

CONSENT TO USE AND REGISTER AGREEMENT

THIS AGREEMENT is entered into on the date last signed below, by and between **SPLENDID BY PORVENIR, LLC**, a limited liability company organized and existing under the laws of the State of California having an address at 450 W. Gold Hill Road, Suite 4, Nogales, AZ 85621 ("**SPLENDID**") on the one hand, and **ALPINE FRESH, INC.**, a corporation organized and existing under the laws of the State of Florida having an address at 9300 NW 58th Street, Miami, FL 33178 ("**ALPINE**") and **BERRY FRESH LLC**, a limited liability company organized and existing under the laws of the State of California having an address at 19640 S. Rancho Way, Dominguez Hills, CA 90220 ("**BERRY**") (collectively "**ALPINE/BERRY**") on the other hand. **SPLENDID** and **ALPINE/BERRY** are referred to herein collectively as the "Parties" and individually as a "Party".

WHEREAS, **SPLENDID** is the owner of U.S. Trademark Application No. 90/907,217 filed on August 27, 2021 for the mark **DANIELLA** for the following goods (the "**SPLENDID GOODS**"): *fresh mangos, in Class 31* (the "**217 APPLICATION**");

WHEREAS, **ALPINE/BERRY** is the owner of U.S. Trademark Registration No. 6,137,444 registered on August 25, 2020 for the mark **DANIELA** for the following goods (the "**ALPINE/BERRY GOODS**"): *fresh berries, in Class 31* (the "**444 REGISTRATION**");

WHEREAS the '217 APPLICATION has been refused registration by the U.S. Patent and Trademark Office in view of the '444 REGISTRATION; and

WHEREAS, the Parties have carefully considered the use and registration of the mark **DANIELLA** by each of the Parties on or in connection with their respective goods described in this Agreement.

NOW THEREFORE, in consideration of the agreements set forth below, the adequacy of which is hereby acknowledged, the Parties agree as follows:

1. **ALPINE/BERRY** consents to the use and registration by **SPLENDID** of the mark **DANIELLA** on or in connection with the **SPLENDID GOODS**. **ALPINE/BERRY** does not consent to the use or registration by **SPLENDID** of the mark **DANIELLA** or any confusingly similar variation on or in connection with any goods or services other than the **SPLENDID GOODS**.

2. **SPLENDID** consents to the use and registration by **ALPINE/BERRY** (individually or jointly) of the word mark **DANIELA**, the design mark **Daniela™**, or any derivation, variation, translation or adaptation thereof or containing the term **DANIELA**, depicted on or in connection with the **ALPINE/BERRY GOODS**, fruits, or fruit related goods. **SPLENDID** consents to the registration of Federal Trademark Application No. 97740041 for **Daniela™**.

3. SPLENDID shall not use or register the marks DANIELLA, DANIELA, or any confusingly similar variation on or in connection with goods or services other than the SPLENDID GOODS without the written consent of ALPINE/BERRY.

4. SPLENDID and ALPINE/BERRY agree that they are not aware of any past or present confusion in the marketplace between their respective goods offered in connection with their respective marks DANIELLA and DANIELA, and do not expect any confusion in the future between their respective goods offered in connection with their respective marks, as long as the provisions of this Agreement are abided by. The Parties acknowledge and agree that consumer confusion resulting from SPLENDID's use of DANIELLA on the SPLENDID

GOODS and ALPINE/BERRY's use of DANIELA, *Daniela*[™] or similar variations on the ALPINE/BERRY GOODS, fruits (excluding mangoes), or fruit (excluding mangoes) related goods is unlikely because of the differences in the appearances of the respective marks, the differences between the respective goods and the differences in purchasing conditions and consumers for the respective goods offered under the DANIELLA and DANIELA marks. SPLENDID and ALPINE/BERRY each agree to take action to prevent such confusion and to remedy such confusion should it arise in the future. The Parties' respective uses of DANIELLA and DANIELA will continue to be visually different from one another. The Parties acknowledge that the factual circumstances underlying this Agreement are unique and specific to the Parties and that this Agreement is based in part on the Parties' knowledge and experience in the produce industry.

5. In the unlikely event that either Party becomes aware of any actual consumer confusion resulting from the simultaneous use of the DANIELLA and DANIELA marks as permitted by this Agreement:

(a) Such Party shall advise the other Party of the details of such confusion within ten (10) business days; and

(b) The Parties shall take commercially reasonable steps to address the confusion and prevent its future occurrence.

6. Noninterference.

(a) ALPINE/BERRY agrees that it will not assist others to, and it will not directly, indirectly, or through its officers, partners, directors, shareholders, parent, subsidiaries or affiliates, oppose, seek to cancel, bring legal action against or in any way interfere with SPLENDID's use, application to register or registration of DANIELLA (alone, in a stylized type font, or with a logo) for use in connection with the SPLENDID GOODS including, without limitation, the '217 APPLICATION.

(b) SPLENDID agrees that it will not assist others to, and it will not directly, indirectly, or through its officers, partners, parent, subsidiaries or affiliates, oppose, seek to cancel, bring legal action against or in any way interfere with ALPINE/BERRY's use,

application to register or registration of DANIELA, *Daniela*[™], or any derivation, variation, translation or adaptation thereof or containing the term DANIELA, for use in connection with the ALPINE/BERRY GOODS, fruits (excluding mangoes), or fruit

(excluding mangoes) related goods including, without limitation, the '444 REGISTRATION or any future applications filed by ALPINE/BERRY (individually or jointly) for said marks.

7. SPLENDID shall not, and shall not license or otherwise permit any other person or entity to, use or register DANIELLA, DANIELA, or any similar variations in connection with the ALPINE/BERRY GOODS, fruits (excluding mangoes), or fruit (excluding mangoes) related goods.

8. ALPINE/BERRY shall not, and shall not license or otherwise permit any other person or entity to, use or register DANIELLA, DANIELA, or any similar variations in connection with the SPLENDID GOODS.

9. Each Party agrees (a) to promptly execute and deliver any further documents reasonably requested by the other Party to effectuate the terms of this Agreement and (b) that this Agreement may be submitted to the U.S. Patent and Trademark Office.

10. The rights and obligations of each of the Parties as provided by this Agreement shall be binding upon each Party's assigns, successors, heirs and licensees. Either Party may assign or transfer this Agreement without the consent of the other Party, provided that the assignee or transferee agrees in writing to be bound by all the terms of this Agreement.

11. Each Party shall bear its own costs and expenses, including but not limited to attorneys' fees, incurred by it (and any of its assigns, successors, heirs and licensees) in considering, negotiating, drafting, reviewing, revising, executing, communicating regarding, and performing this Agreement. In any legal action or proceeding arising out the enforcement of this Agreement the prevailing Party is entitled to recover all of its costs and expenses incurred in connection with or with respect to the action or proceeding including, but not limited to, attorneys' fees, court costs, witness and expert witness fees and expenses, and fees relating to alternative dispute resolution.

12. If any term or provision of this Agreement is or is held invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the Parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner.

13. All notices, requests, consents, claims, demands, waivers, and other communications hereunder shall be in writing and addressed to the parties as follows (or as otherwise specified by a Party in a notice given in accordance with this section):

If to SPLENDID:

450 W. Gold Hill Road, Suite 4
Nogales, AZ 85621

Attn: Daniel Ibarra
Email: daniel@splendidbyporvenir.com

With a copy to:

Fennemore Craig, P.C.
2394 E. Camelback Road, Suite 600
Phoenix, AZ 85016
Attn: Susan Stone Rosenfield, Esq.
Email: srosenfi@fennemorelaw.com

If to ALPINE/BERRY:

9300 NW 58th Street
Miami, FL 33178
Attn: Jose Sanchez
Email: jsanchez@alpinefresh.com

With a copy to:

Sanchelima & Associates
235 SW Le Jeune Rd
Miami, FL 33134
Attn: Chris Sanchelima, Esq.
Email: chris@sanchelima.com; legal@sanchelima.com

Notices sent in accordance with this Agreement shall be deemed effectively given: (a) when received, if delivered by hand (with written confirmation of receipt); (b) when received, if sent by a nationally recognized overnight courier (with tracking confirmation); (c) on the date sent by email, with confirmation of transmission, if sent during normal business hours of the recipient, and on the next business day, if sent after normal hours of the recipient; or (d) on the 7th day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid.

14. This Agreement does not, and no provision in this Agreement may be construed to, create any rights or benefits to any party other than SPLENDID and ALPINE/BERRY and their respective assigns, successors, heirs and licensees.

15. Each Party represents and warrants that it has the full right and authority to enter into this Agreement, and that the person executing this Agreement on its behalf has the full right and authority to fully commit and bind it.

16. This Agreement continues in perpetuity unless terminated (a) by a written agreement signed by both Parties, or (b) by either Party having abandoned its marks.

17. This Agreement contains the entire agreement and understanding between the Parties as to the matters covered herein and supersedes any prior or contemporaneous written or oral agreements as to any such matter. Any failure to enforce any provision of this Agreement shall not constitute a waiver thereof or any other provision of this Agreement. This Agreement may not be amended or modified except by a writing signed by the Parties.

18. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Electronic delivery of a signature (e.g. PDF file) has the same legal effect as an original signature.

WHEREFORE, the Parties have caused this Consent to Use and Register Agreement to be executed as follows:

Signed this 03rd day of february, 2023

SPLENDID BY PORVENIR, LLC

By: Its member Splendid By Porvenir Holding, Inc.

By: 
Daniel Jbarra Lugo, President


Signed this 27th day of FEBRUARY, 2023

ALPINE FRESH, INC.

By: 
Jose Sanchez, President

Signed this 27th day of FEBRUARY, 2023

BERRY FRESH, LLC

By: 
Title/Position: Treasurer/CEO