been provided access by Borden or Holdings to true and complete copies of (A) relevant portions of any separate federal and state income or franchise tax Returns relating to the Borden Corporations for periods ending on and after December 31, 1991; provided, however, that no such Return will be provided if it relates to or includes any corporation or group of corporations other than the Borden Corporations.

(iv) Tax Deficiencies; Audits; Statutes of Limitations. Except as set forth on Schedule 3.2(m)(iv) and except as would not have a Material Adverse Effect: (A) there is no audit by a governmental or Taxing authority in process or pending with respect to the Returns of the Borden Corporations; (B) no deficiencies exist or have been asserted (either in writing or verbally, formally or informally) with respect to Taxes of the Borden Corporations and none of the Borden Corporations has received notice (either in writing or verbally, formally or informally) that it has not filed a Return or paid Taxes required to be filed or paid by it; (C) the Borden Corporations are neither parties to any action or proceeding for assessment or collection of Taxes, nor has such event been asserted (either in writing or verbally, formally or informally) against the Borden Corporations or any of their assets; and (D) no waiver or extension of any statute of limitations is in effect with respect to Taxes or Returns of the Borden Corporations.

(v) Tax Sharing. Except as set forth in Schedule 3.2(m)(v) and with respect to the tax sharing agreement dated as of January 1, 1996 between Borden Holdings, Inc. and Holdings (the "Tax Sharing Agreement"), Holdings and its Subsidiaries are not parties to any tax sharing agreement and have not assumed the liability for taxes of any other person under contract, and, except as provided in this Agreement, any payments to be made by Holdings to Borden, Inc. prior to the Closing Date with respect to Taxes for the period ended on December 31, 1996 or for the Short Period and any accruals of amounts with respect to Taxes



for the period ended on December 31, 1996 or for, only with respect to Taxes other than income Taxes, the Short Period will be made in accordance with the Tax Sharing Agreement.

(vi) Tax Elections and Special Tax Status. Except as set forth in Schedule 3.2(m)(vi) or except as would not have a Material Adverse Effect: (A) none of the Borden Corporations is a party to any safe harbor lease within the meaning of Section 168(f)(8) of the Internal Revenue Code of 1986, as amended (the "Code"), as in effect prior to amendment by the Tax Equity and Fiscal Responsibility Act of 1982; (B) none of the Borden Corporations has entered into any compensatory agreements with respect to the performance of services which payment thereunder would result in a nondeductible expense to the Borden Corporations pursuant to Section 280G of the Code or an excise tax to the recipient of such payment pursuant to Section 4999 of the Code; (C) none of the Borden Corporations is a "consenting corporation" under Section 341(f) of the Code; (D) none of the Borden Corporations has participated in an international boycott as defined in Section 999 of the Code; (E) none of the Borden Corporations has agreed to make, nor is any Borden Corporation required to make, any adjustment under Code Section 481(a) of the Code by reason of a change in accounting method or otherwise; (F) none of the assets of any of the Borden Corporations is "tax exempt use property" within the meaning of Section 168(h) of the Code; (G) Holdings has not made and will not make a deemed dividend election under Treasury Regulations Section 1.1502-32(f)(2) or a consent dividend election under Section 565

of the Code; (H) none of the Borden Corporations has had a permanent establishment in any foreign country, as defined in any applicable tax treaty or convention between the United States of America and such foreign country; (I) none of the Borden Corporations is a party to any joint venture, partnership, or other arrangement or contract which could be treated as a partnership for federal income tax purposes; and (J) none of the Borden Corporations is or was "25-percent foreign owned" within the meaning of Section 6038A of the Code at any time during any taxable period which remains open under the statute of limitations applicable for federal income tax purposes.

(n) Material Contracts. (i) Except as set forth on Schedule 3.2(n) hereto, except as would not, individually or in the aggregate, have a Material Adverse Effect, except for agreements entered into in the ordinary course of business or as permitted by Section 3.2(h) and except for licenses of, and other agreements with respect to, Company Intellectual Property (as defined in Section 3.2(r)) and Leases, as to which no representations or warranties are made other than as set forth in Sections 3.2(r) and 3.2(k), respectively, none of Holdings or its Subsidiaries is a party to or bound by, nor are any of their assets affected by, as of the date of this Agreement, any:

(A) agreement or indenture relating to the borrowing of money or to the mortgaging or pledging any of its assets;

(B) agreement with respect to the lending or investing of funds;

(C) guaranty of any obligation for borrowed money or otherwise, other than endorsements made for collection in the ordinary course of business;

(D) indemnification or other reimbursement obligations, except for indemnities and other reimbursement obligations in the ordinary course of business;

(E) license or royalty agreements involving more than \$100,000;

(F) lease or agreement under which it is lessee of or holds or operates any personal property owned by any other party for which the annual payment exceeds \$100,000;

(G) lease or agreement under which it is lessor of or permits any third party to hold or operate any property, real or personal, owned or controlled by it for which the annual payment exceeds \$100,000;

(H) contract or group of related contracts with the same party for the purchase or sale of products or services under which the undelivered balance of such products and services has a selling price in excess of \$100,000;

(I) other contract or group of related contracts with the same party continuing over a period of more than thirty days from the date or dates thereof involving more than \$100,000;

(J) contract which prohibits it from freely engaging in business anywhere in the world;

(K) contract with distributors of its products involving payments of more than \$100,000 per annum;

(L) contract with any officer, director, shareholder or other affiliate;

(M) contract with any labor union or any bonus or any other form of deferred compensation plan or any stock purchase, stock option, or similar written plan or practice, or any severance agreements;

(N) contract for the employment or retention of any officer, employee or consultant on a full-time or part-time basis (except for consultants in the ordinary course of business); or

(O) any other contracts not described above which involve the payment by Holdings or its Subsidiaries of \$100,000 or more in any 12 month period.

(ii) Except as specifically disclosed on Schedule 3.2(n) and except as would not, individually or in the aggregate, have a Material Adverse Effect:

(A) each contract or commitment listed on Schedule 3.2(n) (the "Material Contracts") is valid, binding and enforceable against Holdings or, if a Subsidiary of Holdings is the party to such Material Contract, such Subsidiary; (B) each of Holdings and its Subsidiaries has performed all obligations under the Material Contracts required to be performed by it and Holdings and its Subsidiaries have not received any claim of default under any Material Contract; and (C) Holdings and its Subsidiaries do not have knowledge of any breach or anticipated breach by any other party to any Material Contract.

(iii) A true and correct copy of each Material Contract as of the date of this Agreement (other than those which are not

located at the executive offices of Holdings in Ogden, Utah or of Borden, Inc. in Columbus, Ohio and those which are not written) has been supplied or made available to Parent, together with all amendments, waivers or other changes thereto.

(o) Legal Proceedings. Except as set forth on Schedule 3.2(o) and except as would not, individually or in the aggregate, have a Material Adverse Effect:

(i) there are no actions, suits, proceedings (including debarment proceedings) or orders pending or (to the knowledge of Holdings and its Subsidiaries, after reasonable review) threatened or (to the knowledge of Holdings and its Subsidiaries after reasonable review) investigations pending or threatened against or affecting Holdings and its Subsidiaries at law or in equity, or before or by any federal, state, municipal, foreign or other governmental department, commission, board, bureau, agency, court or instrumentality, domestic or foreign ("Governmental Authority");

(ii) Holdings and its Subsidiaries are not subject to any order (including debarment orders), writ, injunction, judgment or decree of any court or any Governmental Authority;

(iii) there are no inquiries of any Governmental Authority pending, or to the knowledge of Holdings and its Subsidiaries, threatened (including inquiries as to the qualifications of Holdings and its Subsidiaries to hold or receive any license or permit); and

(iv) neither Holdings nor any of its Subsidiaries is in violation of any term of any judgment, decree, injunction, or order entered by any Governmental Authority or court and outstanding against Holdings or any of its Subsidiaries.

(p) Government Licenses, Permits and Related Approvals. Except as set forth on Schedule 3.2(p) hereto and except as would not, individually or in the aggregate, have a Material Adverse Effect:

(i) Holdings and its Subsidiaries own or possess all permits, licenses, franchises, certificates, approvals and other authorizations which are required under foreign, federal, state and local laws and regulations by such entity in the conduct of its business as it is presently conducted (collectively, the "Licenses and Permits"), including, without limitation, all Licenses and Permits required to operate each of Holdings and its Subsidiaries' dairies and all Licenses and Permits required under current public health and safety, worker health and safety and pollution or environmental protection laws, including laws relating to emissions, discharges, releases or threatened releases of pollutants, contaminants or hazardous or toxic materials or wastes into ambient air, surface water, ground water, or lands or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport, or handling of any pollutant, contaminant or hazardous or toxic substance, material or waste or any regulation, code, plan, order, decree, judgment or notice or demand letter

issued, entered, promulgated or approved thereunder ("Health and Environmental Laws").

(ii) No loss of any License or Permit is pending, or, to the knowledge of Holdings or its Subsidiaries, threatened or reasonably foreseeable as a result of the transaction contemplated by this Agreement or otherwise, except for normal expiration in accordance with the terms thereof.

(iii) Holdings and its Subsidiaries have complied, and are in compliance, in all material respects with all terms and conditions of all required Licenses and Permits and with all other limitations, restrictions, conditions, standards, prohibitions, requirements, obligations, schedules and timetables contained in any applicable Health and Environmental Laws.

(iv) Holdings and its Subsidiaries have complied, and are in compliance, in all material respects with all applicable laws and regulations of all Governmental Authorities which affect the businesses or any owned or leased properties of Holdings and its Subsidiaries and to which Holdings and its Subsidiaries may be subject (including, without limitation, all Health and Environmental Laws), and no claims have been filed against Holdings and its Subsidiaries alleging a violation of any such laws or regulations.

(v) Neither Holdings nor its Subsidiaries has received any notice or claim to the effect that it is or may be liable to any person as a result of a release or

threatened release of any hazardous or non-hazardous substance, material or waste at any location nor has it filed any notice required under applicable law of any such release or threatened release.

(vi) Neither Holdings nor any of its Subsidiaries is presently subject to (A) any outstanding order from or agreement with any Governmental Authority or person respecting environmental or health matters under any Health and Environmental Laws or (B) any outstanding claims, liens, judicial or administrative proceedings or investigations arising under any Health and Environmental Laws.

(q) Employee Matters. (i) Schedule 3.2(q)(i) contains a list of (A) any persons on leave of absence who are currently collecting disability payments; and (B) all employment, consulting or similar compensation agreements of Holdings or its Subsidiaries which may not be terminated by Holdings or its Subsidiaries without penalty within thirty days after the Closing.

(ii) Except as disclosed in this Agreement or the Schedules hereto, except as would not have a Material Adverse Effect and except for the provisions of the Management Stockholder's Agreements between Holdings and certain of its or its Subsidiaries' employees, none of the employees of Holdings and its Subsidiaries is subject to any non-compete, nondisclosure, confidentiality, employment, consulting or similar agreement relating to or affecting the present or proposed business activities of Holdings and its Subsidiaries.



(r) Intellectual Property. Schedule 3.2(r)(i) hereof lists all United States, state and foreign patents and patent applications, United States, state and foreign trademark and service mark registrations and applications and United States, state and foreign copyright registrations and applications therefor owned by or licensed to Holdings or any of its Subsidiaries (herein collectively referred to as the "Company Intellectual Property"). Except as set forth on Schedule 3.2(r)(ii) hereto and except as would not have a Material Adverse Effect, Holdings and its Subsidiaries own or have the right to use all listed patents, patent applications, trademark and service mark registrations and applications, and copyright registrations and applications and hold unexpired licenses or other rights to use all other intellectual property necessary to the conduct of the business of Holdings and its Subsidiaries. Except as set forth on Schedule 3.2(r)(iii) hereto and except as would not have a Material Adverse Effect, there are no existing or, to Holdings' or its Subsidiaries' knowledge, threatened claims of any third party based on the use by, or challenging the ownership of, Holdings or any of its Subsidiaries of any of the Company Intellectual Property and none of Borden, Holdings or its Subsidiaries has received a notice of conflict between the Company Intellectual Property and the asserted rights of others within the last five years. Except as set forth on Schedule 3.2(r)(iv) hereto and except as would not have a Material Adverse Effect, to Holdings' and its Subsidiaries' knowledge, there is no infringing use or contrary claim of ownership by any third person

of the Company Intellectual Property and all other intellectual property necessary to the conduct of the business of Holdings and its Subsidiaries as presently conducted.

(s) Employee Benefit Plans. (i) For purposes of this Agreement, "Business Plans" shall mean all "employee benefit plans" (within the meaning of Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), including, without limitation, "multiemployer plans" (within the meaning of Sections 3(37) and 4001(a)(3) of ERISA)), retirement, savings, stock purchase, stock option, severance, employment, change-in-control, fringe benefit, collective bargaining, bonus, incentive, deferred compensation and all other employee benefit plans, agreements, programs, policies or other arrangements (A) under which any employee or former employee of Holdings or its Subsidiaries (collectively, the "Business Employees") has any present or future right to benefits and (B) under which Borden, Holdings or its Subsidiaries has any present or future liability.

(ii) Schedule 3.2(s)(ii) sets forth a list of (A) each Business Plan that is an employee pension benefit plan, as defined in Section 3(2) of ERISA (an "Employee Pension Benefit Plan"), (B) each Business Plan that is a multiemployer plan and (C) each other material Business Plan.

(iii) Except where a breach of the following, individually or in the aggregate, would not have a Material Adverse Effect:

(A) each Business Plan sponsored by Borden, Holdings or its Subsidiaries has been established and administered in

accordance with its terms and in compliance with ERISA, the Code and all other applicable laws, rules and regulations; provided, however, that "compliance" shall not be achieved for purposes of this Section 3.2(s)(iii)(A) if an act or failure to act with respect to a Business Plan has resulted in or could reasonably be expected to result in unpaid excise taxes, penalties or fines under ERISA, the Code or other applicable laws, rules or regulations;

(B) a favorable determination letter as to the qualification under Section 401(a) or Section 505(c) of the Code of each Business Plan designed or intended to be a plan qualified under such sections has been issued by the Internal Revenue Service (the "IRS"), and nothing has occurred, to Borden's knowledge, which would cause the loss of such qualification or tax-exempt status;

(C) there are no actions, suits or claims to Borden's knowledge (other than routine claims for benefits in the ordinary course) that are pending, threatened, choate or inchoate with respect to Business Employees covered by any Business Plan (including, without limitation, claims by governmental regulatory agencies);

(D) no "prohibited transaction" (as defined in Section 4975 of the Code and for which no exemption exists under the Code) exists with respect to any Business Plan;

(E) no "reportable event" (as defined in Section 4043 of ERISA and the regulations thereunder and with respect to

which the 30 day notice requirement has not been waived) exists with respect to any Business Plan;

(F) each member of a controlled group of organizations (within the meaning of Section 414(b), (c), (m) or (o) of the Code) of which Borden, Holdings or any of its Subsidiaries is also a member (the "Controlled Group") has paid all premiums (and interest charges and penalties for late payment, if applicable) due the Pension Benefit Guaranty Corporation (the "PBGC") with respect to each Employee Pension Benefit Plan during the last five plan years; and as of the Closing, all members of the Controlled Group will have made all required premium payments to the PBGC that are due on or prior to such date with respect to such plans; and none of Borden, Holdings, its Subsidiaries or any Controlled Group member has engaged in a transaction that has subjected them to liability under Section 4069 of ERISA;

(G) true, correct and complete copies of the following have been delivered to Parent: (I) each Business Plan (but excluding any "multiemployer plans") listed on Schedule 3.2(s)(ii); (II) current summary plan descriptions that are routinely delivered to the Business Employees with respect to the Business Plans (but excluding any "multiemployer plans") listed on Schedule 3.2(s)(ii); and (III) to the extent applicable, the most recent determination letters issued by the IRS with respect to each Pension Benefit Plan; and

(H) no amounts have been contributed to any voluntary employees' beneficiary association maintained by Borden, Holdings or its Subsidiaries that was intended to fund any Business Plan providing benefits other than disability income benefits.

(t) Insurance. As of the date of this Agreement, none of Borden, Holdings or its Subsidiaries has received any notice of cancellation of any insurance policy maintained in favor of Holdings or its Subsidiaries or been denied insurance coverage, which, in either case, would have a Material Adverse Effect.

(u) Brokers, Finders, etc. None of Borden, Holdings or its Subsidiaries has employed, or is subject to any valid claim of, any broker, finder, consultant or other intermediary in connection with the transactions contemplated by this Agreement who might be or is entitled to a fee or commission in connection with such transactions.

(v) Transactions with Affiliates. Except as set forth herein, including, without limitation, as set forth in Article IV hereof, in Schedule 3.2(v) hereto or as contemplated or permitted by Schedule 4.2 hereto, or as set forth in the Financial Statements, Holdings and its Subsidiaries have not engaged in any transaction, other than the movement of monetary assets, outside the ordinary course of business consistent with past practice with Borden or its affiliates (other than Holdings and its Subsidiaries) since December 31, 1996, which was (i) material to the business of Holdings and its Subsidiaries taken as a whole or (ii) undertaken in contemplation of the sale of Holdings.

(w) Bank Accounts. Schedule 3.2(w) lists all of the concentration bank accounts of each of Holdings and its Subsidiaries. None of Holdings or its Subsidiaries has granted a power of attorney to any person or entity which will not be terminated as of the Closing Date.

(x) Product Warranty; Product Recall; Product Liability. Except as set forth on Schedule 3.2(x) and except as would not, individually or in the aggregate, have a Material Adverse Effect, (i) all products, and the delivery thereof, processed, manufactured, distributed or sold by Holdings and its Subsidiaries have been in conformity with all applicable contractual commitments and all express or implied warranties, (ii) in the last year, none of Holdings nor its Subsidiaries has recalled any products manufactured, distributed or sold by it and (iii) none of Holdings nor its Subsidiaries has, or at Closing will have, any liability to any person or entity relating to damage to property, personal injury or death caused by or relating to products processed, manufactured, distributed or sold by Holdings or its Subsidiaries prior to the Closing, to the extent such damage to property, personal injury or death arose or arises out of actions by or the inaction of Borden, Holdings or its Subsidiaries prior to the Closing.

(y) No Losses of Significant Customers. Except as set forth on Schedule 3.2(y), no customer of Holdings and its Subsidiaries which accounted for more than \$17,000,000 of Holdings and its Subsidiaries' gross sales during the fiscal year of Holdings ended December 31, 1996 ceased purchasing all dairy

products of the types theretofore purchased by such customer from Holdings or its Subsidiaries during the fiscal year of Holdings ended December 31, 1996. Except as set forth on Schedule 3.2(y), no customer of Holdings and its Subsidiaries which accounted for more than \$4,000,000 of Holdings and its Subsidiaries' gross sales during the fiscal year of Holdings ended December 31, 1996 has, during the period from January 1, 1997 through the date of this Agreement, ceased purchasing all dairy products of the types theretofore purchased by such customer from Holdings or its Subsidiaries during the fiscal year of Holdings ended December 31, 1996.

3.3 Representations and Warranties of Parent. Parent represents and warrants to Holdings and Borden as follows:

(a) Due Organization and Power. Parent is a cooperative association duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization and has all requisite corporate power and authority to enter into this Agreement and perform its obligations hereunder. Complete and correct copies of the Certificate of Incorporation and By-Laws of Parent, as amended to date, have been delivered to Holdings. At the time of the Closing, Acquisition will be a duly organized corporation, limited liability company or limited partnership, validly existing and in good standing under the laws of Delaware, will have all requisite power and authority to consummate the Merger and will not have engaged in any transaction or business, except incident to its formation and the consummation of the Merger.

(b) Authorization and Validity of Agreement. The execution, delivery and performance by Parent of this Agreement and the consummation by Parent of the transactions contemplated hereby have been, and, at the time of the Closing, the performance by Acquisition of this Agreement and the consummation by Acquisition of the transactions contemplated hereby will have been, duly authorized by the Board of Directors of Parent and Acquisition, and no other corporate action on the part of Parent or Acquisition is or will be necessary for the execution, delivery and performance by Parent of this Agreement and the consummation by Parent or Acquisition of the transactions contemplated hereby. After the Stock Purchase, the Merger will be duly authorized by Acquisition pursuant to Section 253 of the GCL, and no other corporate action on the part of Acquisition, Holdings or their respective stockholders will be necessary for the consummation of the Merger. This Agreement has been duly executed and delivered by Parent and is a legal, valid and binding obligation of Parent, enforceable against Parent in accordance with its terms, except to the extent that enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other laws relating to or affecting creditors' rights generally and by general equity principles.

(c) No Conflict. Except as set forth in Schedule 3.3(c) hereto and except for any consent, approval, filing or notice that would not, if not given or made, or any violation, conflict, breach, termination, default or acceleration which does not, materially impair the ability of Parent to consummate the



transactions contemplated hereby, the execution, delivery and performance by Parent of this Agreement and the consummation by Parent of the transactions contemplated hereby: (i) will not violate any provision of law, rule or regulation, order, judgment or decree applicable to Parent; (ii) will not require any consent or approval of, or filing or notice to, any Governmental Authority under any provision of law applicable to Parent, except for the requirements of the Antitrust Improvements Act and the Exchange Act and except for any consent, approval, filing or notice requirements which become applicable solely as a result of the specific regulatory status of Borden or which Borden or any of its affiliates are otherwise required to obtain; (iii) will not violate any provision of the Certificate of Incorporation or By-Laws of Parent; and (iv) will not require any consent, approval or notice under, and will not conflict with, or result in the breach or termination of, or constitute a default under, or result in the acceleration of the performance by Parent under, any indenture, mortgage, deed of trust, lease, license, franchise, contract, agreement or other instrument to which Parent is a party or by which it or any of its assets is bound or encumbered.

(d) Brokers, Finders, etc. Parent has not employed, nor is subject to the valid claim of, any broker, finder, consultant or other intermediary in connection with the transactions contemplated by this Agreement who might be entitled to a fee or commission from Borden or Holdings in connection with such transactions.

(e) Available Funds. Parent, together with any Permitted Assignees, will have sufficient funds available at the Closing to pay all amounts payable pursuant to Articles I and II.

(f) USDA Suspension or Debarment. Except as set forth on Schedule 3.3(f), neither Parent nor any of its affiliates has been suspended or debarred from Federal procurement or non- procurement programs, no cause for any such suspension or debarment of Parent exists and, to Parent's knowledge, no cause for any such suspension or debarment of any of Parent's affiliates exists.

3.4 Representations and Warranties of the Parties. Each party hereto represents and warrants to the other that it is the explicit intent of each party hereto that, except for the express representations and warranties contained in this Article III, Borden is making no representation or warranty whatsoever, express or implied, including but not limited to any implied warranty or representation as to condition, merchantability or suitability as to any of the properties or assets of Holdings and its Subsidiaries and that Parent takes Holdings and its Subsidiaries "as is" and "where is." It is understood that any cost estimates, projections or other predictions, any data, any financial information or any memoranda or offering materials or presentations provided or addressed to Parent are not and shall not be deemed to be or to include representations or warranties of Borden.

3.5 Survival of Representations and Warranties. The respective representations and warranties of Borden, Holdings and

Parent contained in this Article III shall not survive the Closing, and no party shall have any liability or obligation in connection with any such representation or warranty following the Closing, except that the representations and warranties contained in Sections 3.1(b), 3.1(d), 3.2(b), 3.3(b) and 3.4 shall survive the Closing.

3.6 Schedules and Exhibits. Disclosure of any fact or item in any Schedule or Exhibit hereto referenced by a particular paragraph or section in this Agreement shall, should the existence of the fact or item or its contents be relevant to any other paragraph or section, be deemed to be disclosed with respect to that other paragraph or section whether or not a specific cross reference appears. Disclosure of any fact or item in any Schedule or Exhibit hereto shall not necessarily mean that such item or fact individually is material to the business or financial condition of any of Holdings and its Subsidiaries individually or of Holdings and its Subsidiaries taken as a whole.

#### ARTICLE IV

##### COVENANTS

4.1 Access; Information and Records; Confidentiality. (a) During the period commencing on the date hereof and ending on the Closing Date, Borden, Inc. shall, and Holdings shall and shall cause its Subsidiaries to, upon reasonable request and notice, afford to Parent, its counsel, accountants and other authorized representatives reasonable access during normal business hours to the plants, properties, senior management,

books and records of Holdings and its Subsidiaries, in order that Parent may have the opportunity to make such reasonable investigations as it shall desire to make of the affairs of Holdings and its Subsidiaries; provided that, any contacts with such senior management shall be approved in advance by Borden. Each of Borden, Inc. and Holdings will cause its officers, employees, accountants and other agents to furnish to Parent such additional financial and operating data and information with respect to Holdings and its Subsidiaries (including information relating to the liabilities and obligations referred to in Sections 8.1(a)(i) and 8.1(a)(iii)) as Parent may from time to time reasonably request.

(b) (i) Prior to the Closing, Borden, Inc. shall deliver, or shall cause Holdings to deliver, to Parent a statement setting forth, as of a date not more than 10 days prior to the Closing Date, any changes that would be required to Schedules 3.2(j), 3.2(k) and 3.2(m) if such Schedules were being delivered for purposes of Sections 3.2(j), 3.2(k) and 3.2(m), respectively, as of such date; provided that none of Borden or Holdings makes or will be deemed to have made any representation or warranty with respect to such information and only the representations and warranties contained in Article III hereof shall have any legal effect.

(ii) Promptly after they become available following each Accounting Period (as defined in Section 4.6) ending after the date hereof and prior to the Closing Date, Holdings shall deliver to Parent a copy of Holdings' and its Subsidiaries'

balance sheet and statement of earnings before income taxes for such Accounting Period to the extent that, and in such form as, such information is prepared in the ordinary course of business; provided that none of Borden or Holdings makes or will be deemed to have made any representation or warranty with respect to such information and only the representations and warranties contained in Article III hereof shall have any legal effect.

(c) Parent will hold, and will cause its respective directors, officers, employees, accountants, counsel, financial advisors and other representatives and affiliates to hold, any nonpublic information in confidence to the extent required by, and in accordance with, the provisions of the letter dated February 7, 1997, between Parent and Borden, Inc.

4.2 Conduct of the Businesses of Holdings Prior to the Closing Date. Borden, Inc. and Holdings agree that, except as permitted, required or specifically contemplated by this Agreement, including, without limitation, those actions contemplated on Schedule 4.2 or in this Article IV, or as otherwise consented to or approved in writing by Parent, during the period commencing on the date hereof and ending at the Closing Date:

(a) the businesses of Holdings and its Subsidiaries shall be conducted only in the ordinary course of business;

(b) neither Holdings nor any of its Subsidiaries will amend its Certificate of Incorporation or By-Laws;

(c) Holdings and its Subsidiaries will use their reasonable efforts to preserve intact their business

organization, to keep available the services of their present officers and key employees, and to preserve the good will of those having business relationships with them; and

(d) neither Holdings nor any of its Subsidiaries will take any other action which would result in the representation and warranty contained in Section 3.2(h) being untrue at and as of the Closing Date.

4.3 Antitrust Laws. (a) Each party hereto shall (i) take promptly all actions necessary to make the filings required of it or any of its affiliates under the applicable Antitrust Laws (as defined in Section 4.3(e) hereof) in connection with this Agreement and the transactions contemplated hereby, (ii) comply at the earliest practicable date with any request for additional information or documentary material received by it or any of its affiliates from the Federal Trade Commission (the "FTC") or the Antitrust Division of the Department of Justice (the "Antitrust Division") and (iii) cooperate with one another in connection with any filing under applicable Antitrust Laws and in connection with resolving any investigation or other inquiry concerning the transactions contemplated by this Agreement initiated by any Antitrust Authority (as defined in Section 4.3(e) hereof).

(b) Each party hereto shall use all best efforts to resolve such objections, if any, as may be asserted with respect to the transactions contemplated by this Agreement under any Antitrust Law. Without limiting the generality of the foregoing, "best efforts" shall include, without limitation:

(i) in the case of each of Parent and Borden:

(A) filing with the appropriate Antitrust Authorities no later than the business day following the date hereof a Notification and Report Form with respect to the transactions contemplated by this Agreement; and

(B) if Parent or Borden receives a second request for information and documents from an Antitrust Authority, substantially complying with such second request within 21 days following the date of its receipt thereof;

(ii) in the case of Parent only:

(A) (1) filing with the appropriate Antitrust Authorities, and causing each of Parent's Affiliates and/or Permitted Assignees and/or other Persons with whom Parent or any of its Permitted Assignees intends to consummate any transaction related to any of the assets or businesses of Holdings or its Subsidiaries or related to any assets or businesses of Parent, Parent's Affiliates and/or Permitted Assignees, in either case in connection with, or in order to permit the consummation of, the transactions contemplated hereby (such Affiliates of Parent, Permitted Assignees and other Persons, collectively, "Related Transaction Parties") to file with the appropriate Antitrust Authorities, no later than five business days following the date hereof a Notification and Report Form with

respect to any and all such transactions (including without limitation any and all such transactions contemplated by Parent's filing under Section 4.3(b)(1)(A)) for which such a filing with the appropriate Antitrust Authorities is required and (2) if Parent or Related Transaction Party receives a second request for information and documents from an Antitrust Authority, substantially complying (and causing each applicable Related Transaction Party to substantially comply) with such second request within 21 days following the date of its receipt thereof; and

(B) taking any and all actions and doing any and all other things necessary, proper or advisable to cause the condition contained in Section 5.1(b)(ii) hereof to be satisfied and to permit the Closing to occur as soon as possible but in any event on or prior to the Earliest Borden Antitrust Termination Date (as defined below) (it being understood that, without limiting Parent's obligations hereunder, the timing of the Closing shall be as set forth in Section 1.4); and

(iii) in the case of Borden only, subject to Parent's compliance with clauses (i) and (ii) above, not frustrating or impeding Parent's strategy or negotiating positions with any Antitrust Authority, except to the extent such strategy would cause Borden or any of its Affiliates to take any action with respect to their assets or businesses, other than actions required by this Agreement with respect to



Holdings and its Subsidiaries and their assets and businesses.

For purposes of this Agreement, the term "Earliest Borden Antitrust Termination Date" shall mean, at any time, the earliest date when Borden would then be permitted to terminate this Agreement pursuant to Section 9.1(a)(iii) hereof.

(c) If any administrative, judicial or legislative action or proceeding is instituted (or threatened to be instituted) challenging the transactions contemplated by this Agreement as violative of any Antitrust Law, each party hereto shall cooperate with one another to contest and resist any such action or proceeding, and to have vacated, lifted, reversed or overturned any decree, judgment, injunction or other order (whether temporary, preliminary or permanent) that is in effect and that restricts, prevents or prohibits consummation of the transactions contemplated by this Agreement, including, without limitation, by pursuing all reasonable avenues of administrative and judicial appeal. Without limiting the generality of the foregoing, Parent's obligations pursuant to Section 4.3(b)(ii)(B) above shall include litigating against any Antitrust Authority or other person necessary, proper or advisable in order that the condition contained in Section 5.1(b)(ii) hereof may be satisfied and any and all objections raised by any Antitrust Authority will not prevent the Closing from occurring on or prior to the Earliest Borden Antitrust Termination Date (it being understood that, without limiting Parent's obligations hereunder, the timing of the Closing shall be as set forth in Section 1.4).

(d) Each party hereto shall promptly inform the other parties of any material communication made to, or received by such party from, any Antitrust Authority or any other Governmental Authority regarding any of the transactions contemplated hereby. In addition, and without limiting the generality of the foregoing, Parent and Borden, Inc. each shall cause its counsel to (i) afford to the other party's counsel the opportunity to receive and to review for a reasonable period in advance of filing or submission to any Antitrust Authority all forms, documents, letters, memoranda and other materials proposed to be filed or submitted to any Antitrust Authority regarding the transactions contemplated hereby, and give reasonable consideration to any comments or proposals such counsel may make with respect to any such forms, documents, letters, memoranda or other materials, (ii) give reasonable advance notice to the other party's counsel of each meeting, pre-arranged telephone call or telephone call initiated by a party or its counsel with any Antitrust Authority regarding the transactions contemplated hereby, so that such counsel may attend or otherwise participate therein, and permit the other party's counsel to attend or otherwise participate therein, and (iii) promptly inform the other party's counsel of the substance of each other communication (written or oral, in person or by telephone) with any Antitrust Authority regarding the transactions contemplated hereby.

(e) For purposes hereof, (i) "Antitrust Authorities" means the FTC, the Antitrust Division and the attorneys general

of the several states of the United States and (ii) "Antitrust Law" means the Sherman Act, as amended, the Clayton Act, as amended, the Antitrust Improvements Act, the Federal Trade Commission Act, as amended, and all other federal and state statutes, rules, regulations, orders, decrees, administrative and judicial doctrines, and other laws that are designed or intended to prohibit, restrict or regulate actions having the purpose or effect of monopolization or restraint of trade.

(f) Parent shall pay to Borden, Inc. by wire transfer in immediately available funds \$10,000,000 within one business day following the satisfaction of the condition contained in Section 5.1(b)(ii). Except as provided in Section 9.11(b), such amount shall be non-refundable regardless of whether or not any of the transactions contemplated by this Agreement is consummated but, upon the consummation of the Stock Purchase, shall be credited towards the amounts payable to Borden, Inc. pursuant to Section 1.1(b).

4.4 Non-Solicitation. (a) Parent will not, from and after the date hereof and for a period of three years following the earlier of the termination of this Agreement and the Closing Date, without the prior written approval of Borden, directly or indirectly, solicit, encourage, entice or induce any person who is an employee of Borden or any of its Subsidiaries, at the date hereof or at any time hereafter until the earlier of the termination of this Agreement and the Closing Date, to terminate his or her employment with Borden or any of its Subsidiaries; provided that the foregoing shall not prohibit Parent from, after

the Closing Date, soliciting, encouraging, enticing or inducing any such person who is an employee of Holdings or its Subsidiaries on the Closing Date. Parent agrees that any remedy at law for any breach by it of this Section 4.4(a) would be inadequate, and Borden would be entitled to injunctive relief in such a case. If it is ever held that the restriction placed on Parent by this Section 4.4(a) is too broad to permit enforcement of such restriction to its fullest extent, Parent agrees that a court of competent jurisdiction may enforce such restriction to the maximum extent permitted by law, and Parent hereby consents and agrees that such scope may be judicially modified accordingly in any proceeding brought to enforce such restriction.

(b) Borden will not, from and after the date hereof and for a period of three years following the earlier of the termination of this Agreement and the Closing Date, without the prior written approval of Parent, directly or indirectly, solicit, encourage, entice or induce any person who is an employee of Parent or any of its affiliates known to Borden at the date hereof or at any time hereafter until the earlier of the termination of this Agreement and the Closing Date and with whom Borden or its affiliates has had contact in the course of the negotiation of the transactions contemplated hereby, to terminate his or her employment with Parent or any of such affiliates. In addition, Borden will not, for a period of three years following the Closing Date, without the prior written approval of Parent, directly or indirectly, solicit, encourage, entice or induce any person who is an employee of Holdings or Subsidiaries at the

Closing Date to terminate his or her employment with Parent or any of its affiliates known to Borden, including Holdings or its Subsidiaries. Borden agrees that any remedy at law for any breach by it of this Section 4.4(b) would be inadequate, and Parent would be entitled to injunctive relief in such a case. If it is ever held that the restriction placed on Borden by this Section 4.4(b) is too broad to permit enforcement of such restriction to its fullest extent, Borden agrees that a court of competent jurisdiction may enforce such restriction to the maximum extent permitted by law, and Borden hereby consents and agrees that such scope may be judicially modified accordingly in any proceeding brought to enforce such restriction.

4.5 Equipment. Borden, Inc. shall use its reasonable efforts to obtain Bankers Leasing Corporation's consent to the assignment of that portion of the Master Lease Agreement (the "Master Lease Agreement") between Borden, Inc. and Bankers Leasing Corporation relating to the equipment subject thereto that is used in the operation of Holdings' and its Subsidiaries' business (the "Equipment"); provided that, in connection with any such assignment, unless Borden, Inc. otherwise consents thereto in writing, Holdings or its Subsidiary or Subsidiaries shall assume all of Borden, Inc.'s obligations under the Master Lease Agreement with respect to such Equipment. Upon reasonable request and notice, Parent shall, and shall cause its counsel, accountants and other representatives to, cooperate with Borden, Inc. in connection with obtaining such consent and in connection with any such assignment, including without limitation by

providing such financial and other information with respect to Parent and its Subsidiaries as Borden, Inc. or Bankers Leasing Corporation may from time to time reasonably request; provided that neither Parent nor any of its Subsidiaries shall be required to pay any amount to Bankers Leasing Corporation in order to obtain such consent from Bankers Leasing Corporation. If such consent is not obtained prior to the 40th day after the date hereof, then, subject to Borden's obligations under Section 6.5(a), Parent shall purchase or cause the purchase of the Equipment on or prior to the Closing Date. Schedule 4.5 hereto sets forth a list of the Equipment as of the date hereof.

4.6 Earnings. (a) Holdings shall prepare and deliver to Parent on the Closing Date a statement, prepared in accordance with Holdings' accounting practices applied consistently (subject to normal year-end adjustments) with Holdings' accounting practices used in the preparation of the Financial Statements (the "Closing Date Statement"), of the Earnings (as defined below) for the period from and including January 1, 1997 through the close of business of the last full accounting period of Holdings (which consists, for each fiscal quarter of Holdings, of two four-week periods followed by one five-week period (each, an "Accounting Period")) preceding the Closing for which Holdings has closed its accounting records in accordance with its normal practices. If the Earnings set forth on the Closing Date Statement exceed the sum of (i) the amount of dividends, if any (including, without limitation, dividends on the Common Stock and any special or regular quarterly dividends on the Preferred

Stock), paid by Holdings during the period covered by the Closing Date Statement (less the amount of any cash contributions received by Holdings during such period), plus (ii) the amount of accrued and unpaid dividends on the Preferred Stock as of the last day covered by such Closing Date Statement, plus (iii) the aggregate amount of tax sharing payments (including advances thereof) made by Holdings pursuant to the Tax Sharing Agreement for and during the period covered by the Closing Date Statement (the amount of such excess, if any, the "Closing Payment Amount"), then, on the Closing Date, Parent shall pay to Borden, Inc. by intra-bank transfer at The Chase Manhattan Bank, New York, New York (ABA #021000021) (Credit to Borden, Inc. 015-1- 013521) cash in U.S. dollars and in immediately available funds in an amount equal to the Closing Payment Amount.

"Earnings" means the consolidated earnings before income taxes (but net of all other Taxes) of Holdings and its Subsidiaries as reported by Holdings using Holdings' accounting practices applied consistently (subject to normal year-end adjustments) with Holdings' accounting practices used in the preparation of the Financial Statements, determined without giving effect to (i) any extraordinary charges or (ii) any fees or expenses incurred by Holdings and its Subsidiaries in connection with the transactions contemplated by this Agreement, but only to the extent such fees and expenses were incurred specifically at the request of Parent or its affiliates or in connection with Parent obtaining financing for the transactions contemplated by this Agreement.

(b) Not later than 20 business days after Holdings would close its accounting records in accordance with its normal practices (as in effect prior to the Closing) for the full Accounting Period in which the Closing occurs (such Accounting Period, the "Closing Period"), Parent shall, or shall cause the Surviving Entity to, prepare and deliver to Borden, Inc. a statement, prepared in accordance with the same accounting practices as are used for purposes of the Closing Date Statement (the "Earnings Statement") of the Earnings for the period from and including January 1, 1997 through the last day of the Closing Period. The Earnings Statement shall include separate calculations of (i) the Earnings for the period covered by the Closing Date Statement, together with a reconciliation of any amounts that differ from the amounts contained in the Closing Date Statement and a reasonably detailed statement of the reasons for each such difference, (ii) the Earnings for each full Accounting Period beginning immediately following the period covered by the Closing Date Statement and ending before the Closing Period, (iii) the Earnings for the Closing Period and (iv) the Earnings for the Closing Period, multiplied by a fraction, the numerator of which is the number of days from and including the first day of the Closing Period through the Closing Date and the denominator of which is the number of days in the Closing Period.

(c) Borden, Inc. will have 20 business days to review the Earnings Statement, together with the workpapers used in its preparation. Parent shall make the books and records of



Holdings, the Surviving Entity and the Subsidiaries available to Borden, Inc. for purposes of its review of the Earnings Statement. Unless Borden, Inc. delivers written notice to Parent on or prior to the 20th business day after its receipt of the Earnings Statement of its objection to the Earnings Statement, the parties hereto will be deemed to have accepted and agreed to the Earnings Statement, and such agreement will be final and binding. If Borden, Inc. so notifies Parent of its objection to the Earnings Statement and delivers to Parent a reasonably detailed itemized basis for such objection, Parent shall have 20 business days to prepare and deliver a revised Earnings Statement to Borden, Inc. or to notify Borden, Inc. in writing that it does not intend to do so. Thereafter, Parent and Borden, Inc. will, within 20 business days following the delivery of such revised Earnings Statement or written notice (the "Resolution Period"), attempt to resolve their differences. Any resolution by Parent and Borden, Inc. during the Resolution Period as to any disputed amounts will be final, binding and conclusive. If Parent and Borden, Inc. do not resolve all disputed items by the end of the Resolution Period, then all items remaining in dispute will be submitted within ten days after the expiration of the Resolution Period to an independent accounting firm of national reputation mutually acceptable to Parent and Borden, Inc. (the "Neutral Auditors"). All fees and expenses relating to the work, if any, to be performed by the Neutral Auditors will be borne equally by Parent and Borden, Inc. The Neutral Auditors will deliver to Parent and Borden, Inc. a written determination (such

determination to include a worksheet setting forth all material calculations used in arriving at such determination and to be based solely on information provided to the Neutral Auditors by Parent and Borden, Inc.) of the disputed items within 30 days of receipt of the disputed items, which determination will be final, binding and conclusive. The final, binding and conclusive Earnings Statement, which either is agreed upon by Parent and Borden, Inc. or is delivered by the Neutral Auditors in accordance with this Section, will be the "Conclusive Earnings Statement" and the date on which an Earnings Statement becomes a Conclusive Earnings Statement will be the "Establishment Date".

(d) If the amount of Earnings set forth on the Conclusive Earnings Statement is different from the amount of the amount of Earnings set forth on the Closing Date Statement, Parent or Borden, Inc., as the case may be, shall pay to the other, by wire transfer in immediately available funds on the second business day following the Establishment Date, an amount in cash equal to the difference between the Aggregate Earnings Payment (as defined below) and the Closing Payment Amount (the amount of such difference is referred to herein as the "Final Payment Amount"). For purposes of this Agreement, "Aggregate Earnings Payment" means:

(i) the sum of (A) the Earnings for the period from and including January 1, 1997 through the last day of the full Accounting Period immediately preceding the Closing Period, plus (B) the Earnings for the Closing Period, multiplied, in the case of this clause (B) only, by a

fraction, the numerator of which is the number of days from and including the first day of the Closing Period through the Closing Date and the denominator of which is the number of days in the Closing Period; minus

(ii) the sum of (A) the amount of dividends, if any (including, without limitation, dividends on the Common Stock and any special or regular quarterly dividends on the Preferred Stock), paid by Holdings during the period from and including January 1, 1997 through the Closing Date (less the amount of any cash contributions received by Holdings during such period), plus (B) the amount of accrued and unpaid dividends on the Preferred Stock as of the Closing Date, plus (C) the aggregate amount of tax sharing payments (including advances thereof) made by Holdings pursuant to the Tax Sharing Agreement for and during the period covered by the Closing Date Statement.

The Final Payment Amount payable by Parent or Borden, Inc. pursuant to this Section 4.6(d) shall bear interest for the period from and including the Closing Date to the date of payment (calculated on the basis of a 365-day year) at the rate per annum equal to the prime rate publicly announced on the Closing Date by The Chase Manhattan Bank in New York, New York minus 1%, which interest shall be payable together with the payment of the Final Payment Amount.

4.7 Termination of Affiliate Relations. Except as contemplated by this Agreement or as set forth on Schedule 4.7 hereto, on or prior to the Closing Date, Holdings and its

Subsidiaries shall have repaid all of their outstanding indebtedness (including interest thereon) and satisfied all of their other liabilities owed to Borden or Borden's affiliates (other than Holdings and its Subsidiaries) and Borden and its affiliates (other than Holdings and its Subsidiaries) shall have repaid all of their outstanding indebtedness (including interest thereon) and satisfied all of their other liabilities owed to Holdings and its Subsidiaries. All agreements between Holdings and its Subsidiaries and Borden and its affiliates (other than agreements solely between Holdings and its Subsidiaries, agreements contemplated by this Agreement and agreements listed on Schedule 4.7) shall be terminated as of the Closing, and all obligations and liabilities thereunder shall have been satisfied.

4.8 Further Actions. (a) Subject to the terms and conditions of this Agreement, and without limiting (or, with respect to the matters covered by Section 4.3, expanding) the obligations of the parties contained in Section 4.3, each of the parties hereto agrees to use its reasonable best efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary, proper or advisable to consummate and make effective the transactions contemplated by this Agreement, including using its reasonable best efforts: (i) to obtain, in addition to approvals discussed in Section 4.3 hereof, any licenses, permits, consents, approvals, authorizations, qualifications and orders of federal, state, local and foreign Governmental Authorities and parties to contracts with Holdings or any of its Subsidiaries as are required in connection with the

consummation of the transactions contemplated hereby; (ii) to effect, in addition to filings discussed in Section 4.3 hereof, all necessary registrations and filings; (iii) to defend any lawsuits or other legal proceedings, whether judicial or administrative, whether brought derivatively or on behalf of third parties (including Governmental Authorities or officials), challenging this Agreement or the consummation of the Stock Purchase, the Merger or the other transactions contemplated hereby; (iv) in the case of Parent, to obtain the funds necessary to consummate the transactions contemplated by this Agreement on the Closing Date; and (v) to furnish to each other such information and assistance and to consult with respect to the terms of any registration, filing, application or undertaking as reasonably may be requested in connection with the foregoing.

(b) Except as permitted in the Trademark License Agreement, neither Holdings nor any of its Subsidiaries shall in any way use, after the end of the three month period beginning on the Closing Date, any trademark, tradename, brandmark, brandname, tradedress or logo owned or used in the continuing business of Borden or any of its affiliates (collectively, the "Borden Names"), or use any trademark, tradename, brandmark, brandname, tradedress or logo which is likely to cause confusion with any Borden Name or be associated with Borden or any of its affiliates, on or as of the Closing Date. If this Section 4.8(b) is breached or threatened to be breached, Parent expressly consents that in addition to any other remedy Borden and its affiliates may have, Borden or such affiliate shall be entitled

to apply for and receive injunctive relief in order to prevent the continuation of any existing breach or the occurrence of any threatened breach.

(c) Promptly after the Closing, Borden, Inc. shall cause all books of account, minute books, stock record books and other records of Holdings and its Subsidiaries to be delivered to Holdings; provided that Borden, Inc. may deliver copies of, or relevant extracts from, any such documents which contain information with respect to Borden or affiliates of Borden, Inc. other than Holdings or its Subsidiaries.

4.9 Preparation of Returns and Payment of Taxes. Holdings shall prepare and timely file all Returns and amendments thereto required to be filed by the Borden Corporations on or before the Closing Date. Parent shall have a reasonable opportunity to review any such Returns to the extent that such Returns do not include or relate to any corporation or group of corporations other than the Borden Corporations. Borden and each of the Borden Corporations shall pay and discharge all Taxes, assessments and governmental charges upon or against it or any of its properties or assets, and all liabilities at any time existing, before the same shall become delinquent and before penalties accrue thereon prior to the Closing Date, except to the extent and as long as: (a) the same are being contested in good faith and by appropriate proceedings pursued diligently and in such a manner as not to cause any Material Adverse Effect; and (b) Holdings shall have set aside on its books reserves (segregated to the extent required by sound accounting practice)

in the amount of the demanded principal imposition (together with interest and penalties relating thereto, if any).

4.10 No Shopping. Until the earlier of the Closing and the termination of this Agreement, Borden and Holdings and those acting on behalf of them will not (and Borden will use its best efforts to cause its officers, employees, shareholders, agents and representatives not to), directly or indirectly, solicit, encourage or initiate any discussions with, or negotiate with or provide any information to, any person or entity other than Parent and Parent's officers, employees and agents concerning any merger, sale of material assets or similar transaction involving Holdings and its Subsidiaries or any sale of any capital stock of Holdings and its Subsidiaries (other than sales of common stock pursuant to the exercise of outstanding Options). Without the prior written consent of Parent during such period, neither Borden nor Holdings will furnish to any person or entity (other than Parent) any non-public information concerning Holdings and its Subsidiaries or their respective businesses, financial affairs or prospects for the purpose of or with the intent of permitting such person or entity to evaluate a possible acquisition of any capital stock or (other than in the ordinary course of business) assets of Holdings and its Subsidiaries.

4.11 USDA Compliance Agreement. Parent agrees that it will assume the obligations of Borden, Inc. and/or Borden/Meadow Gold Dairies, Inc. under the Compliance Agreement in Lieu of Debarment among Borden, Inc., Borden/Meadow Gold Dairies, Inc.

and the Food and Consumer Service of the United States Department of Agriculture if Parent is requested to assume such obligations by the Food and Consumer Service pursuant to Section 7(a) of such Compliance Agreement.

4.12 Post-Closing Services. No later than 30 days after the date of this Agreement, Parent shall notify Borden, Inc. in writing of the services under the Master Customer Services Agreement currently in effect that Parent desires to terminate as of the Closing Date (the "Terminated Services"). Unless Borden Services Company and Parent otherwise agree in writing prior to the Closing Date, Borden, Inc. agrees to cause Borden Services Company to terminate the Terminated Services effective as of the Closing Date.

4.13 Financing Best Efforts. Parent shall use all best efforts to obtain the funds needed to permit the Closing to occur as soon as possible but in any event no later than the Clause (iv) Termination Date (as defined in Section 9.1). Without limiting the generality of the foregoing, "best efforts" shall include, without limitation, taking any and all actions and doing any and all other things necessary, proper or advisable to obtain such funds and to permit the Closing to occur as soon as possible but in any event on or prior to the Clause (iv) Termination Date.



## ARTICLE V

## CONDITIONS PRECEDENT

5.1 Conditions Precedent to Obligations of Parties. The respective obligations of each of the parties hereto hereunder are subject to the satisfaction, at or prior to the Closing Date, of each of the following conditions:

(a) No Injunction. At the Closing Date, there shall be no injunction, restraining order or decree of any nature of any court or Governmental Authority of competent jurisdiction that is in effect that restrains or prohibits the consummation of the Stock Purchase or the Merger; provided, however, that the parties invoking this condition shall use their best efforts to have such injunction, order or decree vacated or denied.

(b) Regulatory Authorizations. All (i) consents, approvals, authorizations and orders of federal and state Governmental Authorities as are required to be obtained prior to the Closing in connection with the transactions contemplated by this Agreement (the "Required Consents") shall have been obtained, except for Required Consents the failure to obtain which, individually or in the aggregate, would not have a Material Adverse Effect; and (ii) applicable waiting periods specified under the Antitrust Improvements Act with respect to the transactions contemplated by this Agreement shall have lapsed or been terminated.

5.2 Conditions Precedent to Obligation of Parent. The obligation of Parent to consummate the transactions contemplated

by this Agreement is subject to the satisfaction at or prior to the Closing Date of each of the following additional conditions:

(a) Accuracy of Representations and Warranties. The representations and warranties of Borden, Inc. and Holdings contained in this Agreement shall be true and accurate as of the Closing Date as if made at and as of such date (except for changes permitted or contemplated by this Agreement and except those representations and warranties that address matters only as of a particular date or only with respect to a specific period of time, which need only be true and accurate as of such date or with respect to such period), except where the failure of such representations and warranties to be so true and correct (without giving effect to any exception contained therein for matters that would or would not, as the case may be, have a Material Adverse Effect), would not, individually or in the aggregate, have Material Adverse Effect.

(b) Performance of Agreement. Each of Borden and Holdings shall have performed in all material respects all obligations and agreements, and complied in all material respects with all covenants and conditions, contained in this Agreement to be performed or complied with by it prior to or at the Closing Date.

(c) Absence of Material Adverse Change. Since the date of this Agreement, there shall not have been any material adverse change, individually or in the aggregate, in the financial condition or business of Holdings and its Subsidiaries taken as a whole (except for changes affecting the economy

generally, the dairy industry generally or the dairy industry within any of the jurisdictions in which Holdings or its Subsidiaries is operating).

(d) Certificate. Parent shall have received a certificate of Holdings, dated the Closing Date, executed on behalf of Holdings by its President or any Vice President, to the effect that the conditions specified in paragraphs (a), (b) and (c) above have been satisfied.

(e) Delivery of the Borden Shares. Borden shall have delivered to Parent certificates representing all of the Borden Shares owned by such corporation, each of which shall have been duly endorsed or accompanied by stock powers duly executed, with all necessary stock transfer stamps attached thereto.

(f) Ancillary Agreements. Borden Services Company shall have executed and delivered to Parent or Holdings the Amendment to the Master Customer Services Agreement, substantially in the form of Exhibit A hereto (the "Master Services Agreement Amendment"), Borden shall have executed and delivered to Parent or Holdings the Trademark License Agreement, substantially in the form of Exhibit B hereto (the "Trademark License Agreement"), Borden, Inc. shall have executed and delivered to Parent the Insurance Matters Agreement, substantially in the form of Exhibit C hereto (the "Insurance Matters Agreement"), and Borden Foods Corporation or another affiliate of Borden, Inc. shall have executed and delivered to Holdings or its subsidiary the Trademark License Agreement,

substantially in the form of Exhibit D hereto (the "Meadow Gold Trademark License Agreement").

5.3 Conditions Precedent to the Obligation of Holdings and Borden. The obligation of Holdings and Borden to consummate the transactions contemplated by this Agreement is subject to the satisfaction at or prior to the Closing Date of each of the following additional conditions:

(a) Accuracy of Representations and Warranties. The representations and warranties of Parent contained in this Agreement shall be true and accurate as of the Closing Date as if made at and as of such date (except for changes permitted or contemplated by this Agreement and except those representations and warranties that address matters only as of a particular date or only with respect to a specific period of time, which need only be true and accurate as of such date or with respect to such period), except where the failure of such representations and warranties to be so true and correct (without giving effect to any exception or threshold with respect to materiality contained therein), would not, individually or in the aggregate, prevent, materially hinder or materially delay the ability of Parent to perform its obligations under this Agreement or to consummate the transactions contemplated hereby.

(b) Performance of Agreements. Parent shall have performed in all material respects all obligations and agreements, and complied in all material respects with all covenants and conditions, contained in this Agreement to be performed or complied with by it prior to or at the Closing Date.

(c) Certificate. Borden shall have received a certificate of Parent, dated the Closing Date, executed on behalf of Parent by its President or any Vice President, to the effect that the conditions specified in paragraphs (a) and (b) above have been satisfied.

(d) PBGC Actions. The PBGC shall not have (i) threatened to terminate or terminated any Employee Pension Benefit Plan, (ii) imposed any lien on any assets of Borden or any of their affiliates or (iii) required any agreement or guarantee by Borden or any of their affiliates of any obligations in respect of pension plans of Borden or any of their affiliates as a condition to withdrawing any threat to terminate any Employee Pension Benefit Plan.

(e) Ancillary Agreements. Parent or Holdings shall have executed and delivered to Borden Services Company the Master Services Agreement Amendment, to Borden, Inc. the Insurance Matters Agreement and to Borden the Trademark License Agreement, and Holdings or its subsidiary shall have executed and delivered to Borden Foods Corporation or another affiliate of Borden, Inc. the Meadow Gold Trademark License Agreement.

#### ARTICLE VI

##### PROVISIONS AS TO TAXES

6.1 Access to Records Following Closing. Parent and Borden agree that so long as any books, records and files retained by Borden relating to the business of the Borden Corporations, or the books, records and files delivered to the control of Parent pursuant to this Agreement to the extent they

relate to the operations of the Borden Corporations prior to the Closing Date, remain in existence and available, each party (at its expense) shall have the right upon prior notice to inspect and to make copies of the same at any time during business hours for any proper purpose. Parent and Borden shall use reasonable efforts not to destroy or allow the destruction of any such books, records and files without first offering in writing to deliver them to the other.

6.2 Section 338 Elections. (a) If requested by Parent, Borden and Parent shall jointly make timely and irrevocable elections under Section 338(h)(10) of the Code (the "Elections"), and, if permissible, similar Elections under any applicable state or local income tax laws with respect to Holdings and those Subsidiaries set forth on Schedule 6.2 ("Electing Subsidiaries"). Borden, Parent and Holdings and the Electing Subsidiaries shall report the transaction consistent with such Elections under Section 338(h)(10) of the Code or any similar state or local tax provision and agree not to take any action that could cause such Elections to be invalid, and shall take no position contrary thereto unless required to do so pursuant to a Final Determination (as hereinafter defined). For purposes of this Agreement, "Final Determination" shall mean final resolution by (i) a decision of the Tax Court or judgment, decree, or other order by a court of competent jurisdiction, which has become final and unappealable; (ii) IRS Form 870, 870-AD, 870-L, 870-L(AD), 870-P, 870-P(AD), 870-S, 870-S(AD) (or any successor forms thereto), on the date of acceptance by or on

behalf of the Internal Revenue Service, or by comparable agreement form under the laws of other jurisdictions; except that a Form 870, 870-AD, 870-L, 870-L(AD), 870-P, 870-P(AD), 870-S, 870-S(AD) or comparable form that reserves the right of the taxpayer to file a claim for refund and/or the right of the taxing authority to assert a further deficiency shall not constitute a Final Determination; (iii) a closing agreement or compromise under Sections 7121 or 7122 of Code or under corresponding provisions of any subsequently enacted Federal tax laws, or comparable agreements under the laws of other jurisdictions; (iv) any allowance of a refund or credit in respect of any overpayment of Tax, including any related interest or penalties, but only after the expiration of all periods during which such refund may be recovered (including by the way of offset) by the Tax imposing jurisdiction; or (v) any other final disposition by reason of the expiration of the applicable statute of limitations or the expiration of the period during which a protest may be filed.

(b) To the extent possible, Parent, Borden, Holdings and the Electing Subsidiaries shall execute as of the Closing Date any and all forms necessary to effectuate the Elections (including, without limitation, Internal Revenue Service Form 8023 and any similar forms under applicable state and local income tax laws (the "Section 338 Forms")). To the extent, however, that any Section 338 Forms are not executed by the Closing Date, Parent, Borden, Holdings and the Electing Subsidiaries shall prepare and complete each such Section 338

Form no later than 15 days prior to the date such Section 338 Form is required to be filed. Parent, Borden, Holdings and each of the Electing Subsidiaries each agree to cause the Section 338 Forms to be duly executed by an authorized person for such entity and each shall duly and timely file the Section 338 Forms in accordance with applicable tax laws and the terms of this Agreement.

(c) As soon as practicable after the Closing Date, Parent shall reasonably determine the fair market value of the assets of Holdings and the Electing Subsidiaries and the allocation of the deemed sales price of the assets of Holdings and the Electing Subsidiaries resulting from the Elections (as required pursuant to Section 338(h)(10) of the Code and regulations promulgated thereunder) among such assets (the "Section 338 Allocation"). Parent shall deliver to Borden a schedule setting forth the Section 338 Allocation within 120 days after the Closing. If the Section 338 Allocation would have a material adverse effect on Borden as reasonably demonstrated to Parent by Borden, then Borden shall be entitled to have Borden's comments incorporated into the Allocation Schedule. Parent, Borden, Holdings and the Electing Subsidiaries shall file all Returns consistently with the Section 338 Allocation.

(d) Borden shall be responsible for and shall pay any income, franchise or similar Taxes arising as a result of any Section 338(h)(10) Election or any comparable or resulting election under state law filed by Parent or Borden. Notwithstanding the preceding sentence, Parent shall be



responsible for and shall pay any income, franchise or similar Taxes imposed by any state or local taxing authority as a result of any resulting mandatory Section 338(g) election (or any comparable election under state law) if such state or local taxing authority does not allow or respect a Section 338(h)(10) Election (or any comparable or resulting election under state law) with respect to the purchase and sale of the Borden Shares contemplated hereby.

6.3 Post-Closing Cooperation. (a) Borden, Parent and each of the Borden Corporations shall reasonably cooperate, and shall cause their respective affiliates, officers, employees, agents, auditors and other representatives reasonably to cooperate, in preparing and filing all Returns, including maintaining and making available to each other all records necessary in connection with Taxes and in resolving all disputes and audits with respect to all taxable periods relating to Taxes.

(b) Borden shall be responsible for and shall pay all Taxes for the Borden Corporations that become due before or after the Closing Date that are properly allocable under this Section to the period prior to and including the Closing Date, except that the Borden Corporations and Parent, and not Borden, shall be responsible for and shall pay either to Borden or to the appropriate taxing authorities (a) the amounts accrued therefor in the Financial Statements (including amounts accrued with respect to the Tax Sharing Agreement notwithstanding the fact that such Tax Sharing Agreement has been terminated pursuant to Section 6.5(d) hereof) but not paid on or before the Closing

Date, and (b) the amounts (other than income Taxes) accrued therefor but not paid on or before the Closing Date which are reflected as expenses in determining the Earnings for the period from and including January 1, 1997 through the last day of the Closing Period. In order to appropriately apportion any of these Taxes relating to a period that includes (but that would not, but for this section, close on) the Closing Date, the parties hereto will, to the extent permitted by applicable law, elect with the relevant taxing authorities to treat for all purposes the Closing Date as the last day of a taxable period of Holdings, and such period shall be treated as a "Short Period" and a "Pre-Closing Period" for purposes of this Agreement.

In any case where applicable law does not permit Holdings to treat the Closing Date as the last day of a taxable period, then for purposes of this Agreement, the Taxes attributable to the operations of Holdings or its Subsidiaries for such Interim Period (as defined below) shall be (i) in the case of any transaction-based Tax (such as sales, transfer and other similar Taxes) ("Transaction-Based Taxes"), any such Tax attributable to a transaction occurring in such Interim Period; (ii) in the case of Taxes other than Transaction-Based Taxes that are not based on income or gross receipts, the total amount of such Taxes for the period in question multiplied by a fraction, the numerator of which is the number of days in the Interim Period, and the denominator of which is the total number of days in the entire period in question, and (iii) in the case of Taxes that are based on income or gross receipts, the Taxes other than

Transaction-Based Taxes that would be due with respect to the Interim Period, if such Interim Period were a Short Period. "Interim Period" means with respect to any Taxes imposed on Holdings or its Subsidiaries on a periodic basis for which the Closing Date is not the last day of a Short Period, the period of time beginning on the first day of the actual taxable period that includes (but does not end on) the Closing Date and ending on and including the Closing Date. An Interim Period shall be treated as a Pre-Closing Period for purposes of this Agreement. "Post- Closing Period" means with respect to any Taxes imposed on Holdings or its Subsidiaries on a periodic basis for which the Closing Date is not the last day of a Short Period, the period of time beginning on the day immediately following the Closing Date and ending on and including the last day of the actual taxable period that includes (but does not end on) the Closing Date. Any Taxes relating to a period that includes (but does not end on) the Closing Date which are not attributed to the Interim Period pursuant to this paragraph shall be attributed to the Post- Closing Period.

(c) If in any period ending after the Closing Date Holdings earns any credit or recognizes any loss which cannot be applied against its Tax liability for such period, such loss or credit shall not be carried back to any period prior to the Closing Date.

6.4 Tax Indemnification. (a) Borden's Indemnification. From and after the Closing Date, Borden shall protect, defend and indemnify Parent and its affiliates

(including Holdings and its Subsidiaries) and each of their respective officers, directors, employees, agents and other representatives (collectively, the "Parent Indemnitees"), and hold each Parent Indemnatee harmless, from any diminution in value, demand, damage, claim, action, cause of action, deficiency, fine, liability, Tax or other loss or expense including, without limitation, interest, penalties and attorneys' fees and expenses (collectively, "Damages") arising out of or resulting from any and all Taxes which are (i) imposed on Borden or any member (other than the Borden Corporations) of the consolidated, unitary or combined group which includes or included any one or more of the Borden Corporations that (a) Parent or any one or more of the Borden Corporations pays or otherwise satisfies in whole or in part, or (b) results in liens or encumbrances on any assets of any one or more of the Borden Corporations or Parent, or (ii) imposed on any one or more of the Borden Corporations in respect of its income, business, property or operations or for which any one or more of the Borden Corporations may otherwise be liable (A) for any taxable period ending prior to the Closing Date and for any Pre-Closing Period, (B) resulting by reason of the several liability of any one or more of the Borden Corporations pursuant to Treasury Regulations Section 1.1502-6 or any analogous state, local or foreign law or regulation or by reason of any one or more of the Borden Corporations having been a member of any consolidated, combined or unitary group on or prior to the Closing Date, (C) resulting from any one or more of the Borden Corporations ceasing to be a

member of the affiliated group (within the meaning of Section 1504(a) of the Code) that includes Borden, (D) attributable to any discharge of indebtedness that may result from any capital contributions by Borden (or an affiliate of Borden) prior to the Closing Date to any one or more of the Borden Corporations of any intercompany indebtedness owed by such Borden Corporation or Corporations to Borden (or an affiliate of Borden), or (E) resulting from the making of the Elections except as provided in Section 6.2(d); provided, however, that Borden's liability for Damages under the foregoing provisions of this paragraph shall be reduced to the extent that, as of the time of the payment of the indemnity claim by Borden, the Borden Corporations and/or Parent have not satisfied the obligation, if any, imposed on them in the first sentence of Section 6.3(b) hereof.

(b) Parent's Indemnification. Following the Closing Date, Parent shall, and shall cause Holdings and each of its Subsidiaries to, indemnify Borden and its affiliates and each of their respective officers, directors, employees, and agents and hold them harmless from: (i) all liability for Taxes of Holdings and any of its Subsidiaries for any period beginning after the Closing Date and any Post-Closing Period; and (ii) all liability for Taxes of Holdings or any of its Subsidiaries for the Pre-Closing Period to the extent of the obligation imposed on the Borden Corporations to pay such Taxes in the first sentence of Section 6.3(b) hereof.

(c) Tax Audits. With respect to any claim made by any taxing authority relating to the Borden Corporations (a "Tax

Claim") relating to any taxable period ending on or before the Closing Date, Borden shall, at its expense, control all proceedings and may make all decisions taken in connection with such Tax Claim (including selection of counsel) and, without limiting the foregoing, may in its sole discretion pursue or forego any and all administrative appeals, proceedings, hearings and conferences with any taxing authority with respect thereto, and may, in its sole discretion, either pay the Tax claimed and sue for a refund where applicable law permits such refund suits or contest the Tax Claim in any permissible manner, provided, however, that if the results of such proceeding could reasonably be expected to have a Material Adverse Effect on the business, financial condition or results of operations of Parent or the Borden Corporations for any taxable period including or ending after the Closing Date, there shall be no settlement or closing or other agreement with respect thereto without the consent of Parent, which consent will not be unreasonably withheld. Parent shall, at its expense, control all proceedings and make all decisions taken in connection with any Tax Claim relating solely to Taxes of Holdings or any of its Subsidiaries for any taxable period beginning after the Closing Date (including selection of counsel) and, without limiting the foregoing, may in its sole discretion pursue or forego any and all administrative appeals, proceedings, hearings and conferences with any taxing authority with respect thereto, and may, in its sole discretion, either pay the Tax claimed and sue for a refund where applicable law permits such refund suits or contest the Tax Claim in any permissible

manner; provided, however, that if the results of such proceeding could reasonably be expected to have a Material Adverse Effect on the business, financial condition or results of operations of Borden (or any member of the group of which it is the common parent) for any taxable period including or ending after the Closing Date, there shall be no settlement or closing or other agreement with respect thereto without the consent of Borden, which consent will not be unreasonably withheld.

With respect to any taxable period of the Borden Corporations beginning before and ending after the Closing Date, Borden and Parent shall jointly control the defense and settlement of any Tax audit or administrative or court proceeding relating to any Tax covered by Section 6.4(a) or (b) and each party shall cooperate with the other party at its own expense and there shall be no settlement or closing or other agreement with respect thereto without the consent of the other party, which consent will not be unreasonably withheld.

In no case shall any of Parent, Holdings or any of Holdings' Subsidiaries settle or otherwise compromise any Tax Claim relating to a Pre-Closing Period without Borden's prior written consent. None of Borden, Parent, Holdings or any of Holdings' Subsidiaries shall settle a Tax Claim relating to a Post-Closing Period without Parent's prior written consent. In the event that any party violates the provisions of this paragraph (relating to the settlement of Tax Claims), such party shall not be entitled to any indemnity payments with respect to

any indemnifiable claim (relating to such Tax Claims) pursuant to this Section 6.4.

(d) Tax Refunds. Parent agrees to pay (and to cause each Borden Corporation to pay) to Borden all refunds of any Taxes for which Borden is liable under Sections 6.3 and 6.4 hereof, but only to the extent such refund has not been specifically included as a receivable in the Financial Statements. Borden agrees to pay to Parent all refunds of any Taxes for which Parent is liable under Sections 6.3 and 6.4 hereof. The parties shall cooperate in order to take all reasonably necessary steps to claim any such refund. Any such refund received by a party (considering, for purposes of this sentence, Parent and the Borden Corporations as one party and Borden as the other party) or its affiliates for the account of the other party shall be paid to such other party within thirty (30) days after such refund is received. For purposes of this Agreement, a refund of Tax includes the application of an amount otherwise refundable as a reduction of amounts owed or to be owed.

(e) Computation of Indemnifiable Losses. Subject to Section 6.5(c) hereof, any amount payable pursuant to this Section 6.4 shall be decreased to the extent of (i) any net Tax benefit actually recognized and utilized to offset or reduce the Tax liability of the indemnified party as a result of the adjustment to Taxes giving rise to the indemnifiable loss and (ii) any insurance proceeds received or receivable by the indemnified party in respect of an indemnifiable loss. The



indemnification provisions set forth in this Section 6.4 shall survive the Closing until ninety days after the expiration of the applicable statute of limitations (and any extensions thereof). Anything to the contrary notwithstanding, the termination or expiration of any indemnification obligation hereunder shall not affect any claims made in writing prior to such expiration or termination.

6.5 Other Tax Matters. (a) Except for stock transfer taxes and other Taxes referred to in Articles I and II hereof and except for any Transfer Taxes, as hereinafter defined, imposed in connection with any purchase by Parent or Parent's designee of the Equipment pursuant to Section 4.5, which shall be paid by Borden, Inc., all Transfer Taxes incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by Parent, and Borden and Parent shall cooperate in timely making all filings, returns, reports and forms as may be required to comply with the provisions of such tax laws. For purposes of this Agreement, (i) "Transfer Taxes" shall mean transfer, documentary, sales, use, registration and other such taxes (including all applicable Real Estate Transfer Taxes, as hereinafter defined, and Real Property Gains Taxes, as hereinafter defined) and related fees (including any penalties, interest and additions to tax) incurred with respect to such taxes, (ii) "Real Estate Transfer Tax" shall mean the New York Real Estate Transfer Tax and any other similar state or local taxes imposed by New York State or any other state or local jurisdiction, and (iii) "Real Property Gains Tax" shall mean any

state or local taxes similar to the New York Real Property Gains Tax prior to its repeal.

(b) There shall be no withholding pursuant to Section 1445 of the Code; provided that Borden delivers to Parent at the Closing a certificate complying with the Code and Treasury Regulations, in form and substance satisfactory to Parent, duly executed and acknowledged, certifying that the transactions contemplated hereby are exempt from withholding under Section 1445 of the Code.

(c) Borden and Parent agree to treat any amounts payable pursuant to this Article VI as an adjustment to the purchase price of the Borden Shares.

(d) Except as provided in Section 6.3(b), Borden shall cause all tax allocation agreements or tax sharing agreements with respect to each of the Borden Corporations (including without limitation the Tax Sharing Agreement) to be terminated as of the Closing Date, and shall ensure that such agreements are of no further force or effect as to any of the Borden Corporations on and after the Closing Date and that there shall be no further liabilities or obligations imposed on any of the Borden Corporations under any such agreements.

#### ARTICLE VII

##### LABOR MATTERS, EMPLOYEE

##### RELATIONS AND BENEFITS

7.1 Conduct Prior to the Closing. Prior to the Closing, Parent shall take no action to cause Borden, Holdings or their Subsidiaries to terminate the employment of any Business

Employee, and neither Borden, Holdings nor their Subsidiaries shall be under any obligation to terminate any Business Employee prior to or at the Closing.

7.2 Continuity of Employment. The parties hereto intend that there shall be continuity of employment with respect to all Business Employees; provided that nothing contained herein to the contrary shall prohibit Parent, Holdings or its Subsidiaries from terminating any non-union employee following the Closing, and nothing contained herein to the contrary shall prohibit Parent, Holdings or its Subsidiaries from terminating any union employee following the Closing pursuant to the terms of a valid Collective Bargaining Agreement (as defined in Section 7.3 below).

7.3 Collective Bargaining Agreements. Parent shall continue to employ all Business Employees covered by any of the collective bargaining agreements listed on Schedule 7.3 (the "Collective Bargaining Agreements") as of the Closing. For each Collective Bargaining Agreement in effect as of the Closing, Parent agrees to (a) recognize the union which is a party to such Collective Bargaining Agreement as the exclusive collective bargaining representative for the Business Employees covered under the terms of the Collective Bargaining Agreement and (b) negotiate with the union over the terms of a new collective bargaining agreement upon timely demand by the union. Nothing contained herein to the contrary shall prohibit Parent, Holdings or its Subsidiaries from terminating any Business Employee

covered under an existing Collective Bargaining Agreement pursuant to the terms of that agreement.

7.4 Comparable Benefits. For one year following the Closing, Parent shall, or shall cause an affiliate to, offer employee benefits, effective as of the Closing (including, but not limited to, health, welfare, pension, vacation, savings and severance benefits) to the Business Employees that are comparable in the aggregate to the employee benefits that are in effect for such employees immediately prior to the Closing. Prior to Closing, Parent and Borden shall mutually agree upon what employee benefits shall be offered to non-union Business Employees during the one-year period following the Closing, in order to provide comparable benefits within the meaning of this Section 7.4. If the parties are unable to agree as to what employee benefits offered by Parent are "comparable," the decision of an independent third-party actuary (the selection of which shall be acceptable to both parties) shall be binding. With respect to Business Employees who are covered by Collective Bargaining Agreements, Parent agrees to negotiate with the certified bargaining representative(s) for such Business Employees over the employee benefits to be offered following the Closing.

7.5 Business Plan Participation. Except as expressly provided in this Section 7.5 or except as otherwise required by applicable law, Business Employees shall cease active participation in (and accrual of additional benefits under) all Borden-sponsored Business Plans as of the Closing.

7.6 Business Plan Liabilities. Except as otherwise specifically provided in this Article VII, Parent shall be responsible and liable for all liabilities and obligations (a) relating to the participation of the Business Employees under the Business Plans and the Parent Business Plans before, on or after the Closing (including, but not limited to, medical, dental and life insurance benefits for the benefit of Business Employees who are receiving disability income payments under any Business Plan, but excluding long-term disability income benefits payable to Business Employees for long-term disability claims (i) in pay status prior to Closing or (ii) converted directly from short-term disability claims in pay status prior to Closing, without any intervening period between short-term disability status and long-term disability status) and (b) in connection with the employment (or termination of employment) of the Business Employees before, on or after the Closing. Other than the liabilities and obligations expressly assumed by Parent pursuant to this Agreement relating to the participation of Business Employees in the Business Plans and in the Parent Business Plans (including, without limitation, the liabilities and obligations assumed by Parent in the immediately preceding sentence), Borden shall be responsible and liable for all liabilities and obligations relating to the Business Plans accruing prior to Closing. Parent shall have no liabilities or obligations under any Business Plans that are welfare benefit plans (as defined in Section 3(1) of ERISA) under which Business Employees have ceased active participation pursuant to Section 7.5 of this Agreement,

except that Parent shall be responsible and liable for all accruals or claims relating to the participation of Business Employees for all periods of time prior to such cessation with respect to such welfare benefit plans.

7.7 Defined Benefit Plan. (a) As of the Closing, Borden shall cause the participation by the Business Employees in the Borden, Inc. Employees Retirement Income Plan (the "Borden Pension Plan") to cease. Assets shall be transferred in cash or other marketable assets as determined by Borden (valued at their fair market value as of the date or dates of transfer) as soon as practicable (but in no event later than nine months) after the Closing to such defined benefit plan designated by Parent (the "Parent Pension Plan"); provided, however, that unless Parent agrees otherwise, all assets so transferred shall be a pro rata portion of plan assets on hand at Closing in approximately the same ratio that liabilities transferred bear to total plan liabilities. The amount of assets to be transferred shall be equal to:

(i) the funded percentage of "current liability" under the Borden Pension Plan of the Business Employees as of the Closing (with assets valued at fair market value as of such date), using an interest rate equal to the highest permissible rate under Section 412(1)(7) of the Code at the Closing. Current liability shall be determined as of January 1, 1997 and actuarially rolled forward from January 1, 1997 to the Closing, determined by an actuary retained by Borden ("Borden's Actuary"), utilizing the actuarial methods

and assumptions (other than the aforementioned interest rate) used for determining the minimum funding requirements for the Borden Plan for 1996, minus

(ii) any benefit payments made to or in respect of a Business Employee during the period from the Closing to the date of transfer, plus

(iii) interest on the net amount described in clauses (i) and (ii) above at the same interest rate used to determine the amount in clause (i) above from the Closing Date to the date of transfer.

The foregoing method is accepted by the parties to this Agreement as a reasonable basis on which to determine the present value of accrued benefits in compliance with the provisions of Section 414(l) of the Code. Parent's actuary may review Borden's Actuary's calculations for accuracy in the application of the agreed actuarial methods, assumptions and interest rates specified in clause (i) above as well as the calculations pursuant to clauses (ii) and (iii) above. Should the actuaries be unable to agree upon the calculations, the matter shall be submitted to an independent third-party actuary (the selection of which shall be acceptable to both parties) for final resolution. Prior to the transfer date, all benefit payments shall be made from the Borden Pension Plan. In consideration of the transfer of assets described herein, the Parent Pension Plan shall, as of the Closing, assume all liabilities in respect of participants for whom assets are transferred.

(b) Parent shall (i) give Borden written notice of the name of the trustee of the Parent Pension Plan, accompanied by a copy of the most recent favorable IRS determination letter for such plan received by Parent, as promptly as possible after the Closing, but in any event prior to the date on which such transfer is to occur; and (ii) as soon as practicable (but in no event later than nine months) after the Closing, make all required filings and submissions to appropriate Governmental Authorities. As soon as practicable after the Closing, Borden shall cause the trustee of the Borden Pension Plan to transfer to the trustee of the Parent Pension Plan the amount of assets described in Section 7.7(a) above. Borden, Parent and each of the Borden Corporations shall reasonably cooperate, and shall cause their respective affiliates, officers, employees, agents and other representatives reasonably to cooperate, in preparing and filing all returns, reports and other documents with governmental regulatory agencies, including maintaining and making available to each other all records necessary in connection with such filings or reasonably necessary to resolve disputes or audits with respect to Business Employees covered by Business Plans (other than those records that, absent a specific judicial order or decree requiring disclosure, are privileged or that otherwise may not be disclosed pursuant to contract, judicial order or other similar circumstances).

7.8 Defined Contribution Plans. (a) As of the Closing, Borden shall cause the active participation by the Business Employees in the Borden, Inc. Retirement Savings Plan,



the Borden, Inc. Union Savings Plan and the Borden, Inc. Associate Savings Plan (collectively, the "Savings Plans") to cease. Borden shall (i) as of the Closing cause the trustees of the Savings Plans to identify, in accordance with the applicable spinoff provisions set forth under Section 414(l) of the Code, the assets of the Savings Plans representing the full account balances of the Business Employees for all periods of participation through the Closing (including, as applicable, all employee contributions, employer contributions and all earnings attributable thereto); and (ii) as soon as practicable (but in no event later than nine months) after the Closing, make all required filings and submissions to appropriate Governmental Authorities and all required amendments to the Savings Plans and related trust agreements necessary to provide for the transfer of assets described in this Section 7.8. The Savings Plans shall be amended to provide that (i) there shall be no contributions thereto with respect to the Business Employees for periods after the Closing and (ii) all transferred employer contributions shall be fully vested.

(b) Parent shall (i) give Borden written notice of the name of the trustee of the defined contribution plan designated by Parent to which the assets and liabilities for benefits of the Savings Plans are to be transferred (the "Parent Savings Plan"), accompanied by a copy of the most recent favorable IRS determination letter for such plan received by Parent, as promptly as possible after the Closing, but in any event prior to the date on which such transfer is to occur; and (ii) as soon as

practicable (but in no event later than nine months) after the Closing, make all required filings and submissions to appropriate Governmental Authorities. As soon as practicable after the Closing, and pursuant to the procedures set forth below, Borden shall cause the trustees of the Savings Plans to transfer to the trustee of the Parent Savings Plan the following amount (the "Total Transfer Amount"): (A) the full account balances (in kind or in cash as determined by Borden, and notes for any loans to the Business Employees) of all Business Employees, whose account balances shall have been credited with appropriate earnings and contributions, if any, attributable to the period ending on the close of business on the day preceding the Closing, plus (B) earnings on such account balances attributable to the period from the Closing to the Transfer Date, reduced by (C) any benefit or withdrawal payments in respect of the Business Employees prior to the Transfer Dates. The "Transfer Date" shall be the first day of the month following a 15th day of a month by which Parent has requested the transfer and Borden has received copies of the applicable favorable IRS determination letters. On the Transfer Date, Borden shall transfer 90% of its good faith estimate of the Total Transfer Amount. Upon the completion of a calculation of the Total Transfer Amount by the recordkeeper for the Savings Plans (such calculation to occur no later than 120 days after the Transfer Date and such calculation to be binding on Parent), the Savings Plans shall transfer to the Parent Savings Plan an amount equal to the difference between the Total Transfer Amount and any amounts previously transferred to the Parent Savings Plan or, if

applicable, the Parent Savings Plan shall transfer to the Savings Plans an amount equal to the difference between any amounts previously transferred to the Parent Savings Plan and the Total Transfer Amount. In consideration of the transfer of assets hereunder, Parent shall, as of the Transfer Date, cause the Parent Savings Plan to assume the liabilities for benefits payable to plan participants and beneficiaries in respect of participants for whom assets (including notes) are transferred.

(c) Periods of employment by the Business Employees with Borden for which credit was given under the Savings Plans shall be taken into account for all purposes under the Parent Savings Plan to the same extent they were taken into account under the Savings Plans.

(d) Parent shall (i) permit repayment to the Parent Savings Plan of the outstanding loans of the Business Employees (under the Savings Plans) by way of regular paycheck deductions and (ii) take all steps required to effectuate such repayment (including amending its plans).

(e) Any transfer of plan assets shall consist of (i) cash, (ii) the loan balances described below in this Section 7.8(e) and (iii) fixed investment contracts as determined by Borden (valued at their fair market value as of the date or dates of transfer); provided, however, that unless Parent agrees otherwise, all fixed investment contracts so transferred shall be a pro rata portion of such contracts on hand at Closing in approximately the same ratio as the account balances transferred bear to total account balances. Should any outstanding loans of

Business Employees (under the Savings Plans) be transferred to the trustee or trustees of the Parent's Savings Plan, Borden shall cause such loans to be transferred only with respect to such Business Employees who are identified in writing to Parent by the Transfer Date as having executed new notes in favor of Parent's Savings Plan.

7.9 Withdrawal Liability. As of the Closing, Parent shall assume the liability for any pension withdrawal liability to the Central States Southeast and Southwest Areas Pension Fund thereafter due resulting from participation in the pension fund of employees or former employees of Holdings or its Subsidiaries. Claims for multiemployer plan withdrawal liability triggered by events occurring prior to the Closing shall be the responsibility of Borden.

7.10 Post-Retirement Benefits. Subject to Sections 7.7 and 7.8 above, as of the Closing, no Business Employee shall be eligible to receive "Post-Retirement Benefits" from Borden (including, but not limited to, pension, retiree medical and retiree life benefits). To the extent that Business Employees receive (or are eligible to receive) Post-Retirement Benefits from Borden immediately prior to the Closing, such Business Employees shall receive Post-Retirement Benefits from Parent following the Closing.

7.11 Welfare Plans. With respect to any Parent Business Plan that is a "welfare benefit plan" (as defined in Section 3(1) of ERISA) maintained for the benefit of Business Employees on and after the Closing, Parent shall (a) cause there

to be waived any pre-existing condition limitations and (b) give effect, in determining any deductible and maximum out-of-pocket limitations, to claims incurred and amounts paid by, and amounts reimbursed to, such employees with respect to similar plans maintained by Borden immediately prior to the Closing.

7.12 Accrued Vacation. With respect to any accrued but unused vacation time to which any Business Employee is entitled pursuant to the vacation policy applicable to such employee immediately prior to the Closing (the "Vacation Policy"), Parent shall allow such Business Employee to use such accrued vacation; provided, however, that if Parent deems it necessary to disallow such employee from taking such accrued vacation, Parent shall be liable for and pay in cash to such employee an amount equal to such vacation time in accordance with terms of the Vacation Policy; provided, further, that Parent shall be liable for and pay in cash an amount equal to such accrued vacation time to any Business Employee whose employment terminates for any reason subsequent to the Closing; provided, further, that Parent shall be under no obligation to recognize any unused vacation time accrued prior to the year in which the Closing occurs.

7.13 Severance. Parent shall provide severance benefits in accordance with Schedule 7.13 to Business Employees (who are either salaried or non-union hourly employees) terminated within 12 months of the Closing under the same terms as the Business Plans that are severance plans.

7.14 Service Credit. With respect to the Business Employees, Parent shall recognize all service with Borden for purposes of eligibility and vesting under the Parent Business Plans.

7.15 WARN Act. Parent agrees to provide any required notice under the Worker Adjustment and Retraining Notification Act ("WARN") and any other applicable law and to otherwise comply with any such statute with respect to any "plant closing" or "mass layoff" (as defined in WARN) or similar event affecting employees and occurring on or after the Closing or arising as a result of the transactions contemplated hereby.

7.16 COBRA. Parent agrees to provide any required notice under the Consolidated Omnibus Budget Reconciliation Act of 1986, as amended ("COBRA"), and any other applicable law on or after the Closing.

7.17 No Rights Conferred on Employees. Nothing herein, expressed or implied, shall confer upon any employee or former employee of Borden, Parent, Holdings and its Subsidiaries, or any of their affiliates (including, without limitation, the Business Employees), any rights or remedies (including, without limitation, any right to employment or continued employment for any specified period) of any nature or kind whatsoever, under or by reason of this Agreement.

## ARTICLE VIII

## ASSUMPTION OF CERTAIN OBLIGATIONS

## AND LIABILITIES; INDEMNIFICATION

8.1 Assumption and Indemnification. (a) Parent hereby agrees to assume all obligations and liabilities of Borden and its affiliates (collectively, the "Borden Indemnified Parties"), and to indemnify, defend and hold the Borden Indemnified Parties harmless from and against and in respect of any and all claims, losses, damages, expenses, obligations and liabilities (including costs of collection, attorney's fees and other costs of defense) incurred by them in respect of or arising out of:

(i) except for liabilities and obligations expressly assumed by Borden under this Agreement, any liabilities or obligations of or related to Holdings or any of its Subsidiaries, whether arising prior to, on or after the Closing Date;

(ii) any breach (A) by Parent or the Surviving Entity of any of its agreements or covenants contained in this Agreement, the Master Customer Services Agreement, as amended by the Master Services Agreement Amendment, the Insurance Matters Agreement, the Trademark License Agreement or the Meadow Gold Trademark License Agreement, or (B) by Parent of the representation and warranty contained in Section 3.3(b); and

(iii) (A) any assignment of Parent's rights or obligations pursuant to Section 9.6, any modification of any

of the provisions of this Agreement, the Master Customer Services Agreement, as amended by the Master Services Agreement Amendment, the Trademark License Agreement or the Meadow Gold Trademark License Agreement made in connection with such assignment and any filing, notice, waiver, agreement, document or other action made or required in connection with such assignment and (B) any change to the structure of the Merger referred to in the last sentence of Section 1.2.

All such claims, losses, damages, expenses, obligations and liabilities are collectively referred to as "Borden Indemnified Liabilities".

Notwithstanding any other provision of this Agreement, Parent agrees that it shall have no cause of action against any Indemnified Party under Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act, as the same has been or may be amended from time to time, or any other cause of action with respect to chemicals in the soil or groundwater at, near or from any property or facility owned or operated by any of Holdings and its Subsidiaries.

(b) Borden, Inc. hereby agrees to assume all obligations and liabilities of Parent, Holdings, the Surviving Entity and their affiliates (collectively, the "Parent Indemnified Parties" and, together with the Borden Indemnified Parties, the "Indemnified Parties"), and to indemnify, defend and hold the Parent Indemnified Parties harmless from and against and in respect of any and all claims, losses, damages, expenses,



obligations and liabilities (including costs of collection, attorney's fees and other costs of defense) incurred by them in respect of or arising out of:

(i) any demand for appraisal of Shares made by a holder of Common Shares who has not voted in favor of the Merger, or any other claim by a holder of Common Shares that such holder is entitled to additional consideration as a holder of Common Shares as a result of the transactions contemplated by this Agreement;

(ii) any breach (A) by Borden of any of their agreements or covenants contained in this Agreement (but expressly excluding, notwithstanding anything to the contrary that may be contained herein, Sections 3.1 and 3.2 hereof, except as expressly provided in clause (C), (D) or (E) below), (B) after the Closing, by Borden or their affiliates of the Master Customer Services Agreement, as amended by the Master Services Agreement Amendment, the Insurance Matters Agreement, the Trademark License Agreement or the Meadow Gold Trademark License Agreement, (C) by Borden of the representation and warranty contained in Section 3.1(b) or 3.1(d), (D) by Holdings of the representation and warranty contained in Section 3.2(b) or (E) by Holdings of the representation and warranty contained in the second sentence of Section 3.2(d) insofar as it pertains to Holdings' or its Subsidiaries' ownership of all of the outstanding shares of capital stock or other equity interests of each of the Subsidiaries;

(iii) any claim by any holder of shares of Common Stock on the date hereof that the original offer and sale by Holdings of shares of its Common Stock to such holder violated applicable federal or state securities laws;

(iv) any shares of capital stock or options outstanding immediately prior to the Closing which are not taken into account in determining the Common Share Consideration pursuant to Section 1.1 or otherwise settled pursuant to Section 2.2; and

(v) any liability for long-term disability income benefits payable to Business Employees, but only to the extent retained by Borden after the Closing pursuant to Section 7.6(a) of this Agreement.

All such claims, losses, damages, expenses, obligations and liabilities are collectively referred to as "Parent Indemnified Liabilities" and, together with the Borden Indemnified Liabilities, as "Indemnified Liabilities". Parent hereby agrees, on behalf of each Parent Indemnified Party, that, if the consideration to be paid to any holder of Dissenting Shares is less than the Common Share Consideration, then Parent shall pay to Borden, Inc., in cash and immediately available funds, an amount equal to the excess of the Common Share Consideration over the amount required to be paid to such holder of a Dissenting Share.

8.2 Procedure. If a claim by a third party (which term shall include a holder of Dissenting Shares) is made against an Indemnified Party, and if such party intends to seek indemnity

with respect thereto under this Article VIII, such Indemnified Party shall promptly notify the indemnifying party in writing of such claims setting forth such claims in reasonable detail. The indemnifying party shall have 10 days after receipt of such notice to undertake, conduct and control, through counsel of its own choosing and at its own expense, the settlement or defense thereof, and the Indemnified Party shall cooperate with it in connection therewith; provided that the Indemnified Party may participate in such settlement or defense through counsel chosen by such Indemnified Party if the fees and expenses of such counsel shall be borne by such Indemnified Party. So long as the indemnifying party is reasonably contesting any such claim in good faith, the Indemnified Party shall not pay or settle any such claim. Notwithstanding the foregoing, the Indemnified Party shall have the right to pay or settle any such claim; provided that in such event it shall waive any right to indemnity therefor by the indemnifying party. If the indemnifying party does not notify the Indemnified Party within 10 days after the receipt of the Indemnified Party's notice of a claim of indemnity hereunder that it elects to undertake the defense thereof, the Indemnified Party shall have the right to contest, settle or compromise the claim but shall not thereby waive any right to indemnity therefor pursuant to this Agreement. The indemnifying party shall not, except with the consent of the Indemnified Party, enter into any settlement that does not include as an unconditional term thereof the giving by the person or persons asserting such claim to all Indemnified Parties an unconditional release from all liability

with respect to such claim or consent to entry of any judgment. Notwithstanding the foregoing, following the Closing, each party hereto will afford to the other parties hereto, and cause its counsel and its accountants, during normal business hours, reasonable access to the books, records and other data with respect to Holdings and its Subsidiaries, to the extent that such access may be reasonably required by such other parties to facilitate the investigation, litigation and final disposition of any claims which may have been or may be made against them in connection with Holdings and its Subsidiaries.

ARTICLE IX

MISCELLANEOUS

9.1 Termination and Abandonment. (a) General. This Agreement may be terminated and the transactions contemplated hereby may be abandoned at any time, but not later than the Closing Date:

(i) by mutual written consent of Parent and Borden; or

(ii) by Parent or Borden if an injunction, restraining order or decree of any nature of any Governmental Authority of competent jurisdiction is issued that prohibits the consummation of the Stock Purchase or the Merger and such injunction, restraining order or decree is final and non-appealable; provided, however, that the party seeking to terminate this Agreement pursuant to this clause (ii) shall have used its best efforts to have such injunction, order or decree vacated or denied; or

(iii) by Borden at any time on or after the 110th day from the date hereof if the conditions contained in Sections 5.1(a) and 5.1(b) hereof shall not have been satisfied with respect to all matters under or with respect to Antitrust Laws, or the Closing otherwise could not occur for any reason relating to Antitrust Laws; provided that, if Parent has fulfilled its obligations under Section 4.3, such 110th day shall be extended by one additional day for each day following the 21st day after receipt by Borden of a second request for information and documents under the Antitrust Improvements Act and the regulations thereunder in connection with the transactions contemplated hereby that Borden shall not have substantially complied with such second request; or

(iv) by Borden at any time on or after the Clause (iv) Termination Date (as defined below) if the Closing shall not have occurred by the Clause (iv) Termination Date; or

(v) by Borden if Borden shall not have received the payment referred to in Section 4.3(f) on the date such payment becomes due and payable under such Section 4.3(f); or

(vi) by Parent at any time after the 30th day following receipt by Borden, Inc. of written notice from Parent (the "Parent Termination Notice") that any of the conditions contained in Sections 5.2(a), 5.2(b) and 5.2(c) has not been satisfied unless on or prior to such 30th day Borden, Inc. shall have caused each such condition to be satisfied;

provided that Parent shall not be permitted to deliver the Parent Termination Notice or to terminate this Agreement pursuant to this clause (vi) unless each of the conditions contained in Sections 5.1, 5.3(a), 5.3(b) and 5.3(d) shall have been satisfied or waived by Borden and Parent otherwise is ready, willing and able to perform the obligations to be performed by it at the Closing and to consummate the transactions contemplated hereby.

For purposes of this Agreement, the "Clause (iv) Termination Date" means the earlier of (i) the 28th day after the satisfaction of the condition contained in Section 5.1(b)(ii) and (ii) the 138th day after the date of this Agreement; provided that, if Parent has fulfilled its obligations under Section 4.3, then the Clause (iv) Termination Date shall be extended by one additional day for each day following the 21st day after receipt by Borden of a second request for information and documents under the Antitrust Improvements Act and the regulations thereunder in connection with the transactions contemplated hereby that Borden shall not have substantially complied with such second request.

(b) Procedure Upon Termination. (i) In the event of the termination and abandonment of this Agreement, written notice thereof shall promptly be given to the other parties hereto and this Agreement shall terminate and the transactions contemplated hereby shall be abandoned without further action by any of the parties hereto; provided, however, that nothing herein shall relieve any party from liability for any breach hereof, except as otherwise provided in Sections 9.1(b)(ii) and 9.1(b)(iii).

(ii) If Borden shall terminate this Agreement at any time when both of the Applicable Antitrust Conditions (as defined in the immediately succeeding sentence) shall have been satisfied, then none of Parent, Borden or Holdings shall have any further liability hereunder for breach of this Agreement (other than for the payment by Parent to Borden of non-refundable amounts due under this Agreement) and all non-refundable amounts paid by Parent to Borden hereunder shall be retained by Borden (notwithstanding the provisions of Section 9.11(b)). For purposes of this Agreement, "Applicable Antitrust Conditions" means (A) Parent shall have complied in all respects with Section 4.3 hereof and (B) either (1) the condition set forth in Section 5.1(a) shall not have been satisfied with respect to all matters under or with respect to Antitrust Laws or (2) the condition set forth in Section 5.1(b) shall not have been satisfied with respect to all matters under or with respect to Antitrust Laws.

(iii) If Borden shall terminate this Agreement at any time when all of the Applicable Funding Conditions (as defined in the immediately succeeding sentence) shall have been satisfied, then none of Parent, Borden or Holdings shall have any further liability hereunder for breach of this Agreement (other than for the payment by Parent to Borden of non-refundable amounts due under this Agreement) and all non-refundable amounts paid by Parent to Borden hereunder shall be retained by Borden (notwithstanding the provisions of Section 9.11(b)). For purposes of this Agreement, "Applicable Funding Conditions" means (A) Parent shall have complied in all respects with Sections

4.3(f) and 4.13 hereof, (B) all conditions contained in Section 5.1 hereof shall have been satisfied, (C) the conditions contained in Sections 5.3(a) and 5.3(b) shall have been satisfied and (D) Parent shall be ready, willing and able to consummate the Closing, including by satisfying all other conditions to be satisfied by Parent at or prior to the Closing, except only that Parent is unable to make the required payments under Articles I and II hereof because it does not have the required funds.

(c) Survival of Certain Provisions. The respective obligations of the parties hereto pursuant to Sections 4.1(c), 4.4 and this Article IX shall survive any termination of this Agreement.

9.2 Fees and Expenses. Whether or not the transactions contemplated hereby are consummated, each of the parties hereto shall pay its own fees and expenses incident to the negotiation, preparation and execution of this Agreement, including attorneys', accountants' and other advisors' fees and the fees and expenses of any broker, finder or agent retained by such party in connection with the transactions contemplated by the Agreement; provided, however, that Borden shall pay all fees and expenses incurred by Holdings and its Subsidiaries in connection with the transactions contemplated by this Agreement except to the extent such fees and expenses were incurred specifically at the request of Parent or its affiliates or in connection with Parent obtaining financing for the transactions contemplated by this Agreement.



9.3 Notices. All notices, requests, demands, waivers and other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if delivered personally or mailed, certified or registered mail with postage prepaid, or sent by telex, telegram or telecopy, as follows:

(a) if to Borden or, prior to the Closing, Holdings, to it at:

Borden, Inc.  
180 East Broad Street  
Columbus, Ohio 43215  
Attention: William F. Stoll, Jr., Esq., Senior  
Vice President and General Counsel  
Telecopy: 614-627-8374

with copies to:

Kohlberg Kravis Roberts & Co.  
9 West 57th Street  
New York, New York 10019  
Attention: Scott M. Stuart  
Telecopy: 212-750-0003

-and-

Simpson Thacher & Bartlett  
425 Lexington Avenue  
New York, New York 10017  
Attention: David J. Sorkin, Esq.  
Telecopy: 212-455-2502

(b) if to Parent, to it at:

Mid-America Dairymen, Inc.  
3253 East Chestnut Expressway  
Springfield, Missouri 65802  
Attention: Gerald L. Bos, Vice President and  
Chief Financial Officer  
Telecopy: 417-865-1093

with a copy to:

Mid-America Dairymen, Inc.  
3253 East Chestnut Expressway  
Springfield, Missouri 65802

Attention: David A. Giesler, Esq., Vice  
President--Legal  
Telecopy: 417-865-1093

or to such other person or address as a party shall specify by notice in writing to the other parties. All such notices, requests, demands, waivers and communications shall be deemed to have been received on the date of personal delivery or on the third business day after the mailing thereof or, in the case of notice by telecopier, when receipt thereof is confirmed by telephone.

9.4 Entire Agreement. This Agreement (including the Exhibits hereto and the documents referred to herein) constitutes the entire agreement between the parties hereto and supersedes all prior agreements and understandings, oral and written, between the parties hereto with respect to the subject matter hereof.

9.5 No Third Party Beneficiaries. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. Nothing in this Agreement, expressed or implied, is intended to confer on any person other than the parties hereto or their respective successors and assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement.

9.6 Assignability. This Agreement shall not be assigned by any of the parties hereto without the prior written consent of the other parties hereto. Notwithstanding the foregoing, Borden shall not unreasonably withhold its consent to any of the following assignments by Parent (each a "Contemplated

Assignment"), unless (x) the Contemplated Assignment would have an adverse tax or other consequence to Borden, Inc. or any of its affiliates, or (ii) in the case of a Contemplated Assignment referred to in clause (b) or (c) below, the request for consent to such Contemplated Assignment is not received by Borden within five business days after the date hereof:

(a) an assignment by Parent of all or any part of its rights and obligations to a direct or indirect wholly owned subsidiary of Parent;

(b) an assignment by Parent of all or any part of its rights and obligations under this Agreement to Southern Foods Group, L.P. or a direct or indirect wholly owned subsidiary of Southern Foods Group, L.P.; or

(c) an assignment by Parent of its indirect right under this Agreement to purchase all the outstanding shares of common stock of Borden/Meadow Gold Dairies, Inc. ("BMGD") to a newly formed entity controlled by Mr. Allen Meyer ("Newco"), provided that, as part of such assignment, Parent directs Newco to pay, and Newco agrees to pay the consideration to be paid by Newco for BMGD directly to Borden in accordance with the provisions of Section 1.1;

provided that, with respect to each Contemplated Assignment, (i) the assignee (to the extent Borden consents to a Contemplated Assignment as set forth herein, a "Permitted Assignee") shall enter into a written agreement with Borden, in form and substance satisfactory to Borden, pursuant to which the Permitted Assignee agrees to be bound by, and to comply with, all of Parent's

obligations under this Agreement (other than those obligations which relate solely to Parent's rights under this Agreement which have not been assigned to such Permitted Assignee) as if such Permitted Assignee were "Parent" for purposes of this Agreement (it being understood that, in connection with a Contemplated Assignment to Newco, Newco shall agree, with respect to BMGD, to be bound by, and to comply with, all of Parent's obligations relating to Holdings). No assignment permitted by this Section 9.6, including without limitation any Contemplated Assignment, shall relieve Parent of any of its obligations under this Agreement, including without limitation the obligations to pay to Borden the full amount of consideration set forth in Section 1.1 hereof and to pay the Merger Consideration.

9.7 Amendment and Modification; Waiver. Subject to applicable law, this Agreement may be amended, modified and supplemented by a written instrument authorized and executed on behalf of the parties hereto at any time prior to the Closing Date with respect to any of the terms contained herein. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and executed by the party so waiving. Except as provided in the preceding sentence, no action taken pursuant to this Agreement, including without limitation, any investigation by or on behalf of any party, shall be deemed to constitute a waiver by the party taking such action of compliance with any representations, warranties, covenants, or agreements contained herein, and in any documents delivered or to be delivered pursuant to this Agreement and in

connection with the Closing hereunder. The waiver by any party hereto of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any other or subsequent breach.

9.8 Public Announcements. Unless otherwise required by law, prior to the Closing Date, no news release or other public announcement pertaining to the transactions contemplated by this Agreement will be made by or on behalf of any party without the prior approval of the other party. Prior to issuing a press release or other public announcement with respect to the execution and delivery of this Agreement, Parent and Borden, Inc. shall agree on the form of such press release or other public announcement.

9.9 Section Headings. The section headings contained in this Agreement are inserted for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

9.10 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which together shall be deemed to be one and the same instrument.

9.11 Enforcement. (a) The parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this

Agreement in any court of the United States located in the State of Delaware, this being in addition to any other remedy to which they are entitled at law or in equity. In addition, each of the parties hereto (i) consents to submit itself to the personal jurisdiction of the United States District Court for the District of Delaware or any court of the State of Delaware located in such district in the event any dispute arises out of this Agreement or any of the transactions contemplated by this Agreement, (ii) agrees that it will not attempt to deny or defeat such personal jurisdiction or venue by motion or other request for leave from any such court and (iii) agrees that it will not bring any action relating to this Agreement or any of the transactions contemplated by this Agreement in any court other than such courts sitting in the State of Delaware.

(b) Notwithstanding any statement herein that an amount paid by Parent to Borden is non-refundable, Parent shall be entitled, in the event that this Agreement shall be terminated without the Closing having occurred, to a refund of such amounts actually paid by Parent to Borden if and to the extent that a court of competent jurisdiction determines in a final and non-appealable judgment that Borden, Holdings or any of its Subsidiaries has breached this Agreement and that the aggregate amount of such payments by Parent constitutes all or a portion of Parent's damages for such breach; provided that Parent shall not be entitled to any such refund if the provisions of Section 9.1(b)(ii) or 9.1(b)(iii) shall have been applicable to such termination of this Agreement.

9.12 Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Delaware without giving effect to the principles of conflicts of law thereof.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Agreement as of the date first above written.

MID-AMERICA DAIRYMEN, INC.

By: \_\_\_\_\_  
Name:  
Title:

BORDEN/MEADOW GOLD DAIRIES  
HOLDINGS, INC.

By: \_\_\_\_\_  
Name:  
Title:

BDH TWO, INC.

By: \_\_\_\_\_  
Name:  
Title:

BORDEN, INC.

By: \_\_\_\_\_  
Name:  
Title:

## CREDIT AGREEMENT

Dated as of December 15, 1994

AMENDED AND RESTATED  
as of July 14, 1997

Among

BORDEN, INC.

as Borrower,

BORDEN FOODS HOLDINGS CORPORATION

and

WISE HOLDINGS, INC.

as Affiliate Guarantors,

and

THE BANKS NAMED HEREIN

as Banks,

CITIBANK, N.A.

as Administrative Agent,

BANKERS TRUST COMPANY  
THE CHASE MANHATTAN BANK  
CITIBANK, N.A.  
CREDIT SUISSE FIRST BOSTON

as Lead Managing Agents

and

BT SECURITIES CORPORATION  
CHASE SECURITIES INC.  
CITICORP SECURITIES, INC.  
CREDIT SUISSE FIRST BOSTON

as Arrangers



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## CREDIT AGREEMENT

DATED AS OF DECEMBER 15, 1994

AMENDED AND RESTATED

AS OF JULY 14, 1997

CREDIT AGREEMENT dated as of December 15, 1994, Amended and Restated as of July 14, 1997 among Borden, Inc., a New Jersey corporation (the "Borrower"), Borden Foods Holdings Corporation, a Delaware corporation ("Foods Holdings"), Wise Holdings, Inc., a Delaware corporation ("Wise Holdings" and, together with Foods Holdings, the "Affiliate Guarantors"), the banks (the "Banks") listed on the signature pages hereof, Citibank, N.A. ("Citibank"), as administrative agent (together with any successor appointed pursuant to Article VIII, the "Administrative Agent") for the Lenders (as hereinafter defined) and the Swing Line Bank (as hereinafter defined), BT Securities Corporation ("BT Securities"), Chase Securities Inc. ("Chase Securities"), Citicorp Securities, Inc. and Credit Suisse First Boston ("Credit Suisse First Boston"), as arrangers (the "Arrangers"), BT Securities and Chase Securities, as co-syndication agents, and Credit Suisse First Boston, as Issuing Bank (as defined below) and documentation agent.

## ARTICLE I

## DEFINITIONS AND ACCOUNTING TERMS

SECTION 1.01. Certain Defined Terms. As used in this Agreement, the following terms shall have the following meanings (such meanings to be equally applicable to both the singular and plural forms of the terms defined):

"Acquired Entity" means any Person, business unit or assets of any Person invested in or acquired by any Affiliate Guarantor, the Borrower or any of their respective Subsidiaries.

"Administrative Agent" has the meaning specified in the recital of parties to this Agreement.

"Administrative Agent's Account" means the account of the Administrative Agent maintained by the Administrative

Agent with Citibank at its office at 1 Court Square, 7th Floor, Long Island City, New York 11120, Account No. 3685 2248, Attention: John Makrinos.

"Advance" means a Working Capital Advance, a Swing Line Advance, a Competitive Bid Advance or a Letter of Credit Advance.

"Affiliate" means, as to any Person (other than a Subsidiary), any other Person that, directly or indirectly, controls, is controlled by or is under common control with such Person or is a director or officer of such Person. For purposes of this definition, the term "control" (including the terms "controlling," "controlled by" and "under common control with") of a Person means the possession, direct or indirect, of the power to vote 10% or more of the Voting Stock of such Person or to direct or cause the direction of the management and policies of such Person, whether through the ownership of Voting Stock, by contract or otherwise.

"Affiliate Assumption Agreement" means an agreement substantially in the form of Exhibit E hereto.

"Affiliate Guarantors" means each of Foods Holdings, Wise Holdings and, after any transfer of the Dairy Business to an Affiliate that executes an Affiliate Assumption Agreement, such Affiliate, in each case until it is released from its guarantee obligations under Article VII in accordance with the provisions of Section 7.05.

"Affiliate Notes" means the senior notes issued by any Affiliate Guarantor or any of its Subsidiaries to the Borrower as consideration for the transfer of certain assets.

"Agents" means, collectively, the Administrative Agent, the Lead Managing Agents and the Arrangers.

"Applicable Lending Office" means, with respect to each Lender, such Lender's Domestic Lending Office in the case of a Base Rate Advance and such Lender's Eurodollar Lending Office in the case of a Eurodollar Rate Advance and, in the case of a Competitive Bid Advance, the office of such Lender notified by such Lender to the Administrative Agent as its Applicable Lending Office with respect to such Competitive Bid Advance.

"Applicable Margin" means, as of any date, a percentage per annum determined by reference to the Performance Level in effect on such date as set forth below:

Performance Level	Applicable Margin for Base Rate Advances	Applicable Margin for Eurodollar Rate Advances
Level 1	0%	.25%
Level 2	0%	.375%
Level 3	0%	.50%
Level 4	0%	.60%
Level 5	0%	.875%
Level 6	.125%	1.125%

"Applicable Percentage" means, as of any date, a percentage per annum determined by reference to the Performance Level in effect on such date as set forth below:

Performance Level	Applicable Percentage
Level 1	.10%
Level 2	.15%
Level 3	.20%
Level 4	.20%
Level 5	.375%
Level 6	.50%

"Appropriate Lender" means, at any time, with respect to (a) any of the Letter of Credit Facility Sublimit or Working Capital Facility, a Lender that has a Commitment with respect to such Facility at such time and (b) the Swing Line Facility, (i) the Swing Line Bank and (ii) if any other Working Capital Lenders have made Swing Line Advances pursuant to Section 2.02(b) that are outstanding at such time, each such other Working Capital Lender.

"Arrangers" has the meaning specified in the recital of parties to this Agreement.

"Asset Proceeds" means the aggregate value received in connection with the sale of assets or the sale of options to acquire assets of the Affiliate Guarantors, the Borrower and any of their respective Subsidiaries (other than Excluded Asset Sales) after deducting therefrom only (a) the costs of sale including reasonable brokerage commissions, underwriting fees and discounts, legal fees, finder's fees, severance, legacy and similar costs and other similar fees and commissions, (b) the amount of taxes paid or estimated to be payable during the then current or next fiscal year in connection with or as a result of such transaction and reasonable reserves associated therewith (including such amounts paid or payable by direct or indirect partners, members or other holders of direct or indirect equity or other ownership interests in the assets or options subject to such sale), (c) the amount of any Indebtedness related to such asset that, by the terms of such transaction, is required to be repaid upon such disposition and (d) any such other reasonable exit costs related to such transaction, in each case to the extent, but only to the extent, that the amounts so deducted are properly attributable to such transaction or to the asset that is the subject thereof.

"Assignment and Acceptance" means an assignment and acceptance entered into by a Lender and an Eligible Assignee, and accepted by the Administrative Agent, in accordance with Section 9.07 and in substantially the form of Exhibit C hereto.

"Assuming Lender" has the meaning specified in Section 2.19(d).

"Assumption Agreement" has the meaning specified in Section 2.19(d)(ii).

"Attributable Share" means (a) with respect to any Person of which an Obligated Party directly or indirectly owns or controls up to 50% of the equity interests, 0%, (b) with respect to any Person of which an Obligated Party directly or indirectly owns or control more than 50% but less than 90% of the equity interests, such percentage equity interest directly or indirectly owned or controlled and (c) with respect to any Person of which an Obligated Party directly or

indirectly owns or controls 90% or more of the equity interests, 100%.

"Available Amount" of any Letter of Credit means, at any time, the maximum amount available to be drawn under such Letter of Credit at such time (assuming compliance at such time with all conditions to drawing).

"Bank" has the meaning specified in the recital of parties to this Agreement.

"Base Rate" means a fluctuating interest rate per annum in effect from time to time, which rate per annum shall at all times be equal to the highest of:

(a) the rate of interest announced publicly by Citibank in New York, New York, from time to time, as Citibank's base rate;

(b) the sum (adjusted to the nearest 1/4 of 1% or, if there is no nearest 1/4 of 1%, to the next higher 1/4 of 1%) of (i) 1/2 of 1% per annum, plus (ii) the rate obtained by dividing (A) the latest three-week moving average of secondary market morning offering rates in the United States for three-month certificates of deposit of major United States money market banks, such three-week moving average (adjusted to the basis of a year of 360 days) being determined weekly on each Monday (or, if such day is not a Business Day, on the next succeeding Business Day) for the three-week period ending on the previous Friday by Citibank on the basis of such rates reported by certificate of deposit dealers to and published by the Federal Reserve Bank of New York or, if such publication shall be suspended or terminated, on the basis of quotations for such rates received by Citibank from three New York certificate of deposit dealers of recognized standing selected by Citibank, by (B) a percentage equal to 100% minus the average of the daily percentages specified during such three-week period by the Board of Governors of the Federal Reserve System (or any successor) for determining the maximum reserve requirement (including, but not limited to, any emergency, supplemental or other marginal reserve requirement) for Citibank with respect to liabilities consisting of or including (among other liabilities) three-month U.S. dollar non-personal time deposits in



the United States, plus (iii) the average during such three-week period of the annual assessment rates reasonably estimated by Citibank for determining the then current annual assessment payable by Citibank to the Federal Deposit Insurance Corporation (or any successor) for insuring U.S. dollar deposits of Citibank in the United States; and

(c) 1/2 of one percent per annum above the Federal Funds Rate.

"Base Rate Advance" means an Advance that bears interest as provided in Section 2.08(a)(i).

"Borden Holdings" means Borden Holdings, Inc., a Delaware corporation.

"Borden Holdings Notes" means the senior notes originally issued by Borden Holdings on September 29, 1995 in the original aggregate principal amount of \$614,368,775 in the form of Exhibit G hereto.

"Borrower" has the meaning specified in the recital of parties to this Agreement.

"Borrowing" means a Competitive Bid Borrowing, a Working Capital Borrowing or a Swing Line Borrowing.

"BT" means Bankers Trust Company.

"BT Securities" has the meaning specified in the recital of parties to this Agreement.

"Business Day" means a day of the year on which banks are not required or authorized to close in New York City and, if the applicable Business Day relates to any Eurodollar Rate Advances, on which dealings are carried on in the London interbank eurodollar market.

"Capital Expenditures" means for any period, the aggregate of all expenditures (whether paid in cash or accrued as liabilities and including in all events all amounts expended or capitalized under Capitalized Leases but excluding any amount representing capitalized interest) by the Affiliate Guarantors, the Borrower and their respective Subsidiaries during such period that, in conformity with GAAP, are or are required to be included as additions during

such period to property, plant or equipment reflected in the Combined balance sheet of the Affiliate Guarantors, the Borrower and their respective Subsidiaries, provided that Capital Expenditures shall in any event exclude (a) expenditures made in connection with the replacement, substitution or restoration of assets (i) to the extent financed from insurance proceeds paid on account of the loss of or damage to the assets being replaced or restored or (ii) with awards of compensation arising from the taking by eminent domain or condemnation of the assets being replaced, (b) the purchase price of equipment that is purchased simultaneously with the trade-in of existing equipment to the extent that the gross amount of such purchase price is reduced by the credit granted by the seller of such equipment for the equipment being traded in at such time and (c) the purchase of plant, property and equipment made within 270 days of the sale of a similar asset.

"Capitalized Leases" has the meaning specified in clause (e) of the definition of Debt.

"Cash Equivalents" means (i) securities issued or unconditionally guaranteed by the United States Government or any agency or instrumentality thereof, in each case having maturities of not more than twelve months from the date of acquisition thereof; (ii) securities issued by any state of the United States of America or any political subdivision of any such state or any public instrumentality thereof having maturities of not more than twelve months from the date of acquisition thereof and, at the time of acquisition, having the highest rating generally obtainable from either S&P or Moody's (or, if at any time neither S&P nor Moody's shall be rating such obligations, then from another nationally recognized rating service); (iii) commercial paper issued by any Lender or any bank holding company owning any Lender; (iv) commercial paper maturing no more than twelve months after the date of creation thereof and, at the time of acquisition, having a rating of at least A-1 or P-1 from either S&P or Moody's (or, if at any time neither S&P nor Moody's shall be rating such obligations, then an equivalent rating from another nationally recognized rating service); (v) domestic and eurodollar certificates of deposit or bankers' acceptances maturing no more than one year after the date of acquisition thereof issued by any Lender or any other bank having combined capital and surplus of not less than \$250,000,000 in the case of domestic banks and \$100,000,000 (or the

dollar equivalent thereof) in the foreign banks; (vi) repurchase agreements with a term of not more than seven days for underlying securities of the type described in clauses (i), (ii) and (v) above entered into with any bank meeting the qualifications specified in clause (v) above or securities dealers of recognized national standing; and (vii) other customarily utilized high quality instruments in countries where the Borrower's or any Affiliate Guarantor's foreign Subsidiaries are located.

"Chase" means The Chase Manhattan Bank.

"Chase Securities" has the meaning specified in the recital of parties to this Agreement.

"Citibank" has the meaning specified in the recital of parties to this Agreement.

"Combined" refers to the combination of accounts in accordance with GAAP.

"Commitment" means a Working Capital Commitment or a Letter of Credit Commitment.

"Commitment Date" has the meaning specified in Section 2.19(b).

"Commitment Increase" has the meaning specified in Section 2.19(a).

"Competitive Bid Advance" means an advance by a Lender to the Borrower as part of a Competitive Bid Borrowing resulting from the auction bidding procedure described in Section 2.03 and refers to a Fixed Rate Advance or a LIBO Rate Advance.

"Competitive Bid Borrowing" means a borrowing consisting of simultaneous Competitive Bid Advances from each of the Lenders whose offer to make one or more Competitive Bid Advances as part of such borrowing has been accepted under the auction bidding procedure described in Section 2.03.

"Competitive Bid Note" means the promissory note of the Borrower payable to the order of the Administrative Agent for the benefit of each Lender making a Competitive Bid Advance, in substantially the form of Exhibit A-3 hereto,

evidencing the indebtedness of the Borrower to the Lenders resulting from Competitive Bid Advances made by the Lenders.

"Competitive Bid Register" has the meaning specified in Section 2.03(a)(vi).

"Confidential Information" means information that the Borrower or any Affiliate Guarantor furnishes to any Agent or any Lender in a writing designated as confidential, but does not include any such information that is or becomes generally available to the public or that is or becomes available to such Agent or such Lender from a source other than the Borrower or any Affiliate Guarantor.

"Consolidated" refers to the consolidation of accounts in accordance with GAAP.

"Conversion," "Convert" and "Converted" each refer to a conversion of Advances of one Type into Advances of the other Type pursuant to Section 2.10 or 2.11.

"Credit Suisse First Boston" has the meaning specified in the recital of parties to this Agreement.

"Dairy Business" means the Dairy business of the Borrower as reflected in the total adjusted balance sheet and statements of income and cash flows of Meadow Gold Dairies West as of December 31, 1996, with such changes as are related to the ordinary course of the Borrower's Dairy business and including any additions to such business permitted hereunder.

"Debt" of any Person means, without duplication, (a) all indebtedness of such Person for borrowed money, (b) all obligations of such Person for the deferred purchase price of property or services (other than trade payables and accrued expenses arising in the ordinary course of business), (c) all obligations of such Person evidenced by notes, bonds, debentures or other similar instruments, (d) all obligations of such Person created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property), (e) all obligations of such Person as lessee under leases that have been, in accordance with GAAP, recorded as capital leases

("Capitalized Leases") and (f) all Debt referred to in clauses (a) through (e) above secured by any Lien on property owned by such Person, even though such Person has not assumed or become liable for the payment of such Debt, but only to the extent that, in accordance with GAAP, such Debt would be reflected on the financial statements of such Person.

"Default" means any Event of Default or any event that would constitute an Event of Default but for the requirement that notice be given or time elapse or both.

"Defaulted Advance" means, with respect to any Lender at any time, the amount of any Advance required to be made by such Lender to the Borrower pursuant to Section 2.01 at or prior to such time which has not been so made as of such time; provided, however, any Advance made by the Administrative Agent for the account of such Lender pursuant to Section 2.02(e) shall not be considered a Defaulted Advance even if, at such time, such Lender shall not have reimbursed the Administrative Agent therefor as provided in Section 2.02(e). In the event that a portion of a Defaulted Advance shall be deemed made pursuant to Section 2.17(a), the remaining portion of such Defaulted Advance shall be considered a Defaulted Advance originally required to be made pursuant to Section 2.01 on the same date as the Defaulted Advance so deemed made in part.

"Defaulted Amount" means, with respect to any Lender at any time, any amount required to be paid by such Lender to the Administrative Agent or any other Lender hereunder or under any other Loan Document at or prior to such time which has not been so paid as of such time, including, without limitation, any amount required to be paid by such Lender to (a) the Swing Line Bank pursuant to Section 2.02(b) to purchase a portion of the Swing Line Advances made by the Swing Line Bank, (b) any Issuing Bank pursuant to Section 2.15(b) to purchase a portion of a Letter of Credit Advance made by such Issuing Bank, (c) the Administrative Agent pursuant to Section 2.02(e) to reimburse the Administrative Agent for the amount of any Advance made by the Administrative Agent for the account of such Lender, (d) any other Lender pursuant to Section 2.14 to purchase any participation in Advances owing to such other Lender and (e) the Administrative Agent pursuant to Section 8.05 to reimburse the Administrative Agent for such Lender's ratable share of any amount required to be paid by the Lenders to

the Administrative Agent as provided therein. In the event that a portion of a Defaulted Amount shall be deemed paid pursuant to Section 2.17(b), the remaining portion of such Defaulted Amount shall be considered a Defaulted Amount originally required to be made hereunder or under any other Loan Document on the same date as the Defaulted Amount so deemed paid in part.

"Defaulting Lender" means, at any time, any Lender that, at such time, (a) owes a Defaulted Advance or a Defaulted Amount or (b) shall take or be the subject of any action or proceeding of a type described in Section 6.01(f).

"Domestic Lending Office" means, with respect to any Lender, the office of such Lender specified as its "Domestic Lending Office" opposite its name on Schedule I hereto or in the Assumption Agreement or the Assignment and Acceptance, as the case may be, pursuant to which it became a Lender, or such other office of such Lender as such Lender may from time to time specify to the Borrower and the Administrative Agent.

"EBITDA" means, for any period, net income (or net loss) plus the sum, without duplication, of (a) Net Interest Expense, (b) income tax expense, (c) depreciation expense, (d) amortization expense, (e) extraordinary or unusual losses included in net income (net of taxes to the extent not already deducted in determining such losses and net of extraordinary or unusual gains included in net income) including, without limitation, cumulative effects of accounting changes, discontinued operations, restructuring charges and non-cash charges, (f) amortization of deferred financing fees and debt discount, (g) other non-cash charges, (h) gains or losses on asset sales (including sales of accounts receivable), (i) severance and similar expenses, (j) dividends accrued on securities other than common stock, in each case determined in accordance with GAAP for such period and (k) any deduction from such net income for minority interests held by management for such period.

"Eligible Assignee" means any of (i) a commercial bank organized under the laws of the United States, or any State thereof, and having a combined capital and surplus of at least \$250,000,000; (ii) a savings and loan association or savings bank organized under the laws of the United States, or any State thereof, and having a combined capital and surplus of at least \$250,000,000; (iii) a commercial bank

organized under the laws of any other country that is a member of the OECD or has concluded special lending arrangements with the International Monetary Fund associated with its General Arrangements to Borrow, or a political subdivision of any such country, and having a combined capital and surplus of at least \$250,000,000, so long as such bank is acting through a branch or agency located in the United States or in the country in which it is organized or another country that is described in this clause (iii); (iv) the central bank of any country that is a member of the OECD; and (v) a finance company, insurance company or other financial institution or fund (whether a corporation, partnership, trust or other entity) that is engaged in making, purchasing or otherwise investing in commercial loans in the ordinary course of its business and having a combined capital and surplus of at least \$100,000,000, in each case as approved by the Arrangers and the Borrower, such approval not to be unreasonably withheld or delayed; provided, however, that an Affiliate or Subsidiary of the Borrower shall not qualify as an Eligible Assignee under this definition.

"Environmental Claims" means any and all administrative, regulatory or judicial actions, suits, demands, demand letters, claims, liens, notices of non-compliance or violation, investigations or proceedings relating in any way to any Environmental Law (hereafter "Claims") or any permit issued under any such law, including without limitation (a) any and all Claims by governmental or regulatory authorities for enforcement, cleanup, removal, response, remedial or other actions or damages pursuant to any applicable Environmental Law and (b) any and all Claims by any third party seeking damages, contribution, indemnification, cost recovery, compensation or injunctive relief resulting from Hazardous Materials or arising from alleged injury or threat or injury to health, safety or the environment.

"Environmental Law" means any federal, state, provincial or local statute, law, rule, regulation, ordinance, code, policy or rule of common law now or hereafter in effect and in each case as amended, and any judicial or administrative interpretation thereof, including any judicial or administrative order, consent, decree or judgment, relating to the environment, health, safety or Hazardous Materials.

"Equity Proceeds" means gross proceeds received by any Affiliate Guarantor, the Borrower or any of their respective Subsidiaries from (a) the sale or issuance of any equity security of such Affiliate Guarantor, the Borrower or such Subsidiary whether by means of any public offering or private placement or (b) cash capital contributions to the Borrower or such Affiliate Guarantor from time to time.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended from time to time, and the regulations promulgated and rulings issued thereunder.

"ERISA Affiliate" means each person (as defined in Section 3(9) of ERISA) which together with the Borrower, any Affiliate Guarantor or any Subsidiary of the Borrower or any Affiliate Guarantor would be deemed to be a "single employer" within the meaning of Section 414 (b), (c), (m) or (o) of the Internal Revenue Code.

"Eurocurrency Liabilities" has the meaning specified in Regulation D of the Board of Governors of the Federal Reserve System, as in effect from time to time.

"Eurodollar Lending Office" means, with respect to any Lender, the office of such Lender specified as its "Eurodollar Lending Office" opposite its name on Schedule I hereto or in the Assumption Agreement or the Assignment and Acceptance, as the case may be, pursuant to which it became a Lender (or, if no such office is specified, its Domestic Lending Office), or such other office of such Lender as such Lender may from time to time specify to the Borrower and the Administrative Agent.

"Eurodollar Rate" means, for any Interest Period for each Eurodollar Rate Advance comprising part of the same Borrowing, an interest rate per annum equal to the rate per annum obtained by dividing (a) the average (rounded upward to the nearest whole multiple of 1/16 of 1% per annum, if such average is not such a multiple) of the rate per annum at which deposits in U.S. dollars are offered by the principal office of each of the Reference Banks in London, England to prime banks in the London interbank market at 11:00 A.M. (London Time) two Business Days before the first day of such Interest Period in an amount substantially equal to such Reference Bank's Eurodollar Rate Advance comprising part of such Borrowing to be outstanding during such Interest Period and for a period equal to such Interest



Period by (b) a percentage equal to 100% minus the Eurodollar Rate Reserve Percentage for such Interest Period. The Eurodollar Rate for any Interest Period for each Eurodollar Rate Advance comprising part of the same Borrowing shall be determined by the Administrative Agent on the basis of applicable rates furnished to and received by the Administrative Agent from the Reference Banks two Business Days before the first day of such Interest Period.

"Eurodollar Rate Advance" means an Advance that bears interest as provided in Section 2.08(a)(ii).

"Eurodollar Rate Reserve Percentage" for any Interest Period for all Eurodollar Rate Advances comprising part of the same Borrowing means the reserve percentage if and to the extent actually applicable two Business Days before the first day of such Interest Period under regulations issued from time to time by the Board of Governors of the Federal Reserve System (or any successor) for determining the reserve requirement (including, without limitation, any emergency, supplemental or other marginal reserve requirement) for each Lender with respect to liabilities or assets consisting of or including Eurocurrency Liabilities (or with respect to any other category of liabilities that includes deposits by reference to which the interest rate on Eurodollar Rate Advances is determined) having a term equal to such Interest Period.

"Events of Default" has the meaning specified in Section 6.01.

"Excluded Asset Sales" means (i) sales of inventory and other assets (including, without limitation, worn out or obsolete equipment) in the ordinary course of business, (ii) sales of accounts receivable pursuant to Section 5.02(d) and (iii) sales of plant, property and equipment to the extent that the proceeds thereof are used to purchase a similar asset within 270 days of such sale.

"Existing Credit Agreement" means the Credit Agreement dated as of December 15, 1994, Amended and Restated as of May 7, 1996 among the Borrower, Foods Holdings, Wise Holdings, the banks named therein, Citibank, as administrative agent, and BT Securities, Chase Securities, Citicorp Securities and Credit Suisse, as arrangers, BT Securities and Chase Securities, as co-syndication agents,

and Credit Suisse, as issuing bank and documentation agent, as amended prior to the date hereof.

"Existing Indebtedness" means Indebtedness of the Borrower and its Subsidiaries outstanding on the date of the Existing Credit Agreement.

"Facility" means the Working Capital Facility, the Letter of Credit Facility Sublimit or the Swing Line Facility.

"Fair Market Value" means, (a) with respect to any asset or Option sold to any Person that is an Affiliate of any Obligated Party for consideration of \$10,000,000 or more, the fair market value of such asset or Option as determined by the Board of Directors of the Borrower and (b) with respect to any other asset sold for consideration of \$10,000,000 or more or Option, the value that the Board of Directors of the Person owning such asset or the stock or assets subject to such Option determines to be the fair market value of such asset or Option; provided, in each case, that (i) the consideration so determined to equal such fair market value may include notes or other evidence of indebtedness and (ii) the fair market value of Options with respect to the issuance of Options on assets to be held by Borden Foods Holdings Corporation and its Subsidiaries will be represented by Borden Holdings Notes in an aggregate principal amount of up to \$95,000,000, unless, subject to Section 9.12, the Borrower shall have obtained an appraisal of the fair market value of such Option from a nationally recognized investment banker selected by the Borrower.

"Federal Funds Rate" means, for any period, a fluctuating interest rate per annum equal for each day during such period to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers, as published for such day (or, if such day is not a Business Day, for the next preceding Business Day) by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a Business Day, the average of the quotations for such day for such transactions received by the Administrative Agent from three Federal funds brokers of recognized standing selected by it.

"Fixed Rate Advances" has the meaning specified in Section 2.03(a)(i).

"Foods Business" means the business of Foods Holdings and its Subsidiaries.

"GAAP" has the meaning specified in Section 1.03.

"Guaranteed Obligations" has the meaning specified in Section 7.01.

"Hazardous Materials" means (a) petroleum or petroleum products, radioactive materials, asbestos in any form that is or could become friable, urea formaldehyde foam insulation, transformers or other equipment that contained electric fluid containing levels of polychlorinated biphenyls and radon gas, (b) any chemicals, materials or substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous wastes," "restricted hazardous wastes," "toxic substances," "toxic pollutants," "contaminants" or "pollutants," or words of similar import, under any applicable Environmental Law and (c) any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any governmental authority.

"Hedge Agreements" means interest rate swap, cap or collar agreements, interest rate future or option contracts, currency swap agreements, currency future or option contracts and other similar agreements.

"Increase Date" has the meaning specified in Section 2.19(a).

"Increasing Lender" has the meaning specified in Section 2.19(b).

"Indebtedness" of any Person means, without duplication, (a) all Debt of such Person, (b) all obligations, contingent or otherwise, of such Person under acceptance, letter of credit or similar facilities, (c) all obligations of such Person in respect of Hedge Agreements and (d) all Indebtedness of others referred to in clauses (a) through (c) above guaranteed directly or indirectly in any manner by such Person, or in effect guaranteed directly or indirectly by such Person through an agreement (i) to pay or purchase such Indebtedness or to advance or supply funds for the payment or purchase of such Indebtedness, (ii) to purchase, sell or lease (as lessee or

lessor) property, or to purchase or sell services, primarily for the purpose of enabling the debtor to make payment of such Indebtedness or to assure the holder of such Indebtedness against loss, (iii) to supply funds to or in any other manner invest in the debtor (including any agreement to pay for property or services irrespective of whether such property is received or such services are rendered) or (iv) otherwise to assure a creditor against loss; provided, however, that amount so guaranteed shall not include endorsements of instruments for deposit or collection in the ordinary course of business. The amount of any such guarantee obligation shall be deemed to be an amount equal to the stated or determinable amount of the primary obligation in respect of which such guarantee obligation is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof (assuming such Person is required to perform thereunder) as determined by such Person in good faith.

"Indemnified Party" has the meaning specified in Section 9.04(b).

"Information Memorandum" means the information memorandum dated November 16, 1994 used by the Arrangers in connection with the syndication of the Commitments.

"Interest Period" means, for each Eurodollar Rate Advance comprising part of the same Borrowing, the period commencing on the date of such Eurodollar Rate Advance or the date of the Conversion of any Base Rate Advance into such Eurodollar Rate Advance, and ending on the last day of the period selected by the Borrower pursuant to the provisions below and, thereafter, each subsequent period commencing on the last day of the immediately preceding Interest Period and ending on the last day of the period selected by the Borrower pursuant to the provisions below. The duration of each such Interest Period shall be one, two, three, six or, to the extent available in the reasonable judgment of the Administrative Agent, nine or twelve months, as the Borrower may, upon notice received by the Administrative Agent not later than 11:00 A.M. (New York City time) on the third Business Day prior to the first day of such Interest Period, select; provided, however, that:

(a) the Borrower may not select any Interest Period that ends after the Termination Date;

(b) Interest Periods commencing on the same date for Eurodollar Rate Advances comprising part of the same Borrowing shall be of the same duration;

(c) whenever the last day of any Interest Period would otherwise occur on a day other than a Business Day, the last day of such Interest Period shall be extended to occur on the next succeeding Business Day, provided, however, that, if such extension would cause the last day of such Interest Period to occur in the next following calendar month, the last day of such Interest Period shall occur on the next preceding Business Day; and

(d) whenever the first day of any Interest Period occurs on a day of an initial calendar month for which there is no numerically corresponding day in the calendar month that succeeds such initial calendar month by the number of months equal to the number of months in such Interest Period, such Interest Period shall end on the last Business Day of such succeeding calendar month.

"Internal Revenue Code" means the Internal Revenue Code of 1986, as amended from time to time, and the regulations promulgated and rulings issued thereunder.

"Investment Grade Rating" means the Borrower's long term senior unsecured public debt is rated at least BBB- by S&P or Baa3 by Moody's.

"Issuing Bank" means Credit Suisse First Boston, and any other Lender that is a commercial bank, acting through a domestic branch, as issuer of a Letter of Credit.

"KKR" has the meaning specified in Section 5.01(h).

"L/C Account" means an account to be established by the Borrower with the Administrative Agent pursuant to an agreement in form and substance reasonably satisfactory to the Administrative Agent.

"L/C Related Documents" has the meaning specified in Section 2.15(d).

"Lead Managing Agents" means BT, Chase, Citibank and Credit Suisse First Boston.

"Lenders" means the Banks listed on the signature pages hereof, each Assuming Lender that shall become a party hereto pursuant to Section 2.19 and each Eligible Assignee that shall become a party hereto pursuant to Section 9.07.

"Letter of Credit Advance" means an advance made by any Issuing Bank or any Working Capital Lender pursuant to Section 2.15(c).

"Letter of Credit Agreement" has the meaning specified in Section 2.15(b).

"Letter of Credit Commitment" means, with respect to any Lender at any time, the amount set forth opposite such Lender's name on Schedule I hereto under the caption "Letter of Credit Commitment" or, if such Lender has entered into one or more Assignments and Acceptances, set forth for such Lender in the Register maintained by the Administrative Agent pursuant to Section 9.07(c) as such Lender's "Letter of Credit Commitment," as such amount may be reduced at or prior to such time pursuant to Sections 2.05 and 2.06.

"Letter of Credit Facility Sublimit" means \$300,000,000.

"Letters of Credit" has the meaning specified in Section 2.15(a).

"LIBO Rate Advances" has the meaning specified in Section 2.03(a)(i).

"Lien" means any lien, security interest or other charge or encumbrance of any kind, or any other type of preferential arrangement, including, without limitation, the lien or retained security title of a conditional vendor.

"Loan Documents" means this Agreement, the Notes and each Letter of Credit Agreement, as the same may be amended, supplemented or otherwise modified from time to time.

"Margin Stock" has the meaning specified in Regulation U.

"Material Adverse Change" means any change in the business, condition (financial or otherwise), operations, performance or properties of the Affiliate Guarantors, the Borrower and their respective Subsidiaries taken as a whole

that would materially adversely affect the ability of the Borrower or any Affiliate Guarantor to perform its obligations under this Agreement and the other Loan Documents to which it is a party (taken as a whole).

"Material Adverse Effect" means a circumstance or condition affecting the business, condition (financial or otherwise), operations, performance or properties of the Affiliate Guarantors, the Borrower and their respective Subsidiaries taken as a whole which would materially adversely affect (a) the ability of the Borrower and the Affiliate Guarantors, taken as a whole, to perform their obligations under this Agreement, the Notes and the other Loan Documents to which any of them is a party (taken as a whole) or (b) the rights and remedies of the Administrative Agent or any Lender under this Agreement and the other Loan Documents (taken as a whole).

"Material Subsidiary" means each Subsidiary of the Borrower or any Affiliate Guarantor now existing or hereafter acquired or formed by the Borrower or any Affiliate Guarantor which (x) for the most recent fiscal year of the Borrower and the Affiliate Guarantors, accounted for more than 3% of the Combined revenues of the Borrower and the Affiliate Guarantors, taken as a whole, or (y) as at the end of such fiscal year, was the owner of more than 4% of the Combined assets of the Borrower and the Affiliate Guarantors, taken as a whole, in each case as shown on the Combined financial statements of the Affiliate Guarantors, the Borrower and their respective Subsidiaries for such fiscal year.

"Moody's" means Moody's Investors Service, Inc. or any successor by merger or consolidation to its business.

"Net Interest Expense" means, for any fiscal period of the Borrower, the aggregate of (a) interest expense on all Debt of the Affiliate Guarantors, the Borrower and their respective Subsidiaries, net of interest income, in accordance with GAAP (excluding, in any event, interest expense, if any, on overdue tax assessments and amortization of financing fees and debt discount) and (b) dividends required to be paid on Preferred Stock permitted by Section 5.02(f)(ii).

"Note" means the Competitive Bid Note or a Working Capital Note.

"Notice of Borrowing" has the meaning specified in Section 2.02(a).

"Notice of Competitive Bid Borrowing" has the meaning specified in Section 2.03(a).

"Notice of Issuance" has the meaning specified in Section 2.15(b).

"Notice of Swing Line Borrowing" has the meaning specified in Section 2.02(b).

"Obligated Parties" means the Borrower and, until it is released from its guarantee obligations under Article VII in accordance with the provisions of Section 7.05, each Affiliate Guarantor.

"OECD" means the Organization for Economic Cooperation and Development.

"Option Exercise Proceeds" means the aggregate value received in connection with the exercise of Options.

"Options" means the options acquired by Persons other than officers, directors and employees of the Affiliate Guarantors, the Borrower and their respective Subsidiaries to acquire stock or certain assets of the Affiliate Guarantors, the Borrower or their respective Subsidiaries.

"Other Taxes" has the meaning specified in Section 2.13(b).

"PBG" means the Pension Benefit Guaranty Corporation or any successor thereof.

"Performance Level" means, as of any date of determination, the numerically lowest level set forth below as then in effect, as determined in accordance with the following provision of this definition:

Level 1 Total Debt/EBITDA Ratio is less than 2.00:1.00;

Level 2 Total Debt/EBITDA Ratio is 2.00:1.00 or greater but less than 2.50:1.00;



- Level 3 Total Debt/EBITDA Ratio is 2.50:1.00 or greater but less than 3.00:1.00;
- Level 4 Total Debt/EBITDA Ratio is 3.00:1.00 or greater but less than 3.50:1.00;
- Level 5 Total Debt/EBITDA Ratio is 3:50:1.00 or greater but less than 4:00:1.00;
- Level 6 Total Debt/EBITDA Ratio is 4:00:1.00 or greater;

provided, for purposes of this definition, the Performance Level shall be determined as at the end of each of the first three fiscal quarters of the Borrower and as of the end of the fiscal year of the Borrower, based on the relevant financial statements delivered pursuant to Section 5.03; changes in the Performance Level shall become effective on the date such financial statements are delivered to the Lenders and shall remain in effect until the next change to be effected pursuant to this definition.

"Permitted Liens" means (a) Liens for taxes, assessments or governmental charges or claims not yet due or which are being contested in good faith and by appropriate proceedings for which appropriate reserves have been established in accordance with GAAP; (b) Liens in respect of property or assets of any Affiliate Guarantor, the Borrower or any of their respective Subsidiaries imposed by law which are incurred in the ordinary course of business, such as carriers', warehousemen's and mechanics' Liens and other similar Liens arising in the ordinary course of business, and which do not individually or in the aggregate have a Material Adverse Effect; (c) Liens on assets of any Affiliate Guarantor, the Borrower or any of their respective Subsidiaries existing on the date hereof securing Indebtedness in an aggregate principal amount not to exceed \$5,000,000 or arising pursuant to any of the Loan Documents; (d) Liens arising from judgments or decrees in circumstances not constituting an Event of Default under Section 6.01(g); (e) Liens incurred or deposits made in connection with workers' compensation, unemployment insurance and other types of social security, or to secure the performance of tenders, statutory obligations, surety and appeal bonds, bids, leases, government contracts, performance and return-of-money bonds and other similar obligations incurred in the ordinary course of business; (f) leases or subleases granted

to others not interfering in any material respect with the business of the Affiliate Guarantors, the Borrower and their respective Subsidiaries taken as a whole; (g) ground leases in respect of real property on which facilities owned or leased by any Affiliate Guarantor, the Borrower or any of their respective Subsidiaries are located; (h) easements, rights-of-way, restrictions, minor defects or irregularities in title and other similar charges or encumbrances not interfering in any material respect with the business of the Affiliate Guarantors, the Borrower and their respective Subsidiaries taken as a whole; (i) any interest or title of a lessor or secured by a lessor's interest under any lease permitted by this Agreement; (j) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods; (k) Liens on goods the purchase price of which is financed by a documentary letter of credit issued for the account of any Affiliate Guarantor, the Borrower or any of their respective Subsidiaries where such Lien secures the obligations of such Affiliate Guarantor, the Borrower or such Subsidiaries in respect of such letter of credit to the extent permitted under Section 5.02(b); (l) Liens on assets permitted to be acquired hereunder; provided that such Liens were existing at the time of such acquisition and were not created in anticipation thereof; and (m) Liens granted in connection with any foreign contract option, futures contract or similar agreement designed to protect any Affiliate Guarantor, the Borrower or any of their respective Subsidiaries from fluctuations in the price of commodities, provided that such Liens attach solely to the commodities which are the subject of such options, contracts or agreements.

"Person" means an individual, partnership, corporation (including a business trust), limited liability company, joint stock company, trust, unincorporated association, joint venture or other entity, or a government or any political subdivision or agency thereof.

"Plan" means any multiemployer or single-employer plan as defined in Section 4001 of ERISA and which is covered by Title IV of ERISA, which is maintained or contributed to (or to which there is an obligation to contribute), by any Affiliate Guarantor, the Borrower, any of their respective Subsidiaries or any ERISA Affiliate.

"Preferred Stock" means, with respect to any corporation, capital stock issued by such corporation that is entitled to a preference or priority over any other capital stock issued by such corporation upon any distribution of such corporation's assets, whether by dividend or upon liquidation.

"Pro Forma EBITDA" means, for any period, (a) the sum of (i) EBITDA, (ii) from and after the making of any investment or acquisition in or of an Acquired Entity during such period, the Obligated Parties' Attributable Share of the EBITDA of each Acquired Entity so invested in or acquired for such period (including the portion thereof accruing prior to the date of such acquisition or investment and determined as of the last day of such period) and (iii) an amount equal to 50% of the increase or decrease in EBITDA of such Acquired Entity that the Borrower in good faith projects will occur as a result of reasonably identifiable and supportable net cost savings or additional net costs that are projected to be realizable during such period by combining the operations of such Acquired Entity with the operations of the Borrower, an Affiliate Guarantor or any of their respective Subsidiaries; provided that, so long as such net cost savings or additional net costs are projected to be realizable at any time during such period it shall be assumed, for purposes of projecting such pro forma increase or decrease in EBITDA of such Acquired Entity, that such net cost savings or additional net costs will be realizable during the entire such period; provided further that any such pro forma increase or decrease in EBITDA of such Acquired Entity shall be without duplication of any net cost savings or additional net costs actually realized during such period and already included in clause (ii) above; minus (b) from and after the disposition outside of the ordinary course of business of any assets constituting a business unit or any Subsidiary, (i) the proportion of the EBITDA of such assets or Subsidiary so disposed of for cash consideration and (ii) with respect to any such period of determination ended on or after the last day of the next full fiscal quarter following the date of such disposition, the proportion of the EBITDA of such assets or Subsidiary so disposed of for consideration other than cash. For purposes of the foregoing, clauses (a)(ii) and (b) above shall not apply to any investment, acquisition or disposition made prior to December 31, 1996.

"Ratable Share" of any amount means, with respect to any Working Capital Lender at any time, the product of (a) a fraction the numerator of which is the amount of such Lender's Working Capital Commitment at such time and the denominator of which is the Working Capital Facility at such time and (b) such amount.

"Real Property" of any Person means all of the right, title and interest of such Person in and to land, improvements and fixtures, including leaseholds.

"Receivables Financing Transaction" means any financing secured by or based on the sale or transfer of, accounts receivable of any Affiliate Guarantor, the Borrower or any of their respective Subsidiaries on terms and conditions reasonably satisfactory to the Required Lenders; provided that the aggregate program amount of Receivable Financing Transactions shall not exceed \$350,000,000.

"Redesign" means the restructuring of the businesses of the Borrower, as more fully described on Schedule II hereto.

"Redesign Documents" means Borden Holdings Notes held by the Borrower, each Option Agreement for stock in substantially the form of Exhibit K hereto, each Option Agreement for assets in substantially the form of Exhibit L hereto, each Conveyance and Transfer Agreement in substantially the form of Exhibit I hereto and the Limited Partnership Agreement of BFC Investments, L.P. in substantially the form of Exhibit H hereto.

"Reference Banks" means BT, Chase, Citibank and Credit Suisse First Boston.

"Register" has the meaning specified in Section 9.07(c).

"Regulation U" means Regulation U of the Board of Governors of the Federal Reserve System, as in effect from time to time.

"Replacement Lender" has the meaning specified in Section 2.18.

"Reportable Event" means an event described in Section 4043(b) of ERISA with respect to a Plan as to which the 30-day notice requirement has not been waived by the PBGC.

"Required Lenders" means at any time Lenders having at least 51% of the Working Capital Commitments or, if the Working Capital Commitments have been terminated, Lenders owed or holding at least 51% of the aggregate principal amount of Advances outstanding at such time.

"Restatement Date" means July 14, 1997.

"S&P" means Standard & Poor's Ratings Group or any successor by merger or consolidation to its business.

"Scheduled Debt" means Debt of the Borrower listed on Schedule 1.01 hereto, to the extent that such Debt matures or is payable on or before the Termination Date and any renewal, extension or refinancing thereof that does not increase the amount thereof that becomes due and payable on or before the Termination Date.

"Senior Bank Facilities" means this Agreement and the 364-Day Credit Agreement.

"Subsidiary" of any Person shall mean and include (i) any corporation more than 50% of whose stock of any class or classes having by the terms thereof ordinary voting power to elect a majority of the directors of such corporation (irrespective of whether or not at the time stock of any class or classes of such corporation shall have or might have voting power by reason of the happening of any contingency) is at the time owned by such Person directly or indirectly through Subsidiaries and (ii) any partnership, association, joint venture or other entity in which such Person directly or indirectly through Subsidiaries has more than a 50% equity interest at the time.

"Swing Line Advance" means an advance made by (a) the Swing Line Bank pursuant to Section 2.01(b) or (b) any Working Capital Lender pursuant to Section 2.02(b).

"Swing Line Bank" means Citibank.

"Swing Line Borrowing" means a borrowing consisting of a Swing Line Advance made by the Swing Line Bank.

"Swing Line Facility" has the meaning specified in Section 2.01(b).

"364-Day Credit Agreement" means the 364-Day Credit Agreement dated as of July 14, 1997 among the Borrower, Foods Holdings, Wise Holdings, the banks named therein, Citibank, as administrative agent, BT Securities, Chase Securities, Citicorp Securities and Credit Suisse First Boston, as arrangers, BT Securities and Chase Securities, as co-syndication agents, and Credit Suisse First Boston, as documentation agent, as amended, supplemented or otherwise modified from time to time.

"Taxes" has the meaning specified in Section 2.13(a).

"Termination Date" means the earlier of July 13, 2002 and the date of termination in whole of the Working Capital Commitments pursuant to Section 2.05 or 6.01.

"Total Debt" means, on any date of determination, (a) Debt of the Affiliate Guarantors, the Borrower and their respective Subsidiaries described in clauses (a) through (e) of the definition of "Debt" herein minus (b) cash of the Affiliate Guarantors, the Borrower and their respective Subsidiaries at such date in excess of \$75,000,000.

"Total Debt/EBITDA Ratio" means the ratio determined as of the last day of each fiscal quarter for the twelve month period ended on such day of (a) Combined Total Debt of the Affiliate Guarantors, the Borrower and their Subsidiaries on such day to (b) to Combined Pro Forma EBITDA of the Affiliate Guarantors, the Borrower and their Subsidiaries for such period; provided, that for purposes of this definition, Total Debt of any Subsidiary of any Obligated Party shall be determined as such Obligated Party's Attributable Share of the Total Debt of such Subsidiary.

"Type" refers to the distinction between Advances bearing interest by reference to the Base Rate and Advances bearing interest by reference to the Eurodollar Rate.

"Unfunded Current Liability" of any Plan means the amount, if any, by which the present value of the accrued benefits under such Plan as of the close of its most recent plan year, based upon the actuarial assumptions which would be required to be used by such Plan's actuary in connection with the determination of such Plan's accrued benefits pursuant to its termination, exceeds the fair market value of the assets allocable thereto, determined in accordance with Section 412 of the Internal Revenue Code.

"Unused Working Capital Commitment" means, with respect to any Working Capital Lender at any time, (a) such Lender's Working Capital Commitments at such time minus (b) the sum of (i) the aggregate principal amount of all Working Capital Advances, Swing Line Advances and Letter of Credit Advances made by such Lender and outstanding at such time, plus, without duplication, (ii) such Lender's Ratable Share of (A) the aggregate Available Amount of all Letters of Credit outstanding at such time, (B) the aggregate principal amount of all Letter of Credit Advances made by an Issuing Bank pursuant to Section 2.15(c) and outstanding at such time other than any such Letter of Credit Advance which, at or prior to such time, has been assigned in part to such Working Capital Lender pursuant to Section 2.15(c), (C) the aggregate principal outstanding amount of Competitive Bid Advances and (D) the aggregate principal amount of all Swing Line Advances made by the Swing Line Bank pursuant to Section 2.01(b) and outstanding at such time.

"Voting Stock" means capital stock issued by a corporation, or equivalent interests in any other Person, the holders of which are ordinarily, in the absence of contingencies, entitled to vote for the election of directors (or persons performing similar functions) of such Person, even though the right so to vote has been suspended by the happening of such a contingency (but excluding in any event convertible or exchangeable Preferred Stock prior to conversion or exchange, as the case may be).

"Working Capital Advance" has the meaning specified in Section 2.01.

"Working Capital Borrowing" means a borrowing consisting of simultaneous Working Capital Advances of the same Type made by the Working Capital Lenders.

"Working Capital Commitment" means, with respect to any Working Capital Lender at any time, the amount set forth opposite such Lender's name on Schedule I hereto under the caption "Working Capital Commitment" or, if such Lender has become a Lender hereunder pursuant to an Assumption Agreement, the amount set forth as the Commitment of such Lender in such Assumption Agreement or, if such Lender has entered into one or more Assignment and Acceptances, the amount set forth for such Lender in the Register maintained by the Administrative Agent pursuant to Section 9.07(c) as

such Lender's "Working Capital Commitment," as such amount may be reduced pursuant to Sections 2.05 and 2.06.

"Working Capital Facility" means, at any time, the aggregate amount of the Working Capital Lenders' Working Capital Commitments at such time.

"Working Capital Lender" means any Lender that has a Working Capital Commitment.

"Working Capital Note" means a promissory note of the Borrower payable to the order of any Working Capital Lender, in substantially the form of Exhibit A-2 hereto, evidencing the indebtedness of the Borrower to such Lender resulting from the Working Capital Advances made by such Lender.

SECTION 1.02. Computation of Time Periods. In this Agreement in the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including" and the words "to" and "until" each mean "to but excluding."

SECTION 1.03. Accounting Terms. All accounting terms not specifically defined herein shall be construed in accordance with generally accepted accounting principles ("GAAP").

## ARTICLE II

### AMOUNTS AND TERMS OF THE ADVANCES AND THE LETTERS OF CREDIT

SECTION 2.01. The Advances. (a) Working Capital Advances. Each Working Capital Lender severally agrees, on the terms and conditions hereinafter set forth, to make advances ("Working Capital Advances") to the Borrower from time to time on any Business Day during the period from the date hereof until the Termination Date in an amount for each such Advance not to exceed such Lender's Unused Working Capital Commitment on such Business Day. Each Working Capital Borrowing shall be in an aggregate amount not less than \$10,000,000 or an integral multiple of \$1,000,000 in excess thereof and shall consist of Working Capital Advances of the same Type made on the same day by the Working Capital Lenders ratably according to their respective Working Capital Commitments. Within the limits of each Working Capital Lender's Unused Working Capital Commitment in effect from time to



time, the Borrower may borrow under this Section 2.01(a), prepay pursuant to Section 2.07 and reborrow under this Section 2.01(a).

(b) The Swing Line Advances. The Borrower may request the Swing Line Bank to make, and the Swing Line Bank may, if in its sole discretion it elects to do so, make, on the terms and conditions hereinafter set forth, Swing Line Advances to the Borrower from time to time on any Business Day during the period from the date hereof until the Termination Date (i) in an aggregate amount not to exceed at any time outstanding \$20,000,000 (the "Swing Line Facility") and (ii) in an amount for each such Swing Line Borrowing not to exceed the aggregate of the Unused Working Capital Commitments of the Working Capital Lenders at such time. No Swing Line Advance shall be used for the purpose of funding the payment of principal of any other Swing Line Advance. Each Swing Line Borrowing shall be in an amount of \$1,000,000 or an integral multiple of \$1,000,000 in excess thereof and shall be made as a Base Rate Advance. Within the limits of the Swing Line Facility and within the limits referred to in clause (ii) above, so long as the Swing Line Bank, in its sole discretion, elects to make Swing Line Advances, the Borrower may borrow under this Section 2.01(b), repay pursuant to Section 2.04(c) or prepay pursuant to Section 2.07 and reborrow under this Section 2.01(b).

SECTION 2.02. Making the Advances. (a) Except as otherwise provided in Section 2.02(b) and Section 2.15, each Borrowing shall be made on notice, given not later than 11:00 A.M. (New York City time) (i) on the third Business Day prior to the date of the proposed Borrowing in the case of Eurodollar Rate Borrowings and (ii) on the same Business Day in the case of Base Rate Borrowings, by the Borrower to the Administrative Agent, which shall give to each Appropriate Lender prompt notice thereof by telex, telecopier or cable. Each such notice of a Borrowing (a "Notice of Borrowing") shall be by telephone, telex, telecopier or cable, confirmed immediately in writing, in substantially the form of Exhibit B hereto, specifying therein the requested (i) date of such Borrowing, (ii) Facility under which such Borrowing is to be made, (iii) Type of Advances comprising such Borrowing, (iv) aggregate amount of such Borrowing and (v) in the case of a Borrowing consisting of Eurodollar Rate Advances, initial Interest Period for each such Advance. In the case of a proposed Borrowing comprised of Eurodollar Rate Advances, the Administrative Agent shall promptly notify each Appropriate Lender of the applicable interest rate under Section 2.08(a)(ii). Each Appropriate Lender shall, before 12:00 noon (New York City time) on the date of such Borrowing,

make available for the account of its Applicable Lending Office to the Administrative Agent at the Administrative Agent's Account, in same day funds, such Lender's ratable portion of such Borrowing in accordance with the respective Commitments of such Lender and the other Appropriate Lenders. After the Administrative Agent's receipt of such funds and upon fulfillment of the applicable conditions set forth in Article III, the Administrative Agent will make such funds available to the Borrower; provided, however, that, in the case of any Working Capital Borrowing, the Administrative Agent shall first make a portion of such funds equal to the aggregate principal amount of any Swing Line Advances and Letter of Credit Advances made by the Swing Line Bank or any Issuing Bank, as the case may be, and by any other Working Capital Lender and outstanding on the date of such Borrowing, plus interest accrued and unpaid thereon to and as of such date, available to the Swing Line Bank or such Issuing Bank, as the case may be, and such other Working Capital Lenders for repayment of such Swing Line Advances and Letter of Credit Advances.

(b) Each Swing Line Borrowing shall be made on notice, given not later than 11:00 A.M. (New York City time) on the date of the proposed Swing Line Borrowing, by the Borrower to the Swing Line Bank and the Administrative Agent. Each such notice of a Swing Line Borrowing (a "Notice of Swing Line Borrowing") shall be by telephone, confirmed immediately in writing, or telex or telecopier, specifying therein the requested (i) date of such Borrowing, (ii) amount of such Borrowing and (iii) maturity of such Borrowing. If, in its sole discretion, it elects to make the requested Swing Line Advance, the Swing Line Bank will make the amount thereof available to the Administrative Agent at the Administrative Agent's Account, in same day funds. After the Administrative Agent's receipt of such funds and upon fulfillment of the applicable conditions set forth in Article III, the Administrative Agent will make such funds available to the Borrower by crediting the Borrower's Account. Upon written demand by the Swing Line Bank, with a copy of such demand to the Administrative Agent, each other Working Capital Lender shall purchase from the Swing Line Bank, and the Swing Line Bank shall sell and assign to each such other Working Capital Lender, such other Lender's Pro Rata Share of such outstanding Swing Line Advance as of the date of such demand, by making available for the account of its Applicable Lending Office to the Administrative Agent for the account of the Swing Line Bank, by deposit to the Administrative Agent's Account, in same day funds, an amount equal to the portion of the outstanding principal amount of such Swing Line Advance to be purchased by such Lender.

The Borrower hereby agrees to each such sale and assignment. Each Working Capital Lender agrees to purchase its Pro Rata Share of an outstanding Swing Line Advance on (i) the Business Day on which demand therefor is made by the Swing Line Bank, provided that notice of such demand is given not later than 11:00 A.M. (New York City time) on such Business Day or (ii) the first Business Day next succeeding such demand if notice of such demand is given after such time. Upon any such assignment by the Swing Line Bank to any other Working Capital Lender of a portion of a Swing Line Advance, the Swing Line Bank represents and warrants to such other Lender that the Swing Line Bank is the legal and beneficial owner of such interest being assigned by it, but makes no other representation or warranty and assumes no responsibility with respect to such Swing Line Advance, the Loan Documents or any Obligated Party. If and to the extent that any Working Capital Lender shall not have so made the amount of such Swing Line Advance available to the Administrative Agent, such Working Capital Lender agrees to pay to the Administrative Agent forthwith on demand such amount together with interest thereon, for each day from the date of demand by the Swing Line Bank until the date such amount is paid to the Administrative Agent, at the Federal Funds Rate. If such Lender shall pay to the Administrative Agent such amount for the account of the Swing Line Bank on any Business Day, such amount so paid in respect of principal shall constitute a Swing Line Advance made by such Lender on such Business Day for purposes of this Agreement, and the outstanding principal amount of the Swing Line Advance made by the Swing Line Bank shall be reduced by such amount on such Business Day.

(c) Anything in subsection (a) above to the contrary notwithstanding, (i) the Borrower may not select Eurodollar Rate Advances for the initial Borrowing hereunder or for any Borrowing if the aggregate amount of such Borrowing is less than \$10,000,000 or if the obligation of the Appropriate Lenders to make Eurodollar Rate Advances shall then be suspended pursuant to Section 2.11 and (ii) the Working Capital Advances made on any date as Eurodollar Rate Advances may not be outstanding as part of more than 20 separate Working Capital Borrowings.

(d) Each Notice of Borrowing and Notice of Swing Line Borrowing shall be irrevocable and binding on the Borrower. In the case of any Borrowing that the related Notice of Borrowing specifies is to be comprised of Eurodollar Rate Advances, the Borrower shall indemnify each Appropriate Lender, after receipt of a written request by such Lender (which request shall set forth in reasonable detail the basis for such amount) against any

loss, cost or expense actually incurred by such Lender (excluding loss of anticipated profits) as a result of any failure to fulfill on or before the date specified in such Notice of Borrowing for such Borrowing the applicable conditions set forth in Article III, including, without limitation, any loss, cost or expense reasonably incurred by reason of the liquidation or reemployment of deposits or other funds acquired by such Lender to fund the Advance to be made by such Lender as part of such Borrowing when such Advance, as a result of such failure, is not made on such date.

(d) Unless the Administrative Agent shall have received notice from an Appropriate Lender prior to the time of any Borrowing under a Facility under which such Lender has a Commitment that such Lender will not make available to the Administrative Agent such Lender's ratable portion of such Borrowing, the Administrative Agent may assume that such Lender has made such portion available to the Administrative Agent on the date of such Borrowing in accordance with subsection (a) of this Section 2.02 and the Administrative Agent may, in reliance upon such assumption, make available to the Borrower on such date a corresponding amount. If and to the extent that such Lender shall not have so made such ratable portion available to the Administrative Agent, such Lender and the Borrower severally agree to repay or pay to the Administrative Agent forthwith on demand such corresponding amount and to pay interest thereon, for each day from the date such amount is made available to the Borrower until the date such amount is repaid or paid to the Administrative Agent, at (i) in the case of the Borrower, the interest rate applicable at such time under Section 2.08 to Advances comprising such Borrowing and (ii) in the case of such Lender, the Federal Funds Rate. If such Lender shall pay to the Administrative Agent such corresponding amount, such amount so paid shall constitute such Lender's Advance as part of such Borrowing for purposes of this Agreement.

(e) The failure of any Lender to make the Advance to be made by it as part of any Borrowing shall not relieve any other Lender of its obligation, if any, hereunder to make its Advance on the date of such Borrowing, but no Lender shall be responsible for the failure of any other Lender to make the Advance to be made by such other Lender on the date of any Borrowing.

SECTION 2.03. The Competitive Bid Advances. (a) Each Working Capital Lender severally agrees that the Borrower may make Competitive Bid Borrowings under this Section 2.03 from time

to time on any Business Day during the period from the date hereof until the date occurring seven days prior to the Termination Date in the manner set forth below; provided that, following the making of each Competitive Bid Borrowing, no prepayment shall be required pursuant to Section 2.07(b)(i).

(i) The Borrower may request a Competitive Bid Borrowing under this Section 2.03 by delivering to the Administrative Agent, by telecopier or telex, confirmed immediately in writing, a notice of a Competitive Bid Borrowing (a "Notice of Competitive Bid Borrowing"), in substantially the form of Exhibit B-2 hereto, together with a processing fee of \$4,000 for each Notice of Competitive Bid Borrowing, specifying therein (v) the date of such proposed Competitive Bid Borrowing, (w) the aggregate amount of such proposed Competitive Bid Borrowing, (x) the maturity date for repayment of each Competitive Bid Advance to be made as part of such Competitive Bid Borrowing (which maturity date may not be earlier than the date occurring seven days after the date of such Competitive Bid Borrowing or later than the Termination Date), (y) the interest payment date or dates relating thereto, and (z) any other terms to be applicable to such Competitive Bid Borrowing, not later than 10:00 A.M. (New York City time) (A) at least one Business Day prior to the date of the proposed Competitive Bid Borrowing, if the Borrower shall specify in the Notice of Competitive Bid Borrowing that the rates of interest to be offered by the Lenders shall be fixed rates per annum (the Advances comprising any such Competitive Bid Borrowing being referred to herein as "Fixed Rate Advances") and (B) at least four Business Days prior to the date of the proposed Competitive Bid Borrowing, if the Borrower shall instead specify in the Notice of Competitive Bid Borrowing the basis to be used by the Lenders in determining the rates of interest to be offered by them (the Advances comprising such Competitive Bid Borrowing being referred to herein as "LIBO Rate Advances"). The Administrative Agent shall in turn promptly notify each Working Capital Lender of each request for a Competitive Bid Borrowing received by it from the Borrower by sending such Lender a copy of the related Notice of Competitive Bid Borrowing.

(ii) Each Working Capital Lender may, if, in its sole discretion, it elects to do so, irrevocably offer to make one or more Competitive Bid Advances to the Borrower as part of such proposed Competitive Bid Borrowing at a rate or rates of interest specified by such Lender in its sole

discretion, by notifying the Administrative Agent (which shall give prompt notice thereof to the Borrower), before 10:00 A.M. (New York City time) on the date of such proposed Competitive Bid Borrowing, in the case of a Competitive Bid Borrowing consisting of Fixed Rate Advances and three Business Days before the date of such proposed Competitive Bid Borrowing, in the case of a Competitive Bid Borrowing consisting of LIBO Rate Advances, of the minimum amount and maximum amount of each Competitive Bid Advance which such Lender would be willing to make as part of such proposed Competitive Bid Borrowing (which amounts may, subject to the proviso to the first sentence of this Section 2.03(a), exceed such Lender's Working Capital Commitment), the rate or rates of interest therefor and such Lender's Applicable Lending Office with respect to such Competitive Bid Advance; provided that if the Administrative Agent in its capacity as a Working Capital Lender shall, in its sole discretion, elect to make any such offer, it shall notify the Borrower of such offer before 9:00 A.M. (New York City time) on the date on which notice of such election is to be given to the Administrative Agent by the other Working Capital Lenders. If any Working Capital Lender shall elect not to make such an offer, such Lender shall so notify the Administrative Agent, before 10:00 A.M. (New York City time) on the date on which notice of such election is to be given to the Administrative Agent by the other Working Capital Lenders, and such Lender shall not be obligated to, and shall not, make any Competitive Bid Advance as part of such Competitive Bid Borrowing; provided that the failure by any Working Capital Lender to give such notice shall not cause such Lender to be obligated to make any Competitive Bid Advance as part of such proposed Competitive Bid Borrowing.

(iii) The Borrower shall, in turn, before 11:00 A.M. (New York City time) on the date of such proposed Competitive Bid Borrowing, in the case of a Competitive Bid Borrowing consisting of Fixed Rate Advances and before 1:00 P.M. (New York City time) three Business Days before the date of such proposed Competitive Bid Borrowing, in the case of a Competitive Bid Borrowing consisting of LIBO Rate Advances, either:

(x) cancel such Competitive Bid Borrowing by giving the Administrative Agent notice to that effect, or

(y) accept one or more of the offers made by any Working Capital Lender or Lenders pursuant to paragraph (ii) above, by giving notice to the Administrative Agent of the amount of each Competitive Bid Advance (which amount shall be equal to or greater than the minimum amount, and equal to or less than the maximum amount, notified to the Borrower by the Administrative Agent on behalf of such Lender for such Competitive Bid Advance pursuant to paragraph (ii) above) to be made by each Lender as part of such Competitive Bid Borrowing, and reject any remaining offers made by Lenders pursuant to paragraph (ii) above by giving the Administrative Agent notice to that effect.

(iv) If the Borrower notifies the Administrative Agent that such Competitive Bid Borrowing is cancelled pursuant to paragraph (iii)(x) above, the Administrative Agent shall give prompt notice thereof to the Working Capital Lenders and such Competitive Bid Borrowing shall not be made.

(v) If the Borrower accepts one or more of the offers made by any Working Capital Lender or Lenders pursuant to paragraph (iii)(y) above, the Administrative Agent shall in turn promptly notify (A) each Working Capital Lender that has made an offer as described in paragraph (ii) above, of the date and aggregate amount of such Competitive Bid Borrowing and whether or not any offer or offers made by such Lender pursuant to paragraph (ii) above have been accepted by the Borrower, (B) each Working Capital Lender that is to make a Competitive Bid Advance as part of such Competitive Bid Borrowing, of the amount of each Competitive Bid Advance to be made by such Lender as part of such Competitive Bid Borrowing, and (C) each Working Capital Lender that is to make a Competitive Bid Advance as part of such Competitive Bid Borrowing, upon receipt, that the Administrative Agent has received forms of documents appearing to fulfill the applicable conditions set forth in Article III. Each Working Capital Lender that is to make a Competitive Bid Advance as part of such Competitive Bid Borrowing shall, before 12:00 noon (New York City time) on the date of such Competitive Bid Borrowing specified in the notice received from the Administrative Agent pursuant to clause (A) of the preceding sentence or any later time when such Lender shall have received notice from the Administrative Agent pursuant to clause (C) of the preceding sentence, make available for the account of its Applicable Lending Office to the Administrative Agent at the

Administrative Agent's Account, in same day funds, such Lender's portion of such Competitive Bid Borrowing. Upon fulfillment of the applicable conditions set forth in Article III and after receipt by the Administrative Agent of such funds, the Administrative Agent will make such funds available to the Borrower at the Administrative Agent's address referred to in Section 9.02. Promptly after each Competitive Bid Borrowing the Administrative Agent will notify each Working Capital Lender of the amount of such Competitive Bid Borrowing.

(vi) The Administrative Agent shall maintain at its address referred to in Section 9.02 a copy of each Notice of Competitive Bid Borrowing delivered pursuant to subsection (a)(i) above and a register for the recordation of the date, amount, maturity, interest rate, interest payment dates, other terms and Working Capital Lender of each Competitive Bid Advance accepted by the Borrower from time to time pursuant to this subsection (a) (the "Competitive Bid Register"). The entries in the Competitive Bid Register shall be conclusive and binding for all purposes, absent demonstrable error, and the Borrower, the Administrative Agent and the Working Capital Lenders may treat the entries recorded in the Competitive Bid Register as evidence of Competitive Bid Advances made pursuant to this Section 2.03. The Competitive Bid Register shall be available for inspection by the Borrower, or by any Working Capital Lender as to its Competitive Bid Advances, at any reasonable time and from time to time upon reasonable prior notice.

(b) Each Competitive Bid Borrowing shall be in an aggregate amount of \$10,000,000 or an integral multiple of \$1,000,000 in excess thereof and, following the making of each Competitive Bid Borrowing, the Borrower shall be in compliance with the limitation set forth in the proviso to the first sentence of subsection (a) above.

(c) Within the limits and on the conditions set forth in this Section 2.03, the Borrower may from time to time borrow under this Section 2.03, repay or prepay pursuant to subsection (d) below, and reborrow under this Section 2.03, provided that a Competitive Bid Borrowing shall not be made within three Business Days of the date of any other Competitive Bid Borrowing.

(d) The Borrower shall repay to the Administrative Agent for the account of each Working Capital Lender that has made a Competitive Bid Advance, on the maturity date of each



Competitive Bid Advance (such maturity date being that specified by the Borrower for repayment of such Competitive Bid Advance in the related Notice of Competitive Bid Borrowing delivered pursuant to subsection (a)(i) above and recorded in the Competitive Bid Register with respect to such Competitive Bid Advance), the then unpaid principal amount of such Competitive Bid Advance.

(e) The Borrower shall pay interest on the unpaid principal amount of each Competitive Bid Advance from the date of such Competitive Bid Advance to the date the principal amount of such Competitive Bid Advance is repaid in full, at the rate of interest for such Competitive Bid Advance specified by the Working Capital Lender making such Competitive Bid Advance in its notice with respect thereto delivered pursuant to subsection (a)(ii) above, payable on the interest payment date or dates specified by the Borrower for such Competitive Bid Advance in the related Notice of Competitive Bid Borrowing delivered pursuant to subsection (a)(i) above, as recorded in the Competitive Bid Register with respect to such Competitive Bid Advance.

(f) The indebtedness of the Borrower resulting from each Competitive Bid Advance made to the Borrower as part of a Competitive Bid Borrowing shall be evidenced by a master Competitive Bid Note of the Borrower payable to the order of the Administrative Agent for the benefit of the Working Capital Lender making such Competitive Bid Advance.

SECTION 2.04. Repayment. (a) Working Capital Advances. The Borrower shall repay to the Administrative Agent for the ratable account of the Working Capital Lenders the aggregate outstanding principal amount of the Working Capital Advances on the Termination Date.

(b) Letter of Credit Advances. The Borrower shall repay to the Administrative Agent for the account of each Issuing Bank and each other Working Capital Lender which has made a Letter of Credit Advance the outstanding principal amount of each Letter of Credit Advance made by each of them on demand.

(c) Swing Line Advances. The Borrower shall repay to the Administrative Agent for the account of the Swing Line Bank and each other Working Capital Lender that has made a Swing Line Advance the outstanding principal amount of each Swing Line Advance made by each of them on the earlier of the maturity date specified in the applicable Notice of Swing Line Borrowing and the Termination Date.

SECTION 2.05. Reduction of the Commitments. (a) Optional. The Borrower may, upon at least one Business Day's notice to the Administrative Agent, terminate in whole or reduce in part the Unused Working Capital Commitments and the Letter of Credit Commitments; provided, however, that each partial reduction of a Facility (i) shall be in an aggregate amount of \$10,000,000 or an integral multiple of \$1,000,000 in excess thereof and (ii) shall be made ratably among the Appropriate Lenders in accordance with their Commitments with respect to such Facility.

(b) Mandatory. (i) The Working Capital Commitments shall be terminated in full on the Termination Date.

(ii) The Working Capital Commitments shall be reduced by an amount equal to the aggregate program amount of any Receivables Financing Transaction.

SECTION 2.06. Application of Certain Proceeds. (a) The Borrower shall reduce the aggregate Commitments under the Senior Bank Facilities or pay or prepay Scheduled Debt by an amount equal to, and upon receipt of, Asset Proceeds and Option Exercise Proceeds by the Affiliate Guarantors, the Borrower and their respective Subsidiaries other than the following, without duplication:

(i) Asset Proceeds paid to the Borrower for the initial transfer of the Dairy Business to an Affiliate and its Subsidiaries at the time, if any, such Affiliate becomes an Affiliate Guarantor;

(ii) Asset Proceeds from, without duplication, (A) the sale of the Borrower's Dairy Business, (B) the sale of Foods Businesses other than the pasta, soups and related businesses, (C) Option Exercise Proceeds, (D) an amount equal to the portion, if any, of the amount of the excess of (x) in the case of the exercise of an Option with a substantially contemporaneous sale of the stock or assets the subject of such Option, the actual sale price of such stock or assets or, in each other case, the fair market value (as determined by the board of directors of the Borrower) over (y) the exercise price of such Options (the "Option Differential"), which is contributed to the equity of the Borrower or the Affiliate Guarantors, upon the exercise of such Option, (E) an amount equal to the portion, if any, of the amount of the appreciation of trademarks the benefit of which accrues to Borden Foods Holdings, L.L.C.

(the "Trademark Appreciation") which is contributed to the equity of the Borrower or the Affiliate Guarantors, upon the sale of any trademarks used in the Foods Business, (F) an amount equal to the portion, if any, of the Affiliate Guarantor Stock Sale Proceeds (as defined in Section 2.06(d)) contributed as equity to the Borrower or the Affiliate Guarantors and (G) the sale of \$1,000,000,000 of assets not otherwise described in this clause (iii) and not including consideration described in clauses (b), (c) and (d) below;

(iii) Asset Proceeds in the form of notes, property and other consideration other than cash received other than pursuant to transactions described in clause (ii) above from entities that are not Affiliates of the Borrower or the Affiliate Guarantors, to the extent that the amount thereof outstanding at any time (after giving effect to monetization, payment or other cash realization thereof) does not exceed \$200,000,000;

(iv) Asset Proceeds from the sale, transfer or other disposition of non-cash consideration to the extent an amount equal to such non-cash consideration was required to be and was applied in accordance with this Section 2.06(a) (including pursuant to the exceptions described therein);

(v) Asset Proceeds from the sale, transfer or other disposition of assets between or among (x) the Borrower and its Subsidiaries or (y) the Affiliate Guarantors and their respective Subsidiaries (including as an Affiliate Guarantor, for purposes of this clause (vi), the Dairy Business); and

(vi) Asset Proceeds from sales of stock of, or equity interest in, any Affiliate Guarantor or any Subsidiary of any Obligated Party to any Obligated Party, any Subsidiary thereof or any employee of any Obligated Party or its Subsidiaries by the exercise of stock options or otherwise, provided that the aggregate amount of such sales made to such employees (other than in respect of the exercise of stock options issued to employees before the Restatement Date) with respect to any Affiliate Guarantor or Subsidiary of any Obligated Party shall not exceed the greater of \$10,000,000 and 15% of the equity interests of such Affiliate Guarantor or Subsidiary of an Obligated Party.

(vii) Asset Proceeds applied pursuant to clauses (b), (c) and (d) below, to the extent that Commitments under the Senior Bank Facilities have been reduced or Scheduled Debt has been paid or prepaid pursuant to clauses (b), (c), (d) and (e) below, as applicable.

(b) The Borrower shall reduce the aggregate Commitments under the Senior Bank Facilities or pay or prepay Scheduled Debt upon receipt of Option Exercise Proceeds, by an amount equal to the portion of the Option Differential not contributed to the equity of the Borrower or the Affiliate Guarantors.

(c) The Borrower shall reduce the aggregate Commitments under the Senior Bank Facilities or pay or prepay Scheduled Debt upon the sale of any trademarks the benefit of which sale accrues to Borden Foods Holdings, L.L.C., by an amount equal to the portion of the Trademark Appreciation not contributed to the equity of the Borrower or the Affiliate Guarantors.

(d) The Borrower shall reduce the aggregate Commitments under the Senior Bank Facilities or pay or prepay Scheduled Debt on the date of each Guarantee Release Event (as defined in Section 7.05) in an amount equal to the portion of the "Affiliate Guarantor Stock Sale Proceeds" (as defined below) in respect thereof not contributed to the equity of the Borrower or the Affiliate Guarantors. "Affiliate Guarantor Stock Sale Proceeds" means, in respect of any Affiliate Guarantor, (i) in the event of a sale of all of the common stock of such Affiliate Guarantor, the amount of Asset Proceeds of such sale received by the holders of such common stock (or by such Affiliate Guarantor if a primary issuance and sale) or (ii) in the event of a sale of less than all of the common stock of such Affiliate Guarantor, the amount equal to the product of (x) the Asset Proceeds per share of common stock received by the holders thereof in such partial sale (or by such Affiliate Guarantor, if a primary issuance and sale) and (y) the total number of shares of common stock of such Affiliate Guarantor outstanding after giving effect to such partial sale.

(e) The payments and commitment reductions required by Sections 2.06(a), (b), (c) and (d) shall be made as the Borrower may direct.

(f) For purposes of this Section 2.06, the Borrower and the Affiliate Guarantors shall be deemed to have received

Asset Proceeds on the last day of the fiscal year following the date of an asset sale transaction in an amount equal to the excess of the reserve for taxes payable or estimated to be payable in connection with or as a result of such transaction over taxes actually paid in connection with or as a result of such transaction on or before the last day of such fiscal year. The Borrower shall apply an amount equal to such deemed Asset Proceeds in accordance with the terms of this Section 2.06.

(g) The Borrower may apply proceeds as required by this Section 2.06 on the last day of any Interest Period next ending after receipt or, in the case of Asset Proceeds, deemed receipt, of such proceeds; provided that the Borrower shall apply such proceeds on or before 30 days after such receipt or deemed receipt; provided further that in the case of Asset Proceeds resulting from the sale of an asset located outside the United States, such 30 days after such receipt or deemed receipt shall be extended to 90 days after such receipt or deemed receipt.

(h) All prepayments of Senior Bank Facilities under this Section 2.06 shall be made together with accrued interest to the date of such prepayment on the principal amount prepaid.

SECTION 2.07. Prepayments. (a) Optional. The Borrower may, upon (i) at least one Business Day's notice in the case of Base Rate Borrowings and (ii) at least three Business Days' notice in the case of Eurodollar Rate Borrowings, in each case to the Administrative Agent stating the proposed date and aggregate principal amount of the prepayment, and if such notice is given the Borrower shall, prepay the outstanding aggregate principal amount of the Advances comprising part of the same Borrowing in whole or ratably in part, together with accrued interest to the date of such prepayment on the aggregate principal amount prepaid; provided, however, that each partial prepayment shall be in an aggregate principal amount of \$10,000,000 or an integral multiple of \$1,000,000 in excess thereof.

(b) Mandatory. (i) The Borrower shall, on each Business Day, prepay an aggregate principal amount of the Working Capital Advances comprising part of the same Borrowings and Swing Line Advances equal to the amount by which the (x) sum of (A) aggregate principal amount of the Working Capital Advances, Letter of Credit Advances, Swing Line Advances and Competitive Bid Advances then outstanding and (B) the Available Amount of all Letters of Credit then outstanding exceeds (y) the Working Capital Facility.

(ii) Prepayments of the Working Capital Facility made pursuant to clause (i) above shall be first applied to prepay Letter of Credit Advances then outstanding until such Advances are paid in full, second applied to prepay Swing Line Advances then outstanding until such Advances are paid in full and third applied to prepay Working Capital Advances then outstanding comprising part of the same Borrowings until such Advances are paid in full.

(iii) All prepayments under this subsection (b) shall be made together with accrued interest to the date of such prepayment on the principal amount prepaid.

SECTION 2.08. Interest. (a) Ordinary Interest. The Borrower shall pay interest on the unpaid principal amount of each Advance owing to each Lender from the date of such Advance until such principal amount shall be paid in full, at the following rates per annum:

(i) Base Rate Advances. During such periods as such Advance is a Base Rate Advance, a rate per annum equal at all times to the sum of (A) the Base Rate in effect from time to time plus (B) the Applicable Margin in effect from time to time, payable in arrears quarterly on the first day of each January, April, July, and October during such periods and on the date such Base Rate Advance shall be Converted or paid in full.

(ii) Eurodollar Rate Advances. During such periods as such Advance is a Eurodollar Rate Advance, a rate per annum equal at all times during each Interest Period for such Advance to the sum of (A) the Eurodollar Rate for such Interest Period for such Advance plus (B) the Applicable Margin in effect on each day during such Interest Period, payable in arrears on the last day of such Interest Period and, if such Interest Period has a duration of more than three months, on each day that occurs during such Interest Period every three months from the first day of such Interest Period.

(b) Default Interest. Overdue principal and interest in respect of each Advance shall bear interest at a rate per annum equal to the Base Rate in effect from time to time plus the sum of (i) 2% and (ii) the Applicable Margin; provided that each Eurodollar Rate Advance and Competitive Bid Advance shall bear interest after maturity (whether by acceleration or otherwise) until the end of the Interest Period then applicable thereto at a

rate per annum equal to 2% in excess of the rate of interest applicable thereto at maturity.

SECTION 2.09. Fees. (a) Commitment Fee. The Borrower shall pay to the Administrative Agent for the account of the Lenders a commitment fee on each Working Capital Lender's average daily Unused Working Capital Commitment, computed without regard to clauses (C) and (D) of the definition of Unused Working Capital Commitment, minus the aggregate amount of Competitive Bid Advances made by such Lender from the date hereof until the Termination Date at the Applicable Percentage, payable in arrears quarterly on the first Business Day of each January, April, July and October, commencing October 3, 1997, and on the Termination Date; provided, however, that any commitment fee accrued with respect to any of the Commitments of a Defaulting Lender during the period prior to the time such Lender became a Defaulting Lender and unpaid at such time shall not be payable by the Borrower so long as such Lender shall be a Defaulting Lender except to the extent that such commitment fee shall otherwise have been due and payable by the Borrower prior to such time; and provided further that no commitment fee shall accrue on any of the Commitments of a Defaulting Lender so long as such Lender shall be a Defaulting Lender.

(b) Administrative Agent's and Arrangers' Fees. The Borrower shall pay to the Administrative Agent and the Arrangers for their own respective account such fees as may from time to time be agreed between the Borrower and the Administrative Agent and the Arrangers.

SECTION 2.10. Conversion of Advances. (a) Optional. The Borrower may on any Business Day, upon notice given to the Administrative Agent not later than 11:00 A.M. (New York City time) on the third Business Day prior to the date of the proposed Conversion and subject to the provisions of Section 2.11, Convert all or any portion of the Working Capital Advances of one Type comprising the same Borrowing into Advances of the other Type; provided, however, that any Conversion of Base Rate Advances into Eurodollar Rate Advances shall be in an amount not less than the minimum amount specified in Section 2.02(c) and no Conversion of any Advances shall result in more separate Borrowings than permitted under Section 2.02(c). Each such notice of Conversion shall, within the restrictions specified above, specify (i) the date of such Conversion, (ii) the Advances to be Converted and (iii) if such Conversion is into Eurodollar Rate Advances, the duration of the initial Interest Period for such Advances.

(b) Mandatory. (i) On the date on which the aggregate unpaid principal amount of Eurodollar Rate Advances comprising any Borrowing shall be reduced, by payment or prepayment or otherwise, to less than \$10,000,000, such Advances shall automatically Convert into Base Rate Advances.

(ii) If the Borrower shall fail to select the duration of any Interest Period for any Eurodollar Rate Advances in accordance with the provisions contained in the definition of "Interest Period" in Section 1.01, the Administrative Agent will forthwith so notify the Borrower and the Appropriate Lenders, whereupon each such Eurodollar Rate Advance will automatically, on the last day of the then existing Interest Period therefor, Convert into a Base Rate Advance.

SECTION 2.11. Increased Costs, Etc. (a) If, due to either (i) the introduction of or any change in or in the interpretation of any law or regulation after the date hereof or (ii) the compliance with any guideline or request made after the date hereof from any central bank or other governmental authority (whether or not having the force of law), there shall be any increase in the cost to any Lender of agreeing to make or of making, funding or maintaining Eurodollar Rate Advances or LIBO Rate Advances or of agreeing to issue or issuing or maintaining Letters of Credit or of agreeing to make or of making or maintaining Letter of Credit Advances, then the Borrower shall from time to time, upon demand by such Lender (with a copy of such demand to the Administrative Agent), pay to the Administrative Agent for the account of such Lender additional amounts sufficient to compensate such Lender for such increased cost; provided, however, that each Lender agrees to use reasonable efforts (consistent with its internal policy and legal and regulatory restrictions) to designate a different Applicable Lending Office or take other steps if to do so would avoid the need for, or reduce the amount of, such increased cost and would not, in the reasonable judgment of such Lender, be otherwise disadvantageous to such Lender. A certificate as to the amount of such increased cost accompanied by a statement setting forth in reasonable detail the basis for, and amount of, such increased cost, submitted to the Borrower by such Lender, shall be conclusive and binding for all purposes, absent demonstrable error.

(b) If, after the date hereof, (i) the introduction of or any change in any applicable law or regulation regarding capital adequacy or any change after the date hereof in the interpretation or administration thereof by any governmental



authority, central bank or comparable agency charged with the interpretation or administration thereof, or (ii) the compliance by a Lender or its parent with any directive or request made after the date hereof regarding capital adequacy from any central bank or other governmental authority (whether or not having the force of law), has the effect of reducing the rate of return on such Lender's or its parent's capital or assets as a consequence of such Lender's commitment to lend hereunder or other obligations hereunder to a level below that which such Lender or its parent would have achieved but for such introduction, change or compliance (taking into consideration such Lender's or its parent's policies with respect to capital adequacy), then, upon demand by such Lender (with a copy of such demand to the Administrative Agent), the Borrower shall pay to the Administrative Agent for the account of such Lender, from time to time as specified by such Lender, additional amounts sufficient to compensate such Lender for such reduction, it being understood and agreed, however, that such Lender shall not be entitled to such compensation as a result of such Lender's compliance with, or pursuant to any directive or request to comply with, any such law or regulation as in effect on the date hereof; provided, however, that each Lender agrees to use reasonable efforts (consistent with its internal policy and legal and regulatory restrictions) to designate a different Applicable Lending Office or take other steps if to do so would avoid the need for, or reduce the amount of, such compensation and would not, in the reasonable judgment of such Lender, be otherwise disadvantageous to such Lender. A certificate as to such amounts accompanied by a statement setting forth in reasonable detail the basis for, and amount of, such increased cost submitted to the Borrower by such Lender, shall be conclusive and binding for all purposes, absent demonstrable error.

(c) If, with respect to any Eurodollar Rate Advances, the Administrative Agent shall have determined that on any date for determining the Eurodollar Rate for any Interest Period for such Advances that, by reason of changes arising after the date hereof affecting the London interbank market, adequate and fair means do not exist for ascertaining the applicable interest rate on the basis provided for in the definition of Eurodollar Rate (i) each such Eurodollar Rate Advance will automatically, on the last day of the then existing Interest Period therefor, Convert into a Base Rate Advance and (ii) the obligation of the Lenders to make, or to Convert Advances into, Eurodollar Rate Advances shall be suspended until the Administrative Agent shall notify the Borrower that such Lenders have determined that the circumstances causing such suspension no longer exist.

(d) Notwithstanding any other provision of this Agreement, if after the date hereof the introduction of or any change in or in the interpretation of any law or regulation shall make it unlawful or impracticable, or any central bank or other governmental authority shall assert that it is unlawful, for any Lender or its Eurodollar Lending Office to perform its obligations hereunder to make Eurodollar Rate Advances or LIBO Rate Advances or to continue to fund or maintain Eurodollar Rate Advances or LIBO Rate Advances hereunder, then, on notice thereof and demand therefor by such Lender to the Borrower through the Administrative Agent, (i) each Eurodollar Rate Advance under which such Lender has a Commitment or LIBO Rate Advance, as the case may be, will automatically, upon such demand, Convert into a Base Rate Advance or an Advance that bears interest at the rate set forth in Section 2.08(a)(i), as the case may be, and (ii) the obligation of the Appropriate Lenders to make, or to Convert Advances into, Eurodollar Rate Advances shall be suspended until the circumstances causing such suspension no longer exist; provided, however, that such Lender agrees to use reasonable efforts (consistent with its internal policy and legal and regulatory restrictions) to designate a different Eurodollar Lending Office or take other steps if to do so would allow such Lender or its Eurodollar Lending Office to continue to perform its obligations to make Eurodollar Rate Advances or to continue to fund or maintain Eurodollar Rate Advances would not, in the reasonable judgment of such Lender, be otherwise disadvantageous to such Lender.

(e) If the Required Lenders shall so determine, upon the occurrence and during the continuance of any Default, the obligation of the Lenders to make, or to Convert Advances into, Eurodollar Rate Advances shall be suspended.

SECTION 2.12. Payments and Computations. (a) The Borrower shall make each payment hereunder and under the Notes not later than 11:00 A.M. (New York City time) on the day when due in U.S. dollars to the Administrative Agent at the Administrative Agent's Account in same day funds. The Administrative Agent will promptly thereafter cause like funds to be distributed (i) if such payment by the Borrower is in respect of principal, interest, commitment fees or any other obligation then payable hereunder and under the Notes to more than one Lender, to such Lenders for the account of their respective Applicable Lending Offices ratably in accordance with the amounts of such respective obligations then payable to such Lenders and (ii) if such payment by the Borrower is in respect of any obligation then payable hereunder to one Lender, to such Lender

for the account of its Applicable Lending Office, in each case to be applied in accordance with the terms of this Agreement. Upon any Assuming Lender's becoming a Lender hereunder as a result of a Commitment Increase pursuant to Section 2.19, and upon the Administrative Agent's receipt of such Lender's Assumption Agreement and recording of the information contained therein in the Register, from and after the applicable Increase Date, the Administrative Agent shall make all payments hereunder and under the Notes issued in connection therewith in respect of the interest assumed thereby to the Assuming Lender. Upon its acceptance of an Assignment and Acceptance and recording of the information contained therein in the Register pursuant to Section 9.07(d), from and after the effective date of such Assignment and Acceptance, the Administrative Agent shall make all payments hereunder and under the Notes in respect of the interest assigned thereby to the Lender assignee thereunder, and the parties to such Assignment and Acceptance shall make all appropriate adjustments in such payments for periods prior to such effective date directly between themselves.

(b) All computations of interest, fees and Letter of Credit commissions shall be made by the Administrative Agent on the basis of a year of 360 days, in each case for the actual number of days (including the first day but excluding the last day) occurring in the period for which such interest, fees or commissions are payable. Each determination by the Administrative Agent of an interest rate, fee or commission hereunder shall be conclusive and binding for all purposes, absent demonstrable error.

(c) Whenever any payment hereunder or under the Notes shall be stated to be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day, and such extension of time shall in such case be included in the computation of payment of interest or commitment fee, as the case may be; provided, however, that, if such extension would cause payment of interest on or principal of Eurodollar Rate Advances or LIBO Rate Advances to be made in the next following calendar month, such payment shall be made on the next preceding Business Day.

(d) Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due to any Lender hereunder that the Borrower will not make such payment in full, the Administrative Agent may assume that the Borrower has made such payment in full to the Administrative Agent on such date and the Administrative Agent

may, in reliance upon such assumption, cause to be distributed to each such Lender on such due date an amount equal to the amount then due such Lender. If and to the extent the Borrower shall not have so made such payment in full to the Administrative Agent, each such Lender shall repay to the Administrative Agent forthwith on demand such amount distributed to such Lender together with interest thereon, for each day from the date such amount is distributed to such Lender until the date such Lender repays such amount to the Administrative Agent, at the Federal Funds Rate.

(e) If the Administrative Agent receives funds for application to the obligations under the Loan Documents under circumstances for which the Loan Documents do not specify the Advances or the Facility to which, or the manner in which, such funds are to be applied, the Administrative Agent shall apply such funds to prepay Working Capital Advances (but not reduce the Working Capital Commitments).

SECTION 2.13. Taxes. (a) Any and all payments by any Obligated Party hereunder or under the Notes shall be made, in accordance with Section 2.12, free and clear of and without deduction for any and all present or future taxes, levies, imposts, deductions, charges or withholdings, and all liabilities with respect thereto, excluding, in the case of each Lender and the Administrative Agent, net income taxes and franchise taxes (imposed in lieu of net income taxes) that are imposed by the United States or any political subdivision or taxing authority thereof or therein or by a foreign jurisdiction as a result of a present or former connection between the Administrative Agent or such Lender and the jurisdiction imposing such tax or any political subdivision or taxing authority thereof or therein (other than any such connection arising solely from the Administrative Agent or such Lender having executed, enforced, delivered or performed its obligations or received a payment under this Agreement) (all such non-excluded taxes, levies, imposts, deductions, charges, withholdings and liabilities being hereinafter referred to as "Taxes"). If any Obligated Party shall be required by law to deduct any Taxes from or in respect of any sum payable hereunder or under any Note to any Lender or the Administrative Agent, (i) the sum payable shall be increased as may be necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 2.13) such Lender or the Administrative Agent (as the case may be) receives an amount equal to the sum it would have received had no such deductions been made, (ii) such Obligated Party shall make such deductions and (iii) such

Obligated Party shall pay the full amount deducted to the relevant taxation authority or other authority in accordance with applicable law.

(b) In addition, each Obligated Party shall pay any present or future stamp, documentary, excise, property or similar taxes, charges or levies that arise from any payment made hereunder or under the Notes or from the execution, delivery or registration of, or otherwise with respect to, this Agreement or the Notes (hereinafter referred to as "Other Taxes").

(c) Each Obligated Party shall indemnify each Lender and the Administrative Agent for the full amount of Taxes and Other Taxes, and for the full amount of taxes imposed by any jurisdiction on amounts payable under this Section 2.13, paid by such Lender or the Administrative Agent (as the case may be) and any liability (including penalties, additions to tax, interest and expenses) arising therefrom or with respect thereto. The Administrative Agent or such Lender shall provide the applicable Obligated Party with appropriate receipts for any payments or reimbursements made to such Obligated Party pursuant to this Section 2.13. This indemnification shall be made within 45 days from the date such Lender or the Administrative Agent (as the case may be) makes written demand therefor.

(d) Within 45 days after the date of any payment of Taxes, each Obligated Party shall furnish to the Administrative Agent, at its address referred to in Section 9.02, the original receipt of payment thereof or a certified copy of such receipt. In the case of any payment hereunder or under the Notes by any Obligated Party through an account or branch outside the United States or on behalf of such Obligated Party by a payor that is not a United States person, if such Obligated Party determines that no Taxes are payable in respect thereof, such Obligated Party shall furnish, or shall cause such payor to furnish, to the Administrative Agent, at such address, an opinion of counsel acceptable to the Administrative Agent stating that such payment is exempt from Taxes. For purposes of this subsection (d) and subsection (e), the terms "United States" and "United States person" shall have the meanings specified in Section 7701 of the Internal Revenue Code.

(e) Each Lender organized under the laws of a jurisdiction outside the United States shall, on or prior to the date of its execution and delivery of this Agreement in the case of each Bank, and on the date of the Assumption Agreement or the Assignment and Acceptance pursuant to which it became a Lender in

the case of each other Lender, and from time to time thereafter if requested in writing by any Obligated Party or the Administrative Agent (but only so long thereafter as such Lender remains lawfully able to do so), provide the Administrative Agent and each Obligated Party with Internal Revenue Service form 1001 or 4224, as appropriate, or any successor form prescribed by the Internal Revenue Service, certifying that such Lender is entitled to benefits under an income tax treaty to which the United States is a party that reduces the rate of withholding tax on payments under this Agreement or the Notes or certifying that the income receivable pursuant to this Agreement or the Notes is effectively connected with the conduct of a trade or business in the United States. If the form provided by a Lender at the time such Lender first becomes a party to this Agreement indicates a United States interest withholding tax rate in excess of zero, withholding tax at such rate shall be considered excluded from Taxes unless and until such Lender provides the appropriate form certifying that a lesser rate applies, whereupon withholding tax at such lesser rate only shall be considered excluded from Taxes for periods governed by such form; provided, however, that, if at the date of the Assumption Agreement or the Assignment and Acceptance, as the case may be, pursuant to which a Lender assignee becomes a party to this Agreement, the Lender assignor was entitled to payments under subsection (a) in respect of United States withholding tax with respect to interest paid at such date, then, to such extent, the term Taxes shall include (in addition to withholding taxes that may be imposed in the future or other amounts otherwise includable in Taxes) United States withholding tax, if any, applicable with respect to such Lender assignee on such date. If any form or document referred to in this subsection (e) requires the disclosure of information, other than information necessary to compute the tax payable and information required on the date hereof by Internal Revenue Service form 1001 or 4224, that the applicable Lender reasonably considers to be confidential, such Lender shall give notice thereof to the Obligated Parties and shall not be obligated to include in such form or document such confidential information.

(f) For any period with respect to which a Lender has failed to provide the Obligated Parties with the appropriate form described in subsection (e) (other than if such failure is due to a change in law occurring after the date on which a form originally was required to be provided or if such form otherwise is not required under subsection (e)), such Lender shall not be entitled to indemnification under subsection (a) or (c) with respect to Taxes imposed by the United States; provided, however, that should a Lender become subject to Taxes because of its

failure to deliver a form required hereunder, each Obligated Party shall take such steps as such Lender shall reasonably request to assist such Lender to recover such Taxes.

(g) Any Lender claiming any additional amounts payable pursuant to this Section 2.13 shall use reasonable efforts (consistent with its internal policy and legal and regulatory restrictions) to change the jurisdiction of its Eurodollar Lending Office or to take other steps if to do so would avoid the need for, or reduce the amount of, any such additional amounts that may thereafter accrue and would not, in the reasonable judgment of such Lender, be otherwise disadvantageous to such Lender.

SECTION 2.14. Sharing of Payments, Etc. If any Lender shall obtain at any time any payment (whether voluntary, involuntary, through the exercise of any right of set-off, or otherwise) (a) on account of obligations due and payable to such Lender hereunder and under the Notes at such time under any Facility in excess of its ratable share (according to the proportion of (i) the amount of such obligations due and payable to such Lender at such time under such Facility to (ii) the aggregate amount of the obligations due and payable to all Appropriate Lenders hereunder and under the Notes at such time under such Facility) of payments on account of the obligations due and payable to all Appropriate Lenders hereunder and under the Notes at such time under such Facility obtained by all the Appropriate Lenders at such time or (b) on account of obligations owing (but not due and payable) to such Lender hereunder and under the Notes at such time under any Facility in excess of its ratable share (according to the proportion of (i) the amount of such obligations owing to such Lender at such time under such Facility to (ii) the aggregate amount of the obligations owing (but not due and payable) to all Appropriate Lenders hereunder and under the Notes at such time under such Facility) of payments on account of the obligations owing (but not due and payable) to all Appropriate Lenders hereunder and under the Notes at such time under such Facility obtained by all the Appropriate Lenders at such time, such Lender shall forthwith purchase from the Appropriate Lenders such participations in the obligations due and payable or owing to them, as the case may be, as shall be necessary to cause such purchasing Lender to share the excess payment ratably with each of them; provided, however, that if all or any portion of such excess payment is thereafter recovered from such purchasing Lender, such purchase from each other Lender shall be rescinded and such other Lender shall repay to the purchasing Lender the purchase price to the extent of such other

Lender's ratable share (according to the proportion of (i) the purchase price paid to such Lender to (ii) the aggregate purchase price paid to all Appropriate Lenders) of such recovery together with an amount equal to such Lender's ratable share (according to the proportion of (i) the amount of such other Lender's required repayment to (ii) the total amount so recovered from the purchasing Lender) of any interest or other amount paid or payable by the purchasing Lender in respect of the total amount so recovered. The Borrower agrees that any Lender so purchasing a participation from another Lender pursuant to this Section 2.14 may, to the fullest extent permitted by law, exercise all its rights of payment (including the right of set-off) with respect to such participation as fully as if such Lender were the direct creditor of the Borrower in the amount of such participation.

SECTION 2.15. Letters of Credit. (a) The Letter of Credit Facility. The Borrower may request any Issuing Bank, on the terms and conditions hereinafter set forth, to issue, and any such Issuing Bank shall, subject to the terms and conditions hereinafter set forth, issue letters of credit (the "Letters of Credit") for the account of the Borrower from time to time on any Business Day during the period from the date of the initial Borrowing until 30 days before the Termination Date (i) in an aggregate Available Amount for all Letters of Credit issued by such Issuing Bank not to exceed at any time such Issuing Bank's Letter of Credit Commitment or Letter of Credit Facility Sublimit and (ii) in an Available Amount for each such Letter of Credit not to exceed the Unused Working Capital Commitments of the Working Capital Lenders on such Business Day; provided, however, that no Issuing Bank shall be obligated to issue any trade letters of credit. No Letter of Credit shall have an expiration date (including all rights of the Borrower or the beneficiary to require renewal) later than the earlier of 30 days before the Termination Date and one year after the date of issuance thereof, but may by its terms be renewable annually with the consent of the Issuing Bank. Within the limits of the Letter of Credit Facility Sublimit, and subject to the limits referred to above, the Borrower may request the issuance of Letters of Credit under this Section 2.15(a), repay any Letter of Credit Advances resulting from drawings thereunder pursuant to Section 2.15(c) and request the issuance of additional Letters of Credit under this Section 2.15(a).

(b) Request for Issuance. (i) Each Letter of Credit shall be issued upon notice, given not later than 11:00 A.M. (New York City time) on the fifth Business Day prior to the date of the proposed issuance of such Letter of Credit, by the



Borrower to any Issuing Bank, which shall give to the Administrative Agent and each Working Capital Lender prompt notice thereof by telex, telecopier or cable. Each such notice of issuance of a Letter of Credit (a "Notice of Issuance") shall be by telex, telecopier or cable, confirmed immediately in writing, specifying therein the requested (A) date of such issuance (which shall be a Business Day), (B) Available Amount of such Letter of Credit, (C) expiration date of such Letter of Credit, (D) name and address of the beneficiary of such Letter of Credit and (E) form of such Letter of Credit, and shall be accompanied by such Issuing Bank's customary application and agreement for letter of credit (a "Letter of Credit Agreement"). If the requested form of such Letter of Credit is acceptable to such Issuing Bank in its reasonable discretion, such Issuing Bank will, upon fulfillment of the applicable conditions set forth in Article III, make such Letter of Credit available to the Borrower at its office referred to in Section 9.02 or as otherwise agreed with the Borrower in connection with such issuance. In the event and to the extent that the provisions of any Letter of Credit Agreement shall conflict with, or be duplicative of, provisions in this Agreement, the provisions of this Agreement shall govern.

(ii) Each Issuing Bank shall furnish (A) to the Administrative Agent on the first Business Day of each month a written report summarizing issuance and expiration dates of Letters of Credit issued by such Issuing Bank during the preceding month and drawings during such month under all Letters of Credit issued by such Issuing Bank and (B) to the Administrative Agent on the first Business Day of each calendar quarter a written report setting forth the average daily aggregate Available Amount during the preceding calendar quarter of all Letters of Credit issued by such Issuing Bank.

(c) Drawing and Reimbursement. The payment by any Issuing Bank of a draft drawn under any Letter of Credit shall constitute for all purposes of this Agreement the making by such Issuing Bank of a Letter of Credit Advance, which shall be a Base Rate Advance, in the amount of such draft. Upon written demand by any Issuing Bank with an outstanding Letter of Credit Advance, with a copy of such demand to the Administrative Agent, each other Working Capital Lender shall purchase from such Issuing Bank, and such Issuing Bank shall sell and assign to each such other Working Capital Lender, such other Lender's Ratable Share of such outstanding Letter of Credit Advance as of the date of such purchase, by making available for the account of its Applicable Lending Office to the Administrative Agent for the account of such Issuing Bank, by deposit to the Administrative

Agent's Account, in same day funds, an amount equal to the portion of the outstanding principal amount of such Letter of Credit Advance to be purchased by such Lender. The Borrower hereby agrees to each such sale and assignment. Each Working Capital Lender agrees to purchase its Ratable Share of an outstanding Letter of Credit Advance on (i) the Business Day on which demand therefor is made by the Issuing Bank which made such Advance, provided notice of such demand is given not later than 11:00 A.M. (New York City time) on such Business Day or (ii) the first Business Day next succeeding such demand if notice of such demand is given after such time. Upon any such assignment by an Issuing Bank to any other Working Capital Lender of a portion of a Letter of Credit Advance, such Issuing Bank represents and warrants to such other Lender that such Issuing Bank is the legal and beneficial owner of such interest being assigned by it free and clear of any adverse claim, but makes no other representation or warranty and assumes no responsibility with respect to such Letter of Credit Advance, the Loan Documents or any Obligated Party. If and to the extent that any Working Capital Lender shall not have so made the amount of such Working Capital Advance available to the Administrative Agent, such Working Capital Lender agrees to pay to the Administrative Agent forthwith on demand such amount together with interest thereon, for each day from the date of demand by such Issuing Bank until the date such amount is paid to the Administrative Agent, at the Federal Funds Rate. If such Lender shall pay to the Administrative Agent such amount for the account of such Issuing Bank on any Business Day, such amount so paid in respect of principal shall constitute a Letter of Credit Advance made by such Lender on such Business Day for purposes of this Agreement, and the outstanding principal amount of the Letter of Credit Advance made by such Issuing Bank shall be reduced by such amount on such Business Day. No Lender shall be obligated to purchase its Ratable Share of Letter of Credit Advances under this Section 2.15(c) to the extent that such Advances result from any Issuing Bank's willful misconduct or gross negligence.

(d) Obligations Absolute. The obligations of the Borrower under this Agreement, any Letter of Credit Agreement and any other agreement or instrument relating to any Letter of Credit shall be unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement, such Letter of Credit Agreement and such other agreement or instrument under all circumstances, including, without limitation, the following circumstances:

(i) any lack of validity or enforceability of this Agreement, any Letter of Credit Agreement, any Letter of Credit or any other agreement or instrument relating thereto (this Agreement and all of the other foregoing being, collectively, the "L/C Related Documents");

(ii) any change in the time, manner or place of payment of, or in any other term of, all or any of the obligations of the Borrower in respect of any L/C Related Document or any other amendment or waiver of or any consent to departure from all or any of the L/C Related Documents;

(iii) the existence of any claim, set-off, defense or other right that the Borrower may have at any time against any beneficiary or any transferee of a Letter of Credit (or any Persons for whom any such beneficiary or any such transferee may be acting), any Issuing Bank, any Lender or any other Person, whether in connection with the transactions contemplated by the L/C Related Documents or any unrelated transaction;

(iv) any statement or any other document presented under a Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect;

(v) payment by any Issuing Bank under a Letter of Credit against presentation of a draft or certificate that does not strictly comply with the terms of such Letter of Credit;

(vi) any exchange, release or non-perfection of any collateral, or any release or amendment or waiver of or consent to departure from any guarantee, for all or any of the obligations of the Borrower in respect of the L/C Related Documents; or

(vii) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, including, without limitation, any other circumstance that might otherwise constitute a defense available to, or a discharge of, the Borrower or a guarantor;

provided that notwithstanding the foregoing, the Borrower shall not be obligated to reimburse any Issuing Bank for any payment made by such Issuing Bank under a Letter of Credit as a result of

acts or omissions constituting willful misconduct or gross negligence.

(e) Compensation. (i) The Borrower shall pay to the Administrative Agent for the account of each Working Capital Lender a commission on such Lender's Ratable Share of the average daily aggregate Available Amount of all Letters of Credit outstanding from time to time at the Applicable Margin applicable to Eurodollar Rate Advances payable in arrears quarterly on the first Business Day of each January, April, July and October, commencing January 3, 1995, and on the Termination Date.

(ii) The Borrower shall pay to each Issuing Bank, for its own account, such commissions, issuance fees, transfer fees and other fees and charges in connection with the issuance or administration of each Letter of Credit as the Borrower and such Issuing Bank shall agree.

SECTION 2.16. Use of Proceeds. The Letters of Credit and the proceeds of the Advances shall be available to pay transaction fees and expenses, for acquisitions and general corporate purposes of the Borrower and its Subsidiaries and for making advances to the Affiliate Guarantors and their Subsidiaries for acquisitions and general corporate purposes of the Affiliate Guarantors and their Subsidiaries.

SECTION 2.17. Defaulting Lenders. (a) In the event that, at any one time, (i) any Lender shall be a Defaulting Lender, (ii) such Defaulting Lender shall owe a Defaulted Advance to the Borrower and (iii) the Borrower shall be required to make any payment hereunder or under any other Loan Document to or for the account of such Defaulting Lender, then the Borrower may, so long as no Default shall occur or be continuing at such time and to the fullest extent permitted by applicable law, set off and otherwise apply the obligation of the Borrower to make such payment to or for the account of such Defaulting Lender against the obligation of such Defaulting Lender to make such Defaulted Advance. In the event that the Borrower shall so set off and otherwise apply the obligation of the Borrower to make any such payment against the obligation of such Defaulting Lender to make any such Defaulted Advance on any date, the amount so set off and otherwise applied by the Borrower shall constitute for all purposes of this Agreement and the other Loan Documents an Advance by such Defaulting Lender made on such date. Such Advance shall bear interest at a rate equal to the Base Rate (without giving effect to the Applicable Margin) and shall be considered, for all purposes of this Agreement, to comprise part

of the Borrowing in connection with which such Defaulted Advance was originally required to have been made pursuant to Section 2.01, even if the other Advances comprising such Borrowing shall be Eurodollar Rate Advances on the date such Advance is deemed to be made pursuant to this subsection (a). The Borrower shall notify the Administrative Agent at any time the Borrower reduces the amount of the obligation of the Borrower to make any payment otherwise required to be made by it hereunder or under any other Loan Document as a result of the exercise by the Borrower of its right set forth in this subsection (a) and shall set forth in such notice (A) the name of the Defaulting Lender and the Defaulted Advance required to be made by such Defaulting Lender and (B) the amount set off and otherwise applied in respect of such Defaulted Advance pursuant to this subsection (a). Any portion of such payment otherwise required to be made by the Borrower to or for the account of such Defaulting Lender which is paid by the Borrower, after giving effect to the amount set off and otherwise applied by the Borrower pursuant to this subsection (a), shall be applied by the Administrative Agent as specified in subsection (b) or (c) of this Section 2.17.

(b) In the event that, at any one time, (i) any Lender shall be a Defaulting Lender, (ii) such Defaulting Lender shall owe a Defaulted Amount to the Administrative Agent or any of the other Lenders and (iii) the Borrower shall make any payment hereunder or under any other Loan Document to the Administrative Agent for the account of such Defaulting Lender, then the Administrative Agent may, on its behalf or on behalf of such other Lenders and to the fullest extent permitted by applicable law, apply at such time the amount so paid by the Borrower to or for the account of such Defaulting Lender to the payment of each such Defaulted Amount to the extent required to pay such Defaulted Amount. In the event that the Administrative Agent shall so apply any such amount to the payment of any such Defaulted Amount on any date, the amount so applied by the Administrative Agent shall constitute for all purposes of this Agreement and the other Loan Documents payment, to such extent, of such Defaulted Amount on such date. Any such amount so applied by the Administrative Agent shall be retained by the Administrative Agent or distributed by the Administrative Agent to such other Lenders, ratably in accordance with the respective portions of such Defaulted Amounts payable at such time to the Administrative Agent and such other Lenders and, if the amount of such payment made by the Borrower shall at such time be insufficient to pay all Defaulted Amounts owing at such time to

the Administrative Agent and the other Lenders, in the following order of priority:

(i) first, to the Administrative Agent for any Defaulted Amount then owing to the Administrative Agent; and

(ii) second, to any other Lenders for any Defaulted Amounts then owing to such other Lenders, ratably in accordance with such respective Defaulted Amounts then owing to such other Lenders.

Any portion of such amount paid by the Borrower for the account of such Defaulting Lender remaining, after giving effect to the amount applied by the Administrative Agent pursuant to this subsection (b), shall be applied by the Administrative Agent as specified in subsection (c) of this Section 2.17.

(c) In the event that, at any one time, (i) any Lender shall be a Defaulting Lender, (ii) such Defaulting Lender shall not owe a Defaulted Advance or a Defaulted Amount and (iii) the Borrower, the Administrative Agent or any other Lender shall be required to pay or distribute any amount hereunder or under any other Loan Document to or for the account of such Defaulting Lender, then the Borrower or such other Lender shall pay such amount to the Administrative Agent to be held by the Administrative Agent, to the fullest extent permitted by applicable law, in escrow or the Administrative Agent shall, to the fullest extent permitted by applicable law, hold in escrow such amount otherwise held by it. Any funds held by the Administrative Agent in escrow under this subsection (c) shall be deposited by the Administrative Agent in an interest-bearing account with Citibank, in the name and under the control of the Administrative Agent, but subject to the provisions of this subsection (c). The terms applicable to such account, including the rate of interest payable with respect to the credit balance of such account from time to time, shall be Citibank's standard terms applicable to escrow accounts maintained with it. Any interest credited to such account from time to time shall be held by the Administrative Agent in escrow under, and applied by the Administrative Agent from time to time in accordance with the provisions of, this subsection (c). The Administrative Agent shall, to the fullest extent permitted by applicable law, apply all funds so held in escrow from time to time to the extent necessary to make any Advances required to be made by such Defaulting Lender and to pay any amount payable by such Defaulting Lender hereunder and under the other Loan Documents to the Administrative Agent or any other Lender, as and when such

Advances or amounts are required to be made or paid and, if the amount so held in escrow shall at any time be insufficient to make and pay all such Advances and amounts required to be made or paid at such time, in the following order of priority:

(i) first, to the Administrative Agent for any amount then due and payable by such Defaulting Lender to the Administrative Agent hereunder;

(ii) second, to any other Lenders for any amount then due and payable by such Defaulting Lender to such other Lenders hereunder, ratably in accordance with such respective amounts then due and payable to such other Lenders; and

(iii) third, to the Borrower for any Advance then required to be made by such Defaulting Lender pursuant to the Commitments of such Defaulting Lender.

In the event that such Defaulting Lender shall, at any time, cease to be a Defaulting Lender, any funds held by the Administrative Agent in escrow at such time with respect to such Defaulting Lender shall be distributed by the Administrative Agent to such Defaulting Lender and applied by such Defaulting Lender to the obligations owing to such Lender at such time under this Agreement and the other Loan Documents ratably in accordance with the respective amounts of such obligations outstanding at such time.

(d) The rights and remedies against a Defaulting Lender under this Section 2.17 are in addition to other rights and remedies which the Borrower may have against such Defaulting Lender with respect to any Defaulted Advance and which the Administrative Agent or any Lender may have against such Defaulting Lender with respect to any Defaulted Amount.

SECTION 2.18. Option to Replace Lenders. If any Lender shall request the Borrower to pay any amounts, or shall assert any other special rights, under Section 2.11 or 2.13 or if a Lender is a Defaulting Lender, the Borrower may request one or more other Lenders or other financial institutions, each of which is an Eligible Assignee (each a "Replacement Lender") to take over all or the affected portion of such Lender's then outstanding Advances and to assume all or the affected portion of such Lender's Commitments and obligations hereunder. If one or more Replacement Lenders shall so agree, the Advances and Commitments of the Lender to be replaced shall, at the direction

of the Borrower, be assigned to such Replacement Lenders in accordance with Section 9.07, in such amounts as the Borrower may designate.

SECTION 2.19. Increase in the Aggregate Commitments. (a) The Borrower may, at any time but in any event not more than once in any year prior to the Termination Date, by notice to the Administrative Agent, request that the aggregate amount of the Commitments be increased by an amount of \$50,000,000 or an integral multiple of \$5,000,000 in excess thereof (each a "Commitment Increase") to be effective as of a date that is at least 90 days prior to the scheduled Termination Date then in effect (the "Increase Date") as specified in the related notice to the Administrative Agent; provided, however, that (i) in no event shall the aggregate amount of the Commitments at any time exceed \$1,200,000,000, (ii) no Default shall have occurred and be continuing as of the date of such request or as of the applicable Increase Date, or shall occur as a result thereof and (iii) the aggregate amount of the Commitments and of the "Commitments" under the 364-Day Credit Agreement shall not exceed \$1,200,000,000.

(b) The Administrative Agent shall promptly notify the Lenders of a request by the Borrower for a Commitment Increase, which notice shall include (i) the proposed amount of such requested Commitment Increase, (ii) the proposed Increase Date and (iii) the date by which Lenders wishing to participate in the Commitment Increase must commit to an increase in the amount of their respective Commitments (the "Commitment Date"). Each Lender that is willing to participate in such requested Commitment Increase (each an "Increasing Lender") shall give written notice to the Administrative Agent on or prior to the Commitment Date of the amount by which it is willing to increase its Commitment. If the Lenders notify the Administrative Agent that they are willing to increase the amount of their respective Commitments by an aggregate amount that exceeds the amount of the requested Commitment Increase, the requested Commitment Increase shall be allocated among the Lenders willing to participate therein in such amounts as are agreed between the Borrower and the Administrative Agent.

(c) Promptly following each Commitment Date, the Administrative Agent shall notify the Borrower as to the amount, if any, by which the Lenders are willing to participate in the requested Commitment Increase. If the aggregate amount by which the Lenders are willing to participate in any requested Commitment Increase on any such Commitment Date is less than the



requested Commitment Increase, then the Borrower may extend offers to one or more Eligible Assignees to participate in any portion of the requested Commitment Increase that has not been committed to by the Lenders as of the applicable Commitment Date; provided, however, that the Commitment of each such Eligible Assignee shall be in an amount of \$10,000,000 or an integral multiple of \$1,000,000 in excess thereof.

(d) On each Increase Date, each Eligible Assignee that accepts an offer to participate in a requested Commitment Increase in accordance with Section 2.19(c) (an "Assuming Lender") shall become a Lender party to this Agreement as of such Increase Date and the Commitment of each Increasing Lender for such requested Commitment Increase shall be so increased by such amount (or by the amount allocated to such Lender pursuant to the last sentence of Section 2.19(b)) as of such Increase Date; provided, however, that the Administrative Agent shall have received on or before such Increase Date the following, each dated such date:

(i) an assumption agreement from each Assuming Lender, if any, in form and substance satisfactory to the Borrower and the Administrative Agent (each an "Assumption Agreement"), duly executed by such Eligible Assignee, the Administrative Agent and the Borrower; and

(ii) confirmation from each Increasing Lender of the increase in the amount of its Commitment in a writing satisfactory to the Borrower and the Administrative Agent.

On each Increase Date, upon fulfillment of the conditions set forth in the immediately preceding sentence of this Section 2.19(d), the Administrative Agent shall notify the Lenders (including, without limitation, each Assuming Lender) and the Borrower, on or before 1:00 P.M. (New York City time), by telecopier or telex, of the occurrence of the Commitment Increase to be effected on such Increase Date and shall record in the Register the relevant information with respect to each Increasing Lender and each Assuming Lender on such date.

### ARTICLE III

#### CONDITIONS PRECEDENT

SECTION 3.01. Conditions Precedent to Certain Borrowings and Issuances. The obligation of each Appropriate Lender to make an Advance (other than a Swing Line Advance made

by a Working Capital Lender pursuant to Section 2.02(b) and other than a Letter of Credit Advance) on the occasion of each Borrowing, and the obligation of the Issuing Banks to issue Letters of Credit, that would in either case cause the aggregate amount of Advances outstanding and the Available Amount of Letters of Credit outstanding or to be outstanding at the close of business on such date to exceed the aggregate amount of all Advances outstanding (including any Advances to be paid on the date of such Borrowing) and the Available Amount of Letters of Credit outstanding immediately prior to the making of such Advance or such issuance, and the right of the Borrower to request a Swing Line Borrowing, shall be subject to the further conditions precedent that on the date of such Borrowing or issuance the following statements shall be true (and each of the giving of the Notice of Borrowing, Notice of Issuance or Notice of Swing Line Borrowing and the acceptance by the Borrower of the proceeds of such Borrowing or such Letter of Credit shall constitute a representation and warranty by the Borrower that on the date of such Borrowing or issuance such statements are true):

(a) the representations and warranties contained in each Loan Document are correct in all material respects on and as of the date of such Borrowing or issuance, before and after giving effect to such Borrowing or issuance and to the application of the proceeds therefrom, as though made on and as of such date (other than any such representations or warranties that, by their terms, are made as of a date other than the date of such Borrowing or issuance); and

(b) no event has occurred and is continuing, or would result from such Borrowing or issuance or from the application of the proceeds therefrom, that constitutes a Default.

SECTION 3.02. Conditions Precedent to Each Competitive Bid Borrowing. The obligation of each Working Capital Lender that is to make a Competitive Bid Advance on the occasion of a Competitive Bid Borrowing to make such Competitive Bid Advance as part of such Competitive Bid Borrowing is subject to the conditions precedent that (a) the Administrative Agent shall have received the written confirmatory Notice of Competitive Bid Borrowing with respect thereto and (b) on or before the date of such Competitive Bid Borrowing, but prior to such Competitive Bid Borrowing, the Administrative Agent shall have received for recordation in the Competitive Bid Register information as to each of the one or more Competitive Bid Advances to be made by the Working Capital Lenders as part of such Competitive Bid

Borrowing, the principal amount of each such Competitive Bid Advance and such other terms as were agreed to for each such Competitive Bid Advance in accordance with Section 2.03.

#### ARTICLE IV

##### REPRESENTATIONS AND WARRANTIES

SECTION 4.01. Representations and Warranties of the Obligated Parties. Each Obligated Party represents and warrants as follows:

(a) Such Obligated Party (i) is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation, (ii) is duly qualified and in good standing as a foreign corporation in each other jurisdiction in which it owns or leases property or in which the conduct of its business requires it to so qualify or be licensed except where the failure to so qualify or be licensed would not be likely to have a Material Adverse Effect and (iii) has all requisite corporate power and authority to own or lease and operate its properties and to carry on its business as now conducted and as proposed to be conducted.

(b) Set forth on Schedule 4.01(b) hereto is a complete and accurate list of all Material Subsidiaries of the Obligated Parties as of the date of this Agreement, showing as of the date of this Agreement (as to each such Subsidiary) the jurisdiction of its incorporation and percentage of the outstanding shares of each such class owned (directly or indirectly) by each Obligated Party. Each such Material Subsidiary (i) is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, except where the failure thereof would not be likely to have a Material Adverse Effect, (ii) is duly qualified and in good standing as a foreign corporation in each other jurisdiction in which it owns or leases property or in which the conduct of its business requires it to so qualify or be licensed except where the failure to so qualify or be licensed would not be likely to have a Material Adverse Effect and (iii) has all requisite corporate power and authority to own or lease and operate its properties and to carry on its business as now conducted and as proposed to be conducted except where the

failure to have such power would not be likely to have a Material Adverse Effect.

(c) The execution, delivery and performance by each Obligated Party of this Agreement, the Notes and each other Loan Document to which it is or is to be a party, and the consummation of the transactions contemplated hereby or thereby are within such Obligated Party's corporate powers, have been duly authorized by all necessary corporate action, and do not (i) contravene such Obligated Party's charter or by-laws, (ii) violate any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award, the consequences of which would be likely to have a Material Adverse Effect, (iii) conflict with or result in the breach of, or constitute a default under, any loan agreement, indenture, mortgage, deed of trust, lease or other instrument in each case involving Debt obligations of the Borrower and the Affiliate Guarantors of \$1,000,000 or more or (iv) result in or require the creation or imposition of any Lien upon or with respect to any of the properties of the Affiliate Guarantors, the Borrower and their respective Subsidiaries, other than Liens permitted by Section 5.02. None of any Affiliate Guarantor, the Borrower or any of their respective Subsidiaries is in violation of any such law, rule, regulation, order, writ, judgment, injunction, decree, determination or award or in breach of any such contract, loan agreement, indenture, mortgage, deed of trust, lease or other instrument, the violation or breach of which would be likely to have a Material Adverse Effect.

(d) All necessary material governmental and third party approvals required for (i) the due execution, delivery, recordation, filing or performance by each Obligated Party of this Agreement, the Notes or any other Loan Document to which it is a party or (ii) to the extent obtainable on or prior to the date hereof, the exercise by the Administrative Agent or any Lender of its rights under the Loan Documents, have been duly obtained, taken, given or made and are in full force and effect.

(e) This Agreement has been, and each of the Notes and each other Loan Document to which each Obligated Party is a party when delivered hereunder will have been, duly executed and delivered by such Obligated Party. This Agreement is, and each of the Notes and each other Loan Document to which the Borrower or any Affiliate Guarantor is a party when delivered hereunder will be, the legal, valid and binding

obligation of the Obligated Parties party thereto, enforceable against each such Obligated Party in accordance with its terms except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other laws relating to or limiting creditors' rights or by equitable principles generally.

(f) The Consolidated balance sheet of the Borrower and its Subsidiaries as at December 31, 1996, and the related Consolidated statement of income and cash flows of the Borrower and its Subsidiaries for the fiscal year then ended, accompanied by an opinion of Deloitte & Touche LLP, independent public accountants, and the Consolidated balance sheet of the Borrower and its Subsidiaries as at March 31, 1997, and the related Consolidated statement of income and cash flows of the Borrower and its Subsidiaries for the three months then ended, duly certified by the chief financial officer of the Borrower, copies of which have been furnished to each Lender, fairly present, subject, in the case of said balance sheet as at March 31, 1997, and said statements of income and cash flows for the three months then ended, to year-end audit adjustments, the Consolidated financial condition of the Borrower and its Subsidiaries as at such date and the Consolidated results of the operations of the Borrower and its Subsidiaries for the periods ended on such dates, all in accordance with generally accepted accounting principles applied on a consistent basis. Since December 31, 1996, there has been no Material Adverse Change.

(g) Neither the Information Memorandum nor any assertion of fact of the Obligated Parties contained in any other written information, exhibit or report furnished by the Obligated Parties to the Administrative Agent or any Lender in connection with the negotiation of the Loan Documents or pursuant to the terms of the Loan Documents contained, as of its date, any untrue statement of a material fact or omitted to state a material fact necessary to make the statements made in the Information Memorandum and such other information, exhibits and reports (taken as a whole) not misleading.

(h) There is no action, suit, investigation, litigation or proceeding affecting any Affiliate Guarantor, the Borrower or any of their respective Subsidiaries pending or, to the best of any of their knowledge, threatened before any court, governmental agency or arbitrator that (i) except

as disclosed in the Borrower's Annual Report on Form 10-K for the fiscal year ended December 31, 1996, would be likely to have a Material Adverse Effect or (ii) would be likely to materially adversely affect the legality, validity or enforceability of this Agreement and the other Loan Documents (taken as a whole) or the consummation of the transactions contemplated hereby.

(i) No Letters of Credit or proceeds of any Advance will be used to acquire any equity security of a class that is registered pursuant to Section 12 of the Securities Exchange Act of 1934.

(j) Neither the issuance of any Letter of Credit nor the making of any Advance hereunder, nor the use of the proceeds thereof, will violate the provisions of Regulation G, T, U or X of the Board of Governors of the Federal Reserve System.

(k) Each Plan is in substantial compliance with ERISA and the Internal Revenue Code; no Reportable Event has occurred with respect to a Plan; no Plan is insolvent or in reorganization; no Plan has an accumulated or waived funding deficiency, has permitted decreases in its funding standard account or has applied for an extension of any amortization period within the meaning of Section 412 of the Internal Revenue Code; none of any Affiliate Guarantor, the Borrower, any of their respective Subsidiaries or any ERISA Affiliate has incurred or reasonably expects to incur any liability to or on account of a Plan pursuant to ERISA or the Internal Revenue Code; no proceedings have been instituted by the PBGC to terminate any Plan; no condition exists which presents a material risk to any Affiliate Guarantor, the Borrower, any of their respective Subsidiaries or any ERISA Affiliate of incurring a liability to or on account of a Plan pursuant to ERISA or the Internal Revenue Code; no lien imposed under the Internal Revenue Code or ERISA on the assets of any Affiliate Guarantor, the Borrower, any of their respective Subsidiaries or any ERISA Affiliate exists or is likely to arise on account of any Plan; where, with respect to any of the foregoing representations in this Section 4.01(k), the liability for or the lien which would arise as a result of, the particular circumstance or event which is the subject of the representation, would be likely to result in a Material Adverse Effect. All representations and warranties made with respect to any Plan which is a

Multiemployer Plan shall be made to the best knowledge of the Borrower and the Affiliate Guarantors.

(l) Each Affiliate Guarantor, the Borrower and each of their respective Subsidiaries are in material compliance with all material laws and regulations relating to pollution and environmental control or employee safety in all domestic jurisdictions in which the Affiliate Guarantors, the Borrower and their respective Subsidiaries are presently doing business, other than those the non-compliance with which would not be likely to have a Material Adverse Effect.

(m) Each Affiliate Guarantor, the Borrower and each of their respective Subsidiaries has filed, has caused to be filed or has been included in all tax returns (Federal, state, local and foreign) required to be filed and has paid all taxes shown thereon to be due, together with applicable interest and penalties, except where the failure to so file or pay would not be likely to have a Material Adverse Effect or as disclosed on the Borrower's Annual Report on Form 10-K for the fiscal year ended December 31, 1994.

(n) None of any Affiliate Guarantor, the Borrower or any of their respective Subsidiaries is an "investment company," or a company "controlled" by an "investment company," as such terms are defined in the Investment Company Act of 1940, as amended.

#### ARTICLE V

##### COVENANTS OF THE BORROWER

SECTION 5.01. Affirmative Covenants. So long as any Advance shall remain unpaid, any Letter of Credit shall be outstanding or any Lender shall have any Commitment hereunder, each Obligated Party will, unless the Required Lenders shall otherwise consent in writing:

(a) Compliance with Laws, Etc. Comply, and cause each of its Subsidiaries to comply, with all applicable laws, rules, regulations and orders except to the extent the failure to do so would not be likely to have a Material Adverse Effect.

(b) Payment of Taxes, Etc. Pay and discharge, and cause each of its Subsidiaries to pay and discharge, before

the same shall become delinquent, (i) all taxes, assessments and governmental charges or levies imposed upon it or upon its property and (ii) all lawful claims in excess of \$15,000,000 individually or \$30,000,000 in the aggregate for the Obligated Parties and their respective Subsidiaries that, if unpaid, would by law become a Lien (other than a Permitted Lien) upon its property; provided, however, that no Obligated Party or any of its Subsidiaries shall be required to pay or discharge any such tax, assessment, charge or claim that is being contested in good faith and by appropriate proceedings for which appropriate reserves have been established in accordance with GAAP.

(c) Compliance with Environmental Laws. Comply, and cause each of its Subsidiaries to comply, with all material laws and regulations relating to pollution and environmental control or employee safety which may be imposed in the future in jurisdictions in which any Obligated Party or any of its Subsidiaries may then be doing business, other than those the non-compliance with which would not be likely to have a Material Adverse Effect; and if required to do so under any applicable Environmental Law, undertake, and cause each of its Subsidiaries to undertake, any cleanup, removal, remedial or other action necessary to remove and clean up any Hazardous Materials from any Real Property in accordance with the requirements of all such applicable Environmental Laws and in accordance with orders and directives of all governmental authorities; provided that no Obligated Party or any of its Subsidiaries shall be required to take any such action where the failure to do so would not have a Material Adverse Effect.

(d) Maintenance of Insurance. Maintain, and cause each of its Material Subsidiaries to maintain, insurance with reputable insurance companies or associations in such amounts, with such retention and deductibles, and covering such risks as are in accordance with normal industry practice.

(e) Preservation of Corporate Existence, Etc. Preserve and maintain, and cause each of its Material Subsidiaries to preserve and maintain, its corporate existence, rights (charter and statutory) and franchises except to the extent that the failure to do so would not be likely to have a Material Adverse Effect; provided, however, that the Obligated Parties and their Subsidiaries may consummate any transaction permitted under Section 5.02(c);



and provided further that no Obligated Party or any of its Subsidiaries shall be required to preserve any right or franchise if the Board of Directors of such Obligated Party or such Subsidiary shall determine that the preservation thereof is no longer desirable in the conduct of the business of such Obligated Party or such Subsidiary, as the case may be, and that the loss thereof is not disadvantageous in any material respect to such Obligated Party, such Subsidiary or the Lenders.

(f) Visitation Rights. At any reasonable time and upon prior notice, permit the Administrative Agent or any of the Lenders or any agents or representatives thereof, to examine and make copies of and abstracts from the records and books of account of, and visit the properties of, such Obligated Party and any of its Subsidiaries, and to discuss the affairs, finances and accounts of such Obligated Party and any of its Subsidiaries with any of their officers or, if reasonably requested by the Administrative Agent or any Lender, through the officers of such Obligated Party or such Subsidiary and with their independent certified public accountants.

(g) Maintenance of Properties, Etc. Maintain and preserve, and cause each of its Subsidiaries to maintain and preserve, all of its properties that are used or useful in the conduct of its business in good working order and condition, ordinary wear and tear excepted, and do, or cause to be done, all things necessary to preserve and keep in full force and effect its material licenses, permits, copyrights, patents, trademarks, service marks, tradenames and rights with respect thereto, except in each case to the extent that the failure to do so would not be likely to have a Material Adverse Effect.

(h) Transactions with Affiliates. Conduct, and cause each of its Subsidiaries to conduct, all transactions with any of their Affiliates (other than the Borrower and its Subsidiaries) on terms that are substantially as favorable to such Obligated Party or such Subsidiary as it would obtain in a comparable arm's-length transaction with a Person not an Affiliate; provided that the foregoing restrictions shall not apply to (i) customary annual fees paid to Kohlberg Kravis Roberts & Co. ("KKR") and its Affiliates for management, consulting and financial services rendered to such Obligated Party and its Subsidiaries, and customary investment banking fees paid to KKR and its

Affiliates for services rendered to such Obligated Party and its Subsidiaries in connection with divestitures, acquisitions, financings and certain other transactions; (ii) customary fees paid to members of the Board of Directors of such Obligated Party and its Subsidiaries; (iii) loans and advances made by the Borrower to any of its Subsidiaries or any Affiliate Guarantor; and (iv) the consummation of the Redesign in accordance with the terms set forth in Section 9.12.

SECTION 5.02. Negative Covenants. So long as any Advance shall remain unpaid, any Letter of Credit shall be outstanding or any Lender shall have any Commitment hereunder, no Obligated Party will, at any time, without the written consent of the Required Lenders:

(a) Liens, Etc. Create, incur, assume or suffer to exist, or permit any of its Subsidiaries to create, incur, assume or suffer to exist, any Lien on or with respect to any of its properties of any character whether now owned or hereafter acquired other than:

(i) Permitted Liens;

(ii) Liens securing Indebtedness permitted by Sections 5.02(b)(viii), (ix) and (xi);

(iii) Liens, if any, arising under, financing statements filed in connection with, and assignments of accounts pursuant, to a Receivables Financing Transaction;

(iv) other Liens securing Indebtedness outstanding in an aggregate principal amount for the Obligated Parties and their respective Subsidiaries not to exceed \$200,000,000 at any time;

(v) purchase money Liens upon or in any capital assets acquired or held by the Borrower, any Affiliate Guarantor or any of their respective Subsidiaries in the ordinary course of business to secure the purchase price of such asset or to secure Debt incurred solely for the purpose of financing the acquisition, construction or improvement of such asset, or Liens existing on such asset at the time of its acquisition (other than any such Liens created in contemplation of such acquisition that were not incurred to finance the

acquisition of such asset) or extensions, renewals or replacements of any of the foregoing for the same or a lesser amount, provided, however, that no such Lien shall extend to or cover any properties of any character other than the asset being acquired, and no such extension, renewal or replacement shall extend to or cover any properties not theretofore subject to the Lien being extended, renewed or replaced, provided further that the aggregate principal amount of the indebtedness secured by the Liens referred to in this clause (v) shall not exceed \$100,000,000 at any time outstanding.

(vi) the replacement, extension or renewal of any Lien permitted by clauses (i) through (v) above upon or in the same property theretofore subject thereto or the replacement, extension or renewal (without increase in the amount or change in any direct or contingent obligor) of the Indebtedness secured thereby.

(b) Indebtedness. Create, incur, assume or suffer to exist, or permit any of its Subsidiaries to create, incur, assume or suffer to exist, any Indebtedness other than:

(i) Indebtedness arising under the Loan Documents;

(ii) Indebtedness with no principal or sinking fund payment due prior to December 31, 2002 with covenants (taken as a whole) customary in United States unsecured public debt financings or private placements (other than bank financings) for comparably rated issuers and in any event no more onerous than those contained in this Agreement (taken as a whole);

(iii) unsecured Indebtedness incurred in the ordinary course of business for borrowed money, maturing within one year from the date incurred, evidenced by commercial paper or comparable instruments customary for evidencing similar obligations in jurisdictions other than the United States in an aggregate principal amount not exceeding the Unused Working Capital Commitments of the Working Capital Lenders;

(iv) Indebtedness in respect of acceptance, trade letter of credit, warehouse receipt or similar

facilities and non-trade letters of credit issued outside the United States not supporting Debt entered into in the ordinary course of business;

(v) Indebtedness, if any, arising under a Receivables Financing Transaction;

(vi) Guaranties in respect of Indebtedness otherwise permitted hereunder;

(vii) Guaranties in the ordinary course of business in respect of obligations of suppliers, customers, franchisees and licensees of such Obligated Party and its Subsidiaries;

(viii) Indebtedness of the Subsidiaries of any Obligated Party organized outside the United States in an aggregate principal amount for the Obligated Parties and their respective Subsidiaries not exceeding at any time the excess of \$250,000,000 over the proceeds of sales of accounts receivable by such Subsidiaries;

(ix) Indebtedness arising under Capitalized Leases in an aggregate principal amount for the Obligated Parties and their respective Subsidiaries not exceeding \$100,000,000 at any time;

(x) Indebtedness in respect of Hedge Agreements in an aggregate notional amount for the Obligated Parties and their respective Subsidiaries not to exceed \$2,500,000,000 at any time outstanding;

(xi) Indebtedness of any Obligated Party or any of its Subsidiaries owed to any Obligated Party or any of its Subsidiaries;

(xii) Indebtedness secured by Liens permitted by Section 5.02(a)(v).

(xiii) Guaranties in respect of Indebtedness listed on Schedule 5.02(b) hereto;

(xiv) additional Indebtedness not contemplated by clauses (i)-(xii) above in an aggregate principal amount for the Obligated Parties and their respective Subsidiaries not exceeding \$300,000,000 at any time;

(xv) any renewal, extension or refinancing of the foregoing Indebtedness in an amount not exceeding the amount outstanding at the time of such renewal, extension or refinancing and, in the case of any renewal, extension or refinancing of the Indebtedness specified in clauses (ii) and (iii) above, otherwise in compliance with the limitations set forth in clauses (ii) and (iii), respectively; and

(xvi) the Existing Indebtedness, and any Indebtedness extending the maturity of, or refunding or refinancing, in whole or in part, any Existing Indebtedness, provided that the terms of any such extending, refunding or refinancing Indebtedness, and of any agreement entered into and of any instrument issued in connection therewith, are otherwise permitted by the Loan Documents and certain covenants that are no more onerous than the stricter of those covenants of this Agreement (taken as a whole) or those covenants applicable to such Existing Indebtedness on the date hereof and further provided that the principal amount of such Existing Indebtedness shall not be increased above the principal amount thereof outstanding immediately prior to such extension, refunding or refinancing (including additional Indebtedness to the extent necessary to finance the payment of premiums, make-wholes or similar payments incurred in connection with such extension, refunding or refinancing), and the direct and contingent obligors therefor shall not be changed, as a result of or in connection with such extension, refunding or refinancing.

(c) Mergers, Etc. Merge into or consolidate with any Person or permit any Person to merge into it, or permit any of its Subsidiaries to do so, except that (i) any Subsidiary of any Obligated Party may merge into or consolidate with, or transfer all or a portion of its assets to, any Person, provided that, in the case of any such merger or consolidation, the Person formed by such merger or consolidation, or the Person to which all or a portion of such assets were transferred, shall be a Subsidiary of an Obligated Party, (ii) any Subsidiaries of an Obligated Party may merge into, or transfer all or a portion of its assets to, any Obligated Party, provided that in the case of any such merger, such Obligated Party is the surviving corporation, (iii) the Borrower may merge into a wholly owned Subsidiary of the Borrower that (A) is incorporated

under the laws of any of the States of Delaware, New York or Ohio and (B) has no material assets or liabilities, for the sole purpose of changing the state of incorporation of the Borrower if the surviving corporation shall expressly assume the liabilities of the Borrower under the Loan Documents and (iv) any Subsidiary of any Obligated Party may merge into any Person pursuant to a transaction not prohibited by Section 5.02(d); provided, however, that in each case, immediately after giving effect thereto, no event shall occur and be continuing that constitutes a Default.

(d) Sales, Etc. of Assets. Sell, lease, transfer or otherwise dispose of any assets of such Obligated Party and its Subsidiaries for less than Fair Market Value, provided, that the foregoing shall not apply to (i) sales of inventory and other assets (including, without limitation, worn out and obsolete equipment) in the ordinary course of business, (ii) dispositions of assets conducted on an arm's length basis for a consideration of less than \$10,000,000 and (iii) dispositions of assets between or among an Obligated Party and any of its Subsidiaries; sell, lease, transfer or otherwise dispose of all or substantially all of the assets of the Obligated Parties and their Subsidiaries taken as a whole, except in a transaction authorized by subsection (c) of this Section; or sell or grant Options except that the Obligated Parties and their Subsidiaries may sell or grant Options (i) pursuant to terms and conditions substantially similar to those set forth in Exhibits K and L hereto, (ii) for Fair Market Value and (iii) in an aggregate amount of proceeds thereof not to exceed \$101,000,000 after June 30, 1997; provided, however, that with respect to any sale, lease, transfer or other disposition of Options or any assets (other than Excluded Asset Sales) including pursuant to Options, immediately after giving effect thereto, no event shall occur and be continuing that constitutes an Event of Default under Sections 6.01(a), (b), (c) or (f).

(e) Dividends, Etc. Declare or pay any dividends (other than dividends payable only in common stock or Preferred Stock permitted by clause (ii) below of the Borrower), purchase, redeem, retire, defease or otherwise acquire for value any of its capital stock or any warrants, rights or options to acquire such capital stock, now or hereafter outstanding, return any capital to its stockholders as such, make any distribution of assets, capital stock, warrants, rights, options, obligations or

securities to its stockholders as such or issue or sell any capital stock (other than common stock) or any warrants, rights or options to acquire such capital stock (other than common stock), or permit any of its Subsidiaries to purchase, redeem, retire, defease or otherwise acquire for value any capital stock of the Borrower or any Affiliate Guarantor or any warrants, rights or options to acquire such capital stock or to issue or sell any capital stock (other than common stock) or any warrants, rights or options to acquire such capital stock (other than common stock), except that, so long as no Default described in Sections 6.01(a) or (f) and no Event of Default shall have occurred and be continuing, (i) any Obligated Party or its Subsidiaries may repurchase capital stock, or any warrants, rights or options to acquire such capital stock held by its officers, directors and employees, (ii) the Borrower may issue Preferred Stock and pay dividends thereon, provided that such Preferred Stock (A) shall not obligate the Borrower to redeem at a fixed or determinable date prior to January 1, 2000, whether by operation of a sinking fund or otherwise, or upon the occurrence of a condition not solely within the control of this issuer and (B) shall not be redeemable at the option of the holder prior to January 1, 2000, (iii) the Borrower may pay dividends on its common stock to the extent that such dividends are paid to the Borrower as interest on the notes issued by Borden Holdings then held by the Borrower or its Subsidiaries; (iv) the Borrower may pay dividends on its common stock at any time when the ratio of Combined Total Debt to Combined EBITDA of the Affiliate Guarantors, the Borrower, and their respective Subsidiaries for the period of four consecutive fiscal quarters most recently ended is less than 3.00:1.00, in an amount not to exceed 25% of the Borrower's net income for the fiscal year most recently ended; and (v) any Subsidiary of any Obligated Party may issue Preferred Stock to such Obligated Party and pay dividends thereon; (vi) the Borrower may make non-cash dividends after the Effective Date in an aggregate amount not to exceed \$50,000,000; (vii) the Borrower may make a non-cash dividend of its Borden Services division; and (viii) any Affiliate Guarantor may make and pay dividends or distributions in amounts necessary to pay taxes paid or payable in connection with any sale or disposition of assets by such Affiliate Guarantor or its Subsidiaries.

(f) Change in Nature of Business. Make any material change in the nature of its business taken as a whole as carried on at the date of the Existing Credit Agreement,

other than as a result of (i) dispositions of assets or businesses approved by the Board of Directors of the applicable Obligated Party or (ii) business activities engaged in by any Obligated Party or its Subsidiaries on or prior to such date and other similar or related activities.

(g) Accounting Changes. Make or permit, or permit any of its Material Subsidiaries to make or permit, any change in its fiscal year or any significant change in accounting policies or reporting practices, except as required or permitted by generally accepted accounting principles.

(h) Amendment, Etc. of Redesign Documents. After the execution and delivery of any Redesign Document, cancel or terminate such Redesign Document or consent to, permit or accept such cancellation or termination thereof, amend, modify or change in any manner any term or condition of such Redesign Document or give any consent, waiver or approval thereunder, waive any default under or any breach of any term or condition of such Redesign Document, agree in any manner to any other amendment, modification or change of any term or condition of such Redesign Document or take any other action in connection with such Redesign Document, or permit any of its Subsidiaries to do so, except to the extent that after giving effect to any such action, the applicable Redesign Document contains terms substantially the same as those set forth in Exhibits G through L, as applicable, provided that after giving effect to any such action the Amended and Restated Agreement of Limited Partnership of BFC Investments, L.P. shall contain provisions strictly complying with those set forth in Exhibit H as (i) the defined term "Percentage Interest@ and (ii) Section 5.3(b).

5.03. Reporting Requirements. So long as any Advance shall remain unpaid or any Lender shall have any Commitment hereunder, the Borrower will, unless the Required Lenders shall otherwise consent in writing, furnish to the Lenders:

(a) Default Notice. As soon as possible and in any event within three Business Days after any officer of the Borrower obtains knowledge of each Default continuing on the date of such statement, a statement of the chief financial officer of the Borrower setting forth details thereof and the action that the Borrower has taken and proposes to take with respect thereto.



(b) Quarterly Financials. As soon as available and in any event within 45 days after the end of each of the first three quarters of each fiscal year of the Obligated Parties, a Consolidated balance sheet of (x) the Borrower and its Subsidiaries, (y) each Affiliate Guarantor and its Subsidiaries and (z) Borden Holdings and its Subsidiaries, respectively, and a Combined balance sheet of the Affiliate Guarantors, the Borrower and their respective Subsidiaries, in each case as of the end of such quarter and Consolidated statements of income and cash flows of (x) the Borrower and its Subsidiaries, (y) each Affiliate Guarantor and its Subsidiaries and (z) Borden Holdings and its Subsidiaries, respectively, and Combined statements of income and cash flows of the Affiliate Guarantors, the Borrower and their respective Subsidiaries, in each case for the period commencing at the end of the previous fiscal year and ending with the end of such quarter, setting forth in each case in comparative form the corresponding figures for the corresponding date or period of the preceding fiscal year, certified (subject to year-end audit adjustments) by the chief financial officer of the Borrower as having been prepared in accordance with GAAP, together with (i) a certificate of said officer stating that, to the knowledge of such officer, no Default has occurred and is continuing or, if a Default has occurred and is continuing, a statement as to the nature thereof and the action that the Borrower has taken and proposes to take with respect thereto and (ii) a schedule setting forth in reasonable detail the computations used by the Borrower in determining compliance with the covenants contained in Section 5.04. To the extent that a Combined financial statement is required to be delivered under this Section, if Consolidated statements of the Affiliate Guarantors, the Borrower and their respective Subsidiaries are filed with the Securities and Exchange Commission in lieu of Combined statements, delivery of such Consolidated statements shall satisfy the requirements of this Section.

(c) Annual Financials. As soon as available and in any event within 90 days after the end of each fiscal year of the Obligated Parties, a copy of the annual audit report for such year for (w) the Borrower and its Subsidiaries, the Affiliate Guarantors and their Subsidiaries, (y) each Affiliate Guarantor and its Subsidiaries and (z) Borden Holdings and its Subsidiaries, respectively, including

therein a Consolidated balance sheet of (x) the Borrower and its Subsidiaries, (y) each Affiliate Guarantor and its Subsidiaries and (z) Borden Holdings and its Subsidiaries, respectively, and a Combined balance sheet of the Affiliate Guarantors, the Borrower and their respective Subsidiaries, in each case as of the end of such fiscal year and Consolidated statements of income and cash flows of (x) the Borrower and its Subsidiaries, (y) each Affiliate Guarantor and its Subsidiaries and (z) Borden Holdings and its Subsidiaries, respectively (or audited combining statements including the Borrower and the Affiliate Guarantors if combining statements are filed with the Securities and Exchange Commission in lieu of such separate consolidating statements), and Combined statements of income and cash flows of the Affiliate Guarantors, the Borrower and their respective Subsidiaries for such fiscal year, in each case accompanied by either an unqualified opinion, or an opinion acceptable to the Required Lenders, of Deloitte & Touche LLP or other independent public accountants of recognized standing acceptable to the Required Lenders, together with (i) a certificate of such accounting firm to the Lenders stating that in the course of the regular audit of the business of (w) the Borrower and its Subsidiaries, (x) the Borrower, the Affiliate Guarantors and their Subsidiaries, (y) each Affiliate Guarantor and its Subsidiaries and (z) Borden Holdings and its Subsidiaries, respectively, which audit was conducted by such accounting firm in accordance with generally accepted auditing standards, such accounting firm has obtained no knowledge that a Default has occurred and is continuing, or if, in the opinion of such accounting firm, a Default has occurred and is continuing, a statement as to the nature thereof (provided that in no event shall such accountants be liable as a result of this Agreement by reason of any failure to obtain knowledge of any Default that would not be disclosed in the course of their audit examination), (ii) a schedule setting forth in reasonable detail the computations used by such accountants in determining, as of the end of such fiscal year, compliance with the covenants contained in Section 5.04 and (iii) a certificate of the chief financial officer of the Borrower stating that, to the knowledge of such officer, no Default has occurred and is continuing or, if a Default has occurred and is continuing, a statement as to the nature thereof and the action that the Borrower has taken and proposes to take with respect thereto. To the extent that a Combined financial statement is required to be delivered under this Section, if Consolidated statements of the

Affiliate Guarantors, the Borrower and their respective Subsidiaries are filed with the Securities and Exchange Commission in lieu of Combined statements, delivery of such Consolidated statements shall satisfy the requirements of this Section.

(d) Budgets; Etc. Not more than 60 days after the commencement of each fiscal year of the Obligated Parties, budgets of each Obligated Party on a Consolidated basis in reasonable detail for each of the four fiscal quarters of such fiscal year as customarily prepared by management for its internal use setting forth, with appropriate discussion, the principal assumptions upon which such budgets are based.

(e) ERISA. As soon as possible and, in any event, within 10 days after any Affiliate Guarantor, the Borrower, any of their respective Subsidiaries or any ERISA Affiliate knows of the occurrence of any of the following events which, in the aggregate would be likely to have a Material Adverse Effect, the Borrower will deliver to each of the Lenders a certificate of the chief financial officer or other authorized officer of the Borrower setting forth details as to such occurrence and such action, if any, which such Affiliate Guarantor, the Borrower, such Subsidiary, such ERISA Affiliate, the PBGC, a Plan participant or the Plan administrator with respect thereto: that a Reportable Event has occurred; that an accumulated funding deficiency has been incurred or an application is reasonably likely to be or has been made to the Secretary of the Treasury for a waiver or modification of the minimum funding standard (including any required installment payments) or an extension of any amortization period under Section 412 of the Internal Revenue Code with respect to a Plan; that a Plan has been or is reasonably likely to be terminated, reorganized, partitioned or declared insolvent under Title IV of ERISA; that a Plan has an Unfunded Current Liability giving rise to a lien under ERISA or the Internal Revenue Code; that proceedings are reasonably likely to be or have been instituted to terminate a Plan; that a proceeding has been instituted pursuant to Section 515 of ERISA to collect a delinquent contribution to a Plan; or that any Affiliate Guarantor, the Borrower, any of their respective Subsidiaries or any ERISA Affiliate will or is reasonably likely to incur any liability (including any contingent or secondary liability) to or on account of the termination of or withdrawal from a Plan under Section 4062, 4063, 4064, 4069, 4201 or 4204 of ERISA or with respect to a Plan under

Section 4971 or 2975 of the Internal Revenue Code or Section 409 or 502(i) or 502(l) of ERISA.

(f) Litigation. Promptly after the commencement thereof, notice of all actions, suits, investigations, litigation and proceedings before any court or governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, affecting any Affiliate Guarantor, the Borrower or any of their respective Subsidiaries which the Borrower reasonably believes would be likely to have a Material Adverse Effect.

(g) Securities Reports. Promptly after the sending or filing thereof, copies of all proxy statements, financial statements and reports that any Affiliate Guarantor, the Borrower or any of their respective Subsidiaries sends to the public stockholders of the Borrower or any Affiliate Guarantor and copies of all reports on Forms 10-Q, 10-K and 8-K that any Affiliate Guarantor, the Borrower or any of their respective Subsidiaries files with the Securities and Exchange Commission or any governmental authority that may be substituted therefor.

(h) Environmental Matters. Promptly after obtaining knowledge of any of the following environmental matters, unless such environmental matters would not, individually or when aggregated with all other such matters, be likely to have a Material Adverse Effect, written notice of (i) any pending or threatened material Environmental Claim against any Affiliate Guarantor, the Borrower or any of their respective Subsidiaries or any Real Property; (ii) any condition or occurrence on any Real Property that (x) results in material noncompliance by any Affiliate Guarantor, the Borrower or any of their respective Subsidiaries with any applicable Environmental Law or (y) would be likely to form the basis of a material Environmental Claim against any Affiliate Guarantor, the Borrower or any of their respective Subsidiaries or any Real Property; (iii) any condition or occurrence on any material Real Property that could reasonably be anticipated to cause such Real Property to be subject to any restrictions on the ownership, occupancy, use or transferability of such Real Property under any Environmental Law; and (iv) the taking of any material removal or remedial action in response to the actual or alleged presence of any Hazardous Material on any Real Property. All such notices shall describe in reasonable detail the nature of the claim, investigation,

condition, occurrence or removal or remedial action and such Affiliate Guarantor's or the Borrower's response thereto.

(i) Other Information. Such other information respecting the business, condition (financial or otherwise), operations, performance, properties or prospects of any Affiliate Guarantor, the Borrower or any of their respective Subsidiaries as any Lender through the Administrative Agent may from time to time reasonably request.

SECTION 5.04. Financial Covenants. So long as any Advance shall remain unpaid or any Lender shall have any Commitment hereunder, the Obligated Parties will, unless the Required Lenders otherwise consent in writing:

(a) EBITDA/Net Interest Expense. Maintain a ratio of Combined EBITDA of the Affiliate Guarantors, the Borrower and their respective Subsidiaries to Combined Net Interest Expense of not less than the amount set forth below for each period of four consecutive fiscal quarters ended at the dates set forth below:

QUARTER ENDING -----	RATIO -----
June 30, 1997	2.25:1.00
September 30, 1997	2.35:1.00
December 31, 1997	2.50:1.00
March 31, 1998	2.50:1.00
June 30, 1998	2.50:1.00
September 30, 1998	2.60:1.00
December 31, 1998	2.75:1.00
March 31, 1999	2.75:1.00
June 30, 1999	2.75:1.00
September 30, 1999	2.85:1.00
December 31, 1999 and thereafter	3.00:1.00

(b) Total Debt/EBITDA Ratio. Maintain a Total Debt/EBITDA Ratio of not more than the amount set forth below for each period of four consecutive fiscal quarters ended at the dates set forth below:

QUARTER ENDING -----	RATIO -----
June 30, 1997	4.50:1.00
September 30, 1997	4.50:1.00
December 31, 1997	4.50:1.00
March 31, 1998	4.50:1.00
June 30, 1998	4.50:1.00
September 30, 1998	4.50:1.00
December 31, 1998	4.50:1.00
March 31, 1999	4.00:1.00
June 30, 1999	4.00:1.00
September 30, 1999	4.00:1.00
December 31, 1999	4.00:1.00
March 31, 2000 and thereafter	3.90:1.00

(c) Capital Expenditures. Not make, or permit any of its Subsidiaries to make, any Capital Expenditures that would cause the aggregate of all such Capital Expenditures made by the Affiliate Guarantors, the Borrower and their respective Subsidiaries to exceed \$275,000,000 in fiscal year 1997 or \$250,000,000 in any fiscal year thereafter, plus for the first year following any acquisition or investment by the Borrower, any Affiliate Guarantor or their respective Subsidiaries, an amount equal to 10% of the sales attributable to the Person or assets acquired or investment made for the period of twelve consecutive calendar months ended immediately prior to the date of determination, plus for each year following the first anniversary of any acquisition, an amount equal to 7.5% of such acquisition's target's sales for the period of twelve consecutive calendar months ended immediately prior to the date of determination and plus for any fiscal year Equity Proceeds received by the Borrower or any Affiliate Guarantor on or after March 31, 1997; provided that any Capital Expenditure permitted but not made in a prior year (commencing with the year 1997) may be carried forward and added to the amounts set forth above; provided further that for purposes of this Section 5.04(c) "Capital Expenditures" shall not include any portion of any acquisition made outside of the ordinary course of business.

#### ARTICLE VI

##### EVENTS OF DEFAULT

SECTION 6.01. Events of Default. If any of the following events ("Events of Default") shall occur and be continuing:

(a) the Borrower shall fail to pay when due any principal of any Advance, or the Borrower shall fail to pay any interest or other amount due under any Loan Document and such failure shall continue for five or more days; or

(b) any representation or warranty made by any Obligated Party under or in connection with any Loan Document shall prove to have been incorrect in any material respect when made; or

(c) any Obligated Party shall fail to perform or observe any term, covenant or agreement contained in Section 5.01(e), 5.02 or 5.04; or

(d) any Obligated Party shall fail to perform any other term, covenant or agreement contained in any Loan Document on its part to be performed or observed if such failure shall remain unremedied for 30 days after written notice thereof shall have been received by the Borrower from the Administrative Agent or the Required Lenders; or

(e) any Obligated Party or any of its Subsidiaries shall default in any payment with respect to any Indebtedness in excess of \$15,000,000 individually or \$30,000,000 in the aggregate (but excluding Indebtedness outstanding hereunder) of such Obligated Party and its Subsidiaries, when the same becomes due and payable (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise), and such failure shall continue after the applicable grace period, if any, specified in the agreement or instrument relating to such Indebtedness; or any other event shall occur or condition shall exist under any agreement or instrument relating to any such Indebtedness and shall continue after the applicable grace period, if any, specified in such agreement or instrument, if the effect of such event or condition is to accelerate, or to permit the acceleration of, the maturity of such Indebtedness or otherwise to cause, or to permit the holder thereof to cause, such Indebtedness to mature; or any such Indebtedness shall be declared to be due and payable or required to be prepaid or redeemed (other than by a regularly scheduled required prepayment or redemption), purchased or defeased, or an offer to prepay, redeem, purchase or defease such Indebtedness shall be required to

be made, in each case prior to the stated maturity thereof; or

(f) any Obligated Party or any of its Material Subsidiaries shall generally not pay its debts as such debts become due, or shall admit in writing its inability to pay its debts generally, or shall make a general assignment for the benefit of creditors; or any proceeding shall be instituted by or against any Obligated Party or any of its Material Subsidiaries seeking to adjudicate it a bankrupt or insolvent, or seeking liquidation, winding up, reorganization, arrangement, adjustment, protection, relief, or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors, or seeking the entry of an order for relief or the appointment of a receiver, trustee, or other similar official for it or for any substantial part of its property and, in the case of any such proceeding instituted against it (but not instituted by it) that is being diligently contested by it in good faith, either such proceeding shall remain undismissed or unstayed for a period of 60 days or any of the actions sought in such proceeding (including, without limitation, the entry of an order for relief against, or the appointment of a receiver, trustee, custodian or other similar official for, it or any substantial part of its property) shall occur; or any Obligated Party or any of its Material Subsidiaries shall take any corporate action to authorize any of the actions set forth above in this subsection (f); or

(g) any judgment or order for the payment of money in excess of \$15,000,000 individually or \$30,000,000 in the aggregate (to the extent not paid or fully covered by insurance provided by a carrier that has acknowledged coverage) shall be rendered against any Obligated Party or any of its Subsidiaries and any such judgment or order shall not have been vacated, discharged, satisfied or stayed or bonded pending appeal within 60 days from the entry thereof; or

(h) (i) KKR and its Affiliates or Subsidiaries shall cease to have beneficial ownership (within the meaning of Rule 13d-3 of the Securities and Exchange Commission under the Securities Exchange Act of 1934), directly or indirectly, of Voting Stock of the Borrower and each Affiliate Guarantor that has not been released in accordance with Section 7.05 (or other Securities convertible into such



Voting Stock) representing 50.1% or more of the combined voting power of all Voting Stock of the Borrower and each such Affiliate Guarantor, provided that the percentage required by this subsection (i) shall be reduced to 35% or more provided that the Borrower maintains an Investment Grade Rating; or (ii) individuals selected by KKR and its Affiliates or Subsidiaries (other than the Borrower or an Affiliate Guarantor that has not been released in accordance with Section 7.05) shall fail to constitute a majority of the Board of Directors of the Borrower or such Affiliate Guarantor; or

(i) (i) Any Plan shall fail to satisfy the minimum funding standard required for any plan year or part thereof or a waiver of such standard or extension of any amortization period is sought or granted under Section 412 of the Internal Revenue Code; any Plan is, shall have been or is likely to be terminated or the subject of termination proceedings under ERISA; any Plan shall have an Unfunded Current Liability; or any Affiliate Guarantor, the Borrower, any of their respective Subsidiaries or any ERISA Affiliate has incurred or is likely to incur a liability to or on account of a Plan under Section 409, 502(i), 502(1), 515, 4062, 4063, 4064, 4069, 4201 or 4204 of ERISA or Section 4971 or 4975 of the Internal Revenue Code; and (ii) there shall result from any such event or events referred to in clause (i) above the imposition of a lien, the granting of a security interest, or a liability or a material risk of incurring a liability, on the part of any Affiliate Guarantor, the Borrower, any of their respective Subsidiaries or any ERISA Affiliate, which in each case would be likely to have a Material Adverse Effect;

then, and in any such event, the Administrative Agent (i) shall at the request, or may with the consent, of the Required Lenders, by notice to the Borrower, declare the obligation of each Lender to make Advances to be terminated, whereupon the same shall forthwith terminate, and (ii) shall at the request, or may with the consent, of the Required Lenders, by notice to the Borrower, declare the Notes, all interest thereon and all other amounts payable under this Agreement and the other Loan Documents to be forthwith due and payable, whereupon the Notes, all such interest and all such amounts shall become and be forthwith due and payable, without presentment, demand, protest or further notice of any kind, all

of which are hereby expressly waived by the Borrower; provided, however, that in the event of an actual or deemed entry of an order for relief with respect to any Obligated Party under the Federal Bankruptcy Code, (x) the obligation of each Lender to make Advances shall automatically be terminated and (y) the Notes, all such interest and all such amounts shall automatically become and be due and payable, without presentment, demand, protest or any notice of any kind, all of which are hereby expressly waived by the Borrower.

SECTION 6.02. Actions in Respect of the Letters of Credit upon Default. If any Event of Default shall have occurred and be continuing, the Administrative Agent shall at the request, or may with the consent, of the Required Lenders, irrespective of whether it is taking any of the actions described in Section 6.01 or otherwise, make demand upon the Borrower to, and forthwith upon such demand the Borrower will, pay to the Administrative Agent on behalf of the Lenders in same day funds at the Administrative Agent's office designated in such demand, for deposit in the L/C Account, an amount equal to the aggregate Available Amount of all Letters of Credit then outstanding. If at any time the total amount of such funds is less than the aggregate Available Amount of all Letters of Credit, the Borrower will, forthwith upon demand by the Administrative Agent, pay to the Administrative Agent, as additional funds to be deposited and held in the L/C Account, an amount equal to the excess of (a) such aggregate Available Amount over (b) the total amount of funds, if any, then held in the L/C Account.

## ARTICLE VII

### GUARANTY

#### SECTION 7.01. Unconditional Guaranty; Limitation of Liability.

(a) Each Affiliate Guarantor hereby absolutely and unconditionally guarantees the punctual payment when due, whether at stated maturity, by acceleration or otherwise, of all obligations of each other Obligated Party now or hereafter existing under the Loan Documents whether for principal, interest, fees, expenses or otherwise (such obligations being the "Guaranteed Obligations"), and agrees to pay any and all reasonable expenses (including reasonable counsel fees and expenses) incurred by the Administrative Agent or any Lender in enforcing any rights under this Article VII. Without limiting

the generality of the foregoing, each Affiliate Guarantor's liability shall extend to all amounts that constitute part of the Guaranteed Obligations and would be owed by any Obligated Party to the Administrative Agent or any Lender under the Loan Documents but for the fact that they are unenforceable or not allowable due to the existence of a bankruptcy, reorganization or similar proceeding involving such Obligated Party.

(b) The aggregate liability of each Affiliate Guarantor under this Article VII and under guaranties by such Affiliate Guarantor permitted by Section 5.02(b)(xii) shall not exceed the greater of (i) the net benefit realized by such Affiliate Guarantor from the proceeds of the Advances made from time to time by the Borrower to such Affiliate Guarantor or any Subsidiary of such Affiliate Guarantor and (ii) the greater of (x) 95% of the Adjusted Net Assets of such Affiliate Guarantor on the date of delivery hereof and (y) 95% of the Adjusted Net Assets of such Affiliate Guarantor on the date of any payment hereunder. "Adjusted Net Assets" of any Affiliate Guarantor at any date means the lesser of (x) the amount by which the fair value of the property of such Affiliate Guarantor exceeds the total amount of liabilities, including, without limitation, contingent liabilities, but excluding liabilities under this Article VII and liabilities under guaranties by such Affiliate Guarantor permitted by Section 5.02(b)(xii), of such Affiliate Guarantor at such date and (y) the amount by which the present fair salable value of the assets of such Affiliate Guarantor at such date exceeds the amount that will be required to pay the probable liability of such Affiliate Guarantor on its debts, excluding debt in respect of this Article VII and debt in respect of guaranties by such Affiliate Guarantor permitted by Section 5.02(b)(xii), as they become absolute and matured.

SECTION 7.02. Guaranty Absolute. Each Affiliate Guarantor guarantees that the Guaranteed Obligations will be paid strictly in accordance with the terms of the Loan Documents, regardless of any law, regulation or order now or hereafter in effect in any jurisdiction affecting any of such terms or the rights of the Administrative Agent or any Lender with respect thereto. The obligations of each Affiliate Guarantor under this Article VII are independent of the Guaranteed Obligations, and a separate action or actions may be brought and prosecuted against each Affiliate Guarantor to enforce this Article VII, irrespective of whether any action is brought against the Borrower or any other Affiliate Guarantor or whether the Borrower or any other Affiliate Guarantor is joined in any such action or

actions. The liability of each Affiliate Guarantor under this Article VII shall be absolute and unconditional irrespective of:

(a) any lack of validity or enforceability of any Loan Document or any agreement or instrument relating thereto;

(b) any change in the time, manner or place of payment of, or in any other term of, all or any of the Guaranteed Obligations, or any other amendment or waiver of or any consent to departure from any Loan Document other than this Article VII, including, without limitation, any increase in the Guaranteed Obligations resulting from the extension of additional credit to the Borrower or otherwise;

(c) any taking, exchange, release or non-perfection of any collateral, or any taking, release or amendment or waiver of or consent to departure from any other guaranty, for all or any of the Guaranteed Obligations;

(d) any manner of application of collateral, or proceeds thereof, to all or any of the Guaranteed Obligations, or any manner of sale or other disposition of any collateral for all or any of the Guaranteed Obligations or any other assets of the Borrower or any other Obligated Party or any of their respective Subsidiaries;

(e) any change, restructuring or termination of the corporate structure or existence of the Borrower or any other Obligated Party or any of their respective Subsidiaries; or

(f) any other circumstance (including, without limitation, any statute of limitations) that might otherwise constitute a defense available to, or a discharge of, the Borrower, any other Obligated Party or a guarantor.

This guaranty shall continue to be effective or shall be reinstated, as the case may be, if at any time any payment of any of the Guaranteed Obligations is rescinded or must otherwise be returned by the Administrative Agent or any Lender upon the insolvency, bankruptcy or reorganization of the Borrower, any other Obligated Party or otherwise, all as though such payment had not been made.

SECTION 7.03. Waivers. Each Affiliate Guarantor hereby waives to the extent permitted by applicable law:

(a) promptness, diligence, notice of acceptance and any other notice with respect to any of the Guaranteed Obligations and this Article VII;

(b) any requirement that the Administrative Agent, any Lender or any other Person protect, secure, perfect or insure any Lien or any property subject thereto or exhaust any right or take any action against the Borrower, any Affiliate Guarantor or any other Person or any collateral;

(c) any defense arising by reason of any claim or defense based upon an election of remedies by the Administrative Agent or any Lender that in any manner impairs, reduces, releases or otherwise adversely affects its subrogation, contribution or reimbursement rights or other rights to proceed against the Borrower, any Affiliate Guarantor or any other Person or any collateral; and

(d) any duty on the part of the Administrative Agent or any Lender to disclose to such Affiliate Guarantor any matter, fact or thing relating to the business, operation or condition of any Obligated Party and its assets now or hereafter known by the Administrative Agent or such Lender, as the case may be.

SECTION 7.04. Subrogation. No Affiliate Guarantor will exercise any rights that it may now or hereafter acquire against the Borrower, any other Obligated Party or any other insider guarantor that arise from the existence, payment, performance or enforcement of such Affiliate Guarantor's obligations under this Article VII or any other Loan Document, including, without limitation, any right of subrogation, reimbursement, exoneration, contribution or indemnification and any right to participate in any claim or remedy of the Administrative Agent or any Lender against the Borrower, any other Obligated Party or any other insider guarantor or any collateral, whether or not such claim, remedy or right arises in equity or under contract, statute or common law, including, without limitation, the right to take or receive from the Borrower, any other Obligated Party or any other insider guarantor, directly or indirectly, in cash or other property or by set-off or in any other manner, payment or security on account of such claim, remedy or right, unless and until all of the Guaranteed Obligations and all other amounts payable under this Article VII shall have been paid in full in cash and the Commitments shall have expired or terminated. If any amount shall be paid to any Affiliate Guarantor in violation of the preceding sentence at any time prior to the later of the payment

in full in cash of the Guaranteed Obligations and all other amounts payable under this Article VII and the Termination Date, such amount shall be held in trust for the benefit of the Administrative Agent and the Lenders and the beneficiaries of guaranties made by the Affiliate Guarantors as permitted by Section 5.02(b)(xii) and shall forthwith be paid to the Administrative Agent and such other beneficiaries, and if delivered to the Administrative Agent shall be credited and applied to the Guaranteed Obligations and all other amounts payable under this Article VII, whether matured or unmatured, in accordance with the terms of the Loan Documents, or held as collateral for any Guaranteed Obligations or other amounts payable under this Article VII thereafter arising. If (i) any Affiliate Guarantor shall make payment to the Administrative Agent or any Lender of all or any part of the Guaranteed Obligations, (ii) all of the Guaranteed Obligations and all other amounts payable under this Article VII shall be paid in full in cash and (iii) the Termination Date shall have occurred, the Administrative Agent and the Lenders will, at such Affiliate Guarantor's request and expense, execute and deliver to such Affiliate Guarantor appropriate documents, without recourse and without representation or warranty, necessary to evidence the transfer by subrogation to such Affiliate Guarantor of an interest in the Guaranteed Obligations resulting from such payment by such Affiliate Guarantor.

SECTION 7.05. Release and Termination. (a) Upon the sale, transfer or other disposition of all or any portion of the common stock of any Affiliate Guarantor (including through the primary issuance and sale of shares of common stock) that the Borrower elects by notice to the Administrative Agent to designate as a "Guarantee Release Event", the Administrative Agent will, at the Borrower's expense, execute and deliver to such Affiliate Guarantor such documents as such Affiliate Guarantor shall reasonably request to evidence the release of such Affiliate Guarantor from its obligations under this Agreement, provided that (i) at the time of such designation and such release no Default shall have occurred and be continuing, (ii) such sale, transfer or disposition is in compliance with Section 5.02(d) and (iii) the proceeds of such sale, transfer or disposition required to be applied pursuant to Section 2.06 shall be so applied.

(b) Upon the payment in full of the Guaranteed Obligations (on or after the Termination Date), the Administrative Agent will, at the Borrower's expense, execute and deliver to each Affiliate Guarantor such documents as such

Affiliate Guarantor shall reasonably request to evidence the termination of the obligations of such Affiliate Guarantor under this Agreement.

(c) Upon the earlier of the occurrence of a "Guarantee Release Event" in accordance with subsection (a) above or the termination of obligations pursuant to subsection (b) above, the applicable Affiliate Guarantor shall be released from the guaranty of such Affiliate Guarantor under this Article VII and from all other obligations of such Affiliate Guarantor under this Agreement and each other Loan Document and such Affiliate Guarantor shall cease to be an "Affiliate Guarantor" or an "Obligated Party" hereunder.

## ARTICLE VIII

### THE AGENTS

SECTION 8.01. Authorization and Action. Each Lender (in its capacities as a Lender, the Swing Line Bank (if applicable) and an Issuing Bank (if applicable)) hereby appoints and authorizes the Administrative Agent to take such action as agent on its behalf and to exercise such powers and discretion under this Agreement and the other Loan Documents as are delegated to the Administrative Agent by the terms hereof and thereof, together with such powers and discretion as are reasonably incidental thereto. As to any matters not expressly provided for by the Loan Documents (including, without limitation, enforcement or collection of the Notes), the Administrative Agent shall not be required to exercise any discretion or take any action, but shall be required to act or to refrain from acting (and shall be fully protected in so acting or refraining from acting) upon the instructions of the Required Lenders, and such instructions shall be binding upon all Lenders and all holders of Notes; provided, however, that the Administrative Agent shall not be required to take any action that exposes the Administrative Agent to personal liability or that is contrary to this Agreement or applicable law. The Administrative Agent agrees to give to each Lender prompt notice of each notice given to it by the Borrower pursuant to the terms of this Agreement.

SECTION 8.02. Reliance, Etc. (a) None of the Administrative Agent, any Lead Managing Agent or any Arranger or any of their respective directors, officers, agents or employees shall be liable for any action taken or omitted to be taken by it

or them under or in connection with the Loan Documents, except for its or their own gross negligence or willful misconduct. Without limitation of the generality of the foregoing, the Administrative Agent: (i) may treat the payee of any Note as the holder thereof until the Administrative Agent receives and accepts an Assumption Agreement entered into by an Assuming Lender as provided in Section 2.19 or an Assignment and Acceptance entered into by the Lender that is the payee of such Note, as assignor, and an Eligible Assignee, as assignee, as provided in Section 9.07; (ii) may consult with legal counsel (including counsel for any Obligated Party), independent public accountants and other experts selected by it and shall not be liable for any action taken or omitted to be taken in good faith by it in accordance with the advice of such counsel, accountants or experts; (iii) makes no warranty or representation to any Lender and shall not be responsible to any Lender for any statements, warranties or representations made in or in connection with the Loan Documents; (iv) shall not have any duty to ascertain or to inquire as to the performance or observance of any of the terms, covenants or conditions of any Loan Document on the part of any Obligated Party or to inspect the property (including the books and records) of any Obligated Party; (v) shall not be responsible to any Lender for the due execution, legality, validity, enforceability, genuineness, sufficiency or value of, or the perfection or priority of any Lien created or purported to be created under or in connection with, any Loan Document or any other instrument or document furnished pursuant hereto; and (vi) shall incur no liability under or in respect of any Loan Document by acting upon any notice, consent, certificate or other instrument or writing (which may be by telegram, telecopy, cable or telex) believed by it to be genuine and signed or sent by the proper party or parties.

(b) The Lead Managing Agents and the Arrangers, as such, shall have no duties or obligations whatsoever with respect to this Agreement, the Notes or any other document or any matter related thereto.

SECTION 8.03. Lead Managing Agents and Affiliates. With respect to their respective Commitments, the Advances made by them and the Notes issued to them, each of the Lead Managing Agents shall have the same rights and powers under the Loan Documents as any other Lender and may exercise the same as though it or its Affiliate were not the Administrative Agent, a Lead Managing Agent or an Arranger, as the case may be; and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated, include each of the Lead Managing Agents in its



individual capacity. Each of the Lead Managing Agents and its respective affiliates may accept deposits from, lend money to, act as trustee under indentures of, accept investment banking engagements from and generally engage in any kind of business with, any Obligated Party, any of its Subsidiaries and any Person who may do business with or own securities of any Obligated Party or any such Subsidiary, all as if such Lead Managing Agent or any of its respective Affiliates were not the Administrative Agent, a Lead Managing Agent or an Arranger, as the case may be, and without any duty to account therefor to the Lenders.

SECTION 8.04. Lender Credit Decision. Each Lender acknowledges that it has, independently and without reliance upon the Administrative Agent, the Lead Managing Agents, any Arranger or any other Lender and based on the financial statements referred to in Section 4.01 and such other documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon the Administrative Agent, the Lead Managing Agents, any Arranger or any other Lender and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement.

SECTION 8.05. Indemnification. Each Lender severally agrees to indemnify each Agent (to the extent not promptly reimbursed by the Borrower) from and against such Lender's ratable share of any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever that may be imposed on, incurred by, or asserted against such Agent in any way relating to or arising out of the Loan Documents or any action taken or omitted by such Agent under the Loan Documents; provided, however, that no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from such Agent's gross negligence or willful misconduct. Without limitation of the foregoing, each Lender agrees to reimburse each Agent promptly upon demand for its ratable share of any costs and expenses payable by the Borrower under Section 9.04, to the extent that such Agent is not promptly reimbursed for such costs and expenses by the Borrower. For purposes of this Section 8.05, the Lenders' respective Ratable Shares of any amount shall be determined, at any time, according to the sum of (a) the aggregate principal amount of the Advances outstanding at such time and owing to the respective Lenders,

(b) their respective Ratable Shares of the aggregate Available Amount of all Letters of Credit outstanding at such time and (c) their respective Unused Working Capital Commitments at such time; provided that the aggregate principal amount of Swing Line Advances owing to the Swing Line Bank shall be considered to be owed to the Working Capital Lenders ratably in accordance with their respective Working Capital Commitments. In the event that any Defaulted Advance shall be owing by any Defaulting Lender at any time, such Lender's Commitment with respect to the Advance under which such Defaulted Advance was required to have been made shall be considered to be unused for purposes of this Section 8.05 to the extent of the amount of such Defaulted Advance. The failure of any Lender to reimburse any Agent promptly upon demand for its ratable share of any amount required to be paid by the Lenders to such Agent as provided herein shall not relieve any other Lender of its obligation hereunder to reimburse such Agent for its ratable share of such amount, but no Lender shall be responsible for the failure of any other Lender to reimburse such Agent for such other Lender's ratable share of such amount.

SECTION 8.06. Successor Administrative Agent. The Administrative Agent may resign as to all of the Facilities at any time by giving written notice thereof to the Lenders and the Borrower and may be removed at any time with or without cause by the Required Lenders. Upon any such resignation or removal, the Required Lenders shall have the right to appoint a successor Administrative Agent. If no successor Administrative Agent shall have been so appointed by the Required Lenders, and shall have accepted such appointment, within 30 days after the retiring Administrative Agent's giving of notice of resignation or the Required Lenders' removal of the retiring Administrative Agent, then the retiring Administrative Agent may, on behalf of the Lenders, appoint a successor Administrative Agent, which shall be a commercial bank organized under the laws of the United States or of any State thereof and having a combined capital and surplus of at least \$250,000,000. Upon the acceptance of any appointment as Administrative Agent hereunder by a successor Administrative Agent as to all of the Facilities, such successor Administrative Agent shall succeed to and become vested with all the rights, powers, discretion, privileges and duties of the retiring Administrative Agent, and the retiring Administrative Agent shall be discharged from its duties and obligations under the Loan Documents. After any retiring Administrative Agent's resignation or removal hereunder as Administrative Agent, the provisions of this Article VIII shall inure to its benefit as to any actions

taken or omitted to be taken by it while it was Administrative Agent under this Agreement.

#### ARTICLE IX

##### MISCELLANEOUS

SECTION 9.01. Amendments, Etc. No amendment or waiver of any provision of this Agreement or the Notes, nor consent to any departure by the Borrower therefrom, shall in any event be effective unless the same shall be in writing and signed by the Required Lenders, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided, however, that no amendment, waiver or consent shall, unless in writing and signed by each Lender affected thereby (other than any Lender which is, at such time, a Defaulting Lender) directly: (i) reduce the percentage of the Commitments or of the aggregate unpaid principal amount of the Notes, or the number of Lenders, that shall be required for the Lenders or any of them to take any action hereunder, (ii) amend this Section 9.01, (iii) extend the scheduled time of payment of any interest or commitment fee or Letter of Credit fee owing to such Lender, (iv) increase the aggregate amount of the Commitments of such Lender, (v) reduce the stated rate of interest borne by the Advances owing to such Lender (other than as a result of waiving the applicability of any post-default increase in interest rates), forgive all or any part of the principal amount thereof or reduce the stated rate for calculating any commitment fee or Letter of Credit fee owing to such Lender, (vi) extend the final scheduled maturity of any Advance owing to such Lender or (vii) release any Affiliate Guarantor from its obligations under Article VII except as expressly provided in Section 7.05; provided further that no amendment, waiver or consent shall, unless in writing and signed by the Swing Line Bank or each Issuing Bank, as the case may be, in addition to the Lenders required above to take such action, affect the rights or obligations of the Swing Line Bank or the Issuing Banks, as the case may be, under this Agreement; and provided further that no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent in addition to the Lenders required above to take such action, affect the rights or duties of the Administrative Agent under this Agreement or any Note.

SECTION 9.02. Notices, Etc. All notices and other communications provided for hereunder shall be in writing

(including telegraphic, telecopy, telex or cable communication) and mailed, telegraphed, telecopied, telexed, cabled or delivered, if to the Borrower, at its address at 180 East Broad Street, Columbus, Ohio 43215-3799, Attention: Vice President and Treasurer; if to Foods Holdings, at its address at 80 East Broad Street, Columbus, Ohio 43215-3799; if to Wise Holdings, at its address at 80 East Broad Street, Columbus, Ohio 43215-3799; if to any Bank, at its Domestic Lending Office specified opposite its name on Schedule I hereto; if to any other Lender, at its Domestic Lending Office specified in the Assumption Agreement or the Assignment and Acceptance pursuant to which it became a Lender, as the case may be; if to Credit Suisse First Boston, in its capacity as an Issuing Bank, at its address at 5 World Trade Center, 8th Floor, New York, New York 10048, Attention: Trade Services Department, with a copy to 11 Madison Avenue, New York, New York 10010, Attention: Lisa Perrotto; and if to the Administrative Agent, at its address at 1 Court Square, 7th Floor, Long Island City, New York 11120, Attention: John Makrinos, with a copy to 399 Park Avenue, New York, New York 10043, Attention: Steve Sellhausen; or, as to the Borrower or the Administrative Agent, at such other address as shall be designated by such party in a written notice to the other parties and, as to each other party, at such other address as shall be designated by such party in a written notice to the Borrower and the Administrative Agent. All such notices and communications shall, when mailed, telegraphed, telecopied, telexed or cabled, be effective when deposited in the mails, delivered to the telegraph company, transmitted by telecopier, confirmed by telex answerback or delivered to the cable company, respectively, except that notices and communications to the Administrative Agent pursuant to Article II, III or VIII shall not be effective until received by the Administrative Agent.

SECTION 9.03. No Waiver; Remedies. No failure on the part of any Lender, any Arranger or the Administrative Agent to exercise, and no delay in exercising, any right hereunder or under any Note shall operate as a waiver thereof; nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

SECTION 9.04. Costs and Expenses. (a) The Borrower agrees to pay on demand (i) all reasonable and documented costs and out-of-pocket expenses of each Agent in connection with the preparation, execution, delivery and amendment of the Loan Documents (including, without limitation, (A) all due diligence,

syndication (including printing, distribution and bank meetings), transportation, computer, telecommunications, duplication, audit, insurance, consultant, search, filing and recording fees and all other out-of-pocket expenses in an aggregate amount agreed to by the Arrangers and the Borrower and (B) the reasonable and documented fees and out-of-pocket expenses of counsel for the Lead Managing Agents and the Arrangers) with respect thereto, with respect to advising the Administrative Agent as to its rights and responsibilities, or the perfection, protection or preservation of rights or interests, under the Loan Documents, with respect to negotiations with any Obligated Party or with other creditors of any Obligated Party or any of its Subsidiaries arising out of any Default or any events or circumstances that may give rise to a Default and with respect to presenting claims in or otherwise participating in or monitoring any bankruptcy, insolvency or other similar proceeding involving creditors' rights generally and any proceeding ancillary thereto), (ii) all reasonable and documented costs and out-of-pocket expenses of the Administrative Agent in connection with the administration of the Loan Documents and (iii) all reasonable and documented costs and out-of-pocket expenses of the Administrative Agent and the Lenders in connection with the enforcement of the Loan Documents, whether in any action, suit or litigation, any bankruptcy, insolvency or other similar proceeding affecting creditors' rights generally or otherwise (including, without limitation, the reasonable and documented fees and out-of-pocket expenses of counsel for the Administrative Agent and each Lender with respect thereto).

(b) The Borrower agrees to indemnify and hold harmless each Agent and each Lender and each of their respective Affiliates and their respective officers, directors, employees, agents and advisors (each, an "Indemnified Party") from and against any and all claims, damages, losses, liabilities and expenses (including, without limitation, reasonable and documented fees and expenses of counsel) that may be incurred by or asserted or awarded against any Indemnified Party, in each case arising out of or in connection with or by reason of, or in connection with the preparation for a defense of, any investigation, litigation or proceeding arising out of, related to or in connection with this Agreement (including, without limitation, the Notes and any of the transactions contemplated herein or in any other Loan Document or the actual or proposed use of the Letters of Credit or the proceeds of the Advances) whether or not such investigation, litigation or proceeding is brought by any Obligated Party, its directors, shareholders or creditors or an Indemnified Party or any Indemnified Party is

otherwise a party thereto and whether or not the transactions contemplated hereby are consummated, except to the extent such claim, damage, loss, liability or expense results from such Indemnified Party's gross negligence or willful misconduct. The Borrower also agrees not to assert any claim against any Agent or any Lender or any of their respective Affiliates or any of their respective directors, officers, employees, attorneys and agents, on any theory of liability, for special, indirect, consequential or punitive damages arising out of or otherwise relating to the Notes, this Agreement, any of the transactions contemplated herein or in any other Loan Document or the actual or proposed use of the Letters of Credit or the proceeds of the Advances.

Each Indemnified Party agrees to notify the Borrower, promptly after obtaining actual knowledge thereof, of the assertion against it or any other Person of any claim or the commencement of any action or proceeding relating to this Agreement (including, without limitation, the Notes and any of the transactions contemplated herein or in any other Loan Document or the actual or proposed use of the proceeds of the Advances) which such Indemnified Party considers to be a claim, action or proceeding with respect to which it is entitled to indemnification hereunder, but failure to so notify will not relieve the Borrower from any liability under this Section 9.04(b). Each Indemnified Party will be entitled to defend any such claim, action or proceeding, and may employ or retain counsel to represent it in, and to defend, such claim, action or proceeding and the Borrower will pay the reasonable and documented fees and out-of-pocket expenses of such counsel; provided, however, that the Indemnified Parties shall, to the extent practicable, choose one counsel to act on their behalf at the Borrower's expense, which counsel, at the request of the Borrower, shall also represent and defend the Borrower in such claim, action or proceeding unless an Indemnified Party reasonably determines based on an opinion of outside counsel that having common counsel would present such counsel with a conflict of interest. In the event of such determination, such Indemnified Party or Parties shall not be required to share counsel and shall be entitled to full indemnification for such counsel's fees and expenses as otherwise provided herein.

(c) If any payment of principal of, or Conversion of, or failure to Convert as a result of a withdrawn notice of Conversion, any Eurodollar Rate Advance, LIBO Rate Advance or Fixed Rate Advance is made by the Borrower to or for the account of a Lender other than on the last day of the Interest Period for such Advance, as a result of a payment or Conversion pursuant to

Section 2.07, 2.10(b)(i) or 2.11(d), acceleration of the maturity of the Notes pursuant to Section 6.01 or for any other reason, the Borrower shall, after receipt of a written request by such Lender (which request shall set forth in reasonable detail the basis for requesting such amount and shall also be sent upon demand by such Lender (with a copy of such demand to the Administrative Agent), pay to the Administrative Agent for the account of such Lender any amounts required to compensate such Lender for any additional losses, costs or expenses that it may reasonably incur as a result of such payment, including, without limitation, any loss cost or expense (excluding loss of anticipated profits) actually incurred by reason of the liquidation or reemployment of deposits or other funds acquired by any Lender to fund or maintain such Advance.

(d) Without prejudice to the survival of any other agreement of the Borrower and each other Obligated Party hereunder, the agreements and obligations of the Borrower contained in Sections 2.11, 2.13 and 9.04 shall survive the payment in full of the principal and interest hereunder and under the Notes.

SECTION 9.05. Right of Set-Off. Upon (a) the occurrence and during the continuance of any Event of Default and (b) the making of the request or the granting of the consent specified by Section 6.01 to authorize the Administrative Agent to declare the Notes due and payable pursuant to the provisions of Section 6.01, each Lender and each of its branches and agencies is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and otherwise apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other indebtedness at any time owing by such Lender, its branches or agencies to or for the credit or the account of the Borrower against any and all of the obligations of the Borrower now or hereafter existing under this Agreement and the Notes held by such Lender, irrespective of whether such Lender shall have made any demand under this Agreement or such Note and although such obligations may be unmatured. Each Lender agrees promptly to notify the Borrower after any such set-off and application; provided, however, that the failure to give such notice shall not affect the validity of such set-off and application. The rights of each Lender, its branches or agencies under this Section are in addition to other rights and remedies (including, without limitation, other rights of set-off) that such Lender, its branches or agencies may have.

SECTION 9.06. Binding Effect. This amendment and restatement of the Existing Credit Agreement shall become effective when it shall have been executed by the Borrower, the Affiliate Guarantors and the Administrative Agent and when the Administrative Agent shall have been notified by each Bank that such Bank has executed it and thereafter shall be binding upon and inure to the benefit of the Borrower, the Administrative Agent and each Lender and their respective successors and assigns, except that the Borrower shall not have the right to assign its rights or obligations hereunder or any interest herein without the prior written consent of the Lenders.

SECTION 9.07. Assignments and Participations. (a) Each Lender (x) may assign to one or more of its Affiliates or Subsidiaries and (y) may with the prior consent of the Administrative Agent and the Borrower (such consents not to be unreasonably withheld or delayed) assign to one or more banks or other entities, all or a portion of its rights and obligations under this Agreement (including, without limitation, all or a portion of its Commitments, the Advances owing to it and the Notes held by it); provided, however, that such assignment or any activity intended to give rise to an assignment shall not be initiated prior to the receipt by the Lenders of notice from the Arrangers that the syndication of this Agreement has been completed; provided further, however, that (i) each such assignment shall be of a uniform, and not a varying, percentage of all such Lender's rights and obligations under and in respect of the Working Capital Facility (other than any right to make Competitive Bid Advances or Competitive Bid Advances owing to it), (ii) except in the case of an assignment to a Person that immediately prior to such assignment was a Lender or an assignment of all of a Lender's rights and obligations under this Agreement the amount of the Commitments of the assigning Lender being assigned pursuant to each such assignment (determined as of the date of the Assignment and Acceptance with respect to such assignment) shall in no event be less than \$10,000,000, (iii) each such assignment shall be to a Lender, an Eligible Assignee or to an Affiliate or Subsidiary of the assignor, and (iv) the parties to each such assignment shall execute and deliver to the Administrative Agent, for its acceptance and recording in the Register, an Assignment and Acceptance, together with any Note subject to such assignment, and a processing and recordation fee of \$3,000 for each assignment completed after the notice referred to in the first proviso of this Section 9.07 has been received. Upon such execution, delivery, acceptance and recording, from and after the effective date specified in such Assignment and Acceptance, (x) the assignee thereunder shall be a



party hereto and, to the extent that rights and obligations hereunder have been assigned to it pursuant to such Assignment and Acceptance, have the rights and obligations of a Lender hereunder and (y) the Lender assignor thereunder shall, to the extent that rights and obligations hereunder have been assigned by it pursuant to such Assignment and Acceptance, relinquish its rights and be released from its obligations under this Agreement (and, in the case of an Assignment and Acceptance covering all or the remaining portion of an assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto).

(b) By executing and delivering an Assignment and Acceptance, the Lender assignor thereunder and the assignee thereunder confirm to and agree with each other and the other parties hereto as follows: (i) other than as provided in such Assignment and Acceptance, such assigning Lender makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with this Agreement or the execution, legality, validity, enforceability, genuineness, sufficiency or value of, or the perfection or priority of any Lien created or purported to be created under or in connection with, this Agreement or any other instrument or document furnished pursuant hereto; (ii) such assigning Lender makes no representation or warranty and assumes no responsibility with respect to the financial condition of the Borrower or any other Obligated Party or the performance or observance by the Borrower or any other Obligated Party of any of its obligations under this Agreement or any other instrument or document furnished pursuant hereto; (iii) such assignee confirms that it has received a copy of this Agreement, together with copies of the financial statements referred to in Section 4.01 and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into such Assignment and Acceptance; (iv) such assignee will, independently and without reliance upon the Administrative Agent, such assigning Lender or any other Lender and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement; (v) such assignee confirms that it is a Lender, an Eligible Assignee or an Affiliate of the assignor; (vi) such assignee appoints and authorizes the Administrative Agent to take such action as agent on its behalf and to exercise such powers and discretion under this Agreement as are delegated to the Administrative Agent by the terms hereof, together with such powers and discretion as are reasonably incidental thereto; and (vii) such assignee agrees

that it will perform in accordance with their terms all of the obligations that by the terms of this Agreement are required to be performed by it as a Lender.

(c) The Administrative Agent shall maintain at its address referred to in Section 9.02 a copy of each Assumption Agreement and each Assignment and Acceptance delivered to and accepted by it and a register for the recordation of the names and addresses of the Lenders and the Commitment under each Facility of, and principal amount of the Advances owing under each Facility to, each Lender from time to time (the "Register"). The entries in the Register shall be conclusive and binding for all purposes, absent manifest error, and the Borrower, the Administrative Agent and the Lenders may treat each Person whose name is recorded in the Register as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Borrower or any Lender at any reasonable time and from time to time upon reasonable prior notice.

(d) Upon its receipt of an Assignment and Acceptance executed by an assigning Lender and an assignee, together with any Note or Notes subject to such assignment, the Administrative Agent shall, if such Assignment and Acceptance has been completed and is in substantially the form of Exhibit C hereto, (i) accept such Assignment and Acceptance, (ii) record the information contained therein in the Register and (iii) give prompt notice thereof to the Borrower. Within five Business Days after its receipt of such notice, the Borrower, at its own expense, shall execute and deliver to the Administrative Agent in exchange for the surrendered Note or Notes a new Note or Notes to the order of such assignee in an amount equal to the Commitment assumed by it under a Facility pursuant to such Assignment and Acceptance and, if the assigning Lender has retained a Commitment hereunder under such Facility, new Notes to the order of the assigning Lender in an aggregate amount equal to the aggregate Commitments retained by it hereunder. Such new Note or Notes shall be in an aggregate principal amount equal to the aggregate principal amount of such surrendered Note or Notes, shall be dated the effective date of such Assignment and Acceptance and shall otherwise be in substantially the form of Exhibit A-1 hereto.

(e) Each Lender may sell participations in or to all or a portion of its rights and obligations under this Agreement (including, without limitation, all or a portion of its Commitments, the Advances owing to it and the Note or Notes held by it); provided, however, that (i) such Lender's obligations under this Agreement (including, without limitation, its

Commitments) shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, (iii) such Lender shall remain the holder of such Note or Notes for all purposes of this Agreement, (iv) the Borrower, the Agents and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement and (v) no participant under any such participation and no sub-participant of such participation shall have any right to approve any amendment or waiver of any provision of any Loan Document, or any consent to any departure by the Borrower therefrom, except to the extent that such amendment, waiver or consent would directly: reduce the stated rate of interest borne by the Advances owing to such participant (other than as a result of waiving the applicability of any post-default increase in interest rates), forgive all or any part of the principal amount thereof, reduce the stated rate for calculating any commitment fee or Letter of Credit fee owing to the Lenders or extend the final scheduled maturity of any Advance owing to such participant, in each case to the extent subject to such participation.

(f) Any Lender may, in connection with any assignment or participation or proposed assignment or participation pursuant to this Section 9.07, disclose to the assignee or participant or proposed assignee or participant, any information relating to the Borrower furnished to such Lender by or on behalf of the Borrower; provided, however, that, prior to any such disclosure, the assignee or participant or proposed assignee or participant shall have executed a confidentiality agreement substantially in the form of Exhibit F hereto and returned to same to such Lender and the Borrower.

(g) Notwithstanding any other provision set forth in this Agreement, any Lender may at any time create a security interest in all or any portion of its rights under this Agreement (including, without limitation, the Advances owing to it and the Notes held by it) in favor of any Federal Reserve Bank in accordance with Regulation A of the Board of Governors of the Federal Reserve System.

SECTION 9.08. Governing Law. This Agreement and the Notes shall be governed by, and construed in accordance with, the laws of the State of New York.

SECTION 9.09. Execution in Counterparts. This Agreement may be executed in any number of counterparts and by

different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page to this Agreement by telecopier shall be effective as delivery of a manually executed counterpart of this Agreement.

SECTION 9.10. Confidentiality. Each Lender has heretofore executed a confidentiality agreement in the form of Exhibit F hereto and returned a copy thereof to the Borrower. Each Lender shall hold all non-public information obtained pursuant to this Agreement in accordance with the terms of such confidentiality agreement and in accordance with safe and sound banking practices and, subject to Section 9.07, may make disclosure reasonably requested by any bona fide transferee in connection with the contemplated transfer of any Advances or participation therein or as required or requested by any governmental authority or pursuant to legal process; provided that each such transferee shall have previously signed and returned to such Lender a confidentiality agreement in the form of Exhibit F, and such Lender agrees to send to the Borrower promptly a copy of each such confidentiality agreement executed by such transferee.

SECTION 9.11. No Liability of the Issuing Banks. The Borrower assumes all risks of the acts or omissions of any beneficiary or transferee of any Letter of Credit with respect to its use of such Letter of Credit. Neither any Issuing Bank nor any of its officers or directors shall be liable or responsible for: (a) the use that may be made of any Letter of Credit or any acts or omissions of any beneficiary or transferee in connection therewith; (b) the validity, sufficiency or genuineness of documents, or of any endorsement thereon, even if such documents should prove to be in any or all respects invalid, insufficient, fraudulent or forged; (c) payment by such Issuing Bank against presentation of documents that do not comply with the terms of a Letter of Credit, including failure of any documents to bear any reference or adequate reference to the Letter of Credit; or (d) any other circumstances whatsoever in making or failing to make payment under any Letter of Credit, except that the Borrower shall have a claim against such Issuing Bank, and the Issuing Bank shall be liable to the Borrower, to the extent of any direct, but not consequential, damages suffered by the Borrower that the Borrower proves were caused by (i) such Issuing Bank's willful misconduct or gross negligence in determining whether documents presented under any Letter of Credit comply with the terms of such Letter of Credit or (ii) such Issuing Bank's

willful failure to make lawful payment under a Letter of Credit after the presentation to it of a draft and certificates strictly complying with the terms and conditions of such Letter of Credit. In furtherance and not in limitation of the foregoing, such Issuing Bank may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary.

SECTION 9.12. Redesign. The Lenders hereby agree that, in accordance with Section 5.01(h), the Borrower, its Subsidiaries, the Affiliate Guarantors and their Subsidiaries may enter into the Redesign Documents on the following terms and conditions:

(a) Trademarks. The Borrower and its Subsidiaries may transfer trademarks to be used by Borden Foods Holdings, LLC and its Subsidiaries to a partnership organized pursuant to terms substantially the same as those set forth in Exhibit H hereto, provided that the executed Amended and Restated Agreement of Limited Partnership of BFC Investments, L.P. shall contain provisions strictly conforming to those set forth in Exhibit H as (i) the defined term "Percentage Interest" and (ii) Section 5.3(b).

(b) Dairy Business. The Borrower and its Subsidiaries may transfer the Dairy Business to an Affiliate Guarantor and any of such Affiliate Guarantor's Subsidiaries having a structure substantially the same as that of Wise Holdings, Inc. and its Subsidiaries, pursuant to terms substantially the same as those set forth in the form of Conveyance and Transfer Agreement attached as Exhibit I hereto, provided that (i) the consideration for the transfer of the subject assets shall not be less than Fair Market Value and (ii) upon the consummation of such transfer the Borrower and such Affiliate Guarantor shall deliver to the Administrative Agent a certificate in the form of Exhibit J hereto.

(c) Options on Assets. The initial Options granted in respect of certain of the assets of Borden Foods Holdings Corporation and its Subsidiaries shall be issued pursuant to terms substantially the same as those set forth in the form of Option Agreement attached as Exhibit L hereto, provided that the consideration for the issuance of such Options shall not exceed \$95,000,000 in the aggregate, which may consist of Borden Holdings Notes in whole or in part.

SECTION 9.13. Waiver of Jury Trial. Each of the Borrower, the Agents and the Lenders hereby irrevocably waives all right to trial by jury in any action, proceeding or counterclaim (whether based on contract, tort or otherwise) arising out of or relating to any of the Loan Documents, the Advances or the actions of any Agent or any Lender in the negotiation, administration, performance or enforcement thereof.

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

BORDEN, INC.

By -----  
Name:  
Title:

BORDEN FOODS HOLDINGS CORPORATION

By -----  
Name:  
Title:

WISE HOLDINGS, INC.

By -----  
Name:  
Title:

CITIBANK, N.A., as Administrative Agent

By -----

Name:  
Title:

ARRANGERS

BT SECURITIES CORPORATION,  
as Arranger

By -----

Name:  
Title:

CHASE SECURITIES INC.,  
as Arranger

By -----

Name:  
Title:

CITICORP SECURITIES, INC.,  
as Arranger

By -----

Name:  
Title:

CREDIT SUISSE FIRST BOSTON,  
as Arranger

By -----

Name:  
Title:

By -----

Name:  
Title:



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BANKS

LEAD MANAGING AGENTS

BANKERS TRUST COMPANY

By

-----  
Name:  
Title:

THE CHASE MANHATTAN BANK

By

-----  
Name:  
Title:

CITIBANK, N.A.

By

-----  
Name:  
Title:

CREDIT SUISSE FIRST BOSTON

By

-----  
Name:  
Title:

By

-----  
Name:  
Title:

SENIOR MANAGING AGENTS

NATIONAL WESTMINSTER BANK PLC,  
NEW YORK BRANCH

By -----  
Name:  
Title:

NATIONAL WESTMINSTER BANK PLC,  
NASSAU BRANCH

By -----  
Name:  
Title:

NATIONSBANK, N.A.

By -----  
Name:  
Title:

THE BANK OF NOVA SCOTIA

By -----  
Name:  
Title:

MANAGING AGENTS

THE BANK OF NEW YORK

By -----  
Name:

112

Title:

BANK OF TOKYO -  
MITSUBISHI TRUST COMPANY

By

-----  
Name:  
Title:

THE FIRST NATIONAL BANK OF CHICAGO

By

-----  
Name:  
Title:

THE FUJI BANK, LIMITED

By

-----

Name:

Title:

## 364-DAY CREDIT AGREEMENT

Dated as of July 14, 1997

Among

BORDEN, INC.

as Borrower,

BORDEN FOODS HOLDINGS CORPORATION

and

WISE HOLDINGS, INC.

as Affiliate Guarantors,

and

THE BANKS NAMED HEREIN

as Banks,

CITIBANK, N.A.

as Administrative Agent,

BANKERS TRUST COMPANY  
THE CHASE MANHATTAN BANK  
CITIBANK, N.A.  
CREDIT SUISSE FIRST BOSTON

as Lead Managing Agents

and

BT SECURITIES CORPORATION  
CHASE SECURITIES INC.  
CITICORP SECURITIES, INC.  
CREDIT SUISSE FIRST BOSTON

as Arrangers

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## 364-DAY CREDIT AGREEMENT

DATED AS OF JULY 14, 1997

364-DAY CREDIT AGREEMENT dated as of July 14, 1997 among Borden, Inc., a New Jersey corporation (the "Borrower"), Borden Foods Holdings Corporation, a Delaware corporation ("Foods Holdings"), Wise Holdings, Inc., a Delaware corporation ("Wise Holdings" and, together with Foods Holdings, the "Affiliate Guarantors"), the banks (the "Banks") listed on the signature pages hereof, Citibank, N.A. ("Citibank"), as administrative agent (together with any successor appointed pursuant to Article VIII, the "Administrative Agent") for the Lenders (as hereinafter defined), BT Securities Corporation ("BT Securities"), Chase Securities Inc. ("Chase Securities"), Citicorp Securities, Inc. and Credit Suisse First Boston ("Credit Suisse First Boston"), as arrangers (the "Arrangers"), BT Securities and Chase Securities, as co-syndication agents, and Credit Suisse First Boston, as documentation agent.

## ARTICLE I

## DEFINITIONS AND ACCOUNTING TERMS

SECTION 1.01. Certain Defined Terms. As used in this Agreement, the following terms shall have the following meanings (such meanings to be equally applicable to both the singular and plural forms of the terms defined):

"Acquired Entity" means any Person, business unit or assets of any Person invested in or acquired by any Affiliate Guarantor, the Borrower or any of their respective Subsidiaries.

"Administrative Agent" has the meaning specified in the recital of parties to this Agreement.

"Administrative Agent's Account" means the account of the Administrative Agent maintained by the Administrative Agent with Citibank at its office at 1 Court Square, 7th Floor, Long Island City, New York 11120, Account No. 3685 2248, Attention: John Makrinos.

"Advance" means a Working Capital Advance or a Competitive Bid Advance.

"Affiliate" means, as to any Person (other than a Subsidiary), any other Person that, directly or indirectly, controls, is controlled by or is under common control with such Person or is a director or officer of such Person. For purposes of this definition, the term "control" (including the terms "controlling," "controlled by" and "under common control with") of a Person means the possession, direct or indirect, of the power to vote 10% or more of the Voting Stock of such Person or to direct or cause the direction of the management and policies of such Person, whether through the ownership of Voting Stock, by contract or otherwise.

"Affiliate Assumption Agreement" means an agreement substantially in the form of Exhibit E hereto.

"Affiliate Guarantors" means each of Foods Holdings, Wise Holdings and, after any transfer of the Dairy Business to an Affiliate that executes an Affiliate Assumption Agreement, such Affiliate, in each case until it is released from its guarantee obligations under Article VII in accordance with the provisions of Section 7.05.

"Affiliate Notes" means the senior notes issued by any Affiliate Guarantor or any of its Subsidiaries to the Borrower as consideration for the transfer of certain assets.

"Agents" means, collectively, the Administrative Agent, the Lead Managing Agents and the Arrangers.

"Applicable Lending Office" means, with respect to each Lender, such Lender's Domestic Lending Office in the case of a Base Rate Advance and such Lender's Eurodollar Lending Office in the case of a Eurodollar Rate Advance and, in the case of a Competitive Bid Advance, the office of such Lender notified by such Lender to the Administrative Agent as its Applicable Lending Office with respect to such Competitive Bid Advance.

"Applicable Margin" means, as of any date, a percentage per annum determined by reference to the Performance Level in effect on such date as set forth below:

Performance	Applicable Margin for	Margin for Eurodollar

Level	Base Rate Advances	Rate Advances
Level 1	0%	.25%
Level 2	0%	.375%
Level 3	0%	.50%
Level 4	0%	.60%
Level 5	0%	.875%
Level 6	.125%	1.125%

"Applicable Percentage" means, as of any date, a percentage per annum determined by reference to the Performance Level in effect on such date as set forth below:

Performance Level	Applicable Percentage
Level 1	.10%
Level 2	.10%
Level 3	.10%
Level 4	.10%
Level 5	12.5%
Level 6	12.5%

"Arrangers" has the meaning specified in the recital of parties to this Agreement.

"Asset Proceeds" means the aggregate value received in connection with the sale of assets or the sale of options to acquire assets of the Affiliate Guarantors, the Borrower and any of their respective Subsidiaries (other than Excluded Asset Sales) after deducting therefrom only (a) the costs of sale including reasonable brokerage commissions, underwriting fees and discounts, legal fees, finder's fees, severance, legacy and similar costs and other similar fees and commissions, (b) the amount of taxes paid or estimated to be payable during the then current or next fiscal year in connection with or as a result of such transaction and reasonable reserves associated therewith (including such amounts paid or payable by direct or indirect partners,

members or other holders of direct or indirect equity or other ownership interests in the assets or options subject to such sale), (c) the amount of any Indebtedness related to such asset that, by the terms of such transaction, is required to be repaid upon such disposition and (d) any such other reasonable exit costs related to such transaction, in each case to the extent, but only to the extent, that the amounts so deducted are properly attributable to such transaction or to the asset that is the subject thereof.

"Assignment and Acceptance" means an assignment and acceptance entered into by a Lender and an Eligible Assignee, and accepted by the Administrative Agent, in accordance with Section 9.07 and in substantially the form of Exhibit C hereto.

2.19(d). "Assuming Lender" has the meaning specified in Section

2.18(c). "Assumption Agreement" has the meaning specified in Section

"Attributable Share" means (a) with respect to any Person of which an Obligated Party directly or indirectly owns or controls up to 50% of the equity interests, 0%, (b) with respect to any Person of which an Obligated Party directly or indirectly owns or control more than 50% but less than 90% of the equity interests, such percentage equity interest directly or indirectly owned or controlled and (c) with respect to any Person of which an Obligated Party directly or indirectly owns or controls 90% or more of the equity interests, 100%.

"Bank" has the meaning specified in the recital of parties to this Agreement.

"Base Rate" means a fluctuating interest rate per annum in effect from time to time, which rate per annum shall at all times be equal to the highest of:

(a) the rate of interest announced publicly by Citibank in New York, New York, from time to time, as Citibank's base rate;

(b) the sum (adjusted to the nearest 1/4 of 1% or, if there is no nearest 1/4 of 1%, to the next higher 1/4 of 1%) of (i) 1/2 of 1% per annum, plus

(ii) the rate obtained by dividing (A) the latest three-week moving average of secondary market morning offering rates in the United States for three-month certificates of deposit of major United States money market banks, such three-week moving average (adjusted to the basis of a year of 360 days) being determined weekly on each Monday (or, if such day is not a Business Day, on the next succeeding Business Day) for the three-week period ending on the previous Friday by Citibank on the basis of such rates reported by certificate of deposit dealers to and published by the Federal Reserve Bank of New York or, if such publication shall be suspended or terminated, on the basis of quotations for such rates received by Citibank from three New York certificate of deposit dealers of recognized standing selected by Citibank, by (B) a percentage equal to 100% minus the average of the daily percentages specified during such three-week period by the Board of Governors of the Federal Reserve System (or any successor) for determining the maximum reserve requirement (including, but not limited to, any emergency, supplemental or other marginal reserve requirement) for Citibank with respect to liabilities consisting of or including (among other liabilities) three-month U.S. dollar non-personal time deposits in the United States, plus (iii) the average during such three-week period of the annual assessment rates reasonably estimated by Citibank for determining the then current annual assessment payable by Citibank to the Federal Deposit Insurance Corporation (or any successor) for insuring U.S. dollar deposits of Citibank in the United States; and

(c) 1/2 of one percent per annum above the Federal Funds Rate.

"Base Rate Advance" means an Advance that bears interest as provided in Section 2.08(a)(i).

"Borden Holdings" means Borden Holdings, Inc., a Delaware corporation.

"Borden Holdings Notes" means the senior notes originally issued by Borden Holdings on September 29, 1995 in the original aggregate principal amount of \$614,368,775 in the form of Exhibit G hereto.

"Borrower" has the meaning specified in the recital of parties to this Agreement.

"Borrowing" means a Competitive Bid Borrowing or a Working Capital Borrowing.

"BT" means Bankers Trust Company.

"BT Securities" has the meaning specified in the recital of parties to this Agreement.

"Business Day" means a day of the year on which banks are not required or authorized to close in New York City and, if the applicable Business Day relates to any Eurodollar Rate Advances, on which dealings are carried on in the London interbank eurodollar market.

"Capital Expenditures" means for any period, the aggregate of all expenditures (whether paid in cash or accrued as liabilities and including in all events all amounts expended or capitalized under Capitalized Leases but excluding any amount representing capitalized interest) by the Affiliate Guarantors, the Borrower and their respective Subsidiaries during such period that, in conformity with GAAP, are or are required to be included as additions during such period to property, plant or equipment reflected in the Combined balance sheet of the Affiliate Guarantors, the Borrower and their respective Subsidiaries, provided that Capital Expenditures shall in any event exclude (a) expenditures made in connection with the replacement, substitution or restoration of assets (i) to the extent financed from insurance proceeds paid on account of the loss of or damage to the assets being replaced or restored or (ii) with awards of compensation arising from the taking by eminent domain or condemnation of the assets being replaced, (b) the purchase price of equipment that is purchased simultaneously with the trade-in of existing equipment to the extent that the gross amount of such purchase price is reduced by the credit granted by the seller of such equipment for the equipment being traded in at such time and (c) the purchase of plant, property and equipment made within 270 days of the sale of a similar asset.

"Capitalized Leases" has the meaning specified in clause (e) of the definition of Debt.

"Cash Equivalents" means (i) securities issued or unconditionally guaranteed by the United States Government or any agency or instrumentality thereof, in each case having maturities of not more than twelve months from the date of acquisition thereof; (ii) securities issued by any state of the United States of America or any political subdivision of any such state or any public instrumentality thereof having maturities of not more than twelve months from the date of acquisition thereof and, at the time of acquisition, having the highest rating generally obtainable from either S&P or Moody's (or, if at any time neither S&P nor Moody's shall be rating such obligations, then from another nationally recognized rating service); (iii) commercial paper issued by any Lender or any bank holding company owning any Lender; (iv) commercial paper maturing no more than twelve months after the date of creation thereof and, at the time of acquisition, having a rating of at least A-1 or P-1 from either S&P or Moody's (or, if at any time neither S&P nor Moody's shall be rating such obligations, then an equivalent rating from another nationally recognized rating service); (v) domestic and eurodollar certificates of deposit or bankers' acceptances maturing no more than one year after the date of acquisition thereof issued by any Lender or any other bank having combined capital and surplus of not less than \$250,000,000 in the case of domestic banks and \$100,000,000 (or the dollar equivalent thereof) in the foreign banks; (vi) repurchase agreements with a term of not more than seven days for underlying securities of the type described in clauses (i), (ii) and (v) above entered into with any bank meeting the qualifications specified in clause (v) above or securities dealers of recognized national standing; and (vii) other customarily utilized high quality instruments in countries where the Borrower's or any Affiliate Guarantor's foreign Subsidiaries are located.

"Chase" means The Chase Manhattan Bank.

"Chase Securities" has the meaning specified in the recital of parties to this Agreement.

"Citibank" has the meaning specified in the recital of parties to this Agreement.

"Combined" refers to the combination of accounts in accordance with GAAP.

"Commitment" means, with respect to any Lender at any time, the amount set forth opposite such Lender's name on Schedule I hereto under the caption "Commitment" or, if such Lender has become a Lender hereunder pursuant to an Assumption Agreement, the amount set forth as the Commitment of such Lender in such Assumption Agreement or, if such Lender has entered into one or more Assignment and Acceptances, the amount set forth for such Lender in the Register maintained by the Administrative Agent pursuant to Section 9.07(c) as such Lender's "Commitment," as such amount may be reduced pursuant to Sections 2.05 and 2.06.

"Commitment Date" has the meaning specified in Section 2.19(b).

"Commitment Increase" has the meaning specified in Section 2.19(a).

"Competitive Bid Advance" means an advance by a Lender to the Borrower as part of a Competitive Bid Borrowing resulting from the auction bidding procedure described in Section 2.03 and refers to a Fixed Rate Advance or a LIBO Rate Advance.

"Competitive Bid Borrowing" means a borrowing consisting of simultaneous Competitive Bid Advances from each of the Lenders whose offer to make one or more Competitive Bid Advances as part of such borrowing has been accepted under the auction bidding procedure described in Section 2.03.

"Competitive Bid Note" means the promissory note of the Borrower payable to the order of the Administrative Agent for the benefit of each Lender making a Competitive Bid Advance, in substantially the form of Exhibit A-3 hereto, evidencing the indebtedness of the Borrower to the Lenders resulting from Competitive Bid Advances made by the Lenders.

"Competitive Bid Register" has the meaning specified in Section 2.03(a)(vi).

"Confidential Information" means information that the Borrower or any Affiliate Guarantor furnishes to any Agent or any Lender in a writing designated as confidential, but does not include any such information that is or becomes generally available to the public or that is or becomes



available to such Agent or such Lender from a source other than the Borrower or any Affiliate Guarantor.

"Consenting Lender" has the meaning specified in Section 2.18(c).

"Consolidated" refers to the consolidation of accounts in accordance with GAAP.

"Conversion," "Convert" and "Converted" each refer to a conversion of Advances of one Type into Advances of the other Type pursuant to Section 2.10 or 2.11.

"Credit Suisse First Boston" has the meaning specified in the recital of parties to this Agreement.

"Dairy Business" means the Dairy business of the Borrower as reflected in the total adjusted balance sheet and statements of income and cash flows of Meadow Gold Dairies West as of December 31, 1996, with such changes as are related to the ordinary course of the Borrower's Dairy business and including any additions to such business permitted hereunder.

"Debt" of any Person means, without duplication, (a) all indebtedness of such Person for borrowed money, (b) all obligations of such Person for the deferred purchase price of property or services (other than trade payables and accrued expenses arising in the ordinary course of business), (c) all obligations of such Person evidenced by notes, bonds, debentures or other similar instruments, (d) all obligations of such Person created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property), (e) all obligations of such Person as lessee under leases that have been, in accordance with GAAP, recorded as capital leases ("Capitalized Leases") and (f) all Debt referred to in clauses (a) through (e) above secured by any Lien on property owned by such Person, even though such Person has not assumed or become liable for the payment of such Debt, but only to the extent that, in accordance with GAAP, such Debt would be reflected on the financial statements of such Person.

"Default" means any Event of Default or any event that would constitute an Event of Default but for the requirement that notice be given or time elapse or both.

"Defaulted Advance" means, with respect to any Lender at any time, the amount of any Advance required to be made by such Lender to the Borrower pursuant to Section 2.01 at or prior to such time which has not been so made as of such time; provided, however, any Advance made by the Administrative Agent for the account of such Lender pursuant to Section 2.02(d) shall not be considered a Defaulted Advance even if, at such time, such Lender shall not have reimbursed the Administrative Agent therefor as provided in Section 2.02(d). In the event that a portion of a Defaulted Advance shall be deemed made pursuant to Section 2.16(a), the remaining portion of such Defaulted Advance shall be considered a Defaulted Advance originally required to be made pursuant to Section 2.01 on the same date as the Defaulted Advance so deemed made in part.

"Defaulted Amount" means, with respect to any Lender at any time, any amount required to be paid by such Lender to the Administrative Agent or any other Lender hereunder or under any other Loan Document at or prior to such time which has not been so paid as of such time, including, without limitation, any amount required to be paid by such Lender to (a) the Administrative Agent pursuant to Section 2.02(d) to reimburse the Administrative Agent for the amount of any Advance made by the Administrative Agent for the account of such Lender, (b) any other Lender pursuant to Section 2.14 to purchase any participation in Advances owing to such other Lender and (c) the Administrative Agent pursuant to Section 8.05 to reimburse the Administrative Agent for such Lender's ratable share of any amount required to be paid by the Lenders to the Administrative Agent as provided therein. In the event that a portion of a Defaulted Amount shall be deemed paid pursuant to Section 2.16(b), the remaining portion of such Defaulted Amount shall be considered a Defaulted Amount originally required to be made hereunder or under any other Loan Document on the same date as the Defaulted Amount so deemed paid in part.

"Defaulting Lender" means, at any time, any Lender that, at such time, (a) owes a Defaulted Advance or a Defaulted Amount or (b) shall take or be the subject of any action or proceeding of a type described in Section 6.01(f).

"Domestic Lending Office" means, with respect to any Lender, the office of such Lender specified as its "Domestic Lending Office" opposite its name on Schedule I hereto or in the Assumption Agreement or the Assignment and Acceptance, as the case may be, pursuant to which it became a Lender, or such other office of such Lender as such Lender may from time to time specify to the Borrower and the Administrative Agent.

"EBITDA" means, for any period, net income (or net loss) plus the sum, without duplication, of (a) Net Interest Expense, (b) income tax expense, (c) depreciation expense, (d) amortization expense, (e) extraordinary or unusual losses included in net income (net of taxes to the extent not already deducted in determining such losses and net of extraordinary or unusual gains included in net income) including, without limitation, cumulative effects of accounting changes, discontinued operations, restructuring charges and non-cash charges, (f) amortization of deferred financing fees and debt discount, (g) other non-cash charges, (h) gains or losses on asset sales (including sales of accounts receivable), (i) severance and similar expenses, (j) dividends accrued on securities other than common stock, in each case determined in accordance with GAAP for such period and (k) any deduction from such net income for minority interests held by management for such period.

"Effective Date" has the meaning specified in Section 3.01.

"Eligible Assignee" means any of (i) a commercial bank organized under the laws of the United States, or any State thereof, and having a combined capital and surplus of at least \$250,000,000; (ii) a savings and loan association or savings bank organized under the laws of the United States, or any State thereof, and having a combined capital and surplus of at least \$250,000,000; (iii) a commercial bank organized under the laws of any other country that is a member of the OECD or has concluded special lending arrangements with the International Monetary Fund associated with its General Arrangements to Borrow, or a political subdivision of any such country, and having a combined capital and surplus of at least \$250,000,000, so long as such bank is acting through a branch or agency located in the United States or in the country in which it is organized or another country that is described in this clause (iii); (iv) the central bank of any country that is a member of the

OECD; and (v) a finance company, insurance company or other financial institution or fund (whether a corporation, partnership, trust or other entity) that is engaged in making, purchasing or otherwise investing in commercial loans in the ordinary course of its business and having a combined capital and surplus of at least \$100,000,000, in each case as approved by the Arrangers and the Borrower, such approval not to be unreasonably withheld or delayed; provided, however, that an Affiliate or Subsidiary of the Borrower shall not qualify as an Eligible Assignee under this definition.

"Environmental Claims" means any and all administrative, regulatory or judicial actions, suits, demands, demand letters, claims, liens, notices of non-compliance or violation, investigations or proceedings relating in any way to any Environmental Law (hereafter "Claims") or any permit issued under any such law, including without limitation (a) any and all Claims by governmental or regulatory authorities for enforcement, cleanup, removal, response, remedial or other actions or damages pursuant to any applicable Environmental Law and (b) any and all Claims by any third party seeking damages, contribution, indemnification, cost recovery, compensation or injunctive relief resulting from Hazardous Materials or arising from alleged injury or threat or injury to health, safety or the environment.

"Environmental Law" means any federal, state, provincial or local statute, law, rule, regulation, ordinance, code, policy or rule of common law now or hereafter in effect and in each case as amended, and any judicial or administrative interpretation thereof, including any judicial or administrative order, consent, decree or judgment, relating to the environment, health, safety or Hazardous Materials.

"Equity Proceeds" means gross proceeds received by any Affiliate Guarantor, the Borrower or any of their respective Subsidiaries from (a) the sale or issuance of any equity security of such Affiliate Guarantor, the Borrower or such Subsidiary whether by means of any public offering or private placement or (b) cash capital contributions to the Borrower or such Affiliate Guarantor from time to time.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended from time to time, and the regulations promulgated and rulings issued thereunder.

"ERISA Affiliate" means each person (as defined in Section 3(9) of ERISA) which together with the Borrower, any Affiliate Guarantor or any Subsidiary of the Borrower or any Affiliate Guarantor would be deemed to be a "single employer" within the meaning of Section 414 (b), (c), (m) or (o) of the Internal Revenue Code.

"Eurocurrency Liabilities" has the meaning specified in Regulation D of the Board of Governors of the Federal Reserve System, as in effect from time to time.

"Eurodollar Lending Office" means, with respect to any Lender, the office of such Lender specified as its "Eurodollar Lending Office" opposite its name on Schedule I hereto or in the Assumption Agreement or the Assignment and Acceptance, as the case may be, pursuant to which it became a Lender (or, if no such office is specified, its Domestic Lending Office), or such other office of such Lender as such Lender may from time to time specify to the Borrower and the Administrative Agent.

"Eurodollar Rate" means, for any Interest Period for each Eurodollar Rate Advance comprising part of the same Borrowing, an interest rate per annum equal to the rate per annum obtained by dividing (a) the average (rounded upward to the nearest whole multiple of 1/16 of 1% per annum, if such average is not such a multiple) of the rate per annum at which deposits in U.S. dollars are offered by the principal office of each of the Reference Banks in London, England to prime banks in the London interbank market at 11:00 A.M. (London Time) two Business Days before the first day of such Interest Period in an amount substantially equal to such Reference Bank's Eurodollar Rate Advance comprising part of such Borrowing to be outstanding during such Interest Period and for a period equal to such Interest Period by (b) a percentage equal to 100% minus the Eurodollar Rate Reserve Percentage for such Interest Period. The Eurodollar Rate for any Interest Period for each Eurodollar Rate Advance comprising part of the same Borrowing shall be determined by the Administrative Agent on the basis of applicable rates furnished to and received by the Administrative Agent from the Reference Banks two Business Days before the first day of such Interest Period.

"Eurodollar Rate Advance" means an Advance that bears interest as provided in Section 2.08(a)(ii).

"Eurodollar Rate Reserve Percentage" for any Interest Period for all Eurodollar Rate Advances comprising part of the same Borrowing means the reserve percentage if and to the extent actually applicable two Business Days before the first day of such Interest Period under regulations issued from time to time by the Board of Governors of the Federal Reserve System (or any successor) for determining the reserve requirement (including, without limitation, any emergency, supplemental or other marginal reserve requirement) for each Lender with respect to liabilities or assets consisting of or including Eurocurrency Liabilities (or with respect to any other category of liabilities that includes deposits by reference to which the interest rate on Eurodollar Rate Advances is determined) having a term equal to such Interest Period.

"Events of Default" has the meaning specified in Section 6.01.

"Excluded Asset Sales" means (i) sales of inventory or other assets (including, without limitation, worn out or obsolete equipment) in the ordinary course of business, (ii) sales of accounts receivable pursuant to Section 5.02(d) and (iii) sales of plant, property and equipment to the extent that the proceeds thereof are used to purchase a similar asset within 270 days of such sale.

"Existing Credit Agreement" means the Credit Agreement dated as of December 15, 1994, Amended and Restated as of May 7, 1996 among the Borrower, Foods Holdings, Wise Holdings, the banks named therein, Citibank, as administrative agent, BT Securities, Chase Securities, Citicorp Securities and Credit Suisse, as arrangers, BT Securities and Chase Securities, as co-syndication agents, and Credit Suisse, as issuing bank and documentation agent, as amended prior to the date hereof.

"Existing Indebtedness" means Indebtedness of the Borrower and its Subsidiaries outstanding on the date of the Existing Credit Agreement.

"Extension Date" has the meaning specified in Section 2.18(b).

"Facility" means, at any time, the aggregate amount of the Lenders' Commitments at such time.

"Fair Market Value" means, (a) with respect to any asset or Option sold to any Person that is an Affiliate of any Obligated Party for consideration of \$10,000,000 or more, the fair market value of such asset or Option as determined by the Board of Directors of the Borrower and (b) with respect to any other asset sold for consideration of \$10,000,000 or more or Option, the value that the Board of Directors of the Person owning such asset or the stock or assets subject to such Option determines to be the fair market value of such asset or Option; provided, in each case, that (i) the consideration so determined to equal such fair market value may include notes or other evidence of indebtedness and (ii) the fair market value of Options with respect to the issuance of Options on assets to be held by Borden Foods Holdings Corporation and its Subsidiaries will be represented by Borden Holdings Notes in an aggregate principal amount of up to \$95,000,000, unless, subject to Section 9.11, the Borrower shall have obtained an appraisal of the fair market value of such Option from a nationally recognized investment banker selected by the Borrower.

"Federal Funds Rate" means, for any period, a fluctuating interest rate per annum equal for each day during such period to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers, as published for such day (or, if such day is not a Business Day, for the next preceding Business Day) by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a Business Day, the average of the quotations for such day for such transactions received by the Administrative Agent from three Federal funds brokers of recognized standing selected by it.

"Five-Year Credit Agreement" means the Credit Agreement dated as of December 15, 1994, Amended and Restated as of July 14, 1997 among the Borrower, Foods Holdings, Wise Holdings, the banks named therein, Citibank, as administrative agent and swing line bank, BT Securities, Chase Securities, Citicorp Securities and Credit Suisse First Boston, as arrangers, BT Securities and Chase Securities, as co-syndication agents, and Credit Suisse First Boston, as issuing bank and documentation agent, as amended, supplemented or otherwise modified from time to time.

"Fixed Rate Advances" has the meaning specified in Section 2.03(a)(i).

"Foods Business" means the business of Foods Holdings and its Subsidiaries.

"GAAP" has the meaning specified in Section 1.03.

"Guaranteed Obligations" has the meaning specified in Section 7.01.

"Hazardous Materials" means (a) petroleum or petroleum products, radioactive materials, asbestos in any form that is or could become friable, urea formaldehyde foam insulation, transformers or other equipment that contained electric fluid containing levels of polychlorinated biphenyls and radon gas, (b) any chemicals, materials or substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous wastes," "restricted hazardous wastes," "toxic substances," "toxic pollutants," "contaminants" or "pollutants," or words of similar import, under any applicable Environmental Law and (c) any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any governmental authority.

"Hedge Agreements" means interest rate swap, cap or collar agreements, interest rate future or option contracts, currency swap agreements, currency future or option contracts and other similar agreements.

"Increase Date" has the meaning specified in Section 2.19(b).

"Increasing Lender" has the meaning specified in Section 2.19(a).

"Indebtedness" of any Person means, without duplication, (a) all Debt of such Person, (b) all obligations, contingent or otherwise, of such Person under acceptance, letter of credit or similar facilities, (c) all obligations of such Person in respect of Hedge Agreements and (d) all Indebtedness of others referred to in clauses (a) through (c) above guaranteed directly or indirectly in any manner by such Person, or in effect guaranteed directly or indirectly by such Person through an



agreement (i) to pay or purchase such Indebtedness or to advance or supply funds for the payment or purchase of such Indebtedness, (ii) to purchase, sell or lease (as lessee or lessor) property, or to purchase or sell services, primarily for the purpose of enabling the debtor to make payment of such Indebtedness or to assure the holder of such Indebtedness against loss, (iii) to supply funds to or in any other manner invest in the debtor (including any agreement to pay for property or services irrespective of whether such property is received or such services are rendered) or (iv) otherwise to assure a creditor against loss; provided, however, that amount so guaranteed shall not include endorsements of instruments for deposit or collection in the ordinary course of business. The amount of any such guarantee obligation shall be deemed to be an amount equal to the stated or determinable amount of the primary obligation in respect of which such guarantee obligation is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof (assuming such Person is required to perform thereunder) as determined by such Person in good faith.

"Indemnified Party" has the meaning specified in Section 9.04(b).

"Information Memorandum" means the information memorandum dated November 16, 1994 used by the Arrangers in connection with the syndication of the Commitments.

"Interest Period" means, for each Eurodollar Rate Advance comprising part of the same Borrowing, the period commencing on the date of such Eurodollar Rate Advance or the date of the Conversion of any Base Rate Advance into such Eurodollar Rate Advance, and ending on the last day of the period selected by the Borrower pursuant to the provisions below and, thereafter, each subsequent period commencing on the last day of the immediately preceding Interest Period and ending on the last day of the period selected by the Borrower pursuant to the provisions below. The duration of each such Interest Period shall be one, two, three, six or, to the extent available in the reasonable judgment of the Administrative Agent, nine or twelve months, as the Borrower may, upon notice received by the Administrative Agent not later than 11:00 A.M. (New York City time) on the third Business Day prior to the first day of such Interest Period, select; provided, however, that:

(a) the Borrower may not select any Interest Period that ends after scheduled Revolver Termination Date then in effect or, if the Advances have been converted to a term loan pursuant to Section 2.04 prior to the time of such selection, that ends after the Maturity Date;

(b) Interest Periods commencing on the same date for Eurodollar Rate Advances comprising part of the same Borrowing shall be of the same duration;

(c) whenever the last day of any Interest Period would otherwise occur on a day other than a Business Day, the last day of such Interest Period shall be extended to occur on the next succeeding Business Day, provided, however, that, if such extension would cause the last day of such Interest Period to occur in the next following calendar month, the last day of such Interest Period shall occur on the next preceding Business Day; and

(d) whenever the first day of any Interest Period occurs on a day of an initial calendar month for which there is no numerically corresponding day in the calendar month that succeeds such initial calendar month by the number of months equal to the number of months in such Interest Period, such Interest Period shall end on the last Business Day of such succeeding calendar month.

"Internal Revenue Code" means the Internal Revenue Code of 1986, as amended from time to time, and the regulations promulgated and rulings issued thereunder.

"Investment Grade Rating" means the Borrower's long term senior unsecured public debt is rated at least BBB- by S&P or Baa3 by Moody's.

"KKR" has the meaning specified in Section 5.01(h).

"Lead Managing Agents" means BT, Chase, Citibank and Credit Suisse First Boston.

"Lenders" means the Banks listed on the signature pages hereof, each Assuming Lender that shall become a party hereto pursuant to Section 2.18 or Section 2.19 and each

Eligible Assignee that shall become a party hereto pursuant to Section 9.07.

"LIBO Rate Advances" has the meaning specified in Section 2.03(a)(i).

"Lien" means any lien, security interest or other charge or encumbrance of any kind, or any other type of preferential arrangement, including, without limitation, the lien or retained security title of a conditional vendor.

"Loan Documents" means this Agreement and the Notes, as the same may be amended, supplemented or otherwise modified from time to time.

"Margin Stock" has the meaning specified in Regulation U.

"Material Adverse Change" means any change in the business, condition (financial or otherwise), operations, performance or properties of the Affiliate Guarantors, the Borrower and their respective Subsidiaries taken as a whole that would materially adversely affect the ability of the Borrower or any Affiliate Guarantor to perform its obligations under this Agreement and the other Loan Documents to which it is a party (taken as a whole).

"Material Adverse Effect" means a circumstance or condition affecting the business, condition (financial or otherwise), operations, performance or properties of the Affiliate Guarantors, the Borrower and their respective Subsidiaries taken as a whole which would materially adversely affect (a) the ability of the Borrower and the Affiliate Guarantors, taken as a whole, to perform their obligations under this Agreement, the Notes and the other Loan Documents to which any of them is a party (taken as a whole) or (b) the rights and remedies of the Administrative Agent or any Lender under this Agreement and the other Loan Documents (taken as a whole).

"Material Subsidiary" means each Subsidiary of the Borrower or any Affiliate Guarantor now existing or hereafter acquired or formed by the Borrower or any Affiliate Guarantor which (x) for the most recent fiscal year of the Borrower and the Affiliate Guarantors, accounted for more than 3% of the Combined revenues of the Borrower and the Affiliate Guarantors, taken as a whole, or (y) as at

the end of such fiscal year, was the owner of more than 4% of the Combined assets of the Borrower and the Affiliate Guarantors, taken as a whole, in each case as shown on the Combined financial statements of the Affiliate Guarantors, the Borrower and their respective Subsidiaries for such fiscal year.

"Maturity Date" means the earlier of (a) July 13, 2002 and (b) the date of termination in whole of the aggregate Commitments pursuant to Section 2.05 or 6.01.

"Moody's" means Moody's Investors Service, Inc. or any successor by merger or consolidation to its business.

"Net Interest Expense" means, for any fiscal period of the Borrower, the aggregate of (a) interest expense on all Debt of the Affiliate Guarantors, the Borrower and their respective Subsidiaries, net of interest income, in accordance with GAAP (excluding, in any event, interest expense, if any, on overdue tax assessments and amortization of financing fees and debt discount) and (b) dividends required to be paid on Preferred Stock permitted by Section 5.02(f)(ii).

"Non-Consenting Lender" has the meaning specified in Section 2.18(b).

"Note" means the Competitive Bid Note or a Working Capital Note.

"Notice of Borrowing" has the meaning specified in Section 2.02(a).

"Notice of Competitive Bid Borrowing" has the meaning specified in Section 2.03(a).

"Obligated Parties" means the Borrower and, until it is released from its guarantee obligations under Article VII in accordance with the provisions of Section 7.05, each Affiliate Guarantor.

"OECD" means the Organization for Economic Cooperation and Development.

"Option Exercise Proceeds" means the aggregate value received in connection with the exercise of Options.

"Options" means the options acquired by Persons other than officers, directors and employees of the Affiliate Guarantors, the Borrower and their respective Subsidiaries to acquire stock or certain assets of the Affiliate Guarantors, the Borrower or their respective Subsidiaries.

"Other Taxes" has the meaning specified in Section 2.13(b).

"PBGC" means the Pension Benefit Guaranty Corporation or any successor thereof.

"Performance Level" means, as of any date of determination, the numerically lowest level set forth below as then in effect, as determined in accordance with the following provision of this definition:

- Level 1 Total Debt/EBITDA Ratio is less than 2.00:1.00;
- Level 2 Total Debt/EBITDA Ratio is 2.00:1.00 or greater but less than 2.50:1.00;
- Level 3 Total Debt/EBITDA Ratio is 2.50:1.00 or greater but less than 3.00:1.00;
- Level 4 Total Debt/EBITDA Ratio is 3.00:1.00 or greater but less than 3.50:1.00;
- Level 5 Total Debt/EBITDA Ratio is 3.50:1.00 or greater but less than 4:00:1.00;
- Level 6 Total Debt/EBITDA Ratio is 4:00:1.00 or greater;

provided, for purposes of this definition, the Performance Level shall be determined as at the end of each of the first three fiscal quarters of the Borrower and as of the end of the fiscal year of the Borrower, based on the relevant financial statements delivered pursuant to Section 5.03; changes in the Performance Level shall become effective on the date such financial statements are delivered to the Lenders and shall remain in effect until the next change to be effected pursuant to this definition.

"Permitted Liens" means (a) Liens for taxes, assessments or governmental charges or claims not yet due or

which are being contested in good faith and by appropriate proceedings for which appropriate reserves have been established in accordance with GAAP; (b) Liens in respect of property or assets of any Affiliate Guarantor, the Borrower or any of their respective Subsidiaries imposed by law which are incurred in the ordinary course of business, such as carriers', warehousemen's and mechanics' Liens and other similar Liens arising in the ordinary course of business, and which do not individually or in the aggregate have a Material Adverse Effect; (c) Liens on assets of any Affiliate Guarantor, the Borrower or any of their respective Subsidiaries existing on the date hereof securing Indebtedness in an aggregate principal amount not to exceed \$5,000,000 or arising pursuant to any of the Loan Documents; (d) Liens arising from judgments or decrees in circumstances not constituting an Event of Default under Section 6.01(g); (e) Liens incurred or deposits made in connection with workers' compensation, unemployment insurance and other types of social security, or to secure the performance of tenders, statutory obligations, surety and appeal bonds, bids, leases, government contracts, performance and return-of-money bonds and other similar obligations incurred in the ordinary course of business; (f) leases or subleases granted to others not interfering in any material respect with the business of the Affiliate Guarantors, the Borrower and their respective Subsidiaries taken as a whole; (g) ground leases in respect of real property on which facilities owned or leased by any Affiliate Guarantor, the Borrower or any of their respective Subsidiaries are located; (h) easements, rights-of-way, restrictions, minor defects or irregularities in title and other similar charges or encumbrances not interfering in any material respect with the business of the Affiliate Guarantors, the Borrower and their respective Subsidiaries taken as a whole; (i) any interest or title of a lessor or secured by a lessor's interest under any lease permitted by this Agreement; (j) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods; (k) Liens on goods the purchase price of which is financed by a documentary letter of credit issued for the account of any Affiliate Guarantor, the Borrower or any of their respective Subsidiaries where such Lien secures the obligations of such Affiliate Guarantor, the Borrower or such Subsidiaries in respect of such letter of credit to the extent permitted under Section 5.02(b); (l) Liens on assets permitted to be acquired hereunder; provided that such Liens were existing at the time of such acquisition and were not

created in anticipation thereof; and (m) Liens granted in connection with any foreign contract option, futures contract or similar agreement designed to protect any Affiliate Guarantor, the Borrower or any of their respective Subsidiaries from fluctuations in the price of commodities, provided that such Liens attach solely to the commodities which are the subject of such options, contracts or agreements.

"Person" means an individual, partnership, corporation (including a business trust), limited liability company, joint stock company, trust, unincorporated association, joint venture or other entity, or a government or any political subdivision or agency thereof.

"Plan" means any multiemployer or single-employer plan as defined in Section 4001 of ERISA and which is covered by Title IV of ERISA, which is maintained or contributed to (or to which there is an obligation to contribute), by any Affiliate Guarantor, the Borrower, any of their respective Subsidiaries or any ERISA Affiliate.

"Preferred Stock" means, with respect to any corporation, capital stock issued by such corporation that is entitled to a preference or priority over any other capital stock issued by such corporation upon any distribution of such corporation's assets, whether by dividend or upon liquidation.

"Pro Forma EBITDA" means, for any period, (a) the sum of (i) EBITDA, (ii) from and after the making of any investment or acquisition in or of an Acquired Entity during such period, the Obligated Parties' Attributable Share of the EBITDA of each Acquired Entity so invested in or acquired for such period (including the portion thereof accruing prior to the date of such acquisition or investment and determined as of the last day of such period) and (iii) an amount equal to 50% of the increase or decrease in EBITDA of such Acquired Entity that the Borrower in good faith projects will occur as a result of reasonably identifiable and supportable net cost savings or additional net costs that are projected to be realizable during such period by combining the operations of such Acquired Entity with the operations of the Borrower, an Affiliate Guarantor or any of their respective Subsidiaries; provided that, so long as such net cost savings or additional net costs are projected to be realizable at any time during such period it

shall be assumed, for purposes of projecting such pro forma increase or decrease in EBITDA of such Acquired Entity, that such net cost savings or additional net costs will be realizable during the entire such period; provided, further that any such pro forma increase or decrease in EBITDA of such Acquired Entity shall be without duplication of any net cost savings or additional net costs actually realized during such period and already included in clause (ii) above; minus (b) from and after the disposition outside of the ordinary course of business of any assets constituting a business unit or any Subsidiary, (i) the proportion of the EBITDA of such assets or Subsidiary so disposed of for cash consideration and (ii) with respect to any such period of determination ended on or after the last day of the next full fiscal quarter following the date of such disposition, the proportion of the EBITDA of such assets or Subsidiary so disposed of for consideration other than cash. For purposes of the foregoing, clauses (a)(ii) and (b) above shall not apply to any investment, acquisition or disposition made prior to December 31, 1996.

"Ratable Share" of any amount means, with respect to any Lender at any time, the product of (a) a fraction the numerator of which is the amount of such Lender's Commitment at such time and the denominator of which is the Facility at such time and (b) such amount.

"Real Property" of any Person means all of the right, title and interest of such Person in and to land, improvements and fixtures, including leaseholds.

"Receivables Financing Transaction" means any financing secured by or based on the sale or transfer of, accounts receivable of any Affiliate Guarantor, the Borrower or any of their respective Subsidiaries on terms and conditions reasonably satisfactory to the Required Lenders; provided that the aggregate program amount of Receivable Financing Transactions shall not exceed \$350,000,000.

"Redesign" means the restructuring of the businesses of the Borrower, as more fully described on Schedule II hereto.

"Redesign Documents" means Borden Holdings Notes held by the Borrower, each Option Agreement for stock in substantially the form of Exhibit K hereto, each Option Agreement for assets in substantially the form of Exhibit L hereto, each Conveyance and Transfer Agreement in



substantially the form of Exhibit I hereto and the Limited Partnership Agreement of BFC Investments, L.P. in substantially the form of Exhibit H hereto.

"Reference Banks" means BT, Chase, Citibank and Credit Suisse First Boston.

"Register" has the meaning specified in Section 9.07(c).

"Regulation U" means Regulation U of the Board of Governors of the Federal Reserve System, as in effect from time to time.

"Replacement Lender" has the meaning specified in Section 2.16.

"Reportable Event" means an event described in Section 4043(b) of ERISA with respect to a Plan as to which the 30-day notice requirement has not been waived by the PBGC.

"Required Lenders" means at any time Lenders having at least 51% of the Commitments or, if the Commitments have been terminated, Lenders owed or holding at least 51% of the aggregate principal amount of Advances outstanding at such time.

"Revolver Termination Date" means the earlier of (a) July 13, 1998, subject to the extension thereof pursuant to Section 2.18, and (b) the date of termination in whole of the aggregate Commitments pursuant to Section 2.05 or 6.01; provided, however, that the Revolver Termination Date of any Lender that is a Non-Consenting Lender to any requested extension pursuant to Section 2.18 shall be the Revolver Termination Date in effect immediately prior to the applicable Extension Date for all purposes of this Agreement.

"S&P" means Standard & Poor's Ratings Group or any successor by merger or consolidation to its business.

"Scheduled Debt" means Debt of the Borrower listed on Schedule 1.01 hereto, to the extent that such Debt matures or is payable on or before July 13, 2002 and any renewal, extension or refinancing thereof that does not increase the amount thereof that becomes due and payable on or before July 13, 2002.

"Senior Bank Facilities" means this Agreement and the Five-Year Credit Agreement.

"Subsidiary" of any Person shall mean and include (i) any corporation more than 50% of whose stock of any class or classes having by the terms thereof ordinary voting power to elect a majority of the directors of such corporation (irrespective of whether or not at the time stock of any class or classes of such corporation shall have or might have voting power by reason of the happening of any contingency) is at the time owned by such Person directly or indirectly through Subsidiaries and (ii) any partnership, association, joint venture or other entity in which such Person directly or indirectly through Subsidiaries has more than a 50% equity interest at the time.

"Taxes" has the meaning specified in Section 2.13(a).

"Term Loan Conversion Date" means the Revolver Termination Date on which all Advances outstanding on such date are converted into a term loan pursuant to Section 2.04.

"Term Loan Election" has the meaning specified in Section 2.04.

"Total Debt" means, on any date of determination, (a) Debt of the Affiliate Guarantors, the Borrower and their respective Subsidiaries described in clauses (a) through (e) of the definition of "Debt" herein minus (b) cash of the Affiliate Guarantors, the Borrower and their respective Subsidiaries at such date in excess of \$75,000,000.

"Total Debt/EBITDA Ratio" means the ratio determined as of the last day of each fiscal quarter for the twelve month period ended on such day of (a) Combined Total Debt of the Affiliate Guarantors, the Borrower and their Subsidiaries on such day to (b) to Combined Pro Forma EBITDA of the Affiliate Guarantors, the Borrower and their Subsidiaries for such period; provided, that for purposes of this definition, Total Debt of any Subsidiary of any Obligated Party shall be determined as such Obligated Party's Attributable Share of the Total Debt of such Subsidiary.

"Type" refers to the distinction between Advances bearing interest by reference to the Base Rate and Advances bearing interest by reference to the Eurodollar Rate.

"Unfunded Current Liability" of any Plan means the amount, if any, by which the present value of the accrued benefits under such Plan as of the close of its most recent plan year, based upon the actuarial assumptions which would be required to be used by such Plan's actuary in connection with the determination of such Plan's accrued benefits pursuant to its termination, exceeds the fair market value of the assets allocable thereto, determined in accordance with Section 412 of the Internal Revenue Code.

"Unused Commitment" means, with respect to any Lender at any time, (a) such Lender's Commitment at such time minus (b) the sum of (i) the aggregate principal amount of all Advances made by such Lender and outstanding at such time, plus, without duplication, (ii) such Lender's Ratable Share of the aggregate principal outstanding amount of Competitive Bid Advances.

"Voting Stock" means capital stock issued by a corporation, or equivalent interests in any other Person, the holders of which are ordinarily, in the absence of contingencies, entitled to vote for the election of directors (or persons performing similar functions) of such Person, even though the right so to vote has been suspended by the happening of such a contingency (but excluding in any event convertible or exchangeable Preferred Stock prior to conversion or exchange, as the case may be).

"Working Capital Advance" has the meaning specified in Section 2.01.

"Working Capital Borrowing" means a borrowing consisting of simultaneous Working Capital Advances of the same Type made by the Lenders.

"Working Capital Note" means a promissory note of the Borrower payable to the order of any Lender, in substantially the form of Exhibit A-2 hereto, evidencing the indebtedness of the Borrower to such Lender resulting from the Working Capital Advances made by such Lender.

SECTION 1.02. Computation of Time Periods. In this Agreement in the computation of periods of time from a specified

date to a later specified date, the word "from" means "from and including" and the words "to" and "until" each mean "to but excluding."

SECTION 1.03. Accounting Terms. All accounting terms not specifically defined herein shall be construed in accordance with generally accepted accounting principles ("GAAP").

## ARTICLE II

### AMOUNTS AND TERMS OF THE ADVANCES

SECTION 2.01. The Advances. Each Lender severally agrees, on the terms and conditions hereinafter set forth, to make advances ("Working Capital Advances") to the Borrower from time to time on any Business Day during the period from the date hereof until the Revolver Termination Date in an amount for each such Advance not to exceed such Lender's Unused Commitment on such Business Day. Each Working Capital Borrowing shall be in an aggregate amount not less than \$10,000,000 or an integral multiple of \$1,000,000 in excess thereof and shall consist of Working Capital Advances of the same Type made on the same day by the Lenders ratably according to their respective Commitments. Within the limits of each Lender's Unused Commitment in effect from time to time, the Borrower may borrow under this Section 2.01, prepay pursuant to Section 2.07 and reborrow under this Section 2.01.

SECTION 2.02. Making the Advances. (a) Except as otherwise provided in Section 2.02(b), each Borrowing shall be made on notice, given not later than 11:00 A.M. (New York City time) (i) on the third Business Day prior to the date of the proposed Borrowing in the case of Eurodollar Rate Borrowings and (ii) on the same Business Day in the case of Base Rate Borrowings, by the Borrower to the Administrative Agent, which shall give to each Lender prompt notice thereof by telex, telecopier or cable. Each such notice of a Borrowing (a "Notice of Borrowing") shall be by telephone, telex, telecopier or cable, confirmed immediately in writing, in substantially the form of Exhibit B hereto, specifying therein the requested (i) date of such Borrowing, (ii) Type of Advances comprising such Borrowing, (iii) aggregate amount of such Borrowing and (iv) in the case of a Borrowing consisting of Eurodollar Rate Advances, initial Interest Period for each such Advance. In the case of a proposed Borrowing comprised of Eurodollar Rate Advances, the Administrative Agent shall promptly notify each Lender of the

applicable interest rate under Section 2.08(a)(ii). Each Lender shall, before 12:00 noon (New York City time) on the date of such Borrowing, make available for the account of its Applicable Lending Office to the Administrative Agent at the Administrative Agent's Account, in same day funds, such Lender's ratable portion of such Borrowing in accordance with the respective Commitments of such Lender and the other Lenders. After the Administrative Agent's receipt of such funds and upon fulfillment of the applicable conditions set forth in Article III, the Administrative Agent will make such funds available to the Borrower.

(b) Anything in subsection (a) above to the contrary notwithstanding, (i) the Borrower may not select Eurodollar Rate Advances for the initial Borrowing hereunder or for any Borrowing if the aggregate amount of such Borrowing is less than \$10,000,000 or if the obligation of the Lenders to make Eurodollar Rate Advances shall then be suspended pursuant to Section 2.11 and (ii) the Working Capital Advances made on any date as Eurodollar Rate Advances may not be outstanding as part of more than 20 separate Working Capital Borrowings.

(c) Each Notice of Borrowing shall be irrevocable and binding on the Borrower. In the case of any Borrowing that the related Notice of Borrowing specifies is to be comprised of Eurodollar Rate Advances, the Borrower shall indemnify each Lender, after receipt of a written request by such Lender (which request shall set forth in reasonable detail the basis for such amount) against any loss, cost or expense actually incurred by such Lender (excluding loss of anticipated profits) as a result of any failure to fulfill on or before the date specified in such Notice of Borrowing for such Borrowing the applicable conditions set forth in Article III, including, without limitation, any loss, cost or expense reasonably incurred by reason of the liquidation or reemployment of deposits or other funds acquired by such Lender to fund the Advance to be made by such Lender as part of such Borrowing when such Advance, as a result of such failure, is not made on such date.

(d) Unless the Administrative Agent shall have received notice from a Lender prior to the time of any Borrowing that such Lender will not make available to the Administrative Agent such Lender's ratable portion of such Borrowing, the Administrative Agent may assume that such Lender has made such portion available to the Administrative Agent on the date of such Borrowing in accordance with subsection (a) of this Section 2.02 and the Administrative Agent may, in reliance upon such

assumption, make available to the Borrower on such date a corresponding amount. If and to the extent that such Lender shall not have so made such ratable portion available to the Administrative Agent, such Lender and the Borrower severally agree to repay or pay to the Administrative Agent forthwith on demand such corresponding amount and to pay interest thereon, for each day from the date such amount is made available to the Borrower until the date such amount is repaid or paid to the Administrative Agent, at (i) in the case of the Borrower, the interest rate applicable at such time under Section 2.08 to Advances comprising such Borrowing and (ii) in the case of such Lender, the Federal Funds Rate. If such Lender shall pay to the Administrative Agent such corresponding amount, such amount so paid shall constitute such Lender's Advance as part of such Borrowing for purposes of this Agreement.

(e) The failure of any Lender to make the Advance to be made by it as part of any Borrowing shall not relieve any other Lender of its obligation, if any, hereunder to make its Advance on the date of such Borrowing, but no Lender shall be responsible for the failure of any other Lender to make the Advance to be made by such other Lender on the date of any Borrowing.

SECTION 2.03. The Competitive Bid Advances. (a) Each Lender severally agrees that the Borrower may make Competitive Bid Borrowings under this Section 2.03 from time to time on any Business Day during the period from the date hereof until the date occurring seven days prior to the Revolver Termination Date in the manner set forth below; provided that, following the making of each Competitive Bid Borrowing, no prepayment shall be required pursuant to Section 2.07(b)(i).

(i) The Borrower may request a Competitive Bid Borrowing under this Section 2.03 by delivering to the Administrative Agent, by telecopier or telex, confirmed immediately in writing, a notice of a Competitive Bid Borrowing (a "Notice of Competitive Bid Borrowing"), in substantially the form of Exhibit B-2 hereto, together with a processing fee of \$4,000 for each Notice of Competitive Bid Borrowing, specifying therein (v) the date of such proposed Competitive Bid Borrowing, (w) the aggregate amount of such proposed Competitive Bid Borrowing, (x) the maturity date for repayment of each Competitive Bid Advance to be made as part of such Competitive Bid Borrowing (which maturity date may not be earlier than the date occurring seven days after the date of such Competitive Bid Borrowing

or later than the Revolver Termination Date), (y) the interest payment date or dates relating thereto, and (z) any other terms to be applicable to such Competitive Bid Borrowing, not later than 10:00 A.M. (New York City time) (A) at least one Business Day prior to the date of the proposed Competitive Bid Borrowing, if the Borrower shall specify in the Notice of Competitive Bid Borrowing that the rates of interest to be offered by the Lenders shall be fixed rates per annum (the Advances comprising any such Competitive Bid Borrowing being referred to herein as "Fixed Rate Advances") and (B) at least four Business Days prior to the date of the proposed Competitive Bid Borrowing, if the Borrower shall instead specify in the Notice of Competitive Bid Borrowing the basis to be used by the Lenders in determining the rates of interest to be offered by them (the Advances comprising such Competitive Bid Borrowing being referred to herein as "LIBO Rate Advances"). The Administrative Agent shall in turn promptly notify each Lender of each request for a Competitive Bid Borrowing received by it from the Borrower by sending such Lender a copy of the related Notice of Competitive Bid Borrowing.

(ii) Each Lender may, if, in its sole discretion, it elects to do so, irrevocably offer to make one or more Competitive Bid Advances to the Borrower as part of such proposed Competitive Bid Borrowing at a rate or rates of interest specified by such Lender in its sole discretion, by notifying the Administrative Agent (which shall give prompt notice thereof to the Borrower), before 10:00 A.M. (New York City time) on the date of such proposed Competitive Bid Borrowing, in the case of a Competitive Bid Borrowing consisting of Fixed Rate Advances and three Business Days before the date of such proposed Competitive Bid Borrowing, in the case of a Competitive Bid Borrowing consisting of LIBO Rate Advances, of the minimum amount and maximum amount of each Competitive Bid Advance which such Lender would be willing to make as part of such proposed Competitive Bid Borrowing (which amounts may, subject to the proviso to the first sentence of this Section 2.03(a), exceed such Lender's Commitment), the rate or rates of interest therefor and such Lender's Applicable Lending Office with respect to such Competitive Bid Advance; provided that if the Administrative Agent in its capacity as a Lender shall, in its sole discretion, elect to make any such offer, it shall notify the Borrower of such offer before 9:00 A.M. (New York City time) on the date on which notice of such election is to be given to the Administrative Agent by the other Lenders. If

any Lender shall elect not to make such an offer, such Lender shall so notify the Administrative Agent, before 10:00 A.M. (New York City time) on the date on which notice of such election is to be given to the Administrative Agent by the other Lenders, and such Lender shall not be obligated to, and shall not, make any Competitive Bid Advance as part of such Competitive Bid Borrowing; provided that the failure by any Lender to give such notice shall not cause such Lender to be obligated to make any Competitive Bid Advance as part of such proposed Competitive Bid Borrowing.

(iii) The Borrower shall, in turn, before 11:00 A.M. (New York City time) on the date of such proposed Competitive Bid Borrowing, in the case of a Competitive Bid Borrowing consisting of Fixed Rate Advances and before 1:00 P.M. (New York City time) three Business Days before the date of such proposed Competitive Bid Borrowing, in the case of a Competitive Bid Borrowing consisting of LIBO Rate Advances, either:

(x) cancel such Competitive Bid Borrowing by giving the Administrative Agent notice to that effect, or

(y) accept one or more of the offers made by any Lender or Lenders pursuant to paragraph (ii) above, by giving notice to the Administrative Agent of the amount of each Competitive Bid Advance (which amount shall be equal to or greater than the minimum amount, and equal to or less than the maximum amount, notified to the Borrower by the Administrative Agent on behalf of such Lender for such Competitive Bid Advance pursuant to paragraph (ii) above) to be made by each Lender as part of such Competitive Bid Borrowing, and reject any remaining offers made by Lenders pursuant to paragraph (ii) above by giving the Administrative Agent notice to that effect.

(iv) If the Borrower notifies the Administrative Agent that such Competitive Bid Borrowing is cancelled pursuant to paragraph (iii)(x) above, the Administrative Agent shall give prompt notice thereof to the Lenders and such Competitive Bid Borrowing shall not be made.

(v) If the Borrower accepts one or more of the offers made by any Lender or Lenders pursuant to paragraph (iii)(y) above, the Administrative Agent shall in turn promptly



notify (A) each Lender that has made an offer as described in paragraph (ii) above, of the date and aggregate amount of such Competitive Bid Borrowing and whether or not any offer or offers made by such Lender pursuant to paragraph (ii) above have been accepted by the Borrower, (B) each Lender that is to make a Competitive Bid Advance as part of such Competitive Bid Borrowing, of the amount of each Competitive Bid Advance to be made by such Lender as part of such Competitive Bid Borrowing, and (C) each Lender that is to make a Competitive Bid Advance as part of such Competitive Bid Borrowing, upon receipt, that the Administrative Agent has received forms of documents appearing to fulfill the applicable conditions set forth in Article III. Each Lender that is to make a Competitive Bid Advance as part of such Competitive Bid Borrowing shall, before 12:00 noon (New York City time) on the date of such Competitive Bid Borrowing specified in the notice received from the Administrative Agent pursuant to clause (A) of the preceding sentence or any later time when such Lender shall have received notice from the Administrative Agent pursuant to clause (C) of the preceding sentence, make available for the account of its Applicable Lending Office to the Administrative Agent at the Administrative Agent's Account, in same day funds, such Lender's portion of such Competitive Bid Borrowing. Upon fulfillment of the applicable conditions set forth in Article III and after receipt by the Administrative Agent of such funds, the Administrative Agent will make such funds available to the Borrower at the Administrative Agent's address referred to in Section 9.02. Promptly after each Competitive Bid Borrowing the Administrative Agent will notify each Lender of the amount of such Competitive Bid Borrowing.

(vi) The Administrative Agent shall maintain at its address referred to in Section 9.02 a copy of each Notice of Competitive Bid Borrowing delivered pursuant to subsection (a)(i) above and a register for the recordation of the date, amount, maturity, interest rate, interest payment dates, other terms and Lender of each Competitive Bid Advance accepted by the Borrower from time to time pursuant to this subsection (a) (the "Competitive Bid Register"). The entries in the Competitive Bid Register shall be conclusive and binding for all purposes, absent demonstrable error, and the Borrower, the Administrative Agent and the Lenders may treat the entries recorded in the Competitive Bid Register as evidence of Competitive Bid Advances made pursuant to this Section 2.03. The Competitive Bid Register shall be

available for inspection by the Borrower, or by any Lender as to its Competitive Bid Advances, at any reasonable time and from time to time upon reasonable prior notice.

(b) Each Competitive Bid Borrowing shall be in an aggregate amount of \$10,000,000 or an integral multiple of \$1,000,000 in excess thereof and, following the making of each Competitive Bid Borrowing, the Borrower shall be in compliance with the limitation set forth in the proviso to the first sentence of subsection (a) above.

(c) Within the limits and on the conditions set forth in this Section 2.03, the Borrower may from time to time borrow under this Section 2.03, repay or prepay pursuant to subsection (d) below, and reborrow under this Section 2.03, provided that a Competitive Bid Borrowing shall not be made within three Business Days of the date of any other Competitive Bid Borrowing.

(d) The Borrower shall repay to the Administrative Agent for the account of each Lender that has made a Competitive Bid Advance, on the maturity date of each Competitive Bid Advance (such maturity date being that specified by the Borrower for repayment of such Competitive Bid Advance in the related Notice of Competitive Bid Borrowing delivered pursuant to subsection (a)(i) above and recorded in the Competitive Bid Register with respect to such Competitive Bid Advance), the then unpaid principal amount of such Competitive Bid Advance.

(e) The Borrower shall pay interest on the unpaid principal amount of each Competitive Bid Advance from the date of such Competitive Bid Advance to the date the principal amount of such Competitive Bid Advance is repaid in full, at the rate of interest for such Competitive Bid Advance specified by the Lender making such Competitive Bid Advance in its notice with respect thereto delivered pursuant to subsection (a)(ii) above, payable on the interest payment date or dates specified by the Borrower for such Competitive Bid Advance in the related Notice of Competitive Bid Borrowing delivered pursuant to subsection (a)(i) above, as recorded in the Competitive Bid Register with respect to such Competitive Bid Advance.

(f) The indebtedness of the Borrower resulting from each Competitive Bid Advance made to the Borrower as part of a Competitive Bid Borrowing shall be evidenced by a master Competitive Bid Note of the Borrower payable to the order of the Administrative Agent for the benefit of the Lender making such Competitive Bid Advance.

SECTION 2.04. Repayment. The Borrower shall, subject to the next succeeding sentence, repay to each Lender on the Revolver Termination Date the aggregate principal amount of the Advances owing to such Lender on such date. The Borrower may, upon not less than 15 days' notice to the Administrative Agent, elect (the "Term Loan Election") to convert all of the Advances outstanding on the Revolver Termination Date in effect at such time into a term loan which the Borrower shall repay in full ratably to the Lenders on the Maturity Date; provided that no Default has occurred and is continuing on the date of notice of the Term Loan Election or on the Term Loan Conversion Date on which such election is to be effected.

SECTION 2.05. Reduction of the Commitments. (a) Optional. The Borrower may, upon at least one Business Day's notice to the Administrative Agent, terminate in whole or reduce in part the Unused Commitments; provided, however, that each partial reduction of the Commitments (i) shall be in an aggregate amount of \$10,000,000 or an integral multiple of \$1,000,000 in excess thereof and (ii) shall be made ratably among the Lenders in accordance with their Commitments.

(b) Mandatory. On the Revolver Termination Date, if the Borrower has made the Term Loan Election in accordance with Section 2.04 prior to such date, and from time to time thereafter upon each prepayment of the Advances, the aggregate Commitments of the Lenders under this Agreement shall be automatically and permanently reduced on a pro rata basis by an amount equal to the amount by which the aggregate Commitments of the Lenders under this Agreement immediately prior to such reduction exceeds the aggregate unpaid principal amount of the Advances outstanding at such time.

SECTION 2.06. Application of Certain Proceeds. (a) The Borrower shall reduce the aggregate Commitments under the Senior Bank Facilities or pay or prepay Scheduled Debt by an amount equal to, and upon receipt of, Asset Proceeds and Option Exercise Proceeds by the Affiliate Guarantors, the Borrower and their respective Subsidiaries other than the following, without duplication:

(i) Asset Proceeds paid to the Borrower for the initial transfer of the Dairy Business to an Affiliate and its Subsidiaries at the time, if any, such Affiliate becomes an Affiliate Guarantor;

(ii) Asset Proceeds from, without duplication, (A) the sale of the Borrower's Dairy Business, (B) the sale of Foods Businesses other than the pasta, soups and related businesses, (C) Option Exercise Proceeds, (D) an amount equal to the portion, if any, of the amount of the excess of (x) in the case of the exercise of an Option with a substantially contemporaneous sale of the stock or assets the subject of such Option, the actual sale price of such stock or assets or, in each other case, the fair market value (as determined by the board of directors of the Borrower) over (y) the exercise price of such Options (the "Option Differential"), which is contributed to the equity of the Borrower or the Affiliate Guarantors, upon the exercise of such Option, (E) an amount equal to the portion, if any, of the amount of the appreciation of trademarks the benefit of which accrues to Borden Foods Holdings, L.L.C. (the "Trademark Appreciation") which is contributed to the equity of the Borrower or the Affiliate Guarantors, upon the sale of any trademarks used in the Foods Business, (F) an amount equal to the portion, if any, of the Affiliate Guarantor Stock Sale Proceeds (as defined in Section 2.06(d)) contributed as equity to the Borrower or the Affiliate Guarantors and (G) the sale of \$1,000,000,000 of assets not otherwise described in this clause (iii) and not including consideration described in clauses (b), (c) and (d) below;

(iii) Asset Proceeds in the form of notes, property and other consideration other than cash received other than pursuant to transactions described in clause (ii) above from entities that are not Affiliates of the Borrower or the Affiliate Guarantors, to the extent that the amount thereof outstanding at any time (after giving effect to monetization, payment or other cash realization thereof) does not exceed \$200,000,000;

(iv) Asset Proceeds from the sale, transfer or other disposition of non-cash consideration to the extent an amount equal to such non-cash consideration was required to be and was applied in accordance with this Section 2.06(a) (including pursuant to the exceptions described therein);

(v) Asset Proceeds from the sale, transfer or other disposition of assets between or among (x) the Borrower and its Subsidiaries or (y) the Affiliate Guarantors and their respective Subsidiaries (including as an Affiliate

Guarantor, for purposes of this clause (vi), the Dairy Business); and

(vi) Asset Proceeds from sales of stock of, or equity interests in, any Affiliate Guarantor to any Obligated Party or any Subsidiary of any Obligated Party, any Subsidiary thereof or any employee of any Obligated Party or any Subsidiaries by the exercise of stock options or otherwise, provided that the aggregate amount of such sales made to such employees (other than in respect of the exercise of stock options issued to employees before the Restatement Date) with respect to any Affiliate Guarantor or Subsidiary of any Obligated Party shall not exceed the greater of \$10,000,000 and 15% of the equity interests of such Affiliate Guarantor or Subsidiary of an Obligated Party.

(vii) Asset Proceeds applied pursuant to clauses (b), (c) and (d) below, to the extent that Commitments under the Senior Bank Facilities have been reduced or Scheduled Debt has been paid or prepaid pursuant to clauses (b), (c), (d) and (e) below, as applicable.

(b) The Borrower shall reduce the aggregate Commitments under the Senior Bank Facilities or pay or prepay Scheduled Debt upon receipt of Option Exercise Proceeds, by an amount equal to the portion of the Option Differential not contributed to the equity of the Borrower or the Affiliate Guarantors.

(c) The Borrower shall reduce the aggregate Commitments under the Senior Bank Facilities or pay or prepay Scheduled Debt upon the sale of any trademarks the benefit of which sale accrues to Borden Foods Holdings, L.L.C., by an amount equal to the portion of the Trademark Appreciation not contributed to the equity of the Borrower or the Affiliate Guarantors.

(d) The Borrower shall reduce the aggregate Commitments under the Senior Bank Facilities or pay or prepay Scheduled Debt on the date of each Guarantee Release Event (as defined in Section 7.05) in an amount equal to the portion of the "Affiliate Guarantor Stock Sale Proceeds" (as defined below) in respect thereof not contributed to the equity of the Borrower or the Affiliate Guarantors. "Affiliate Guarantor Stock Sale Proceeds" means, in respect of any Affiliate Guarantor, (i) in the event of a sale of all of the common stock of such Affiliate Guarantor, the amount of Asset Proceeds of such sale received by

the holders of such common stock (or by such Affiliate Guarantor if a primary issuance and sale) or (ii) in the event of a sale of less than all of the common stock of such Affiliate Guarantor, the amount equal to the product of (x) the Asset Proceeds per share of common stock received by the holders thereof in such partial sale (or by such Affiliate Guarantor, if a primary issuance and sale) and (y) the total number of shares of common stock of such Affiliate Guarantor outstanding after giving effect to such partial sale.

(e) The payments and commitment reductions required by Sections 2.06(a), (b), (c) and (d) shall be made as the Borrower may direct.

(f) For purposes of this Section 2.06, the Borrower and the Affiliate Guarantors shall be deemed to have received Asset Proceeds on the last day of the fiscal year following the date of an asset sale transaction in an amount equal to the excess of the reserve for taxes payable or estimated to be payable in connection with or as a result of such transaction over taxes actually paid in connection with or as a result of such transaction on or before the last day of such fiscal year. The Borrower shall apply an amount equal to such deemed Asset Proceeds in accordance with the terms of this Section 2.06.

(g) The Borrower may apply proceeds as required by this Section 2.06 on the last day of any Interest Period next ending after receipt or, in the case of Asset Proceeds, deemed receipt, of such proceeds; provided that the Borrower shall apply such proceeds on or before 30 days after such receipt or deemed receipt; provided further that in the case of Asset Proceeds resulting from the sale of an asset located outside the United States, such 30 days after such receipt or deemed receipt shall be extended to 90 days after such receipt or deemed receipt.

(h) All prepayments of Senior Bank Facilities under this Section 2.06 shall be made together with accrued interest to the date of such prepayment on the principal amount prepaid.

SECTION 2.07. Prepayments. (a) Optional. The Borrower may, upon (i) at least one Business Day's notice in the case of Base Rate Borrowings and (ii) at least three Business Days' notice in the case of Eurodollar Rate Borrowings, in each case to the Administrative Agent stating the proposed date and aggregate principal amount of the prepayment, and if such notice is given the Borrower shall, prepay the outstanding aggregate principal amount of the Advances comprising part of the same

Borrowing in whole or ratably in part, together with accrued interest to the date of such prepayment on the aggregate principal amount prepaid; provided, however, that each partial prepayment shall be in an aggregate principal amount of \$10,000,000 or an integral multiple of \$1,000,000 in excess thereof.

(b) Mandatory. (i) The Borrower shall, on each Business Day, prepay an aggregate principal amount of the Working Capital Advances comprising part of the same Borrowings equal to the amount by which the (x) sum of aggregate principal amount of the Working Capital Advances and Competitive Bid Advances then outstanding exceeds (y) the Facility.

(ii) All prepayments under this subsection (b) shall be made together with accrued interest to the date of such prepayment on the principal amount prepaid.

SECTION 2.08. Interest. (a) Ordinary Interest. The Borrower shall pay interest on the unpaid principal amount of each Advance owing to each Lender from the date of such Advance until such principal amount shall be paid in full, at the following rates per annum:

(i) Base Rate Advances. During such periods as such Advance is a Base Rate Advance, a rate per annum equal at all times to the sum of (A) the Base Rate in effect from time to time plus (B) the Applicable Margin in effect from time to time, payable in arrears quarterly on the first day of each January, April, July, and October during such periods and on the date such Base Rate Advance shall be Converted or paid in full.

(ii) Eurodollar Rate Advances. During such periods as such Advance is a Eurodollar Rate Advance, a rate per annum equal at all times during each Interest Period for such Advance to the sum of (A) the Eurodollar Rate for such Interest Period for such Advance plus (B) the Applicable Margin in effect on each day during such Interest Period, payable in arrears on the last day of such Interest Period and, if such Interest Period has a duration of more than three months, on each day that occurs during such Interest Period every three months from the first day of such Interest Period.

(b) Default Interest. Overdue principal and interest in respect of each Advance shall bear interest at a rate per

annum equal to the Base Rate in effect from time to time plus the sum of (i) 2% and (ii) the Applicable Margin; provided that each Eurodollar Rate Advance and Competitive Bid Advance shall bear interest after maturity (whether by acceleration or otherwise) until the end of the Interest Period then applicable thereto at a rate per annum equal to 2% in excess of the rate of interest applicable thereto at maturity.

SECTION 2.09. Fees. (a) Commitment Fee. The Borrower shall pay to the Administrative Agent for the account of the Lenders a commitment fee on each Lender's average daily Unused Commitment, computed without regard to clause (ii) of the definition of Unused Commitment, minus the aggregate amount of Competitive Bid Advances made by such Lender from the date hereof until the Revolver Termination Date at the Applicable Percentage, payable in arrears quarterly on the first Business Day of each January, April, July and October, commencing October 3, 1997, and on the Revolver Termination Date; provided, however, that any commitment fee accrued with respect to any of the Commitments of a Defaulting Lender during the period prior to the time such Lender became a Defaulting Lender and unpaid at such time shall not be payable by the Borrower so long as such Lender shall be a Defaulting Lender except to the extent that such commitment fee shall otherwise have been due and payable by the Borrower prior to such time; and provided further that no commitment fee shall accrue on any of the Commitments of a Defaulting Lender so long as such Lender shall be a Defaulting Lender.

(b) Administrative Agent's and Arrangers' Fees. The Borrower shall pay to the Administrative Agent and the Arrangers for their own respective account such fees as may from time to time be agreed between the Borrower and the Administrative Agent and the Arrangers.

SECTION 2.10. Conversion of Advances. (a) Optional. The Borrower may on any Business Day, upon notice given to the Administrative Agent not later than 11:00 A.M. (New York City time) on the third Business Day prior to the date of the proposed Conversion and subject to the provisions of Section 2.11, Convert all or any portion of the Working Capital Advances of one Type comprising the same Borrowing into Advances of the other Type; provided, however, that any Conversion of Base Rate Advances into Eurodollar Rate Advances shall be in an amount not less than the minimum amount specified in Section 2.02(b) and no Conversion of any Advances shall result in more separate Borrowings than permitted under Section 2.02(b). Each such notice of Conversion shall, within the restrictions specified above, specify (i) the



date of such Conversion, (ii) the Advances to be Converted and (iii) if such Conversion is into Eurodollar Rate Advances, the duration of the initial Interest Period for such Advances.

(b) Mandatory. (i) On the date on which the aggregate unpaid principal amount of Eurodollar Rate Advances comprising any Borrowing shall be reduced, by payment or prepayment or otherwise, to less than \$10,000,000, such Advances shall automatically Convert into Base Rate Advances.

(ii) If the Borrower shall fail to select the duration of any Interest Period for any Eurodollar Rate Advances in accordance with the provisions contained in the definition of "Interest Period" in Section 1.01, the Administrative Agent will forthwith so notify the Borrower and the Lenders, whereupon each such Eurodollar Rate Advance will automatically, on the last day of the then existing Interest Period therefor, Convert into a Base Rate Advance.

SECTION 2.11. Increased Costs, Etc. (a) If, due to either (i) the introduction of or any change in or in the interpretation of any law or regulation after the date hereof or (ii) the compliance with any guideline or request made after the date hereof from any central bank or other governmental authority (whether or not having the force of law), there shall be any increase in the cost to any Lender of agreeing to make or of making, funding or maintaining Eurodollar Rate Advances or LIBO Rate Advances, then the Borrower shall from time to time, upon demand by such Lender (with a copy of such demand to the Administrative Agent), pay to the Administrative Agent for the account of such Lender additional amounts sufficient to compensate such Lender for such increased cost; provided, however, that each Lender agrees to use reasonable efforts (consistent with its internal policy and legal and regulatory restrictions) to designate a different Applicable Lending Office or take other steps if to do so would avoid the need for, or reduce the amount of, such increased cost and would not, in the reasonable judgment of such Lender, be otherwise disadvantageous to such Lender. A certificate as to the amount of such increased cost accompanied by a statement setting forth in reasonable detail the basis for, and amount of, such increased cost, submitted to the Borrower by such Lender, shall be conclusive and binding for all purposes, absent demonstrable error.

(b) If, after the date hereof, (i) the introduction of or any change in any applicable law or regulation regarding capital adequacy or any change after the date hereof in the

interpretation or administration thereof by any governmental authority, central bank or comparable agency charged with the interpretation or administration thereof, or (ii) the compliance by a Lender or its parent with any directive or request made after the date hereof regarding capital adequacy from any central bank or other governmental authority (whether or not having the force of law), has the effect of reducing the rate of return on such Lender's or its parent's capital or assets as a consequence of such Lender's commitment to lend hereunder or other obligations hereunder to a level below that which such Lender or its parent would have achieved but for such introduction, change or compliance (taking into consideration such Lender's or its parent's policies with respect to capital adequacy), then, upon demand by such Lender (with a copy of such demand to the Administrative Agent), the Borrower shall pay to the Administrative Agent for the account of such Lender, from time to time as specified by such Lender, additional amounts sufficient to compensate such Lender for such reduction, it being understood and agreed, however, that such Lender shall not be entitled to such compensation as a result of such Lender's compliance with, or pursuant to any directive or request to comply with, any such law or regulation as in effect on the date hereof; provided, however, that each Lender agrees to use reasonable efforts (consistent with its internal policy and legal and regulatory restrictions) to designate a different Applicable Lending Office or take other steps if to do so would avoid the need for, or reduce the amount of, such compensation and would not, in the reasonable judgment of such Lender, be otherwise disadvantageous to such Lender. A certificate as to such amounts accompanied by a statement setting forth in reasonable detail the basis for, and amount of, such increased cost submitted to the Borrower by such Lender, shall be conclusive and binding for all purposes, absent demonstrable error.

(c) If, with respect to any Eurodollar Rate Advances, the Administrative Agent shall have determined that on any date for determining the Eurodollar Rate for any Interest Period for such Advances that, by reason of changes arising after the date hereof affecting the London interbank market, adequate and fair means do not exist for ascertaining the applicable interest rate on the basis provided for in the definition of Eurodollar Rate (i) each such Eurodollar Rate Advance will automatically, on the last day of the then existing Interest Period therefor, Convert into a Base Rate Advance and (ii) the obligation of the Lenders to make, or to Convert Advances into, Eurodollar Rate Advances shall be suspended until the Administrative Agent shall notify

the Borrower that such Lenders have determined that the circumstances causing such suspension no longer exist.

(d) Notwithstanding any other provision of this Agreement, if after the date hereof the introduction of or any change in or in the interpretation of any law or regulation shall make it unlawful or impracticable, or any central bank or other governmental authority shall assert that it is unlawful, for any Lender or its Eurodollar Lending Office to perform its obligations hereunder to make Eurodollar Rate Advances or LIBO Rate Advances or to continue to fund or maintain Eurodollar Rate Advances or LIBO Rate Advances hereunder, then, on notice thereof and demand therefor by such Lender to the Borrower through the Administrative Agent, (i) each Eurodollar Rate Advance under which such Lender has a Commitment or LIBO Rate Advance, as the case may be, will automatically, upon such demand, Convert into a Base Rate Advance or an Advance that bears interest at the rate set forth in Section 2.08(a)(i), as the case may be, and (ii) the obligation of the Lenders to make, or to Convert Advances into, Eurodollar Rate Advances shall be suspended until the circumstances causing such suspension no longer exist; provided, however, that such Lender agrees to use reasonable efforts (consistent with its internal policy and legal and regulatory restrictions) to designate a different Eurodollar Lending Office or take other steps if to do so would allow such Lender or its Eurodollar Lending Office to continue to perform its obligations to make Eurodollar Rate Advances or to continue to fund or maintain Eurodollar Rate Advances would not, in the reasonable judgment of such Lender, be otherwise disadvantageous to such Lender.

(e) If the Required Lenders shall so determine, upon the occurrence and during the continuance of any Default, the obligation of the Lenders to make, or to Convert Advances into, Eurodollar Rate Advances shall be suspended.

SECTION 2.12. Payments and Computations. (a) The Borrower shall make each payment hereunder and under the Notes not later than 11:00 A.M. (New York City time) on the day when due in U.S. dollars to the Administrative Agent at the Administrative Agent's Account in same day funds. The Administrative Agent will promptly thereafter cause like funds to be distributed (i) if such payment by the Borrower is in respect of principal, interest, commitment fees or any other obligation then payable hereunder and under the Notes to more than one Lender, to such Lenders for the account of their respective Applicable Lending Offices ratably in accordance with the amounts

of such respective obligations then payable to such Lenders and (ii) if such payment by the Borrower is in respect of any obligation then payable hereunder to one Lender, to such Lender for the account of its Applicable Lending Office, in each case to be applied in accordance with the terms of this Agreement. Upon any Assuming Lender's becoming a Lender hereunder as a result of an extension of the Revolver Termination Date pursuant to Section 2.18 or as a result of a Commitment Increase pursuant to Section 2.19, and upon the Administrative Agent's receipt of such Lender's Assumption Agreement and recording of the information contained therein in the Register, from and after the applicable Extension Date or Increase Date, as the case may be, the Administrative Agent shall make all payments hereunder and under the Notes issued in connection therewith in respect of the interest assumed thereby to the Assuming Lender. Upon its acceptance of an Assignment and Acceptance and recording of the information contained therein in the Register pursuant to Section 9.07(d), from and after the effective date of such Assignment and Acceptance, the Administrative Agent shall make all payments hereunder and under the Notes in respect of the interest assigned thereby to the Lender assignee thereunder, and the parties to such Assignment and Acceptance shall make all appropriate adjustments in such payments for periods prior to such effective date directly between themselves.

(b) All computations of interest and fees shall be made by the Administrative Agent on the basis of a year of 360 days, in each case for the actual number of days (including the first day but excluding the last day) occurring in the period for which such interest, fees or commissions are payable. Each determination by the Administrative Agent of an interest rate, fee or commission hereunder shall be conclusive and binding for all purposes, absent demonstrable error.

(c) Whenever any payment hereunder or under the Notes shall be stated to be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day, and such extension of time shall in such case be included in the computation of payment of interest or commitment fee, as the case may be; provided, however, that, if such extension would cause payment of interest on or principal of Eurodollar Rate Advances or LIBO Rate Advances to be made in the next following calendar month, such payment shall be made on the next preceding Business Day.

(d) Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any

payment is due to any Lender hereunder that the Borrower will not make such payment in full, the Administrative Agent may assume that the Borrower has made such payment in full to the Administrative Agent on such date and the Administrative Agent may, in reliance upon such assumption, cause to be distributed to each such Lender on such due date an amount equal to the amount then due such Lender. If and to the extent the Borrower shall not have so made such payment in full to the Administrative Agent, each such Lender shall repay to the Administrative Agent forthwith on demand such amount distributed to such Lender together with interest thereon, for each day from the date such amount is distributed to such Lender until the date such Lender repays such amount to the Administrative Agent, at the Federal Funds Rate.

(e) If the Administrative Agent receives funds for application to the obligations under the Loan Documents under circumstances for which the Loan Documents do not specify the Advances to which, or the manner in which, such funds are to be applied, the Administrative Agent shall apply such funds to prepay Working Capital Advances (but not reduce the Commitments).

SECTION 2.13. Taxes. (a) Any and all payments by any Obligated Party hereunder or under the Notes shall be made, in accordance with Section 2.12, free and clear of and without deduction for any and all present or future taxes, levies, imposts, deductions, charges or withholdings, and all liabilities with respect thereto, excluding, in the case of each Lender and the Administrative Agent, net income taxes and franchise taxes (imposed in lieu of net income taxes) that are imposed by the United States or any political subdivision or taxing authority thereof or therein or by a foreign jurisdiction as a result of a present or former connection between the Administrative Agent or such Lender and the jurisdiction imposing such tax or any political subdivision or taxing authority thereof or therein (other than any such connection arising solely from the Administrative Agent or such Lender having executed, enforced, delivered or performed its obligations or received a payment under this Agreement) (all such non-excluded taxes, levies, imposts, deductions, charges, withholdings and liabilities being hereinafter referred to as "Taxes"). If any Obligated Party shall be required by law to deduct any Taxes from or in respect of any sum payable hereunder or under any Note to any Lender or the Administrative Agent, (i) the sum payable shall be increased as may be necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 2.13) such Lender or the Administrative Agent (as

the case may be) receives an amount equal to the sum it would have received had no such deductions been made, (ii) such Obligated Party shall make such deductions and (iii) such Obligated Party shall pay the full amount deducted to the relevant taxation authority or other authority in accordance with applicable law.

(b) In addition, each Obligated Party shall pay any present or future stamp, documentary, excise, property or similar taxes, charges or levies that arise from any payment made hereunder or under the Notes or from the execution, delivery or registration of, or otherwise with respect to, this Agreement or the Notes (hereinafter referred to as "Other Taxes").

(c) Each Obligated Party shall indemnify each Lender and the Administrative Agent for the full amount of Taxes and Other Taxes, and for the full amount of taxes imposed by any jurisdiction on amounts payable under this Section 2.13, paid by such Lender or the Administrative Agent (as the case may be) and any liability (including penalties, additions to tax, interest and expenses) arising therefrom or with respect thereto. The Administrative Agent or such Lender shall provide the applicable Obligated Party with appropriate receipts for any payments or reimbursements made to such Obligated Party pursuant to this Section 2.13. This indemnification shall be made within 45 days from the date such Lender or the Administrative Agent (as the case may be) makes written demand therefor.

(d) Within 45 days after the date of any payment of Taxes, each Obligated Party shall furnish to the Administrative Agent, at its address referred to in Section 9.02, the original receipt of payment thereof or a certified copy of such receipt. In the case of any payment hereunder or under the Notes by any Obligated Party through an account or branch outside the United States or on behalf of such Obligated Party by a payor that is not a United States person, if such Obligated Party determines that no Taxes are payable in respect thereof, such Obligated Party shall furnish, or shall cause such payor to furnish, to the Administrative Agent, at such address, an opinion of counsel acceptable to the Administrative Agent stating that such payment is exempt from Taxes. For purposes of this subsection (d) and subsection (e), the terms "United States" and "United States person" shall have the meanings specified in Section 7701 of the Internal Revenue Code.

(e) Each Lender organized under the laws of a jurisdiction outside the United States shall, on or prior to the

date of its execution and delivery of this Agreement in the case of each Bank, and on the date of the Assumption Agreement or the Assignment and Acceptance pursuant to which it became a Lender in the case of each other Lender, and from time to time thereafter if requested in writing by any Obligated Party or the Administrative Agent (but only so long thereafter as such Lender remains lawfully able to do so), provide the Administrative Agent and each Obligated Party with Internal Revenue Service form 1001 or 4224, as appropriate, or any successor form prescribed by the Internal Revenue Service, certifying that such Lender is entitled to benefits under an income tax treaty to which the United States is a party that reduces the rate of withholding tax on payments under this Agreement or the Notes or certifying that the income receivable pursuant to this Agreement or the Notes is effectively connected with the conduct of a trade or business in the United States. If the form provided by a Lender at the time such Lender first becomes a party to this Agreement indicates a United States interest withholding tax rate in excess of zero, withholding tax at such rate shall be considered excluded from Taxes unless and until such Lender provides the appropriate form certifying that a lesser rate applies, whereupon withholding tax at such lesser rate only shall be considered excluded from Taxes for periods governed by such form; provided, however, that, if at the date of the Assumption Agreement or the Assignment and Acceptance, as the case may be, pursuant to which a Lender assignee becomes a party to this Agreement, the Lender assignor was entitled to payments under subsection (a) in respect of United States withholding tax with respect to interest paid at such date, then, to such extent, the term Taxes shall include (in addition to withholding taxes that may be imposed in the future or other amounts otherwise includable in Taxes) United States withholding tax, if any, applicable with respect to such Lender assignee on such date. If any form or document referred to in this subsection (e) requires the disclosure of information, other than information necessary to compute the tax payable and information required on the date hereof by Internal Revenue Service form 1001 or 4224, that the applicable Lender reasonably considers to be confidential, such Lender shall give notice thereof to the Obligated Parties and shall not be obligated to include in such form or document such confidential information.

(f) For any period with respect to which a Lender has failed to provide the Obligated Parties with the appropriate form described in subsection (e) (other than if such failure is due to a change in law occurring after the date on which a form originally was required to be provided or if such form otherwise is not required under subsection (e)), such Lender shall not be

entitled to indemnification under subsection (a) or (c) with respect to Taxes imposed by the United States; provided, however, that should a Lender become subject to Taxes because of its failure to deliver a form required hereunder, each Obligated Party shall take such steps as such Lender shall reasonably request to assist such Lender to recover such Taxes.

(g) Any Lender claiming any additional amounts payable pursuant to this Section 2.13 shall use reasonable efforts (consistent with its internal policy and legal and regulatory restrictions) to change the jurisdiction of its Eurodollar Lending Office or to take other steps if to do so would avoid the need for, or reduce the amount of, any such additional amounts that may thereafter accrue and would not, in the reasonable judgment of such Lender, be otherwise disadvantageous to such Lender.

SECTION 2.14. Sharing of Payments, Etc. If any Lender shall obtain at any time any payment (whether voluntary, involuntary, through the exercise of any right of set-off, or otherwise) (a) on account of obligations due and payable to such Lender hereunder and under the Notes at such time in excess of its ratable share (according to the proportion of (i) the amount of such obligations due and payable to such Lender at such time to (ii) the aggregate amount of the obligations due and payable to all Lenders hereunder and under the Notes at such time) of payments on account of the obligations due and payable to all Lenders hereunder and under the Notes at such time obtained by all the Lenders at such time or (b) on account of obligations owing (but not due and payable) to such Lender hereunder and under the Notes at such time in excess of its ratable share (according to the proportion of (i) the amount of such obligations owing to such Lender at such time to (ii) the aggregate amount of the obligations owing (but not due and payable) to all Lenders hereunder and under the Notes at such time) of payments on account of the obligations owing (but not due and payable) to all Lenders hereunder and under the Notes at such time obtained by all the Lenders at such time, such Lender shall forthwith purchase from the Lenders such participations in the obligations due and payable or owing to them, as the case may be, as shall be necessary to cause such purchasing Lender to share the excess payment ratably with each of them; provided, however, that if all or any portion of such excess payment is thereafter recovered from such purchasing Lender, such purchase from each other Lender shall be rescinded and such other Lender shall repay to the purchasing Lender the purchase price to the extent of such other Lender's ratable share (according to the



proportion of (i) the purchase price paid to such Lender to (ii) the aggregate purchase price paid to all Lenders) of such recovery together with an amount equal to such Lender's ratable share (according to the proportion of (i) the amount of such other Lender's required repayment to (ii) the total amount so recovered from the purchasing Lender) of any interest or other amount paid or payable by the purchasing Lender in respect of the total amount so recovered. The Borrower agrees that any Lender so purchasing a participation from another Lender pursuant to this Section 2.14 may, to the fullest extent permitted by law, exercise all its rights of payment (including the right of set-off) with respect to such participation as fully as if such Lender were the direct creditor of the Borrower in the amount of such participation.

SECTION 2.15. Use of Proceeds. The proceeds of the Advances shall be available to pay transaction fees and expenses, for acquisitions and general corporate purposes of the Borrower and its Subsidiaries and for making advances to the Affiliate Guarantors and their Subsidiaries for acquisitions and general corporate purposes of the Affiliate Guarantors and their Subsidiaries.

SECTION 2.16. Defaulting Lenders. (a) In the event that, at any one time, (i) any Lender shall be a Defaulting Lender, (ii) such Defaulting Lender shall owe a Defaulted Advance to the Borrower and (iii) the Borrower shall be required to make any payment hereunder or under any other Loan Document to or for the account of such Defaulting Lender, then the Borrower may, so long as no Default shall occur or be continuing at such time and to the fullest extent permitted by applicable law, set off and otherwise apply the obligation of the Borrower to make such payment to or for the account of such Defaulting Lender against the obligation of such Defaulting Lender to make such Defaulted Advance. In the event that the Borrower shall so set off and otherwise apply the obligation of the Borrower to make any such payment against the obligation of such Defaulting Lender to make any such Defaulted Advance on any date, the amount so set off and otherwise applied by the Borrower shall constitute for all purposes of this Agreement and the other Loan Documents an Advance by such Defaulting Lender made on such date. Such Advance shall bear interest at a rate equal to the Base Rate (without giving effect to the Applicable Margin) and shall be considered, for all purposes of this Agreement, to comprise part of the Borrowing in connection with which such Defaulted Advance was originally required to have been made pursuant to Section 2.01, even if the other Advances comprising such

Borrowing shall be Eurodollar Rate Advances on the date such Advance is deemed to be made pursuant to this subsection (a). The Borrower shall notify the Administrative Agent at any time the Borrower reduces the amount of the obligation of the Borrower to make any payment otherwise required to be made by it hereunder or under any other Loan Document as a result of the exercise by the Borrower of its right set forth in this subsection (a) and shall set forth in such notice (A) the name of the Defaulting Lender and the Defaulted Advance required to be made by such Defaulting Lender and (B) the amount set off and otherwise applied in respect of such Defaulted Advance pursuant to this subsection (a). Any portion of such payment otherwise required to be made by the Borrower to or for the account of such Defaulting Lender which is paid by the Borrower, after giving effect to the amount set off and otherwise applied by the Borrower pursuant to this subsection (a), shall be applied by the Administrative Agent as specified in subsection (b) or (c) of this Section 2.16.

(b) In the event that, at any one time, (i) any Lender shall be a Defaulting Lender, (ii) such Defaulting Lender shall owe a Defaulted Amount to the Administrative Agent or any of the other Lenders and (iii) the Borrower shall make any payment hereunder or under any other Loan Document to the Administrative Agent for the account of such Defaulting Lender, then the Administrative Agent may, on its behalf or on behalf of such other Lenders and to the fullest extent permitted by applicable law, apply at such time the amount so paid by the Borrower to or for the account of such Defaulting Lender to the payment of each such Defaulted Amount to the extent required to pay such Defaulted Amount. In the event that the Administrative Agent shall so apply any such amount to the payment of any such Defaulted Amount on any date, the amount so applied by the Administrative Agent shall constitute for all purposes of this Agreement and the other Loan Documents payment, to such extent, of such Defaulted Amount on such date. Any such amount so applied by the Administrative Agent shall be retained by the Administrative Agent or distributed by the Administrative Agent to such other Lenders, ratably in accordance with the respective portions of such Defaulted Amounts payable at such time to the Administrative Agent and such other Lenders and, if the amount of such payment made by the Borrower shall at such time be insufficient to pay all Defaulted Amounts owing at such time to the Administrative Agent and the other Lenders, in the following order of priority:

(i) first, to the Administrative Agent for any Defaulted Amount then owing to the Administrative Agent; and

(ii) second, to any other Lenders for any Defaulted Amounts then owing to such other Lenders, ratably in accordance with such respective Defaulted Amounts then owing to such other Lenders.

Any portion of such amount paid by the Borrower for the account of such Defaulting Lender remaining, after giving effect to the amount applied by the Administrative Agent pursuant to this subsection (b), shall be applied by the Administrative Agent as specified in subsection (c) of this Section 2.16.

(c) In the event that, at any one time, (i) any Lender shall be a Defaulting Lender, (ii) such Defaulting Lender shall not owe a Defaulted Advance or a Defaulted Amount and (iii) the Borrower, the Administrative Agent or any other Lender shall be required to pay or distribute any amount hereunder or under any other Loan Document to or for the account of such Defaulting Lender, then the Borrower or such other Lender shall pay such amount to the Administrative Agent to be held by the Administrative Agent, to the fullest extent permitted by applicable law, in escrow or the Administrative Agent shall, to the fullest extent permitted by applicable law, hold in escrow such amount otherwise held by it. Any funds held by the Administrative Agent in escrow under this subsection (c) shall be deposited by the Administrative Agent in an interest-bearing account with Citibank, in the name and under the control of the Administrative Agent, but subject to the provisions of this subsection (c). The terms applicable to such account, including the rate of interest payable with respect to the credit balance of such account from time to time, shall be Citibank's standard terms applicable to escrow accounts maintained with it. Any interest credited to such account from time to time shall be held by the Administrative Agent in escrow under, and applied by the Administrative Agent from time to time in accordance with the provisions of, this subsection (c). The Administrative Agent shall, to the fullest extent permitted by applicable law, apply all funds so held in escrow from time to time to the extent necessary to make any Advances required to be made by such Defaulting Lender and to pay any amount payable by such Defaulting Lender hereunder and under the other Loan Documents to the Administrative Agent or any other Lender, as and when such Advances or amounts are required to be made or paid and, if the amount so held in escrow shall at any time be insufficient to

make and pay all such Advances and amounts required to be made or paid at such time, in the following order of priority:

(i) first, to the Administrative Agent for any amount then due and payable by such Defaulting Lender to the Administrative Agent hereunder;

(ii) second, to any other Lenders for any amount then due and payable by such Defaulting Lender to such other Lenders hereunder, ratably in accordance with such respective amounts then due and payable to such other Lenders; and

(iii) third, to the Borrower for any Advance then required to be made by such Defaulting Lender pursuant to the Commitments of such Defaulting Lender.

In the event that such Defaulting Lender shall, at any time, cease to be a Defaulting Lender, any funds held by the Administrative Agent in escrow at such time with respect to such Defaulting Lender shall be distributed by the Administrative Agent to such Defaulting Lender and applied by such Defaulting Lender to the obligations owing to such Lender at such time under this Agreement and the other Loan Documents ratably in accordance with the respective amounts of such obligations outstanding at such time.

(d) The rights and remedies against a Defaulting Lender under this Section 2.16 are in addition to other rights and remedies which the Borrower may have against such Defaulting Lender with respect to any Defaulted Advance and which the Administrative Agent or any Lender may have against such Defaulting Lender with respect to any Defaulted Amount.

SECTION 2.17. Option to Replace Lenders. If any Lender shall request the Borrower to pay any amounts, or shall assert any other special rights, under Section 2.11 or 2.13 or if a Lender is a Defaulting Lender, the Borrower may request one or more other Lenders or other financial institutions, each of which is an Eligible Assignee (each a "Replacement Lender") to take over all or the affected portion of such Lender's then outstanding Advances and to assume all or the affected portion of such Lender's Commitments and obligations hereunder. If one or more Replacement Lenders shall so agree, the Advances and Commitments of the Lender to be replaced shall, at the direction of the Borrower, be assigned to such Replacement Lenders in

accordance with Section 9.07, in such amounts as the Borrower may designate.

SECTION 2.18. Extension of Revolver Termination Date. (a) At least 45 days but not more than 60 days prior to the Revolver Termination Date in effect at any time, the Borrower, by written notice to the Administrative Agent, may request an extension of the Revolver Termination Date in effect at such time for a period of 364 days from its then scheduled expiration; provided, however, that the Borrower shall not have made the Term Loan Election for Advances outstanding on such Revolver Termination Date prior to the then scheduled Revolver Termination Date. The Administrative Agent shall promptly notify each Lender of such request, and each Lender shall in turn, in its sole discretion, not earlier than 30 days but at least 20 days prior to such Revolver Termination Date, notify the Borrower and the Administrative Agent in writing as to whether such Lender will consent to such extension. If any Lender shall fail to notify the Administrative Agent and the Borrower in writing of its consent to any such request for extension of the Revolver Termination Date at least 20 days prior to the scheduled occurrence thereof at such time, such Lender shall be deemed to be a Non-Consenting Lender with respect to such request. The Administrative Agent shall notify the Borrower not later than 15 days prior to the scheduled Revolver Termination Date in effect at such time of the decision of the Lenders regarding the Borrower's request for an extension of the Revolver Termination Date.

(b) If all of the Lenders consent in writing to any such request in accordance with subsection (a) of this Section 2.18, the Revolver Termination Date shall, effective as at the Revolver Termination Date otherwise in effect at such time (the "Extension Date"), be extended for a period of 364 days from such Extension Date; provided that on each Extension Date, no Default shall have occurred and be continuing, or shall occur as a consequence thereof. If Lenders holding at least a majority in interest of the aggregate Commitments at such time consent in writing to any such request in accordance with subsection (a) of this Section 2.18, the Revolver Termination Date in effect at such time shall, effective as at the applicable Extension Date, be extended as to those Lenders that so consented (each a "Consenting Lender") but shall not be extended as to any other Lender (each a "Non-Consenting Lender"). To the extent that the Revolver Termination Date is not extended as to any Lender pursuant to this Section 2.18 and the Commitment of such Lender is not assumed in accordance with subsection (c) of this Section

2.18 on or prior to the applicable Extension Date, the Commitment of such Non-Consenting Lender shall automatically terminate in whole on such unextended Revolver Termination Date without any further notice or other action by the Borrower, such Lender or any other Person; provided that such Non-Consenting Lender's rights under Sections 2.11, 2.13 and 9.04, and its obligations under Section 8.05, shall survive the Revolver Termination Date for such Lender as to matters occurring prior to such date. It is understood and agreed that no Lender shall have any obligation whatsoever to agree to any request made by the Borrower for any requested extension of the Revolver Termination Date.

(c) If Lenders holding at least a majority in interest of the aggregate Commitments at any time consent to any such request pursuant to subsection (a) of this Section 2.18, the Borrower may arrange for one or more Consenting Lenders or other Eligible Assignees as Assuming Lenders to assume, effective as of the Extension Date, any Non-Consenting Lender's Commitment and all of the obligations of such Non-Consenting Lender under this Agreement thereafter arising, without recourse to or warranty by, or expense to, such Non-Consenting Lender; provided, however, that the amount of the Commitment of any such Assuming Lender as a result of such substitution shall in no event be less than \$10,000,000 unless the amount of the Commitment of such Non-Consenting Lender is less than \$10,000,000, in which case such Assuming Lender shall assume all of such lesser amount; and provided further that:

(i) any such Consenting Lender or Assuming Lender shall have paid to such Non-Consenting Lender (A) the aggregate principal amount of, and any interest accrued and unpaid to the effective date of the assignment on, the outstanding Advances, if any, of such Non-Consenting Lender plus (B) any accrued but unpaid facility fees owing to such Non-Consenting Lender as of the effective date of such assignment;

(ii) all additional costs reimbursements, expense reimbursements and indemnities payable to such Non-Consenting Lender, and all other accrued and unpaid amounts owing to such Non-Consenting Lender hereunder, as of the effective date of such assignment shall have been paid to such Non-Consenting Lender; and

(iii) with respect to any such Assuming Lender, the applicable processing and recordation fee required under Section 9.07(a) for such assignment shall have been paid;

provided further that such Non-Consenting Lender's rights under Sections 2.11, 2.13 and 9.04, and its obligations under Section 8.05, shall survive such substitution as to matters occurring prior to the date of substitution. At least three Business Days prior to any Extension Date, (A) each such Assuming Lender, if any, shall have delivered to the Borrower and the Administrative Agent an assumption agreement, in form and substance satisfactory to the Borrower and the Administrative Agent (an "Assumption Agreement"), duly executed by such Assuming Lender, such Non-Consenting Lender, the Borrower and the Administrative Agent, (B) any such Consenting Lender shall have delivered confirmation in writing satisfactory to the Borrower and the Administrative Agent as to the increase in the amount of its Commitment and (C) each Non-Consenting Lender being replaced pursuant to this Section 2.18 shall have delivered to the Administrative Agent the Note or Notes held by such Non-Consenting Lender. Upon the payment or prepayment of all amounts referred to in clauses (i), (ii) and (iii) of the immediately preceding sentence, each such Consenting Lender or Assuming Lender, as of the Extension Date, will be substituted for such Non-Consenting Lender under this Agreement and shall be a Lender for all purposes of this Agreement, without any further acknowledgment by or the consent of the other Lenders, and the obligations of each such Non-Consenting Lender hereunder shall, by the provisions hereof, be released and discharged.

(d) If all of the Lenders (after giving effect to any assignments pursuant to subsection (b) of this Section 2.18) consent in writing to a requested extension (whether by execution or delivery of an Assumption Agreement or otherwise) not later than one Business Day prior to such Extension Date, the Administrative Agent shall so notify the Borrower, and, so long as no Default shall have occurred and be continuing as of such Extension Date, or shall occur as a consequence thereof, the Revolver Termination Date then in effect shall be extended for the 364-day period described in subsection (a) of this Section 2.18, and all references in this Agreement, and in the Notes to the "Revolver Termination Date" shall, with respect to each Consenting Lender and each Assuming Lender for such Extension Date, refer to the Revolver Termination Date as so extended. Promptly following each Extension Date, the Administrative Agent shall notify the Lenders (including, without limitation, each Assuming Lender) of the extension of the scheduled Revolver Termination Date in effect immediately prior thereto and shall thereupon record in the Register the relevant information with respect to each such Consenting Lender and each such Assuming Lender.

SECTION 2.19. Increase in the Aggregate Commitments. (a) The Borrower may, at any time but in any event not more than once prior to the Revolver Termination Date, by notice to the Administrative Agent, request that the aggregate amount of the Commitments be increased by an amount of \$50,000,000 or an integral multiple of \$5,000,000 in excess thereof (each a "Commitment Increase") to be effective as of a date that is at least 90 days prior to the scheduled Revolver Termination Date then in effect (the "Increase Date") as specified in the related notice to the Administrative Agent; provided, however, that (i) in no event shall the aggregate amount of the Commitments at any time exceed \$250,000,000, (ii) no Default shall have occurred and be continuing as of the date of such request or as of the applicable Increase Date, or shall occur as a result thereof and (iii) the aggregate amount of the Commitments and of the "Commitments" under the Five-Year Credit Agreement shall not exceed \$1,200,000,000.

(b) The Administrative Agent shall promptly notify the Lenders of a request by the Borrower for a Commitment Increase, which notice shall include (i) the proposed amount of such requested Commitment Increase, (ii) the proposed Increase Date and (iii) the date by which Lenders wishing to participate in the Commitment Increase must commit to an increase in the amount of their respective Commitments (the "Commitment Date"). Each Lender that is willing to participate in such requested Commitment Increase (each an "Increasing Lender") shall give written notice to the Administrative Agent on or prior to the Commitment Date of the amount by which it is willing to increase its Commitment. If the Lenders notify the Administrative Agent that they are willing to increase the amount of their respective Commitments by an aggregate amount that exceeds the amount of the requested Commitment Increase, the requested Commitment Increase shall be allocated among the Lenders willing to participate therein in such amounts as are agreed between the Borrower and the Administrative Agent.

(c) Promptly following each Commitment Date, the Administrative Agent shall notify the Borrower as to the amount, if any, by which the Lenders are willing to participate in the requested Commitment Increase. If the aggregate amount by which the Lenders are willing to participate in any requested Commitment Increase on any such Commitment Date is less than the requested Commitment Increase, then the Borrower may extend offers to one or more Eligible Assignees to participate in any portion of the requested Commitment Increase that has not been committed to by the Lenders as of the applicable Commitment Date;



provided, however, that the Commitment of each such Eligible Assignee shall be in an amount of \$10,000,000 or an integral multiple of \$1,000,000 in excess thereof.

(d) On each Increase Date, each Eligible Assignee that accepts an offer to participate in a requested Commitment Increase in accordance with Section 2.19(c) (each such Eligible Assignee and each Eligible Assignees that agrees to an extension of the Revolver Termination Date in accordance with Section 2.18(c), an "Assuming Lender") shall become a Lender party to this Agreement as of such Increase Date and the Commitment of each Increasing Lender for such requested Commitment Increase shall be so increased by such amount (or by the amount allocated to such Lender pursuant to the last sentence of Section 2.19(b)) as of such Increase Date; provided, however, that the Administrative Agent shall have received on or before such Increase Date the following, each dated such date:

(i) an Assumption Agreement from each Assuming Lender, duly executed by such Eligible Assignee, the Administrative Agent and the Borrower; and

(ii) confirmation from each Increasing Lender of the increase in the amount of its Commitment in a writing satisfactory to the Borrower and the Administrative Agent.

On each Increase Date, upon fulfillment of the conditions set forth in the immediately preceding sentence of this Section 2.19(d), the Administrative Agent shall notify the Lenders (including, without limitation, each Assuming Lender) and the Borrower, on or before 1:00 P.M. (New York City time), by telecopier or telex, of the occurrence of the Commitment Increase to be effected on such Increase Date and shall record in the Register the relevant information with respect to each Increasing Lender and each Assuming Lender on such date.

### ARTICLE III

#### CONDITIONS PRECEDENT

SECTION 3.01. Conditions of Effectiveness. This Agreement shall become effective as of the date first above written (the "Effective Date") when, and only when, the following conditions precedent have been satisfied:

(a) There shall have occurred no Material Adverse Change since December 31, 1996.

(b) The representations and warranties contained in each Loan Document are correct in all material respects on and as of the Effective Date, as though made on and as of such date (other than any such representations or warranties that, by their terms, are made as of a date other than the Effective Date).

(c) No event shall have occurred and be continuing that constitutes a Default.

(d) There is no action, suit, investigation, litigation or proceeding affecting any Affiliate Guarantor, the Borrower or any of their respective Subsidiaries pending or, to the best of any of their knowledge, threatened before any court, governmental agency or arbitrator that (i) except as disclosed in the Borrower's Annual Report on Form 10-K for the fiscal year ended December 31, 1996, would be likely to have a Material Adverse Effect or (ii) would be likely to materially adversely affect the legality, validity or enforceability of this Agreement and the other Loan Documents (taken as a whole) or the consummation of the transactions contemplated hereby.

(e) The Borrower shall have paid such fees as have been agreed to in writing to be payable in connection herewith and expenses of the Administrative Agent, the Arrangers and the Lenders (including the reasonable fees and expenses of counsel to the Administrative Agent and the Arrangers).

(f) The Administrative Agent shall have received, on or before the Effective Date, the following, each dated such day (unless otherwise specified), in form and substance satisfactory to the Administrative Agent (unless otherwise specified) and in sufficient copies (other than the Notes) for each Lender:

(i) The Notes to the order of such Lender.

(ii) Certified copies of the resolutions of the Board of Directors of the Borrower and each Affiliate Guarantor approving this Agreement and each Loan Document to which it is or is to be a party, and of all documents evidencing other necessary corporate action

and governmental approvals, if any, with respect to this Agreement and each Loan Document to which it is a party.

(iii) A certificate of each Obligated Party, signed on behalf of such Obligated Party by its President or a Vice President and its Secretary or any Assistant Secretary, dated the Effective Date (the statements made in which certificate shall be true on and as of the Effective Date), certifying as to (A) a true and correct copy of the charter of such Obligated Party as in effect on the Effective Date, (B) a true and correct copy of the bylaws of such Affiliate Guarantor as in effect on the Effective Date, (C) the due incorporation and good standing of such Affiliate Guarantor as a corporation organized under the laws of the State of the jurisdiction of its incorporation and the absence of any proceeding for the dissolution or liquidation of such Affiliate Guarantor (D) the truth or the representations and warranties contained in the Loan Documents as though made on and as of the Effective Date (other than any such representations or warranties that, by their terms, are made as of a date other than the Effective Date) and (E) the absence of any event continuing on the Effective Date that constitutes a Default.

(iv) A certificate of the Secretary or an Assistant Secretary of each Obligated Party certifying the names and true signatures of the officers of such Obligated Party authorized to sign this Agreement and each Loan Document to which it is or is to be a party and the other documents to be delivered hereunder and thereunder.

(v) A favorable opinion of Simpson Thacher & Bartlett, special New York counsel to the Borrower and the Affiliate Guarantors, and a favorable opinion of William F. Stoll, Jr., Senior Vice President and General Counsel of the Borrower, in substantially the forms of Exhibits D-1 and D-2, respectively.

(vi) A favorable opinion of Shearman & Sterling, counsel for the Lead Managing Agents and the Administrative Agent, in form and substance reasonably satisfactory to the Lead Managing Agents and the Administrative Agent.

SECTION 3.02. Conditions Precedent to Certain Borrowings. The obligation of each Lender to make an Advance on the occasion of each Borrowing that would cause the aggregate amount of Advances outstanding or to be outstanding at the close of business on such date to exceed the aggregate amount of all Advances outstanding (including any Advances to be paid on the date of such Borrowing) outstanding immediately prior to the making of such Advance shall be subject to the further conditions precedent that on the date of such Borrowing the following statements shall be true (and each of the giving of the Notice of Borrowing and the acceptance by the Borrower of the proceeds of such Borrowing shall constitute a representation and warranty by the Borrower that on the date of such Borrowing such statements are true):

(a) the representations and warranties contained in each Loan Document are correct in all material respects on and as of the date of such Borrowing, before and after giving effect to such Borrowing and to the application of the proceeds therefrom, as though made on and as of such date (other than any such representations or warranties that, by their terms, are made as of a date other than the date of such Borrowing); and

(b) no event has occurred and is continuing, or would result from such Borrowing or from the application of the proceeds therefrom, that constitutes a Default.

SECTION 3.03. Conditions Precedent to Each Competitive Bid Borrowing. The obligation of each Lender that is to make a Competitive Bid Advance on the occasion of a Competitive Bid Borrowing to make such Competitive Bid Advance as part of such Competitive Bid Borrowing is subject to the conditions precedent that (a) the Administrative Agent shall have received the written confirmatory Notice of Competitive Bid Borrowing with respect thereto and (b) on or before the date of such Competitive Bid Borrowing, but prior to such Competitive Bid Borrowing, the Administrative Agent shall have received for recordation in the Competitive Bid Register information as to each of the one or more Competitive Bid Advances to be made by the Lenders as part of such Competitive Bid Borrowing, the principal amount of each such Competitive Bid Advance and such other terms as were agreed to for each such Competitive Bid Advance in accordance with Section 2.03.

#### ARTICLE IV

## REPRESENTATIONS AND WARRANTIES

SECTION 4.01. Representations and Warranties of the Obligated Parties. Each Obligated Party represents and warrants as follows:

(a) Such Obligated Party (i) is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation, (ii) is duly qualified and in good standing as a foreign corporation in each other jurisdiction in which it owns or leases property or in which the conduct of its business requires it to so qualify or be licensed except where the failure to so qualify or be licensed would not be likely to have a Material Adverse Effect and (iii) has all requisite corporate power and authority to own or lease and operate its properties and to carry on its business as now conducted and as proposed to be conducted.

(b) Set forth on Schedule 4.01(b) hereto is a complete and accurate list of all Material Subsidiaries of the Obligated Parties as of the date of this Agreement, showing as of the date of this Agreement (as to each such Subsidiary) the jurisdiction of its incorporation and percentage of the outstanding shares of each such class owned (directly or indirectly) by each Obligated Party. Each such Material Subsidiary (i) is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, except where the failure thereof would not be likely to have a Material Adverse Effect, (ii) is duly qualified and in good standing as a foreign corporation in each other jurisdiction in which it owns or leases property or in which the conduct of its business requires it to so qualify or be licensed except where the failure to so qualify or be licensed would not be likely to have a Material Adverse Effect and (iii) has all requisite corporate power and authority to own or lease and operate its properties and to carry on its business as now conducted and as proposed to be conducted except where the failure to have such power would not be likely to have a Material Adverse Effect.

(c) The execution, delivery and performance by each Obligated Party of this Agreement, the Notes and each other Loan Document to which it is or is to be a party, and the consummation of the transactions contemplated hereby or thereby are within such Obligated Party's corporate powers,

have been duly authorized by all necessary corporate action, and do not (i) contravene such Obligated Party's charter or by-laws, (ii) violate any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award, the consequences of which would be likely to have a Material Adverse Effect, (iii) conflict with or result in the breach of, or constitute a default under, any loan agreement, indenture, mortgage, deed of trust, lease or other instrument in each case involving Debt obligations of the Borrower and the Affiliate Guarantors of \$1,000,000 or more or (iv) result in or require the creation or imposition of any Lien upon or with respect to any of the properties of the Affiliate Guarantors, the Borrower and their respective Subsidiaries, other than Liens permitted by Section 5.02. None of any Affiliate Guarantor, the Borrower or any of their respective Subsidiaries is in violation of any such law, rule, regulation, order, writ, judgment, injunction, decree, determination or award or in breach of any such contract, loan agreement, indenture, mortgage, deed of trust, lease or other instrument, the violation or breach of which would be likely to have a Material Adverse Effect.

(d) All necessary material governmental and third party approvals required for (i) the due execution, delivery, recordation, filing or performance by each Obligated Party of this Agreement, the Notes or any other Loan Document to which it is a party or (ii) to the extent obtainable on or prior to the date hereof, the exercise by the Administrative Agent or any Lender of its rights under the Loan Documents, have been duly obtained, taken, given or made and are in full force and effect.

(e) This Agreement has been, and each of the Notes and each other Loan Document to which each Obligated Party is a party when delivered hereunder will have been, duly executed and delivered by such Obligated Party. This Agreement is, and each of the Notes and each other Loan Document to which the Borrower or any Affiliate Guarantor is a party when delivered hereunder will be, the legal, valid and binding obligation of the Obligated Parties party thereto, enforceable against each such Obligated Party in accordance with its terms except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other laws relating to or limiting creditors' rights or by equitable principles generally.

(f) The Consolidated balance sheet of the Borrower and its Subsidiaries as at December 31, 1996, and the related Consolidated statement of income and cash flows of the Borrower and its Subsidiaries for the fiscal year then ended, accompanied by an opinion of Deloitte & Touche LLP, independent public accountants, and the Consolidated balance sheet of the Borrower and its Subsidiaries as at March 31, 1997, and the related Consolidated statement of income and cash flows of the Borrower and its Subsidiaries for the three months then ended, duly certified by the chief financial officer of the Borrower, copies of which have been furnished to each Lender, fairly present, subject, in the case of said balance sheet as at March 31, 1997, and said statements of income and cash flows for the three months then ended, to year-end audit adjustments, the Consolidated financial condition of the Borrower and its Subsidiaries as at such date and the Consolidated results of the operations of the Borrower and its Subsidiaries for the periods ended on such dates, all in accordance with generally accepted accounting principles applied on a consistent basis. Since December 31, 1996, there has been no Material Adverse Change.

(g) Neither the Information Memorandum nor any assertion of fact of the Obligated Parties contained in any other written information, exhibit or report furnished by the Obligated Parties to the Administrative Agent or any Lender in connection with the negotiation of the Loan Documents or pursuant to the terms of the Loan Documents contained, as of its date, any untrue statement of a material fact or omitted to state a material fact necessary to make the statements made in the Information Memorandum and such other information, exhibits and reports (taken as a whole) not misleading.

(h) There is no action, suit, investigation, litigation or proceeding affecting any Affiliate Guarantor, the Borrower or any of their respective Subsidiaries pending or, to the best of any of their knowledge, threatened before any court, governmental agency or arbitrator that (i) except as disclosed in the Borrower's Annual Report on Form 10-K for the fiscal year ended December 31, 1996, would be likely to have a Material Adverse Effect or (ii) would be likely to materially adversely affect the legality, validity or enforceability of this Agreement and the other Loan Documents (taken as a whole) or the consummation of the transactions contemplated hereby.

(i) No proceeds of any Advance will be used to acquire any equity security of a class that is registered pursuant to Section 12 of the Securities Exchange Act of 1934.

(j) Neither the making of any Advance hereunder, nor the use of the proceeds thereof, will violate the provisions of Regulation G, T, U or X of the Board of Governors of the Federal Reserve System.

(k) Each Plan is in substantial compliance with ERISA and the Internal Revenue Code; no Reportable Event has occurred with respect to a Plan; no Plan is insolvent or in reorganization; no Plan has an accumulated or waived funding deficiency, has permitted decreases in its funding standard account or has applied for an extension of any amortization period within the meaning of Section 412 of the Internal Revenue Code; none of any Affiliate Guarantor, the Borrower, any of their respective Subsidiaries or any ERISA Affiliate has incurred or reasonably expects to incur any liability to or on account of a Plan pursuant to ERISA or the Internal Revenue Code; no proceedings have been instituted by the PBGC to terminate any Plan; no condition exists which presents a material risk to any Affiliate Guarantor, the Borrower, any of their respective Subsidiaries or any ERISA Affiliate of incurring a liability to or on account of a Plan pursuant to ERISA or the Internal Revenue Code; no lien imposed under the Internal Revenue Code or ERISA on the assets of any Affiliate Guarantor, the Borrower, any of their respective Subsidiaries or any ERISA Affiliate exists or is likely to arise on account of any Plan; where, with respect to any of the foregoing representations in this Section 4.01(k), the liability for or the lien which would arise as a result of, the particular circumstance or event which is the subject of the representation, would be likely to result in a Material Adverse Effect. All representations and warranties made with respect to any Plan which is a Multiemployer Plan shall be made to the best knowledge of the Borrower and the Affiliate Guarantors.

(l) Each Affiliate Guarantor, the Borrower and each of their respective Subsidiaries are in material compliance with all material laws and regulations relating to pollution and environmental control or employee safety in all domestic jurisdictions in which the Affiliate Guarantors, the Borrower and their respective Subsidiaries are presently doing business, other than those the non-compliance with which would not be likely to have a Material Adverse Effect.



(m) Each Affiliate Guarantor, the Borrower and each of their respective Subsidiaries has filed, has caused to be filed or has been included in all tax returns (Federal, state, local and foreign) required to be filed and has paid all taxes shown thereon to be due, together with applicable interest and penalties, except where the failure to so file or pay would not be likely to have a Material Adverse Effect or as disclosed on the Borrower's Annual Report on Form 10-K for the fiscal year ended December 31, 1994.

(n) None of any Affiliate Guarantor, the Borrower or any of their respective Subsidiaries is an "investment company," or a company "controlled" by an "investment company," as such terms are defined in the Investment Company Act of 1940, as amended.

#### ARTICLE V

##### COVENANTS OF THE BORROWER

SECTION 5.01. Affirmative Covenants. So long as any Advance shall remain unpaid or any Lender shall have any Commitment hereunder, each Obligated Party will, unless the Required Lenders shall otherwise consent in writing:

(a) Compliance with Laws, Etc. Comply, and cause each of its Subsidiaries to comply, with all applicable laws, rules, regulations and orders except to the extent the failure to do so would not be likely to have a Material Adverse Effect.

(b) Payment of Taxes, Etc. Pay and discharge, and cause each of its Subsidiaries to pay and discharge, before the same shall become delinquent, (i) all taxes, assessments and governmental charges or levies imposed upon it or upon its property and (ii) all lawful claims in excess of \$15,000,000 individually or \$30,000,000 in the aggregate for the Obligated Parties and their respective Subsidiaries that, if unpaid, would by law become a Lien (other than a Permitted Lien) upon its property; provided, however, that no Obligated Party or any of its Subsidiaries shall be required to pay or discharge any such tax, assessment, charge or claim that is being contested in good faith and by appropriate proceedings for which appropriate reserves have been established in accordance with GAAP.

(c) Compliance with Environmental Laws. Comply, and cause each of its Subsidiaries to comply, with all material laws and regulations relating to pollution and environmental control or employee safety which may be imposed in the future in jurisdictions in which any Obligated Party or any of its Subsidiaries may then be doing business, other than those the non-compliance with which would not be likely to have a Material Adverse Effect; and if required to do so under any applicable Environmental Law, undertake, and cause each of its Subsidiaries to undertake, any cleanup, removal, remedial or other action necessary to remove and clean up any Hazardous Materials from any Real Property in accordance with the requirements of all such applicable Environmental Laws and in accordance with orders and directives of all governmental authorities; provided that no Obligated Party or any of its Subsidiaries shall be required to take any such action where the failure to do so would not have a Material Adverse Effect.

(d) Maintenance of Insurance. Maintain, and cause each of its Material Subsidiaries to maintain, insurance with reputable insurance companies or associations in such amounts, with such retention and deductibles, and covering such risks as are in accordance with normal industry practice.

(e) Preservation of Corporate Existence, Etc. Preserve and maintain, and cause each of its Material Subsidiaries to preserve and maintain, its corporate existence, rights (charter and statutory) and franchises except to the extent that the failure to do so would not be likely to have a Material Adverse Effect; provided, however, that the Obligated Parties and their Subsidiaries may consummate any transaction permitted under Section 5.02(c); and provided further that no Obligated Party or any of its Subsidiaries shall be required to preserve any right or franchise if the Board of Directors of such Obligated Party or such Subsidiary shall determine that the preservation thereof is no longer desirable in the conduct of the business of such Obligated Party or such Subsidiary, as the case may be, and that the loss thereof is not disadvantageous in any material respect to such Obligated Party, such Subsidiary or the Lenders.

(f) Visitation Rights. At any reasonable time and upon prior notice, permit the Administrative Agent or any of the Lenders or any agents or representatives thereof, to

examine and make copies of and abstracts from the records and books of account of, and visit the properties of, such Obligated Party and any of its Subsidiaries, and to discuss the affairs, finances and accounts of such Obligated Party and any of its Subsidiaries with any of their officers or, if reasonably requested by the Administrative Agent or any Lender, through the officers of such Obligated Party or such Subsidiary and with their independent certified public accountants.

(g) Maintenance of Properties, Etc. Maintain and preserve, and cause each of its Subsidiaries to maintain and preserve, all of its properties that are used or useful in the conduct of its business in good working order and condition, ordinary wear and tear excepted, and do, or cause to be done, all things necessary to preserve and keep in full force and effect its material licenses, permits, copyrights, patents, trademarks, service marks, tradenames and rights with respect thereto, except in each case to the extent that the failure to do so would not be likely to have a Material Adverse Effect.

(h) Transactions with Affiliates. Conduct, and cause each of its Subsidiaries to conduct, all transactions with any of their Affiliates (other than the Borrower and its Subsidiaries) on terms that are substantially as favorable to such Obligated Party or such Subsidiary as it would obtain in a comparable arm's-length transaction with a Person not an Affiliate; provided that the foregoing restrictions shall not apply to (i) customary annual fees paid to Kohlberg Kravis Roberts & Co. ("KKR") and its Affiliates for management, consulting and financial services rendered to such Obligated Party and its Subsidiaries, and customary investment banking fees paid to KKR and its Affiliates for services rendered to such Obligated Party and its Subsidiaries in connection with divestitures, acquisitions, financings and certain other transactions; (ii) customary fees paid to members of the Board of Directors of such Obligated Party and its Subsidiaries; (iii) loans and advances made by the Borrower to any of its Subsidiaries or any Affiliate Guarantor; and (iv) the consummation of the Redesign in accordance with the terms set forth in Section 9.11.

SECTION 5.02. Negative Covenants. So long as any Advance shall remain unpaid or any Lender shall have any

Commitment hereunder, no Obligated Party will, at any time, without the written consent of the Required Lenders:

(a) Liens, Etc. Create, incur, assume or suffer to exist, or permit any of its Subsidiaries to create, incur, assume or suffer to exist, any Lien on or with respect to any of its properties of any character whether now owned or hereafter acquired other than:

(i) Permitted Liens;

(ii) Liens securing Indebtedness permitted by Sections 5.02(b)(viii), (ix) and (xi);

(iii) Liens, if any, arising under, financing statements filed in connection with, and assignments of accounts pursuant, to a Receivables Financing Transaction;

(iv) other Liens securing Indebtedness outstanding in an aggregate principal amount for the Obligated Parties and their respective Subsidiaries not to exceed \$200,000,000 at any time;

(v) purchase money Liens upon or in any capital assets acquired or held by the Borrower, any Affiliate Guarantor or any of their respective Subsidiaries in the ordinary course of business to secure the purchase price of such asset or to secure Debt incurred solely for the purpose of financing the acquisition, construction or improvement of such asset, or Liens existing on such asset at the time of its acquisition (other than any such Liens created in contemplation of such acquisition that were not incurred to finance the acquisition of such asset) or extensions, renewals or replacements of any of the foregoing for the same or a lesser amount, provided, however, that no such Lien shall extend to or cover any properties of any character other than the asset being acquired, and no such extension, renewal or replacement shall extend to or cover any properties not theretofore subject to the Lien being extended, renewed or replaced, provided further that the aggregate principal amount of the indebtedness secured by the Liens referred to in this clause (v) shall not exceed \$100,000,000 at any time outstanding.

(vi) the replacement, extension or renewal of any Lien permitted by clauses (i) through (v) above upon or in the same property theretofore subject thereto or the replacement, extension or renewal (without increase in the amount or change in any direct or contingent obligor) of the Indebtedness secured thereby.

(b) Indebtedness. Create, incur, assume or suffer to exist, or permit any of its Subsidiaries to create, incur, assume or suffer to exist, any Indebtedness other than:

(i) Indebtedness arising under the Loan Documents;

(ii) Indebtedness with no principal or sinking fund payment due prior to December 31, 2002 with covenants (taken as a whole) customary in United States unsecured public debt financings or private placements (other than bank financings) for comparably rated issuers and in any event no more onerous than those contained in this Agreement (taken as a whole);

(iii) unsecured Indebtedness incurred in the ordinary course of business for borrowed money, maturing within one year from the date incurred, evidenced by commercial paper or comparable instruments customary for evidencing similar obligations in jurisdictions other than the United States in an aggregate principal amount not exceeding the Unused Commitments of the Lenders;

(iv) Indebtedness in respect of acceptance, trade letter of credit, warehouse receipt or similar facilities and non-trade letters of credit issued outside the United States not supporting Debt entered into in the ordinary course of business;

(v) Indebtedness, if any, arising under a Receivables Financing Transaction;

(vi) Guaranties in respect of Indebtedness otherwise permitted hereunder;

(vii) Guaranties in the ordinary course of business in respect of obligations of suppliers, customers, franchisees and licensees of such Obligated Party and its Subsidiaries;

(viii) Indebtedness of the Subsidiaries of any Obligated Party organized outside the United States in an aggregate principal amount for the Obligated Parties and their respective Subsidiaries not exceeding at any time the excess of \$250,000,000 over the proceeds of sales of accounts receivable by such Subsidiaries;

(ix) Indebtedness arising under Capitalized Leases in an aggregate principal amount for the Obligated Parties and their respective Subsidiaries not exceeding \$100,000,000 at any time;

(x) Indebtedness in respect of Hedge Agreements in an aggregate notional amount for the Obligated Parties and their respective Subsidiaries not to exceed \$2,500,000,000 at any time outstanding;

(xi) Indebtedness of any Obligated Party or any of its Subsidiaries owed to any Obligated Party or any of its Subsidiaries;

(xii) Indebtedness secured by Liens permitted by Section 5.02(a)(v).

(xiii) Guaranties in respect of Indebtedness listed on Schedule 5.02(b) hereto;

(xiv) additional Indebtedness not contemplated by clauses (i)-(xii) above in an aggregate principal amount for the Obligated Parties and their respective Subsidiaries not exceeding \$300,000,000 at any time;

(xv) any renewal, extension or refinancing of the foregoing Indebtedness in an amount not exceeding the amount outstanding at the time of such renewal, extension or refinancing and, in the case of any renewal, extension or refinancing of the Indebtedness specified in clauses (ii) and (iii) above, otherwise in compliance with the limitations set forth in clauses (ii) and (iii), respectively; and

(xvi) the Existing Indebtedness, and any Indebtedness extending the maturity of, or refunding or refinancing, in whole or in part, any Existing Indebtedness, provided that the terms of any such extending, refunding or refinancing Indebtedness, and of any agreement entered into and of any instrument

issued in connection therewith, are otherwise permitted by the Loan Documents and certain covenants that are no more onerous than the stricter of those covenants of this Agreement (taken as a whole) or those covenants applicable to such Existing Indebtedness on the date hereof and further provided that the principal amount of such Existing Indebtedness shall not be increased above the principal amount thereof outstanding immediately prior to such extension, refunding or refinancing (including additional Indebtedness to the extent necessary to finance the payment of premiums, make-wholes or similar payments incurred in connection with such extension, refunding or refinancing), and the direct and contingent obligors therefor shall not be changed, as a result of or in connection with such extension, refunding or refinancing.

(c) Mergers, Etc. Merge into or consolidate with any Person or permit any Person to merge into it, or permit any of its Subsidiaries to do so, except that (i) any Subsidiary of any Obligated Party may merge into or consolidate with, or transfer all or a portion of its assets to, any Person, provided that, in the case of any such merger or consolidation, the Person formed by such merger or consolidation, or the Person to which all or a portion of such assets were transferred, shall be a Subsidiary of an Obligated Party, (ii) any Subsidiaries of an Obligated Party may merge into, or transfer all or a portion of its assets to, any Obligated Party, provided that in the case of any such merger, such Obligated Party is the surviving corporation, (iii) the Borrower may merge into a wholly owned Subsidiary of the Borrower that (A) is incorporated under the laws of any of the States of Delaware, New York or Ohio and (B) has no material assets or liabilities, for the sole purpose of changing the state of incorporation of the Borrower if the surviving corporation shall expressly assume the liabilities of the Borrower under the Loan Documents and (iv) any Subsidiary of any Obligated Party may merge into any Person pursuant to a transaction not prohibited by Section 5.02(d); provided, however, that in each case, immediately after giving effect thereto, no event shall occur and be continuing that constitutes a Default.

(d) Sales, Etc. of Assets. Sell, lease, transfer or otherwise dispose of any assets of such Obligated Party and its Subsidiaries for less than Fair Market Value, provided, that the foregoing shall not apply to (i) sales of inventory

and other assets (including, without limitation, worn out and obsolete equipment) in the ordinary course of business, (ii) dispositions of assets conducted on an arm's length basis for a consideration of less than \$10,000,000 and (iii) dispositions of assets between or among an Obligated Party and any of its Subsidiaries; sell, lease, transfer or otherwise dispose of all or substantially all of the assets of the Obligated Parties and their Subsidiaries taken as a whole, except in a transaction authorized by subsection (c) of this Section; or sell or grant Options except that the Obligated Parties and their Subsidiaries may sell or grant Options (i) pursuant to terms and conditions substantially similar to those set forth in Exhibits K and L hereto, (ii) for Fair Market Value and (iii) in an aggregate amount of proceeds thereof not to exceed \$101,000,000 after June 30, 1997; provided, however, that with respect to any sale, lease, transfer or other disposition of Options or any assets (other than Excluded Asset Sales) including pursuant to Options, immediately after giving effect thereto, no event shall occur and be continuing that constitutes an Event of Default under Sections 6.01(a), (b), (c) or (f).

(e) Dividends, Etc. Declare or pay any dividends (other than dividends payable only in common stock or Preferred Stock permitted by clause (ii) below of the Borrower), purchase, redeem, retire, defease or otherwise acquire for value any of its capital stock or any warrants, rights or options to acquire such capital stock, now or hereafter outstanding, return any capital to its stockholders as such, make any distribution of assets, capital stock, warrants, rights, options, obligations or securities to its stockholders as such or issue or sell any capital stock (other than common stock) or any warrants, rights or options to acquire such capital stock (other than common stock), or permit any of its Subsidiaries to purchase, redeem, retire, defease or otherwise acquire for value any capital stock of the Borrower or any Affiliate Guarantor or any warrants, rights or options to acquire such capital stock or to issue or sell any capital stock (other than common stock) or any warrants, rights or options to acquire such capital stock (other than common stock), except that, so long as no Default described in Sections 6.01(a) or (f) and no Event of Default shall have occurred and be continuing, (i) any Obligated Party or its Subsidiaries may repurchase capital stock, or any warrants, rights or options to acquire such capital stock held by its officers, directors and employees, (ii) the Borrower may issue



Preferred Stock and pay dividends thereon, provided that such Preferred Stock (A) shall not obligate the Borrower to redeem at a fixed or determinable date prior to January 1, 2000, whether by operation of a sinking fund or otherwise, or upon the occurrence of a condition not solely within the control of this issuer and (B) shall not be redeemable at the option of the holder prior to January 1, 2000, (iii) the Borrower may pay dividends on its common stock to the extent that such dividends are paid to the Borrower as interest on the notes issued by Borden Holdings then held by the Borrower or its Subsidiaries; (iv) the Borrower may pay dividends on its common stock at any time when the ratio of Combined Total Debt to Combined EBITDA of the Affiliate Guarantors, the Borrower, and their respective Subsidiaries for the period of four consecutive fiscal quarters most recently ended is less than 3.00:1.00, in an amount not to exceed 25% of the Borrower's net income for the fiscal year most recently ended; and (v) any Subsidiary of any Obligated Party may issue Preferred Stock to such Obligated Party and pay dividends thereon; (vi) the Borrower may make non-cash dividends after the Effective Date in an aggregate amount not to exceed \$50,000,000; (vii) the Borrower may make a non-cash dividend of its Borden Services division; and (viii) any Affiliate Guarantor may make and pay dividends or distributions in amounts necessary to pay taxes paid or payable in connection with any sale or disposition of assets by such Affiliate Guarantor or its Subsidiaries.

(f) Change in Nature of Business. Make any material change in the nature of its business taken as a whole as carried on at the date of the Existing Credit Agreement, other than as a result of (i) dispositions of assets or businesses approved by the Board of Directors of the applicable Obligated Party or (ii) business activities engaged in by any Obligated Party or its Subsidiaries on or prior to such date and other similar or related activities.

(g) Accounting Changes. Make or permit, or permit any of its Material Subsidiaries to make or permit, any change in its fiscal year or any significant change in accounting policies or reporting practices, except as required or permitted by generally accepted accounting principles.

(h) Amendment, Etc. of Redesign Documents. After the execution and delivery of any Redesign Document, cancel or terminate such Redesign Document or consent to, permit or accept such cancellation or termination thereof, amend,

modify or change in any manner any term or condition of such Redesign Document or give any consent, waiver or approval thereunder, waive any default under or any breach of any term or condition of such Redesign Document, agree in any manner to any other amendment, modification or change of any term or condition of such Redesign Document or take any other action in connection with such Redesign Document, or permit any of its Subsidiaries to do so, except to the extent that after giving effect to any such action, the applicable Redesign Document contains terms substantially the same as those set forth in Exhibits G through L, as applicable, provided that after giving effect to any such action the Amended and Restated Agreement of Limited Partnership of BFC Investments, L.P. shall contain provisions strictly complying with those set forth in Exhibit H as (i) the defined term "Percentage Interest" and (ii) Section 5.3(b).

5.03. Reporting Requirements. So long as any Advance shall remain unpaid or any Lender shall have any Commitment hereunder, the Borrower will, unless the Required Lenders shall otherwise consent in writing, furnish to the Lenders:

(a) Default Notice. As soon as possible and in any event within three Business Days after any officer of the Borrower obtains knowledge of each Default continuing on the date of such statement, a statement of the chief financial officer of the Borrower setting forth details thereof and the action that the Borrower has taken and proposes to take with respect thereto.

(b) Quarterly Financials. As soon as available and in any event within 45 days after the end of each of the first three quarters of each fiscal year of the Obligated Parties, a Consolidated balance sheet of (x) the Borrower and its Subsidiaries, (y) each Affiliate Guarantor and its Subsidiaries and (z) Borden Holdings and its Subsidiaries, respectively, and a Combined balance sheet of the Affiliate Guarantors, the Borrower and their respective Subsidiaries, in each case as of the end of such quarter and Consolidated statements of income and cash flows of (x) the Borrower and its Subsidiaries, (y) each Affiliate Guarantor and its Subsidiaries and (z) Borden Holdings and its Subsidiaries, respectively, and Combined statements of income and cash flows of the Affiliate Guarantors, the Borrower and their respective Subsidiaries, in each case for the period commencing at the end of the previous fiscal year and ending

with the end of such quarter, setting forth in each case in comparative form the corresponding figures for the corresponding date or period of the preceding fiscal year, certified (subject to year-end audit adjustments) by the chief financial officer of the Borrower as having been prepared in accordance with GAAP, together with (i) a certificate of said officer stating that, to the knowledge of such officer, no Default has occurred and is continuing or, if a Default has occurred and is continuing, a statement as to the nature thereof and the action that the Borrower has taken and proposes to take with respect thereto and (ii) a schedule setting forth in reasonable detail the computations used by the Borrower in determining compliance with the covenants contained in Section 5.04. To the extent that a Combined financial statement is required to be delivered under this Section, if Consolidated statements of the Affiliate Guarantors, the Borrower and their respective Subsidiaries are filed with the Securities and Exchange Commission in lieu of Combined statements, delivery of such Consolidated statements shall satisfy the requirements of this Section.

(c) Annual Financials. As soon as available and in any event within 90 days after the end of each fiscal year of the Obligated Parties, a copy of the annual audit report for such year for (w) the Borrower and its Subsidiaries, the Affiliate Guarantors and their Subsidiaries, (y) each Affiliate Guarantor and its Subsidiaries and (z) Borden Holdings and its Subsidiaries, respectively, including therein a Consolidated balance sheet of (x) the Borrower and its Subsidiaries, (y) each Affiliate Guarantor and its Subsidiaries and (z) Borden Holdings and its Subsidiaries, respectively, and a Combined balance sheet of the Affiliate Guarantors, the Borrower and their respective Subsidiaries, in each case as of the end of such fiscal year and Consolidated statements of income and cash flows of (x) the Borrower and its Subsidiaries, (y) each Affiliate Guarantor and its Subsidiaries and (z) Borden Holdings and its Subsidiaries, respectively (or audited combining statements including the Borrower and the Affiliate Guarantors if combining statements are filed with the Securities and Exchange Commission in lieu of such separate consolidating statements), and Combined statements of income and cash flows of the Affiliate Guarantors, the Borrower and their respective Subsidiaries for such fiscal year, in each case accompanied by either an unqualified opinion, or an opinion acceptable to the Required Lenders, of Deloitte & Touche LLP

or other independent public accountants of recognized standing acceptable to the Required Lenders, together with (i) a certificate of such accounting firm to the Lenders stating that in the course of the regular audit of the business of (w) the Borrower and its Subsidiaries, (x) the Borrower, the Affiliate Guarantors and their Subsidiaries, (y) each Affiliate Guarantor and its Subsidiaries and (z) Borden Holdings and its Subsidiaries, respectively, which audit was conducted by such accounting firm in accordance with generally accepted auditing standards, such accounting firm has obtained no knowledge that a Default has occurred and is continuing, or if, in the opinion of such accounting firm, a Default has occurred and is continuing, a statement as to the nature thereof (provided that in no event shall such accountants be liable as a result of this Agreement by reason of any failure to obtain knowledge of any Default that would not be disclosed in the course of their audit examination), (ii) a schedule setting forth in reasonable detail the computations used by such accountants in determining, as of the end of such fiscal year, compliance with the covenants contained in Section 5.04 and (iii) a certificate of the chief financial officer of the Borrower stating that, to the knowledge of such officer, no Default has occurred and is continuing or, if a Default has occurred and is continuing, a statement as to the nature thereof and the action that the Borrower has taken and proposes to take with respect thereto. To the extent that a Combined financial statement is required to be delivered under this Section, if Consolidated statements of the Affiliate Guarantors, the Borrower and their respective Subsidiaries are filed with the Securities and Exchange Commission in lieu of Combined statements, delivery of such Consolidated statements shall satisfy the requirements of this Section.

(d) Budgets; Etc. Not more than 60 days after the commencement of each fiscal year of the Obligated Parties, budgets of each Obligated Party on a Consolidated basis in reasonable detail for each of the four fiscal quarters of such fiscal year as customarily prepared by management for its internal use setting forth, with appropriate discussion, the principal assumptions upon which such budgets are based.

(e) ERISA. As soon as possible and, in any event, within 10 days after any Affiliate Guarantor, the Borrower, any of their respective Subsidiaries or any ERISA Affiliate knows of the occurrence of any of the following events

which, in the aggregate would be likely to have a Material Adverse Effect, the Borrower will deliver to each of the Lenders a certificate of the chief financial officer or other authorized officer of the Borrower setting forth details as to such occurrence and such action, if any, which such Affiliate Guarantor, the Borrower, such Subsidiary, such ERISA Affiliate, the PBGC, a Plan participant or the Plan administrator with respect thereto: that a Reportable Event has occurred; that an accumulated funding deficiency has been incurred or an application is reasonably likely to be or has been made to the Secretary of the Treasury for a waiver or modification of the minimum funding standard (including any required installment payments) or an extension of any amortization period under Section 412 of the Internal Revenue Code with respect to a Plan; that a Plan has been or is reasonably likely to be terminated, reorganized, partitioned or declared insolvent under Title IV of ERISA; that a Plan has an Unfunded Current Liability giving rise to a lien under ERISA or the Internal Revenue Code; that proceedings are reasonably likely to be or have been instituted to terminate a Plan; that a proceeding has been instituted pursuant to Section 515 of ERISA to collect a delinquent contribution to a Plan; or that any Affiliate Guarantor, the Borrower, any of their respective Subsidiaries or any ERISA Affiliate will or is reasonably likely to incur any liability (including any contingent or secondary liability) to or on account of the termination of or withdrawal from a Plan under Section 4062, 4063, 4064, 4069, 4201 or 4204 of ERISA or with respect to a Plan under Section 4971 or 2975 of the Internal Revenue Code or Section 409 or 502(i) or 502(l) of ERISA.

(f) Litigation. Promptly after the commencement thereof, notice of all actions, suits, investigations, litigation and proceedings before any court or governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, affecting any Affiliate Guarantor, the Borrower or any of their respective Subsidiaries which the Borrower reasonably believes would be likely to have a Material Adverse Effect.

(g) Securities Reports. Promptly after the sending or filing thereof, copies of all proxy statements, financial statements and reports that any Affiliate Guarantor, the Borrower or any of their respective Subsidiaries sends to the public stockholders of the Borrower or any Affiliate Guarantor and copies of all reports on Forms 10-Q, 10-K

and 8-K that any Affiliate Guarantor, the Borrower or any of their respective Subsidiaries files with the Securities and Exchange Commission or any governmental authority that may be substituted therefor.

(h) Environmental Matters. Promptly after obtaining knowledge of any of the following environmental matters, unless such environmental matters would not, individually or when aggregated with all other such matters, be likely to have a Material Adverse Effect, written notice of (i) any pending or threatened material Environmental Claim against any Affiliate Guarantor, the Borrower or any of their respective Subsidiaries or any Real Property; (ii) any condition or occurrence on any Real Property that (x) results in material noncompliance by any Affiliate Guarantor, the Borrower or any of their respective Subsidiaries with any applicable Environmental Law or (y) would be likely to form the basis of a material Environmental Claim against any Affiliate Guarantor, the Borrower or any of their respective Subsidiaries or any Real Property; (iii) any condition or occurrence on any material Real Property that could reasonably be anticipated to cause such Real Property to be subject to any restrictions on the ownership, occupancy, use or transferability of such Real Property under any Environmental Law; and (iv) the taking of any material removal or remedial action in response to the actual or alleged presence of any Hazardous Material on any Real Property. All such notices shall describe in reasonable detail the nature of the claim, investigation, condition, occurrence or removal or remedial action and such Affiliate Guarantor's or the Borrower's response thereto.

(i) Other Information. Such other information respecting the business, condition (financial or otherwise), operations, performance, properties or prospects of any Affiliate Guarantor, the Borrower or any of their respective Subsidiaries as any Lender through the Administrative Agent may from time to time reasonably request.

SECTION 5.04. Financial Covenants. So long as any Advance shall remain unpaid or any Lender shall have any Commitment hereunder, the Obligated Parties will, unless the Required Lenders otherwise consent in writing:

(a) EBITDA/Net Interest Expense. Maintain a ratio of Combined EBITDA of the Affiliate Guarantors, the Borrower

and their respective Subsidiaries to Combined Net Interest Expense of not less than the amount set forth below for each period of four consecutive fiscal quarters ended at the dates set forth below:

QUARTER ENDING -----	RATIO -----
June 30, 1997	2.25:1.00
September 30, 1997	2.35:1.00
December 31, 1997	2.50:1.00
March 31, 1998	2.50:1.00
June 30, 1998	2.50:1.00
September 30, 1998	2.60:1.00
December 31, 1998	2.75:1.00
March 31, 1999	2.75:1.00
June 30, 1999	2.75:1.00
September 30, 1999	2.85:1.00
December 31, 1999 and thereafter	3.00:1.00

(b) Total Debt/EBITDA Ratio. Maintain a Total Debt/EBITDA Ratio of not more than the amount set forth below for each period of four consecutive fiscal quarters ended at the dates set forth below:

QUARTER ENDING -----	RATIO -----
June 30, 1997	4.50:1.00
September 30, 1997	4.50:1.00
December 31, 1997	4.50:1.00
March 31, 1998	4.50:1.00
June 30, 1998	4.50:1.00
September 30, 1998	4.50:1.00
December 31, 1998	4.50:1.00
March 31, 1999	4.00:1.00
June 30, 1999	4.00:1.00
September 30, 1999	4.00:1.00
December 31, 1999	4.00:1.00
March 31, 2000 and thereafter	3.90:1.00

(c) Capital Expenditures. Not make, or permit any of its Subsidiaries to make, any Capital Expenditures that would cause the aggregate of all such Capital Expenditures made by the Affiliate Guarantors, the Borrower and their respective Subsidiaries to exceed \$275,000,000 in fiscal year 1997 or \$250,000,000 in any fiscal year thereafter,

plus for the first year following any acquisition or investment by the Borrower, any Affiliate Guarantor or their respective Subsidiaries, an amount equal to 10% of the sales attributable to the Person or assets acquired or investment made for the period of twelve consecutive calendar months ended immediately prior to the date of determination, plus for each year following the first anniversary of any acquisition, an amount equal to 7.5% of such acquisition's target's sales for the period of twelve consecutive calendar months ended immediately prior to the date of determination and plus for any fiscal year Equity Proceeds received by the Borrower or any Affiliate Guarantor on or after March 31, 1997; provided that any Capital Expenditure permitted but not made in a prior year (commencing with the year 1997) may be carried forward and added to the amounts set forth above; provided further that for purposes of this Section 5.04(c) "Capital Expenditures" shall not include any portion of any acquisition made outside of the ordinary course of business.

#### ARTICLE VI

##### EVENTS OF DEFAULT

SECTION 6.01. Events of Default. If any of the following events ("Events of Default") shall occur and be continuing:

(a) the Borrower shall fail to pay when due any principal of any Advance, or the Borrower shall fail to pay any interest or other amount due under any Loan Document and such failure shall continue for five or more days; or

(b) any representation or warranty made by any Obligated Party under or in connection with any Loan Document shall prove to have been incorrect in any material respect when made; or

(c) any Obligated Party shall fail to perform or observe any term, covenant or agreement contained in Section 5.01(e), 5.02 or 5.04; or

(d) any Obligated Party shall fail to perform any other term, covenant or agreement contained in any Loan Document on its part to be performed or observed if such failure shall remain unremedied for 30 days after written



notice thereof shall have been received by the Borrower from the Administrative Agent or the Required Lenders; or

(e) any Obligated Party or any of its Subsidiaries shall default in any payment with respect to any Indebtedness in excess of \$15,000,000 individually or \$30,000,000 in the aggregate (but excluding Indebtedness outstanding hereunder) of such Obligated Party and its Subsidiaries, when the same becomes due and payable (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise), and such failure shall continue after the applicable grace period, if any, specified in the agreement or instrument relating to such Indebtedness; or any other event shall occur or condition shall exist under any agreement or instrument relating to any such Indebtedness and shall continue after the applicable grace period, if any, specified in such agreement or instrument, if the effect of such event or condition is to accelerate, or to permit the acceleration of, the maturity of such Indebtedness or otherwise to cause, or to permit the holder thereof to cause, such Indebtedness to mature; or any such Indebtedness shall be declared to be due and payable or required to be prepaid or redeemed (other than by a regularly scheduled required prepayment or redemption), purchased or defeased, or an offer to prepay, redeem, purchase or defease such Indebtedness shall be required to be made, in each case prior to the stated maturity thereof; or

(f) any Obligated Party or any of its Material Subsidiaries shall generally not pay its debts as such debts become due, or shall admit in writing its inability to pay its debts generally, or shall make a general assignment for the benefit of creditors; or any proceeding shall be instituted by or against any Obligated Party or any of its Material Subsidiaries seeking to adjudicate it a bankrupt or insolvent, or seeking liquidation, winding up, reorganization, arrangement, adjustment, protection, relief, or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors, or seeking the entry of an order for relief or the appointment of a receiver, trustee, or other similar official for it or for any substantial part of its property and, in the case of any such proceeding instituted against it (but not instituted by it) that is being diligently contested by it in good faith, either such proceeding shall remain undismitted or unstayed for a period of 60 days or

any of the actions sought in such proceeding (including, without limitation, the entry of an order for relief against, or the appointment of a receiver, trustee, custodian or other similar official for, it or any substantial part of its property) shall occur; or any Obligated Party or any of its Material Subsidiaries shall take any corporate action to authorize any of the actions set forth above in this subsection (f); or

(g) any judgment or order for the payment of money in excess of \$15,000,000 individually or \$30,000,000 in the aggregate (to the extent not paid or fully covered by insurance provided by a carrier that has acknowledged coverage) shall be rendered against any Obligated Party or any of its Subsidiaries and any such judgment or order shall not have been vacated, discharged, satisfied or stayed or bonded pending appeal within 60 days from the entry thereof; or

(h) (i) KKR and its Affiliates or Subsidiaries shall cease to have beneficial ownership (within the meaning of Rule 13d-3 of the Securities and Exchange Commission under the Securities Exchange Act of 1934), directly or indirectly, of Voting Stock of the Borrower and each Affiliate Guarantor that has not been released in accordance with Section 7.05 (or other Securities convertible into such Voting Stock) representing 50.1% or more of the combined voting power of all Voting Stock of the Borrower and each such Affiliate Guarantor, provided that the percentage required by this subsection (i) shall be reduced to 35% or more provided that the Borrower maintains an Investment Grade Rating; or (ii) individuals selected by KKR and its Affiliates or Subsidiaries (other than the Borrower or an Affiliate Guarantor that has not been released in accordance with Section 7.05) shall fail to constitute a majority of the Board of Directors of the Borrower or such Affiliate Guarantor; or

(i) (i) Any Plan shall fail to satisfy the minimum funding standard required for any plan year or part thereof or a waiver of such standard or extension of any amortization period is sought or granted under Section 412 of the Internal Revenue Code; any Plan is, shall have been or is likely to be terminated or the subject of termination proceedings under ERISA; any Plan shall have an Unfunded Current Liability; or any Affiliate Guarantor, the Borrower, any of their respective Subsidiaries or any ERISA Affiliate

has incurred or is likely to incur a liability to or on account of a Plan under Section 409, 502(i), 502(1), 515, 4062, 4063, 4064, 4069, 4201 or 4204 of ERISA or Section 4971 or 4975 of the Internal Revenue Code; and (ii) there shall result from any such event or events referred to in clause (i) above the imposition of a lien, the granting of a security interest, or a liability or a material risk of incurring a liability, on the part of any Affiliate Guarantor, the Borrower, any of their respective Subsidiaries or any ERISA Affiliate, which in each case would be likely to have a Material Adverse Effect;

then, and in any such event, the Administrative Agent (i) shall at the request, or may with the consent, of the Required Lenders, by notice to the Borrower, declare the obligation of each Lender to make Advances to be terminated, whereupon the same shall forthwith terminate, and (ii) shall at the request, or may with the consent, of the Required Lenders, by notice to the Borrower, declare the Notes, all interest thereon and all other amounts payable under this Agreement and the other Loan Documents to be forthwith due and payable, whereupon the Notes, all such interest and all such amounts shall become and be forthwith due and payable, without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by the Borrower; provided, however, that in the event of an actual or deemed entry of an order for relief with respect to any Obligated Party under the Federal Bankruptcy Code, (x) the obligation of each Lender to make Advances shall automatically be terminated and (y) the Notes, all such interest and all such amounts shall automatically become and be due and payable, without presentment, demand, protest or any notice of any kind, all of which are hereby expressly waived by the Borrower.

## ARTICLE VII

### GUARANTY

#### SECTION 7.01. Unconditional Guaranty; Limitation of Liability.

(a) Each Affiliate Guarantor hereby absolutely and unconditionally guarantees the punctual payment when due, whether at stated maturity, by acceleration or otherwise, of all obligations of each other Obligated Party now or hereafter existing under the Loan Documents whether for principal, interest, fees, expenses or otherwise (such obligations being the "Guaranteed Obligations"), and agrees to pay any and all reasonable expenses (including reasonable counsel fees and

expenses) incurred by the Administrative Agent or any Lender in enforcing any rights under this Article VII. Without limiting the generality of the foregoing, each Affiliate Guarantor's liability shall extend to all amounts that constitute part of the Guaranteed Obligations and would be owed by any Obligated Party to the Administrative Agent or any Lender under the Loan Documents but for the fact that they are unenforceable or not allowable due to the existence of a bankruptcy, reorganization or similar proceeding involving such Obligated Party.

(b) The aggregate liability of each Affiliate Guarantor under this Article VII and under guaranties by such Affiliate Guarantor permitted by Section 5.02(b)(xii) shall not exceed the greater of (i) the net benefit realized by such Affiliate Guarantor from the proceeds of the Advances made from time to time by the Borrower to such Affiliate Guarantor or any Subsidiary of such Affiliate Guarantor and (ii) the greater of (x) 95% of the Adjusted Net Assets of such Affiliate Guarantor on the date of delivery hereof and (y) 95% of the Adjusted Net Assets of such Affiliate Guarantor on the date of any payment hereunder. "Adjusted Net Assets" of any Affiliate Guarantor at any date means the lesser of (x) the amount by which the fair value of the property of such Affiliate Guarantor exceeds the total amount of liabilities, including, without limitation, contingent liabilities, but excluding liabilities under this Article VII and liabilities under guaranties by such Affiliate Guarantor permitted by Section 5.02(b)(xii), of such Affiliate Guarantor at such date and (y) the amount by which the present fair salable value of the assets of such Affiliate Guarantor at such date exceeds the amount that will be required to pay the probable liability of such Affiliate Guarantor on its debts, excluding debt in respect of this Article VII and debt in respect of guaranties by such Affiliate Guarantor permitted by Section 5.02(b)(xii), as they become absolute and matured.

SECTION 7.02. Guaranty Absolute. Each Affiliate Guarantor guarantees that the Guaranteed Obligations will be paid strictly in accordance with the terms of the Loan Documents, regardless of any law, regulation or order now or hereafter in effect in any jurisdiction affecting any of such terms or the rights of the Administrative Agent or any Lender with respect thereto. The obligations of each Affiliate Guarantor under this Article VII are independent of the Guaranteed Obligations, and a separate action or actions may be brought and prosecuted against each Affiliate Guarantor to enforce this Article VII, irrespective of whether any action is brought against the Borrower or any other Affiliate Guarantor or whether the Borrower

or any other Affiliate Guarantor is joined in any such action or actions. The liability of each Affiliate Guarantor under this Article VII shall be absolute and unconditional irrespective of:

(a) any lack of validity or enforceability of any Loan Document or any agreement or instrument relating thereto;

(b) any change in the time, manner or place of payment of, or in any other term of, all or any of the Guaranteed Obligations, or any other amendment or waiver of or any consent to departure from any Loan Document other than this Article VII, including, without limitation, any increase in the Guaranteed Obligations resulting from the extension of additional credit to the Borrower or otherwise;

(c) any taking, exchange, release or non-perfection of any collateral, or any taking, release or amendment or waiver of or consent to departure from any other guaranty, for all or any of the Guaranteed Obligations;

(d) any manner of application of collateral, or proceeds thereof, to all or any of the Guaranteed Obligations, or any manner of sale or other disposition of any collateral for all or any of the Guaranteed Obligations or any other assets of the Borrower or any other Obligated Party or any of their respective Subsidiaries;

(e) any change, restructuring or termination of the corporate structure or existence of the Borrower or any other Obligated Party or any of their respective Subsidiaries; or

(f) any other circumstance (including, without limitation, any statute of limitations) that might otherwise constitute a defense available to, or a discharge of, the Borrower, any other Obligated Party or a guarantor.

This guaranty shall continue to be effective or shall be reinstated, as the case may be, if at any time any payment of any of the Guaranteed Obligations is rescinded or must otherwise be returned by the Administrative Agent or any Lender upon the insolvency, bankruptcy or reorganization of the Borrower, any other Obligated Party or otherwise, all as though such payment had not been made.

SECTION 7.03. Waivers. Each Affiliate Guarantor hereby waives to the extent permitted by applicable law:

(a) promptness, diligence, notice of acceptance and any other notice with respect to any of the Guaranteed Obligations and this Article VII;

(b) any requirement that the Administrative Agent, any Lender or any other Person protect, secure, perfect or insure any Lien or any property subject thereto or exhaust any right or take any action against the Borrower, any Affiliate Guarantor or any other Person or any collateral;

(c) any defense arising by reason of any claim or defense based upon an election of remedies by the Administrative Agent or any Lender that in any manner impairs, reduces, releases or otherwise adversely affects its subrogation, contribution or reimbursement rights or other rights to proceed against the Borrower, any Affiliate Guarantor or any other Person or any collateral; and

(d) any duty on the part of the Administrative Agent or any Lender to disclose to such Affiliate Guarantor any matter, fact or thing relating to the business, operation or condition of any Obligated Party and its assets now or hereafter known by the Administrative Agent or such Lender, as the case may be.

SECTION 7.04. Subrogation. No Affiliate Guarantor will exercise any rights that it may now or hereafter acquire against the Borrower, any other Obligated Party or any other insider guarantor that arise from the existence, payment, performance or enforcement of such Affiliate Guarantor's obligations under this Article VII or any other Loan Document, including, without limitation, any right of subrogation, reimbursement, exoneration, contribution or indemnification and any right to participate in any claim or remedy of the Administrative Agent or any Lender against the Borrower, any other Obligated Party or any other insider guarantor or any collateral, whether or not such claim, remedy or right arises in equity or under contract, statute or common law, including, without limitation, the right to take or receive from the Borrower, any other Obligated Party or any other insider guarantor, directly or indirectly, in cash or other property or by set-off or in any other manner, payment or security on account of such claim, remedy or right, unless and until all of the Guaranteed Obligations and all other amounts payable under this Article VII shall have been paid in full in cash and the Commitments shall have expired or terminated. If any amount

shall be paid to any Affiliate Guarantor in violation of the preceding sentence at any time prior to the later of the payment in full in cash of the Guaranteed Obligations and all other amounts payable under this Article VII and the Revolver Termination Date, or, if the Term Loan Election shall have been made in accordance with Section 2.04, the Maturity Date, such amount shall be held in trust for the benefit of the Administrative Agent and the Lenders and the beneficiaries of guaranties made by the Affiliate Guarantors as permitted by Section 5.02(b)(xii) and shall forthwith be paid to the Administrative Agent and such other beneficiaries, and if delivered to the Administrative Agent shall be credited and applied to the Guaranteed Obligations and all other amounts payable under this Article VII, whether matured or unmatured, in accordance with the terms of the Loan Documents, or held as collateral for any Guaranteed Obligations or other amounts payable under this Article VII thereafter arising. If (i) any Affiliate Guarantor shall make payment to the Administrative Agent or any Lender of all or any part of the Guaranteed Obligations, (ii) all of the Guaranteed Obligations and all other amounts payable under this Article VII shall be paid in full in cash and (iii) the Revolver Termination Date or, if the Term Loan Election shall have been made in accordance with Section 2.04, the Maturity Date shall have occurred, the Administrative Agent and the Lenders will, at such Affiliate Guarantor's request and expense, execute and deliver to such Affiliate Guarantor appropriate documents, without recourse and without representation or warranty, necessary to evidence the transfer by subrogation to such Affiliate Guarantor of an interest in the Guaranteed Obligations resulting from such payment by such Affiliate Guarantor.

SECTION 7.05. Release and Termination. (a) Upon the sale, transfer or other disposition of all or any portion of the common stock of any Affiliate Guarantor (including through the primary issuance and sale of shares of common stock) that the Borrower elects by notice to the Administrative Agent to designate as a "Guarantee Release Event", the Administrative Agent will, at the Borrower's expense, execute and deliver to such Affiliate Guarantor such documents as such Affiliate Guarantor shall reasonably request to evidence the release of such Affiliate Guarantor from its obligations under this Agreement, provided, that (i) at the time of such designation and such release no Default shall have occurred and be continuing, (ii) such sale, transfer or disposition is in compliance with Section 5.02(d) and (iii) the proceeds of such sale, transfer or

disposition required to be applied pursuant to Section 2.06 shall be so applied.

(b) Upon the payment in full of the Guaranteed Obligations (on or after the Revolver Termination Date or, if the Term Loan Election shall have been made in accordance with Section 2.04, the Maturity Date), the Administrative Agent will, at the Borrower's expense, execute and deliver to each Affiliate Guarantor such documents as such Affiliate Guarantor shall reasonably request to evidence the termination of the obligations of such Affiliate Guarantor under this Agreement.

(c) Upon the earlier of the occurrence of a "Guarantee Release Event" in accordance with subsection (a) above or the termination of obligations pursuant to subsection (b) above, the applicable Affiliate Guarantor shall be released from the guaranty of such Affiliate Guarantor under this Article VII and from all other obligations of such Affiliate Guarantor under this Agreement and each other Loan Document and such Affiliate Guarantor shall cease to be an "Affiliate Guarantor" or an "Obligated Party" hereunder.

#### ARTICLE VIII

##### THE AGENTS

SECTION 8.01. Authorization and Action. Each Lender hereby appoints and authorizes the Administrative Agent to take such action as agent on its behalf and to exercise such powers and discretion under this Agreement and the other Loan Documents as are delegated to the Administrative Agent by the terms hereof and thereof, together with such powers and discretion as are reasonably incidental thereto. As to any matters not expressly provided for by the Loan Documents (including, without limitation, enforcement or collection of the Notes), the Administrative Agent shall not be required to exercise any discretion or take any action, but shall be required to act or to refrain from acting (and shall be fully protected in so acting or refraining from acting) upon the instructions of the Required Lenders, and such instructions shall be binding upon all Lenders and all holders of Notes; provided, however, that the Administrative Agent shall not be required to take any action that exposes the Administrative Agent to personal liability or that is contrary to this Agreement or applicable law. The Administrative Agent agrees to give to each Lender prompt notice



of each notice given to it by the Borrower pursuant to the terms of this Agreement.

SECTION 8.02. Reliance, Etc. (a) None of the Administrative Agent, any Lead Managing Agent or any Arranger or any of their respective directors, officers, agents or employees shall be liable for any action taken or omitted to be taken by it or them under or in connection with the Loan Documents, except for its or their own gross negligence or willful misconduct. Without limitation of the generality of the foregoing, the Administrative Agent: (i) may treat the payee of any Note as the holder thereof until the Administrative Agent receives and accepts an Assumption Agreement entered into by an Assuming Lender as provided in Section 2.18, or an Assignment and Acceptance entered into by the Lender that is the payee of such Note, as assignor, and an Eligible Assignee, as assignee, as provided in Section 9.07; (ii) may consult with legal counsel (including counsel for any Obligated Party), independent public accountants and other experts selected by it and shall not be liable for any action taken or omitted to be taken in good faith by it in accordance with the advice of such counsel, accountants or experts; (iii) makes no warranty or representation to any Lender and shall not be responsible to any Lender for any statements, warranties or representations made in or in connection with the Loan Documents; (iv) shall not have any duty to ascertain or to inquire as to the performance or observance of any of the terms, covenants or conditions of any Loan Document on the part of any Obligated Party or to inspect the property (including the books and records) of any Obligated Party; (v) shall not be responsible to any Lender for the due execution, legality, validity, enforceability, genuineness, sufficiency or value of, or the perfection or priority of any Lien created or purported to be created under or in connection with, any Loan Document or any other instrument or document furnished pursuant hereto; and (vi) shall incur no liability under or in respect of any Loan Document by acting upon any notice, consent, certificate or other instrument or writing (which may be by telegram, telecopy, cable or telex) believed by it to be genuine and signed or sent by the proper party or parties.

(b) The Lead Managing Agents and the Arrangers, as such, shall have no duties or obligations whatsoever with respect to this Agreement, the Notes or any other document or any matter related thereto.

SECTION 8.03. Lead Managing Agents and Affiliates. With respect to their respective Commitments, the Advances made

by them and the Notes issued to them, each of the Lead Managing Agents shall have the same rights and powers under the Loan Documents as any other Lender and may exercise the same as though it or its Affiliate were not the Administrative Agent, a Lead Managing Agent or an Arranger, as the case may be; and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated, include each of the Lead Managing Agents in its individual capacity. Each of the Lead Managing Agents and its respective affiliates may accept deposits from, lend money to, act as trustee under indentures of, accept investment banking engagements from and generally engage in any kind of business with, any Obligated Party, any of its Subsidiaries and any Person who may do business with or own securities of any Obligated Party or any such Subsidiary, all as if such Lead Managing Agent or any of its respective Affiliates were not the Administrative Agent, a Lead Managing Agent or an Arranger, as the case may be, and without any duty to account therefor to the Lenders.

SECTION 8.04. Lender Credit Decision. Each Lender acknowledges that it has, independently and without reliance upon the Administrative Agent, the Lead Managing Agents, any Arranger or any other Lender and based on the financial statements referred to in Section 4.01 and such other documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon the Administrative Agent, the Lead Managing Agents, any Arranger or any other Lender and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement.

SECTION 8.05. Indemnification. Each Lender severally agrees to indemnify each Agent (to the extent not promptly reimbursed by the Borrower) from and against such Lender's ratable share of any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever that may be imposed on, incurred by, or asserted against such Agent in any way relating to or arising out of the Loan Documents or any action taken or omitted by such Agent under the Loan Documents; provided, however, that no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from such Agent's gross negligence or willful misconduct. Without limitation of the foregoing, each Lender agrees to reimburse each Agent promptly upon demand for its

ratable share of any costs and expenses payable by the Borrower under Section 9.04, to the extent that such Agent is not promptly reimbursed for such costs and expenses by the Borrower. For purposes of this Section 8.05, the Lenders' respective Ratable Shares of any amount shall be determined, at any time, according to the sum of (a) the aggregate principal amount of the Advances outstanding at such time and owing to the respective Lenders and (b) their respective Unused Commitments at such time. In the event that any Defaulted Advance shall be owing by any Defaulting Lender at any time, such Lender's Commitment with respect to the Advance under which such Defaulted Advance was required to have been made shall be considered to be unused for purposes of this Section 8.05 to the extent of the amount of such Defaulted Advance. The failure of any Lender to reimburse any Agent promptly upon demand for its ratable share of any amount required to be paid by the Lenders to such Agent as provided herein shall not relieve any other Lender of its obligation hereunder to reimburse such Agent for its ratable share of such amount, but no Lender shall be responsible for the failure of any other Lender to reimburse such Agent for such other Lender's ratable share of such amount.

SECTION 8.06. Successor Administrative Agent. The Administrative Agent may resign as to all of the Facilities at any time by giving written notice thereof to the Lenders and the Borrower and may be removed at any time with or without cause by the Required Lenders. Upon any such resignation or removal, the Required Lenders shall have the right to appoint a successor Administrative Agent. If no successor Administrative Agent shall have been so appointed by the Required Lenders, and shall have accepted such appointment, within 30 days after the retiring Administrative Agent's giving of notice of resignation or the Required Lenders' removal of the retiring Administrative Agent, then the retiring Administrative Agent may, on behalf of the Lenders, appoint a successor Administrative Agent, which shall be a commercial bank organized under the laws of the United States or of any State thereof and having a combined capital and surplus of at least \$250,000,000. Upon the acceptance of any appointment as Administrative Agent hereunder by a successor Administrative Agent as to all of the Facilities, such successor Administrative Agent shall succeed to and become vested with all the rights, powers, discretion, privileges and duties of the retiring Administrative Agent, and the retiring Administrative Agent shall be discharged from its duties and obligations under the Loan Documents. After any retiring Administrative Agent's resignation or removal hereunder as Administrative Agent, the provisions of this Article VIII shall inure to its benefit as to any actions

taken or omitted to be taken by it while it was Administrative Agent under this Agreement.

#### ARTICLE IX

##### MISCELLANEOUS

SECTION 9.01. Amendments, Etc. No amendment or waiver of any provision of this Agreement or the Notes, nor consent to any departure by the Borrower therefrom, shall in any event be effective unless the same shall be in writing and signed by the Required Lenders, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided, however, that no amendment, waiver or consent shall, unless in writing and signed by each Lender affected thereby (other than any Lender which is, at such time, a Defaulting Lender) directly: (i) reduce the percentage of the Commitments or of the aggregate unpaid principal amount of the Notes, or the number of Lenders, that shall be required for the Lenders or any of them to take any action hereunder, (ii) amend this Section 9.01, (iii) extend the scheduled time of payment of any interest or commitment fee owing to such Lender, (iv) increase the aggregate amount of the Commitments of such Lender, (v) reduce the stated rate of interest borne by the Advances owing to such Lender (other than as a result of waiving the applicability of any post-default increase in interest rates), forgive all or any part of the principal amount thereof or reduce the stated rate for calculating any commitment fee owing to such Lender, (vi) extend the final scheduled maturity of any Advance owing to such Lender or (vii) release any Affiliate Guarantor from its obligations under Article VII except as expressly provided in Section 7.05; provided further that no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent in addition to the Lenders required above to take such action, affect the rights or duties of the Administrative Agent under this Agreement or any Note.

SECTION 9.02. Notices, Etc. All notices and other communications provided for hereunder shall be in writing (including telegraphic, telecopy, telex or cable communication) and mailed, telegraphed, telecopied, telexed, cabled or delivered, if to the Borrower, at its address at 180 East Broad Street, Columbus, Ohio 43215-3799, Attention: Vice President and Treasurer; if to Foods Holdings, at its address at 80 East Broad Street, Columbus, Ohio 43215-3799; if to Wise Holdings, at its address at 80 East Broad Street, Columbus, Ohio 43215-3799; if to

any Bank, at its Domestic Lending Office specified opposite its name on Schedule I hereto; if to any other Lender, at its Domestic Lending Office specified in the Assumption Agreement or the Assignment and Acceptance pursuant to which it became a Lender, as the case may be; and if to the Administrative Agent, at its address at 1 Court Square, 7th Floor, Long Island City, New York 11120, Attention: John Makrinos, with a copy to 399 Park Avenue, New York, New York 10043, Attention: Steve Sellhausen; or, as to the Borrower or the Administrative Agent, at such other address as shall be designated by such party in a written notice to the other parties and, as to each other party, at such other address as shall be designated by such party in a written notice to the Borrower and the Administrative Agent. All such notices and communications shall, when mailed, telegraphed, telecopied, telexed or cabled, be effective when deposited in the mails, delivered to the telegraph company, transmitted by telecopier, confirmed by telex answerback or delivered to the cable company, respectively, except that notices and communications to the Administrative Agent pursuant to Article II, III or VIII shall not be effective until received by the Administrative Agent.

SECTION 9.03. No Waiver; Remedies. No failure on the part of any Lender, any Arranger or the Administrative Agent to exercise, and no delay in exercising, any right hereunder or under any Note shall operate as a waiver thereof; nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

SECTION 9.04. Costs and Expenses. (a) The Borrower agrees to pay on demand (i) all reasonable and documented costs and out-of-pocket expenses of each Agent in connection with the preparation, execution, delivery and amendment of the Loan Documents (including, without limitation, (A) all due diligence, syndication (including printing, distribution and bank meetings), transportation, computer, telecommunications, duplication, audit, insurance, consultant, search, filing and recording fees and all other out-of-pocket expenses in an aggregate amount agreed to by the Arrangers and the Borrower and (B) the reasonable and documented fees and out-of-pocket expenses of counsel for the Lead Managing Agents and the Arrangers) with respect thereto, with respect to advising the Administrative Agent as to its rights and responsibilities, or the perfection, protection or preservation of rights or interests, under the Loan Documents, with respect to negotiations with any Obligated Party or with

other creditors of any Obligated Party or any of its Subsidiaries arising out of any Default or any events or circumstances that may give rise to a Default and with respect to presenting claims in or otherwise participating in or monitoring any bankruptcy, insolvency or other similar proceeding involving creditors' rights generally and any proceeding ancillary thereto), (ii) all reasonable and documented costs and out-of-pocket expenses of the Administrative Agent in connection with the administration of the Loan Documents and (iii) all reasonable and documented costs and out-of-pocket expenses of the Administrative Agent and the Lenders in connection with the enforcement of the Loan Documents, whether in any action, suit or litigation, any bankruptcy, insolvency or other similar proceeding affecting creditors' rights generally or otherwise (including, without limitation, the reasonable and documented fees and out-of-pocket expenses of counsel for the Administrative Agent and each Lender with respect thereto).

(b) The Borrower agrees to indemnify and hold harmless each Agent and each Lender and each of their respective Affiliates and their respective officers, directors, employees, agents and advisors (each, an "Indemnified Party") from and against any and all claims, damages, losses, liabilities and expenses (including, without limitation, reasonable and documented fees and expenses of counsel) that may be incurred by or asserted or awarded against any Indemnified Party, in each case arising out of or in connection with or by reason of, or in connection with the preparation for a defense of, any investigation, litigation or proceeding arising out of, related to or in connection with this Agreement (including, without limitation, the Notes and any of the transactions contemplated herein or in any other Loan Document or the actual or proposed use of the proceeds of the Advances) whether or not such investigation, litigation or proceeding is brought by any Obligated Party, its directors, shareholders or creditors or an Indemnified Party or any Indemnified Party is otherwise a party thereto and whether or not the transactions contemplated hereby are consummated, except to the extent such claim, damage, loss, liability or expense results from such Indemnified Party's gross negligence or willful misconduct. The Borrower also agrees not to assert any claim against any Agent or any Lender or any of their respective Affiliates or any of their respective directors, officers, employees, attorneys and agents, on any theory of liability, for special, indirect, consequential or punitive damages arising out of or otherwise relating to the Notes, this Agreement, any of the transactions contemplated herein or in any other Loan Document or the actual or proposed use of the proceeds of the Advances.

Each Indemnified Party agrees to notify the Borrower, promptly after obtaining actual knowledge thereof, of the assertion against it or any other Person of any claim or the commencement of any action or proceeding relating to this Agreement (including, without limitation, the Notes and any of the transactions contemplated herein or in any other Loan Document or the actual or proposed use of the proceeds of the Advances) which such Indemnified Party considers to be a claim, action or proceeding with respect to which it is entitled to indemnification hereunder, but failure to so notify will not relieve the Borrower from any liability under this Section 9.04(b). Each Indemnified Party will be entitled to defend any such claim, action or proceeding, and may employ or retain counsel to represent it in, and to defend, such claim, action or proceeding and the Borrower will pay the reasonable and documented fees and out-of-pocket expenses of such counsel; provided, however, that the Indemnified Parties shall, to the extent practicable, choose one counsel to act on their behalf at the Borrower's expense, which counsel, at the request of the Borrower, shall also represent and defend the Borrower in such claim, action or proceeding unless an Indemnified Party reasonably determines based on an opinion of outside counsel that having common counsel would present such counsel with a conflict of interest. In the event of such determination, such Indemnified Party or Parties shall not be required to share counsel and shall be entitled to full indemnification for such counsel's fees and expenses as otherwise provided herein.

(c) If any payment of principal of, or Conversion of, or failure to Convert as a result of a withdrawn notice of Conversion, any Eurodollar Rate Advance, LIBO Rate Advance or Fixed Rate Advance is made by the Borrower to or for the account of a Lender other than on the last day of the Interest Period for such Advance, as a result of a payment or Conversion pursuant to Section 2.07, 2.10(b)(i) or 2.11(d), acceleration of the maturity of the Notes pursuant to Section 6.01 or for any other reason, the Borrower shall, after receipt of a written request by such Lender (which request shall set forth in reasonable detail the basis for requesting such amount and shall also be sent upon demand by such Lender (with a copy of such demand to the Administrative Agent), pay to the Administrative Agent for the account of such Lender any amounts required to compensate such Lender for any additional losses, costs or expenses that it may reasonably incur as a result of such payment, including, without limitation, any loss cost or expense (excluding loss of anticipated profits) actually incurred by reason of the liquidation or reemployment of deposits or other funds acquired by any Lender to fund or maintain such Advance.

(d) Without prejudice to the survival of any other agreement of the Borrower and each other Obligated Party hereunder, the agreements and obligations of the Borrower contained in Sections 2.11, 2.13 and 9.04 shall survive the payment in full of the principal and interest hereunder and under the Notes.

SECTION 9.05. Right of Set-Off. Upon (a) the occurrence and during the continuance of any Event of Default and (b) the making of the request or the granting of the consent specified by Section 6.01 to authorize the Administrative Agent to declare the Notes due and payable pursuant to the provisions of Section 6.01, each Lender and each of its branches and agencies is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and otherwise apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other indebtedness at any time owing by such Lender, its branches or agencies to or for the credit or the account of the Borrower against any and all of the obligations of the Borrower now or hereafter existing under this Agreement and the Notes held by such Lender, irrespective of whether such Lender shall have made any demand under this Agreement or such Note and although such obligations may be unmatured. Each Lender agrees promptly to notify the Borrower after any such set-off and application; provided, however, that the failure to give such notice shall not affect the validity of such set-off and application. The rights of each Lender, its branches or agencies under this Section are in addition to other rights and remedies (including, without limitation, other rights of set-off) that such Lender, its branches or agencies may have.

SECTION 9.06. Binding Effect. This Agreement shall become effective when it shall have been executed by the Borrower, the Affiliate Guarantors and the Administrative Agent and when the Administrative Agent shall have been notified by each Bank that such Bank has executed it and thereafter shall be binding upon and inure to the benefit of the Borrower, the Administrative Agent and each Lender and their respective successors and assigns, except that the Borrower shall not have the right to assign its rights or obligations hereunder or any interest herein without the prior written consent of the Lenders.

SECTION 9.07. Assignments and Participations. (a) Each Lender (x) may assign to one or more of its Affiliates or Subsidiaries and (y) may with the prior consent of the Administrative Agent and the Borrower (such consents not to be unreasonably withheld or delayed) assign to one or more banks or other entities, all or a portion of its rights and obligations



under this Agreement (including, without limitation, all or a portion of its Commitments, the Advances owing to it and the Notes held by it); provided, however, that such assignment or any activity intended to give rise to an assignment shall not be initiated prior to the receipt by the Lenders of notice from the Arrangers that the syndication of this Agreement has been completed; provided further, however, that (i) each such assignment shall be of a uniform, and not a varying, percentage of all such Lender's rights and obligations under and in respect of the Facility (other than any right to make Competitive Bid Advances or Competitive Bid Advances owing to it), (ii) except in the case of an assignment to a Person that immediately prior to such assignment was a Lender or an assignment of all of a Lender's rights and obligations under this Agreement the amount of the Commitments of the assigning Lender being assigned pursuant to each such assignment (determined as of the date of the Assignment and Acceptance with respect to such assignment) shall in no event be less than \$10,000,000, (iii) each such assignment shall be to a Lender, an Eligible Assignee or to an Affiliate or Subsidiary of the assignor, and (iv) the parties to each such assignment shall execute and deliver to the Administrative Agent, for its acceptance and recording in the Register, an Assignment and Acceptance, together with any Note subject to such assignment, and a processing and recordation fee of \$3,000 for each assignment completed after the notice referred to in the first proviso of this Section 9.07 has been received. Upon such execution, delivery, acceptance and recording, from and after the effective date specified in such Assignment and Acceptance, (x) the assignee thereunder shall be a party hereto and, to the extent that rights and obligations hereunder have been assigned to it pursuant to such Assignment and Acceptance, have the rights and obligations of a Lender hereunder and (y) the Lender assignor thereunder shall, to the extent that rights and obligations hereunder have been assigned by it pursuant to such Assignment and Acceptance, relinquish its rights and be released from its obligations under this Agreement (and, in the case of an Assignment and Acceptance covering all or the remaining portion of an assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto).

(b) By executing and delivering an Assignment and Acceptance, the Lender assignor thereunder and the assignee thereunder confirm to and agree with each other and the other parties hereto as follows: (i) other than as provided in such Assignment and Acceptance, such assigning Lender makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with this Agreement or the execution, legality,

validity, enforceability, genuineness, sufficiency or value of, or the perfection or priority of any Lien created or purported to be created under or in connection with, this Agreement or any other instrument or document furnished pursuant hereto; (ii) such assigning Lender makes no representation or warranty and assumes no responsibility with respect to the financial condition of the Borrower or any other Obligated Party or the performance or observance by the Borrower or any other Obligated Party of any of its obligations under this Agreement or any other instrument or document furnished pursuant hereto; (iii) such assignee confirms that it has received a copy of this Agreement, together with copies of the financial statements referred to in Section 4.01 and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into such Assignment and Acceptance; (iv) such assignee will, independently and without reliance upon the Administrative Agent, such assigning Lender or any other Lender and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement; (v) such assignee confirms that it is a Lender, an Eligible Assignee or an Affiliate of the assignor; (vi) such assignee appoints and authorizes the Administrative Agent to take such action as agent on its behalf and to exercise such powers and discretion under this Agreement as are delegated to the Administrative Agent by the terms hereof, together with such powers and discretion as are reasonably incidental thereto; and (vii) such assignee agrees that it will perform in accordance with their terms all of the obligations that by the terms of this Agreement are required to be performed by it as a Lender.

(c) The Administrative Agent shall maintain at its address referred to in Section 9.02 a copy of each Assumption Agreement and each Assignment and Acceptance delivered to and accepted by it and a register for the recordation of the names and addresses of the Lenders and the Commitment of, and principal amount of the Advances owing to, each Lender from time to time (the "Register"). The entries in the Register shall be conclusive and binding for all purposes, absent manifest error, and the Borrower, the Administrative Agent and the Lenders may treat each Person whose name is recorded in the Register as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Borrower or any Lender at any reasonable time and from time to time upon reasonable prior notice.

(d) Upon its receipt of an Assignment and Acceptance executed by an assigning Lender and an assignee, together with

any Note or Notes subject to such assignment, the Administrative Agent shall, if such Assignment and Acceptance has been completed and is in substantially the form of Exhibit C hereto, (i) accept such Assignment and Acceptance, (ii) record the information contained therein in the Register and (iii) give prompt notice thereof to the Borrower. Within five Business Days after its receipt of such notice, the Borrower, at its own expense, shall execute and deliver to the Administrative Agent in exchange for the surrendered Note or Notes a new Note or Notes to the order of such assignee in an amount equal to the Commitment assumed by it pursuant to such Assignment and Acceptance and, if the assigning Lender has retained a Commitment hereunder, new Notes to the order of the assigning Lender in an aggregate amount equal to the aggregate Commitments retained by it hereunder. Such new Note or Notes shall be in an aggregate principal amount equal to the aggregate principal amount of such surrendered Note or Notes, shall be dated the effective date of such Assignment and Acceptance and shall otherwise be in substantially the form of Exhibit A-1 hereto.

(e) Each Lender may sell participations in or to all or a portion of its rights and obligations under this Agreement (including, without limitation, all or a portion of its Commitments, the Advances owing to it and the Note or Notes held by it); provided, however, that (i) such Lender's obligations under this Agreement (including, without limitation, its Commitments) shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, (iii) such Lender shall remain the holder of such Note or Notes for all purposes of this Agreement, (iv) the Borrower, the Agents and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement and (v) no participant under any such participation and no sub-participant of such participation shall have any right to approve any amendment or waiver of any provision of any Loan Document, or any consent to any departure by the Borrower therefrom, except to the extent that such amendment, waiver or consent would directly: reduce the stated rate of interest borne by the Advances owing to such participant (other than as a result of waiving the applicability of any post-default increase in interest rates), forgive all or any part of the principal amount thereof, reduce the stated rate for calculating any commitment fee owing to the Lenders or extend the final scheduled maturity of any Advance owing to such participant, in each case to the extent subject to such participation.

(f) Any Lender may, in connection with any assignment or participation or proposed assignment or participation pursuant to this Section 9.07, disclose to the assignee or participant or proposed assignee or participant, any information relating to the Borrower furnished to such Lender by or on behalf of the Borrower; provided, however, that, prior to any such disclosure, the assignee or participant or proposed assignee or participant shall have executed a confidentiality agreement substantially in the form of Exhibit F hereto and returned to same to such Lender and the Borrower.

(g) Notwithstanding any other provision set forth in this Agreement, any Lender may at any time create a security interest in all or any portion of its rights under this Agreement (including, without limitation, the Advances owing to it and the Notes held by it) in favor of any Federal Reserve Bank in accordance with Regulation A of the Board of Governors of the Federal Reserve System.

SECTION 9.08. Governing Law. This Agreement and the Notes shall be governed by, and construed in accordance with, the laws of the State of New York.

SECTION 9.09. Execution in Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page to this Agreement by telecopier shall be effective as delivery of a manually executed counterpart of this Agreement.

SECTION 9.10. Confidentiality. Each Lender has heretofore executed a confidentiality agreement in the form of Exhibit F hereto and returned a copy thereof to the Borrower. Each Lender shall hold all non-public information obtained pursuant to this Agreement in accordance with the terms of such confidentiality agreement and in accordance with safe and sound banking practices and, subject to Section 9.07, may make disclosure reasonably requested by any bona fide transferee in connection with the contemplated transfer of any Advances or participation therein or as required or requested by any governmental authority or pursuant to legal process; provided that each such transferee shall have previously signed and returned to such Lender a confidentiality agreement in the form of Exhibit F, and such Lender agrees to send to the Borrower promptly a copy of each such confidentiality agreement executed by such transferee.

SECTION 9.11. Redesign. The Lenders hereby agree that, in accordance with Section 5.01(h), the Borrower, its Subsidiaries, the Affiliate Guarantors and their Subsidiaries may enter into the Redesign Documents on the following terms and conditions:

(a) Trademarks. The Borrower and its Subsidiaries may transfer trademarks to be used by Borden Foods Holdings, LLC and its Subsidiaries to a partnership organized pursuant to terms substantially the same as those set forth in Exhibit H hereto, provided that the executed Amended and Restated Agreement of Limited Partnership of BFC Investments, L.P. shall contain provisions strictly conforming to those set forth in Exhibit H as (i) the defined term "Percentage Interest" and (ii) Section 5.3(b).

(b) Dairy Business. The Borrower and its Subsidiaries may transfer the Dairy Business to an Affiliate Guarantor and any of such Affiliate Guarantor's Subsidiaries having a structure substantially the same as that of Wise Holdings, Inc. and its Subsidiaries, pursuant to terms substantially the same as those set forth in the form of Conveyance and Transfer Agreement attached as Exhibit I hereto, provided that (i) the consideration for the transfer of the subject assets shall not be less than Fair Market Value and (ii) upon the consummation of such transfer the Borrower and such Affiliate Guarantor shall deliver to the Administrative Agent a certificate in the form of Exhibit J hereto.

(c) Options on Assets. The initial Options granted in respect of certain of the assets of Borden Foods Holdings Corporation and its Subsidiaries shall be issued pursuant to terms substantially the same as those set forth in the form of Option Agreement attached as Exhibit L hereto, provided that the consideration for the issuance of such Options shall not exceed \$95,000,000 in the aggregate, which may consist of Borden Holdings Notes in whole or in part.

SECTION 9.12. Waiver of Jury Trial. Each of the Borrower, the Agents and the Lenders hereby irrevocably waives all right to trial by jury in any action, proceeding or counterclaim (whether based on contract, tort or otherwise) arising out of or relating to any of the Loan Documents, the Advances or the actions of any Agent or any Lender in the negotiation, administration, performance or enforcement thereof.

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

BORDEN, INC.

By \_\_\_\_\_  
Name:  
Title:

BORDEN FOODS HOLDINGS CORPORATION

By \_\_\_\_\_  
Name:  
Title:

WISE HOLDINGS, INC.

By \_\_\_\_\_  
Name:  
Title:

CITIBANK, N.A., as Administrative Agent

By \_\_\_\_\_  
Name:  
Title:

ARRANGERS

BT SECURITIES CORPORATION,  
as Arranger

By \_\_\_\_\_  
Name:  
Title:

CHASE SECURITIES INC.,  
as Arranger

By \_\_\_\_\_  
Name:  
Title:

CITICORP SECURITIES, INC.,  
as Arranger

By \_\_\_\_\_  
Name:  
Title:

CREDIT SUISSE FIRST BOSTON,  
as Arranger

By \_\_\_\_\_  
Name:  
Title:

By \_\_\_\_\_  
Name:  
Title:

BANKS

LEAD MANAGING AGENTS

BANKERS TRUST COMPANY

By \_\_\_\_\_  
Name:  
Title:

THE CHASE MANHATTAN BANK

By \_\_\_\_\_  
Name:  
Title:

CITIBANK, N.A.

By \_\_\_\_\_  
Name:  
Title:

CREDIT SUISSE FIRST BOSTON

By \_\_\_\_\_  
Name:  
Title:

By \_\_\_\_\_  
Name:  
Title:

SENIOR MANAGING AGENTS



NATIONAL WESTMINSTER BANK PLC,  
NEW YORK BRANCH

By \_\_\_\_\_  
Name:  
Title:

NATIONAL WESTMINSTER BANK PLC,  
NASSAU BRANCH

By \_\_\_\_\_  
Name:  
Title:

NATIONSBANK, N.A.

By \_\_\_\_\_  
Name:  
Title:

THE BANK OF NOVA SCOTIA

By \_\_\_\_\_  
Name:  
Title:

MANAGING AGENTS

THE BANK OF NEW YORK

By \_\_\_\_\_  
Name:  
Title:

BANK OF TOKYO - MITSUBISHI  
TRUST COMPANY

By \_\_\_\_\_  
Name:  
Title:

THE FIRST NATIONAL BANK  
OF CHICAGO

By \_\_\_\_\_  
Name:  
Title:

THE FUJI BANK, LIMITED

By \_\_\_\_\_  
Name:  
Title:

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