

CONFIDENTIALITY AGREEMENT

THIS CONFIDENTIALITY AGREEMENT (“Agreement”) is entered into by and between Lund Food Holdings, Inc. (the “Company”), and the United Food and Commercial Workers Local 663 (the “Union”) as of the date of execution by both parties.

RECITALS

WHEREAS, the Company and the Union are in the process of negotiating a collective bargaining agreement (“CBA”);

WHEREAS, the Union has requested non-public information from the Company, which it believes necessary for the Union to knowledgably engage in the collective bargaining process;

WHEREAS, certain of the information requested by the Union is of a proprietary, confidential, and sensitive nature; and

WHEREAS, the Employer and the Union have legitimate interests in protecting proprietary and confidential information from public and otherwise unnecessary disclosure.

NOW, THEREFORE, the Union and the Company agree as follows:

1. The Union acknowledges that it has requested information from the Company, which the Company considers to be confidential including non-public financial information pertaining to health and welfare benefits; non-financial health and welfare benefit plan information; and similar or related materials and information and compilations of information (“Confidential Information”).
2. As a condition of the Company providing the Union with Confidential Information that is relevant and responsive to the Union’s requests for information, the Union agrees not to use Confidential Information for any purpose other than to inform its representation of its members during collective bargaining with the Company and will not, without the prior written consent of the Company, disclose, distribute or communicate (in whole or in part) in any form any of the Confidential Information to any persons other than its law firm and in each case only to those individuals who need to know such information solely for the purpose described herein and, who, in turn, will also be bound by this Agreement.
3. The Union acknowledges that Confidential Information may be transmitted orally or in writing, and any other method of transmitting information and whether prepared by the Company or collected or created by a third party (including the Union). Confidential Information may, but shall not be obligated to, be so designated by placing or affixing the word “CONFIDENTIAL” on any document prior to, or contemporaneously with, the production or disclosure of such document. The Confidential Information is provided in “AS IS” condition, and no warranty or representation is made as to the completeness, accuracy or reliability of such Confidential Information. Neither the Company nor its representatives shall have any liability to the Union on any basis (including, without limitation, in contract, tort, under federal or state securities laws or otherwise), and the Union shall not make any claims whatsoever against the Company or its representatives with respect to or arising out of the review of or use or

content of the Confidential Information or any errors therein or omissions therefrom or any action taken or any inaction occurring in reliance on the Confidential Information. Confidential Information will be and remain the property of the Company and this Agreement does not grant and shall not be construed as granting to the Union a license or any rights in or to the Confidential Information, except to the extent specifically stated herein. All copies, duplicates, extracts, summaries, analyses or descriptions or other documents and materials in whatever form maintained and whether prepared by the Company or the Union or others, which contain or reflect or are generated from any Confidential Information (hereinafter referred to collectively as “copies”) shall also be Confidential Information and shall be afforded the full protection of this Agreement.

4. The Union acknowledges that any disclosure of the Confidential Information in violation of this Agreement would cause immeasurable and irreparable damage to the Company and that the Company’s remedy at law for damages will be inadequate to fully and completely make the Company whole for the damages and harm caused by any such breach of the Agreement. Accordingly, if the Union, or any of its representatives, threatens to breach or breaches this Agreement, the parties agree that the Company can obtain a temporary or permanent injunction or other equitable relief from any court of competent jurisdiction against such breach or threatened breach, without the Company having to show any actual damages or post bond or other security. This equitable relief is in addition to any legal remedies, monetary damages, or other available forms of relief.
5. If the Union discovers that the Company’s Confidential Information has been disclosed to persons other than those authorized by this Agreement to receive such information, whether the result of an intentional act or omission or otherwise, the Union will immediately notify (to the extent known) the Company in writing of the date and details of the disclosure, the specific information disclosed, when and how the disclosure occurred, and the person(s) by whom and to whom it was disclosed. The Union shall be responsible and liable for any unauthorized disclosure and hereby agrees to indemnify the Company against any and all claims asserted against the Company (by any person or entity).
6. Nothing in this Agreement prevents either party from disclosing Information to a jointly selected mediator during the collective bargaining process for the purposes of seeking the mediator’s assistance in reaching agreement on the terms of a CBA.
7. The Union further agrees that, after the ratification of a CBA, the Union will return any physical documents containing Confidential Information that it received in connection with these matters to the Company and will permanently delete any and all electronic files containing such Confidential Information from any and all electronic devices where such information is located.
8. In the event the Union is requested (by oral questions, interrogatories, requests for information or documents, subpoena, civil investigation demand or similar process) to disclose any part of the Information, the Union shall notify the Company promptly of such request(s), and the documents requested thereby, so that Company may seek an appropriate protective order and/or waive in writing the Union’s obligation not to disclose the Information. The parties further agree that, if in the absence of a protective order or the receipt of a waiver hereunder, the Union is nonetheless, in the opinion of its counsel, compelled to disclose all or part of the Information or else stand liable for contempt

or suffer other censure or penalty from any tribunal or governmental or similar authority, the Union may disclose such information without liability hereunder.

9. This Agreement shall be construed in accordance with the laws of the State of Minnesota and any and all actions regarding this Agreement shall be brought in the federal or state courts situated in that state.
10. The restrictions imposed hereby shall survive any termination of this Agreement and remain in full force and effect indefinitely. The parties agree that the failure of any party to enforce or exercise any right, condition, term, or provision of this Agreement shall not be construed as or deemed a relinquishment or waiver thereof, and the same shall continue in full force and effect.
11. The provisions of this Agreement are severable, and if any one or more provisions may be determined to be invalid or otherwise unenforceable, in whole or in part, the remaining provisions and any partially unenforceable provision, to the maximum extent enforceable, shall, nevertheless, be binding and enforceable.
12. This Agreement constitutes the entire understanding of the parties hereto with respect to the subject matter hereof and supersedes all prior negotiations, discussions, undertakings and agreements between the Company and the Union. This Agreement may be amended or modified only by a writing executed by the parties hereto. No failure or delay by the Company in exercising any right, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder. The Union may not assign this Agreement, in whole or in part, without the prior written consent of the Company.
13. This Agreement does not constitute or create any obligation of the Company to provide requested Confidential Information in any particular form or to provide all such information to the Union, but merely defines the rights, duties and obligations of the parties with respect to Confidential Information to the extent it may be provided to the Union. Neither this Agreement nor the Company's decision to provide Confidential Information shall be construed as a waiver by the Company of its position that it is not obligated to provide the information requested or produced.
14. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but both of which shall constitute the same agreement. Signatures to this Agreement transmitted by facsimile transmission, by electronic mail in "portable document format" (.pdf) form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, will have the same effect as physical delivery of the paper document bearing the original signature.
15. Any dispute regarding the interpretation, application or enforcement of this Agreement shall be brought under and in accordance with Section 301 of the Labor Management Reporting and Disclosure Act and shall not be subject to the grievance and arbitration provisions of any collective bargaining or other agreement between or involving the Parties.

IN WITNESS WHEREOF, the parties have entered into this Confidentiality Agreement as of the date indicated in the signature lines below.

Date: _____

Lund Food Holdings, Inc.

By: _____

Name: _____

Title: _____

Date: _____

United Food and Commercial Workers Local 663

By: _____

Name: _____

Title: _____