

TYSON FOODS INC

FORM 8-K (Current report filing)

Filed 08/05/14 for the Period Ending 07/30/14

Address	2200 DON TYSON PARKWAY SPRINGDALE, AR 72762-6999
Telephone	479-290-4000
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Industry	Food Processing
Sector	Consumer/Non-Cyclical
Fiscal Year	09/30

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

FORM 8-K

**Current Report
Pursuant to Section 13 or 15(d)
of the Securities Exchange Act of 1934**

Date of Report (Date of Earliest Event Reported): July 30, 2014

Tyson Foods, Inc.
(Exact name of Registrant as specified in its charter)

Delaware
(State of incorporation or organization)

001-14704
(Commission File Number)

71-0225165
(IRS Employer Identification No.)

2200 Don Tyson Parkway, Springdale, AR 72762-6999
(479) 290-4000
(Address, including zip code, and telephone number, including area code, of
Registrant's principal executive offices)

Not applicable
(Former name, former address and former fiscal year, if applicable)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (*see* General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
 - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
 - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
 - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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Item 1.01. Entry into a Material Definitive Agreement.

On August 5, 2014, Tyson Foods, Inc. (the “Company”) completed its previously announced public offering and sale of 23,810,000 shares of its Class A common stock (the “Shares”) at a public offering price of \$37.80 per Share pursuant to an underwriting agreement (the “Shares Underwriting Agreement”), dated July 30, 2014, among the Company and Morgan Stanley & Co. LLC, J.P. Morgan Securities LLC and the other underwriters named therein. Through August 29, 2014, the underwriters may also purchase up to 3,571,500 Shares at the public offering price, less underwriting discounts and commissions, to cover over-allotments, if any. In addition, on August 5, 2014, the Company completed its previously announced public offering and sale of 30,000,000 4.75% tangible equity units (the “Units”) at a public offering price of \$50.00 per Unit, pursuant to an underwriting agreement (the “Units Underwriting Agreement”), dated July 30, 2014, among the Company and Morgan Stanley & Co. LLC, J.P. Morgan Securities LLC and the other underwriters named therein.

The sale of the Shares and Units was made pursuant to the Company’s Registration Statement on Form S-3 (Registration No. 333-197661), including prospectus supplements each dated July 30, 2014 (each a “Prospectus Supplement”) to the prospectus contained therein dated July 28, 2014, filed by the Company with the Securities and Exchange Commission, pursuant to Rule 424(b)(5) under the Securities Act of 1933, as amended.

Units

The Company issued the Units under a purchase contract agreement (the “Purchase Contract Agreement”), dated as of August 5, 2014, between the Company and The Bank of New York Mellon Trust Company, N.A., as purchase contract agent, attorney-in-fact for holders of Purchase Contracts (as defined below) and as trustee under the indenture referred to below. The Company issued the Amortizing Notes (as defined below) under an indenture dated as of June 1, 1995 (the “Base Indenture”), as supplemented by a supplemental indenture dated as of August 5, 2014 (the “Supplemental Indenture” and, together with the Base Indenture, the “Indenture”), each between the Company and The Bank of New York Mellon Trust Company, N.A. (as successor to JPMorgan Chase Bank, N.A. (formerly The Chase Manhattan Bank, N.A.)), as trustee. The Purchase Contract Agreement (including the forms of Unit and Purchase Contract), the Base Indenture and the Supplemental Indenture (including the form of Amortizing Note) are filed as Exhibits 4.1, 4.4 and 4.5, respectively, to this report and are incorporated herein by reference. The following description of the Units, the Purchase Contracts and the Amortizing Notes is a summary and is not meant to be a complete description of the Units, the Purchase Contracts and the Amortizing Notes.

Each Unit offered is comprised of (i) a prepaid stock purchase contract issued by the Company (each, a “Purchase Contract”) pursuant to which the Company will deliver to the holder, not later than July 15, 2017 (subject to postponement in certain limited circumstances, the “mandatory settlement date”), unless earlier redeemed or settled, a number of Shares per Purchase Contract equal to the settlement rate described below, and (ii) a senior amortizing note issued by the Company (each, a “Amortizing Note”) with an initial principal amount of \$6.82854 that pays equal quarterly installments of \$0.59375 per Amortizing Note (except for the October 15, 2014 installment payment, which will be \$0.46181 per Amortizing Note), which cash payment in the aggregate will be equivalent to 4.75% per year with respect to the \$50 stated amount per Unit.

Purchase Contracts

Unless previously redeemed or settled at the holder’s or the Company’s option, for each Purchase Contract the Company will deliver to holders on July 15, 2017 (subject to postponement in certain limited circumstances described below, the “mandatory settlement date”) a number of shares of the Company’s Class A common stock. The number of shares of the Company’s Class A common stock issuable upon settlement of each Purchase Contract (the “settlement rate”) will be determined as follows:

- if the Applicable Market Value (as defined below) of the Company’s Class A common stock is equal to or greater than the threshold appreciation price of \$47.25, then the holder will receive 1.0582 shares of Class A common stock for each Purchase Contract (the “minimum settlement rate”);
- if the Applicable Market Value of the Company’s Class A common stock is greater than \$37.80 (the “reference price”) but less than the threshold appreciation price, then the holder will receive a number of shares of Class A common stock for each Purchase Contract equal to the Unit stated amount of \$50, divided by the Applicable Market Value; and
- if the Applicable Market Value of the Company’s Class A common stock is less than or equal to the reference price of \$37.80, then the holder will receive 1.3228 shares of Class A common stock for each Purchase Contract (the “maximum settlement rate”).

The “Applicable Market Value” means the average of the closing prices of the Company’s Class A common stock on each of the 20 consecutive trading days beginning on, and including, the 23rd scheduled trading day immediately preceding July 15, 2017. The minimum settlement rate, the maximum settlement rate and the reference price are each subject to adjustment as set forth in the Purchase Contract Agreement.

At any time prior to 5:00 p.m., New York City time, on the third scheduled trading day immediately preceding July 15, 2017, a holder of Purchase Contracts may settle any or all of its Purchase Contracts early, in which case the Company will deliver a number of shares of the Company’s Class A common stock per Purchase Contract equal to the minimum settlement rate, which is subject to adjustment as set forth in the Purchase Contract Agreement. In addition, at any time prior to the third scheduled trading day immediately preceding July 15, 2017, if a “Fundamental Change” (as defined in the Purchase Contract Agreement) occurs, holders may settle any or all of their Purchase Contracts early. If a holder elect to settle its Purchase Contracts early in connection with such Fundamental Change, it will receive a number of shares of the Company’s Class A common stock based on the “Fundamental Change Early Settlement Rate” as defined in, and in accordance with, the Purchase Contract Agreement. In either case, upon early settlement at a holder’s election of a Purchase Contract that is a component of a Unit, the corresponding Amortizing Note will remain outstanding and beneficially owned by or registered in the name of, as the case may be, the holder who elected to settle the related Purchase Contract early.

The Company may elect to settle all, but not less than all, outstanding Purchase Contracts early at the “Early Mandatory Settlement Rate” upon a date fixed by the Company upon not less than five business days’ notice. The “Early Mandatory Settlement Rate” will be the maximum settlement rate, unless the closing price of the Company’s Class A common stock for 20 or more trading days in a period of 30 consecutive trading days ending on the trading day immediately preceding a specified notice date exceeds 140% of the threshold appreciation price in effect on each such trading day, in which case the “Early Mandatory Settlement Rate” will be the minimum settlement rate. If the Company elects to settle all the Purchase Contracts early, holders will have the right to require the Company to repurchase their Amortizing Notes, except in certain limited circumstances set forth in the Supplemental Indenture.

If the agreement and plan of merger for the acquisition of the Hillshire Brands Company has been terminated, the Company may elect to redeem all, but not less than all, of the outstanding Purchase Contracts for the applicable redemption amount, as set forth in the Purchase Contract Agreement. In that case, holders will have the right to require us to repurchase their Amortizing Notes on the terms set forth in the Supplemental Indenture.

Amortizing Notes

Each Amortizing Note will have an initial principal amount of \$6.82854, will bear interest at a rate of 1.50% per annum and will have a final installment payment date of July 15, 2017. On each January 15, April 15, July 15 and October 15 commencing on October 15, 2014, the company will pay equal quarterly cash installments of \$0.59375 per Amortizing Note (except for the October 15, 2014 installment payment, which will be \$0.46181 per Amortizing Note), which will constitute a payment of interest and a partial repayment of principal, and which cash payment in the aggregate per year will be equivalent to 4.75% per year with respect to each \$50 stated amount of tangible equity units. The Amortizing Notes will be senior unsecured obligations of the Company, and will be guaranteed by only Tyson Fresh Meats, Inc., one of our wholly owned operating subsidiaries.

If the Company elects to settle the Purchase Contracts early or in the event of a merger termination redemption as described above, Holders will have the right to require the Company to repurchase their Amortizing Notes for cash at the repurchase price set forth in the Supplemental Indenture.

The Indenture contains customary terms and covenants, including that upon certain events of default occurring and continuing, either the trustee or the holders of not less than 25% in aggregate principal amount of the Amortizing Notes then outstanding may declare the unpaid principal of the Amortizing Notes and any accrued and unpaid interest thereon immediately due and payable. In the case of certain events of bankruptcy, insolvency or reorganization relating to the Company, the principal amount of the Amortizing Notes together with any accrued and unpaid interest thereon will automatically become and be immediately due and payable.

General

Each Unit may be separated into its constituent Purchase Contract and Amortizing Note after the initial issuance date of the Units, and the separate components may be combined to create a Unit, in each case in accordance with the terms of the Purchase Contract Agreement.

The Company has applied to list the Units on the New York Stock Exchange under the symbol “TSNU,” subject to satisfaction of its minimum listing standards with respect to the Units. If approved for listing, the Company expects trading on the New York Stock Exchange to begin within 30 calendar days. However, the Company will not initially apply to list the separate Purchase Contracts or the separate Amortizing Notes on any securities exchange or automated inter-dealer quotation system.

The Company intends to use the net proceeds from these offerings, together with additional debt financing and cash on hand, to finance the previously announced acquisition of The Hillshire Brands Company and to pay related fees and expenses. If for any reason the Hillshire Brands acquisition is not consummated, then the Company intends to use the net proceeds from these offerings for general corporate purposes.

Eight of the Company’s directors and officers and the Tyson Limited Partnership (of which 33.33% and 11.115% is controlled by the Company’s chairman John Tyson and director Barbara Tyson, respectively) have purchased an aggregate of approximately 758,400 Units in the Units offering. Such purchases were made on the same terms and conditions as purchases by nonaffiliated investors and with a view toward investment, not resale.

The foregoing descriptions of the Shares Underwriting Agreement, the Units Underwriting Agreement, the Purchase Contract Agreement, the Indenture and the related instruments and transactions associated therewith does not purport to complete and is subject to, and qualified in its entirety by, the full text of the agreements and instruments, each of which is attached hereto as an Exhibit.

Forward-Looking Statements

This Current Report on Form 8-K contains forward-looking statements that are based on the Company’s management’s current expectations. Such forward-looking statements are subject to certain risks, uncertainties and assumptions, including, without limitation, prevailing market conditions and other factors. Should one or more of these risks or uncertainties materialize, or should underlying assumptions prove incorrect, actual results may vary materially from those expected. More information about potential risk factors that could affect the Company and its results is included in the Company’s filings with the SEC.

Item 2.03. Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registration.

The description contained under Item 1.01 above is hereby incorporated by reference in its entirety into this Item 2.03.

Item 8.01. Other Events.

In connection with the offering of the Shares and the Units, as described in response to Item 1.01 of this Current Report on Form 8-K, the following exhibits are filed with this Current Report on Form 8-K and are incorporated by reference herein and into the Registration Statement: (i) the Shares Underwriting Agreement, (ii) the Units Underwriting Agreement, (iii) the Purchase Contract Agreement, (iv) the form of Unit, (v) the form of Purchase Contract, (vi) the Base Indenture, (vii) the Supplemental Indenture, (viii) the form of Amortizing Note, (ix) the Base Indenture and (x) the opinion of Davis Polk & Wardwell LLP, and related consent.

Item 9.01. Financial Statements and Exhibits

(d) Exhibits

<u>Exhibit Number</u>	<u>Description</u>
1.1	Shares Underwriting Agreement, dated July 30, 2014
1.2	Units Underwriting Agreement, dated July 30, 2014
4.1	Purchase Contract Agreement, dated August 5, 2014
4.2	Form of Unit (included in Exhibit 4.1)
4.3	Form of Purchase Contract (including in Exhibit 4.1)
4.4	Base Indenture, dated June 1, 1995 (incorporated herein by reference to Exhibit 4 to the Company’s Registration Statement on Form S-3 filed December 17, 1997 (Commission File No. 333-42525))
4.5	Supplemental Indenture, dated August 5, 2014

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- 4.6 Form of Amortizing Note (included in Exhibit 4.5)
 - 5.1 Opinion of Davis Polk & Wardwell LLP
 - 23.1 Consent of Davis Polk & Wardwell LLP (included in Exhibit 5.1)

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 hereunto duly authorized.

Date: August 5, 2014

TYSON FOODS, INC.

By: /s/ Dennis Leatherby
Name: Dennis Leatherby
Title: Executive Vice President and
Chief Financial Officer

EXHIBIT INDEX

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TYSON FOODS, INC.

(a Delaware corporation)

Class A Common Stock, Par Value \$0.10

UNDERWRITING AGREEMENT

Dated: July 30, 2014

TYSON FOODS, INC.
(a Delaware corporation)
23,810,000 Shares
Class A Common Stock, Par Value \$0.10

UNDERWRITING AGREEMENT

July 30, 2014

MORGAN STANLEY & CO. LLC
1585 Broadway
New York, New York 10036

J.P. MORGAN SECURITIES LLC
383 Madison Avenue
New York, New York 10179

As Representatives of the several Underwriters

Ladies and Gentlemen:

Tyson Foods, Inc., a Delaware corporation (the “Company”), confirms its agreement (this “Agreement”) with Morgan Stanley & Co. LLC (“Morgan Stanley”) and J.P. Morgan Securities LLC (“J.P. Morgan”) and each of the other Underwriters named in Schedule A hereto (collectively, the “Underwriters,” which term shall also include any underwriter substituted as hereinafter provided in Section 10 hereof), for whom Morgan Stanley and J.P. Morgan are acting as representatives (in such capacity, the “Representatives”), with respect to the issue and sale by the Company and the purchase by the Underwriters, acting severally and not jointly, of an aggregate of 23,810,000 shares (the “Firm Shares”) of the Company’s Class A Common Stock, par value \$0.10 per share (the “Common Stock”). The Company also proposes to issue and sell to the Underwriters not more than an additional 3,571,500 shares of its Class A Common Stock, par value \$0.10 per share (the “Additional Shares”) if and to the extent that you, as Representatives of the offering, shall have determined to purchase such shares of Common Stock granted to the Underwriters in Section 2 hereof. The Firm Shares and the Additional Shares are hereinafter collectively referred to as the “Securities.”

The Company understands that the Underwriters propose to make a public offering of the Securities as soon as the Representatives deem advisable after this Agreement has been executed and delivered.

Pursuant to an Agreement and Plan of Merger, dated July 1, 2014 (the “Merger Agreement”), by and among the Company, The Hillshire Brands Company, a Maryland corporation (“Hillshire”) and HMB Holdings, Inc., a Maryland corporation and a direct, wholly owned subsidiary of the Company (“HMB”), and subject to the conditions contained therein, HMB will merge with and into Hillshire (the “Merger”), with Hillshire continuing as the surviving entity and as a wholly owned subsidiary of the Company.

Concurrently with this offering of Class A common stock, the Company is offering 30,000,000 of our tangible equity units pursuant to a separate prospectus supplement. The completion of this offering is not contingent on the completion of the offering of the tangible equity units, and the tangible equity units offering is not contingent on the completion of this Common Stock offering. Neither this offering nor the tangible equity units offering is contingent on the consummation of the acquisition of the Merger or any additional debt financing.

The Company has filed with the Securities and Exchange Commission (the “Commission”) an automatic shelf registration statement on Form S-3 (No. 333-197661), including the related preliminary prospectus or prospectuses, which registration statement became effective upon filing under Rule 462(e) of the rules and regulations of the Commission (the “1933 Act Regulations”) under the Securities Act of 1933, as amended (the “1933 Act”). Such registration statement covers the registration of the Securities under the 1933 Act. Promptly after execution and delivery of this Agreement, the Company will prepare and file a prospectus in accordance with the provisions of Rule 430B (“Rule 430B”) of the 1933 Act Regulations and paragraph (b) of Rule 424 (“Rule 424(b)”) of the 1933 Act Regulations. Any information included in such prospectus that was omitted from such registration statement at the time it became effective but that is deemed to be part of and included in such registration statement pursuant to Rule 430B is referred to as “Rule 430B Information.” Each prospectus used in connection with the offering of the Securities that omitted Rule 430B Information is herein called a “preliminary prospectus.” Such registration statement, at any given time, including any amendments thereto to such time, the exhibits and any schedules thereto at such time, the documents incorporated by reference therein pursuant to Item 12 of Form S-3 under the 1933 Act at such time and the documents otherwise deemed to be a part thereof or included therein by 1933 Act Regulations, is herein called the “Registration Statement.” The final prospectus in the form first furnished to the Underwriters for use in connection with the offering of the Securities, including the documents incorporated by reference therein pursuant to Item 12 of Form S-3 under the 1933 Act at the time of the execution of this Agreement and any preliminary prospectuses that form a part thereof, is herein called the “Prospectus.” For purposes of this Agreement, all references to the Registration Statement, any preliminary prospectus, the Prospectus or any amendment or supplement to any of the foregoing shall be deemed to include the copy filed with the Commission pursuant to its Electronic Data Gathering, Analysis and Retrieval system (“EDGAR”).

All references in this Agreement to financial statements and schedules and other information which is “contained,” “included” or “stated” in the Registration Statement, any preliminary prospectus or the Prospectus (or other references of like import) shall be deemed to mean and include all such financial statements and schedules and other information which is incorporated by reference in or otherwise deemed by 1933 Act Regulations to be a part of or included in the Registration Statement, any preliminary prospectus or the Prospectus, as the case may be; and all references in this Agreement to amendments or supplements to the Registration Statement, any preliminary prospectus or the Prospectus shall be deemed to mean and include the filing of any document under the Securities Exchange Act of 1934 (the “1934 Act”) which is incorporated by reference in or otherwise deemed by 1933 Act Regulations to be a part of or included in the Registration Statement, such preliminary prospectus or the Prospectus, as the case may be.

SECTION 1. Representations and Warranties.

(a) *Representations and Warranties by the Company.* The Company represents and warrants to each Underwriter as of the date hereof, the Applicable Time referred to in Section 1(a)(ii) hereof and as of the Closing Time referred to in Section 2(c) hereof, and agrees with each Underwriter, as follows:

(i) Status as a Well-Known Seasoned Issuer. (A) At the time of filing the Registration Statement, (B) at the time of the most recent amendment thereto for the purposes of complying with Section 10(a)(3) of the 1933 Act (whether such amendment was by post-effective amendment, incorporated report filed pursuant to Section 13 or 15(d) of the 1934 Act or form of

prospectus), (C) at the time the Company or any person acting on its behalf (within the meaning, for this clause only, of Rule 163(c) of the 1933 Act Regulations) made any offer relating to the Securities in reliance on the exemption of Rule 163 of the 1933 Act Regulations and (D) at the date hereof, the Company was and is a “well-known seasoned issuer” as defined in Rule 405 of the 1933 Act Regulations (“Rule 405”), including not having been and not being an “ineligible issuer” as defined in Rule 405. The Registration Statement is an “automatic shelf registration statement,” as defined in Rule 405, and the Securities, since their registration on the Registration Statement, have been and remain eligible for registration by the Company on a Rule 405 “automatic shelf registration statement”. The Company has not received from the Commission any notice pursuant to Rule 401(g)(2) of the 1933 Act Regulations objecting to the use of the automatic shelf registration statement form.

At the time of filing the Registration Statement, at the earliest time thereafter that the Company or another offering participant made a *bona fide* offer (within the meaning of Rule 164(h)(2) of the 1933 Act Regulations) of the Securities and at the date hereof, the Company was not and is not an “ineligible issuer,” as defined in Rule 405.

(ii) Registration Statement, Prospectus and Disclosure at Time of Sale . The Registration Statement became effective upon filing under Rule 462(e) of the 1933 Act Regulations (“Rule 462(e)”), and, if filed, any post-effective amendments thereto have also become effective upon filing under Rule 462(e). No stop order suspending the effectiveness of the Registration Statement has been issued under the 1933 Act and no proceedings for that purpose have been instituted or are pending or, to the knowledge of the Company, are threatened by the Commission, and any request on the part of the Commission for additional information has been complied with.

Any offer that is a written communication relating to the Securities made prior to the filing of the Registration Statement by the Company or any person acting on its behalf (within the meaning, for this paragraph only, of Rule 163(c) of the 1933 Act Regulations) has been filed with the Commission in accordance with the exemption provided by Rule 163 of the 1933 Act Regulations (“Rule 163”) and otherwise complied with the requirements of Rule 163, including without limitation the legending requirement, to qualify such offer for the exemption from Section 5(c) of the 1933 Act provided by Rule 163.

At the respective times the Registration Statement and each amendment thereto became effective, at each deemed effective date with respect to the Underwriters pursuant to Rule 430B(f)(2) of the 1933 Act Regulations and at the Closing Time, the Registration Statement complied and will comply in all material respects with the requirements of the 1933 Act and the 1933 Act Regulations, and did not and will not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading.

Neither the Prospectus nor any amendments or supplements thereto, at the time the Prospectus or any such amendment or supplement was issued and at the Closing Time, included or will include an untrue statement of a material fact or omitted or will omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

Each preliminary prospectus (including the prospectus or prospectuses filed as part of the Registration Statement or any amendment thereto) complied when so filed in all material respects with the 1933 Act Regulations and each preliminary prospectus and the Prospectus delivered to the Underwriters for use in connection with this offering was identical to the electronically transmitted copies thereof filed with the Commission pursuant to EDGAR, except to the extent permitted by Regulation S-T and except for filing fees information.

As of the Applicable Time (as defined below), neither (x) the Issuer General Use Free Writing Prospectus(es) (as defined below) issued at or prior to the Applicable Time (as defined below), the Statutory Prospectus (as defined below), the Final Term Sheet (as defined in Section 3(b)), all considered together (collectively, the “General Disclosure Package”), nor (y) any individual Issuer Limited Use Free Writing Prospectus, when considered together with the General Disclosure Package, included any untrue statement of a material fact or omitted to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

As used in this subsection and elsewhere in this Agreement:

“Applicable Time” means 9:15 P.M. (Eastern time) on July 28, 2014 or such other time as agreed by the Company and the Representatives.

“Issuer Free Writing Prospectus” means any “issuer free writing prospectus,” as defined in Rule 433 of the 1933 Act Regulations (“Rule 433”), relating to the Securities that (i) is required to be filed with the Commission by the Company, including the Final Term Sheet, (ii) is a “road show that is a written communication” within the meaning of Rule 433(d)(8)(i), whether or not required to be filed with the Commission or (iii) is exempt from filing pursuant to Rule 433(d)(5)(i) because it contains a description of the Securities or of the offering that does not reflect the final terms, in each case in the form filed or required to be filed with the Commission or, if not required to be filed, in the form retained in the Company’s records pursuant to Rule 433(g).

“Issuer General Use Free Writing Prospectus” means any Issuer Free Writing Prospectus that is intended for general distribution to prospective investors, as evidenced by its being specified in Schedule C hereto.

“Issuer Limited Use Free Writing Prospectus” means any Issuer Free Writing Prospectus that is not an Issuer General Use Free Writing Prospectus.

“Statutory Prospectus” as of any time means the prospectus relating to the Securities that is included in the Registration Statement immediately prior to that time, including any document incorporated by reference therein and any preliminary or other prospectus deemed to be a part thereof.

Each Issuer Free Writing Prospectus, as of its issue date and at all subsequent times through the completion of the public offer and sale of the Securities or until any earlier date that the issuer notified or notifies the Representatives as described in Section 3(e), did not, does not and will not include any information that conflicted, conflicts or will conflict with the information contained in the Registration Statement or the Prospectus, including any document incorporated by reference therein and any preliminary or other prospectus deemed to be a part thereof that has not been superseded or modified.

The representations and warranties in this subsection shall not apply to statements in or omissions from the Registration Statement, the Prospectus or any Issuer Free Writing Prospectus made in reliance upon and in conformity with written information furnished to the Company by or on behalf of any Underwriter through the Representatives expressly for use therein.

(iii) Incorporated Documents. The documents incorporated or deemed to be incorporated by reference in the Registration Statement and the Prospectus, at the time they were or hereafter are filed with the Commission, complied and will comply in all material respects with the requirements of the 1933 Act and the 1933 Act Regulations or the 1934 Act and the rules and regulations of the Commission thereunder (the “1934 Act Regulations”), as applicable, and, when read together with the other information in the Prospectus, (a) at the time the Registration Statement became effective, (b) at the earlier of the time the Prospectus was first used and the Applicable Time and (c) at the Closing Time, did not and will not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein, in light of the circumstances under which they were made, or necessary to make the statements therein not misleading.

(iv) Company’s Independent Registered Public Accounting Firm. PricewaterhouseCoopers LLP, which has certified certain financial statements of the Company and its subsidiaries, is an independent registered public accounting firm as required by the 1933 Act.

(v) Hillshire’s Independent Registered Public Accounting Firms. PricewaterhouseCoopers LLP, at the time it certified certain financial statements of Hillshire and its subsidiaries, was an independent registered public accounting firm as required by the 1933 Act, and Deloitte & Touche LLP, which has certified certain financial statements of Hillshire and its subsidiaries, is an independent registered public accounting firm as required by the 1933 Act.

(vi) Company Financial Statements. The financial statements of the Company and its consolidated subsidiaries, and the related notes thereto, included in the Registration Statement, the General Disclosure Package and the Prospectus, present fairly, in all material respects, the consolidated financial position of the Company and its consolidated subsidiaries as of the dates indicated and the results of their operations and the changes in their consolidated cash flows for the periods specified; said financial statements have been prepared in conformity with generally accepted accounting principles applied on a consistent basis, except as described in the notes to such financial statements, and the supporting schedules included or incorporated by reference in such Registration Statement, the General Disclosure Package and the Prospectus present fairly the information required to be stated therein.

(vii) Hillshire Financial Statements. To the knowledge of the Company, the financial statements of Hillshire and its consolidated subsidiaries, and the related notes thereto, included in the Registration Statement, the General Disclosure Package and the Prospectus, present fairly, in all material respects, the consolidated financial position of Hillshire and its consolidated subsidiaries as of the dates indicated and the results of their operations and the changes in their consolidated cash flows for the periods specified; said financial statements have been prepared in conformity with generally accepted accounting principles applied on a consistent basis, except as described in the notes to such financial statements, and the supporting schedules included or incorporated by reference in such Registration Statement, the General Disclosure Package and the Prospectus present fairly the information required to be stated therein.

(viii) Pro Forma Financial Statements. The pro forma consolidated financial statements of the Company and its subsidiaries and the related notes thereto set forth in the Registration Statement, the General Disclosure Package and the Prospectus present fairly the information

contained therein, have been prepared in accordance with Article 11 of Regulation S-X with respect to pro forma financial statements and have been properly presented on the bases described therein, and the assumptions used in the preparation thereof are reasonable and the adjustments used therein are appropriate to give effect to the transactions and circumstances referred to therein.

(ix) Forward-Looking and Supporting Information. Each of the statements (including the assumptions described therein) included in the Registration Statement and the General Disclosure Package and to be made in the Prospectus (and any supplements thereto) within the coverage of Rule 175(b) under the Securities Act, including (but not limited to) the statements contained under the caption “Fiscal 2014 Outlook” in the Company’s Annual Report on Form 10-K for the fiscal year ended September 28, 2013 and the Company’s Quarterly Reports on Form 10-Q for the fiscal quarters ended December 28, 2013 and March 29, 2014, each of which is incorporated by reference in the Registration Statement and the Prospectus, was made with a reasonable basis and in good faith.

(x) No Material Adverse Change in Company Business. Since the respective dates as of which information is given in the Registration Statement, the General Disclosure Package or the Prospectus, except as otherwise stated therein, there has not been any material adverse change, or any development known by the Company (after diligent inquiry) that would reasonably be expected to result in a material adverse change in or affecting the business, financial position, stockholders’ equity or results of operations of the Company and its subsidiaries, taken as a whole (any such change being referred to hereafter as a “Material Adverse Change”), otherwise than as set forth, incorporated by reference or contemplated in the General Disclosure Package or the Prospectus; and except as set forth, incorporated by reference or contemplated in the Prospectus neither the Company nor any of its subsidiaries has entered into any transaction or agreement (whether or not in the ordinary course of business) material to the Company and its subsidiaries taken as a whole.

(xi) No Material Adverse Change in Hillshire Business. To the knowledge of the Company, since the respective dates as of which information is given in the Registration Statement, the General Disclosure Package or the Prospectus, except as otherwise stated therein, there has not been any material adverse change, or any development known by the Company (after diligent inquiry) that would reasonably be expected to result in a material adverse change in or affecting the business, financial position, stockholders’ equity or results of operations of the Company, its subsidiaries, Hillshire and its subsidiaries, taken as a whole, otherwise than as set forth, incorporated by reference or contemplated in the General Disclosure Package or the Prospectus; and, to the knowledge of the Company, except as set forth, incorporated by reference or contemplated in the Prospectus neither the Hillshire nor any of its subsidiaries has entered into any transaction or agreement (whether or not in the ordinary course of business) material to the Company, its subsidiaries, Hillshire and its subsidiaries, taken as a whole.

(xii) Good Standing of the Company. The Company has been duly incorporated and is validly existing as a corporation in good standing under the laws of the state of its incorporation, with power and authority (corporate and other) to own its properties and conduct its business as described in the Prospectus, and has been duly qualified as a foreign corporation for the transaction of business and is in good standing under the laws of each other jurisdiction in which it owns or leases properties, or conducts any business, so as to require such qualification, other than where the failure to be so qualified or in good standing would not reasonably be expected to have a material adverse effect on the Company and its subsidiaries taken as a whole.

(xiii) Good Standing of Subsidiaries. Each of (i) the Company's subsidiaries that constitutes a "significant subsidiary" of the Company within the meaning of Rule 1-02 of Regulation S-X of the Commission (collectively, the "Material Subsidiaries") and (ii) to the Company's knowledge, Hillshire and each of Hillshire's subsidiaries that will constitute a "significant subsidiary" of the Company within the meaning of Rule 1-02 of Regulation S-X of the Commission (collectively, "Hillshire's Material Subsidiaries") has been duly organized and is validly existing as a corporation or limited liability company, as the case may be, under the laws of its jurisdiction of incorporation, with corporate or limited liability company (as the case may be) power and authority to own its properties and conduct its business as described in the Prospectus, and has been duly qualified as a foreign corporation or limited liability company, as the case may be, for the transaction of business and is in good standing under the laws of each jurisdiction in which it owns or leases properties or conducts any business so as to require such qualification, other than where the failure to be so qualified or in good standing would not reasonably be expected to have a material adverse effect on the Company and its subsidiaries taken as a whole or, in the case of Hillshire and Hillshire's Material Subsidiaries, a material adverse effect on the Company, its subsidiaries, Hillshire and its subsidiaries, taken as a whole; and all the outstanding shares of capital stock or equity interests, as the case may be, of each Material Subsidiary of the Company have been duly authorized and validly issued, are fully-paid and non-assessable, and (except in the case of foreign subsidiaries, for directors' qualifying shares) are owned by the Company, directly or indirectly, free and clear of all liens, encumbrances, security interests and claims.

(xiv) Authorization of Agreement. This Agreement has been duly authorized, executed and delivered by the Company.

(xv) Capital Stock. The authorized capital stock of the Company conforms as to legal matters to the description thereof contained in each of the General Disclosure Package and the Prospectus.

(xvi) Outstanding Shares. The shares of Common Stock outstanding prior to the issuance of the Securities have been duly authorized and are validly issued, fully paid and nonassessable. None of the outstanding shares of capital stock of the Company have been issued in violation of any preemptive or similar rights of any security holder of the Company. The common stock of the Company has been registered pursuant to Section 12(b) of the Exchange Act and the Company has not received any notification that the Commission is contemplating terminating such registration. The common stock of the Company is listed on the NYSE and the Company has not received any notification that the NYSE is contemplating terminating the listing of the common stock of the Company. The Securities have been approved for listing on the NYSE, subject to official notice of issuance. Except as disclosed in the Registration Statement, the General Disclosure Package and the Prospectus, there are no outstanding (A) securities or obligations of the Company convertible into or exchangeable for any capital stock of the Company, (B) warrants, rights or options to subscribe for or purchase from the Company any such capital stock or any such convertible or exchangeable securities or obligations or (C) obligations of the Company to issue or sell any shares of capital stock, any such convertible or exchangeable securities or obligations, or any such warrants, rights or options.

(xvii) Authorization of the Securities. The Securities have been duly authorized by the Company and, when issued and delivered in accordance with the terms of this Agreement, will be validly issued, fully paid and nonassessable, and the issuance of such Securities will not be subject to any preemptive or similar rights.

(xviii) No Registration Rights. No holders of securities of the Company have rights to the registration of such securities under the Registration Statement.

(xix) Absence of Defaults and Conflicts. Neither the Company nor any of its Material Subsidiaries nor, to the Company's knowledge, Hillshire nor any of Hillshire's Material Subsidiaries, is, or with the giving of notice or lapse of time or both would be, in violation of or in default under, its certificate or articles of incorporation, by-laws, certificate or articles of formation, limited liability company operating agreement or other comparable constituent documents, as the case may be, or any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which the Company or any of its Material Subsidiaries or Hillshire or Hillshire's Material Subsidiaries is a party or by which it or any of them or any of their respective properties is bound, except for violations and defaults which individually or in the aggregate are not material to the Company and its subsidiaries or Hillshire and its subsidiaries, as applicable, taken as a whole, or to the holders of the Securities; the issue and sale of the Securities and the performance by the Company of all of its obligations under the Securities and this Agreement and the consummation of the transactions herein and therein contemplated will not conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, any indenture, mortgage, deed of trust, loan agreement or other material agreement or instrument to which the Company or any of its Material Subsidiaries is a party or by which the Company or any of its Material Subsidiaries is bound or to which any of the property or assets of the Company or any of its Material Subsidiaries is subject, except for conflicts, breaches or defaults that, singly or in the aggregate, would not reasonably be expected to have a material adverse effect on the Company and its subsidiaries taken as a whole, or, in the case of any such matter relating to Hillshire, a material adverse effect on the Company, its subsidiaries, Hillshire and its subsidiaries, taken as a whole, or on the transactions contemplated hereby, nor will any such action result in any violation of the provisions of (A) the certificate or articles of incorporation or by-laws of the Company or (B) any applicable law or statute or any order, rule or regulation of any court or governmental agency or body having jurisdiction over the Company, its Material Subsidiaries or any of their respective properties, except, in the case of (B) above, for violations that, singly or in the aggregate, would not reasonably be expected to have a material adverse effect on the Company and its subsidiaries taken as a whole, or on the transactions contemplated hereby; and no consent, approval, authorization, order, registration or qualification of or with any such court or governmental agency or body is required for the issue and sale of the Securities or the consummation by the Company of the transactions contemplated by this Agreement, except such consents, approvals, authorizations, registrations or qualifications as have been obtained under the 1933 Act and as may be required under state securities or Blue Sky Laws in connection with the purchase and distribution of the Securities by the Underwriters.

(xx) Absence of Labor Dispute. Except as described or incorporated by reference in the General Disclosure Package and the Prospectus, no labor disputes exist with employees of the Company or of its Material Subsidiaries or, to the Company's knowledge, Hillshire and Hillshire's Material Subsidiaries, that would, singly or in the aggregate, reasonably be expected to have a material adverse effect on the Company and its subsidiaries, taken as a whole, or, in the case of any such matters relating to Hillshire and its subsidiaries, a material adverse effect on the Company, its subsidiaries, Hillshire and its subsidiaries, taken as a whole.

(xxi) Absence of Proceedings. Except as described or incorporated by reference in the General Disclosure Package and the Prospectus, there are no legal or governmental proceedings pending or, to the knowledge of the Company, threatened to which the Company or any of its subsidiaries or, to the Company's knowledge, Hillshire or any of Hillshire's subsidiaries, is or may be a party or to which any property of the Company or any of its subsidiaries or, to the

Company's knowledge, Hillshire or any of Hillshire's subsidiaries, is or may be the subject which would, individually or in the aggregate, be reasonably expected to have a material adverse effect on the Company and its subsidiaries, taken as a whole, or, in the case of any such matters relating to Hillshire and its subsidiaries, a material adverse effect on the Company, its subsidiaries, Hillshire and its subsidiaries, taken as a whole, or on the transactions contemplated hereby and, to the best of the Company's knowledge, no such proceedings are threatened by governmental authorities or threatened by others; and there are no contracts or other documents of a character required to be filed as an exhibit to the Registration Statement or required to be described in the Registration Statement, the General Disclosure Package and the Prospectus which are not filed or described as required.

(xxii) Possession of Intellectual Property. Each of the Company and its Material Subsidiaries and, to the Company's knowledge, each of Hillshire and Hillshire's Material Subsidiaries, owns or possesses the right to use the patents, patent licenses, trademarks, service marks, trade names, copyrights and know-how (including trade secrets and other unpatented and/or unpatentable proprietary or confidential information, systems or procedures) (collectively, the "Intellectual Property") reasonably necessary to carry on the business conducted by each as conducted on the date hereof, except to the extent that the failure to own or possess the right to use such Intellectual Property would not, singly or in the aggregate, reasonably be expected to have a material adverse effect on the Company and its subsidiaries, taken as a whole, or, in the case of any such matters relating to Hillshire and its subsidiaries, a material adverse effect on the Company, its subsidiaries, Hillshire and its subsidiaries, taken as a whole, and, except as set forth or incorporated by reference in the Registration Statement, the General Disclosure Package and the Prospectus, neither the Company nor any Material Subsidiary nor, to the Company's knowledge, Hillshire or any of Hillshire's Material Subsidiaries, has received any notice of infringement of or conflict with asserted rights of others with respect to any Intellectual Property, except for notices the content of which if accurate would not, singly or in the aggregate, reasonably be expected to have a material adverse effect on the Company and its subsidiaries, taken as a whole, or, in the case of any such matters relating to Hillshire and its subsidiaries, a material adverse effect on the Company, its subsidiaries, Hillshire and its subsidiaries, taken as a whole.

(xxiii) Absence of Further Requirements. No material filing with, or authorization, approval, consent, license, order, registration, qualification or decree of, any court or governmental authority or agency is necessary or required for the performance by the Company of its obligations hereunder, in connection with the offering, issuance or sale of the Securities hereunder or the consummation of the transactions contemplated by this Agreement, except such as have been already obtained or as may be required under the 1933 Act or the 1933 Act Regulations or state securities laws.

(xxiv) Possession of Licenses and Permits. The Company and its Material Subsidiaries and, to the Company's knowledge, Hillshire and Hillshire's Material Subsidiaries, have all licenses, franchises, permits, authorizations, approvals and orders of and from all governmental and regulatory officials and bodies that are necessary to own or lease and operate their properties and conduct their businesses as described in the Prospectus and that are material in relation to the business of the Company and its subsidiaries, taken as a whole, or, the Company, its subsidiaries, Hillshire and its subsidiaries, taken as a whole, except where the failure to possess such licenses or authorizations would not reasonably be expected to have a material adverse effect on the Company and its subsidiaries, taken as a whole, or, in the case of any such matters relating to Hillshire and its subsidiaries, a material adverse effect on the Company, its subsidiaries, Hillshire and its subsidiaries, taken as a whole.

(xxv) Investment Company Act. The Company is not, and after giving effect to the offering and sale of the Securities and the application of the proceeds thereof as described in the Prospectus will not be, an “investment company” or an entity “controlled” by an “investment company”, as such terms are defined in the Investment Company Act of 1940, as amended.

(xxvi) Environmental Laws. Except as described or incorporated by reference in the General Disclosure Package and the Prospectus, each of the Company and its Material Subsidiaries and, to the Company’s knowledge, Hillshire and Hillshire’s Material Subsidiaries, is in compliance with any and all applicable foreign, federal, state and local laws and regulations relating to the protection of human health or the environment or imposing liability or standards of conduct concerning any Hazardous Material (collectively, “Environmental Laws”), except where such non-compliance with Environmental Laws would not, singly or in the aggregate, reasonably be expected to have a material adverse effect on the Company and its subsidiaries, taken as a whole, or, in the case of any such matters relating to Hillshire and its subsidiaries, a material adverse effect on the Company, its subsidiaries, Hillshire and its subsidiaries, taken as a whole. The term “Hazardous Material” means (i) any “hazardous substance” as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, (ii) any “hazardous waste” as defined by the Resource Conservation and Recovery Act, as amended, (iii) any petroleum or petroleum product, (iv) any polychlorinated biphenyl, and (v) any pollutant or contaminant or hazardous, dangerous, or toxic chemical, material, waste or substance regulated under or within the meaning of any other Environmental Law.

(xxvii) Accounting Controls and Disclosure Controls. Except as described or incorporated by reference in the General Disclosure Package and the Prospectus, the Company and each of its subsidiaries and, to the Company’s knowledge, Hillshire and each of its subsidiaries, maintain a system of internal accounting controls sufficient to provide reasonable assurances that (1) transactions are executed in accordance with management’s general or specific authorization; (2) transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles and to maintain accountability for assets; (3) access to assets is permitted only in accordance with management’s general or specific authorization; and (4) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences. Except as described or incorporated by reference in the General Disclosure Package and the Prospectus, since the end of the Company’s most recent audited fiscal year, there has been (I) no material weakness in the Company’s internal control over financial reporting (whether or not remediated) and (II) no change in the Company’s internal control over financial reporting that has materially affected, or is reasonably likely to materially affect, the Company’s internal control over financial reporting. The interactive data in eXtensible Business Reporting Language incorporated by reference in the Registration Statement, the General Disclosure Package and the Prospectus fairly presents the information called for in all material respects and has been prepared in accordance with the Commission’s rules and guidelines applicable thereto.

The Company and its subsidiaries maintain “disclosure controls and procedures” (as such term is defined in Rule 13a-15(e) under the 1934 Act); such disclosure controls and procedures are designed to ensure that information required to be disclosed by the Company in the reports that it files or submits under the 1934 Act is recorded, processed, summarized and reported, within the time periods specified in the Commission’s rules and forms.

(xxviii) Compliance with the Sarbanes-Oxley Act. There is and has been no failure on the part of the Company or any of the Company’s directors or officers, in their capacities as such, or to the knowledge of the Company, Hillshire or any of Hillshire’s directors or officers, in their

capacities as such, to comply in all material respects with any provision of the Sarbanes-Oxley Act of 2002 and the rules and regulations promulgated in connection therewith (the “Sarbanes-Oxley Act”), including Section 402 related to loans and Sections 302 and 906 related to certifications.

(xxix) Pending Proceedings and Examinations. The Registration Statement is not the subject of a pending proceeding or examination under Section 8(d) or 8(e) of the 1933 Act, and the Company is not the subject of a pending proceeding under Section 8A of the 1933 Act in connection with the offering of the Securities.

(xxx) Foreign Corrupt Practices Act. Except as described or incorporated by reference in the General Disclosure Package and the Prospectus or as described in any other periodic reports of the Company filed with the Commission pursuant to the 1934 Act within the last three years, within the past three years, none of the Company, any of its subsidiaries or, to the knowledge of the Company, Hillshire, any of Hillshire’s subsidiaries, any director, officer, agent, employee, affiliate or other person acting on behalf of the Company or any of its subsidiaries or Hillshire or any of Hillshire’s subsidiaries is aware of or has taken any action, directly or indirectly, that would result in a material violation by such persons of the Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder (the “FCPA”), including without limitation, making use of the mails or any means or instrumentality of interstate commerce corruptly in the furtherance of an offer, payment, promise to pay or authorization of the payment of any money, or other property, gift, promise to give, or authorization of the giving of anything of value to any “foreign official” (as such term is defined in the FCPA) or any foreign political party or official thereof or any candidate for foreign political office, in contravention of the FCPA, and except as described or incorporated by reference in the General Disclosure Package and the Prospectus or as described in any other periodic reports of the Company filed with the Commission pursuant to the 1934 Act within the last three years, the Company and, to the knowledge of the Company, its affiliates and affiliates of Hillshire have conducted their businesses in compliance in all material respects with the FCPA and have instituted and maintain policies and procedures designed to ensure, and which are reasonably expected to continue to ensure, continued compliance therewith.

(xxxi) Anti-Money Laundering Laws. The operations of the Company and its subsidiaries and, to the knowledge of the Company, Hillshire and its subsidiaries, are and have been conducted at all times in compliance in all material respects with applicable financial recordkeeping and reporting requirements, including those of the Bank Secrecy Act, as amended by Title III of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), and the applicable anti-money laundering statutes of jurisdictions where the Company and its subsidiaries or Hillshire and its subsidiaries, respectively, conduct business, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any governmental agency (collectively, the “Money Laundering Laws”) and no material action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company or any of its subsidiaries with respect to the Money Laundering Laws is pending or, to the knowledge of the Company, threatened. To the knowledge of the Company, no material action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving Hillshire or any of its subsidiaries with respect to the Money Laundering Laws is pending or, to the knowledge of the Company, threatened.

(xxxii) OFAC. None of the Company, any of its subsidiaries or, to the knowledge of the Company, Hillshire, any of its subsidiaries or any director, officer, agent, employee, affiliate or person acting on behalf of the Company, Hillshire or any of their respective subsidiaries is currently the subject or target of any sanctions administered or enforced by the United States Government, including, without limitation, the Office of Foreign Assets Control of the U.S. Treasury Department (“OFAC”), the United Nations Security Council (“UNSC”), the European Union, Her Majesty’s Treasury (“HMT”), or other relevant sanctions authority (collectively, “Sanctions”), nor is the Company or Hillshire located, organized or resident in a country or territory that is the subject of Sanctions; and the Company will not directly or indirectly use the proceeds of the offering, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other person or entity, to fund any activities of or business with any person or entity, or in any country or territory, that, at the time of such funding, is the subject of Sanctions or in any other manner that will result in a violation by any person or entity (including any person or entity participating in the offering, whether as underwriter, advisor, investor or otherwise) of Sanctions.

(xxxiii) No Stabilization. The Company has not taken, directly or indirectly, any action designed to or that would reasonably be expected to cause or result in any stabilization or manipulation of the price of the Securities.

(b) *Officer’s Certificates*. Any certificate signed by any officer of the Company or any of its subsidiaries delivered to the Representatives or to counsel for the Underwriters shall be deemed a representation and warranty by the Company to each Underwriter as to the matters covered thereby.

SECTION 2. Sale and Delivery to Underwriters; Closing.

(a) *Securities*. On the basis of the representations and warranties herein contained and subject to the terms and conditions herein set forth, the Company agrees to sell to each Underwriter, severally and not jointly, and each Underwriter, severally and not jointly, agrees to purchase from the Company, the respective number of Firm Shares set forth opposite such Underwriter’s name in Schedule A hereto at \$36.6660 per share (the “Purchase Price”), plus any additional number of Securities which such Underwriter may become obligated to purchase pursuant to the provisions of Section 10 hereof.

On the basis of the representations and warranties contained in this Agreement, and subject to its terms and conditions, the Company agrees to sell to the Underwriters the Additional Shares, and the Underwriters shall have the right to purchase, severally and not jointly, up to 3,571,500 Additional Shares at the Purchase Price, provided, however, that the amount paid by the Underwriters for any Additional Shares shall be reduced by an amount per share equal to any dividends declared by the Company and payable on the Firm Shares but not payable on such Additional Shares. You may exercise this right on behalf of the Underwriters in whole or from time to time in part by giving written notice not later than 30 days after the date of this Agreement for the purpose of covering over-allotments which may be made in connection with the offering and distribution of the Firm Shares. Any exercise notice shall specify the number of Additional Shares to be purchased by the Underwriters and the date on which such shares are to be purchased. Each purchase date must be at least one business day after the written notice is given and may not be earlier than the Closing Time (as defined below) nor later than ten business days after the date of such notice. On each day, if any, that Additional Shares are to be purchased (an “Option Closing Date”), each Underwriter agrees, severally and not jointly, to purchase the number of Additional Shares (subject to such adjustments to eliminate fractional shares as you may determine) that bears the same proportion to the total number of Additional Shares to be purchased on such Option Closing Date as the number of Firm Shares set forth in Schedule I hereto opposite the name of such Underwriter bears to the total number of Firm Shares.

(b) *Terms of Public Offering.* The Company is advised by you that the Underwriters propose to make a public offering of their respective portions of the Securities as soon after the Registration Statement and this Agreement have become effective as in your judgment is advisable. The Company is further advised by you that the Securities are to be offered to the public initially at \$37.80 per share (the “Public Offering Price”) and to certain dealers selected by you at a price that represents a concession not in excess of \$0.6804 per share under the Public Offering Price.

(c) *Payment and Delivery.* Payment for the Firm Shares shall be made to, or for the benefit of, the Company in Federal or other funds immediately available in New York City against delivery of such Firm Shares for the respective accounts of the several Underwriters at 10:00 a.m., New York City time, on August 5, 2014, or at such other time on the same or such other date, not later than August 14, 2014, as shall be designated in writing by you. The time and date of such payment are hereinafter referred to as the “Closing Time.”

Payment for any Additional Shares shall be made to, or for the benefit of, the Company in Federal or other funds immediately available in New York City against delivery of such Additional Shares for the respective accounts of the several Underwriters at 10:00 a.m., New York City time, on the date specified in the corresponding notice described in Section 2 or at such other time on the same or on such other date, in any event not later than September 3, 2014, as shall be designated in writing by you.

(d) *Denominations; Registration.* The Firm Shares and Additional Shares shall be registered in such names and in such denominations as you shall request in writing not later than one full business day prior to the Closing Time or the applicable Option Closing Date, as the case may be. The Firm Shares and Additional Shares shall be delivered to you at the Closing Time or on an Option Closing Date, as the case may be, for the respective accounts of the several Underwriters, with any transfer taxes payable in connection with the transfer of the Shares to the Underwriters duly paid, against payment of the Purchase Price therefor.

SECTION 3. Covenants of the Company. The Company covenants with each Underwriter as follows:

(a) *Compliance with Securities Regulations and Commission Requests; Payment of Filing Fees.* The Company, subject to Section 3(b), will comply with the requirements of Rule 430B and will notify the Representatives immediately, and confirm the notice in writing, (i) when any post-effective amendment to the Registration Statement or new registration statement relating to the Securities shall become effective, or any supplement to the Prospectus or any amended Prospectus shall have been filed, (ii) of the receipt of any comments from the Commission, (iii) of any request by the Commission for any amendment to the Registration Statement or the filing of a new registration statement or any amendment or supplement to the Prospectus or any document incorporated by reference therein or otherwise deemed to be a part thereof or for additional information relating to the Registration Statement or the Prospectus, (iv) of the issuance by the Commission of any stop order suspending the effectiveness of the Registration Statement or such new registration statement or of any order preventing or suspending the use of any preliminary prospectus, or of the suspension of the qualification of the Securities for offering or sale in any jurisdiction, or of the initiation or threatening of any proceedings for any of such purposes or of any examination pursuant to Section 8(e) of the 1933 Act concerning the Registration Statement and (v) if the Company becomes the subject of a proceeding under Section 8A of the 1933 Act in connection with the offering of the Securities. The Company will effect the filings required under Rule 424(b), in the manner and within the time period required by Rule 424(b) (without reliance on Rule 424(b)(8)), and will take such steps as it deems necessary to ascertain promptly whether the form of prospectus transmitted for filing under Rule 424(b) was received for filing by the Commission and, in the event that it was not, it will promptly file such prospectus. The Company will make every reasonable effort to prevent the

issuance of any stop order and, if any stop order is issued, to obtain the lifting thereof at the earliest possible moment. The Company shall pay the required Commission filing fees relating to the Securities within the time required by Rule 456(b)(1) (i) of the 1933 Act Regulations without regard to the proviso therein and otherwise in accordance with Rules 456(b) and 457(r) of the 1933 Act Regulations (including, if applicable, by updating the "Calculation of Registration Fee" table in accordance with Rule 456(b)(1)(ii) either in a post-effective amendment to the Registration Statement or on the cover page of a prospectus filed pursuant to Rule 424(b)).

(b) *Filing of Amendments and Exchange Act Documents; Preparation of Final Term Sheet* . The Company will give the Representatives notice of its intention to file or prepare any amendment to the Registration Statement or new registration statement relating to the Securities or any amendment, supplement or revision to either any preliminary prospectus (including any prospectus included in the Registration Statement or amendment thereto at the time it became effective) or to the Prospectus, whether pursuant to the 1933 Act, the 1934 Act or otherwise, and the Company will furnish the Representatives with copies of any such documents a reasonable amount of time prior to such proposed filing or use, as the case may be, and will not file or use any such document to which the Representatives or counsel for the Underwriters shall reasonably object. The Company has given the Representatives notice of any filings made pursuant to the 1934 Act or 1934 Act Regulations within 48 hours prior to the execution of this Agreement; the Company will give the Representatives notice of its intention to make any such filing from the execution of this Agreement to the Closing Time and will furnish the Representatives with copies of any such documents a reasonable amount of time prior to such proposed filing and will not file or use any such document to which the Representatives or counsel for the Underwriters shall reasonably object; *provided, however* , that with respect to any proposed amendment or supplement resulting solely from the incorporation by reference of any report to be filed under the Exchange Act, the Representatives shall be deemed to have consented to the filing or use of such report if the Company receives no acknowledgment of receipt or other response from the Representatives within 24 hours of being provided such report. The Company will prepare a final term sheet (the "Final Term Sheet"), attached hereto as Schedule B, reflecting the final pricing and other terms of the Securities, in form and substance reasonably satisfactory to the Representatives, and shall file such Final Term Sheet as an "issuer free writing prospectus" pursuant to Rule 433 no later than the date of first use; provided that the Company shall furnish the Representatives with copies of any such Final Term Sheet a reasonable amount of time prior to such proposed filing and will not use or file any such document to which the Representatives or counsel to the Underwriters shall reasonably object.

(c) *Delivery of Registration Statement* . Upon request, the Company will deliver to the Representatives and counsel for the Underwriters, without charge, conformed copies of the Registration Statement and of each amendment thereto (including exhibits filed therewith or incorporated by reference therein and documents incorporated or deemed to be incorporated by reference therein or otherwise deemed to be a part thereof) and conformed copies of all consents and certificates of experts, and will also deliver to the Representatives, without charge, a conformed copy of the Registration Statement and of each amendment thereto (without exhibits) for each of the Underwriters. The copies of the Registration Statement and each amendment thereto furnished to the Underwriters will be identical to the electronically transmitted copies thereof filed with the Commission pursuant to EDGAR, except to the extent permitted by Regulation S-T.

(d) *Delivery of Prospectuses* . The Company has delivered to each Underwriter, without charge, as many copies of each preliminary prospectus as such Underwriter reasonably requested, and the Company hereby consents to the use of such copies for purposes permitted by the 1933 Act. The Company will furnish to each Underwriter, without charge, during the period when the Prospectus is required to be delivered under the 1933 Act, such number of copies of the Prospectus (as amended or supplemented) as such Underwriter may reasonably request. The Prospectus and any amendments or supplements thereto furnished to the Underwriters will be identical to the electronically transmitted copies thereof filed with the Commission pursuant to EDGAR, except to the extent permitted by Regulation S-T.

(e) *Continued Compliance with Securities Laws* . The Company will comply with the 1933 Act and the 1933 Act Regulations and the 1934 Act and the 1934 Act Regulations so as to permit the completion of the distribution of the Securities as contemplated in this Agreement and in the Prospectus. If at any time when a prospectus is required by the 1933 Act to be delivered in connection with sales of the Securities, any event shall occur or condition shall exist as a result of which it is necessary, in the opinion of counsel for the Underwriters or for the Company, to amend the Registration Statement or amend or supplement the Prospectus in order that the Prospectus will not include any untrue statements of a material fact or omit to state a material fact necessary in order to make the statements therein not misleading in the light of the circumstances existing at the time it is delivered to a purchaser, or if it shall be necessary, in the opinion of such counsel, at any such time to amend the Registration Statement or to file a new registration statement or amend or supplement the Prospectus in order to comply with the requirements of the 1933 Act or the 1933 Act Regulations, the Company will promptly prepare and file with the Commission, subject to Section 3(b), such amendment, supplement or new registration statement as may be necessary to correct such statement or omission or to comply with such requirements, the Company will use its reasonable best efforts to have such amendment or new registration statement declared effective as soon as practicable (if it is not an automatic shelf registration statement with respect to the Securities) and the Company will furnish to the Underwriters such number of copies of such amendment, supplement or new registration statement as the Underwriters may reasonably request. If at any time following issuance of an Issuer Free Writing Prospectus there occurred or occurs an event or development as a result of which such Issuer Free Writing Prospectus conflicted or would conflict with the information contained in the Registration Statement (or any other registration statement relating to the Securities) or the Statutory Prospectus or any preliminary prospectus or included or would include an untrue statement of a material fact or omitted or would omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances prevailing at that subsequent time, not misleading, the Company will promptly notify the Representatives and will promptly amend or supplement, at its own expense, such Issuer Free Writing Prospectus to eliminate or correct such conflict, untrue statement or omission.

(f) *Blue Sky Qualifications* . The Company will use its reasonable best efforts, in cooperation with the Underwriters, to qualify the Securities for offering and sale under the applicable securities laws of such states and other jurisdictions as the Representatives may designate and to maintain such qualifications in effect for so long as reasonably required for the distribution of the Securities; provided, however, that the Company shall not be obligated to file any general consent to service of process or to qualify as a foreign corporation or as a dealer in securities in any jurisdiction in which it is not so qualified or to subject itself to taxation in respect of doing business in any jurisdiction in which it is not otherwise so subject. The Company will also supply the Underwriters with such information as is reasonably necessary for the determination of the legality of the Securities for investment under the laws of such jurisdictions as the Underwriters may request.

(g) *Rule 158* . The Company will timely file such reports pursuant to the 1934 Act as are necessary in order to make generally available to its securityholders as soon as practicable an earnings statement for the purposes of, and to provide to the Underwriters the benefits contemplated by, the last paragraph of Section 11(a) of the 1933 Act.

(h) *Use of Proceeds* . The Company will use the net proceeds received by it from the sale of the Securities in the manner specified in the Prospectus under "Use of Proceeds."

(i) *Reporting Requirements*. The Company, during the period when the Prospectus is required to be delivered under the 1933 Act, will file all documents required to be filed with the Commission pursuant to the 1934 Act within the time periods required by the 1934 Act and the 1934 Act Regulations.

(j) *Issuer Free Writing Prospectuses*. The Company represents and agrees that, unless it obtains the prior consent of the Representatives, and each Underwriter represents and agrees that, unless it obtains the prior consent of the Company and the Representatives, it has not made and will not make any offer relating to the Securities that would constitute an “issuer free writing prospectus,” as defined in Rule 433, or that would otherwise constitute a “free writing prospectus,” as defined in Rule 405, required to be filed with the Commission; provided, however, that prior to the preparation of the Final Term Sheet in accordance with Section 3(b), each Underwriter is authorized to use the information with respect to the final terms of the Securities in communications conveying information related to the offering to investors. Any such free writing prospectus consented to by the Representatives or by the Company and the Representatives, as the case may be, is hereinafter referred to as a “Permitted Free Writing Prospectus.” The Company represents that it has treated or agrees that it will treat each Permitted Free Writing Prospectus as an “issuer free writing prospectus,” as defined in Rule 433, and has complied and will comply with the requirements of Rule 433 applicable to any Permitted Free Writing Prospectus, including timely filing with the Commission where required, legending and record keeping.

(k) *Restriction on Sale of Securities*. During a period of 90 days from the date of the Prospectus, the Company will not, without the prior written consent of the Representatives, subject to the immediately succeeding sentence, (i) directly or indirectly, offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase or otherwise transfer or dispose of any shares of Common Stock or any securities convertible into or exercisable or exchangeable for Common Stock or file any registration statement under the 1933 Act with respect to any of the foregoing or (ii) enter into any swap or any other agreement or any transaction that transfers, in whole or in part, directly or indirectly, the economic consequences of ownership of the Common Stock, whether any such swap or other agreement or transaction described in clause (i) or (ii) above is to be settled by delivery of Common Stock or such other securities, in cash or otherwise. The foregoing sentence shall not apply (i) to the Securities to be sold hereunder, (ii) in connection with the Company’s concurrent tangible equity units offering as described in the General Disclosure Package, (iii) to any issuance or transfer of shares of Common Stock (restricted or otherwise), stock options, stock units and performance shares pursuant to any existing employee benefits plans or director compensation plans of the Company that is described in the General Disclosure Package and the Prospectus, or (iv) to any issuance or transfer of shares of Common Stock upon the exercise of stock options outstanding on the date hereof under existing employee benefit plans or director compensation plans of the Company that is described in the General Disclosure Package and the Prospectus.

SECTION 4. Payment of Expenses.

(a) *Expenses*. The Company agrees to pay all expenses incident to the performance of its obligations under this Agreement, including (i) the preparation, printing and filing of the Registration Statement (including financial statements and exhibits) as originally filed and of each amendment thereto, (ii) the preparation, printing and delivery to the Underwriters of this Agreement, any Agreement among Underwriters, certificates representing the Securities, if any, and such other documents as may reasonably be required in connection with the offering, purchase, sale, issuance or delivery of the Securities, (iii) the preparation, issuance and delivery of the Securities to the Underwriters, (iv) the fees and disbursements of the Company’s counsel, accountants and other advisors, (v) the qualification of the Securities under securities laws in accordance with the provisions of Section 3(f) hereof, including filing fees and the reasonable fees and disbursements of counsel for the Underwriters in connection therewith and in

connection with the preparation of the Blue Sky survey and any supplement thereto, (vi) the printing and delivery to the Underwriters of copies of each preliminary prospectus, any Permitted Free Writing Prospectus and of the Prospectus and any amendments or supplements thereto and any costs associated with electronic delivery of any of the foregoing by the Underwriters to investors, (vii) the preparation, printing and delivery to the Underwriters of copies of the Blue Sky survey and any supplement thereto, (viii) the fees and expenses of the transfer agent, registrar and depositary, including the fees and disbursements of counsel for the transfer agent, registrar and depositary in connection with the Securities, (ix) the costs and expenses incurred by or on behalf of the Company relating to investor presentations on any “road show” undertaken in connection with the marketing of the Securities, (x) any fees payable in connection with the rating of the Securities and (xi) all costs and expenses incident to listing the Securities on the New York Stock Exchange.

(b) *Termination of Agreement* . If this Agreement is terminated by the Representatives in accordance with the provisions of Section 5(n) or Section 9(a)(i) hereof, the Company agrees to reimburse the Underwriters for all of their out-of-pocket expenses, including the reasonable fees and disbursements of counsel for the Underwriters; *provided, however* , if the Underwriters fail to purchase the Securities because of the termination of this Agreement pursuant to Section 10 or the occurrence of any event specified in clauses (ii), (iii)(B), (iv) and (v) of Section 9 (a), the Company shall not be responsible for the expenses of any of the Underwriters as described above. Except as provided in this Section 4 and Sections 6 and 7 hereof, the Underwriters shall pay their own expenses, including the fees and disbursements of their counsel.

SECTION 5. Conditions of Underwriters’ Obligations . The obligations of the several Underwriters hereunder are subject to the accuracy of the representations and warranties of the Company contained in Section 1 hereof as of the date hereof and as of the Closing Time or in certificates of any officer of the Company or any of its subsidiaries delivered pursuant to the provisions hereof as of the respective dates of such certificates, to the performance by the Company in all material respects of its covenants and other obligations hereunder, and to the following further conditions:

(a) *Effectiveness of Registration Statement; Filing of Prospectus; Payment of Filing Fee* . The Registration Statement has become effective and at the Closing Time no stop order suspending the effectiveness of the Registration Statement shall have been issued under the 1933 Act or proceedings therefor initiated or, to the knowledge of the Company, threatened by the Commission, and any request on the part of the Commission for additional information shall have been complied with to the reasonable satisfaction of counsel to the Underwriters. A prospectus containing the Rule 430B Information shall have been filed with the Commission in the manner and within the time period required by Rule 424(b) without reliance on Rule 424(b)(8) (or a post-effective amendment providing such information shall have been filed and become effective in accordance with the requirements of Rule 430B). The Final Term Sheet and any other material required to be filed by the Company pursuant to Rule 433(d) under the 1933 Act Regulations shall have been timely filed. The Company shall have paid the required Commission filing fees relating to the Securities within the time period required by Rule 456(1)(i) of the 1933 Act Regulations without regard to the proviso therein and otherwise in accordance with Rules 456(b) and 457(r) of the 1933 Act Regulations and, if applicable, shall have updated the “Calculation of Registration Fee” table in accordance with Rule 456(b)(1)(ii) either in a post-effective amendment to the Registration Statement or on the cover page of a prospectus filed pursuant to Rule 424(b).

(b) *Opinions of Counsel for the Company* . At the Closing Time, the Representatives shall have received the opinions, dated as of the Closing Time, of (i) Davis Polk & Wardwell LLP, counsel for the Company, together with signed or reproduced copies of such letter for each of the other Underwriters, to the effect set forth in Exhibit A hereto and (ii) R. Read Hudson, Vice President, Associate General Counsel and Secretary of the Company, together with signed or reproduced copies of such letter for each of the other Underwriters, to the effect set forth in Exhibit B hereto, each in form and substance satisfactory to counsel for the Representatives, together with signed or reproduced copies of such letter for each of the other Underwriters.

(c) *Opinion of Counsel for Underwriters* . At the Closing Time, the Representatives shall have received the favorable opinion, dated as of the Closing Time, of Weil, Gotshal & Manges LLP, counsel for the Underwriters, together with signed or reproduced copies of such letter for each of the other Underwriters, in form and substance satisfactory to the Representatives. In giving such opinion such counsel may rely, as to all matters governed by the laws of jurisdictions other than the law of the State of New York, the federal law of the United States and the General Corporation Law of the State of Delaware, upon the opinions of counsel satisfactory to the Representatives. Such counsel may also state that, insofar as such opinion involves factual matters, they have relied, to the extent they deem proper, upon certificates of officers of the Company and its subsidiaries and certificates of public officials.

(d) *Officers' Certificate* . At the Closing Time, there shall not have been, since the date hereof or since the respective dates as of which information is given in the Prospectus or the General Disclosure Package, any Material Adverse Change, and the Representatives shall have received a certificate of the President or a Vice President of the Company and of the chief financial or chief accounting officer of the Company, dated as of the Closing Time, to the effect that (i) there has been no Material Adverse Change since the date hereof or since the respective dates as of which information is given in the Prospectus or the General Disclosure Package, (ii) the representations and warranties in Section 1(a) hereof are true and correct with the same force and effect as though expressly made at and as of the Closing Time, (iii) the Company has complied in all material respects with all agreements and satisfied all conditions on its part to be performed or satisfied at or prior to the Closing Time, and (iv) no stop order suspending the effectiveness of the Registration Statement has been issued and no proceedings for that purpose have been instituted or are pending or, to their knowledge, threatened by the Commission.

(e) *CFO Certificate*. The Company shall have furnished to the Representatives a certificate of the chief financial officer of the Company, dated the Closing Time, in the form of Exhibit C hereto.

(f) *Accountant's Comfort Letter (Company)* . At the time of the execution of this Agreement, the Representatives shall have received from PricewaterhouseCoopers LLP a letter dated such date, in form and substance satisfactory to the Representatives, together with signed or reproduced copies of such letter for each of the other Underwriters, containing statements and information of the type ordinarily included in accountants' "comfort letters" to underwriters with respect to the financial statements and certain financial information contained or incorporated by reference in the Registration Statement and the Prospectus.

(g) *Accountant's Comfort Letter (Hillshire)* . At the time of the execution of this Agreement, the Representatives shall have received from each of PricewaterhouseCoopers LLP and Deloitte & Touche LLP a letter dated such date, in form and substance satisfactory to the Representatives, together with signed or reproduced copies of such letter for each of the other Underwriters, containing statements and information of the type ordinarily included in accountants' "comfort letters" to underwriters with respect to the financial statements and certain financial information contained or incorporated by reference in the Registration Statement and the Prospectus.

(h) *Bring-down Comfort Letter (Company)* . At the Closing Time, the Representatives shall have received from PricewaterhouseCoopers LLP a letter, dated as of the Closing Time, to the effect that they reaffirm the statements made in the letter furnished pursuant to subsection (f) of this Section, except that the specified date referred to shall be a date not more than three business days prior to the Closing Time.

(i) *Bring-down Comfort Letter (Hillshire)* . At the Closing Time, the Representatives shall have received from each of PricewaterhouseCoopers LLP and Deloitte & Touche LLP a letter, dated as of the Closing Time, to the effect that they reaffirm the statements made in the letter furnished pursuant to subsection (g) of this Section, except that the specified date referred to shall be a date not more than three business days prior to the Closing Time.

(j) *Lock up Agreements*. The “lock up” agreements, each substantially in the form of Exhibit D hereto, between you and the persons and entity listed on Schedule D hereto, delivered to you on or before the date hereof, shall be in full force and effect at the Closing Time.

(k) *Maintenance of Rating* . At the Closing Time and since the date of this Agreement, there shall not have occurred a downgrading in the rating assigned to any of the Company’s debt securities by any “nationally recognized statistical organization,” as that term is defined by the Commission for purposes of Rule 436(g)(2) under the 1933 Act.

(l) *NYSE*. The Securities shall have been approved for listing on the NYSE, subject to official notice of issuance, and satisfactory evidence of such actions shall have been provided to the Representatives.

(m) *Additional Documents* . At the Closing Time, counsel for the Underwriters shall have been furnished with such documents and opinions as they may reasonably require for the purpose of enabling them to pass upon the issuance and sale of the Securities as herein contemplated, or in order to evidence the accuracy of any of the representations or warranties, or the fulfillment of any of the conditions, herein contained; and all proceedings taken by the Company in connection with the issuance and sale of the Securities as herein contemplated shall be reasonably satisfactory in form and substance to the Representatives and counsel for the Underwriters.

(n) *Termination of Agreement* . If any condition specified in this Section shall not have been fulfilled when and as required to be fulfilled, this Agreement may be terminated by the Representatives by written notice to the Company at any time at or prior to the Closing Time, and such termination shall be without liability of any party to any other party except as provided in Section 4 and except that Sections 1, 6, 7 and 8 shall survive any such termination and remain in full force and effect.

(o) The several obligations of the Underwriters to purchase Additional Shares hereunder are subject to the delivery to you on the applicable Option Closing Date of the following:

(i) a certificate, dated the Option Closing Date and signed by an executive officer of the Company, confirming that the certificate delivered at the Closing Time pursuant to Section 5(d) hereof remains true and correct as of such Option Closing Date;

(ii) an opinion of (x) Davis Polk and Wardwell LLP, counsel for the Company, dated the Option Closing Date and (y) R. Read Hudson, Vice President, Associate General Counsel and Secretary of the Company, dated the Option Closing Date, each relating to the Additional Shares to be purchased on such Option Closing Date and otherwise to the same effect as the opinions required by Section 5(b) hereof;

(iii) an opinion of Weil, Gotshal & Manges LLP, counsel for the Underwriters, dated the Option Closing Date, relating to the Additional Shares to be purchased on such Option Closing Date and otherwise to the same effect as the opinion required by Section 5(c) hereof;

(iv) a letter dated the Option Closing Date, in form and substance satisfactory to the Representatives, from PricewaterhouseCoopers LLP, substantially in the same form and substance as the letter furnished to the Underwriters pursuant to Section 5(f) hereof; provided that the letter delivered on the Option Closing Date shall use a “cut-off date” not earlier than three business days prior to such Option Closing Date;

(v) a letter dated the Option Closing Date, in form and substance satisfactory to the Representatives, from each of PricewaterhouseCoopers LLP and Deloitte & Touche LLP, substantially in the same form and substance as the letter furnished to the Underwriters pursuant to Section 5(g) hereof; provided that the letters delivered on the Option Closing Date shall use a “cut-off date” not earlier than three business days prior to such Option Closing Date; and

(vi) such other documents as you may reasonably request with respect to the good standing of the Company, the due authorization and issuance of the Additional Shares to be sold on such Option Closing Date and other matters related to the issuance of such Additional Shares.

SECTION 6. Indemnification.

(a) *Indemnification of Underwriters*. The Company agrees to indemnify and hold harmless each Underwriter, its affiliates, as such term is defined in Rule 501(b) of the 1933 Act Regulations (each, an “Affiliate”), its selling agents and each person, if any, who controls any Underwriter within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act as follows:

(i) against any and all loss, liability, claim, damage and expense whatsoever, as incurred, arising out of any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement (or any amendment thereto), including the Rule 430B Information, or the omission or alleged omission therefrom of a material fact required to be stated therein or necessary to make the statements therein not misleading or arising out of any untrue statement or alleged untrue statement of a material fact contained in any preliminary prospectus, any Issuer Free Writing Prospectus or the Prospectus (or any amendment or supplement thereto), or the omission or alleged omission therefrom of a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(ii) against any and all loss, liability, claim, damage and expense whatsoever, as incurred, to the extent of the aggregate amount paid in settlement of any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or of any claim whatsoever based upon any such untrue statement or omission, or any such alleged untrue statement or omission; provided that (subject to Section 6(d) below) any such settlement is effected with the written consent of the Company; and

(iii) against any and all expenses whatsoever, as incurred (including the fees and disbursements of counsel chosen by the Representatives), reasonably incurred in investigating, preparing or defending against any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever based upon any such untrue statement or omission, or any such alleged untrue statement or omission, to the extent that any such expense is not paid under (i) or (ii) above;

provided, however, that this indemnity agreement shall not apply to any loss, liability, claim, damage or expense to the extent arising out of any untrue statement or omission or alleged untrue statement or omission made in reliance upon and in conformity with written information furnished to the Company by or on behalf of any Underwriter through the Representatives expressly for use in the Registration Statement (or any amendment thereto), including the Rule 430B Information or any preliminary prospectus, any Issuer Free Writing Prospectus or the Prospectus (or any amendment or supplement thereto).

(b) *Indemnification of the Company and Directors and Officers of the Company* . Each Underwriter severally agrees to indemnify and hold harmless the Company, each of its directors and officers and each person, if any, who controls the Company within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act against any and all loss, liability, claim, damage and expense described in the indemnity contained in subsection (a) of this Section, as incurred, but only with respect to untrue statements or omissions, or alleged untrue statements or omissions, made in the Registration Statement (or any amendment thereto), including the Rule 430B Information or any preliminary prospectus, any Issuer Free Writing Prospectus or the Prospectus (or any amendment or supplement thereto) in reliance upon and in conformity with written information furnished to the Company by or on behalf of such Underwriter through the Representatives expressly for use therein; it being understood and agreed that the only such information consists of the following: the twelfth paragraph of the section entitled “Underwriting” in the General Disclosure Package and the Prospectus.

(c) *Actions against Parties; Notification* . Each indemnified party shall give notice as promptly as reasonably practicable to each indemnifying party of any action commenced against it in respect of which indemnity may be sought hereunder, but failure to so notify an indemnifying party shall not relieve such indemnifying party from any liability hereunder to the extent it is not materially prejudiced (through the forfeiture of substantive rights and defenses) as a result thereof and in any event shall not relieve it from any liability which it may have otherwise than on account of this indemnity agreement. In the case of parties indemnified pursuant to Section 6(a) above, counsel to the indemnified parties shall be selected by the Representatives, and, in the case of parties indemnified pursuant to Section 6(b) above, counsel to the indemnified parties shall be selected by the Company. An indemnifying party may participate at its own expense in the defense of any such action; provided, however, that counsel to the indemnifying party shall not (except with the consent of the indemnified party) also be counsel to the indemnified party. In no event shall the indemnifying parties be liable for fees and expenses of more than one counsel (in addition to any local counsel) separate from their own counsel for all indemnified parties in connection with any one action or separate but similar or related actions in the same jurisdiction arising out of the same general allegations or circumstances. No indemnifying party shall, without the prior written consent of the indemnified parties, settle or compromise or consent to the entry of any judgment with respect to any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever in respect of which indemnification or contribution could be sought under this Section 6 or Section 7 hereof (whether or not the indemnified parties are actual or potential parties thereto), unless such settlement, compromise or consent (i) includes an unconditional release of each indemnified party from all liability arising out of such litigation, investigation, proceeding or claim and (ii) does not include a statement as to or an admission of fault, culpability or a failure to act by or on behalf of any indemnified party. Subject to Section 6(d) hereof, no indemnified party shall, without the prior written consent of the indemnifying party, settle or compromise or consent to the entry of any judgment with respect to any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever in respect of which such indemnification or contribution would be sought hereunder.

(d) *Settlement without Consent if Failure to Reimburse* . If at any time an indemnified party shall have requested an indemnifying party to reimburse the indemnified party for fees and expenses of counsel, such indemnifying party agrees that it shall be liable for any settlement of the nature contemplated by Section 6(a) (ii) effected without its written consent if (i) such settlement is entered into more than 45 days after receipt by such indemnifying party of the aforesaid request, (ii) such indemnifying party shall have received notice of the terms of such settlement at least 30 days prior to such settlement being entered into and (iii) such indemnifying party shall not have reimbursed such indemnified party in accordance with such request prior to the date of such settlement.

SECTION 7. Contribution . If the indemnification provided for in Section 6 hereof is for any reason unavailable to or insufficient to hold harmless an indemnified party in respect of any losses, liabilities, claims, damages or expenses referred to therein, then each indemnifying party shall contribute to the aggregate amount of such losses, liabilities, claims, damages and expenses incurred by such indemnified party, as incurred, (i) in such proportion as is appropriate to reflect the relative benefits received by the Company, on the one hand, and the Underwriters, on the other hand, from the offering of the Securities pursuant to this Agreement, or (ii) if the allocation provided by clause (i) is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the Company, on the one hand, and of the Underwriters, on the other hand, in connection with the statements or omissions which resulted in such losses, liabilities, claims, damages or expenses, as well as any other relevant equitable considerations.

The relative benefits received by the Company, on the one hand, and the Underwriters, on the other hand, in connection with the offering of the Securities pursuant to this Agreement shall be deemed to be in the same respective proportions as the total net proceeds from the offering of the Securities pursuant to this Agreement (before deducting expenses) received by the Company and the total underwriting discount received by the Underwriters, in each case as set forth on the cover of the Prospectus bear to the aggregate initial public offering price of the Securities as set forth on the cover of the Prospectus.

The relative fault of the Company, on the one hand, and the Underwriters, on the other hand, shall be determined by reference to, among other things, whether any such untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact relates to information supplied by the Company or by the Underwriters and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

Each of the Company and the Underwriters agree that it would not be just and equitable if contribution pursuant to this Section 7 were determined by pro rata allocation (even if the Underwriters were treated as one entity for such purpose) or by any other method of allocation which does not take account of the equitable considerations referred to above in this Section 7. The aggregate amount of losses, liabilities, claims, damages and expenses incurred by an indemnified party and referred to above in this Section 7 shall be deemed to include any legal or other expenses reasonably incurred by such indemnified party in investigating, preparing or defending against any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever based upon any such untrue or alleged untrue statement or omission or alleged omission.

Notwithstanding the provisions of this Section 7, no Underwriter shall be required to contribute any amount in excess of the amount by which the total price at which the Securities underwritten by it and distributed to the public were offered to the public exceeds the amount of any damages which such Underwriter has otherwise been required to pay by reason of any such untrue or alleged untrue statement or omission or alleged omission.

No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the 1933 Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation.

For purposes of this Section 7, each person, if any, who controls an Underwriter within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act and each Underwriter's Affiliates and selling agents shall have the same rights to contribution as such Underwriter, and each director or officer of the Company and each person, if any, who controls the Company within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act shall have the same rights to contribution as the Company, as appropriate. The Underwriters' respective obligations to contribute pursuant to this Section 7 are several in proportion to the respective principal amount of Securities set forth opposite their respective names in Schedule A hereto and not joint.

SECTION 8. Representations, Warranties and Agreements to Survive. All representations, warranties and agreements contained in this Agreement or in certificates of officers of the Company or any of its subsidiaries submitted pursuant hereto, shall remain operative and in full force and effect regardless of (i) any investigation made by or on behalf of any Underwriter or its Affiliates or selling agents, any person controlling any Underwriter, its officers or directors or any person controlling the Company, and (ii) delivery of and payment for the Securities.

SECTION 9. Termination of Agreement.

(a) *Termination; General*. The Representatives may terminate this Agreement, by notice to the Company, at any time at or prior to the Closing Time (i) if there has been, since the time of execution of this Agreement or since the respective dates as of which information is given in the Prospectus (exclusive of any supplement thereto) or the General Disclosure Package, a Material Adverse Change, or (ii) if there has occurred any material adverse change in the financial markets in the United States or the international financial markets, any outbreak of hostilities or escalation thereof or other calamity or crisis or any change or development involving a prospective change in national or international political, financial or economic conditions, in each case the effect of which is such as to make it, in the judgment of the Representatives, impracticable or inadvisable to market the Securities or to enforce contracts for the sale of the Securities, or (iii) (A) if trading in any securities of the Company has been suspended or materially limited by the Commission or the New York Stock Exchange, or (B) if trading generally on the NYSE Amex, the New York Stock Exchange or the Nasdaq Stock Market has been suspended or materially limited, or minimum or maximum prices for trading have been fixed, or maximum ranges for prices have been required, by any of said exchanges or by such system or by order of the Commission, the Financial Industry Regulatory Authority or any other governmental authority, or a material disruption has occurred in commercial banking or securities settlement, or (iv) a material disruption has occurred in commercial banking or securities settlement or clearance services in the United States or (v) if a banking moratorium has been declared by either Federal or New York authorities.

(b) *Liabilities*. If this Agreement is terminated pursuant to this Section, such termination shall be without liability of any party to any other party except as provided in Section 4 hereof, and provided further that Sections 1, 6, 7 and 8 shall survive such termination and remain in full force and effect.

SECTION 10. Default by One or More of the Underwriters. If one or more of the Underwriters shall fail at the Closing Time to purchase the Securities which it or they are obligated to purchase under this Agreement (the “Defaulted Securities”), the Representatives shall have the right, within 24 hours thereafter, to make arrangements for one or more of the non-defaulting Underwriters, or any other underwriters, to purchase all, but not less than all, of the Defaulted Securities in such amounts as may be agreed upon and upon the terms herein set forth; if, however, the Representatives shall not have completed such arrangements within such 24-hour period, then:

(a) if the number of Defaulted Securities does not exceed 10% of the aggregate principal amount of the Securities to be purchased on such date, each of the non-defaulting Underwriters shall be obligated, severally and not jointly, to purchase the full amount thereof in the proportions that their respective underwriting obligations hereunder bear to the underwriting obligations of all non-defaulting Underwriters, or

(b) if the number of Defaulted Securities exceeds 10% of the aggregate principal amount of the Securities to be purchased on such date, this Agreement shall terminate without liability on the part of any non-defaulting Underwriter.

No action taken pursuant to this Section shall relieve any defaulting Underwriter from liability in respect of its default.

In the event of any such default which does not result in a termination of this Agreement, either the Representatives or the Company shall have the right to postpone the Closing Time for a period not exceeding seven days in order to effect any required changes in the Registration Statement or Prospectus or in any other documents or arrangements. As used herein, the term “Underwriter” includes any person substituted for an Underwriter under this Section 10.

SECTION 11. Tax Disclosure. Notwithstanding any other provision of this Agreement, immediately upon commencement of discussions with respect to the transactions contemplated hereby, the Company (and each employee, representative or other agent of the Company) may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the transactions contemplated by this Agreement and all materials of any kind (including opinions or other tax analyses) that are provided to the Company relating to such tax treatment and tax structure. For purposes of the foregoing, the term “tax treatment” is the purported or claimed federal income tax treatment of the transactions contemplated hereby, and the term “tax structure” includes any fact that may be relevant to understanding the purported or claimed federal income tax treatment of the transactions contemplated hereby.

SECTION 12. Notices. All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given if mailed or transmitted by any standard form of telecommunication. Notices to the Underwriters shall be directed to Morgan Stanley at Morgan Stanley & Co. LLC, 1585 Broadway, 29th Floor, New York, New York 10036, attention of Investment Banking Division, with a copy to the Legal Department, and to J.P. Morgan at J.P. Morgan Securities LLC, 383 Madison Avenue, New York, New York 10179, attention: Equity Syndicate Desk, fax: (212) 622-8358; and notices to the Company shall be directed to them c/o Tyson Foods, Inc., 2200 Don Tyson Parkway, Springdale, Arkansas 72762-6999, attention of Chief Financial Officer.

In accordance with the requirements of the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)), the Underwriters are required to obtain, verify and record information that identifies their respective clients, including the Company, which information may include the name and address of their respective clients, as well as other information that will allow the Underwriters to properly identify their respective clients.

SECTION 13. No Advisory or Fiduciary Relationship. The Company acknowledges and agrees that (a) the purchase and sale of the Securities pursuant to this Agreement, including the determination of the public offering price of the Securities and any related discounts and commissions, is an arm’s-length

commercial transaction between the Company, on the one hand, and the several Underwriters, on the other hand, (b) in connection with the offering contemplated hereby and the process leading to such transaction each Underwriter is and has been acting solely as a principal and is not the agent or fiduciary of the Company or its stockholders, creditors, employees or any other party, (c) no Underwriter has assumed or will assume an advisory or fiduciary responsibility in favor of the Company with respect to the offering contemplated hereby or the process leading thereto (irrespective of whether such Underwriter has advised or is currently advising the Company on other matters) and no Underwriter has any obligation to the Company with respect to the offering contemplated hereby except the obligations expressly set forth in this Agreement, (d) the Underwriters and their respective affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Company, and (e) the Underwriters have not provided any legal, accounting, regulatory or tax advice with respect to the offering contemplated hereby and the Company have consulted their own legal, accounting, regulatory and tax advisors to the extent they have deemed appropriate.

SECTION 14. Integration. This Agreement supersedes all prior agreements and understandings (whether written or oral) between the Company and the Underwriters, or any of them, with respect to the subject matter hereof.

SECTION 15. Parties. This Agreement shall inure to the benefit of and be binding upon each of the Underwriters, the Company and their respective successors. Nothing expressed or mentioned in this Agreement is intended or shall be construed to give any person, firm or corporation, other than the Underwriters, the Company and their respective successors and the controlling persons and officers and directors referred to in Sections 6 and 7 and their heirs and legal representatives, any legal or equitable right, remedy or claim under or in respect of this Agreement or any provision herein contained. This Agreement and all conditions and provisions hereof are intended to be for the sole and exclusive benefit of the Underwriters, the Company and their respective successors, and said controlling persons and officers and directors and their heirs and legal representatives, and for the benefit of no other person, firm or corporation. No purchaser of Securities from any Underwriter shall be deemed to be a successor by reason merely of such purchase.

SECTION 16. GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

SECTION 17. TIME. TIME SHALL BE OF THE ESSENCE OF THIS AGREEMENT. EXCEPT AS OTHERWISE SET FORTH HEREIN, SPECIFIED TIMES OF DAY REFER TO NEW YORK CITY TIME.

SECTION 18. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all such counterparts shall together constitute one and the same Agreement.

SECTION 19. Effect of Headings. The Section headings herein are for convenience only and shall not affect the construction hereof.

[Remainder of page intentionally left blank]

If the foregoing is in accordance with your understanding of our agreement, please sign and return to the Company a counterpart hereof, whereupon this instrument, along with all counterparts, will become a binding agreement between the Underwriters and the Company in accordance with its terms.

Very truly yours,

TYSON FOODS, INC.

By /s/ Susan White

Name: Susan White

Title: Vice President and Treasurer

CONFIRMED AND ACCEPTED,
as of the date first above written:

MORGAN STANLEY & CO. LLC

By: /s/ Serkan Savasoglu

Name: Serkan Savasoglu

Title: Managing Director

J.P. MORGAN SECURITIES LLC

By: /s/ Jason Fournier

Name: Jason Fournier

Title: Managing Director

For themselves and as Representatives of the
other Underwriters named in Schedule A hereto.

SCHEDULE A

<u>Name of Underwriter</u>	<u>Number of the Firm Shares to the Purchasers</u>
Morgan Stanley & Co. LLC	9,524,000
J.P. Morgan Securities LLC	6,547,750
RBC Capital Markets, LLC	2,381,000
HSBC Securities (USA) Inc.	1,071,450
Mizuho Securities USA Inc.	1,071,450
Piper Jaffray & Co.	1,071,450
Rabo Securities USA, Inc.	1,071,450
Credit Agricole Securities (USA) Inc.	535,725
Mitsubishi UFJ Securities (USA), Inc.	535,725
Total	23,810,000

Sch A-1

SCHEDULE B
Final Term Sheet

Filed pursuant to Rule 433
Dated July 30, 2014
Issuer Free Writing Prospectus supplementing the
Preliminary Prospectus Supplements
dated July 28, 2014 and the
Prospectus dated July 28, 2014
Registration No. 333-197661

Tyson Foods, Inc.

**Concurrent Offerings of
23,810,000 Shares of Class A Common Stock of Tyson Foods, Inc.
(the “Common Stock Offering”)**

and

**30,000,000 4.75% Tangible Equity Units of Tyson Foods, Inc.
(the “Units Offering”)**

*The information in this pricing term sheet relates only to the Common Stock Offering and the Units Offering and should be read together with (i) the preliminary prospectus supplement, dated July 28, 2014, relating to the Common Stock Offering (the “**Common Stock Preliminary Prospectus Supplement**”) and the preliminary prospectus supplement, dated July 28, 2014, relating to the Units Offering (the “**Units Preliminary Prospectus Supplement**”) and, together with the Common Stock Preliminary Prospectus Supplement, the “**Preliminary Prospectus Supplements**”), each as filed with the Securities and Exchange Commission (the “**SEC**”) pursuant to Rule 424(b) under the Securities Act of 1933, as amended, and (ii) the related base prospectus dated July 28, 2014, included in the Registration Statement (File No. 333-197661), in each case, including the documents incorporated by reference therein. Terms used but not defined herein have the meanings assigned to such terms in the applicable Preliminary Prospectus Supplement.*

Issuer:	Tyson Foods, Inc., a Delaware corporation (“ Tyson ”).
Ticker / Exchange for Class A Common Stock:	TSN/New York Stock Exchange (“ NYSE ”).
Pricing Date:	July 30, 2014.
Settlement Date:	August 5, 2014.
<u>Common Stock Offering</u>	
Title of Securities:	Class A common stock, par value \$0.10 per share, of Tyson (“ Class A Common Stock ”).
Number of Shares of Class A Common Stock Offered and Sold:	23,810,000 shares (or 27,381,500 shares if the underwriters of the Common Stock Offering exercise their over-allotment option in full).

Outstanding Class A Common Stock after Common Stock Offering:

305,552,209 shares (or 309,123,709 shares if the underwriters of the Common Stock Offering exercise their over-allotment option in full).

Common Stock Public Offering Price:

\$37.80 per share
Approximately \$900.0 million in aggregate (or approximately \$1,035.0 million if the underwriters of the Common Stock Offering exercise their over-allotment option in full).

Underwriting Discount:

\$1.134 per share
Approximately \$27.0 million in aggregate (or approximately \$31.1 million if the underwriters of the Common Stock Offering exercise their over-allotment option in full)

Estimated Net Proceeds to Tyson from the Common Stock Offering:

The net proceeds from the sale of Class A Common Stock in the Common Stock Offering, after deducting the underwriting discounts and commissions and estimated offering expenses, will be approximately \$873 million (or approximately \$1,004 million if the underwriters of the Common Stock Offering exercise their over-allotment option in full).

Joint Book-Running Managers:

Morgan Stanley & Co. LLC, J.P. Morgan Securities LLC and RBC Capital Markets, LLC.

Co-Managers:

HSBC Securities (USA) Inc., Mizuho Securities USA Inc., Piper Jaffray & Co., Rabo Securities USA, Inc., Credit Agricole Securities (USA) Inc. and Mitsubishi UFJ Securities (USA), Inc.

Stabilization Transactions:

Prior to purchasing the shares of Class A Common Stock being offered pursuant to the Common Stock Preliminary Prospectus Supplement, on July 30, 2014, one of the underwriters purchased, on behalf of the syndicate, 120,442 shares of Class A Common Stock at an average price of \$38.25 per share in stabilizing transactions.

Units Offering

Title of Securities:	4.75% Tangible Equity Units (the “ Units ”).
Number of Units Offered and Sold:	30,000,000 Units.
Stated Amount:	Each Unit has a stated amount of \$50.
Composition of Units:	Each Unit is comprised of two parts: <ul style="list-style-type: none">• a prepaid stock purchase contract issued by Tyson (a “ Purchase Contract ”); and• a senior amortizing note issued by Tyson (an “ Amortizing Note ”), which has an initial principal amount of \$6.82854 per Amortizing Note, bears interest at a rate of 1.50% per annum and has a final installment payment date of July 15, 2017.
Fair Market Value of the Units:	Tyson has determined that the fair market value of each Amortizing Note is \$6.82854 and the fair market value of each Purchase Contract is \$43.17146.
Reference Price:	\$37.80, which is the Common Stock Public Offering Price in the concurrent Common Stock Offering described above (subject to adjustment as described in the Units Preliminary Prospectus Supplement).
Threshold Appreciation Price:	$\$50$ <i>divided by</i> the Minimum Settlement Rate (rounded to the nearest \$0.0001), which is \$47.25 and which represents an approximately 25.0% appreciation over the Reference Price (subject to adjustment as described in the Units Preliminary Prospectus Supplement).
Minimum Settlement Rate:	1.0582 shares of Class A Common Stock per Purchase Contract (subject to adjustment as described in the Units Preliminary Prospectus Supplement).
Maximum Settlement Rate:	1.3228 shares of Class A Common Stock per Purchase Contract (subject to adjustment as described in the Units Preliminary Prospectus Supplement).

Settlement Rate:

The following table illustrates the settlement rate per Purchase Contract and the value of Class A Common Stock issuable upon settlement on the Mandatory Settlement Date, determined using the “applicable market value” (as defined in the Units Preliminary Prospectus Supplement) shown, subject to adjustment as described in the Units Preliminary Prospectus Supplement:

Applicable Market Value of Class A Common Stock	Settlement Rate	Value of Class A Common Stock Delivered (Based on the Applicable Market Value Thereof)
Less than or equal to the Reference Price	The Maximum Settlement Rate	Less than or equal to \$50
Greater than the Reference Price but less than the Threshold Appreciation Price	A number of shares of Class A Common Stock equal to \$50, <i>divided by</i> the applicable market value	\$50
Equal to or greater than the Threshold Appreciation Price	The Minimum Settlement Rate	Greater than or equal to \$50

Early Settlement Upon a Fundamental Change:

The following table sets forth the “fundamental change early settlement rate” (as defined in the Units Preliminary Prospectus Supplement) per Purchase Contract for each stock price and effective date set forth below:

Stock Price	Effective Date			
	August 5, 2014	July 15, 2015	July 15, 2016	July 15, 2017
\$10.00	1.1949	1.2377	1.2805	1.3228
\$15.00	1.2300	1.2628	1.2935	1.3228
\$20.00	1.2338	1.2678	1.2990	1.3228
\$25.00	1.2165	1.2534	1.2946	1.3228
\$30.00	1.1880	1.2231	1.2711	1.3228
\$35.00	1.1567	1.1855	1.2278	1.3228
\$37.80	1.1401	1.1645	1.1992	1.3228
\$40.00	1.1281	1.1490	1.1767	1.2500
\$42.50	1.1155	1.1327	1.1526	1.1765
\$45.00	1.1044	1.1181	1.1311	1.1111
\$47.25	1.0955	1.1066	1.1145	1.0582
\$49.00	1.0893	1.0987	1.1034	1.0582
\$52.00	1.0800	1.0871	1.0879	1.0582
\$55.00	1.0724	1.0777	1.0764	1.0582
\$60.00	1.0626	1.0662	1.0641	1.0582
\$70.00	1.0582	1.0582	1.0582	1.0582
\$80.00	1.0582	1.0582	1.0582	1.0582
\$100.00	1.0582	1.0582	1.0582	1.0582
\$125.00	1.0582	1.0582	1.0582	1.0582
\$150.00	1.0582	1.0582	1.0582	1.0582

The exact stock prices and effective dates may not be set forth in the table above, in which case:

- if the applicable stock price is between two stock prices in the table or the applicable effective date is between two effective dates in the table, the fundamental change early settlement rate will be determined by straight line interpolation between the fundamental change early settlement rates set forth for the higher and lower stock prices and the earlier and later effective dates, as applicable, based on a 365-day year;
- if the applicable stock price is greater than \$150.00 per share (subject to adjustment in the same manner and at the same time as the stock prices set forth in the column headings of the table above), then the fundamental change early settlement rate will be the Minimum Settlement Rate; or
- if the applicable stock price is less than \$10.00 per share (subject to adjustment in the same manner and at the same time as the stock prices set forth in the column headings of the table above, the “ **Minimum Stock Price** ”), the fundamental change early settlement

rate will be determined as if the stock price equaled the Minimum Stock Price, and using straight line interpolation, as described in the first bullet of this paragraph, if the effective date is between two effective dates in the table.

The maximum number of shares of Class A Common Stock deliverable under a Purchase Contract is 1.3228, subject to adjustment in the same manner and at the same time as the fixed settlement rates as set forth under “Description of the Purchase Contracts—Adjustments to the Fixed Settlement Rates” in the Units Preliminary Prospectus Supplement.

Early Mandatory Settlement at Tyson’s Election:

Tyson has the right to settle the purchase contracts on or after April 1, 2015, in whole but not in part, on a date fixed by Tyson as described in the Units Preliminary Prospectus Supplement at the “early mandatory settlement rate,” which will be the Maximum Settlement Rate on the “notice date” (as defined in the Units Preliminary Prospectus Supplement), unless the closing price of our Class A common stock for the 20 or more trading days in a period of 30 consecutive trading days ending on the trading day immediately preceding the notice date exceeds 140% of the Threshold Appreciation Price in effect on such trading day, in which case the “early mandatory settlement rate” will be the Minimum Settlement Rate on the notice date.

Merger Termination Redemption:

The following table sets forth the “merger redemption rate” (as defined in the Units Preliminary Prospectus Supplement) per Purchase Contract for each merger termination stock price set forth below:

<u>Merger Termination Stock Price</u>	<u>Merger Redemption Rate</u>
\$37.80, which is equal to the Reference Price	1.1689 (“ Maximum Redemption Rate ”)
\$40.00	1.1426
\$42.50	1.1276
\$45.00	1.1143
\$47.25	1.1037
\$49.00	1.0964
\$52.00	1.0855
\$55.00	1.0767
\$60.00	1.0657
\$70.00	1.0582 (“ Minimum Redemption Rate ”)

The exact merger termination stock prices may not be set forth in the table above, in which case:

- if the applicable merger termination stock price is between two merger termination stock prices in the table, the merger redemption rate will be determined by straight line interpolation between the merger redemption rates set forth for the higher and lower merger termination stock prices;
- if the merger termination stock price is greater than \$70.00 per share (subject to adjustment at the same time and in the same manner as the merger termination stock prices set forth in the table above), then the merger redemption rate will be the Minimum Redemption Rate; or
- if the merger termination stock price is less than \$37.80 per share (subject to adjustment at the same time and in the same manner as the merger termination stock prices set forth in the table above), then the merger redemption rate will be the Maximum Redemption Rate.

Initial Principal Amount of Amortizing Notes:

\$6.82854 per Amortizing Note
 \$204,856,200 in aggregate.

Installment Payment Dates:

Each January 15, April 15, July 15 and October 15, commencing on October 15, 2014, with a final installment payment date of July 15, 2017.

Payments on the Amortizing Notes:

The Amortizing Notes will pay holders equal quarterly cash installments of \$0.59375 per Amortizing Note (except for the October 15, 2014 installment payment, which will be \$0.46181 per Amortizing Note), which cash payment in the aggregate will be equivalent to 4.75% per year with respect to each \$50 Stated Amount of Units. Each installment will constitute a payment of interest (at a rate of 1.50% per annum) and a partial repayment of principal on the Amortizing Note, allocated as set forth in the following amortization schedule:

<u>Scheduled Installment Payment Date</u>	<u>Amount of</u>	<u>Amount of</u>
	<u>Principal</u>	<u>Interest</u>
October 15, 2014	\$0.44189	\$0.01992
January 15, 2015	\$0.56980	\$0.02395
April 15, 2015	\$0.57194	\$0.02181
July 15, 2015	\$0.57408	\$0.01967
October 15, 2015	\$0.57623	\$0.01752
January 15, 2016	\$0.57840	\$0.01535
April 15, 2016	\$0.58056	\$0.01319
July 15, 2016	\$0.58274	\$0.01101
October 15, 2016	\$0.58493	\$0.00882
January 15, 2017	\$0.58712	\$0.00663
April 15, 2017	\$0.58932	\$0.00443
July 15, 2017	\$0.59153	\$0.00222

Repurchase of Amortizing Notes at the option of the holder:

If Tyson elects to settle the Purchase Contracts early or in the event of a Merger Termination Redemption, holders of Amortizing Notes (whether as holders of Units or separate Amortizing Notes) will have the right to require Tyson to repurchase some or all of their Amortizing Notes for cash at a repurchase price per Amortizing Note equal to the

	principal amount of such Amortizing Note as of the repurchase date, plus accrued and unpaid interest on such principal amount from, and including, the immediately preceding Installment Payment Date to, but not including, the repurchase date, calculated at a rate of 1.50% per annum.
Units Public Offering Price:	\$50 per Unit \$1,500.0 million in aggregate.
Underwriting Discount:	\$1.50 per Unit \$45.0 million in aggregate.
Estimated Net Proceeds to Tyson from the Units Offering:	The net proceeds from the sale of Units in the Units Offering, after deducting the underwriting discounts and commissions and estimated offering expenses, will be approximately \$1,454 million.
Joint Book-Running Managers:	Morgan Stanley & Co. LLC, J.P. Morgan Securities LLC and RBC Capital Markets, LLC.
Co-Managers:	HSBC Securities (USA) Inc., Mizuho Securities USA Inc., Rabo Securities USA, Inc., U.S. Bancorp Investments, Inc., Credit Agricole Securities (USA) Inc., Mitsubishi UFJ Securities (USA), Inc.
Listing:	Tyson has applied to list the Units on the NYSE under the symbol "TSNU." If approved for listing, Tyson expects trading on the NYSE to begin within 30 calendar days after the Units are first issued.
CUSIP for the Units:	902494 AU7
ISIN for the Units:	US902494AU79
CUSIP for the Purchase Contracts:	902494 111
ISIN for the Purchase Contracts:	US9024941117
CUSIP for the Amortizing Notes:	902494 AV5
ISIN for the Amortizing Notes:	US902494AV52

Tyson has filed a registration statement (including a prospectus and the related Preliminary Prospectus Supplements) with the Securities and Exchange Commission (the “SEC”) for the Common Stock Offering and the Units Offering. Before you invest, you should read the prospectus in that registration statement, the applicable Preliminary Prospectus Supplements and other documents Tyson has filed with the SEC for more complete information about Tyson and the Common Stock Offering and the Units Offering. You may get these documents for free by visiting EDGAR on the SEC Web site at www.sec.gov. Alternatively, Tyson, any underwriter or any dealer participating in the offering will arrange to send you the prospectus if you request it by calling Morgan Stanley & Co. LLC toll-free at 1-866-718-1649 or J.P. Morgan Securities LLC collect at 1-212-834-4533.

This communication should be read in conjunction with the Preliminary Prospectus Supplements and the accompanying prospectus. The information in this communication supersedes the information in the relevant Preliminary Prospectus Supplement and the accompanying prospectus to the extent inconsistent with the information in such Preliminary Prospectus Supplement and the accompanying prospectus.

ANY DISCLAIMERS OR OTHER NOTICES THAT MAY APPEAR BELOW ARE NOT APPLICABLE TO THIS COMMUNICATION AND SHOULD BE DISREGARDED. SUCH DISCLAIMERS OR OTHER NOTICES WERE AUTOMATICALLY GENERATED AS A RESULT OF THIS COMMUNICATION BEING SENT VIA BLOOMBERG OR ANOTHER EMAIL SYSTEM.

SCHEDULE C

GENERAL USE FREE WRITING PROSPECTUS

1. Final Term Sheet, a copy of which is attached in Schedule B.

Sch C-1

SCHEDULE D

LIST OF PERSONS AND ENTITY SUBJECT TO LOCK-UP

John Tyson
Kathleen M. Bader
Gaurdie E. Banister Jr.
Jim Kever
Kevin M. McNamara
Brad T. Sauer
Robert C. Thurber
Barbara A. Tyson
Albert C. Zapanta
Curt Calaway
Hal Carper
Ken Kimbro
Donnie King
Dennis Leatherby
James V. Lochner
Donnie Smith
Steve Stouffer
David L. Van Bebber
Noel White
Tyson Limited Partnership
Sara Lilygren

Annex A-1

ANNEX A
GENERAL DISCLOSURE PACKAGE

1. The Preliminary Prospectus; and
2. The Final Term Sheet.

For purposes of determining the “General Disclosure Package,” the information contained in the foregoing shall be considered together.

Annex A-1

FORM OF OPINION OF DAVIS POLK & WARDWELL LLP
TO BE DELIVERED PURSUANT TO
SECTION 5(b)(i)

[See attached.]

FORM OF OPINION OF COMPANY COUNSEL
TO BE DELIVERED PURSUANT TO
SECTION 5(b)(ii)

[See attached.]

FORM OF CHIEF FINANCIAL OFFICER CERTIFICATE
TO BE DELIVERED PURSUANT TO
SECTION 5(e)

[See attached.]

C-1

[FORM OF LOCK-UP LETTER]

_____, 2014

MORGAN STANLEY & CO. LLC
1585 Broadway
New York, New York 10036

J.P. MORGAN SECURITIES LLC
383 Madison Avenue
New York, New York 10179

Ladies and Gentlemen:

The undersigned, a stockholder, an officer and/or a director of Tyson Foods, Inc., a Delaware corporation (the "Company"), understands that Morgan Stanley & Co. LLC ("Morgan Stanley") and J.P. Morgan Securities LLC ("J.P. Morgan," and together with Morgan Stanley, the "Representatives") propose to enter into an Underwriting Agreement (the "Common Stock Underwriting Agreement") with the Company providing for the public offering of shares of the Company's Class A common stock, par value \$0.10 per share (the "Common Stock," and such offering, the "Common Stock Offering"), and that the Representatives propose to enter into an Underwriting Agreement (the "Units Underwriting Agreement") with the Company providing for the offering of the Company's tangible equity units, which under certain circumstances will convert into shares of the Common Stock (the "Underlying Securities," and such offering, the "Units Offering"). The Common Stock Underwriting Agreement and the Units Underwriting Agreement are collectively referred to herein as the "Underwriting Agreements," and the Common Stock Offering and the Units Offering are collectively referred to herein as the "Offerings."

In recognition of the benefit that the Offerings will confer upon the undersigned as a stockholder and/or an officer and/or director of the Company, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned agrees with each underwriter to be named in each Underwriting Agreement that, during a period of 60 days from the date of the applicable Underwriting Agreement, the undersigned will not, without the prior written consent of the Representatives, directly or indirectly, (i) offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant for the sale of, or otherwise dispose of or transfer any shares of the Company's Common Stock beneficially owned (as such term is used in Rule 13d-3 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), or any securities convertible into or exchangeable or exercisable for Common Stock, whether now owned or hereafter acquired by the undersigned or with respect to which the undersigned has or hereafter acquires the power of disposition (collectively, the "Lock-Up Securities"), or file, or cause to be filed, any registration statement under the Securities Act of 1933, as amended, with respect to any of the foregoing or (ii) enter into any swap or any other agreement or any transaction that transfers, in whole or in part, directly or indirectly, the economic consequences of ownership of the Lock-Up Securities, whether any such swap or other agreement or transaction is to be settled by delivery of Common Stock or other securities, in cash or otherwise; provided that the foregoing shall not prohibit the undersigned's pledge of Lock-Up Securities as security for a loan or line of credit to the extent described under "Security Ownership of Management" in the Company's Definitive Proxy Statement on Schedule 14A filed on December 20, 2013.

Notwithstanding the foregoing, nothing contained in this lock-up agreement shall prohibit the undersigned from effecting (1) any acquisition of shares of Common Stock, restricted or otherwise, stock options, stock units and performance shares from the Company pursuant to any existing employee benefit plans or director compensation plans of the Company that is described in the General Disclosure Package and the Prospectus, provided that in the case of this clause (1), (i) such shares of Common Stock shall be subject to the provisions of this lock-up agreement and (ii) no filing under Section 16(a) of the Exchange Act, reporting a reduction in beneficial ownership, shall be required or shall be voluntarily made, (2) any acquisition of shares of Common Stock issued by the Company by the undersigned upon the exercise of stock options outstanding on the date hereof or the vesting or conversion of restricted stock, stock units and performance shares outstanding on the date hereof (and any corresponding transfers of Common Stock to the Company, the proceeds of which will be used to cover the tax liability resulting from any such vesting) under existing employee benefit plans or director compensation plans of the Company that is described in the General Disclosure Package and the Prospectus, provided that in the case of this clause (2), (i) such shares of Common Stock shall be subject to the provisions of this lock-up agreement and (ii) no filing under Section 16(a) of the Exchange Act, reporting a reduction in beneficial ownership, shall be required or shall be voluntarily made, (3) the establishment of a trading plan pursuant to Rule 10b5-1 under the Exchange Act, for the transfer of shares of Common Stock, provided that in the case of this clause (3), (i) such plan does not provide for the transfer of Common Stock during the lock-up period and (ii) to the extent a public announcement or filing under the Exchange Act, if any, is required of or voluntarily made by or on behalf of the undersigned or the Company regarding the establishment of such plan, such announcement or filing shall include a statement to the effect that no transfer of Common Stock may be made under such plan during the lock-up period, and (4) subject to the conditions in clauses (i), (ii) and (iii) below, a transfer of shares of Common Stock or options to purchase shares of Common Stock without the prior written consent of the Representatives, provided that, in the case of this clause (4), (A) each Representative receives a signed lock-up agreement for the balance of the lock-up period from each donee, trustee, distributee, or transferee, as the case may be, (B) such transfers are not required to be reported in any public report or filing with the Securities and Exchange Commission, or otherwise and (C) the undersigned does not otherwise voluntarily effect any public filing or report regarding such transfers:

(i) as a bona fide gift or gifts; or

(ii) to any trust, partnership or limited liability company the beneficiaries of which are exclusively the undersigned or a member of the immediate family of the undersigned, including grandchildren; or

(iii) which occurs by operation of law, such as the rules of intestate succession.

The undersigned also agrees and consents to the entry of stop transfer instructions with the Company's transfer agent and registrar against the transfer of the Lock-Up Securities except in compliance with the foregoing restrictions.

The undersigned understands that the Company and the Underwriters are relying upon this agreement in proceeding toward consummation of the Offerings. The undersigned further understands that this agreement is irrevocable and shall be binding upon the undersigned's heirs, legal representatives, successors and assigns.

Whether or not the Offerings actually occur depends on a number of factors, including market conditions. Any Offering will only be made pursuant to an Underwriting Agreement, the terms of which are subject to negotiation between the Company and the Underwriters.

Very truly yours,

(Name)

(Address)

TYSON FOODS, INC.

(a Delaware corporation)

30,000,000 Tangible Equity Units

UNDERWRITING AGREEMENT

Dated: July 30, 2014

TYSON FOODS, INC.
(a Delaware corporation)
30,000,000 Tangible Equity Units
UNDERWRITING AGREEMENT

July 30, 2014

MORGAN STANLEY & CO. LLC
1585 Broadway
New York, New York 10036

J.P. MORGAN SECURITIES LLC
383 Madison Avenue
New York, New York 10179

As Representatives of the several Underwriters

Ladies and Gentlemen:

Tyson Foods, Inc., a Delaware corporation (the “Company”), confirms its agreement (this “Agreement”) with Morgan Stanley & Co. LLC (“Morgan Stanley”) and J.P. Morgan Securities LLC (“J.P. Morgan”) and each of the other Underwriters named in Schedule A hereto (collectively, the “Underwriters,” which term shall also include any underwriter substituted as hereinafter provided in Section 10 hereof), for whom Morgan Stanley and J.P. Morgan are acting as representatives (in such capacity, the “Representatives”), with respect to the issue and sale by the Company and the purchase by the Underwriters, acting severally and not jointly, of an aggregate of 30,000,000 Tangible Equity Units (the “Units”) of the Company.

Each Unit is a unit with a stated amount of \$50 (the “Stated Amount”) initially comprised of (a) a prepaid stock purchase contract (a “Purchase Contract”, and collectively with each other Purchase Contract, the “Purchase Contracts”) under which the holder has purchased and the Company will agree to deliver not later than July 15, 2017 (subject to limited exceptions), unless such Purchase Contract is earlier redeemed or settled pursuant to the provisions thereof and of the Purchase Contract Agreement (the “Purchase Contract Agreement”), to be dated as of the Closing Date (as defined herein), by and between the Company and The Bank of New York Mellon Trust Company, N.A., as purchase contract agent (the “Purchase Contract Agent”) and as Trustee (as defined below), a number of shares of Class A common stock of the Company, par value \$0.10 per share (the “Common Stock”), determined pursuant to the terms of the Purchase Contract and the Purchase Contract Agreement and (b) a senior amortizing note with a final installment payment date of July 15, 2017 (each, an “Amortizing Note,” and collectively with each other Amortizing Note, the “Amortizing Notes”) issued by the Company and to be guaranteed on an unsecured senior basis (collectively, the “Guarantees”) by Tyson Fresh Meats, Inc., a Delaware corporation and a wholly owned subsidiary of the Company (the “Guarantor”), each of which will have an initial principal amount of \$6.82854 and will pay equal quarterly cash installments of \$0.59375 per Amortizing Note (except for the October 15, 2014 installment payment, which will be \$0.46181 per Amortizing Note), which in the aggregate would be equivalent to 4.75% per year with respect to the Stated Amount per Unit. All references herein to the “Securities” include references to the Purchase Contracts and Amortizing Notes, comprising the Units, unless the context otherwise requires.

The Amortizing Notes are to be issued pursuant to an indenture dated as of June 1, 1995 (the “Base Indenture”), between the Company and The Bank of New York Mellon Trust Company, N.A., as successor trustee (the “Trustee”), as supplemented by a supplemental indenture with respect to the Amortizing Notes (the “Supplemental Indenture”), dated as of the Closing Time (as defined below), among the Company, the Guarantor, and the Trustee, relating to the Amortizing Notes. The Base Indenture as supplemented by each Supplemental Indenture is hereinafter referred to collectively as the “Indenture.”

The Company understands that the Underwriters propose to make a public offering of the Units as soon as the Representatives deem advisable after this Agreement has been executed and delivered.

Pursuant to an Agreement and Plan of Merger, dated July 1, 2014 (the “Merger Agreement”), by and among the Company, The Hillshire Brands Company, a Maryland corporation (“Hillshire”) and HMB Holdings, Inc., a Maryland corporation and a direct, wholly owned subsidiary of the Company (“HMB”), and subject to the conditions contained therein, HMB will merge with and into Hillshire (the “Merger”), with Hillshire continuing as the surviving entity and as a wholly owned subsidiary of the Company.

Concurrently with this offering of Units, the Company is offering 24,000,000 shares of Common Stock (or up to 27,600,000 if the underwriters for that offering exercise their option to purchase additional shares of Common Stock) pursuant to a separate prospectus supplement. The completion of this offering is not contingent on the completion of the offering of the Common Stock, and the Common Stock offering is not contingent on the completion of this Units offering. Neither this offering nor the Common Stock offering is contingent on the consummation of the acquisition of the Merger or any additional debt financing.

The Company has filed with the Securities and Exchange Commission (the “Commission”) an automatic shelf registration statement on Form S-3 (No. 333-197661), including the related preliminary prospectus or prospectuses, which registration statement became effective upon filing under Rule 462(e) of the rules and regulations of the Commission (the “1933 Act Regulations”) under the Securities Act of 1933, as amended (the “1933 Act”). Such registration statement covers the registration of the Units, the Issuable Common Stock (as defined below), the Purchase Contracts, the Amortizing Notes and the Guarantees under the 1933 Act. Promptly after execution and delivery of this Agreement, the Company will prepare and file a prospectus in accordance with the provisions of Rule 430B (“Rule 430B”) of the 1933 Act Regulations and paragraph (b) of Rule 424 (“Rule 424(b)”) of the 1933 Act Regulations. Any information included in such prospectus that was omitted from such registration statement at the time it became effective but that is deemed to be part of and included in such registration statement pursuant to Rule 430B is referred to as “Rule 430B Information.” Each prospectus used in connection with the offering of the Securities and the Guarantees that omitted Rule 430B Information is herein called a “preliminary prospectus.” Such registration statement, at any given time, including any amendments thereto to such time, the exhibits and any schedules thereto at such time, the documents incorporated by reference therein pursuant to Item 12 of Form S-3 under the 1933 Act at such time and the documents otherwise deemed to be a part thereof or included therein by 1933 Act Regulations, is herein called the “Registration Statement.” The final prospectus in the form first furnished to the Underwriters for use in connection with the offering of the Securities and the Guarantees, including the documents incorporated by reference therein pursuant to Item 12 of Form S-3 under the 1933 Act at the time of the execution of this Agreement and any preliminary prospectuses that form a part thereof, is herein called the “Prospectus.” For purposes of this Agreement, all references to the Registration Statement, any preliminary prospectus, the Prospectus or any amendment or supplement to any of the foregoing shall be deemed to include the copy filed with the Commission pursuant to its Electronic Data Gathering, Analysis and Retrieval system (“EDGAR”).

All references in this Agreement to financial statements and schedules and other information which is “contained,” “included” or “stated” in the Registration Statement, any preliminary prospectus or the Prospectus (or other references of like import) shall be deemed to mean and include all such financial statements and schedules and other information which is incorporated by reference in or otherwise deemed by 1933 Act Regulations to be a part of or included in the Registration Statement, any preliminary prospectus or the Prospectus, as the case may be; and all references in this Agreement to amendments or supplements to the Registration Statement, any preliminary prospectus or the Prospectus shall be deemed to mean and include the filing of any document under the Securities Exchange Act of 1934 (the “1934 Act”) which is incorporated by reference in or otherwise deemed by 1933 Act Regulations to be a part of or included in the Registration Statement, such preliminary prospectus or the Prospectus, as the case may be.

SECTION 1. Representations and Warranties.

(a) *Representations and Warranties by the Company and the Guarantor.* The Company and the Guarantor jointly and severally represent and warrant to each Underwriter as of the date hereof, the Applicable Time referred to in Section 1(a)(ii) hereof and as of the Closing Time referred to in Section 2(c) hereof, and agree with each Underwriter, as follows:

(i) Status as a Well-Known Seasoned Issuer. (A) At the time of filing the Registration Statement, (B) at the time of the most recent amendment thereto for the purposes of complying with Section 10(a)(3) of the 1933 Act (whether such amendment was by post-effective amendment, incorporated report filed pursuant to Section 13 or 15(d) of the 1934 Act or form of prospectus), (C) at the time the Company or any person acting on its behalf (within the meaning, for this clause only, of Rule 163(c) of the 1933 Act Regulations) made any offer relating to the Securities and the Guarantees in reliance on the exemption of Rule 163 of the 1933 Act Regulations and (D) at the date hereof, the Company was and is a “well-known seasoned issuer” as defined in Rule 405 of the 1933 Act Regulations (“Rule 405”), including not having been and not being an “ineligible issuer” as defined in Rule 405. The Registration Statement is an “automatic shelf registration statement,” as defined in Rule 405, and the Securities and the Guarantees, since their registration on the Registration Statement, have been and remain eligible for registration by the Company and the Guarantor on a Rule 405 “automatic shelf registration statement”. The Company has not received from the Commission any notice pursuant to Rule 401(g)(2) of the 1933 Act Regulations objecting to the use of the automatic shelf registration statement form.

At the time of filing the Registration Statement, at the earliest time thereafter that the Company or another offering participant made a *bona fide* offer (within the meaning of Rule 164(h)(2) of the 1933 Act Regulations) of the Securities and the Guarantees and at the date hereof, the Company was not and is not an “ineligible issuer,” as defined in Rule 405.

(ii) Registration Statement, Prospectus and Disclosure at Time of Sale. The Registration Statement became effective upon filing under Rule 462(e) of the 1933 Act Regulations (“Rule 462(e)”), and, if filed, any post-effective amendments thereto have also become effective upon filing under Rule 462(e). No stop order suspending the effectiveness of the Registration Statement has been issued under the 1933 Act and no proceedings for that purpose have been instituted or are pending or, to the knowledge of the Company, are threatened by the Commission, and any request on the part of the Commission for additional information has been complied with.

Any offer that is a written communication relating to the Securities made prior to the filing of the Registration Statement by the Company or any person acting on its behalf (within the meaning, for this paragraph only, of Rule 163(c) of the 1933 Act Regulations) has been filed with the Commission in accordance with the exemption provided by Rule 163 of the 1933 Act Regulations (“Rule 163”) and otherwise complied with the requirements of Rule 163, including without limitation the legending requirement, to qualify such offer for the exemption from Section 5(c) of the 1933 Act provided by Rule 163.

At the respective times the Registration Statement and each amendment thereto became effective, at each deemed effective date with respect to the Underwriters pursuant to Rule 430B(f)(2) of the 1933 Act Regulations and at the Closing Time, the Registration Statement complied and will comply in all material respects with the requirements of the 1933 Act and the 1933 Act Regulations and the Trust Indenture Act of 1939, as amended (the “1939 Act”), and the rules and regulations of the Commission under the 1939 Act (the “1939 Act Regulations”), and did not and will not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading.

Neither the Prospectus nor any amendments or supplements thereto, at the time the Prospectus or any such amendment or supplement was issued and at the Closing Time, included or will include an untrue statement of a material fact or omitted or will omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

Each preliminary prospectus (including the prospectus or prospectuses filed as part of the Registration Statement or any amendment thereto) complied when so filed in all material respects with the 1933 Act Regulations and each preliminary prospectus and the Prospectus delivered to the Underwriters for use in connection with this offering was identical to the electronically transmitted copies thereof filed with the Commission pursuant to EDGAR, except to the extent permitted by Regulation S-T and except for filing fees information.

As of the Applicable Time (as defined below), neither (x) the Issuer General Use Free Writing Prospectus(es) (as defined below) issued at or prior to the Applicable Time (as defined below), the Statutory Prospectus (as defined below), the Final Term Sheet (as defined in Section 3(b)), all considered together (collectively, the “General Disclosure Package”), nor (y) any individual Issuer Limited Use Free Writing Prospectus, when considered together with the General Disclosure Package, included any untrue statement of a material fact or omitted to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

As used in this subsection and elsewhere in this Agreement:

“Applicable Time” means 9:15 P.M. (Eastern time) on July 30, 2014 or such other time as agreed by the Company and the Representatives.

“Issuer Free Writing Prospectus” means any “issuer free writing prospectus,” as defined in Rule 433 of the 1933 Act Regulations (“Rule 433”), relating to the Securities that (i) is required to be filed with the Commission by the Company, including the Final Term Sheet, (ii) is a “road show that is a written communication” within the meaning of Rule 433(d)(8)(i), whether

or not required to be filed with the Commission or (iii) is exempt from filing pursuant to Rule 433(d)(5)(i) because it contains a description of the Securities or of the offering that does not reflect the final terms, in each case in the form filed or required to be filed with the Commission or, if not required to be filed, in the form retained in the Company's records pursuant to Rule 433(g).

"Issuer General Use Free Writing Prospectus" means any Issuer Free Writing Prospectus that is intended for general distribution to prospective investors, as evidenced by its being specified in Schedule C hereto.

"Issuer Limited Use Free Writing Prospectus" means any Issuer Free Writing Prospectus that is not an Issuer General Use Free Writing Prospectus.

"Statutory Prospectus" as of any time means the prospectus relating to the Securities that is included in the Registration Statement immediately prior to that time, including any document incorporated by reference therein and any preliminary or other prospectus deemed to be a part thereof.

Each Issuer Free Writing Prospectus, as of its issue date and at all subsequent times through the completion of the public offer and sale of the Securities or until any earlier date that the issuer notified or notifies the Representatives as described in Section 3(e), did not, does not and will not include any information that conflicted, conflicts or will conflict with the information contained in the Registration Statement or the Prospectus, including any document incorporated by reference therein and any preliminary or other prospectus deemed to be a part thereof that has not been superseded or modified.

The representations and warranties in this subsection shall not apply to statements in or omissions from the Registration Statement, the Prospectus or any Issuer Free Writing Prospectus made in reliance upon and in conformity with written information furnished to the Company by or on behalf of any Underwriter through the Representatives expressly for use therein.

(iii) Incorporated Documents. The documents incorporated or deemed to be incorporated by reference in the Registration Statement and the Prospectus, at the time they were or hereafter are filed with the Commission, complied and will comply in all material respects with the requirements of the 1933 Act and the 1933 Act Regulations or the 1934 Act and the rules and regulations of the Commission thereunder (the "1934 Act Regulations"), as applicable, and, when read together with the other information in the Prospectus, (a) at the time the Registration Statement became effective, (b) at the earlier of the time the Prospectus was first used and the Applicable Time and (c) at the Closing Time, did not and will not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein, in light of the circumstances under which they were made, or necessary to make the statements therein not misleading.

(iv) Company's Independent Registered Public Accounting Firm. PricewaterhouseCoopers LLP, which has certified certain financial statements of the Company and its subsidiaries, is an independent registered public accounting firm as required by the 1933 Act.

(v) Hillshire's Independent Registered Public Accounting Firms. PricewaterhouseCoopers LLP, at the time it certified certain financial statements of Hillshire and its subsidiaries, was an independent registered public accounting firm as required by the 1933 Act, and Deloitte & Touche LLP, which has certified certain financial statements of Hillshire and its subsidiaries, is an independent registered public accounting firm as required by the 1933 Act.

(vi) Company Financial Statements. The financial statements of the Company and its consolidated subsidiaries, and the related notes thereto, included in the Registration Statement, the General Disclosure Package and the Prospectus, present fairly, in all material respects, the consolidated financial position of the Company and its consolidated subsidiaries as of the dates indicated and the results of their operations and the changes in their consolidated cash flows for the periods specified; said financial statements have been prepared in conformity with generally accepted accounting principles applied on a consistent basis, except as described in the notes to such financial statements, and the supporting schedules included or incorporated by reference in such Registration Statement, the General Disclosure Package and the Prospectus present fairly the information required to be stated therein.

(vii) Hillshire Financial Statements. To the knowledge of the Company or the Guarantor, the financial statements of Hillshire and its consolidated subsidiaries, and the related notes thereto, included in the Registration Statement, the General Disclosure Package and the Prospectus, present fairly, in all material respects, the consolidated financial position of Hillshire and its consolidated subsidiaries as of the dates indicated and the results of their operations and the changes in their consolidated cash flows for the periods specified; said financial statements have been prepared in conformity with generally accepted accounting principles applied on a consistent basis, except as described in the notes to such financial statements, and the supporting schedules included or incorporated by reference in such Registration Statement, the General Disclosure Package and the Prospectus present fairly the information required to be stated therein.

(viii) Pro Forma Financial Statements. The pro forma consolidated financial statements of the Company and its subsidiaries and the related notes thereto set forth in the Registration Statement, the General Disclosure Package and the Prospectus present fairly the information contained therein, have been prepared in accordance with Article 11 of Regulation S-X with respect to pro forma financial statements and have been properly presented on the bases described therein, and the assumptions used in the preparation thereof are reasonable and the adjustments used therein are appropriate to give effect to the transactions and circumstances referred to therein.

(ix) Forward-Looking and Supporting Information. Each of the statements (including the assumptions described therein) included in the Registration Statement and the General Disclosure Package and to be made in the Prospectus (and any supplements thereto) within the coverage of Rule 175(b) under the Securities Act, including (but not limited to) the statements contained under the caption “Fiscal 2014 Outlook” in the Company’s Annual Report on Form 10-K for the fiscal year ended September 28, 2013 and the Company’s Quarterly Reports on Form 10-Q for the fiscal quarters ended December 28, 2013 and March 29, 2014, each of which is incorporated by reference in the Registration Statement and the Prospectus, was made with a reasonable basis and in good faith.

(x) No Material Adverse Change in Company Business. Since the respective dates as of which information is given in the Registration Statement, the General Disclosure Package or the Prospectus, except as otherwise stated therein, there has not been any material adverse change, or any development known by the Company and the Guarantor (after diligent inquiry) that would reasonably be expected to result in a material adverse change in or affecting the business, financial position, stockholders’ equity or results of operations of the Company and its subsidiaries, taken as a whole (any such change being referred to hereafter as a “Material Adverse

Change”), otherwise than as set forth, incorporated by reference or contemplated in the General Disclosure Package or the Prospectus; and except as set forth, incorporated by reference or contemplated in the Prospectus neither the Company nor any of its subsidiaries has entered into any transaction or agreement (whether or not in the ordinary course of business) material to the Company and its subsidiaries taken as a whole.

(xi) No Material Adverse Change in Hillshire Business. To the knowledge of the Company and the Guarantor, since the respective dates as of which information is given in the Registration Statement, the General Disclosure Package or the Prospectus, except as otherwise stated therein, there has not been any material adverse change, or any development known by the Company and the Guarantor (after diligent inquiry) that would reasonably be expected to result in a material adverse change in or affecting the business, financial position, stockholders’ equity or results of operations of the Company, its subsidiaries, Hillshire and its subsidiaries, taken as a whole, otherwise than as set forth, incorporated by reference or contemplated in the General Disclosure Package or the Prospectus; and, to the knowledge of the Company and the Guarantor, except as set forth, incorporated by reference or contemplated in the Prospectus neither the Hillshire nor any of its subsidiaries has entered into any transaction or agreement (whether or not in the ordinary course of business) material to the Company, its subsidiaries, Hillshire and its subsidiaries, taken as a whole.

(xii) Good Standing of the Company. The Company has been duly incorporated and is validly existing as a corporation in good standing under the laws of the state of its incorporation, with power and authority (corporate and other) to own its properties and conduct its business as described in the Prospectus, and has been duly qualified as a foreign corporation for the transaction of business and is in good standing under the laws of each other jurisdiction in which it owns or leases properties, or conducts any business, so as to require such qualification, other than where the failure to be so qualified or in good standing would not reasonably be expected to have a material adverse effect on the Company and its subsidiaries taken as a whole.

(xiii) Good Standing of Subsidiaries. Each of (i) the Company’s subsidiaries that constitutes a “significant subsidiary” of the Company within the meaning of Rule 1-02 of Regulation S-X of the Commission (collectively, the “Material Subsidiaries”) and (ii) to the Company’s and the Guarantor’s knowledge, Hillshire and each of Hillshire’s subsidiaries that will constitute a “significant subsidiary” of the Company within the meaning of Rule 1-02 of Regulation S-X of the Commission (collectively, “Hillshire’s Material Subsidiaries”) has been duly organized and is validly existing as a corporation or limited liability company, as the case may be, under the laws of its jurisdiction of incorporation, with corporate or limited liability company (as the case may be) power and authority to own its properties and conduct its business as described in the Prospectus, and has been duly qualified as a foreign corporation or limited liability company, as the case may be, for the transaction of business and is in good standing under the laws of each jurisdiction in which it owns or leases properties or conducts any business so as to require such qualification, other than where the failure to be so qualified or in good standing would not reasonably be expected to have a material adverse effect on the Company and its subsidiaries, taken as a whole, or, in the case of Hillshire and Hillshire’s Material Subsidiaries, a material adverse effect on the Company, its subsidiaries, Hillshire and its subsidiaries, taken as a whole; and all the outstanding shares of capital stock or equity interests, as the case may be, of each Material Subsidiary of the Company have been duly authorized and validly issued, are fully-paid and non-assessable, and (except in the case of foreign subsidiaries, for directors’ qualifying shares) are owned by the Company, directly or indirectly, free and clear of all liens, encumbrances, security interests and claims.

(xiv) Authorization of Agreement. This Agreement has been duly authorized, executed and delivered by the Company and the Guarantor.

(xv) Authorization of the Purchase Contract Agreement. The Purchase Contract Agreement has been duly authorized, and when duly executed and delivered by the Company (assuming the due authorization, execution and delivery of the Purchase Contract Agreement by the Purchase Contract Agent and the Trustee) will constitute a valid and binding agreement of the Company, enforceable against the Company in accordance with its terms, except as the enforcement thereof may be limited by bankruptcy, insolvency (including, without limitation, all laws relating to fraudulent transfers), reorganization, moratorium or similar laws affecting enforcement of creditors' rights generally and except as enforcement thereof is subject to general principles of equity (regardless of whether enforcement is considered in a proceeding in equity or at law); and the Purchase Contract Agreement will conform, in all material respects, to the description thereof in the Prospectus.

(xvi) Authorization of the Indenture. The Base Indenture has been duly executed and delivered by the Company, and when the Supplemental Indenture has been duly executed and delivered by the Company and the Guarantor (assuming the due authorization, execution and delivery of the Indenture by the Trustee), the Indenture will constitute a valid and binding agreement of the Company and the Guarantor, enforceable against the Company and the Guarantor in accordance with its terms, except as the enforcement thereof may be limited by bankruptcy, insolvency (including, without limitation, all laws relating to fraudulent transfers), reorganization, moratorium or similar laws affecting enforcement of creditors' rights generally and except as enforcement thereof is subject to general principles of equity (regardless of whether enforcement is considered in a proceeding in equity or at law); the Indenture has been duly authorized and is duly qualified under the 1939 Act; and the Indenture will conform, in all material respects, to the description thereof in the Prospectus.

(xvii) Authorization of the Units. The Units have been duly authorized by the Company and, when duly executed, issued and delivered by the Company as provided in the Purchase Contract Agreement (assuming due authentication of the Units by the Purchase Contract Agent and the Trustee) and paid for as provided herein, will constitute valid and binding obligations of the Company, enforceable against the Company in accordance with their terms, except as the enforcement thereof may be limited by bankruptcy, insolvency (including, without limitation, all laws relating to fraudulent transfers), reorganization, moratorium or similar laws affecting enforcement of creditors' rights generally and except as enforcement thereof is subject to general principles of equity (regardless of whether enforcement is considered in a proceeding in equity or at law), and entitled to the benefits provided by the Purchase Contract Agreement; and the Units will conform, in all material respects, to the description thereof in the Prospectus.

(xviii) Authorization of the Purchase Contracts. The Purchase Contracts have been duly authorized by the Company and, when duly executed, issued and delivered by the Company as provided in the Purchase Contract Agreement (assuming due authentication of the Purchase Contracts by the Purchase Contract Agent) and paid for as provided herein, will constitute valid and binding obligations of the Company, enforceable against the Company in accordance with their terms, except as the enforcement thereof may be limited by bankruptcy, insolvency (including, without limitation, all laws relating to fraudulent transfers), reorganization, moratorium or similar laws affecting enforcement of creditors' rights generally and except as enforcement thereof is subject to general principles of equity (regardless of whether enforcement is considered in a proceeding in equity or at law), and entitled to the benefits provided by the Purchase Contract Agreement; and the Purchase Contracts will conform, in all material respects, to the description thereof in the Prospectus.

(xix) Authorization of the Amortizing Notes. The Amortizing Notes have been duly authorized by the Company and, when duly executed, issued and delivered by the Company as provided in the Indenture (assuming due authentication of the Amortizing Notes by the Trustee) and paid for as provided herein, will constitute valid and binding obligations of the Company, enforceable against the Company in accordance with their terms, except as the enforcement thereof may be limited by bankruptcy, insolvency (including, without limitation, all laws relating to fraudulent transfers), reorganization, moratorium or similar laws affecting enforcement of creditors' rights generally and except as enforcement thereof is subject to general principles of equity (regardless of whether enforcement is considered in a proceeding in equity or at law), and entitled to the benefits provided by the Indenture; and the Amortizing Notes will conform, in all material respects, to the description thereof in the Prospectus.

(xx) Authorization of the Guarantees. The Guarantees have been duly authorized by the Guarantor and, when the Supplemental Indenture and the Amortizing Notes have been duly executed, authenticated, issued and delivered as provided in the Indenture and paid for as provided herein, will constitute valid and binding obligations of the Guarantor, enforceable against the Guarantor in accordance with their terms, except as the enforcement thereof may be limited by bankruptcy, insolvency (including, without limitation, all laws relating to fraudulent transfers), reorganization, moratorium or similar laws affecting enforcement of creditors' rights generally and except as enforcement thereof is subject to general principles of equity (regardless of whether enforcement is considered in a proceeding in equity or at law), and entitled to the benefits provided by the Indenture; and the Guarantees will conform, in all material respects, to the description thereof in the Prospectus.

(xxi) Issuable Common Stock. The Company has all requisite corporate power and authority to issue, sell and deliver the shares of Common Stock to be issued and delivered by the Company pursuant to the Purchase Contract Agreement and the Purchase Contracts (the "Issuable Common Stock"). The maximum number of shares of Issuable Common Stock (calculated assuming settlement of the Purchase Contracts at the "Maximum Settlement Rate," as such term is defined in the General Disclosure Package) have been duly authorized and reserved for issuance by the Company and, when issued and delivered in accordance with the provisions of the Purchase Contracts and the Purchase Contract Agreement, will be validly issued, fully paid and nonassessable and not issued in violation of any preemptive or similar right.

(xxii) Capital Stock. The authorized capital stock of the Company conforms as to legal matters to the description thereof contained in each of the General Disclosure Package and the Prospectus.

(xxiii) Outstanding Shares. The shares of Common Stock outstanding prior to the issuance of the Units have been duly authorized and are validly issued, fully paid and nonassessable. None of the outstanding shares of capital stock of the Company have been issued in violation of any preemptive or similar rights of any security holder of the Company. The common stock of the Company has been registered pursuant to Section 12(b) of the Exchange Act and the Company has not received any notification that the Commission is contemplating terminating such registration. The common stock of the Company is listed on the NYSE and the Company has not received any notification that the NYSE is contemplating terminating the listing of the common stock of the Company. Except as disclosed in the Registration Statement, the General Disclosure Package and the Prospectus, there are no outstanding (A) securities or

obligations of the Company convertible into or exchangeable for any capital stock of the Company, (B) warrants, rights or options to subscribe for or purchase from the Company any such capital stock or any such convertible or exchangeable securities or obligations or (C) obligations of the Company to issue or sell any shares of capital stock, any such convertible or exchangeable securities or obligations, or any such warrants, rights or options.

(xxiv) No Registration Rights. No holders of securities of the Company have rights to the registration of such securities under the Registration Statement.

(xxv) Absence of Defaults and Conflicts. Neither the Company nor any of its Material Subsidiaries nor, to the Company's and the Guarantor's knowledge, Hillshire nor any of Hillshire's Material Subsidiaries, is, or with the giving of notice or lapse of time or both would be, in violation of or in default under, its certificate or articles of incorporation, by-laws, certificate or articles of formation, limited liability company operating agreement or other comparable constituent documents, as the case may be, or any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which the Company or any of its Material Subsidiaries or Hillshire or Hillshire's Material Subsidiaries is a party or by which it or any of them or any of their respective properties is bound, except for violations and defaults which individually or in the aggregate are not material to the Company and its subsidiaries or Hillshire and its subsidiaries, as applicable, taken as a whole, or to the holders of the Units (and the Guarantees); the issue and sale of the Securities (and the Guarantees) and the performance by the Company and the Guarantor of all of their obligations under the Securities (and the Guarantees), the Purchase Contract Agreement, the Indenture and this Agreement and the consummation of the transactions herein and therein contemplated will not conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, any indenture, mortgage, deed of trust, loan agreement or other material agreement or instrument to which the Company or any of its Material Subsidiaries is a party or by which the Company or any of its Material Subsidiaries is bound or to which any of the property or assets of the Company or any of its Material Subsidiaries is subject, except for conflicts, breaches or defaults that, singly or in the aggregate, would not reasonably be expected to have a material adverse effect on the Company and its subsidiaries taken as a whole, or, in the case of any such matter relating to Hillshire, a material adverse effect on the Company, its subsidiaries, Hillshire and its subsidiaries, taken as a whole, or on the transactions contemplated hereby, nor will any such action result in any violation of the provisions of (A) the certificate or articles of incorporation or by-laws of the Company or the Guarantor or (B) any applicable law or statute or any order, rule or regulation of any court or governmental agency or body having jurisdiction over the Company, its Material Subsidiaries or any of their respective properties, except, in the case of (B) above, for violations that, singly or in the aggregate, would not reasonably be expected to have a material adverse effect on the Company and its subsidiaries taken as a whole, or on the transactions contemplated hereby; and no consent, approval, authorization, order, registration or qualification of or with any such court or governmental agency or body is required for the issue and sale of the Securities (and the Guarantees) or the consummation by the Company and the Guarantor of the transactions contemplated by this Agreement, the Purchase Contract Agreement, the Indenture, the Securities or the Guarantees, except such consents, approvals, authorizations, registrations or qualifications as have been obtained under the 1933 Act, the 1939 Act and as may be required under state securities or Blue Sky Laws in connection with the purchase and distribution of the Securities by the Underwriters.

(xxvi) Absence of Labor Dispute. Except as described or incorporated by reference in the General Disclosure Package and the Prospectus, no labor disputes exist with employees of the Company or of its Material Subsidiaries or, to the Company's and the Guarantor's knowledge,

Hillshire and Hillshire's Material Subsidiaries, that would, singly or in the aggregate, reasonably be expected to have a material adverse effect on the Company and its subsidiaries, taken as a whole, or, in the case of any such matters relating to Hillshire and its subsidiaries, a material adverse effect on the Company, its subsidiaries, Hillshire and its subsidiaries, taken as a whole.

(xxvii) Absence of Proceedings. Except as described or incorporated by reference in the General Disclosure Package and the Prospectus, there are no legal or governmental proceedings pending or, to the knowledge of the Company or the Guarantor, threatened to which the Company or any of its subsidiaries or, to the Company's and the Guarantor's knowledge, Hillshire or any of Hillshire's subsidiaries, is or may be a party or to which any property of the Company or any of its subsidiaries or, to the Company's and the Guarantor's knowledge, Hillshire or any of Hillshire's subsidiaries, is or may be the subject which would, individually or in the aggregate, be reasonably expected to have a material adverse effect on the Company and its subsidiaries, taken as a whole, or, in the case of any such matters relating to Hillshire and its subsidiaries, a material adverse effect on the Company, its subsidiaries, Hillshire and its subsidiaries, taken as a whole, or on the transactions contemplated hereby and, to the best of the Company's and the Guarantor's knowledge, no such proceedings are threatened by governmental authorities or threatened by others; and there are no contracts or other documents of a character required to be filed as an exhibit to the Registration Statement or required to be described in the Registration Statement, the General Disclosure Package and the Prospectus which are not filed or described as required.

(xxviii) Possession of Intellectual Property. Each of the Company and its Material Subsidiaries and, to the Company's and the Guarantor's knowledge, each of Hillshire and Hillshire's Material Subsidiaries, owns or possesses the right to use the patents, patent licenses, trademarks, service marks, trade names, copyrights and know-how (including trade secrets and other unpatented and/or unpatentable proprietary or confidential information, systems or procedures) (collectively, the "Intellectual Property") reasonably necessary to carry on the business conducted by each as conducted on the date hereof, except to the extent that the failure to own or possess the right to use such Intellectual Property would not, singly or in the aggregate, reasonably be expected to have a material adverse effect on the Company and its subsidiaries, taken as a whole, or, in the case of any such matters relating to Hillshire and its subsidiaries, a material adverse effect on the Company, its subsidiaries, Hillshire and its subsidiaries, taken as a whole, and, except as set forth or incorporated by reference in the Registration Statement, the General Disclosure Package and the Prospectus, neither the Company nor any Material Subsidiary nor, to the Company's and the Guarantor's knowledge, Hillshire or any of Hillshire's Material Subsidiaries, has received any notice of infringement of or conflict with asserted rights of others with respect to any Intellectual Property, except for notices the content of which if accurate would not, singly or in the aggregate, reasonably be expected to have a material adverse effect on the Company and its subsidiaries, taken as a whole, or, in the case of any such matters relating to Hillshire and its subsidiaries, a material adverse effect on the Company, its subsidiaries, Hillshire and its subsidiaries, taken as a whole.

(xxix) Absence of Further Requirements. No material filing with, or authorization, approval, consent, license, order, registration, qualification or decree of, any court or governmental authority or agency is necessary or required for the performance by the Company and the Guarantor of their obligations hereunder, in connection with the offering, issuance or sale of the Securities (and the Guarantees) hereunder or the consummation of the transactions contemplated by this Agreement or for the due execution, delivery or performance of the Indenture and the Purchase Contract Agreement by the Company and the Guarantor, except such as have been already obtained or as may be required under the 1933 Act or the 1933 Act Regulations or state securities laws and except for the qualification of the Indenture under the 1939 Act.

(xxx) Possession of Licenses and Permits. The Company and its Material Subsidiaries and, to the Company's and the Guarantor's knowledge, Hillshire and Hillshire's Material Subsidiaries, have all licenses, franchises, permits, authorizations, approvals and orders of and from all governmental and regulatory officials and bodies that are necessary to own or lease and operate their properties and conduct their businesses as described in the Prospectus and that are material in relation to the business of the Company and its subsidiaries, taken as a whole, or, the Company, its subsidiaries, Hillshire and its subsidiaries, taken as a whole, except where the failure to possess such licenses or authorizations would not reasonably be expected to have a material adverse effect on the Company and its subsidiaries, taken as a whole, or, in the case of any such matters relating to Hillshire and its subsidiaries, a material adverse effect on the Company, its subsidiaries, Hillshire and its subsidiaries, taken as a whole.

(xxxii) Investment Company Act. The Company is not, and after giving effect to the offering and sale of the Securities and the application of the proceeds thereof as described in the Prospectus will not be, an "investment company" or an entity "controlled" by an "investment company", as such terms are defined in the Investment Company Act of 1940, as amended.

(xxxiii) Environmental Laws. Except as described or incorporated by reference in the General Disclosure Package and the Prospectus, each of the Company and its Material Subsidiaries and, to the Company's and the Guarantor's knowledge, Hillshire and Hillshire's Material Subsidiaries, is in compliance with any and all applicable foreign, federal, state and local laws and regulations relating to the protection of human health or the environment or imposing liability or standards of conduct concerning any Hazardous Material (collectively, "Environmental Laws"), except where such non-compliance with Environmental Laws would not, singly or in the aggregate, reasonably be expected to have a material adverse effect on the Company and its subsidiaries, taken as a whole, or, in the case of any such matters relating to Hillshire and its subsidiaries, a material adverse effect on the Company, its subsidiaries, Hillshire and its subsidiaries, taken as a whole. The term "Hazardous Material" means (i) any "hazardous substance" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, (ii) any "hazardous waste" as defined by the Resource Conservation and Recovery Act, as amended, (iii) any petroleum or petroleum product, (iv) any polychlorinated biphenyl, and (v) any pollutant or contaminant or hazardous, dangerous, or toxic chemical, material, waste or substance regulated under or within the meaning of any other Environmental Law.

(xxxiiii) Accounting Controls and Disclosure Controls. Except as described or incorporated by reference in the General Disclosure Package and the Prospectus, the Company and each of its subsidiaries and, to the Company's and the Guarantor's knowledge, Hillshire and each of its subsidiaries, maintain a system of internal accounting controls sufficient to provide reasonable assurances that (1) transactions are executed in accordance with management's general or specific authorization; (2) transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles and to maintain accountability for assets; (3) access to assets is permitted only in accordance with management's general or specific authorization; and (4) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences. Except as described or incorporated by reference in the General Disclosure Package and the Prospectus, since the end of the Company's most recent audited fiscal year, there has been (I) no material weakness in the Company's internal control over financial

reporting (whether or not remediated) and (II) no change in the Company's internal control over financial reporting that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting. The interactive data in eXtensible Business Reporting Language incorporated by reference in the Registration Statement, the General Disclosure Package and the Prospectus fairly presents the information called for in all material respects and has been prepared in accordance with the Commission's rules and guidelines applicable thereto.

The Company and its subsidiaries maintain "disclosure controls and procedures" (as such term is defined in Rule 13a-15(e) under the 1934 Act); such disclosure controls and procedures are designed to ensure that information required to be disclosed by the Company in the reports that it files or submits under the 1934 Act is recorded, processed, summarized and reported, within the time periods specified in the Commission's rules and forms.

(xxxiv) Compliance with the Sarbanes-Oxley Act. There is and has been no failure on the part of the Company or any of the Company's directors or officers, in their capacities as such, or to the knowledge of the Company and the Guarantor, Hillshire or any of Hillshire's directors or officers, in their capacities as such, to comply in all material respects with any provision of the Sarbanes-Oxley Act of 2002 and the rules and regulations promulgated in connection therewith (the "Sarbanes-Oxley Act"), including Section 402 related to loans and Sections 302 and 906 related to certifications.

(xxxv) Pending Proceedings and Examinations. The Registration Statement is not the subject of a pending proceeding or examination under Section 8(d) or 8(e) of the 1933 Act, and the Company is not the subject of a pending proceeding under Section 8A of the 1933 Act in connection with the offering of the Securities.

(xxxvi) Foreign Corrupt Practices Act. Except as described or incorporated by reference in the General Disclosure Package and the Prospectus or as described in any other periodic reports of the Company filed with the Commission pursuant to the 1934 Act within the last three years, within the past three years, none of the Company, any of its subsidiaries or, to the knowledge of the Company and the Guarantor, Hillshire, any of Hillshire's subsidiaries, any director, officer, agent, employee, affiliate or other person acting on behalf of the Company or any of its subsidiaries or Hillshire or any of Hillshire's subsidiaries is aware of or has taken any action, directly or indirectly, that would result in a material violation by such persons of the Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder (the "FCPA"), including without limitation, making use of the mails or any means or instrumentality of interstate commerce corruptly in the furtherance of an offer, payment, promise to pay or authorization of the payment of any money, or other property, gift, promise to give, or authorization of the giving of anything of value to any "foreign official" (as such term is defined in the FCPA) or any foreign political party or official thereof or any candidate for foreign political office, in contravention of the FCPA, and except as described or incorporated by reference in the General Disclosure Package and the Prospectus or as described in any other periodic reports of the Company filed with the Commission pursuant to the 1934 Act within the last three years, the Company and, to the knowledge of the Company and the Guarantor, its affiliates and affiliates of Hillshire have conducted their businesses in compliance in all material respects with the FCPA and have instituted and maintain policies and procedures designed to ensure, and which are reasonably expected to continue to ensure, continued compliance therewith.

(xxxvii) Anti-Money Laundering Laws. The operations of the Company and its subsidiaries and, to the knowledge of the Company and the Guarantor, Hillshire and its subsidiaries, are and have been conducted at all times in compliance in all material respects with applicable financial recordkeeping and reporting requirements, including those of the Bank Secrecy Act, as amended by Title III of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), and the applicable anti-money laundering statutes of jurisdictions where the Company and its subsidiaries or Hillshire and its subsidiaries, respectively, conduct business, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any governmental agency (collectively, the “Money Laundering Laws”) and no material action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company or any of its subsidiaries with respect to the Money Laundering Laws is pending or, to the knowledge of the Company and the Guarantor, threatened. To the knowledge of the Company and the Guarantor, no material action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving Hillshire or any of its subsidiaries with respect to the Money Laundering Laws is pending or, to the knowledge of the Company and the Guarantor, threatened.

(xxxviii) OFAC. None of the Company, any of its subsidiaries or, to the knowledge of the Company and the Guarantor, Hillshire, any of its subsidiaries or any director, officer, agent, employee, affiliate or person acting on behalf of the Company, Hillshire or any of their respective subsidiaries is currently the subject or target of any sanctions administered or enforced by the United States Government, including, without limitation, the Office of Foreign Assets Control of the U.S. Treasury Department (“OFAC”), the United Nations Security Council (“UNSC”), the European Union, Her Majesty’s Treasury (“HMT”), or other relevant sanctions authority (collectively, “Sanctions”), nor is the Company or Hillshire located, organized or resident in a country or territory that is the subject of Sanctions; and the Company will not directly or indirectly use the proceeds of the offering, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other person or entity, to fund any activities of or business with any person or entity, or in any country or territory, that, at the time of such funding, is the subject of Sanctions or in any other manner that will result in a violation by any person or entity (including any person or entity participating in the offering, whether as underwriter, advisor, investor or otherwise) of Sanctions.

(xxxix) No Stabilization. Neither the Company nor the Guarantor has taken, directly or indirectly, any action designed to or that would reasonably be expected to cause or result in any stabilization or manipulation of the price of the Securities.

(b) *Officer’s Certificates*. Any certificate signed by any officer of the Company or any of its subsidiaries delivered to the Representatives or to counsel for the Underwriters shall be deemed a representation and warranty by the Company to each Underwriter as to the matters covered thereby.

SECTION 2. Sale and Delivery to Underwriters; Closing.

(a) *Securities*. On the basis of the representations and warranties herein contained and subject to the terms and conditions herein set forth, the Company agrees to sell to each Underwriter, severally and not jointly, and each Underwriter, severally and not jointly, agrees to purchase from the Company, the respective number of Units set forth opposite such Underwriter’s name in Schedule A hereto at \$48.50 per Unit (the “Purchase Price”), plus any additional number of Units which such Underwriter may become obligated to purchase pursuant to the provisions of Section 10 hereof.

The Company hereby directs the Underwriters to allocate, and the Underwriters hereby agree to sell to Kathleen Bader, Gaurdie Banister, Kevin McNamara, Dennis Leatherby, Noel White, Sara Lilygren, Donnie Smith, Barbara Tyson, and Tyson Limited Partnership (the "Management Investors"), the respective number of Units set forth opposite such Management Investor's name on Schedule E.

(b) *Terms of Public Offering.* The Company is advised by you that the Underwriters propose to make a public offering of their respective portions of the Units as soon after the Registration Statement and this Agreement have become effective as in your judgment is advisable. The Company is further advised by you that the Units are to be offered to the public initially at \$50.00 per share (the "Public Offering Price") and to certain dealers selected by you at a price that represents a concession not in excess of \$0.90 per share under the Public Offering Price.

(c) *Payment and Delivery.* Payment for the Units shall be made to, or for the benefit of, the Company in Federal or other funds immediately available in New York City against delivery of such Units for the respective accounts of the several Underwriters at 10:00 a.m., New York City time, on August 5, 2014, or at such other time on the same or such other date, not later than August 14, 2014, as shall be designated in writing by you. The time and date of such payment are hereinafter referred to as the "Closing Time."

(d) *Denominations; Registration.* The Units shall be registered in such names and in such denominations as you shall request in writing not later than one full business day prior to the Closing Time or the applicable Option Closing Date, as the case may be. The Units shall be delivered to you at the Closing Time or on an Option Closing Date, as the case may be, for the respective accounts of the several Underwriters, with any transfer taxes payable in connection with the transfer of the Units to the Underwriters duly paid, against payment of the Purchase Price therefor.

SECTION 3. Covenants of the Company and the Guarantor. The Company and the Guarantor jointly and severally covenant with each Underwriter as follows:

(a) *Compliance with Securities Regulations and Commission Requests; Payment of Filing Fees.* The Company, subject to Section 3(b), will comply with the requirements of Rule 430B and will notify the Representatives immediately, and confirm the notice in writing, (i) when any post-effective amendment to the Registration Statement or new registration statement relating to the Securities shall become effective, or any supplement to the Prospectus or any amended Prospectus shall have been filed, (ii) of the receipt of any comments from the Commission, (iii) of any request by the Commission for any amendment to the Registration Statement or the filing of a new registration statement or any amendment or supplement to the Prospectus or any document incorporated by reference therein or otherwise deemed to be a part thereof or for additional information relating to the Registration Statement or the Prospectus, (iv) of the issuance by the Commission of any stop order suspending the effectiveness of the Registration Statement or such new registration statement or of any order preventing or suspending the use of any preliminary prospectus, or of the suspension of the qualification of the Securities for offering or sale in any jurisdiction, or of the initiation or threatening of any proceedings for any of such purposes or of any examination pursuant to Section 8(e) of the 1933 Act concerning the Registration Statement and (v) if the Company becomes the subject of a proceeding under Section 8A of the 1933 Act in connection with the offering of the Securities. The Company will effect the filings required under Rule 424(b), in the manner and within the time period required by Rule 424(b) (without reliance on Rule 424(b)(8)), and will take such steps as it deems necessary to ascertain promptly whether the form of prospectus transmitted for filing under Rule 424(b) was received for filing by the Commission and, in the event that it was not, it will promptly file such prospectus. The Company will make every reasonable effort to prevent the issuance of any stop order and, if any stop order is issued, to obtain the lifting thereof at the earliest possible moment. The Company shall pay the required Commission filing fees relating to the Securities

within the time required by Rule 456(b)(1) (i) of the 1933 Act Regulations without regard to the proviso therein and otherwise in accordance with Rules 456(b) and 457(r) of the 1933 Act Regulations (including, if applicable, by updating the “Calculation of Registration Fee” table in accordance with Rule 456(b)(1)(ii) either in a post-effective amendment to the Registration Statement or on the cover page of a prospectus filed pursuant to Rule 424(b)).

(b) *Filing of Amendments and Exchange Act Documents; Preparation of Final Term Sheet* . The Company will give the Representatives notice of its intention to file or prepare any amendment to the Registration Statement or new registration statement relating to the Securities or any amendment, supplement or revision to either any preliminary prospectus (including any prospectus included in the Registration Statement or amendment thereto at the time it became effective) or to the Prospectus, whether pursuant to the 1933 Act, the 1934 Act or otherwise, and the Company will furnish the Representatives with copies of any such documents a reasonable amount of time prior to such proposed filing or use, as the case may be, and will not file or use any such document to which the Representatives or counsel for the Underwriters shall reasonably object. The Company has given the Representatives notice of any filings made pursuant to the 1934 Act or 1934 Act Regulations within 48 hours prior to the execution of this Agreement; the Company will give the Representatives notice of its intention to make any such filing from the execution of this Agreement to the Closing Time and will furnish the Representatives with copies of any such documents a reasonable amount of time prior to such proposed filing and will not file or use any such document to which the Representatives or counsel for the Underwriters shall reasonably object; *provided, however* , that with respect to any proposed amendment or supplement resulting solely from the incorporation by reference of any report to be filed under the Exchange Act, the Representatives shall be deemed to have consented to the filing or use of such report if the Company receives no acknowledgment of receipt or other response from the Representatives within 24 hours of being provided such report. The Company will prepare a final term sheet (the “Final Term Sheet”), attached hereto as Schedule B, reflecting the final pricing and other terms of the Units, in form and substance reasonably satisfactory to the Representatives, and shall file such Final Term Sheet as an “issuer free writing prospectus” pursuant to Rule 433 no later than the date of first use; *provided* that the Company shall furnish the Representatives with copies of any such Final Term Sheet a reasonable amount of time prior to such proposed filing and will not use or file any such document to which the Representatives or counsel to the Underwriters shall reasonably object.

(c) *Delivery of Registration Statement* . Upon request, the Company will deliver to the Representatives and counsel for the Underwriters, without charge, conformed copies of the Registration Statement and of each amendment thereto (including exhibits filed therewith or incorporated by reference therein and documents incorporated or deemed to be incorporated by reference therein or otherwise deemed to be a part thereof) and conformed copies of all consents and certificates of experts, and will also deliver to the Representatives, without charge, a conformed copy of the Registration Statement and of each amendment thereto (without exhibits) for each of the Underwriters. The copies of the Registration Statement and each amendment thereto furnished to the Underwriters will be identical to the electronically transmitted copies thereof filed with the Commission pursuant to EDGAR, except to the extent permitted by Regulation S-T.

(d) *Delivery of Prospectuses* . The Company has delivered to each Underwriter, without charge, as many copies of each preliminary prospectus as such Underwriter reasonably requested, and the Company hereby consents to the use of such copies for purposes permitted by the 1933 Act. The Company will furnish to each Underwriter, without charge, during the period when the Prospectus is required to be delivered under the 1933 Act, such number of copies of the Prospectus (as amended or supplemented) as such Underwriter may reasonably request. The Prospectus and any amendments or supplements thereto furnished to the Underwriters will be identical to the electronically transmitted copies thereof filed with the Commission pursuant to EDGAR, except to the extent permitted by Regulation S-T.

(e) *Continued Compliance with Securities Laws* . The Company will comply with the 1933 Act and the 1933 Act Regulations, the 1934 Act and the 1934 Act Regulations and the 1939 Act and the 1939 Act Regulations so as to permit the completion of the distribution of the Securities as contemplated in this Agreement and in the Prospectus. If at any time when a prospectus is required by the 1933 Act to be delivered in connection with sales of the Securities, any event shall occur or condition shall exist as a result of which it is necessary, in the opinion of counsel for the Underwriters or for the Company, to amend the Registration Statement or amend or supplement the Prospectus in order that the Prospectus will not include any untrue statements of a material fact or omit to state a material fact necessary in order to make the statements therein not misleading in the light of the circumstances existing at the time it is delivered to a purchaser, or if it shall be necessary, in the opinion of such counsel, at any such time to amend the Registration Statement or to file a new registration statement or amend or supplement the Prospectus in order to comply with the requirements of the 1933 Act or the 1933 Act Regulations, the Company will promptly prepare and file with the Commission, subject to Section 3(b), such amendment, supplement or new registration statement as may be necessary to correct such statement or omission or to comply with such requirements, the Company will use its reasonable best efforts to have such amendment or new registration statement declared effective as soon as practicable (if it is not an automatic shelf registration statement with respect to the Units) and the Company will furnish to the Underwriters such number of copies of such amendment, supplement or new registration statement as the Underwriters may reasonably request. If at any time following issuance of an Issuer Free Writing Prospectus there occurred or occurs an event or development as a result of which such Issuer Free Writing Prospectus conflicted or would conflict with the information contained in the Registration Statement (or any other registration statement relating to the Units) or the Statutory Prospectus or any preliminary prospectus or included or would include an untrue statement of a material fact or omitted or would omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances prevailing at that subsequent time, not misleading, the Company will promptly notify the Representatives and will promptly amend or supplement, at its own expense, such Issuer Free Writing Prospectus to eliminate or correct such conflict, untrue statement or omission.

(f) *Blue Sky Qualifications* . The Company will use its reasonable best efforts, in cooperation with the Underwriters, to qualify the Units and the Guarantees for offering and sale under the applicable securities laws of such states and other jurisdictions as the Representatives may designate and to maintain such qualifications in effect for so long as reasonably required for the distribution of the Units; provided, however, that neither the Company nor the Guarantor shall be obligated to file any general consent to service of process or to qualify as a foreign corporation or as a dealer in securities in any jurisdiction in which it is not so qualified or to subject itself to taxation in respect of doing business in any jurisdiction in which it is not otherwise so subject. The Company will also supply the Underwriters with such information as is reasonably necessary for the determination of the legality of the Units for investment under the laws of such jurisdictions as the Underwriters may request.

(g) *Rule 158* . The Company will timely file such reports pursuant to the 1934 Act as are necessary in order to make generally available to its securityholders as soon as practicable an earnings statement for the purposes of, and to provide to the Underwriters the benefits contemplated by, the last paragraph of Section 11(a) of the 1933 Act.

(h) *Use of Proceeds* . The Company will use the net proceeds received by it from the sale of the Units in the manner specified in the Prospectus under "Use of Proceeds."

(i) *Reporting Requirements* . The Company, during the period when the Prospectus is required to be delivered under the 1933 Act, will file all documents required to be filed with the Commission pursuant to the 1934 Act within the time periods required by the 1934 Act and the 1934 Act Regulations.

(j) *Issuable Common Stock.* The Company will reserve and keep available at all times, free of preemptive rights, the maximum number of shares of Issuable Common Stock issuable under the Purchase Contract Agreement (calculated assuming settlement of the Purchase Contracts at the “Maximum Settlement Rate,” as such term is defined in the General Disclosure Package).

(k) *NYSE.* The Company will use its reasonable best efforts to cause the Units to be listed and admitted and authorized for trading on the New York Stock Exchange within 30 days of the Closing Date, and to provide satisfactory evidence of such actions to the Representatives.

(l) *Issuer Free Writing Prospectuses.* The Company represents and agrees that, unless it obtains the prior consent of the Representatives, and each Underwriter represents and agrees that, unless it obtains the prior consent of the Company and the Representatives, it has not made and will not make any offer relating to the Units that would constitute an “issuer free writing prospectus,” as defined in Rule 433, or that would otherwise constitute a “free writing prospectus,” as defined in Rule 405, required to be filed with the Commission; provided, however, that prior to the preparation of the Final Term Sheet in accordance with Section 3(b), each Underwriter is authorized to use the information with respect to the final terms of the Units in communications conveying information related to the offering to investors. Any such free writing prospectus consented to by the Representatives or by the Company and the Representatives, as the case may be, is hereinafter referred to as a “Permitted Free Writing Prospectus.” The Company represents that it has treated or agrees that it will treat each Permitted Free Writing Prospectus as an “issuer free writing prospectus,” as defined in Rule 433, and has complied and will comply with the requirements of Rule 433 applicable to any Permitted Free Writing Prospectus, including timely filing with the Commission where required, legending and record keeping.

(m) *Restriction on Sale of Securities.* During a period of 90 days from the date of the Prospectus, the Company will not, without the prior written consent of the Representatives, subject to the immediately succeeding sentence, (i) directly or indirectly, offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase or otherwise transfer or dispose of any shares of Common Stock or any securities convertible into or exercisable or exchangeable for Common Stock or file any registration statement under the 1933 Act with respect to any of the foregoing or (ii) enter into any swap or any other agreement or any transaction that transfers, in whole or in part, directly or indirectly, the economic consequences of ownership of the Common Stock, whether any such swap or other agreement or transaction described in clause (i) or (ii) above is to be settled by delivery of Common Stock or such other securities, in cash or otherwise. The foregoing sentence shall not apply (i) to the Units to be sold hereunder, (ii) to shares of Common Stock issued or sold by the Company in connection with the Units or its concurrent Common Stock offering as described in the General Disclosure Package, (iii) to any issuance or transfer of shares of Common Stock (restricted or otherwise), stock options, stock units and performance shares pursuant to any existing employee benefits plans or director compensation plans of the Company that is described in the General Disclosure Package and the Prospectus, or (iv) to any issuance or transfer of shares of Common Stock upon the exercise of stock options outstanding on the date hereof under existing employee benefit plans or director compensation plans of the Company that is described in the General Disclosure Package and the Prospectus.

SECTION 4. Payment of Expenses .

(a) *Expenses* . The Company and the Guarantor jointly and severally agree to pay all expenses incident to the performance of their respective obligations under this Agreement, including (i) the preparation, printing and filing of the Registration Statement (including financial statements and exhibits) as originally filed and of each amendment thereto, (ii) the preparation, printing and delivery to the Underwriters of this Agreement, any Agreement among Underwriters, the Indenture, the Purchase

Contract Agreement, certificates representing the Units, the Purchase Contracts and Amortizing Notes, and such other documents as may reasonably be required in connection with the offering, purchase, sale, issuance or delivery of the Securities, (iii) the preparation, issuance and delivery of the Securities to the Underwriters, (iv) the fees and disbursements of the Company's and the Guarantor's counsel, accountants and other advisors, (v) the qualification of the Securities under securities laws in accordance with the provisions of Section 3(f) hereof, including filing fees and the reasonable fees and disbursements of counsel for the Underwriters in connection therewith and in connection with the preparation of the Blue Sky survey and any supplement thereto, (vi) the printing and delivery to the Underwriters of copies of each preliminary prospectus, any Permitted Free Writing Prospectus and of the Prospectus and any amendments or supplements thereto and any costs associated with electronic delivery of any of the foregoing by the Underwriters to investors, (vii) the preparation, printing and delivery to the Underwriters of copies of the Blue Sky survey and any supplement thereto, (viii) the fees and expenses of the Trustee, Purchase Contract Agent, transfer agent, registrar and depository, including the fees and disbursements of counsel for Trustee, Purchase Contract Agent, transfer agent, registrar and depository in connection with the Indenture, the Purchase Contract Agreement and the Securities, (ix) the costs and expenses incurred by or on behalf of the Company relating to investor presentations on any "road show" undertaken in connection with the marketing of the Securities, (x) any fees payable in connection with the rating of the Units and (xi) all costs and expenses incident to listing the Units and the Issuable Common Stock on the New York Stock Exchange.

(b) *Termination of Agreement* . If this Agreement is terminated by the Representatives in accordance with the provisions of Section 5(n) or Section 9(a)(i) hereof, the Company and the Guarantor jointly and severally agree to reimburse the Underwriters for all of their out-of-pocket expenses, including the reasonable fees and disbursements of counsel for the Underwriters; *provided, however* , if the Underwriters fail to purchase the Securities because of the termination of this Agreement pursuant to Section 10 or the occurrence of any event specified in clauses (ii), (iii)(B), (iv) and (v) of Section 9(a), the Company and the Guarantor shall not be responsible for the expenses of any of the Underwriters as described above. Except as provided in this Section 4 and Sections 6 and 7 hereof, the Underwriters shall pay their own expenses, including the fees and disbursements of their counsel.

SECTION 5. Conditions of Underwriters' Obligations . The obligations of the several Underwriters hereunder are subject to the accuracy of the representations and warranties of the Company and the Guarantor contained in Section 1 hereof as of the date hereof and as of the Closing Time or in certificates of any officer of the Company or any of its subsidiaries delivered pursuant to the provisions hereof as of the respective dates of such certificates, to the performance by the Company and the Guarantor in all material respects of their covenants and other obligations hereunder, and to the following further conditions:

(a) *Effectiveness of Registration Statement; Filing of Prospectus; Payment of Filing Fee* . The Registration Statement has become effective and at the Closing Time no stop order suspending the effectiveness of the Registration Statement shall have been issued under the 1933 Act or proceedings therefor initiated or, to the knowledge of the Company and the Guarantor, threatened by the Commission, and any request on the part of the Commission for additional information shall have been complied with to the reasonable satisfaction of counsel to the Underwriters. A prospectus containing the Rule 430B Information shall have been filed with the Commission in the manner and within the time period required by Rule 424(b) without reliance on Rule 424(b)(8) (or a post-effective amendment providing such information shall have been filed and become effective in accordance with the requirements of Rule 430B). The Final Term Sheet and any other material required to be filed by the Company pursuant to Rule 433(d) under the 1933 Act Regulations shall have been timely filed. The Company shall have paid the required Commission filing fees relating to the Securities within the time period required by Rule 456(1)(i) of the 1933 Act Regulations without regard to the proviso therein and otherwise in accordance

with Rules 456(b) and 457(r) of the 1933 Act Regulations and, if applicable, shall have updated the “Calculation of Registration Fee” table in accordance with Rule 456(b)(1)(ii) either in a post-effective amendment to the Registration Statement or on the cover page of a prospectus filed pursuant to Rule 424(b).

(b) *Opinions of Counsel for the Company* . At the Closing Time, the Representatives shall have received the opinions, dated as of the Closing Time, of (i) Davis Polk & Wardwell LLP, counsel for the Company and the Guarantor, together with signed or reproduced copies of such letter for each of the other Underwriters, to the effect set forth in Exhibit A hereto and (ii) R. Read Hudson, Vice President, Associate General Counsel and Secretary of the Company, together with signed or reproduced copies of such letter for each of the other Underwriters, to the effect set forth in Exhibit B hereto, each in form and substance satisfactory to counsel for the Representatives, together with signed or reproduced copies of such letter for each of the other Underwriters.

(c) *Opinion of Counsel for Underwriters* . At the Closing Time, the Representatives shall have received the favorable opinion, dated as of the Closing Time, of Weil, Gotshal & Manges LLP, counsel for the Underwriters, together with signed or reproduced copies of such letter for each of the other Underwriters, in form and substance satisfactory to the Representatives. In giving such opinion such counsel may rely, as to all matters governed by the laws of jurisdictions other than the law of the State of New York, the federal law of the United States and the General Corporation Law of the State of Delaware, upon the opinions of counsel satisfactory to the Representatives. Such counsel may also state that, insofar as such opinion involves factual matters, they have relied, to the extent they deem proper, upon certificates of officers of the Company and its subsidiaries and certificates of public officials.

(d) *Officers' Certificate* . At the Closing Time, there shall not have been, since the date hereof or since the respective dates as of which information is given in the Prospectus or the General Disclosure Package, any Material Adverse Change, and the Representatives shall have received (A) a certificate of the President or a Vice President of the Company and of the chief financial or chief accounting officer of the Company, dated as of the Closing Time, to the effect that (i) there has been no Material Adverse Change since the date hereof or since the respective dates as of which information is given in the Prospectus or the General Disclosure Package, (ii) the representations and warranties in Section 1(a) hereof are true and correct with the same force and effect as though expressly made at and as of the Closing Time, (iii) the Company has complied in all material respects with all agreements and satisfied all conditions on its part to be performed or satisfied at or prior to the Closing Time, and (iv) no stop order suspending the effectiveness of the Registration Statement has been issued and no proceedings for that purpose have been instituted or are pending or, to their knowledge, threatened by the Commission, and (B) a certificate of an executive officer of the Guarantor, dated as of the Closing Time, to the effect that (i) the representations and warranties in Section 1(a) hereof are true and correct with the same force and effect as though expressly made at and as of the Closing Time, (ii) the Guarantor has complied in all material respects with all agreements and satisfied all conditions on its part to be performed or satisfied at or prior to the Closing Time, and (iii) no stop order suspending the effectiveness of the Registration Statement has been issued and no proceedings for that purpose have been instituted or are pending or, to such officer's knowledge, threatened by the Commission.

(e) *CFO Certificate*. The Company shall have furnished to the Representatives a certificate of the chief financial officer of the Company, dated the Closing Time, in the form of Exhibit C hereto.

(f) *Accountant's Comfort Letter (Company)* . At the time of the execution of this Agreement, the Representatives shall have received from PricewaterhouseCoopers LLP a letter dated such date, in form and substance satisfactory to the Representatives, together with signed or reproduced copies of such letter for each of the other Underwriters, containing statements and information of the type ordinarily included in accountants' “comfort letters” to underwriters with respect to the financial statements and certain financial information contained or incorporated by reference in the Registration Statement and the Prospectus.

(g) *Accountant's Comfort Letter (Hillshire)* . At the time of the execution of this Agreement, the Representatives shall have received from each of PricewaterhouseCoopers LLP and Deloitte & Touche LLP a letter dated such date, in form and substance satisfactory to the Representatives, together with signed or reproduced copies of such letter for each of the other Underwriters, containing statements and information of the type ordinarily included in accountants' "comfort letters" to underwriters with respect to the financial statements and certain financial information contained or incorporated by reference in the Registration Statement and the Prospectus.

(h) *Bring-down Comfort Letter (Company)* . At the Closing Time, the Representatives shall have received from PricewaterhouseCoopers LLP a letter, dated as of the Closing Time, to the effect that they reaffirm the statements made in the letter furnished pursuant to subsection (f) of this Section, except that the specified date referred to shall be a date not more than three business days prior to the Closing Time.

(i) *Bring-down Comfort Letter (Hillshire)* . At the Closing Time, the Representatives shall have received from each of PricewaterhouseCoopers LLP and Deloitte & Touche LLP a letter, dated as of the Closing Time, to the effect that they reaffirm the statements made in the letter furnished pursuant to subsection (g) of this Section, except that the specified date referred to shall be a date not more than three business days prior to the Closing Time.

(j) *Lock up Agreements*. The "lock up" agreements, each substantially in the form of Exhibit D hereto, between you and the persons and entity listed on Schedule D hereto, delivered to you on or before the date hereof, shall be in full force and effect at the Closing Time.

(k) *Maintenance of Rating* . At the Closing Time, and since the date of this Agreement, there shall not have occurred a downgrading in the rating assigned to any of the Company's debt securities by any "nationally recognized statistical organization," as that term is defined by the Commission for purposes of Rule 436(g)(2) under the 1933 Act.

(l) *NYSE*. The Issuable Common Stock shall have been approved for listing on the NYSE, subject to official notice of issuance, and satisfactory evidence of such actions shall have been provided to the Representatives. An application for listing of the Units shall have been submitted to the New York Stock Exchange, and satisfactory evidence of such actions shall have been provided to the Representatives.

(m) *Additional Documents* . At the Closing Time, counsel for the Underwriters shall have been furnished with such documents and opinions as they may reasonably require for the purpose of enabling them to pass upon the issuance and sale of the Units (and the Guarantees) as herein contemplated, or in order to evidence the accuracy of any of the representations or warranties, or the fulfillment of any of the conditions, herein contained; and all proceedings taken by the Company and the Guarantor in connection with the issuance and sale of the Units (and the Guarantees) as herein contemplated shall be reasonably satisfactory in form and substance to the Representatives and counsel for the Underwriters.

(n) *Termination of Agreement* . If any condition specified in this Section shall not have been fulfilled when and as required to be fulfilled, this Agreement may be terminated by the Representatives by written notice to the Company at any time at or prior to the Closing Time, and such termination shall be without liability of any party to any other party except as provided in Section 4 and except that Sections 1, 6, 7 and 8 shall survive any such termination and remain in full force and effect.

SECTION 6. Indemnification.

(a) *Indemnification of Underwriters*. The Company and the Guarantor jointly and severally agree to indemnify and hold harmless each Underwriter, its affiliates, as such term is defined in Rule 501(b) of the 1933 Act Regulations (each, an “Affiliate”), its selling agents and each person, if any, who controls any Underwriter within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act as follows:

(i) against any and all loss, liability, claim, damage and expense whatsoever, as incurred, arising out of any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement (or any amendment thereto), including the Rule 430B Information, or the omission or alleged omission therefrom of a material fact required to be stated therein or necessary to make the statements therein not misleading or arising out of any untrue statement or alleged untrue statement of a material fact contained in any preliminary prospectus, any Issuer Free Writing Prospectus or the Prospectus (or any amendment or supplement thereto), or the omission or alleged omission therefrom of a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(ii) against any and all loss, liability, claim, damage and expense whatsoever, as incurred, to the extent of the aggregate amount paid in settlement of any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or of any claim whatsoever based upon any such untrue statement or omission, or any such alleged untrue statement or omission; provided that (subject to Section 6(d) below) any such settlement is effected with the written consent of the Company; and

(iii) against any and all expenses whatsoever, as incurred (including the fees and disbursements of counsel chosen by the Representatives), reasonably incurred in investigating, preparing or defending against any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever based upon any such untrue statement or omission, or any such alleged untrue statement or omission, to the extent that any such expense is not paid under (i) or (ii) above;

provided, however, that this indemnity agreement shall not apply to any loss, liability, claim, damage or expense to the extent arising out of any untrue statement or omission or alleged untrue statement or omission made in reliance upon and in conformity with written information furnished to the Company by or on behalf of any Underwriter through the Representatives expressly for use in the Registration Statement (or any amendment thereto), including the Rule 430B Information or any preliminary prospectus, any Issuer Free Writing Prospectus or the Prospectus (or any amendment or supplement thereto).

(b) *Indemnification of the Company, the Guarantor and Directors and Officers of the Company and the Guarantor*. Each Underwriter severally agrees to indemnify and hold harmless the Company, the Guarantor and each of their respective directors and officers and each person, if any, who controls the Company or the Guarantor within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act against any and all loss, liability, claim, damage and expense described in the indemnity contained in subsection (a) of this Section, as incurred, but only with respect to untrue statements or omissions, or alleged untrue statements or omissions, made in the Registration Statement (or any amendment thereto), including the Rule 430B Information or any preliminary prospectus, any Issuer Free

Writing Prospectus or the Prospectus (or any amendment or supplement thereto) in reliance upon and in conformity with written information furnished to the Company by or on behalf of such Underwriter through the Representatives expressly for use therein; it being understood and agreed that the only such information consists of the following: the fourteenth paragraph of the section entitled "Underwriting" in the General Disclosure Package and the Prospectus.

(c) *Actions against Parties; Notification* . Each indemnified party shall give notice as promptly as reasonably practicable to each indemnifying party of any action commenced against it in respect of which indemnity may be sought hereunder, but failure to so notify an indemnifying party shall not relieve such indemnifying party from any liability hereunder to the extent it is not materially prejudiced (through the forfeiture of substantive rights and defenses) as a result thereof and in any event shall not relieve it from any liability which it may have otherwise than on account of this indemnity agreement. In the case of parties indemnified pursuant to Section 6(a) above, counsel to the indemnified parties shall be selected by the Representatives, and, in the case of parties indemnified pursuant to Section 6(b) above, counsel to the indemnified parties shall be selected by the Company. An indemnifying party may participate at its own expense in the defense of any such action; provided, however, that counsel to the indemnifying party shall not (except with the consent of the indemnified party) also be counsel to the indemnified party. In no event shall the indemnifying parties be liable for fees and expenses of more than one counsel (in addition to any local counsel) separate from their own counsel for all indemnified parties in connection with any one action or separate but similar or related actions in the same jurisdiction arising out of the same general allegations or circumstances. No indemnifying party shall, without the prior written consent of the indemnified parties, settle or compromise or consent to the entry of any judgment with respect to any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever in respect of which indemnification or contribution could be sought under this Section 6 or Section 7 hereof (whether or not the indemnified parties are actual or potential parties thereto), unless such settlement, compromise or consent (i) includes an unconditional release of each indemnified party from all liability arising out of such litigation, investigation, proceeding or claim and (ii) does not include a statement as to or an admission of fault, culpability or a failure to act by or on behalf of any indemnified party. Subject to Section 6(d) hereof, no indemnified party shall, without the prior written consent of the indemnifying party, settle or compromise or consent to the entry of any judgment with respect to any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever in respect of which such indemnification or contribution would be sought hereunder.

(d) *Settlement without Consent if Failure to Reimburse* . If at any time an indemnified party shall have requested an indemnifying party to reimburse the indemnified party for fees and expenses of counsel, such indemnifying party agrees that it shall be liable for any settlement of the nature contemplated by Section 6(a) (ii) effected without its written consent if (i) such settlement is entered into more than 45 days after receipt by such indemnifying party of the aforesaid request, (ii) such indemnifying party shall have received notice of the terms of such settlement at least 30 days prior to such settlement being entered into and (iii) such indemnifying party shall not have reimbursed such indemnified party in accordance with such request prior to the date of such settlement.

SECTION 7. Contribution . If the indemnification provided for in Section 6 hereof is for any reason unavailable to or insufficient to hold harmless an indemnified party in respect of any losses, liabilities, claims, damages or expenses referred to therein, then each indemnifying party shall contribute to the aggregate amount of such losses, liabilities, claims, damages and expenses incurred by such indemnified party, as incurred, (i) in such proportion as is appropriate to reflect the relative benefits received by the Company and the Guarantor, on the one hand, and the Underwriters, on the other hand, from the offering of the Securities pursuant to this Agreement, or (ii) if the allocation provided by clause (i) is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative

benefits referred to in clause (i) above but also the relative fault of the Company and the Guarantor, on the one hand, and of the Underwriters, on the other hand, in connection with the statements or omissions which resulted in such losses, liabilities, claims, damages or expenses, as well as any other relevant equitable considerations.

The relative benefits received by the Company and the Guarantor, on the one hand, and the Underwriters, on the other hand, in connection with the offering of the Securities pursuant to this Agreement shall be deemed to be in the same respective proportions as the total net proceeds from the offering of the Securities pursuant to this Agreement (before deducting expenses) received by the Company and the total underwriting discount received by the Underwriters, in each case as set forth on the cover of the Prospectus bear to the aggregate initial public offering price of the Units as set forth on the cover of the Prospectus.

The relative fault of the Company and the Guarantor, on the one hand, and the Underwriters, on the other hand, shall be determined by reference to, among other things, whether any such untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact relates to information supplied by the Company or the Guarantor or by the Underwriters and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

Each of the Company, the Guarantor and the Underwriters agree that it would not be just and equitable if contribution pursuant to this Section 7 were determined by pro rata allocation (even if the Underwriters were treated as one entity for such purpose) or by any other method of allocation which does not take account of the equitable considerations referred to above in this Section 7. The aggregate amount of losses, liabilities, claims, damages and expenses incurred by an indemnified party and referred to above in this Section 7 shall be deemed to include any legal or other expenses reasonably incurred by such indemnified party in investigating, preparing or defending against any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever based upon any such untrue or alleged untrue statement or omission or alleged omission.

Notwithstanding the provisions of this Section 7, no Underwriter shall be required to contribute any amount in excess of the amount by which the total price at which the Securities underwritten by it and distributed to the public were offered to the public exceeds the amount of any damages which such Underwriter has otherwise been required to pay by reason of any such untrue or alleged untrue statement or omission or alleged omission.

No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the 1933 Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation.

For purposes of this Section 7, each person, if any, who controls an Underwriter within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act and each Underwriter's Affiliates and selling agents shall have the same rights to contribution as such Underwriter, and each director or officer of the Company or the Guarantor and each person, if any, who controls the Company or the Guarantor within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act shall have the same rights to contribution as the Company or the Guarantor, as appropriate. The Underwriters' respective obligations to contribute pursuant to this Section 7 are several in proportion to the respective principal amount of Securities set forth opposite their respective names in Schedule A hereto and not joint.

SECTION 8. Representations, Warranties and Agreements to Survive. All representations, warranties and agreements contained in this Agreement or in certificates of officers of the Company or any of its subsidiaries submitted pursuant hereto, shall remain operative and in full force and effect regardless of (i) any investigation made by or on behalf of any Underwriter or its Affiliates or selling agents, any person controlling any Underwriter, its officers or directors or any person controlling the Company or the Guarantor, and (ii) delivery of and payment for the Securities.

SECTION 9. Termination of Agreement.

(a) *Termination; General*. The Representatives may terminate this Agreement, by notice to the Company, at any time at or prior to the Closing Time (i) if there has been, since the time of execution of this Agreement or since the respective dates as of which information is given in the Prospectus (exclusive of any supplement thereto) or the General Disclosure Package, a Material Adverse Change, or (ii) if there has occurred any material adverse change in the financial markets in the United States or the international financial markets, any outbreak of hostilities or escalation thereof or other calamity or crisis or any change or development involving a prospective change in national or international political, financial or economic conditions, in each case the effect of which is such as to make it, in the judgment of the Representatives, impracticable or inadvisable to market the Securities or to enforce contracts for the sale of the Securities, or (iii) (A) if trading in any securities of the Company has been suspended or materially limited by the Commission or the New York Stock Exchange, or (B) if trading generally on the NYSE Amex, the New York Stock Exchange or the Nasdaq Stock Market has been suspended or materially limited, or minimum or maximum prices for trading have been fixed, or maximum ranges for prices have been required, by any of said exchanges or by such system or by order of the Commission, the Financial Industry Regulatory Authority or any other governmental authority, or a material disruption has occurred in commercial banking or securities settlement, or (iv) a material disruption has occurred in commercial banking or securities settlement or clearance services in the United States or (v) if a banking moratorium has been declared by either Federal or New York authorities.

(b) *Liabilities*. If this Agreement is terminated pursuant to this Section, such termination shall be without liability of any party to any other party except as provided in Section 4 hereof, and provided further that Sections 1, 6, 7 and 8 shall survive such termination and remain in full force and effect.

SECTION 10. Default by One or More of the Underwriters. If one or more of the Underwriters shall fail at the Closing Time to purchase the Units which it or they are obligated to purchase under this Agreement (the "Defaulted Units"), the Representatives shall have the right, within 24 hours thereafter, to make arrangements for one or more of the non-defaulting Underwriters, or any other underwriters, to purchase all, but not less than all, of the Defaulted Units in such amounts as may be agreed upon and upon the terms herein set forth; if, however, the Representatives shall not have completed such arrangements within such 24-hour period, then:

(a) if the number of Defaulted Units does not exceed 10% of the aggregate principal amount of the Units to be purchased on such date, each of the non-defaulting Underwriters shall be obligated, severally and not jointly, to purchase the full amount thereof in the proportions that their respective underwriting obligations hereunder bear to the underwriting obligations of all non-defaulting Underwriters, or

(b) if the number of Defaulted Units exceeds 10% of the aggregate principal amount of the Units to be purchased on such date, this Agreement shall terminate without liability on the part of any non-defaulting Underwriter.

No action taken pursuant to this Section shall relieve any defaulting Underwriter from liability in respect of its default.

In the event of any such default which does not result in a termination of this Agreement, either the Representatives or the Company shall have the right to postpone the Closing Time for a period not exceeding seven days in order to effect any required changes in the Registration Statement or Prospectus or in any other documents or arrangements. As used herein, the term "Underwriter" includes any person substituted for an Underwriter under this Section 10.

SECTION 11. Tax Disclosure. Notwithstanding any other provision of this Agreement, immediately upon commencement of discussions with respect to the transactions contemplated hereby, the Company (and each employee, representative or other agent of the Company) may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the transactions contemplated by this Agreement and all materials of any kind (including opinions or other tax analyses) that are provided to the Company relating to such tax treatment and tax structure. For purposes of the foregoing, the term "tax treatment" is the purported or claimed federal income tax treatment of the transactions contemplated hereby, and the term "tax structure" includes any fact that may be relevant to understanding the purported or claimed federal income tax treatment of the transactions contemplated hereby.

SECTION 12. Notices. All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given if mailed or transmitted by any standard form of telecommunication. Notices to the Underwriters shall be directed to Morgan Stanley at Morgan Stanley & Co. LLC, 1585 Broadway, 29th Floor, New York, New York 10036, attention of Investment Banking Division, with a copy to the Legal Department, and to J.P. Morgan at J.P. Morgan Securities LLC, 383 Madison Avenue, New York, New York 10179, attention: Equity Syndicate Desk, fax: (212) 622-8358; and notices to the Company and the Guarantor shall be directed to them c/o Tyson Foods, Inc., 2200 Don Tyson Parkway, Springdale, Arkansas 72762-6999, attention of Chief Financial Officer.

In accordance with the requirements of the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)), the Underwriters are required to obtain, verify and record information that identifies their respective clients, including the Company, which information may include the name and address of their respective clients, as well as other information that will allow the Underwriters to properly identify their respective clients.

SECTION 13. No Advisory or Fiduciary Relationship. The Company acknowledges and agrees that (a) the purchase and sale of the Securities pursuant to this Agreement, including the determination of the public offering price of the Securities and any related discounts and commissions, is an arm's-length commercial transaction between the Company and the Guarantor, on the one hand, and the several Underwriters, on the other hand, (b) in connection with the offering contemplated hereby and the process leading to such transaction each Underwriter is and has been acting solely as a principal and is not the agent or fiduciary of the Company, the Guarantor or their stockholders, creditors, employees or any other party, (c) no Underwriter has assumed or will assume an advisory or fiduciary responsibility in favor of the Company or the Guarantor with respect to the offering contemplated hereby or the process leading thereto (irrespective of whether such Underwriter has advised or is currently advising the Company or the Guarantor on other matters) and no Underwriter has any obligation to the Company or the Guarantor with respect to the offering contemplated hereby except the obligations expressly set forth in this Agreement, (d) the Underwriters and their respective affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Company or the Guarantor, and (e) the Underwriters have not provided any legal, accounting, regulatory or tax advice with respect to the offering contemplated hereby and the Company and the Guarantor have consulted their own legal, accounting, regulatory and tax advisors to the extent they have deemed appropriate.

SECTION 14. Integration. This Agreement supersedes all prior agreements and understandings (whether written or oral) between the Company, the Guarantor and the Underwriters, or any of them, with respect to the subject matter hereof.

SECTION 15. Parties. This Agreement shall inure to the benefit of and be binding upon each of the Underwriters, the Company, the Guarantor and their respective successors. Nothing expressed or mentioned in this Agreement is intended or shall be construed to give any person, firm or corporation, other than the Underwriters, the Company, the Guarantor and their respective successors and the controlling persons and officers and directors referred to in Sections 6 and 7 and their heirs and legal representatives, any legal or equitable right, remedy or claim under or in respect of this Agreement or any provision herein contained. This Agreement and all conditions and provisions hereof are intended to be for the sole and exclusive benefit of the Underwriters, the Company, the Guarantor and their respective successors, and said controlling persons and officers and directors and their heirs and legal representatives, and for the benefit of no other person, firm or corporation. No purchaser of Units from any Underwriter shall be deemed to be a successor by reason merely of such purchase.

SECTION 16. GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

SECTION 17. TIME. TIME SHALL BE OF THE ESSENCE OF THIS AGREEMENT. EXCEPT AS OTHERWISE SET FORTH HEREIN, SPECIFIED TIMES OF DAY REFER TO NEW YORK CITY TIME.

SECTION 18. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all such counterparts shall together constitute one and the same Agreement.

SECTION 19. Effect of Headings. The Section headings herein are for convenience only and shall not affect the construction hereof.

[Remainder of page intentionally left blank]

If the foregoing is in accordance with your understanding of our agreement, please sign and return to the Company and the Guarantor a counterpart hereof, whereupon this instrument, along with all counterparts, will become a binding agreement between the Underwriters, the Company and the Guarantor in accordance with its terms.

Very truly yours,

TYSON FOODS, INC.

By /s/ Susan White

Name: Susan White

Title: Vice President and Treasurer

TYSON FRESH MEATS, INC.

By /s/ Susan White

Name: Susan White

Title: Vice President and Treasurer

CONFIRMED AND ACCEPTED,
as of the date first above written:

MORGAN STANLEY & CO. LLC

By /s/ Serkan Savasoglu
Name: Serkan Savasoglu
Title: Managing Director

J.P. MORGAN SECURITIES LLC

By Jason Fournier
Name: Jason Fournier
Title: Managing Director

For themselves and as Representatives of the
other Underwriters named in Schedule A hereto.

SCHEDULE A

<u>Name of Underwriter</u>	<u>Number of the Units to the Purchasers</u>
Morgan Stanley & Co. LLC	12,000,000
J.P. Morgan Securities LLC	8,250,000
RBC Capital Markets, LLC	3,000,000
HSBC Securities (USA) Inc.	1,350,000
Mizuho Securities USA Inc.	1,350,000
Rabo Securities USA, Inc.	1,350,000
U.S. Bancorp Investments, Inc.	1,350,000
Credit Agricole Securities (USA) Inc.	675,000
Mitsubishi UFJ Securities (USA), Inc.	675,000
Total	30,000,000

Sch A-1

SCHEDULE B
Final Term Sheet

Filed pursuant to Rule 433
Dated July 30, 2014
Issuer Free Writing Prospectus supplementing the
Preliminary Prospectus Supplements
dated July 28, 2014 and the
Prospectus dated July 28, 2014
Registration No. 333-197661

Tyson Foods, Inc.

**Concurrent Offerings of
23,810,000 Shares of Class A Common Stock of Tyson Foods, Inc.
(the “Common Stock Offering”)**

and

**30,000,000 4.75% Tangible Equity Units of Tyson Foods, Inc.
(the “Units Offering”)**

*The information in this pricing term sheet relates only to the Common Stock Offering and the Units Offering and should be read together with (i) the preliminary prospectus supplement, dated July 28, 2014, relating to the Common Stock Offering (the “**Common Stock Preliminary Prospectus Supplement**”) and the preliminary prospectus supplement, dated July 28, 2014, relating to the Units Offering (the “**Units Preliminary Prospectus Supplement**”) and, together with the Common Stock Preliminary Prospectus Supplement, the “**Preliminary Prospectus Supplements**”), each as filed with the Securities and Exchange Commission (the “**SEC**”) pursuant to Rule 424(b) under the Securities Act of 1933, as amended, and (ii) the related base prospectus dated July 28, 2014, included in the Registration Statement (File No. 333-197661), in each case, including the documents incorporated by reference therein. Terms used but not defined herein have the meanings assigned to such terms in the applicable Preliminary Prospectus Supplement.*

Issuer:	Tyson Foods, Inc., a Delaware corporation (“ Tyson ”).
Ticker / Exchange for Class A Common Stock:	TSN/New York Stock Exchange (“ NYSE ”).
Pricing Date:	July 30, 2014.
Settlement Date:	August 5, 2014.
<u>Common Stock Offering</u>	
Title of Securities:	Class A common stock, par value \$0.10 per share, of Tyson (“ Class A Common Stock ”).
Number of Shares of Class A Common Stock Offered and Sold:	23,810,000 shares (or 27,381,500 shares if the underwriters of the Common Stock Offering exercise their over-allotment option in full).

Outstanding Class A Common Stock after Common Stock Offering:

305,552,209 shares (or 309,123,709 shares if the underwriters of the Common Stock Offering exercise their over-allotment option in full).

Common Stock Public Offering Price:

\$37.80 per share
Approximately \$900.0 million in aggregate (or approximately \$1,035.0 million if the underwriters of the Common Stock Offering exercise their over-allotment option in full).

Underwriting Discount:

\$1.134 per share
Approximately \$27.0 million in aggregate (or approximately \$31.1 million if the underwriters of the Common Stock Offering exercise their over-allotment option in full)

Estimated Net Proceeds to Tyson from the Common Stock Offering:

The net proceeds from the sale of Class A Common Stock in the Common Stock Offering, after deducting the underwriting discounts and commissions and estimated offering expenses, will be approximately \$873 million (or approximately \$1,004 million if the underwriters of the Common Stock Offering exercise their over-allotment option in full).

Joint Book-Running Managers:

Morgan Stanley & Co. LLC, J.P. Morgan Securities LLC and RBC Capital Markets, LLC.

Co-Managers:

HSBC Securities (USA) Inc., Mizuho Securities USA Inc., Piper Jaffray & Co., Rabo Securities USA, Inc., Credit Agricole Securities (USA) Inc. and Mitsubishi UFJ Securities (USA), Inc.

Stabilization Transactions:

Prior to purchasing the shares of Class A Common Stock being offered pursuant to the Common Stock Preliminary Prospectus Supplement, on July 30, 2014, one of the underwriters purchased, on behalf of the syndicate, 120,442 shares of Class A Common Stock at an average price of \$38.25 per share in stabilizing transactions.

Units Offering

Title of Securities:	4.75% Tangible Equity Units (the “ Units ”).
Number of Units Offered and Sold:	30,000,000 Units.
Stated Amount:	Each Unit has a stated amount of \$50.
Composition of Units:	Each Unit is comprised of two parts: <ul style="list-style-type: none">• a prepaid stock purchase contract issued by Tyson (a “ Purchase Contract ”); and• a senior amortizing note issued by Tyson (an “ Amortizing Note ”), which has an initial principal amount of \$6.82854 per Amortizing Note, bears interest at a rate of 1.50% per annum and has a final installment payment date of July 15, 2017.
Fair Market Value of the Units:	Tyson has determined that the fair market value of each Amortizing Note is \$6.82854 and the fair market value of each Purchase Contract is \$43.17146.
Reference Price:	\$37.80, which is the Common Stock Public Offering Price in the concurrent Common Stock Offering described above (subject to adjustment as described in the Units Preliminary Prospectus Supplement).
Threshold Appreciation Price:	$\$50$ divided by the Minimum Settlement Rate (rounded to the nearest \$0.0001), which is \$47.25 and which represents an approximately 25.0% appreciation over the Reference Price (subject to adjustment as described in the Units Preliminary Prospectus Supplement).
Minimum Settlement Rate:	1.0582 shares of Class A Common Stock per Purchase Contract (subject to adjustment as described in the Units Preliminary Prospectus Supplement).
Maximum Settlement Rate:	1.3228 shares of Class A Common Stock per Purchase Contract (subject to adjustment as described in the Units Preliminary Prospectus Supplement).

Settlement Rate:

The following table illustrates the settlement rate per Purchase Contract and the value of Class A Common Stock issuable upon settlement on the Mandatory Settlement Date, determined using the “applicable market value” (as defined in the Units Preliminary Prospectus Supplement) shown, subject to adjustment as described in the Units Preliminary Prospectus Supplement:

Applicable Market Value of Class A Common Stock	Settlement Rate	Value of Class A Common Stock Delivered (Based on the Applicable Market Value Thereof)
Less than or equal to the Reference Price	The Maximum Settlement Rate	Less than or equal to \$50
Greater than the Reference Price but less than the Threshold Appreciation Price	A number of shares of Class A Common Stock equal to \$50, <i>divided by</i> the applicable market value	\$50
Equal to or greater than the Threshold Appreciation Price	The Minimum Settlement Rate	Greater than or equal to \$50

Early Settlement Upon a Fundamental Change:

The following table sets forth the “fundamental change early settlement rate” (as defined in the Units Preliminary Prospectus Supplement) per Purchase Contract for each stock price and effective date set forth below:

Stock Price	Effective Date			
	August 5, 2014	July 15, 2015	July 15, 2016	July 15, 2017
\$10.00	1.1949	1.2377	1.2805	1.3228
\$15.00	1.2300	1.2628	1.2935	1.3228
\$20.00	1.2338	1.2678	1.2990	1.3228
\$25.00	1.2165	1.2534	1.2946	1.3228
\$30.00	1.1880	1.2231	1.2711	1.3228
\$35.00	1.1567	1.1855	1.2278	1.3228
\$37.80	1.1401	1.1645	1.1992	1.3228
\$40.00	1.1281	1.1490	1.1767	1.2500
\$42.50	1.1155	1.1327	1.1526	1.1765
\$45.00	1.1044	1.1181	1.1311	1.1111
\$47.25	1.0955	1.1066	1.1145	1.0582
\$49.00	1.0893	1.0987	1.1034	1.0582
\$52.00	1.0800	1.0871	1.0879	1.0582
\$55.00	1.0724	1.0777	1.0764	1.0582
\$60.00	1.0626	1.0662	1.0641	1.0582
\$70.00	1.0582	1.0582	1.0582	1.0582
\$80.00	1.0582	1.0582	1.0582	1.0582
\$100.00	1.0582	1.0582	1.0582	1.0582
\$125.00	1.0582	1.0582	1.0582	1.0582
\$150.00	1.0582	1.0582	1.0582	1.0582

The exact stock prices and effective dates may not be set forth in the table above, in which case:

- if the applicable stock price is between two stock prices in the table or the applicable effective date is between two effective dates in the table, the fundamental change early settlement rate will be determined by straight line interpolation between the fundamental change early settlement rates set forth for the higher and lower stock prices and the earlier and later effective dates, as applicable, based on a 365-day year;
- if the applicable stock price is greater than \$150.00 per share (subject to adjustment in the same manner and at the same time as the stock prices set forth in the column headings of the table above), then the fundamental change early settlement rate will be the Minimum Settlement Rate; or
- if the applicable stock price is less than \$10.00 per share (subject to adjustment in the same manner and at the same time as the stock prices set forth in the column headings of the table above, the “ **Minimum Stock Price** ”), the fundamental change early settlement

rate will be determined as if the stock price equaled the Minimum Stock Price, and using straight line interpolation, as described in the first bullet of this paragraph, if the effective date is between two effective dates in the table.

The maximum number of shares of Class A Common Stock deliverable under a Purchase Contract is 1.3228, subject to adjustment in the same manner and at the same time as the fixed settlement rates as set forth under “Description of the Purchase Contracts—Adjustments to the Fixed Settlement Rates” in the Units Preliminary Prospectus Supplement.

Early Mandatory Settlement at Tyson’s Election:

Tyson has the right to settle the purchase contracts on or after April 1, 2015, in whole but not in part, on a date fixed by Tyson as described in the Units Preliminary Prospectus Supplement at the “early mandatory settlement rate,” which will be the Maximum Settlement Rate on the “notice date” (as defined in the Units Preliminary Prospectus Supplement), unless the closing price of our Class A common stock for the 20 or more trading days in a period of 30 consecutive trading days ending on the trading day immediately preceding the notice date exceeds 140% of the Threshold Appreciation Price in effect on such trading day, in which case the “early mandatory settlement rate” will be the Minimum Settlement Rate on the notice date.

Merger Termination Redemption:

The following table sets forth the “merger redemption rate” (as defined in the Units Preliminary Prospectus Supplement) per Purchase Contract for each merger termination stock price set forth below:

<u>Merger Termination Stock Price</u>	<u>Merger Redemption Rate</u>
\$37.80, which is equal to the Reference Price	1.1689 (“ Maximum Redemption Rate ”)
\$40.00	1.1426
\$42.50	1.1276
\$45.00	1.1143
\$47.25	1.1037
\$49.00	1.0964
\$52.00	1.0855
\$55.00	1.0767
\$60.00	1.0657
\$70.00	1.0582 (“ Minimum Redemption Rate ”)

The exact merger termination stock prices may not be set forth in the table above, in which case:

- if the applicable merger termination stock price is between two merger termination stock prices in the table, the merger redemption rate will be determined by straight line interpolation between the merger redemption rates set forth for the higher and lower merger termination stock prices;
- if the merger termination stock price is greater than \$70.00 per share (subject to adjustment at the same time and in the same manner as the merger termination stock prices set forth in the table above), then the merger redemption rate will be the Minimum Redemption Rate; or
- if the merger termination stock price is less than \$37.80 per share (subject to adjustment at the same time and in the same manner as the merger termination stock prices set forth in the table above), then the merger redemption rate will be the Maximum Redemption Rate.

Initial Principal Amount of Amortizing Notes:

\$6.82854 per Amortizing Note
 \$204,856,200 in aggregate.

Installment Payment Dates:

Each January 15, April 15, July 15 and October 15, commencing on October 15, 2014, with a final installment payment date of July 15, 2017.

Payments on the Amortizing Notes:

The Amortizing Notes will pay holders equal quarterly cash installments of \$0.59375 per Amortizing Note (except for the October 15, 2014 installment payment, which will be \$0.46181 per Amortizing Note), which cash payment in the aggregate will be equivalent to 4.75% per year with respect to each \$50 Stated Amount of Units. Each installment will constitute a payment of interest (at a rate of 1.50% per annum) and a partial repayment of principal on the Amortizing Note, allocated as set forth in the following amortization schedule:

<u>Scheduled Installment Payment Date</u>	<u>Amount of</u>	<u>Amount of</u>
	<u>Principal</u>	<u>Interest</u>
October 15, 2014	\$0.44189	\$0.01992
January 15, 2015	\$0.56980	\$0.02395
April 15, 2015	\$0.57194	\$0.02181
July 15, 2015	\$0.57408	\$0.01967
October 15, 2015	\$0.57623	\$0.01752
January 15, 2016	\$0.57840	\$0.01535
April 15, 2016	\$0.58056	\$0.01319
July 15, 2016	\$0.58274	\$0.01101
October 15, 2016	\$0.58493	\$0.00882
January 15, 2017	\$0.58712	\$0.00663
April 15, 2017	\$0.58932	\$0.00443
July 15, 2017	\$0.59153	\$0.00222

Repurchase of Amortizing Notes at the option of the holder:

If Tyson elects to settle the Purchase Contracts early or in the event of a Merger Termination Redemption, holders of Amortizing Notes (whether as holders of Units or separate Amortizing Notes) will have the right to require Tyson to repurchase some or all of their Amortizing Notes for cash at a repurchase price per Amortizing Note equal to the

	principal amount of such Amortizing Note as of the repurchase date, plus accrued and unpaid interest on such principal amount from, and including, the immediately preceding Installment Payment Date to, but not including, the repurchase date, calculated at a rate of 1.50% per annum.
Units Public Offering Price:	\$50 per Unit \$1,500.0 million in aggregate.
Underwriting Discount:	\$1.50 per Unit \$45.0 million in aggregate.
Estimated Net Proceeds to Tyson from the Units Offering:	The net proceeds from the sale of Units in the Units Offering, after deducting the underwriting discounts and commissions and estimated offering expenses, will be approximately \$1,454 million.
Joint Book-Running Managers:	Morgan Stanley & Co. LLC, J.P. Morgan Securities LLC and RBC Capital Markets, LLC.
Co-Managers:	HSBC Securities (USA) Inc., Mizuho Securities USA Inc., Rabo Securities USA, Inc., U.S. Bancorp Investments, Inc., Credit Agricole Securities (USA) Inc., Mitsubishi UFJ Securities (USA), Inc.
Listing:	Tyson has applied to list the Units on the NYSE under the symbol "TSNU." If approved for listing, Tyson expects trading on the NYSE to begin within 30 calendar days after the Units are first issued.
CUSIP for the Units:	902494 AU7
ISIN for the Units:	US902494AU79
CUSIP for the Purchase Contracts:	902494 111
ISIN for the Purchase Contracts:	US9024941117
CUSIP for the Amortizing Notes:	902494 AV5
ISIN for the Amortizing Notes:	US902494AV52

Tyson has filed a registration statement (including a prospectus and the related Preliminary Prospectus Supplements) with the Securities and Exchange Commission (the “SEC”) for the Common Stock Offering and the Units Offering. Before you invest, you should read the prospectus in that registration statement, the applicable Preliminary Prospectus Supplements and other documents Tyson has filed with the SEC for more complete information about Tyson and the Common Stock Offering and the Units Offering. You may get these documents for free by visiting EDGAR on the SEC Web site at www.sec.gov. Alternatively, Tyson, any underwriter or any dealer participating in the offering will arrange to send you the prospectus if you request it by calling Morgan Stanley & Co. LLC toll-free at 1-866-718-1649 or J.P. Morgan Securities LLC collect at 1-212-834-4533.

This communication should be read in conjunction with the Preliminary Prospectus Supplements and the accompanying prospectus. The information in this communication supersedes the information in the relevant Preliminary Prospectus Supplement and the accompanying prospectus to the extent inconsistent with the information in such Preliminary Prospectus Supplement and the accompanying prospectus.

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SCHEDULE C

GENERAL USE FREE WRITING PROSPECTUS

1. Final Term Sheet, a copy of which is attached in Schedule B.

Sch C-1

SCHEDULE D

LIST OF PERSONS AND ENTITY SUBJECT TO LOCK-UP

John Tyson
Kathleen M. Bader
Gaurdie E. Banister Jr.
Jim Kever
Kevin M. McNamara
Brad T. Sauer
Robert C. Thurber
Barbara A. Tyson
Albert C. Zapanta
Curt Calaway
Hal Carper
Ken Kimbro
Donnie King
Dennis Leatherby
James V. Lochner
Donnie Smith
Steve Stouffer
David L. Van Bebber
Noel White
Tyson Limited Partnership
Sara Lilygren

Sch D-1

SCHEDULE E

<u>Name of Management Investor</u>	<u>Number of the Units to be Purchased</u>
Kathleen Bader	250,000
Gaurdie Banister	100,000
Kevin McNamara	250,000
Dennis Leatherby	250,000
Noel White	250,000
Sara Lilygren	70,000
Donnie Smith	250,000
Barbara Tyson	1,500,000
Tyson Limited Partnership	35,000,000
Total	37,920,000

Sch E-1

ANNEX A
GENERAL DISCLOSURE PACKAGE

1. The Preliminary Prospectus; and
2. The Final Term Sheet.

For purposes of determining the “General Disclosure Package,” the information contained in the foregoing shall be considered together.

Annex A-1

FORM OF OPINION OF DAVIS POLK & WARDWELL LLP
TO BE DELIVERED PURSUANT TO
SECTION 5(b)(i)

[See attached.]

FORM OF OPINION OF COMPANY COUNSEL
TO BE DELIVERED PURSUANT TO
SECTION 5(b)(ii)

[See attached.]

B-1

FORM OF CHIEF FINANCIAL OFFICER CERTIFICATE
TO BE DELIVERED PURSUANT TO
SECTION 5(e)

[See attached.]

[FORM OF LOCK-UP LETTER]

_____, 2014

MORGAN STANLEY & CO. LLC
1585 Broadway
New York, New York 10036

J.P. MORGAN SECURITIES LLC
383 Madison Avenue
New York, New York 10179

Ladies and Gentlemen:

The undersigned, a stockholder, an officer and/or a director of Tyson Foods, Inc., a Delaware corporation (the "Company"), understands that Morgan Stanley & Co. LLC ("Morgan Stanley") and J.P. Morgan Securities LLC ("J.P. Morgan," and together with Morgan Stanley, the "Representatives") propose to enter into an Underwriting Agreement (the "Common Stock Underwriting Agreement") with the Company providing for the public offering of shares of the Company's Class A common stock, par value \$0.10 per share (the "Common Stock," and such offering, the "Common Stock Offering"), and that the Representatives propose to enter into an Underwriting Agreement (the "Units Underwriting Agreement") with the Company providing for the offering of the Company's tangible equity units, which under certain circumstances will convert into shares of the Common Stock (the "Underlying Securities," and such offering, the "Units Offering"). The Common Stock Underwriting Agreement and the Units Underwriting Agreement are collectively referred to herein as the "Underwriting Agreements," and the Common Stock Offering and the Units Offering are collectively referred to herein as the "Offerings."

In recognition of the benefit that the Offerings will confer upon the undersigned as a stockholder and/or an officer and/or director of the Company, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned agrees with each underwriter to be named in each Underwriting Agreement that, during a period of 60 days from the date of the applicable Underwriting Agreement, the undersigned will not, without the prior written consent of the Representatives, directly or indirectly, (i) offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant for the sale of, or otherwise dispose of or transfer any shares of the Company's Common Stock beneficially owned (as such term is used in Rule 13d-3 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), or any securities convertible into or exchangeable or exercisable for Common Stock, whether now owned or hereafter acquired by the undersigned or with respect to which the undersigned has or hereafter acquires the power of disposition (collectively, the "Lock-Up Securities"), or file, or cause to be filed, any registration statement under the Securities Act of 1933, as amended, with respect to any of the foregoing or (ii) enter into any swap or any other agreement or any transaction that transfers, in whole or in part, directly or indirectly, the economic consequences of ownership of the Lock-Up Securities, whether any such swap or other agreement or transaction is to be settled by delivery of Common Stock or other securities, in cash or otherwise; provided that the foregoing shall not prohibit the undersigned's pledge of Lock-Up Securities as security for a loan or line of credit to the extent described under "Security Ownership of Management" in the Company's Definitive Proxy Statement on Schedule 14A filed on December 20, 2013.

Notwithstanding the foregoing, nothing contained in this lock-up agreement shall prohibit the undersigned from effecting (1) any acquisition of shares of Common Stock, restricted or otherwise, stock options, stock units and performance shares from the Company pursuant to any existing employee benefit plans or director compensation plans of the Company that is described in the General Disclosure Package and the Prospectus, provided that in the case of this clause (1), (i) such shares of Common Stock shall be subject to the provisions of this lock-up agreement and (ii) no filing under Section 16(a) of the Exchange Act, reporting a reduction in beneficial ownership, shall be required or shall be voluntarily made, (2) any acquisition of shares of Common Stock issued by the Company by the undersigned upon the exercise of stock options outstanding on the date hereof or the vesting or conversion of restricted stock, stock units and performance shares outstanding on the date hereof (and any corresponding transfers of Common Stock to the Company, the proceeds of which will be used to cover the tax liability resulting from any such vesting) under existing employee benefit plans or director compensation plans of the Company that is described in the General Disclosure Package and the Prospectus, provided that in the case of this clause (2), (i) such shares of Common Stock shall be subject to the provisions of this lock-up agreement and (ii) no filing under Section 16(a) of the Exchange Act, reporting a reduction in beneficial ownership, shall be required or shall be voluntarily made, (3) the establishment of a trading plan pursuant to Rule 10b5-1 under the Exchange Act, for the transfer of shares of Common Stock, provided that in the case of this clause (3), (i) such plan does not provide for the transfer of Common Stock during the lock-up period and (ii) to the extent a public announcement or filing under the Exchange Act, if any, is required of or voluntarily made by or on behalf of the undersigned or the Company regarding the establishment of such plan, such announcement or filing shall include a statement to the effect that no transfer of Common Stock may be made under such plan during the lock-up period, and (4) subject to the conditions in clauses (i), (ii) and (iii) below, a transfer of shares of Common Stock or options to purchase shares of Common Stock without the prior written consent of the Representatives, provided that, in the case of this clause (4), (A) each Representative receives a signed lock-up agreement for the balance of the lock-up period from each donee, trustee, distributee, or transferee, as the case may be, (B) such transfers are not required to be reported in any public report or filing with the Securities and Exchange Commission, or otherwise and (C) the undersigned does not otherwise voluntarily effect any public filing or report regarding such transfers:

(i) as a bona fide gift or gifts; or

(ii) to any trust, partnership or limited liability company the beneficiaries of which are exclusively the undersigned or a member of the immediate family of the undersigned, including grandchildren; or

(iii) which occurs by operation of law, such as the rules of intestate succession.

The undersigned also agrees and consents to the entry of stop transfer instructions with the Company's transfer agent and registrar against the transfer of the Lock-Up Securities except in compliance with the foregoing restrictions.

The undersigned understands that the Company and the Underwriters are relying upon this agreement in proceeding toward consummation of the Offerings. The undersigned further understands that this agreement is irrevocable and shall be binding upon the undersigned's heirs, legal representatives, successors and assigns.

Whether or not the Offerings actually occur depends on a number of factors, including market conditions. Any Offering will only be made pursuant to an Underwriting Agreement, the terms of which are subject to negotiation between the Company and the Underwriters.

Very truly yours,

(Name)

(Address)

PURCHASE CONTRACT AGREEMENT

Dated as of August 5, 2014

between

TYSON FOODS, INC.

and

**THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.,
as Purchase Contract Agent,
as Attorney-in-Fact for the Holders from time to time as provided herein
and as Trustee under the Indenture referred to herein**

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PURCHASE CONTRACT AGREEMENT, dated as of August 5, 2014 between TYSON FOODS, INC., a Delaware corporation (the “**Company**”) and The Bank of New York Mellon Trust Company, N.A., a national banking association acting as purchase contract agent and attorney-in-fact for the Holders of Purchase Contracts (as defined herein) from time to time (the “**Purchase Contract Agent**”) and as trustee under the Indenture (as defined herein).

RECITALS OF THE COMPANY

The Company has duly authorized the execution and delivery of this Agreement and the Units and Purchase Contracts issuable hereunder.

All things necessary to make the Units and the Purchase Contracts, when such are executed by the Company, and authenticated on behalf of the Holders and delivered by the Purchase Contract Agent, as provided in this Agreement, the valid obligations of the Company and to constitute this Agreement a valid agreement of the Company, in accordance with its terms, have been done. For and in consideration of the premises and the purchase of the Units (including the constituent parts thereof) by the Holders thereof, it is mutually agreed as follows:

ARTICLE I DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

Section 1.01. Definitions. For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) the terms defined in this Article have the meanings assigned to them in this Article and include the plural as well as the singular, and nouns and pronouns of the masculine gender include the feminine and neuter genders;

(b) all accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles in the United States;

(c) the words “herein,” “hereof” and “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section, Exhibit or other subdivision; and

(d) the following terms have the meanings given to them in this Section 1.01(d):

“**Acceleration Date**” has the meaning set forth in Section 4.10.

“**Affiliate**” means, when used with reference to a specified Person, any Person directly or indirectly controlling, or controlled by or under direct or indirect common control with the Person specified.

“**Agreement**” means this instrument as originally executed or as it may from time to time be supplemented or amended by one or more agreements supplemental hereto entered into pursuant to the applicable provisions hereof.

“**Applicable Market Value**” (i) with respect to Class A Common Stock, means the average of the Closing Prices of the Class A Common Stock on each of the 20 consecutive Trading Days beginning on, and including, the 23rd Scheduled Trading Day immediately preceding the Scheduled Mandatory Settlement Date, subject to adjustment as provided in Article 5 and (ii) with respect to any Exchange Property, has the meaning set forth in Section 5.02(a).

“ **Applicants** ” has the meaning set forth in Section 8.12(b).

“ **Bankruptcy Event** ” means the occurrence of one or more of the following events:

(a) a decree or order by a court having jurisdiction in the premises shall have been entered adjudging the Company a bankrupt or insolvent, or approving as properly filed a petition seeking reorganization of the Company under any Bankruptcy Law and if such decree or order shall have been entered more than 60 days prior to the last Trading Day of the 20 consecutive Trading Day period during which the Applicable Market Value is determined, such decree or order shall have continued undischarged and unstayed for a period of 60 days;

(b) a decree or order by a court having jurisdiction in the premises for the appointment of a receiver or liquidator or trustee or assignee (or other similar official) in bankruptcy or insolvency of the Company or of all or substantially all of its property, or for the winding up or liquidation of its affairs, shall have been entered and if such decree or order shall have been entered more than 60 days prior to the last Trading Day of the 20 consecutive Trading Day period during which the Applicable Market Value is determined, such decree or order shall have continued undischarged and unstayed for a period of 60 days; or

(c) the Company shall institute proceedings to be adjudicated a voluntary bankrupt, or shall consent to the filing of a bankruptcy proceeding against it, or shall file a petition or answer or consent seeking reorganization under any Bankruptcy Law, or shall consent to the filing of any such petition, or shall consent to the appointment of a receiver or liquidator or trustee or assignee (or other similar official) in bankruptcy or insolvency of it or of its property, or shall make an assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as they become due.

“ **Bankruptcy Law** ” means title 11 of the United States Code, as amended, or any similar federal or state law for the relief of debtors.

“ **Beneficial Holder** ” means, with respect to a Book-Entry Interest, a Person who is the beneficial owner of such Book-Entry Interest as reflected on the books of the Depository or on the books of a Person maintaining an account with the Depository (directly as a Depository Participant or as an indirect participant, in each case in accordance with the rules of the Depository).

“ **Board of Directors** ” means the board of directors of the Company or any duly authorized committee of that board or any director or directors and/or, with respect to the Notes, any officer or officers to whom that board or committee shall have duly delegated its authority.

“ **Board Resolution** ” means (a) one or more resolutions, certified by the secretary or an assistant secretary of the Company to have been duly adopted or consented to by the Board of Directors and to be in full force and effect, or (b), with respect to the Notes, a certificate signed by the director or directors and/or officer or officers to whom the Board of Directors or any duly authorized committee of that Board shall have duly delegated its authority, in each case delivered to the Purchase Contract Agent.

“ **Book-Entry Interest** ” means a beneficial interest in a Global Security, registered in the name of a Depository or a nominee thereof, ownership and transfers of which shall be maintained and made through book entries by such Depository as described in Section 3.06.

“ **Business Day** ” means any day other than a Saturday, Sunday or any day on which banking institutions in New York, New York are authorized or obligated by applicable law or executive order to close or be closed.

“ **Capital Stock** ” means, with respect to any Person, any and all shares, interests, participations or other equivalents (however designated) of or in such Person’s capital stock or other equity interests, and options, rights or warrants to purchase such capital stock or other equity interests, whether now outstanding or issued after the Issue Date.

“ **Certificate of Incorporation** ” means the Restated Certificate of Incorporation of the Company as in effect on the Issue Date.

“ **Class A Common Stock** ” means the Class A common stock, par value \$0.10 per share, of the Company as it existed on the date of this Agreement, subject to Section 5.02.

“ **Clearing Agency** ” means an organization registered as a “Clearing Agency” pursuant to Section 17A of the Exchange Act.

“ **close of business** ” means 5:00 p.m. (New York City time).

“ **Closing Price** ” with respect to any Exchange Property, has the meaning set forth in Section 5.02; and with respect to a share of the Class A Common Stock on any given date, means:

(a) the reported closing price on that date or, if no closing price is reported, the last reported sale price of shares of Class A Common Stock on the NYSE on that date;

(b) if the Class A Common Stock is not traded on the NYSE, the closing price on that date as reported in composite transactions for the principal U.S. national or regional securities exchange on which the Class A Common Stock is so traded or, if no closing price is reported, the last reported sale price of the Class A Common Stock on the principal U.S. national or regional securities exchange on which the Class A Common Stock is so traded;

(c) if the Class A Common Stock is not traded on a U.S. national or regional securities exchange, the last quoted bid price on that date for the Class A Common Stock in the over-the-counter market as reported by OTC Markets Group Inc. or a similar organization; or

(d) if the Class A Common Stock is not so quoted by OTC Markets Group Inc. or a similar organization, the market value of the Class A Common Stock on that date as determined by the Board of Directors.

All references herein to the closing price of Class A Common Stock and the last reported sale price of Class A Common Stock on the NYSE shall be such closing price and such last reported sale price as reflected on the website of the NYSE (www.nyse.com) and as reported by Bloomberg Professional Service; *provided* that, in the event that there is a discrepancy between the closing price and the last reported sale price as reflected on the website of the NYSE and as reported by Bloomberg Professional Service, the closing price and the last reported sale price on the website of the NYSE shall govern.

“ **Code** ” means the Internal Revenue Code of 1986 (title 26 of the United States Code), as amended from time to time.

“ **Common Equity** ” of any Person means Capital Stock of such Person that is generally entitled (a) to vote in the election of directors of such Person or (b) if such Person is not a corporation, to vote or otherwise participate in the selection of the governing body, partners, managers or others that will control the management or policies of such Person.

“ **Company** ” means the Person named as the “Company” in the first paragraph of this Agreement until a successor shall have become such pursuant to Article 10, and thereafter “Company” shall mean such successor.

“ **Component Note** ” means a Note, in global form and attached to a Global Unit, that (a) shall evidence the number of Notes specified therein that are components of the Units evidenced by such Global Unit, (b) shall be registered on the security register for the Notes in the name of the Purchase Contract Agent, as attorney-in-fact of holder(s) of the Units of which such Notes form a part, and (c) shall be held by the Purchase Contract Agent as attorney-in-fact of such holder(s), together with such Global Unit, as custodian of such Global Unit for the Depository.

“ **Component Purchase Contract** ” means a Purchase Contract, in global form and attached to a Global Unit, that (a) shall evidence the number of Purchase Contracts specified therein that are components of the Units evidenced by such Global Unit, (b) shall be registered on the Security Register in the name of the Purchase Contract Agent, as attorney-in-fact of holder(s) of the Units of which such Purchase Contract forms a part, and (c) shall be held by the Purchase Contract Agent as attorney-in-fact of such holder(s), together with such Global Unit, as custodian of such Global Unit for the Depository.

“ **control** ” when used with respect to any Person, means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms “ **controlling** ” and “ **controlled** ” have meanings correlative to the foregoing.

“ **Corporate Trust Office** ” means the principal corporate trust office of the Purchase Contract Agent at which, at any particular time, its corporate trust business shall be principally administered, which office at the date hereof is located at 601 Travis Street, 16th Floor, Houston, Texas 77002.

“ **Current Market Price** ” per share of Class A Common Stock on any date means:

(a) for purposes of Section 5.01(a)(ii), the average of the Closing Prices of the Class A Common Stock over the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the date of announcement of the issuance requiring such computation;

(b) for purposes of Section 5.01(a)(iv) (in the event of an adjustment not relating to a Spin-Off) and Section 5.01(a)(v), the average of the Closing Prices of the Class A Common Stock over the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the earlier of the Ex-Date and the Record Date for the issuance or distribution requiring such computation;

(c) for purposes of Section 5.01(a)(iv) (in the event of an adjustment relating to a Spin-Off only), the average of the Closing Prices of the Class A Common Stock over the 10 consecutive Trading Day period commencing on, and including, the effective date of such Spin-Off; and

(d) for purposes of adjustments pursuant to Section 5.01(a)(vi), the average of the Closing Prices of the Class A Common Stock over the 10 consecutive Trading Day period commencing on, and including, the Trading Day immediately following the Tender Offer Expiration Date for the relevant tender offer or exchange offer.

“ **Custodian** ” means any receiver, trustee, assignee, liquidator or similar official under any Bankruptcy Law.

“ **default** ” means any failure to comply with terms of this Agreement or any covenant contained herein.

“ **Definitive Equity-Linked Security** ” means an Equity-Linked Security in definitive form.

“ **Definitive Security** ” means any Security in definitive form.

“ **Depository** ” means a Clearing Agency that is acting as a depository for the Equity-Linked Securities and in whose name, or in the name of a nominee of that organization, shall be registered one or more Global Securities and which shall undertake to effect book-entry transfers of the Equity-Linked Securities as contemplated by Section 3.06, Section 3.07, Section 3.08 and Section 3.09.

“ **Depository Participant** ” means a broker, dealer, bank, other financial institution or other Person for whom from time to time the Depository effects book-entry transfers of securities deposited with the Depository.

“ **Determination Date** ” means each of (a) in the case of (x) a settlement of Purchase Contracts on the Mandatory Settlement Date or (y) a Merger Termination Redemption if the Merger Termination Stock Price is greater than the Reference Price and the Company elected to pay cash in lieu of a portion, but not all, of any shares of Class A Common Stock that would otherwise be included in the Redemption Amount, the last Trading Day of the 20 consecutive Trading Day period during which the Applicable Market Value or Redemption Market Value, as the case may be, is determined, (b) any Early Settlement Date, (c) any Early Mandatory Settlement Notice Date, (d) any Fundamental Change Early Settlement Date, (e) the date of any Merger Redemption Notice, if the Company elected (or is deemed to have elected) to settle the Redemption Amount solely by delivering shares of Class A Common Stock, and (f) the day immediately preceding any Acceleration Date.

“ **Dividend Threshold Amount** ” has the meaning set forth in Section 5.01(a)(v).

“ **DTC** ” means The Depository Trust Company.

“ **DWAC System** ” has the meaning set forth in Section 2.03(a).

“ **Early Mandatory Settlement Date** ” has the meaning set forth in Section 4.08(a).

“ **Early Mandatory Settlement Notice** ” has the meaning set forth in Section 4.08(b).

“ **Early Mandatory Settlement Notice Date** ” has the meaning set forth in Section 4.08(b)(ii).

“**Early Mandatory Settlement Rate**” shall be the Maximum Settlement Rate on the Early Mandatory Settlement Notice Date, unless the Closing Price of the Class A Common Stock for the 20 or more Trading Days in a period of 30 consecutive Trading Days ending on the Trading Day immediately preceding the Early Mandatory Settlement Notice Date exceeds 140% of the Threshold Appreciation Price in effect on each such Trading Day, in which case the “Early Mandatory Settlement Rate” shall be the Minimum Settlement Rate on the Early Mandatory Settlement Notice Date.

“ **Early Mandatory Settlement Right** ” has the meaning set forth in Section 4.08(a).

“ **Early Settlement** ” means, in respect of any Purchase Contract, that the Holder of such Purchase Contract has elected to settle such Purchase Contract early pursuant to Section 4.06 or Section 4.07, as the case may be.

“ **Early Settlement Right** ” has the meaning set forth in Section 4.06(a).

“ **Early Settlement Date** ” has the meaning set forth in Section 4.06(c).

“ **Early Settlement Notice** ” has the meaning set forth in Section 4.06(b)(i).

“ **Early Settlement Rate** ” means, for any Purchase Contract in respect of which Early Settlement is applicable, the Minimum Settlement Rate on the Early Settlement Date, unless the Holder of such Purchase contract has elected to settle such Purchase Contract early in connection with a Fundamental Change pursuant to Section 4.07, in which case the “ **Early Settlement Rate** ” for such Purchase Contract means the Fundamental Change Early Settlement Rate.

“ **Effective Date** ” has the meaning set forth in Section 4.07(d).

“ **Equity-Linked Security** ” means a Unit or a Purchase Contract, as applicable.

“ **Exchange Act** ” means the Securities Exchange Act of 1934, as amended, and any statute successor thereto, in each case as amended from time to time, together with the rules and regulations promulgated thereunder.

“ **Exchange Property** ” has the meaning set forth in Section 5.02.

“ **Ex-Date** ” when used with respect to any issuance or distribution, means the first date on which the shares of Class A Common Stock trade on the applicable exchange or in the applicable market, regular way, without the right to receive the issuance or distribution in question from the Company or, if applicable, from the seller of the Class A Common Stock on such exchange or market (in the form of due bills or otherwise) as determined by such exchange or market.

“ **Fair Market Value** ” means, with respect to any asset, the price (after taking into account any liabilities relating to such assets) that would be negotiated in an arm’s-length transaction for cash between a willing seller and a willing and able buyer, neither of which is under any compulsion to complete the transaction, as such price is determined in good faith by the Board of Directors, as evidenced by a resolution of the Board of Directors.

“ **Fixed Settlement Rate** ” has the meaning set forth in Section 4.01(c).

“ **Fundamental Change** ” shall be deemed to have occurred upon the occurrence of any of the following:

(a) the Class A Common Stock (or other common stock receivable upon settlement of the Purchase Contracts, if applicable) is neither listed for trading on a United States national securities exchange nor approved for trading on an established automated over-the-counter trading market in the United States;

(b) the consummation of any acquisition (whether by means of a liquidation, share exchange, tender offer, consolidation, recapitalization, reclassification, merger of the Company or any sale, lease or other transfer of all or substantially all of the consolidated assets of the Company and its Subsidiaries) or a series of related transactions or events pursuant to which:

(i) 90% or more of the Class A Common Stock is exchanged for, converted into or constitutes solely the right to receive cash, securities or other property; and

(ii) more than 10% of such cash, securities or other property does not consist of shares of common stock that are, or that upon issuance will be, traded on a United States national securities exchange or approved for trading on an established automated over-the-counter trading market in the United States; or

(c) any “person” or “group” within the meaning of Section 13(d) of the Exchange Act, other than the Company, any of its Subsidiaries and any of their employee benefit plans, files a Schedule TO or any other schedule, form or report under the Exchange Act disclosing that such person or group has become the direct or indirect “beneficial owner” (as defined in Rule 13d-3 under the Exchange Act) of Class A Common Stock representing more than 50% of the voting power of the Class A Common Stock.

“ **Fundamental Change Early Settlement Date** ” has the meaning set forth in Section 4.07(b).

“ **Fundamental Change Early Settlement Period** ” has the meaning set forth in Section 4.07(a).

“ **Fundamental Change Early Settlement Rate** ” has the meaning set forth in Section 4.07(d).

“ **Fundamental Change Early Settlement Right** ” has the meaning set forth in Section 4.07(a).

“ **Global Note** ” means a Note, as defined in the Indenture, in global form that (a) shall evidence the number of Separate Notes specified therein, (b) shall be registered on the security register for the Notes in the name of the Depositary or its nominee, and (c) shall be held by the Trustee as custodian for the Depositary.

“ **Global Purchase Contract** ” means a Purchase Contract in global form that (a) shall evidence the number of Separate Purchase Contracts specified therein, (b) shall be registered on the Security Register in the name of the Depositary or its nominee, and (c) shall be held by the Purchase Contract Agent as custodian for the Depositary.

“ **Global Security** ” means a Global Unit, a Global Purchase Contract or a Global Note, as applicable.

“ **Global Unit** ” means a Unit in global form that (a) shall evidence the number of Units specified therein, (b) shall be registered on the Security Register in the name of the Depository or its nominee, (c) shall include, as attachments thereto, a Component Note and a Component Purchase Contract, evidencing, respectively, a number of Notes and a number of Purchase Contracts, in each case, equal to the number of Units evidenced by such Unit in global form, and (d) shall be held by the Purchase Contract Agent as custodian for the Depository.

“ **Holder** ” means, with respect to a Unit or Purchase Contract, the Person in whose name the Unit or Purchase Contract, as the case may be, is registered in the Security Register, and with respect to a Note, the Person in whose name the Note is registered as provided for in the Indenture.

“ **Indenture** ” means the Indenture, dated as of June 1, 1995, between the Company and the Trustee (including any provisions of the TIA that are deemed incorporated therein), as supplemented by the Supplemental Indenture, to be dated as of the Issue Date, among the Company, the Guarantor named therein, and the Trustee, pursuant to which the Notes will be issued.

“ **Installment Payment** ” has the meaning set forth in the Indenture.

“ **Issue Date** ” means August 5, 2014.

“ **Issuer Order** ” means a written statement, request or order of the Company, which is signed in its name by the chairman of the Board of Directors, the chief financial officer, the president or chief executive officer, any senior vice president, any vice president or the treasurer of the Company, and delivered to the Purchase Contract Agent and/or the Trustee.

“ **Mandatory Settlement Date** ” means the Scheduled Mandatory Settlement Date, subject to acceleration pursuant to Section 4.10; *provided* that, if one or more of the 20 consecutive Scheduled Trading Days beginning on, and including, the 23rd Scheduled Trading Day immediately preceding the Scheduled Mandatory Settlement Date is not a Trading Day, the “Mandatory Settlement Date” shall be postponed until the third Scheduled Trading Day immediately following the last Trading Day of the 20 consecutive Trading Day period during which the Applicable Market Value is determined.

“ **Maximum Redemption Rate** ” has the meaning set forth in Section 4.09(e).

“ **Maximum Settlement Rate** ” has the meaning set forth under Section 4.01(b)(iii), subject to adjustment pursuant to the terms of Article 5.

“ **Merger Agreement** ” means that certain agreement and plan of merger, dated as of July 1, 2014, among the Company, HMB Holdings, Inc., a Maryland corporation and a wholly-owned subsidiary of the Company, and The Hillshire Brands Company.

“ **Merger Common Stock** ” has the meaning set forth in Section 5.02(e).

“ **Merger Redemption Notice** ” has the meaning set forth in Section 4.09(a).

“ **Merger Redemption Rate** ” has the meaning set forth in Section 4.09(d).

“**Merger Redemption Settlement Date** ” means, with respect to any Merger Termination Redemption: (i) if (x) the Merger Termination Stock Price is greater than the Reference Price and (y) the Company elects to pay cash in lieu of any or all shares of Class A Common Stock that would otherwise be included in the Redemption Amount, the third Business Day following the last Trading Day of the 20 consecutive Trading Day period used to determine the Redemption Market Value; or (ii) otherwise, the Scheduled Merger Redemption Settlement Date specified in the Merger Redemption Notice.

“ **Merger Termination Redemption** ” has the meaning set forth in Section 4.09(a).

“ **Merger Termination Stock Price** ” means the average of the Closing Prices of the Class A Common Stock over the 20 consecutive Trading Day Period ending on, and including, the Trading Day immediately preceding April 1, 2015.

“ **Merger Valuation Percentage** ” for any Reorganization Event shall be equal to (x) the arithmetic average of the Closing Prices of one share of such Merger Common Stock over the relevant Merger Valuation Period (determined as if references to “Class A Common Stock” in the definition of “Closing Price” were references to the “Merger Common Stock” for such Reorganization Event), *divided by* (y) the arithmetic average of the Closing Prices of one share of Class A Common Stock over the relevant Merger Valuation Period.

“ **Merger Valuation Period** ” for any Reorganization Event means the five consecutive Trading Day period immediately preceding, but excluding, the effective date for such Reorganization Event.

“ **Minimum Redemption Rate** ” has the meaning set forth in Section 4.09(e).

“ **Minimum Settlement Rate** ” has the meaning set forth under Section 4.01(b)(i), subject to adjustment pursuant to the terms of Article 5.

“ **Minimum Stock Price** ” has the meaning set forth under Section 4.07(f).

“ **Notes** ” means the series of notes designated as the 1.50% Senior Amortizing Notes due July 15, 2017 to be issued by the Company under the Indenture, and “ **Note** ” means each note of such series having an initial principal amount of \$6.82854.

“ **NYSE** ” means the New York Stock Exchange, Inc.

“ **Officers’ Certificate** ” means a certificate signed by the chairman of the Board of Directors, the president or chief executive officer, or any vice president and by the chief financial officer, the treasurer, any assistant treasurer, the controller, any assistant controller, the secretary or any assistant secretary of the Company. Each such certificate shall include the statements provided for in Section 1.02 if and to the extent required by the provisions of such Section 1.02.

“ **open of business** ” means 9:00 a.m. (New York City time).

“ **Opinion of Counsel** ” means an opinion in writing signed by the chief counsel of the Company or by such other legal counsel who may be an employee of or counsel to the Company and who shall be reasonably satisfactory to the Purchase Contract Agent and/or the Trustee, as applicable. Each such opinion shall include the statements provided for in Section 1.02 if and to the extent required by the provisions of such Section 1.02.

“ **Outstanding Purchase Contracts** ” means, subject to the provisions of Section 6.03, as of the date of determination, all Purchase Contracts theretofor executed, authenticated on behalf of the Holder and delivered under this Agreement (including, for the avoidance of doubt, Purchase Contracts held as a component of Units and Separate Purchase Contracts), except:

(a) Purchase Contracts theretofor cancelled by the Purchase Contract Agent or delivered to the Purchase Contract Agent for cancellation or deemed cancelled pursuant to the provisions of this Agreement; and

(b) Purchase Contracts in exchange for or in lieu of which other Purchase Contracts have been executed, authenticated on behalf of the Holder and delivered pursuant to this Agreement, other than any such Purchase Contract in respect of which there shall have been presented to the Purchase Contract Agent proof satisfactory to it that such Purchase Contract is held by a protected purchaser in whose hands the Purchase Contracts are valid obligations of the Company.

“ **Participant** ” has the meaning set for in Section 2.03(a).

“ **Person** ” means any individual, corporation, limited liability company, partnership, joint venture, association, joint stock company, trust, estate, unincorporated organization or government or any agency or political subdivision thereof.

“ **Prospectus Supplement** ” means the preliminary prospectus supplement dated July 28, 2014, as supplemented by the pricing term sheet dated July 30, 2014, relating to the offering and sale of the Units.

“ **Purchase Contract** ” means a prepaid stock purchase contract obligating the Company to deliver shares of Class A Common Stock on the terms and subject to the conditions set forth herein.

“ **Purchase Contract Agent** ” means the Person named as the “Purchase Contract Agent” in the first paragraph of this Agreement until a successor Purchase Contract Agent shall have become such pursuant to Article 8, and thereafter “Purchase Contract Agent” shall mean such Person.

“ **Purchase Contract Settlement Fund** ” has the meaning set forth in Section 4.03.

“ **Record Date** ” means, when used with respect to any dividend, distribution or other transaction or event in which the holders of the Class A Common Stock (or other applicable security) have the right to receive any cash, securities or other property or in which the Class A Common Stock (or other applicable security) is exchanged for or converted into any combination of cash, securities or other property, the date fixed for determination of holders of the Class A Common Stock (or other applicable security) entitled to receive such cash, securities or other property (whether such date is fixed by the Board of Directors or by statute, contract or otherwise).

“ **Redemption Amount** ” has the meaning set forth in Section 4.09(c).

“ **Redemption Market Value** ” means the average of the Closing Prices of the Class A Common Stock for the 20 consecutive Trading Days beginning on, and including, the 23rd Scheduled Trading Day immediately preceding the Scheduled Merger Redemption Settlement Date.

“ **Reference Price** ” means \$37.80, subject to adjustment pursuant to Section 5.01(f).

“ **Reorganization Event** ” has the meaning set forth in Section 5.02(a).

“ **Repurchase Date** ” has the meaning set forth in the Indenture.

“ **Repurchase Price** ” has the meaning set forth in the Indenture.

“ **Repurchase Right** ” has the meaning set forth in the Indenture.

“ **Responsible Officer** ” means any officer of the Purchase Contract Agent with direct responsibility for the administration of this Agreement.

“ **Scheduled Mandatory Settlement Date** ” means July 15, 2017.

“ **Scheduled Merger Redemption Settlement Date** ” means, with respect to any Merger Termination Redemption: (i) if (x) the Merger Termination Stock Price is greater than the Reference Price and (y) the Company elects to pay cash in lieu of any or all of the shares of Class A Common Stock that would otherwise be included in the Redemption Amount, a date, as specified in the relevant Merger Redemption Notice, that is at least 45 and no more than 60 calendar days after the date of the Merger Redemption Notice; or (ii) otherwise, a date, as specified in the relevant Merger Redemption Notice, that is at least 5 and no more than 30 calendar days after the date of the Merger Redemption Notice.

“ **Scheduled Trading Day** ” means a day that is scheduled to be a Trading Day on the principal U.S. national or regional securities exchange or market on which the Class A Common Stock is listed or admitted for trading. If the Class A Common Stock is not so listed or admitted for trading, “Scheduled Trading Day” means a Business Day.

“ **Securities Act** ” means the Securities Act of 1933, as amended, and any statute successor thereto, in each case as amended from time to time, and the rules and regulations promulgated thereunder.

“ **Security** ” means a Unit, a Purchase Contract or a Note, as applicable.

“ **Security Register** ” has the meaning set forth in Section 3.05.

“ **Security Registrar** ” has the meaning set forth in Section 3.05.

“ **Separate Note** ” has the meaning set forth in Section 2.03(a).

“ **Separate Purchase Contract** ” has the meaning set forth in Section 2.03(a).

“ **Settlement Date** ” means any Fundamental Change Early Settlement Date, Early Settlement Date, Merger Redemption Settlement Date, Early Mandatory Settlement Date, or Mandatory Settlement Date.

“ **Settlement Rate** ” has the meaning set forth in Section 4.01(b).

“ **Spin-Off** ” means the Company makes a dividend or other distribution to all or substantially all holders of Class A Common Stock consisting of Capital Stock of, or similar equity interests in, or relating to, a Subsidiary or other business unit of the Company that, upon issuance, will be traded on a U.S. national securities exchange.

“ **Stated Amount** ” means \$50.

“ **Stock Price** ” has the meaning set forth in Section 4.07(d).

“Subsidiary” of any Person means any corporation or other entity of which a majority of the Capital Stock having ordinary voting power to elect a majority of the board of directors or other Persons performing similar functions of such corporation or other entity is at the time directly or indirectly owned or controlled by such Person.

“Tender Offer Expiration Date” has the meaning set forth in Section 5.01(a)(vi).

“Tender Offer Expiration Time” has the meaning set forth in Section 5.01(a)(vi)(A)(2).

“Threshold Appreciation Price” means an amount equal to the Stated Amount, *divided by* the Minimum Settlement Rate (such quotient rounded to the nearest \$0.0001). The Threshold Appreciation Price shall initially be \$47.25.

“TIA” means the Trust Indenture Act of 1939, as amended from time to time.

“Trading Day” means a day on which (i) trading in the Class A Common Stock (or other security for which a Closing Price must be determined) generally occurs on the NYSE or, if the Class A Common Stock (or such other security) is not then listed on the NYSE, on the principal other U.S. national or regional securities exchange on which the Class A Common Stock (or such other security) is then listed or, if the Class A Common Stock (or such other security) is not then listed on a U.S. national or regional securities exchange, on the principal other market on which the Class A Common Stock (or such other security) is then traded, and (ii) a Closing Price for the Class A Common Stock (or Closing Price for such other security) is available on such securities exchange or market. If the Class A Common Stock (or such other security) is not so listed or traded, “Trading Day” means a Business Day.

“Trustee” means The Bank of New York Mellon Trust Company, N.A., as trustee under the Indenture, or any successor thereto.

“Unit” means the collective rights of a Holder of a unit consisting of a single Purchase Contract and a single Note prior to separation pursuant Section 2.03 or subsequent to recreation pursuant to Section 2.04.

“Valuation Period” has the meaning set forth in Section 5.01(a)(iv)(B)(1).

Section 1.02. Compliance Certificates and Opinions. Except as otherwise expressly provided by this Agreement, upon any application or request by the Company to the Purchase Contract Agent and/or Trustee to take any action in accordance with any provision of this Agreement, the Company shall furnish to the Purchase Contract Agent and/or Trustee, as applicable, an Officers’ Certificate stating that all conditions precedent, if any, provided for in this Agreement relating to the proposed action have been complied with and an Opinion of Counsel stating that, in the opinion of such counsel, all such conditions precedent, if any, have been complied with.

Every Officers’ Certificate or opinion with respect to compliance with a condition or covenant provided for in this Agreement shall include:

(i) a statement that each individual signing such Officers’ Certificate or opinion has read such covenant or condition and the definitions herein relating thereto;

(ii) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such Officers’ Certificate or opinion are based;

(iii) a statement that, in the opinion of each such individual, he or she has made such examination or investigation as is necessary to enable such individual to express an informed opinion as to whether or not such covenant or condition has been complied with; and

(iv) a statement as to whether, in the opinion of each such individual, such condition or covenant has been complied with.

Any certificate, statement or opinion of an officer of the Company may be based, insofar as it relates to legal matters, upon a certificate or opinion of or representations by counsel, unless such officer knows that the certificate or opinion or representations with respect to the matters upon which his certificate, statement or opinion may be based as aforesaid are erroneous, or in the exercise of reasonable care should know that the same are erroneous. Any certificate, statement or opinion of counsel may be based, insofar as it relates to factual matters, on information with respect to which is in the possession of the Company as applicable, upon the certificate, statement or opinion of or representations by an officer or officers of the Company unless such counsel knows that the certificate, statement or opinion or representations with respect to the matters upon which his certificate, statement or opinion may be based as aforesaid are erroneous, or in the exercise of reasonable care should know that the same are erroneous.

Any certificate, statement or opinion of an officer of the Company, as applicable, or of counsel may be based, insofar as it relates to accounting matters, upon a certificate or opinion of or representations by an accountant or firm of accountants in the employ of the Company, as applicable, unless such officer or counsel, as the case may be, knows that the certificate or opinion or representations with respect to the accounting matters upon which his certificate, statement or opinion may be based as aforesaid are erroneous, or in the exercise of reasonable care should know that the same are erroneous.

Any certificate or opinion of any independent firm of public accountants filed with and directed to the Trustee shall contain a statement that such firm is independent.

Section 1.03. Notices. Any notice or demand which by any provision of this Agreement is required or permitted to be given or served by the Purchase Contract Agent or by the Holders to or on the Company may be given or served by being deposited postage prepaid, first class mail (except as otherwise specifically provided herein) addressed (until another address of the Company is filed by the Company with the Purchase Contract Agent) to Tyson Foods, Inc., 2200 Don Tyson Parkway, Springdale, Arkansas 72762-6999. Any notice, direction, request or demand by the Company or any Holder to or upon the Purchase Contract Agent or the Trustee shall be deemed to have been sufficiently given or served by being deposited postage prepaid, first class mail (except as otherwise specifically provided herein) addressed (until another address of the Purchase Contract Agent or Trustee is filed by the Purchase Contract Agent or Trustee with the Company) to The Bank of New York Mellon Trust Company, N.A., 601 Travis Street, 16th Floor, Houston, Texas 77002, Attention: Corporate Trust Services, re: Tyson Foods, Inc.

Where this Agreement provides for notice to Holders, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and mailed, first class postage prepaid, to each Holder entitled thereto, at his last address as it appears in the Security Register; provided, however, that, in the case of a Global Unit or Global Purchase Contract, electronic notice may be given to the Depository, as the Holder thereof, in accordance with the applicable procedures of the Depository. Where this Agreement provides for notice in any manner, such notice may be waived in writing by the Person entitled to receive such notice, either before or after the event, and such waiver shall be the equivalent of such notice. Waivers of notice by Holders shall be filed with the Purchase Contract Agent, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

In case, by reason of the suspension of or irregularities in regular mail service, it shall be impracticable to mail notice to the Company when such notice is required to be given pursuant to any provision of this Agreement, then any manner of giving such notice as shall be reasonably satisfactory to the Purchase Contract Agent shall be deemed to be sufficient notice.

Section 1.04. Effect of Headings and Table of Contents. The Article and Section headings herein and in the Table of Contents are for convenience only and shall not affect the construction hereof.

Section 1.05. Successors and Assigns. All covenants and agreements in this Agreement by the Company and the Purchase Contract Agent shall bind their respective successors and assigns, whether so expressed or not.

Section 1.06. Separability Clause. In case any provision in this Agreement or in the Purchase Contracts shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions hereof and thereof shall not in any way be affected or impaired thereby.

Section 1.07. Benefits of Agreement. Nothing contained in this Agreement or in the Purchase Contracts, express or implied, shall give to any Person, other than the parties hereto and their successors hereunder and, to the extent provided hereby, the Holders, any benefits or any legal or equitable right, remedy or claim under this Agreement. The Holders from time to time shall be beneficiaries of this Agreement and shall be bound by all of the terms and conditions hereof and of the Purchase Contracts by their acceptance of delivery of such Purchase Contracts.

Section 1.08. Governing Law. This Agreement, the Units and the Purchase Contracts, and any claim, controversy or dispute arising under or related to this Agreement, the Units or the Purchase Contracts, shall be governed by, and construed in accordance with, the laws of the State of New York.

Section 1.09. Conflict with Indenture. To the extent that any provision of this Purchase Contract Agreement relating to or affecting the Notes conflicts with or is inconsistent with the Indenture, the Indenture shall govern.

Section 1.10. Legal Holidays. In any case where any Settlement Date shall not be a Business Day, notwithstanding any other provision of this Agreement or the Purchase Contracts, the settlement or redemption of the Purchase Contracts shall not be effected on such date, but instead shall be effected on the next succeeding Business Day with the same force and effect as if made on such Settlement Date, and no interest or other amounts shall accrue or be payable by the Company or to any Holder in respect of such delay.

Section 1.11. Counterparts. This Agreement may be executed in any number of counterparts by the parties hereto on separate counterparts, each of which, when so executed and delivered, shall be deemed an original, but all such counterparts shall together constitute one and the same instrument.

Section 1.12. Inspection of Agreement. A copy of this Agreement shall be available at all reasonable times during normal business hours at Tyson Foods, Inc., 2200 Don Tyson Parkway, Springdale, Arkansas 72762-6999 for inspection by any Holder or Beneficial Holder.

Section 1.13. Calculations. The solicitation of any necessary bids and the performance of any calculations to be made hereunder shall be the sole obligation of the Company, and the Purchase Contract Agent shall have no obligation to make, review or verify such calculations. These calculations include, but are not limited to, determination of the applicable Settlement Rate, the Fixed Settlement Rates, the Early Settlement Rate, the Merger Redemption Rate, the Early Mandatory Settlement Rate, the Fundamental Change Early Settlement Rate, the Applicable Market Value, the Redemption Market Value, the Closing Price and the Current Market Price, as the case may be. All such calculations made by the Company or its agent hereunder shall be made in good faith and, absent manifest error, be final and binding on the Purchase Contract Agent, the Trustee, each Paying Agent and the Holders. For any calculations to be made by the Company or its agent hereunder, the Company shall provide a schedule of such calculations to the Purchase Contract Agent and the Trustee, and each of the Purchase Contract Agent and the Trustee shall be entitled to conclusively rely upon the accuracy of the calculations by the Company or its agent without independent verification, shall have no liability with respect thereto and shall have no liability to the Holders for any loss any of them may incur in connection with no independent verification having been done. Furthermore, the Purchase Contract Agent shall not be under any duty or responsibility to determine whether any facts exist which may require any adjustment hereunder, or with respect to the nature or extent of any such adjustment when made, or with respect to the method employed

Section 1.14. UCC. Each Purchase Contract (whether or not included in a Unit) is a security governed by Article 8 of the Uniform Commercial Code as in effect in the State of New York on the date hereof.

Section 1.15. Waiver of Jury Trial. Each party hereto waives its respective rights to trial by jury in any action or proceeding arising out of or related to the Purchase Contracts, this Agreement or the transactions contemplated hereby, to the maximum extent permitted by law.

ARTICLE II UNIT AND PURCHASE CONTRACT FORMS

Section 2.01. Forms of Units and Purchase Contracts Generally. (a) The Units and Purchase Contracts shall be in substantially the forms set forth in Exhibit A and Exhibit B hereto, respectively, which shall be incorporated in and made a part of this Purchase Contract Agreement, with such letters, numbers or other marks of identification or designation and such legends or endorsements printed, lithographed or engraved thereon as may be required by the rules of any securities exchange on which the Units or Purchase Contracts, as the case may be, are (or may in the future be) listed or any depository therefor, or as may, consistently herewith, be determined by the officers of the Company executing such Units and Purchase Contracts, as the case may be, as evidenced by their execution thereof.

(b) The Units and Purchase Contracts shall be issuable only in registered form and only in denominations of a single Unit or Purchase Contract, as the case may be, and any integral multiple thereof.

(c) The Units will initially be issued in the form of one or more fully registered Global Units as set forth in Section 3.06. The Purchase Contracts will initially be issued as Component Purchase Contracts substantially in the form of Attachment 3 to the form of Global Unit attached as Exhibit A hereto, and will be attached to the related Global Unit and registered in the name of The Bank of New York Mellon Trust Company, N.A., as attorney-in-fact of the holder(s) of such Global Unit.

(d) Definitive Securities shall be printed, lithographed or engraved with steel engraved borders or may be produced in any other manner, all as determined by the officers of the Company executing the Units or Purchase Contracts, as the case may be, evidenced by such Definitive Securities, consistent with the provisions of this Agreement, as evidenced by their execution thereof.

(e) Every Global Unit and Global Purchase Contract executed, authenticated on behalf of the Holders and delivered hereunder shall bear a legend in substantially the following form:

“THIS SECURITY IS A GLOBAL [UNIT / PURCHASE CONTRACT] WITHIN THE MEANING OF THE PURCHASE CONTRACT AGREEMENT HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF A DEPOSITARY OR A NOMINEE OF A DEPOSITARY OR A SUCCESSOR DEPOSITARY. UNLESS AND UNTIL IT IS EXCHANGED IN WHOLE OR IN PART FOR SECURITIES IN CERTIFICATED FORM, THIS SECURITY MAY NOT BE TRANSFERRED EXCEPT AS A WHOLE BY THE DEPOSITARY TRUST COMPANY, A NEW YORK CORPORATION (THE “**DEPOSITARY**”) TO THE NOMINEE OF THE DEPOSITARY OR BY A NOMINEE OF THE DEPOSITARY TO THE DEPOSITARY OR ANOTHER NOMINEE OF THE DEPOSITARY OR BY THE DEPOSITARY OR ANY SUCH NOMINEE TO A SUCCESSOR DEPOSITARY OR A NOMINEE OF SUCH SUCCESSOR DEPOSITARY.

UNLESS THIS SECURITY IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY TO THE COMPANY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE, OR PAYMENT, AND ANY SECURITY ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.”

Section 2.02. Form of Certificate of Authentication. The form of certificate of authentication of the Units and Purchase Contracts shall be in substantially the form set forth in the form of Unit or form of Purchase Contract, respectively, attached hereto.

Section 2.03. Global Securities; Separation of Units.

(a) On any Business Day during the period beginning on, and including, the Business Day immediately following the Issue Date to, but excluding, the third Scheduled Trading Day immediately preceding the Scheduled Mandatory Settlement Date, any Early Mandatory Settlement Date or any Merger Redemption Settlement Date and also excluding the Business Day immediately preceding any Installment Payment Date (*provided* that, for the avoidance of any doubt, such right to separate the Units shall resume after such Business Day), a Holder or Beneficial Holder of a Unit may separate such Unit into its constituent Purchase Contract and Note (each such separated Purchase Contract and separated Note, a “**Separate Purchase Contract**” and “**Separate Note**,” respectively), which will thereafter trade under their respective CUSIP numbers (902494 111) and (902494 AV5), and that Unit will cease to exist. Beneficial interests in a Unit, and after separation, the Separate Purchase Contract and Separate Note, will be shown on and transfers will be effected through direct or indirect participants in DTC. Beneficial interests in Units, Separate Purchase Contracts and Separate Notes will be evidenced by Global Units, Global Purchase Contracts and Global Notes, respectively. In order to separate a Unit into its component parts, a Beneficial Holder must deliver written instruction to the broker or other direct or indirect participant (the “**Participant**”) through which it holds an interest in such Unit to notify DTC through DTC’s Deposit/Withdrawal at Custodian System (the “**DWAC System**”) of such Beneficial Holder’s election to separate such Unit, following which the Purchase Contract Agent or Trustee, as applicable, shall register (i) a decrease in the number of Units represented by the Global Unit and the number of Purchase Contracts and Notes represented by the Component Purchase Contract and the Component Note attached to the Global Unit as Attachments 3 and 4, respectively, as set forth in

Schedule A to each such attachment, and (ii) a corresponding increase in the number of Purchase Contracts and Notes represented by the Global Purchase Contract and the Global Note, respectively. If, however, such Unit is in the form of a Definitive Security in accordance with Section 3.09, the Holder thereof must deliver to the Purchase Contract Agent such Unit, together with a separation notice, in the form set forth in Attachment 1 to the form of Unit attached hereto as Exhibit A. Upon the receipt of such separation notice, the Company shall promptly cause delivery, in accordance with the delivery instructions set forth in such separation notice, of one Separate Purchase Contract and one Separate Note for each such Unit. Separate Purchase Contracts and Separate Notes will be transferable independently from each other.

(b) Holders which elect to separate the Note and related Purchase Contract in accordance with this Section 2.03 shall be responsible for any fees or expenses payable in connection with such separation, and neither the Company, the Purchase Contract Agent nor the Trustee shall be liable for any such fees or expenses.

Section 2.04. Recreation of Units.

(a) On any Business Day during the period beginning on, and including, the Business Day immediately following the Issue Date to, but excluding, the third Scheduled Trading Day immediately preceding the Mandatory Settlement Date, any Early Mandatory Settlement Date or any Merger Redemption Settlement Date and also excluding the Business Day immediately preceding any Installment Payment Date (*provided* that, for the avoidance of any doubt, such right to recreate the Units shall resume after such Business Day), a Holder or Beneficial Holder of a Separate Purchase Contract and a Separate Note may recreate a Unit (which will thereafter trade under the CUSIP number 902494 301 for the Units), and each such Separate Purchase Contract and Separate Note will cease to exist. In order to recreate a Separate Purchase Contract and Separate Note into a Unit, a Beneficial Holder must deliver written instruction to the Participant through which it holds an interest in such Separate Purchase Contract and Separate Note to notify DTC through the DTC's DWAC System of such Beneficial Holder's election to recreate a Unit, following which the Purchase Contract Agent or Trustee, as applicable, shall register (i) an increase in the number of Units represented by the Global Unit and the number of Purchase Contracts and Notes represented by the Component Purchase Contract and the Component Note attached to the Global Unit as Attachments 3 and 4, respectively, as set forth in Schedule A to each such attachment, and (ii) a corresponding decrease in the number of Purchase Contracts and Notes represented by the Global Purchase Contract and Global Note, respectively. If, however, such Separate Purchase Contract and Separate Note are in the form of Definitive Securities, the Holder thereof must deliver to the Purchase Contract Agent such Definitive Securities, together with a recreation notice, in the form set forth in Attachment 2 to the form of Unit attached hereto as Exhibit A. Upon the receipt of such recreation notice, the Company shall promptly cause delivery, in accordance with the delivery instructions set forth in such recreation notice, of one Unit in definitive form for such Definitive Securities.

(b) Holders that recreate Units in accordance with this Section 2.04 shall be responsible for any fees or expenses payable in connection with such recreation, and neither the Company, the Purchase Contract Agent nor the Trustee shall be liable for any such fees or expenses.

ARTICLE III THE UNITS AND PURCHASE CONTRACTS

Section 3.01. Amount and Denominations. The aggregate number of Units and Separate Purchase Contracts evidenced by Equity-Linked Securities executed, authenticated on behalf of the Holders and delivered hereunder is limited to 30,000,000, except for Units and Separate Purchase Contracts executed, authenticated and delivered upon registration of transfer of, in exchange for, or in lieu of, other Units and Separate Purchase Contracts pursuant to Section 3.04, Section 3.05, Section 3.10 or Section 9.05.

Equity-Linked Securities that are not in the form of Global Securities shall be issuable in denominations of one Equity-Linked Security and integral multiples in excess thereof.

Section 3.02. Rights and Obligations Evidenced by the Equity-Linked Securities. Each Equity-Linked Security shall evidence the number of Units or Separate Purchase Contracts, as the case may be, specified therein, with (a) each such Unit representing the rights and obligations of the Holder thereof and of the Company under one Purchase Contract, and the rights and obligations of the Holder thereof and of the Company under one Note, and (b) each such Separate Purchase Contract representing the rights and obligations of the Holder thereof and of the Company under one Separate Purchase Contract. In the case of a Unit, the Holder of such Unit shall, for all purposes hereunder and under the Indenture, be deemed to be the Holder of the Note and Purchase Contract that are components of such Unit.

Prior to the close of business on the last Trading Day of the 20 consecutive Trading Day period during which the Applicable Market Value is determined with respect to any Purchase Contract or, if applicable, any earlier Determination Date with respect to such Purchase Contract (in each case, whether such Purchase Contract is held as a component of a Unit or as a Separate Purchase Contract), the shares of Class A Common Stock underlying such Purchase Contract shall not be outstanding, and such Purchase Contract shall not entitle the Holder thereof to any of the rights of a holder of Class A Common Stock, including, without limitation, the right to vote or receive any dividends or other payments or to consent or to receive notice as a shareholder in respect of the meetings of shareholders or for the election of directors for any other matter, or any other rights whatsoever as a shareholder of the Company.

Section 3.03. Execution, Authentication, Delivery and Dating. Upon the execution and delivery of this Agreement, and at any time and from time to time thereafter, the Company may deliver Equity-Linked Securities executed by the Company and the Purchase Contract Agent as attorney-in-fact for the Holders of Purchase Contracts from time to time (in the case of Purchase Contracts), to the Purchase Contract Agent and Trustee for authentication on behalf of the Holders and delivery, together with the Issuer Order for authentication of such Equity-Linked Securities, and the Purchase Contract Agent and Trustee in accordance with such Issuer Order shall authenticate on behalf of the Holders and deliver such Equity-Linked Securities.

The Equity-Linked Securities shall be executed on behalf of the Company by any authorized officer of the Company and, in the case of the Purchase Contracts, shall be executed on behalf of the Holders by any authorized officer of the Purchase Contract Agent as attorney-in-fact for the Holders of Purchase Contracts from time to time. The signature of any such officer on the Equity-Linked Securities may be manual or facsimile.

Equity-Linked Securities bearing the manual or facsimile signature of an individual who was at any time the proper officer of the Company or, in the case of the Purchase Contracts, the Purchase Contract Agent, shall bind the Company and the Holders of Purchase Contracts, as the case may be, notwithstanding that such individual has ceased to hold such offices prior to the authentication and delivery of such Equity-Linked Securities or did not hold such offices at the date of such Equity-Linked Securities.

Each Equity-Linked Security shall be dated the date of its authentication.

No Equity-Linked Security shall be entitled to any benefit under this Agreement or be valid or obligatory for any purpose unless there appears on such Equity-Linked Security a certificate of authentication substantially in the form provided for herein executed by an authorized officer of the Purchase Contract Agent and Trustee (if applicable) by manual signature, and such certificate upon any Equity-Linked Security shall be conclusive evidence, and the only evidence, that such Equity-Linked Security has been duly authenticated and delivered hereunder.

Section 3.04. Temporary Equity-Linked Securities. Pending the preparation of Definitive Equity-Linked Securities, the Company shall execute and deliver to the Purchase Contract Agent and, in the case of Units, Trustee, and the Purchase Contract Agent and, if applicable, Trustee shall authenticate on behalf of the Holders, and deliver, in lieu of such Definitive Equity-Linked Securities, temporary Equity-Linked Securities that are in substantially the form set forth in Exhibit A or Exhibit B hereto, as the case may be, with such letters, numbers or other marks of identification or designation and such legends or endorsements printed, lithographed or engraved thereon as may be required by the rules of any securities exchange on which the Units or Separate Purchase Contracts, as the case may be, are listed, or as may, consistently herewith, be determined by the officers of the Company executing such Equity-Linked Securities, as evidenced by their execution of the Equity-Linked Securities.

If temporary Equity-Linked Securities are issued, the Company will cause Definitive Equity-Linked Securities to be prepared without unreasonable delay. After the preparation of Definitive Equity-Linked Securities, the temporary Equity-Linked Securities shall be exchangeable for Definitive Equity-Linked Securities upon surrender of the temporary Equity-Linked Securities at the Corporate Trust Office, at the expense of the Company and without charge to the Holder or the Purchase Contract Agent. Upon surrender for cancellation of any one or more temporary Equity-Linked Securities, the Company shall execute and deliver to the Purchase Contract Agent and Trustee, and the Purchase Contract Agent and, if applicable, the Trustee shall authenticate on behalf of the Holder, and deliver in exchange therefor, one or more Definitive Equity-Linked Securities of like tenor and denominations and evidencing a like number of Units or Separate Purchase Contracts, as the case may be, as the temporary Equity-Linked Security or Equity-Linked Securities so surrendered. Until so exchanged, the temporary Equity-Linked Securities shall in all respects evidence the same benefits and the same obligations with respect to the Units or Separate Purchase Contracts, as the case may be, evidenced thereby as Definitive Equity-Linked Securities.

Section 3.05. Registration: Registration of Transfer and Exchange. The Company shall cause to be kept at the Corporate Trust Office a register (the “**Security Register**”) in which, subject to such reasonable regulations as it may prescribe, the Company shall provide for the registration of Equity-Linked Securities and of transfers of Equity-Linked Securities. The Purchase Contract Agent is hereby initially appointed Security Registrar (the “**Security Registrar**”) for the purpose of registration of Equity-Linked Securities and transfers of Equity-Linked Securities as provided herein. The Security Registrar shall record separately the registration and transfer of the Equity-Linked Securities evidencing Units and Separate Purchase Contracts.

Upon surrender for registration of transfer of any Equity-Linked Security at the Corporate Trust Office, the Company shall execute and deliver to the Purchase Contract Agent and Trustee, and the Purchase Contract Agent and Trustee shall authenticate on behalf of the designated transferee or transferees, and deliver, in the name of the designated transferee or transferees, one or more new Equity-Linked Securities of any authorized denominations, of like tenor, and evidencing a like number of Units or Separate Purchase Contracts, as the case may be.

At the option of the Holder, Equity-Linked Securities may be exchanged for other Equity-Linked Securities, of any authorized numbers and evidencing a like number of Units or Separate Purchase Contracts, as the case may be, upon surrender of the Equity-Linked Securities to be exchanged at the Corporate Trust Office. Whenever any Equity-Linked Securities are so surrendered for exchange,

the Company shall execute and deliver to the Purchase Contract Agent and Trustee, and the Purchase Contract Agent and, in the case of Units, the Trustee shall authenticate on behalf of the Holder, and deliver the Equity-Linked Securities which the Holder making the exchange is entitled to receive.

All Equity-Linked Securities issued upon any registration of transfer or exchange of an Equity-Linked Security shall evidence the ownership of the same number of Units or Separate Purchase Contracts, as the case may be, and be entitled to the same benefits and subject to the same obligations, under this Agreement as the Units or Separate Purchase Contracts, as the case may be, evidenced by the Equity-Linked Security surrendered upon such registration of transfer or exchange.

Every Equity-Linked Security presented or surrendered for registration of transfer or exchange shall (if so required by the Purchase Contract Agent) be duly endorsed, or be accompanied by a written instrument of transfer in form satisfactory to the Company and the Purchase Contract Agent duly executed by the Holder thereof, or its attorney duly authorized in writing.

No service charge shall be made for any registration of transfer or exchange of an Equity-Linked Security, but the Company or the Purchase Contract Agent on behalf of the Company may require payment from the Holder of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any registration of transfer or exchange of Equity-Linked Securities, other than any exchanges pursuant to Section 3.06 and Section 9.05 not involving any transfer.

Notwithstanding the foregoing, the Company shall not be obligated to execute and deliver to the Purchase Contract Agent, and the Purchase Contract Agent and, in the case of Units, the Trustee shall not be obligated to authenticate on behalf of the Holder or deliver any Equity-Linked Security in exchange for any other Equity-Linked Security presented or surrendered for registration of transfer or for exchange on or after the Business Day immediately preceding the Scheduled Mandatory Settlement Date or any earlier Settlement Date with respect to such Equity-Linked Security. In lieu of delivery of a new Equity-Linked Security, upon satisfaction of the applicable conditions specified above in this Section and receipt of appropriate registration or transfer instructions from such Holder, the Company shall, if a Settlement Date with respect to such Equity-Linked Security has occurred, deliver or cause to be delivered the shares of Class A Common Stock deliverable (and/or, in the case of a Merger Redemption Settlement Date, make the required cash payment, if any) in respect of the Purchase Contracts evidenced by such Equity-Linked Security (together with the Separate Note, if such Equity-Linked Security is a Unit and if the Repurchase Right is not applicable or, if applicable, not exercised).

Section 3.06. Book-Entry Interests. The Units, on original issuance, will be issued in the form of one or more fully registered Global Units, to be delivered to the Depository or its custodian by, or on behalf of, the Company. The Company hereby designates DTC as the initial Depository. Such Global Units shall initially be registered on the books and records of the Company in the name of Cede & Co., the nominee of DTC, and no Beneficial Holder will receive a Definitive Unit representing such Beneficial Holder's interest in such Global Unit, except as provided in Section 3.09. Unless and until definitive, fully registered Securities have been issued to Beneficial Holders pursuant to Section 3.09:

(i) the provisions of this Section 3.06 shall be in full force and effect;

(ii) the Company shall treat the Depository for all purposes of this Agreement (including settling the Purchase Contracts and receiving approvals, votes or consents hereunder) as the Holder of the Global Units and Global Purchase Contracts and shall have no obligation to the Beneficial Holders;

(iii) to the extent that the provisions of this Section 3.06 conflict with any other provisions of this Agreement, the provisions of this Section 3.06 shall control; and

(iv) the rights of the Beneficial Holders shall be exercised only through the Depository and shall be limited to those established by law and agreements between such Beneficial Holders and the Depository or the Depository Participants.

Section 3.07. Notices to Holders. Whenever a notice or other communication to the Holders is required to be given under this Agreement, the Company or the Company's agent shall give such notices and communications to the Holders and, with respect to any Units or Purchase Contracts registered in the name of the Depository or the nominee of the Depository, the Company or the Company's agent shall, except as set forth herein, have no obligations to the Beneficial Holders.

Section 3.08. Appointment of Successor Depository. If the Depository elects to discontinue its services as securities depository with respect to the Units or Purchase Contracts, the Company may, in its sole discretion, appoint a successor Depository with respect to such Units or such Purchase Contracts, as the case may be.

Section 3.09. Definitive Securities. If:

(i) the Depository is unwilling or unable to continue as depository for the Global Securities and the Company is unable to find a qualified replacement for such Depository within 90 days;

(ii) at any time the Depository ceases to be a Clearing Agency registered under the Exchange Act; or

(iii) an Event of Default (as defined in the Indenture), or any failure on the part of the Company to observe or perform any covenant or agreement in the Purchase Contracts or the Purchase Contract Agreement, has occurred and is continuing and a Beneficial Holder requests that its Securities be issued in physical, certificated form,

then, in each case the Company shall execute, and the Purchase Contract Agent and/or the Trustee, as applicable, upon receipt of an Issuer Order for the authentication and delivery of Definitive Securities, shall authenticate and deliver Definitive Securities representing an aggregate number of Securities with respect to the Global Security or Securities representing such Securities (or representing an aggregate number of Securities equal to the aggregate number of Securities in respect of which such Beneficial Holder has requested the issuance of Definitive Securities pursuant to clause (iii) above) in exchange for such Global Security or Securities (or portion thereof). Each Definitive Security so delivered shall evidence Units or Purchase Contracts or Notes, as the case may be, of the same kind and tenor as the Global Security so surrendered in respect thereof. Notwithstanding the foregoing, the exchange of Global Notes for Notes in definitive form shall be governed by the Indenture.

Section 3.10. Mutilated, Destroyed, Lost and Stolen Securities. If any mutilated Equity-Linked Security is surrendered to the Purchase Contract Agent, the Company shall execute and deliver to the Purchase Contract Agent and Trustee, and the Purchase Contract Agent and, if applicable, the Trustee shall authenticate on behalf of the Holder, and deliver in exchange therefor, a new Equity-Linked Security, evidencing the same number of Units or Separate Purchase Contracts, as the case may be, and bearing a security number not contemporaneously outstanding.

If there shall be delivered to the Company, the Purchase Contract Agent and the Trustee (in the case of any Units) (i) evidence to their satisfaction of the destruction, loss or theft of any Equity-Linked Security, and (ii) such security or indemnity as may be reasonable required by them to hold each of them and any agent of any of them harmless, then, in the absence of notice to the Company, the Purchase Contract Agent or the Trustee that such Equity-Linked Security has been acquired by a protected purchaser, the Company shall execute and deliver to the Purchase Contract Agent and the Trustee (in the case of any Units), and the Purchase Contract Agent and the Trustee (in the case of any Units) shall authenticate on behalf of the Holder, and deliver to the Holder, in lieu of any such destroyed, lost or stolen Equity-Linked Security, a new Equity-Linked Security, evidencing the same number of Units or Separate Purchase Contracts, as the case may be, and bearing a security number not contemporaneously outstanding.

Notwithstanding the foregoing, the Company shall not be obligated to execute and deliver to the Purchase Contract Agent and Trustee, and the Purchase Contract Agent and, in the case of Units, the Trustee shall not be obligated to authenticate on behalf of the Holder, and deliver to the Holder, an Equity-Linked Security on or after the Business Day immediately preceding the Scheduled Mandatory Settlement Date or any earlier Settlement Date with respect to such Equity-Linked Security. In lieu of delivery of a new Equity-Linked Security, upon satisfaction of the applicable conditions specified above in this Section and receipt of appropriate registration or transfer instructions from such Holder, the Company shall, if a Settlement Date with respect to such Equity-Linked Security has occurred, deliver or arrange for delivery of the shares of Class A Common Stock deliverable (and/or, in the case of a Merger Redemption Settlement Date, make the required cash payment, if any) in respect of the Purchase Contracts evidenced by such Equity-Linked Security (together with Separate Notes equal to the number of, and in the same form as, the Notes evidenced by such Equity-Linked Security if such Equity-Linked Security is a Unit and if the Repurchase Right is not applicable or, if applicable, not exercised).

Upon the issuance of any new Equity-Linked Security under this Section 3.10, the Company and the Purchase Contract Agent may require the payment by the Holder of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Purchase Contract Agent) connected therewith.

Every new Equity-Linked Security issued pursuant to this Section 3.10 in lieu of any destroyed, lost or stolen Equity-Linked Security shall constitute an original additional contractual obligation of the Company and of the Holder in respect of the Unit or Separate Purchase Contract, as the case may be, evidenced thereby, whether or not the destroyed, lost or stolen Equity-Linked Security shall be found at any time. Such new Equity-Linked Security (and the Units or Separate Purchase Contracts, as applicable, evidenced thereby) shall be at any time enforceable by anyone, and shall be entitled to all the benefits and be subject to all the obligations of this Agreement equally and proportionately with any and all other Equity-Linked Securities delivered hereunder.

The provisions of this Section 3.10 are exclusive and shall preclude, to the extent lawful, all other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost or stolen Equity-Linked Securities.

Section 3.11. Persons Deemed Owners. Prior to due presentment of an Equity-Linked Security for registration of transfer, the Company, the Purchase Contract Agent and the Trustee, and any agent of the Company, the Purchase Contract Agent or the Trustee, may treat the Person in whose name such Equity-Linked Security is registered as the owner of the Unit or Purchase Contract, as the case may be, evidenced thereby, for the purpose of performance of the Units or Purchase Contracts, as applicable, evidenced by such Equity-Linked Securities and for all other purposes whatsoever, and none of the Company, the Purchase Contract Agent nor the Trustee, nor any agent of the Company, the Purchase Contract Agent nor the Trustee, shall be affected by notice to the contrary.

Notwithstanding the foregoing, with respect to any Global Unit or Global Purchase Contract, nothing contained herein shall prevent the Company, the Purchase Contract Agent, the Trustee or any agent of the Company, the Purchase Contract Agent or the Trustee, from giving effect to any written certification, proxy or other authorization furnished by the Depository (or its nominee), as a Holder, with respect to such Global Unit or Global Purchase Contract or impair, as between such Depository and the related Beneficial Holder, the operation of customary practices governing the exercise of rights of the Depository (or its nominee) as Holder of such Global Unit or Global Purchase Contract.

None of the Purchase Contract Agent, Trustee, the Paying Agent and the Security Registrar shall have any responsibility or obligation to any Beneficial Holder in a Global Security, an agent member or other Person with respect to the accuracy of the records of the Depository or its nominee or of any agent member, with respect to any ownership interest in the Securities or with respect to the delivery to any agent member, Beneficial Holder or other Person (other than the Depository) of any notice or the payment of any amount, under or with respect to such Securities. All notices and communications to be given to the Holders and all payments to be made to Holders under the Securities and this Agreement shall be given or made only to or upon the order of the registered Holders (which shall be the Depository or its nominee in the case of a Global Security). The rights of Beneficial Holders in Global Securities shall be exercised only through the Depository subject to the applicable procedures. The Purchase Contract Agent, the Trustee, the Paying Agent and the Registrar shall be entitled to rely and shall be fully protected in relying upon information furnished by the Depository with respect to its members, participants and any Beneficial Holders. The Purchase Contract Agent, the Trustee, the Paying Agent and the Security Registrar shall be entitled to deal with the Depository, and any nominee thereof, that is the registered Holder of any Global Security for all purposes of this Agreement relating to such Global Security (including the payment or delivery of amounts due hereunder and the giving of instructions or directions by or to any Beneficial Holder) as the sole Holder of such Global Security and shall have no obligations to the Beneficial Holders thereof. None of the Purchase Contract Agent, the Trustee, the Paying Agent and the Security Registrar shall have any responsibility or liability for any acts or omissions of the Depository with respect to such Global Security, for the records of any such Depository, including records in respect of the Beneficial Holders of any such Global Security, for any transactions between the Depository and any agent member or between or among the Depository, any such agent member and/or any Holder or Beneficial Holder of such Global Security, or for any transfers of beneficial interests in any such Global Security.

Notwithstanding the foregoing, with respect to any Global Security, nothing herein shall prevent the Company, the Purchase Contract Agent, the Trustee, or any agent of the Company, the Purchase Contract Agent or the Trustee from giving effect to any written certification, proxy or other authorization furnished by any depository (or its nominee), as a Holder, with respect to such Global Security or shall impair, as between such Depository and Beneficial Holders of such Global Security, the operation of customary practices governing the exercise of the rights of such depository (or its nominee) as Holder of such Global Security.

None of the Purchase Contract Agent, the Trustee, the Paying Agent or the Registrar shall have any obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Agreement or under applicable law with respect to any transfer of any interest in any Security (including any transfers between or among participants of DTC, members or Beneficial Holders in any Global Security) other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by, the terms of this Agreement, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

Section 3.12. Cancellation. All Securities surrendered for separation or recreation and all Equity-Linked Securities surrendered for settlement or redemption or upon the registration of transfer or exchange of an Equity-Linked Security shall, if surrendered to any Person other than the Purchase Contract Agent, be delivered to the Purchase Contract Agent and, if not already cancelled, be promptly cancelled by it; *provided, however*, that the Purchase Contract Agent shall deliver any Notes or Separate Notes so surrendered to it to the Trustee and Paying Agent (as defined in the Indenture) for disposition in accordance with the provisions of the Indenture. In the case of a Unit or Units surrendered for settlement or redemption, subject to Section 4.08 hereof, the Company shall promptly execute and the Trustee shall promptly authenticate and deliver in accordance with the terms of the Indenture to the Holder thereof a number of Separate Notes equal to the number of, and in the same form as, the Notes comprising part of the Units so surrendered. The Company may at any time deliver to the Purchase Contract Agent for cancellation any Equity-Linked Securities previously executed, authenticated and delivered hereunder that the Company may have acquired in any manner whatsoever, and all Equity-Linked Securities so delivered shall, upon an Issuer Order, be promptly cancelled by the Purchase Contract Agent; *provided, however*, that if the Equity-Linked Securities so delivered are Units, the Purchase Contract Agent shall deliver the Notes comprising such Units to the Trustee and Paying Agent (as defined in the Indenture) for disposition in accordance with the provisions of the Indenture. No Equity-Linked Securities shall be executed, authenticated on behalf of the Holder and delivered in lieu of or in exchange for any Equity-Linked Securities cancelled as provided in this Section, except as expressly permitted by this Agreement. All cancelled Equity-Linked Securities held by the Purchase Contract Agent shall be disposed of in accordance with its customary practices.

If the Company or any Affiliate of the Company shall acquire any Equity-Linked Security, such acquisition shall not operate as a cancellation of such Equity-Linked Security unless and until such Equity-Linked Security is delivered to the Purchase Contract Agent for cancellation, in which case such Equity-Linked Security shall be accompanied by an Issuer Order and cancelled in accordance with the immediately preceding paragraph.

ARTICLE IV SETTLEMENT OF THE PURCHASE CONTRACTS

Section 4.01. Settlement Rate. (a) Each Purchase Contract obligates the Company to deliver, on the Mandatory Settlement Date, a number of shares of Class A Common Stock (subject to Article 5) equal to the Settlement Rate as determined by the Company, unless such Purchase Contract has settled or redeemed prior to the Mandatory Settlement Date.

(b) The “**Settlement Rate**” is equal to:

(i) if the Applicable Market Value is equal to or greater than the Threshold Appreciation Price, 1.0582 shares of Class A Common Stock for each Purchase Contract (the “**Minimum Settlement Rate**”);

(ii) if the Applicable Market Value is greater than the Reference Price but less than the Threshold Appreciation Price, a number of shares of Class A Common Stock for each Purchase Contract equal to the Stated Amount, *divided by* the Applicable Market Value; and

(iii) if the Applicable Market Value is less than or equal to the Reference Price, 1.3228 shares of Class A Common Stock for each Purchase Contract (the “ **Maximum Settlement Rate** ”).

(c) The Maximum Settlement Rate, the Minimum Settlement Rate (each, a “ **Fixed Settlement Rate** ”) and the Reference Price shall be subject to adjustment as provided in Article 5 and rounded upward or downward to the nearest 1/10,000th of a share (or if there is not a nearest 1/10,000th of a share, to the next lower 1/10,000th of a share) or nearest \$0.0001, as the case may be.

(d) The Company shall give notice of the Settlement Rate to the Purchase Contract Agent and Holders no later than two Scheduled Trading Days prior to the Mandatory Settlement Date.

Section 4.02. Representations and Agreements of Holders. Each Holder of an Equity-Linked Security, by its acceptance thereof:

(i) irrevocably authorizes and directs the Purchase Contract Agent to execute and deliver on its behalf and perform this Agreement on its behalf and appoints the Purchase Contract Agent as its attorney-in-fact for any and all such purposes;

(ii) in the case of a Purchase Contract that is a component of a Unit, or that is evidenced by a Global Purchase Contract, irrevocably authorizes and directs the Purchase Contract Agent to execute, deliver and hold on its behalf the Global Purchase Contract or the Component Purchase Contract evidencing such Purchase Contract and appoints the Purchase Contract Agent its attorney-in-fact for any and all such purposes;

(iii) consents to the provisions hereof;

(iv) represents that either (i) no portion of the assets used to acquire and hold the Units or Purchase Contracts, as the case may be, constitutes assets of any (A) employee benefit plan that is subject to Title I of the U.S. Employee Retirement Income Security Act of 1974, as amended (“ **ERISA** ”), (B) plan, individual retirement account or other arrangement that is subject to Section 4975 of the Code or provisions under any federal, state, local, non-U.S. or other laws or regulations that are similar to such provisions of the Code or ERISA (collectively, “ **Similar Laws** ”) or (C) entity whose underlying assets are considered to include “plan assets” of such plan, account or arrangement or (ii) the purchase and holding of the Units or Purchase Contracts, as the case may be, will not constitute or result in a non-exempt prohibited transaction under Section 406 of ERISA or Section 4975 of the Code or a violation of any applicable Similar Laws;

(v) agrees to the tax treatment provided for in Section 11.07; and

(vi) agrees to be bound by the terms and provisions thereof.

Section 4.03. Purchase Contract Settlement Fund. On the applicable Settlement Date, the Company shall issue and deliver to the Holders of the Outstanding Purchase Contracts (or, in the case of an Early Settlement, to the Holders of Purchase Contracts that have elected such Early Settlement), the aggregate number of shares of Class A Common Stock to which such Holders of the Purchase Contracts to be settled or redeemed on such Settlement Date are entitled hereunder. When any shares of Class A Common Stock are required to be delivered to Holders pursuant to this Article 4, the Company shall deliver such shares of Class A Common Stock, together with any dividends or distributions for which a Record Date and payment date for such dividend or distribution have occurred on or after the applicable Determination Date (collectively, the “ **Purchase Contract Settlement Fund** ”) to such Holders, and the Company shall cause any such shares to be registered in the name of such Holder or such Holder’s designee pursuant to Section 4.11.

Section 4.04. Settlement Conditions. A Holder's right to receive the shares of Class A Common Stock, and any dividends or distributions with respect to such shares constituting part of the Purchase Contract Settlement Fund, upon settlement of any of its Purchase Contracts is subject to the following conditions:

(a) if such Purchase Contract or the Unit that includes such Purchase Contract is in the form of a Definitive Security, surrendering the relevant Definitive Security to the Purchase Contract Agent at the Corporate Trust Office duly endorsed for transfer to the Company or in blank and with duly completed settlement instructions in the form attached thereto, or if such Purchase Contract is represented by a Global Security, surrendering the relevant Security in compliance with the Depository's applicable procedures; and

(b) the payment of any transfer or similar taxes payable pursuant to Section 4.11.

Section 4.05. Mandatory Settlement on the Mandatory Settlement Date. On the Mandatory Settlement Date, subject to satisfaction of the conditions set forth in Section 4.04 by a Holder with respect to any of its Purchase Contracts, the Company shall cause a number of shares of Class A Common Stock per Purchase Contract equal to the Settlement Rate to be issued and delivered, together with payment of (i) any cash payable in lieu of fractional shares pursuant to Section 4.13 and (ii) any dividends or distributions with respect to such shares constituting part of the Purchase Contract Settlement Fund (but without any interest thereon), to such Holder by book-entry transfer or other appropriate procedures pursuant to Section 4.11. The Person in whose name any shares of Class A Common Stock shall be issuable upon settlement of any Purchase Contract on the Mandatory Settlement Date shall become the holder of record of such shares as of the close of business on the last Trading Day of the 20 consecutive Trading Day period during which the Applicable Market Value is determined.

Section 4.06. Early Settlement. (a) Subject to and upon compliance with the provisions of this Section 4.06, prior to the close of business on the third Scheduled Trading Day immediately preceding the Scheduled Mandatory Settlement Date, a Holder may elect to settle its Purchase Contracts early, in whole or in part, at the Early Settlement Rate (“**Early Settlement Right**”).

(b) A Holder's right to receive Class A Common Stock upon Early Settlement of any of its Purchase Contracts is subject to the following conditions:

(i) delivery of a written and signed notice of election (an “**Early Settlement Notice**”) in the form attached to the Purchase Contract to the Purchase Contract Agent electing Early Settlement of such Purchase Contract;

(ii) satisfaction of the conditions set forth in Section 4.04.

(c) If a Holder complies with the requirements set forth in Section 4.06(b) before the close of business on any Business Day, then that Business Day shall be considered the “**Early Settlement Date**.” If a Holder complies with the requirements set forth in Section 4.06(b) at or after the close of business on any Business Day or at any time on a day that is not a Business Day, then the next succeeding Business Day shall be considered the “**Early Settlement Date**.”

(d) Subject to satisfaction of the conditions set forth in Section 4.06(b) by a Holder with respect to any of its Purchase Contracts, the Company shall cause a number of shares of Class A Common Stock per Purchase Contract equal to the Early Settlement Rate to be issued and delivered, together with payment of (i) any cash payable in lieu of fractional shares pursuant to Section 4.13 and (ii) any dividends or distributions with respect to such shares constituting part of the Purchase Contract Settlement Fund (but without any interest thereon), to such Holder by book-entry transfer or other appropriate procedures pursuant to Section 4.11 on the third Business Day following the Early Settlement Date. The Person in whose name any shares of the Class A Common Stock shall be issuable upon such Early Settlement of a Purchase Contract shall become the holder of record of such shares as of the close of business on the relevant Early Settlement Date.

(e) In the event that Early Settlement is effected with respect to Purchase Contracts that are a component of Units, upon such Early Settlement, the Company shall execute and the Trustee shall authenticate (pursuant to the Indenture) on behalf of the Holder and deliver to the Holder thereof, at the expense of the Company, Separate Notes, in same form as the Notes comprising part of the Units, equal to the number of Purchase Contracts as to which Early Settlement was effected.

(f) In the event that Early Settlement is effected with respect to Purchase Contracts represented by less than all the Purchase Contracts evidenced by a Security, upon such Early Settlement, the Company shall execute and the Purchase Contract Agent and Trustee shall authenticate on behalf of the Holder and deliver to the Holder thereof, at the expense of the Company, a Security evidencing the Purchase Contracts as to which Early Settlement was not effected.

(g) Upon receipt of any Early Settlement Notice pursuant to Section 4.06(b), the Purchase Contract Agent shall promptly deliver a copy of such Early Settlement Notice to the Company.

Section 4.07. Early Settlement Upon a Fundamental Change. (a) If a Fundamental Change occurs and a Holder exercises the option to effect Early Settlement in respect of its Purchase Contracts in connection with such Fundamental Change in accordance with the procedures set forth in Section 4.06, such Holder shall receive a number of shares of Class A Common Stock (or cash, securities or other property, as applicable) for each such Purchase Contract equal to the Fundamental Change Early Settlement Rate on the date such Fundamental Change Early Settlement Right is exercised (the “**Fundamental Change Early Settlement Right**”). An Early Settlement shall be deemed for these purposes to be “in connection with” such Fundamental Change if the Holder delivers an Early Settlement Notice to the Purchase Contract Agent, and otherwise satisfies the requirements for effecting Early Settlement of its Purchase Contracts set forth in Section 4.06 hereof, during the period beginning on, and including, the Effective Date of the Fundamental Change and ending at the close of business on the 30th Business Day thereafter (or, if earlier, the third Scheduled Trading Day immediately preceding the Scheduled Mandatory Settlement Date) (the “**Fundamental Change Early Settlement Period**”).

(b) If a Holder complies with the requirements set forth in Section 4.07(a) to exercise the Fundamental Change Early Settlement Right before the close of business on any Business Day during the Fundamental Change Early Settlement Period, then that Business Day shall be considered the “**Fundamental Change Early Settlement Date**.” If a Holder complies with the requirements set forth in set forth in Section 4.07(a) to exercise the Fundamental Change Early Settlement Right at or after the close of business on any Business Day during the Fundamental Change Early Settlement Period or at any time on a day during the Fundamental Change Early Settlement Period that is not a Business Day, then the next succeeding Business Day shall be considered the “**Fundamental Change Early Settlement Date**.”

(c) The Company shall provide the Purchase Contract Agent, the Trustee and the Holders of Units and Separate Purchase Contracts with a notice of a Fundamental Change within five Business Days after its occurrence, issue a press release announcing the Effective Date and post such press release on its website. The notice shall set forth, among other things, (i) the applicable Fundamental Change Early Settlement Rate, (ii) if not Class A Common Stock, the kind and amount of cash, securities and other property receivable by the Holder upon settlement and (iii) the deadline by which each Holder's Fundamental Change Early Settlement Right must be exercised.

(d) The “ **Fundamental Change Early Settlement Rate** ” shall be determined by the Company by reference to the table below, based on the date on which the Fundamental Change occurs or becomes effective (the “ **Effective Date** ”) and the stock price (the “ **Stock Price** ”) in the Fundamental Change, which shall be:

(i) in the case of a Fundamental Change described in clause (b) of the definition thereof in which holders of shares of Class A Common Stock receive only cash in the Fundamental Change, the Stock Price shall be the cash amount paid per share of Class A Common Stock; and

(ii) in all other cases, the Stock Price shall be the average of the Closing Prices of the Class A Common Stock over the 10 consecutive Trading Day period ending on the Trading Day immediately preceding the Effective Date.

(e) The Stock Prices set forth in the first column of the table below shall be adjusted as of any date on which any Fixed Settlement Rate is otherwise adjusted. The adjusted Stock Prices shall equal the Stock Prices applicable immediately prior to such adjustment, *multiplied* by a fraction, the numerator of which is the Maximum Settlement Rate immediately prior to the adjustment giving rise to the Stock Price adjustment and the denominator of which is the Maximum Settlement Rate as so adjusted. The Fundamental Change Early Settlement Rates per Purchase Contract in the table below shall be adjusted in the same manner and at the same time as the Fixed Settlement Rates as set forth in Section 5.01.

(f) The following table sets forth the Fundamental Change Early Settlement Rate per Purchase Contract for each Stock Price and Effective Date set forth below:

Stock Price	Effective Date			
	August 5, 2014	July 15, 2015	July 15, 2016	July 15, 2017
\$10.00	1.1949	1.2377	1.2805	1.3228
\$15.00	1.2300	1.2628	1.2935	1.3228
\$20.00	1.2338	1.2678	1.2990	1.3228
\$25.00	1.2165	1.2534	1.2946	1.3228
\$30.00	1.1880	1.2231	1.2711	1.3228
\$35.00	1.1567	1.1855	1.2278	1.3228
\$37.80	1.1401	1.1645	1.1992	1.3228
\$40.00	1.1281	1.1490	1.1767	1.2500
\$42.50	1.1155	1.1327	1.1526	1.1765
\$45.00	1.1044	1.1181	1.1311	1.1111
\$47.25	1.0955	1.1066	1.1145	1.0582
\$49.00	1.0893	1.0987	1.1034	1.0582
\$52.00	1.0800	1.0871	1.0879	1.0582
\$55.00	1.0724	1.0777	1.0764	1.0582
\$60.00	1.0626	1.0662	1.0641	1.0582
\$70.00	1.0582	1.0582	1.0582	1.0582
\$80.00	1.0582	1.0582	1.0582	1.0582
\$100.00	1.0582	1.0582	1.0582	1.0582
\$125.00	1.0582	1.0582	1.0582	1.0582
\$150.00	1.0582	1.0582	1.0582	1.0582

The exact Stock Prices and Effective Dates may not be set forth in the table above, in which case:

(i) if the applicable Stock Price is between two Stock Prices in the table or the applicable Effective Date is between two Effective Dates in the table, the Fundamental Change Early Settlement Rate shall be determined by a straight-line interpolation between the Fundamental Change Early Settlement Rates set forth for the higher and lower Stock Prices and the earlier and later Effective Dates, as applicable, based on a 365-day year;

(ii) if the applicable Stock Price is greater than \$150.00 per share (subject to adjustment in the same manner and at the same time as the Stock Prices set forth in the column headings of the table above), the Fundamental Change Early Settlement Rate shall be the Minimum Settlement Rate; or

(iii) if the applicable Stock Price is less than \$10.00 per share (subject to adjustment in the same manner and at the same time as the Stock Prices set forth in the column headings of the table above, the “ **Minimum Stock Price** ”) the Fundamental Change Early Settlement Rate shall be determined as if the Stock Price equaled the Minimum Stock Price, and using straight-line interpolation, as described in clause (i) of this Section 4.07(f), if the Effective Date is between two Effective Dates in the table.

The maximum number of shares of Class A Common Stock deliverable under a Purchase Contract is 1.3228, subject to adjustment in the same manner and at the same time as the Fixed Settlement Rates as set forth under Section 5.01.

(g) *[Reserved.]*

(h) Subject to satisfaction of the conditions set forth in Section 4.06(b) by a Holder with respect to any of its Purchase Contracts, the Company shall cause to be delivered a number of shares of Class A Common Stock, or securities, cash or other property, as applicable, payable as a result of such Holder’s exercise of the Fundamental Change Early Settlement Right in accordance with the provisions set forth in Section 4.06(d), except that (i) such delivery shall be made on the third Business Day following the Fundamental Change Early Settlement Date, and (ii) the Person in whose name any shares of Class A Common Stock or other securities, if applicable, shall be issuable following exercise of a Holder’s Fundamental Change Early Settlement Right shall become the holder of record of such shares or other securities, if applicable, as of the close of business on the Fundamental Change Early Settlement Date.

(i) If a Holder exercises its Fundamental Change Early Settlement Right with respect to Purchase Contracts that are a component of Units, upon such Early Settlement in connection with a Fundamental Change, the Company shall execute and the Trustee shall authenticate (pursuant to the Indenture) on behalf of the Holder and deliver to the Holder thereof, at the expense of the Company, Separate Notes, in same form as the Notes comprising part of the Units, equal to the number of Purchase Contracts as to which Early Settlement in connection with a Fundamental Change was effected.

(j) If a Holder exercises its Fundamental Change Early Settlement Right with respect to Purchase Contracts represented by less than all the Purchase Contracts evidenced by a Security, upon such Early Settlement in connection with a Fundamental Change, the Company shall execute and the Purchase Contract Agent and Trustee shall authenticate on behalf of the Holder and deliver to the Holder thereof, at the expense of the Company, a Security evidencing the Purchase Contracts as to which Early Settlement in connection with a Fundamental Change was not effected.

(k) If a Holder does not elect to exercise the Fundamental Change Early Settlement Right, such Holder's Purchase Contracts shall remain outstanding and shall be subject to normal settlement on any subsequent Settlement Date, including, if applicable, the provisions set forth in Section 5.01.

Section 4.08. Early Mandatory Settlement at the Company's Election. (a) The Company has the right to settle the Purchase Contracts on or after April 1, 2015, in whole but not in part (the "**Early Mandatory Settlement Right**"), on a date fixed by it (the "**Early Mandatory Settlement Date**") at the Early Mandatory Settlement Rate on the Early Mandatory Settlement Notice Date.

(b) If the Company elects to exercise its Early Mandatory Settlement Right, the Company shall provide the Purchase Contract Agent and the Holders of Units, Separate Purchase Contracts and Separate Notes with a notice of its election (the "**Early Mandatory Settlement Notice**"), issue a press release announcing its election and post such press release on its website. The Early Mandatory Settlement Notice shall specify, among other things:

(i) the Early Mandatory Settlement Rate;

(ii) the Early Mandatory Settlement Date, which will be on or after April 1, 2015 and at least 5 but not more than 30 Business Days following the date of the Early Mandatory Settlement Notice (the "**Early Mandatory Settlement Notice Date**");

(iii) that Holders of Units and Separate Notes will have the right to require the Company to repurchase their Notes that are a component of the Units or their Separate Notes, as the case may be, pursuant to and in accordance with the Indenture (subject to certain exceptions as provided in the Indenture);

(iv) the Repurchase Price and Repurchase Date;

(v) the last date on which Holders may exercise their Repurchase Right; and

(vi) the procedures that Holders must follow to require the Company to repurchase their Notes (which procedures shall be in accordance with the Indenture).

(c) On the Early Mandatory Settlement Date, subject to satisfaction of the conditions set forth in Section 4.04 by a Holder with respect to any of its Purchase Contracts, the Company shall cause a number of shares of Class A Common Stock per Purchase Contract equal to the Early Mandatory Settlement Rate to be issued and delivered, together with payment of (i) any cash payable in lieu of fractional shares pursuant to Section 4.13 and (ii) any dividends or distributions with respect to such shares constituting part of the Purchase Contract Settlement Fund (but without any interest thereon), to such Holder by book-entry transfer or other appropriate procedures pursuant to Section 4.11. The Person in whose name any shares of the Class A Common Stock shall be issuable following exercise of the Early Mandatory Settlement Right shall become the holder of record of such shares as of the close of business on the Early Mandatory Settlement Notice Date.

(d) In the event that Early Mandatory Settlement is effected with respect to Purchase Contracts that are a component of Units, upon such Early Mandatory Settlement the Company shall execute and the Trustee shall authenticate (pursuant to the Indenture) on behalf of the Holder and deliver to the Holder thereof, at the expense of the Company, Separate Notes in the same form and in the same number as the Notes comprising part of the Units; *provided, however*, that if the Repurchase Date occurs prior to the Early Mandatory Settlement Date, Holders shall surrender the Units on the Repurchase Date and the Company shall execute, and the Purchase Contract Agent shall authenticate, Separate Purchase Contracts in the same form and in the same number as the Purchase Contracts comprising part of the Units, such Separate Purchase Contracts to be settled on the Early Mandatory Settlement Date.

Section 4.09. Merger Termination Redemption. (a) If the Merger Agreement has terminated, the Company may elect to redeem all, but not less than all, of the Outstanding Purchase Contracts, on the terms described in this Section 4.09 (a “**Merger Termination Redemption**”), by delivering notice within the five Business Days immediately following April 1, 2015 (such notice, the “**Merger Redemption Notice**”) in the manner specified in Section 4.09(b).

(b) In the event of a Merger Termination Redemption, the Company shall provide the Purchase Contract Agent, the Trustee and the Holders of Units, Separate Purchase Contracts and Separate Notes with the Merger Redemption Notice, issue a press release announcing its election and post such press release on its website. The Merger Redemption Notice shall specify:

(i) the Merger Termination Stock Price and the Reference Price;

(ii) the Scheduled Merger Redemption Settlement Date;

(iii) if the Redemption Amount will be determined pursuant to Section 4.09(c)(i), the Redemption Amount;

(iv) if the Redemption Amount will be determined pursuant to Section 4.09(c)(ii), the Merger Redemption Rate, and, if applicable, the number of shares of Class A Common Stock that would otherwise be included in the applicable Redemption Amount that will be replaced with cash;

(v) that Holders of Units and Separate Notes will have the right to require the Company to repurchase their Notes that are a component of the Units or their Separate Notes, as the case may be, pursuant to and in accordance with the Indenture;

(vi) the Repurchase Price and Repurchase Date;

(vii) the last date on which Holders may exercise their Repurchase Right;

(viii) the procedures that Holders must follow hereunder and under the Indenture to require the Company to repurchase their Notes;

(ix) if any outstanding Securities are Definitive Securities, the name and address of the Purchase Contract Agent; and

(x) any other information the Company determines to be appropriate.

If the Company does not specify a number of shares of Class A Common Stock that will be replaced with cash in the Merger Redemption Notice, the Company shall be deemed to have elected to settle the Redemption Amount solely in shares.

(c) In the event of a Merger Termination Redemption, the Company shall deliver the applicable Redemption Amount on the Merger Redemption Settlement Date. The “Redemption Amount” shall mean:

(i) if the Merger Termination Stock Price is equal to or less than the Reference Price, an amount of cash per Purchase Contract equal to (x) the Stated Amount *less* (y) the applicable Repurchase Price; or

(ii) if the Merger Termination Stock Price is greater than the Reference Price, a number of shares of Class A Common Stock per Purchase Contract equal to the Merger Redemption Rate determined by reference to the table set forth in Section 4.09(e); *provided* that the Company may elect to pay cash in lieu of any or all of such shares of Class A Common Stock in an amount equal to such number of shares multiplied by the Redemption Market Value; *provided further* that, if the Company so elects to pay cash, the Company shall specify in the Merger Redemption Notice the number of shares of Class A Common Stock that will be replaced with cash.

The Company shall cause any shares referred to in clause (ii) above to be issued and delivered, together with payment of (a) any cash payable in lieu of fractional shares pursuant to Section 4.13 and (b) any dividends or distributions with respect to such shares constituting part of the Purchase Contract Settlement Fund (but without any interest thereon), to the applicable Holder by book-entry transfer or other appropriate procedures pursuant to Section 4.11. The Person in whose name any shares of the Class A Common Stock shall be issuable pursuant to a Merger Termination Redemption shall become the holder of record of such shares as of the close of business: (x) on the date of the Merger Redemption Notice, if the Company has elected (or is deemed to have elected) to settle the Redemption Amount solely in shares of Class A Common Stock, or (y) on the last Trading Day of the 20 consecutive Trading Day period used to determine the Redemption Market Value, if the Merger Termination Stock Price is greater than the Reference Price and the Company elects to pay cash in lieu of any but not all shares of Class A Common Stock that would otherwise be included in the Redemption Amount.

(d) The table below sets forth the “**Merger Redemption Rate**” per Purchase Contract for each Merger Termination Stock Price. The Merger Termination Stock Prices set forth in the first column of the table below shall be adjusted as of any date on which the Fixed Settlement Rates are otherwise adjusted. The adjusted Merger Termination Stock Prices shall equal the Merger Termination Stock Prices applicable immediately prior to such adjustment, *multiplied by* a fraction, the numerator of which is the Maximum Settlement Rate immediately prior to the adjustment giving rise to the Merger Termination Stock Price adjustment and the denominator of which is the Maximum Settlement Rate as so adjusted. The Merger Redemption Rates per Purchase Contract in the table in Section 4.09(e) shall be adjusted at the same time and in the same manner as the Fixed Settlement Rates as set forth in Section 5.01.

(e) The Merger Redemption Rate per Purchase Contract for each Merger Termination Stock Price is set forth below:

Merger Termination Stock Price	Merger Redemption Rate
\$37.80	1.1689 (the “Maximum Redemption Rate”)
\$40.00	1.1426
\$42.50	1.1276
\$45.00	1.1143
\$47.25	1.1037
\$49.00	1.0964
\$52.00	1.0855
\$55.00	1.0767
\$60.00	1.0657
\$70.00	1.0582 (the “Minimum Redemption Rate”)

The exact Merger Termination Stock Prices may not be set forth in the table above, in which case:

(i) if the applicable Merger Termination Stock Price is between two Merger Termination Stock Prices in the table, the Merger Redemption Rate shall be determined by a straight-line interpolation between the Merger Redemption Rates set forth for the higher and lower Merger Termination Stock Prices;

(ii) if the applicable Merger Termination Stock Price is greater than \$70.00 per share (subject to adjustment at the same time and in the same manner as the Merger Termination Stock Prices set forth in the table above), then the Merger Redemption Rate shall be the Minimum Redemption Rate; or

(iii) if the applicable Merger Termination Stock Price is less than \$37.80 per share (subject to adjustment at the same time and in the same manner as the Merger Termination Stock Prices set forth in the table above), then the Merger Redemption Rate shall be the Maximum Redemption Rate.

(f) In the event of a Merger Termination Redemption with respect to Purchase Contracts that are a component of Units, upon the applicable Merger Redemption Settlement Date, the Company shall execute and the Trustee shall authenticate (pursuant to the Indenture) on behalf of the Holder and deliver to the Holder thereof, at the expense of the Company, Separate Notes in the same form and in the same number as the Notes comprising part of the Units; *provided, however*, that if the Repurchase Date occurs prior to the Merger Redemption Settlement Date, any Holder exercising the Repurchase Right shall surrender the Units on the Repurchase Date and the Company shall execute, and the Purchase Contract Agent shall authenticate, Separate Purchase Contracts in the same form and in the same number as the Purchase Contracts comprising part of the Units, such Separate Purchase Contracts to be redeemed on the Merger Redemption Settlement Date.

Section 4.10. Acceleration of Mandatory Settlement Date. If a Bankruptcy Event occurs at any time on or before the last Trading Day of the 20 consecutive Trading Day period during which the Applicable Market Value is determined (the day on which such Bankruptcy Event occurs, the “**Acceleration Date**”), the Mandatory Settlement Date shall automatically be accelerated to the Business Day immediately following the Acceleration Date and Holders of Purchase Contracts shall be entitled to receive, upon settlement of the Purchase Contracts on such accelerated Mandatory Settlement Date, a number of shares of Class A Common Stock per Purchase Contract equal to the Maximum Settlement Rate in effect immediately prior to the Acceleration Date (regardless of the Applicable Market Value of the Class A Common Stock at that time). The Company shall cause to be delivered the shares of Class A Common Stock, securities, cash or other property deliverable as a result of any such acceleration of the Mandatory Settlement Date in accordance with the provisions set forth in Section 4.05, except that (i) such delivery shall be made on the accelerated Mandatory Settlement Date, and (ii) the Person in whose

name any shares of Class A common stock shall be issuable following such acceleration shall become the holder of record of such shares as of the close of business on the Acceleration Date. Any claim for damages that Holders of the Purchase Contracts (whether as Separate Purchase Contracts or Purchase Contracts underlying Units) have for the Company's failure to deliver Class A Common Stock following a Bankruptcy Event as described in this Section 4.10 will rank *pari passu* with the claims of holders of the Class A Common Stock in the relevant bankruptcy proceeding.

Section 4.11. Registration of Underlying Shares and Transfer Taxes. The shares of Class A Common Stock underlying the Purchase Contracts shall be registered in the name of the Holder or the Holder's designee as specified in the settlement instructions provided by the Holder to the Purchase Contract Agent, and the Company will pay all documentary, stamp or similar issue or transfer taxes attributable to the delivery thereof, unless any such tax is payable in respect of any registration of such shares in a name of a Person other than the Person in whose name the Security evidencing such Purchase Contract is registered, in which case the Company shall not be required to pay any such tax and no such registration shall be made unless the Person requesting such registration has paid any such taxes required by reason of such registration in a name of a Person other than the Person in whose name the Security evidencing such Purchase Contract is registered or has established to the satisfaction of the Company that such tax either has been paid or is not payable.

Section 4.12. Return of Purchase Contract Settlement Fund. In the event a Holder fails to effect surrender or delivery of its Units or Purchase Contracts on or following the applicable Settlement Date in accordance with the provisions hereof, the shares of Class A Common Stock underlying such Purchase Contracts, and any dividends or distributions with respect to such shares constituting part of the Purchase Contract Settlement Fund, shall be held in the name of the Purchase Contract Agent or its nominee in trust for the benefit of such Holder, until the earlier to occur of:

(i) the surrender of the relevant Units or Separate Purchase Contracts for settlement or redemption in accordance with the provisions hereof or receipt by the Company and the Purchase Contract Agent from such Holder of satisfactory evidence that such Units or Separate Purchase Contracts have been destroyed, lost or stolen, together with any indemnity that may be required by the Purchase Contract Agent and the Company; and

(ii) the passage of two years from the applicable Settlement Date, as the case may be, following which the Purchase Contract Agent shall pay to the Company such Holder's share of such Class A Common Stock and any dividends or distributions with respect to such shares constituting part of the Purchase Contract Settlement Fund; *provided, however*, that prior to receiving any such payment, the Company shall mail to each such Holder notice that such property remains unclaimed and that, after a date specified therein, which shall not be less than 30 days from the date of such mailing, any unclaimed balance of such property then remaining will be repaid to the Company. After payment to the Company, (A) Holders entitled to such property must look to the Company for payment as general creditors, unless applicable abandoned property law designates another Person, and (B) all liability of the Purchase Contract Agent with respect to such property shall cease.

Section 4.13. No Fractional Shares. No fractional shares or scrip certificates representing fractional shares of Class A Common Stock shall be issued or delivered to Holders upon settlement or redemption of the Purchase Contracts. In lieu of any fractional shares of Class A Common Stock that would otherwise be issuable upon settlement or redemption of any Purchase Contracts, a Holder of a Purchase Contract shall be entitled to receive an amount in cash equal to the fraction of a share of Class A Common Stock, calculated on an aggregate basis in respect of the Purchase Contracts being settled or redeemed, *multiplied* by the Closing Price of the Class A Common Stock on the Trading

Day immediately preceding the applicable Settlement Date. To the extent the Purchase Contract Agent is obligated to make any payments on behalf of the Company pursuant to this Agreement, the Company shall provide the Purchase Contract Agent with sufficient funds to permit the Purchase Contract Agent to make all such cash payments in a timely manner.

ARTICLE V ADJUSTMENTS

Section 5.01. Adjustments to the Fixed Settlement Rates . (a) Each Fixed Settlement Rate shall be subject to the following adjustments, without duplication:

(i) *Stock Dividends and Distributions* . If the Company issues Class A Common Stock to all or substantially all of the holders of Class A Common Stock as a dividend or other distribution, each Fixed Settlement Rate in effect immediately prior to the close of business on the Record Date for such dividend or distribution shall be *multiplied* by a fraction:

(A) the numerator of which is equal to (i) the number of shares of Class A Common Stock outstanding immediately prior to the close of business on such Record Date; *plus* (ii) the total number of shares of Class A Common Stock constituting such dividend or other distribution; and

(B) the denominator of which is the number of shares of Class A Common Stock outstanding immediately prior to the close of business on such Record Date.

Any adjustment made pursuant to this clause (i) will become effective immediately after the close of business on the Record Date for such dividend or distribution. If any dividend or distribution described in this clause (i) is declared but not so paid or made, each Fixed Settlement Rate shall be readjusted, effective as of the date the Board of Directors publicly announces its decision not to make such dividend or distribution, to such Fixed Settlement Rate that would be in effect if such dividend or distribution had not been declared. For the purposes of this clause (i), the number of shares of Class A Common Stock outstanding immediately prior to the close of business on the Record Date for such dividend or other distribution shall not include shares held in treasury by the Company but shall include any shares issuable in respect of any scrip certificates issued in lieu of fractions of shares of Class A Common Stock. The Company shall not pay any dividend or make any distribution on shares of Class A Common Stock held in treasury by the Company.

(ii) *Issuance of Stock Purchase Rights* . If the Company issues to all or substantially all holders of Class A Common Stock rights, options or warrants (other than rights, options or warrants issued pursuant to a dividend reinvestment plan, shareholder rights plan, share purchase plan or other similar plans), entitling such holders, for a period of up to 45 calendar days from the date of issuance of such rights, options or warrants, to subscribe for or purchase shares of Class A Common Stock at a price per share less than the Current Market Price per share of Class A Common Stock, each Fixed Settlement Rate in effect immediately prior to the close of business on the Record Date for such issuance shall be *multiplied* by a fraction:

(A) the numerator of which is equal to (i) the number of shares of Class A Common Stock outstanding immediately prior to the close of business on such Record Date, *plus* (ii) the number of shares of Class A Common Stock issuable pursuant to such rights, options or warrants, and

(B) the denominator of which is equal to (i) the number of shares of Class A Common Stock outstanding immediately prior to the close of business on such Record Date, *plus* (ii) the number of shares of Class A Common Stock equal to the quotient of the aggregate price payable to exercise such rights, options or warrants *divided by* the Current Market Price per share of Class A Common Stock.

Any adjustment made pursuant to this clause (ii) shall be made successively whenever any such rights, options or warrants are issued and shall become effective immediately after the close of business on the Record Date for such issuance. In the event that such rights, options or warrants described in this clause (ii) are not so issued, each Fixed Settlement Rate shall be readjusted, effective as of the date the Board of Directors publicly announces its decision not to issue such rights, options or warrants, to such Fixed Settlement Rate that would then be in effect if such issuance had not been declared. To the extent that such rights, options or warrants are not exercised prior to their expiration or shares of Class A Common Stock are otherwise not delivered pursuant to such rights, options or warrants upon the exercise of such rights, options or warrants, each Fixed Settlement Rate shall be readjusted, effective as of the date of such expiration or the date of such exercise, as the case may be, to such Fixed Settlement Rate that would then be in effect had the adjustment made upon the issuance of such rights, options or warrants been made on the basis of the delivery of only the number of shares of Class A Common Stock actually delivered.

In determining whether any rights, options or warrants entitle the Holders thereof to subscribe for or purchase shares of Class A Common Stock at less than the Current Market Price per share of Class A Common Stock, and in determining the aggregate price payable to exercise such rights, options or warrants, there shall be taken into account any consideration received by the Company for such rights, options or warrants and any amount payable on exercise or conversion thereof (the value of such consideration, if other than cash, to be determined by the Board of Directors).

For the purposes of this clause (ii), the number of shares of Class A Common Stock at the time outstanding shall not include shares held in treasury by the Company but shall include any shares issuable in respect of any scrip certificates issued in lieu of fractions of shares of Class A Common Stock. The Company shall not issue any such rights, options or warrants in respect of shares of Class A Common Stock held in treasury by the Company.

(iii) *Subdivisions and Combinations of the Class A Common Stock* . If outstanding shares of Class A Common Stock shall be subdivided into a greater number of shares of Class A Common Stock or combined into a lesser number of shares of Class A Common Stock, each Fixed Settlement Rate in effect immediately prior to the open of business on the effective date of such subdivision or combination shall be *multiplied by* a fraction:

(A) the numerator of which is the number of shares of Class A Common Stock that would be outstanding immediately after, and solely as a result of, such subdivision or combination, and

(B) the denominator of which is the number of shares of Class A Common Stock outstanding immediately prior to the open of business, on such effective date.

Any adjustment made pursuant to this clause (iii) shall become effective immediately after the open of business on the effective date of such subdivision or combination.

(iv) *Debt or Asset Distribution* . (A) If the Company distributes to all or substantially all holders of Class A Common Stock evidences of its indebtedness, shares of Capital Stock (other than Class A Common Stock), securities, cash or other assets (excluding (1) any dividend or distribution described in Section 5.01(a)(i), (2) any rights, options or warrants described in Section 5.01(a)(ii), (3) any dividend or distribution described in Section 5.01(a)(v) and (4) any Spin-Off as to which the provisions set forth in Section 5.01(a)(iv)(B) apply), each Fixed Settlement Rate in effect immediately prior to the close of business on the Record Date for such distribution shall be *multiplied by* a fraction:

(1) the numerator of which is the Current Market Price per share of Class A Common Stock, and

(2) the denominator of which is equal to (i) Current Market Price per share of Class A Common Stock, *minus* (ii) the Fair Market Value on such Record Date of the portion of the evidences of indebtedness, shares of Capital Stock, securities, cash or other assets so distributed applicable to one share of Class A Common Stock.

Any adjustment made pursuant to subparagraph (A) of this clause (iv) shall become effective immediately after the close of business on the Record Date for such distribution. In the event that such distribution described in subparagraph (A) of this clause (iv) is not so made, each Fixed Settlement Rate shall be readjusted, effective as of the date the Board of Directors publicly announces its decision not to pay such dividend or distribution, to such Fixed Settlement Rate that would then be in effect if such distribution had not been declared.

(B) If a Spin-Off occurs, each Fixed Settlement Rate in effect immediately prior to the close of business on the Record Date for the relevant distribution shall instead be *multiplied by* a fraction:

(1) the numerator of which is equal to (i) the Current Market Price per share of Class A Common Stock, *plus* (ii) the average of the Closing Prices of Capital Stock or similar equity interests so distributed applicable to one share of Class A Common Stock (determined by reference to the definition of Closing Price as if references therein to Class A Common Stock were to such Capital Stock or similar equity interest) over the 10 consecutive Trading Day period commencing on, and including, the effective date of the Spin-Off (the “ **Valuation Period** ”).

(2) the denominator of which is the Current Market Price per share of Class A Common Stock.

Any adjustment made pursuant to subparagraph (B) of this clause (iv) shall become effective immediately after the close of business on the last Trading Day of the Valuation Period; provided that, if any Determination Date occurs during the Valuation Period, references immediately above to 10 Trading Days shall be deemed to be replaced with such lesser number of Trading Days as have elapsed from, and including the effective date of such Spin-Off to, and including, such Determination Date for purposes of determining the Fixed Settlement Rates on such Determination Date. In the event that such distribution described in subparagraph (B) of this clause (iv) is not so made, each Fixed Settlement Rate shall be readjusted, effective as of the date the Board of Directors publicly announces its decision not to pay such distribution, to such Fixed Settlement Rate that would then be in effect if such distribution had not been declared.

(v) *Cash Distributions* . If the Company distributes an amount exclusively in cash to all or substantially all holders of Class A Common Stock (excluding (1) any cash that is distributed in a Reorganization Event in exchange for shares of Class A Common Stock, (2) any regular quarterly dividend that does not exceed \$0.075 per share of Class A Common Stock (the “ **Dividend Threshold Amount** ”) or (3) any dividend or distribution in connection with the liquidation, dissolution or winding up of the Company), each Fixed Settlement Rate in effect immediately prior to the close of business on the Record Date for such distribution shall be *multiplied by* a fraction:

(A) the numerator of which is the Current Market Price per share of Class A Common Stock, and

(B) the denominator of which is equal to (i) the Current Market Price per share of Class A Common Stock, *minus* (ii) the amount of such distribution per share of Class A Common Stock in excess of the Dividend Threshold Amount; *provided that* if the distribution is not a regular quarterly cash dividend, then the Dividend Threshold Amount will be deemed to be zero.

The Dividend Threshold Amount is subject to adjustment on an inversely proportional basis whenever the Fixed Settlement Rates are adjusted (by multiplying the Dividend Threshold Amount by a fraction, the numerator of which will be the Minimum Settlement Rate in effect immediately prior to the adjustment and the denominator of which will be the Minimum Settlement Rate adjusted), but no adjustment will be made to the Dividend Threshold Amount for any adjustment made to the Fixed Settlement Rates pursuant to this clause 5.01(a)(v).

Any adjustment made pursuant to this clause (v) shall become effective immediately after the close of business on the Record Date for such distribution. In the event that any distribution described in this clause (v) is not so made, each Fixed Settlement Rate shall be readjusted, effective as of the date the Board of Directors publicly announces its decision not to pay such distribution, to such Fixed Settlement Rate which would then be in effect if such distribution had not been declared.

(vi) *Self Tender Offers and Exchange Offers* . If the Company or any Subsidiary of the Company successfully completes a tender or exchange offer pursuant to a Schedule TO or registration statement on Form S-4 for the Class A Common Stock (excluding any securities convertible or exchangeable for Class A Common Stock), where the cash and the value of any other consideration included in the payment per share of Class A Common Stock validly tendered or exchanged exceeds the Current Market Price per share of Class A Common Stock, each Fixed Settlement Rate in effect immediately prior to the close of business on the 10th Trading Day immediately following, and including, the Trading Day immediately following the last date on which tenders or exchanges may be made pursuant to such tender or exchange offer (the “ **Tender Offer Expiration Date** ”) shall be *multiplied by* a fraction:

(A) the numerator of which shall be equal to the sum of:

(1) the aggregate value of all cash and the Fair Market Value on the Tender Offer Expiration Date of any other consideration paid or payable for shares of Class A Common Stock validly tendered or exchanged and not withdrawn as of the Tender Offer Expiration Date; and

(2) the product of (x) the Current Market Price per share of Class A Common Stock, and (y) the number of shares of Class A Common Stock outstanding immediately after the last time tenders or exchanges may be made pursuant to such tender or exchange offer (the “**Tender Offer Expiration Time**”), after giving effect to the purchase of all shares accepted for purchase or exchange in such tender or exchange offer; and

(B) the denominator of which shall be equal to the product of (x) the Current Market Price per share of Class A Common Stock, and (y) the number of shares of Class A Common Stock outstanding immediately prior to the Tender Offer Expiration Time on the Tender Offer Expiration Date, prior to giving effect to the purchase of all shares accepted for purchase or exchange in such tender or exchange offer.

Any adjustment made pursuant to this clause (vi) shall become effective immediately after the close of business on the 10th Trading Day immediately following the Tender Offer Expiration Date; *provided* that, if any Determination Date occurs during the 10 Trading Days immediately following, and including, the Trading Day next succeeding the Tender Offer Expiration Date, references immediately above to 10 Trading Days shall be deemed to be replaced with such lesser number of Trading Days as have elapsed from, and including, such Tender Offer Expiration Date to, and including, such Determination Date for the purposes of determining the Fixed Settlement Rates on such Determination Date. In the event that the Company or one of its Subsidiaries is obligated to purchase shares of Class A Common Stock pursuant to any such tender or exchange offer, but the Company or such Subsidiary is permanently prevented by applicable law from effecting any such purchases, or all such purchases are rescinded, then each Fixed Settlement Rate shall be readjusted to such Fixed Settlement Rate that would then be in effect if such tender or exchange offer had not been made.

(b) *Rights to Certain Distributions* . Except with respect to a Spin-Off, in cases where the Fair Market Value of assets (including cash), debt securities or certain rights, warrants or options to purchase securities of the Company as to which Section 5.01(a)(iv) or Section 5.01(a)(v) apply, applicable to one share of Class A Common Stock, distributed to holders of Class A Common Stock equals or exceeds the applicable Current Market Price per share of the Class A Common Stock, rather than being entitled to an adjustment in each Fixed Settlement Rate, Holders shall be entitled to receive (without settling such Holders’ Purchase Contracts) on the date on which such assets (including cash), debt securities or rights, options or warrants are distributed to holders of Class A Common Stock, for each Purchase Contract, the amount of such assets or securities that such Holder would have received had such Holder owned a number of shares of Class A Common Stock equal to the Maximum Settlement Rate on the Record Date for such distribution.

(c) *Rights Plans* . To the extent that the Company has a rights plan in effect with respect to the Class A Common Stock on any Determination Date, Holders shall receive, in addition to the Class A Common Stock, the rights under such rights plan, unless, prior to such Determination Date, the rights have separated from the Class A Common Stock, in which case each Fixed Settlement Rate shall be adjusted at the time of separation of such rights as if the Company made a distribution to all holders of the Class A Common Stock as described in Section 5.01(a)(iv), subject to readjustment in the event of the expiration, termination or redemption of such rights.

(d) *Adjustment for Tax Reasons* . The Company may make such increases in each Fixed Settlement Rate, in addition to any other increases required by this Article 5, as the Company deems advisable to avoid or diminish any income tax to holders of the Class A Common Stock resulting from any dividend or distribution of shares of Class A Common Stock (or issuance of rights, options or warrants to acquire shares of Class A Common Stock) or from any event treated as such for income tax purposes or for any other reasons; *provided* that the same proportionate adjustment must be made to each Fixed Settlement Rate.

(e) *Calculation of Adjustments* . All adjustments to each Fixed Settlement Rate shall be calculated to the nearest 1/10,000th of a share of Class A Common Stock. No adjustment in a Fixed Settlement Rate shall be required unless such adjustment would require an increase or decrease of at least one percent therein. If any adjustment is not required to be made by reason of this Section 5.01(e), then such adjustment shall be carried forward and taken into account in any subsequent adjustment; *provided* that on each Determination Date, adjustments to each Fixed Settlement Rate shall be made with respect to any such adjustment carried forward and which has not been taken into account before such Determination Date.

(f) *Adjustments to Reference Price and Applicable Market Value*. Upon each adjustment to each Fixed Settlement Rates pursuant to Section 5.01, an inversely proportional adjustment shall also be made to the Reference Price solely for purposes of determining which of clauses (i), (ii) and (iii) of Section 4.01(b) shall be applicable with respect to the Mandatory Settlement Date. Such adjustment shall be made by dividing the Reference Price by a fraction, the numerator of which shall be the Minimum Settlement Rate immediately after such adjustment pursuant to Section 5.01 and the denominator of which shall be such Minimum Settlement Rate immediately before such adjustment. For the avoidance of doubt, no separate inversely proportional adjustment shall be made to the Threshold Appreciation Price because it is equal to the Stated Amount *divided by* the Minimum Settlement Rate (such quotient rounded to the nearest \$0.0001). The Company shall make appropriate adjustments, if any, to the Closing Prices prior to the relevant issuance date, Record Date, Ex-Date, effective date or Tender Offer Expiration Date, as the case may be, used to calculate the Applicable Market Value, Redemption Market Value, Stock Price and/or Merger Termination Stock Price to account for any adjustments to the Fixed Settlement Rates and the Reference Price that become effective during (i) the 20 consecutive Trading Day period used for calculating the Applicable Market Value, Redemption Market Value, Stock Price or Merger Termination Stock Price, as the case may be, and (ii) any period during which the Stock Price is calculated for purposes of determining the Fundamental Change Early Settlement Rate.

(g) *Limitation on Adjustments* . No adjustment to the Fixed Settlement Rates shall be made if Holders of Units or any separate Purchase Contracts participate (other than in the case of (x) a share split or share combination or (y) a tender or exchange offer), at the same time and upon the same terms as holders of the Class A Common Stock and solely as a result of holding the Purchase Contracts, in the transaction that would otherwise give rise to an adjustment without having to settle the Purchase Contracts as if such Holder held a number of shares of the Class A Common Stock equal to the Maximum Settlement Rate, *multiplied by* the number of Purchase Contracts held by such Holder. In addition, the Fixed Settlement Rates shall only be adjusted as set forth above and shall not be adjusted:

(A) upon the issuance of any shares of Class A Common Stock pursuant to any present or future plan providing for the reinvestment of dividends or interest payable on the Company's securities and the investment of additional optional amounts in shares of Class A Common Stock under any plan;

(B) upon the issuance of any shares of Class A Common Stock or rights, options or warrants to purchase those shares pursuant to any present or future employee, director or consultant benefit plan or program of or assumed by the Company or any of its subsidiaries;

(C) upon the repurchase of any shares of Class A Common Stock pursuant to an open market share repurchase program or other buy-back transaction that is not a tender offer or exchange offer described in clause 5.01(vi) hereof;

(D) for the sale or issuance of shares of Class A Common Stock, or securities convertible into or exercisable for shares of Class A Common Stock, for cash, including at a price per share less than the Fair Market Value thereof or otherwise or in an acquisition, except as described in Sections 5.01(i) through (vi) hereof;

(E) for a third party tender offer

(F) upon the issuance of any shares of Class A Common Stock pursuant to any option, warrant, right or exercisable, exchangeable or convertible security outstanding as of the Issue Date; or

(G) for a change in the par value or no par value of the Class A Common Stock.

(h) *Notice of Adjustment* . Whenever the Fixed Settlement Rates are adjusted, the Company shall:

(i) prepare and transmit to the Purchase Contract Agent an Officers' Certificate setting forth such adjusted Fixed Settlement Rates and/or the adjusted Fundamental Change Settlement Rates and the adjusted Merger Redemption Rates, the method of calculation thereof in reasonable detail and the facts requiring such adjustment and upon which such adjustment is based;

(ii) within five Business Days following the occurrence of an event that requires an adjustment to the Fixed Settlement Rates, the Fundamental Change Settlement Rates and/or the adjusted Merger Redemption Rates (or if the Company is not aware of such occurrence, as soon as practicable after becoming so aware), provide, or cause to be provided, a written notice to the Holders of the occurrence of such event; and

(iii) within five Business Days following the determination of such adjusted Fixed Settlement Rates, Fundamental Change Settlement Rates and/or the adjusted Merger Redemption Rates provide, or cause to be provided, to the Holders a statement setting forth in reasonable detail the method by which the adjustment to such Fixed Settlement Rates, the Fundamental Change Settlement Rates and/or the adjusted Merger Redemption Rates was determined and setting forth such adjusted Fixed Settlement Rates, Fundamental Change Settlement Rates and/or the adjusted Merger Redemption Rates and the facts requiring such adjustment and upon which such adjustment is based.

Section 5.02. Reorganization Events . (a) In the event of:

(i) any consolidation or merger of the Company with or into another Person (other than a merger or consolidation in which the Company is the continuing or surviving corporation and in which the Class A Common Stock outstanding immediately prior to the merger or consolidation is not exchanged for cash, securities or other property of the Company or another Person);

(ii) any sale, transfer, lease or conveyance to another Person of all or substantially all of the property and assets of the Company;

(iii) any reclassification of Class A Common Stock into securities, including securities other than Class A Common Stock; or

(iv) any statutory exchange of securities of the Company with another Person (other than in connection with a merger or acquisition), in each case, as a result of which the Class A Common Stock would be converted into, or exchanged for, securities, cash or property (each, a “**Reorganization Event**”), each Purchase Contract outstanding immediately prior to such Reorganization Event shall, without the consent of Holders, become a contract to purchase the kind of securities, cash and other property (the “**Exchange Property**”) that a holder of Class A Common Stock would have been entitled to receive immediately prior to such Reorganization Event and, prior to or at the effective time of such Reorganization Event, the Company or the successor or purchasing Person, as the case may be, shall execute with the Purchase Contract Agent and the Trustee a supplemental agreement permitted under Section 9.01(iv) providing for such change in the right to settle the Purchase Contracts. For purposes of the foregoing, the type and amount of Exchange Property in the case of any Reorganization Event that causes the Class A Common Stock to be converted into, or exchanged for, the right to receive more than a single type of consideration (determined based in part upon any form of shareholder election) will be deemed to be the weighted average of the types and amounts of consideration received by the holders of Class A Common Stock that affirmatively make such an election (or if no holders of Class A Common Stock make such an election, the types and amounts of consideration actually received by the holders of Class A Common Stock). The Company shall notify the Purchase Contract Agent in writing of such weighted average as soon as practicable after such determination is made. The number of units of Exchange Property the Company shall deliver for each Purchase Contract settled or redeemed (if the Company elects not to deliver solely cash in respect of such redemption) following the effective date of such Reorganization Event shall be equal to the number of shares of Class A Common Stock that the Company would otherwise be required to deliver as determined based on the Fixed Settlement Rate then in effect on the applicable Determination Date, or such other settlement rates or redemption rates as provided herein (without any interest thereon and without any right to dividends or distributions thereon which have a record date that is prior to the Determination Date). Each Fixed Settlement Rate shall be determined based upon the Applicable Market Value of a unit of Exchange Property that a holder of one share of Class A Common Stock would have received in such Reorganization Event.

For purposes of this Section 5.02(a), “**Applicable Market Value**” shall be deemed to refer to the Applicable Market Value of the Exchange Property and such value shall be determined (A) with respect to any publicly traded securities that comprises all or part of the Exchange Property, based on the Closing Price of such securities, (B) in the case of any cash that comprises all or part of the Exchange Property, based on the amount of such cash and (C) in the case of any other property that comprises all or part of the Exchange Property, based on the value of such property, as determined by a nationally recognized independent investment banking firm retained by the Company for this purpose. For purposes of this Section 5.02(a), the term “**Closing Price**” shall be determined by reference to the definition of Closing Price as if references therein to Class A Common Stock were to such publicly traded securities that comprise all or part of the Exchange Property. For purposes of this Section 5.02(a), references to Class A Common Stock in the definition of “**Trading Day**” shall be replaced by references to any publicly traded securities that comprise all or part of the Exchange Property.

Such supplemental agreement described in the second immediately preceding paragraph shall provide for adjustments that shall be as nearly equivalent as is possible to the adjustments provided for in this Article 5. If, in the case of any Reorganization Event, the Exchange Property includes shares of stock, securities or other property or assets (including cash or any combination thereof) of a Person other than the successor or purchasing Person, as the case may be, in such Reorganization Event, then such supplemental agreement shall also be executed by such other Person and shall contain such additional provisions to protect the interests of the Holders of the Equity-Linked Securities as the Board of Directors shall reasonably consider necessary by reason of the foregoing.

(b) In the event the Company shall execute a supplemental agreement pursuant to Section 5.02(a), the Company shall promptly file with the Purchase Contract Agent an Officers' Certificate briefly stating the reasons therefor, the kind or amount of cash, securities or property or asset that will comprise the Exchange Property after any such Reorganization Event, any adjustment to be made with respect thereto and that all conditions precedent have been complied with, and shall promptly mail notice thereof to all Holders. The Company (or any successor) shall, within 20 days of the occurrence of any Reorganization Event or, if earlier, within 20 days of the execution of any supplemental agreement pursuant to Section 5.02(a), provide written notice to the Purchase Contract Agent and Holders of such occurrence of such event and of the kind and amount of the cash, securities or other property that constitute the Exchange Property and of the execution of such supplemental agreement, if applicable. Failure to deliver such notice shall not affect the operation of this Section 5.02 or the legality or validity of any such supplemental agreement.

(c) The Company shall not become a party to any Reorganization Event unless its terms are consistent with this Section 5.02. None of the foregoing provisions shall affect the right of a Holder of Purchase Contracts to effect Early Settlement pursuant to Section 4.06 and Section 4.07 prior to the effective date of such Reorganization Event.

(d) The above provisions of this Section 5.02(a) shall similarly apply to successive Reorganization Events and the provisions of Section 5.01 shall apply to any shares of Capital Stock of the Company (or any successor) received by the holders of Class A Common Stock in any such Reorganization Event.

(e) In connection with any Reorganization Event, the Dividend Threshold Amount shall be subject to adjustment as described in clause (i), clause (ii) or clause (iii) below, as the case may be.

(i) In the case of a Reorganization Event in which the Exchange Property (determined, as appropriate, pursuant to subsection (a) above and excluding any dissenters' appraisal rights) is composed entirely of shares of common stock (the "**Merger Common Stock**"), the Dividend Threshold Amount at and after the effective time of such Reorganization Event will be equal to (x) the Dividend Threshold Amount immediately prior to the effective time of such Reorganization Event, *divided by* (y) the number of shares of Merger Common Stock that a holder of one share of Common Stock would receive in such Reorganization Event (such quotient rounded down to the nearest cent).

(ii) In the case of a Reorganization Event in which the Exchange Property (determined, as appropriate, pursuant to subsection (a) above and excluding any dissenters' appraisal rights) is composed in part of shares of Merger Common Stock, the Dividend Threshold Amount at and after the effective time of such Reorganization Event will be equal to (x) the Dividend Threshold Amount immediately prior to the effective time of such Reorganization Event, *multiplied by* (y) the Merger Valuation Percentage for such Reorganization Event (such product rounded down to the nearest cent).

(iii) For the avoidance of doubt, in the case of a Reorganization Event in which the Exchange Property (determined, as appropriate, pursuant to subsection (a) above and excluding any dissenters' appraisal rights) is composed entirely of consideration other than shares of common stock, the Dividend Threshold Amount at and after the effective time of such Reorganization Event will be equal to zero.

ARTICLE VI CONCERNING THE HOLDERS OF PURCHASE CONTRACTS

Section 6.01. Evidence of Action Taken by Holders. Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Agreement to be given or taken by a specified percentage of number of Purchase Contracts may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such specified percentage of Holders in Person or by agent duly appointed in writing; and, except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments are delivered to the Purchase Contract Agent. Proof of execution of any instrument or of a writing appointing any such agent shall be sufficient for any purpose of this Agreement and (subject to Section 8.01 and Section 8.03) conclusive in favor of the Purchase Contract Agent and the Company, if made in the manner provided in this Article 6.

Section 6.02. Proof of Execution of Instruments and of Holding of Securities. Subject to Section 8.01 and Section 8.03, the execution of any instrument by a Holder or his agent or proxy may be proved in the following manner:

(a) The fact and date of the execution by any Holder of any instrument may be proved by the certificate of any notary public or other officer of any jurisdiction authorized to take acknowledgments of deeds or administer oaths that the Person executing such instruments acknowledged to him the execution thereof, or by an affidavit of a witness to such execution sworn to before any such notary or other such officer. Where such execution is by or on behalf of any legal entity other than an individual, such certificate or affidavit shall also constitute sufficient proof of the authority of the Person executing the same.

(b) The ownership of the Units and the Purchase Contracts shall be proved by the Security Register or by a certificate of the Security Registrar.

Section 6.03. Purchase Contracts Deemed Not Outstanding. In determining whether the Holders of the requisite number of Outstanding Purchase Contracts have concurred in any direction, consent or waiver under this Agreement, Purchase Contracts which are owned by the Company or by any Affiliate of the Company with respect to which such determination is being made shall be disregarded and deemed not to be Outstanding Purchase Contracts for the purpose of any such determination, except that for the purpose of determining whether the Purchase Contract Agent shall be protected in relying on any such direction, consent or waiver only Purchase Contracts which a Responsible Officer of the Purchase Contract Agent knows are so owned shall be so disregarded. Purchase Contracts so owned which have been pledged in good faith may be regarded as Outstanding Purchase Contracts if the pledgee establishes to the satisfaction of the Purchase Contract Agent the pledgee's right so to act with respect to such Purchase Contracts and that the pledgee is not the Company or any Affiliate of the Company. In case of a dispute as to such right, the advice of counsel shall be full protection in respect of any decision made by the Purchase Contract Agent in accordance with such advice. Upon request of the Purchase Contract Agent, the Company shall furnish to the Purchase Contract Agent promptly an Officers' Certificate listing

and identifying all Purchase Contracts, if any, known by the Company to be owned or held by or for the account of any of the above described Persons; and, subject to Section 8.01 and Section 8.03, the Purchase Contract Agent shall be entitled to accept such Officers' Certificate as conclusive evidence of the facts therein set forth and of the fact that all Purchase Contracts not listed therein are Outstanding Purchase Contracts for the purpose of any such determination.

Section 6.04. Right of Revocation of Action Taken . At any time prior to (but not after) the evidencing to the Purchase Contract Agent, as provided in Section 6.01, of the taking of any action by the Holders of the percentage of the number of Purchase Contracts specified in this Agreement in connection with such action, any Holder of a Purchase Contract the serial number of which is shown by the evidence to be included among the serial numbers of the Purchase Contracts the Holders of which have consented to such action may, by filing written notice at the Corporate Trust Office and upon proof of holding as provided in this Article 6, revoke such action so far as concerns such Purchase Contract; *provided* that such revocation shall not become effective until three Business Days after such filing. Except as aforesaid, any such action taken by the Holder of any Purchase Contract shall be conclusive and binding upon such Holder and upon all future Holders and owners of such Purchase Contract and of any Purchase Contracts issued in exchange or substitution therefor or on registration of transfer thereof, irrespective of whether or not any notation in regard thereto is made upon any such Purchase Contract. Any action taken by the Holders of the percentage of the number of Purchase Contracts specified in this Agreement in connection with such action shall be conclusively binding upon the Company, the Purchase Contract Agent, the Trustee and the Holders of all the Purchase Contracts affected by such action.

Section 6.05. Record Date for Consents and Waivers . The Company may, but shall not be obligated to, establish a record date for the purpose of determining the Persons entitled to give, make or take any request, demand, authorization, direction, notice, consent, waiver or other action provided or permitted by this Agreement to be given made or taken by Holders of Purchase Contracts. If a record date is fixed, the Holders on such record date, or their duly designated proxies, and any such Persons, shall be entitled to give, make or take any such request, demand, authorization, direction, notice, consent, waiver or other action, whether or not such Holder remains a Holder after such record date; *provided, however* , that unless such waiver or consent is obtained from the Holders, or duly designated proxies, of the requisite number of Outstanding Purchase Contracts prior to the date which is the 120th day after such record date, any such waiver or consent previously given shall automatically and, without further action by any Holder be cancelled and of no further effect.

ARTICLE VII REMEDIES

Section 7.01. Unconditional Right of Holders to Receive Shares of Class A Common Stock . Each Holder of a Purchase Contract (whether or not included in a Unit) shall have the right, which is absolute and unconditional, to receive the shares of Class A Common Stock (and/or, in the case of a Merger Termination Redemption, any cash included in the Redemption Amount) pursuant to such Purchase Contract and to institute suit for the enforcement of any such right to receive the shares of Class A Common Stock (and/or, in the case of a Merger Termination Redemption, any cash included in the Redemption Amount), and such right shall not be impaired without the consent of such Holder.

Section 7.02. Notice To Purchase Contract Agent; Limitation On Proceedings . Holders of not less than 25% of Outstanding Purchase Contracts, by notice given to the Purchase Contract Agent, may request that Purchase Contract Agent to institute proceedings with respect to a default relating to any covenant hereunder, provided, subject to Section 7.08 and Article VIII hereof, the Purchase Contract Agent shall have no obligation to institute any such proceeding. No Holder of Purchase Contracts may institute any proceedings, judicial or otherwise, with respect to this Agreement or for any

remedy hereunder, except in the case of failure of the Purchase Contract Agent, for 60 days, to act after the Purchase Contract Agent has received a written request to institute proceedings in respect of a default with respect to any covenant hereunder from the Holders of not less than 25% of the Outstanding Purchase Contracts, as well as an offer of indemnity satisfactory to the Purchase Contract Agent. This provision will not prevent any Holder of Purchase Contracts from instituting suit for the delivery of Class A Common Stock (and/or, in the case of a Merger Termination Redemption, any cash included in the Redemption Amount) deliverable upon settlement or redemption of the Purchase Contracts on any Settlement Date.

Section 7.03. Restoration of Rights and Remedies. If any Holder or the Purchase Contract Agent has instituted any proceeding to enforce any right or remedy under this Agreement and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to such Holder or the Purchase Contract Agent, then and in every such case, subject to any determination in such proceeding, the Company and such Holder or the Purchase Contract Agent shall be restored severally and respectively to their former positions hereunder and thereafter all rights and remedies of such Holder shall continue as though no such proceeding had been instituted.

Section 7.04. Rights and Remedies Cumulative. Except as otherwise provided with respect to the replacement or payment of mutilated, destroyed, lost or stolen Securities in the last paragraph of Section 3.10, no right or remedy herein conferred upon or reserved to the Holders or the Purchase Contract Agent is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

Section 7.05. Delay or Omission Not Waiver. No delay or omission of any Holder or the Purchase Contract Agent to exercise any right or remedy upon a default hereunder shall impair any such right or remedy or constitute a waiver of any such right. Every right and remedy given by this Article or by law to the Holders or the Purchase Contract Agent may be exercised from time to time, and as often as may be deemed expedient, by such Holders or the Purchase Contract Agent.

Section 7.06. Undertaking for Costs. All parties to this Agreement agree, and each Holder of a Purchase Contract, by its acceptance of such Purchase Contract shall be deemed to have agreed, that any court may in its discretion require, in any suit for the enforcement of any right or remedy under this Agreement, or in any suit against the Purchase Contract Agent for any action taken, suffered or omitted by it as Purchase Contract Agent, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees and costs against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; *provided* that the provisions of this Section shall not apply to any suit instituted by (a) the Purchase Contract Agent, (b) any Holder, or group of Holders, holding in the aggregate more than 10% of the Outstanding Purchase Contracts, or (c) any Holder for the enforcement of the right to receive shares of Class A Common Stock or other Exchange Property issuable upon settlement or the Redemption Amount payable upon redemption, as the case may be, of the Purchase Contracts held by such Holder.

Section 7.07. Waiver of Stay or Execution Laws. The Company covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, or plead, or in any manner whatsoever claim or assume or take the benefit or advantage of, any stay or extension law wherever enacted, now or at any time hereafter in force, that may affect the covenants or the performance of this Agreement; and the Company (to the extent that it may lawfully do so) hereby expressly waives all

benefit or advantage of any such law and covenants that it will not hinder, delay or impede the execution of any power herein granted to the Purchase Contract Agent or the Holders, but will suffer and permit the execution of every such power as though no such law had been enacted.

Section 7.08. Control by Majority. The Holders of not less than a majority in number of the Outstanding Purchase Contracts shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Purchase Contract Agent, or of exercising any trust or power conferred upon the Purchase Contract Agent; *provided* that the Purchase Contract Agent has received indemnity satisfactory to it. Notwithstanding the foregoing, the Purchase Contract Agent may refuse to follow any direction that is in conflict with any law or the Purchase Contract Agreement, or that may involve it in personal liability.

ARTICLE VIII THE PURCHASE CONTRACT AGENT AND TRUSTEE

Section 8.01. Certain Duties and Responsibilities. (a) Each of the Purchase Contract Agent and Trustee undertakes to perform, with respect to the Units and Purchase Contracts, such duties and only such duties as are specifically delegated to it and set forth in this Agreement.

(b) No provision of this Agreement shall be construed to relieve the Purchase Contract Agent from liability for its own grossly negligent action, its own grossly negligent failure to act or its own willful misconduct, except that:

(i) the duties and obligations of the Purchase Contract Agent with respect to the Purchase Contracts shall be determined solely by the express provisions of this Agreement, and the Purchase Contract Agent shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Agreement, and no implied covenants or obligations shall be read into this Agreement against the Purchase Contract Agent or the Trustee;

(ii) in the absence of bad faith on the part of the Purchase Contract Agent and/or the Trustee, as applicable, the Purchase Contract Agent and/or the Trustee, as applicable, may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any statements, certificates or opinions furnished to the Purchase Contract Agent and/or the Trustee, as applicable, and conforming to the requirements of this Agreement; but in the case of any such statements, certificates or opinions which by any provision hereof are specifically required to be furnished to the Purchase Contract Agent and/or the Trustee, the Purchase Contract Agent and/or the Trustee, as applicable, shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Agreement;

(iii) the Purchase Contract Agent and/or the Trustee, as applicable, shall not be liable for any error of judgment made in good faith by a Responsible Officer or Responsible Officers of the Purchase Contract Agent and/or the Trustee, as applicable, unless it shall be proved that the Purchase Contract Agent was negligent in ascertaining the pertinent facts; and

(iv) the Purchase Contract Agent and/or the Trustee, as applicable, shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Holders pursuant to Section 7.08 relating to the time, method and place of conducting any proceeding for any remedy available to the Purchase Contract Agent and/or the Trustee, as applicable, or exercising any right or power conferred upon the Purchase Contract Agent and/or the Trustee, as applicable, under this Agreement.

(c) This Agreement shall not be deemed to create a fiduciary relationship under state or federal law between The Bank of New York Mellon Trust Company, N.A., in its capacity as the Purchase Contract Agent, and any Holder of any Equity-Linked Security or between The Bank of New York Mellon Trust Company, N.A. in its capacity as Trustee under the Indenture, and any Holder of any Purchase Contract (whether separated or as part of a Unit). Nothing herein shall be deemed to govern or effect the Trustee's rights, duties, responsibilities, benefits, protections, indemnities or immunities with respect to the Notes, which shall be governed by the Indenture.

None of the provisions contained in this Agreement shall require the Purchase Contract Agent to expend or risk its own funds or otherwise incur personal financial liability in the performance of any of its duties or in the exercise of any of its rights or powers, if there shall be reasonable ground for believing that the repayment of such funds or adequate indemnity against such liability is not reasonably assured to it.

Section 8.02. Notice of Default. Within 90 days after the occurrence of any default by the Company hereunder of which a Responsible Officer of the Purchase Contract Agent has knowledge (subject to Section 8.03(h) hereof), the Purchase Contract Agent shall transmit by mail to the Company and the Holders of Purchase Contracts, as their names and addresses appear in the Security Register, notice of such default hereunder, unless such Responsible Officer of the Purchase Contract Agent has actual knowledge that such default shall have been cured or waived.

Section 8.03. Certain Rights of Purchase Contract Agent. Subject to the provisions of Section 8.01:

(a) the Purchase Contract Agent may rely and shall be protected in acting or refraining from acting upon any resolution, Officers' Certificate or any other certificate, statement, instrument, opinion, report, notice, request, consent, order, bond, debenture, note, coupon, security or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties;

(b) any request, direction, order or demand of the Company mentioned herein shall be sufficiently evidenced by an Officers' Certificate or Issuer Order (unless other evidence in respect thereof be herein specifically prescribed); and any resolution of the Board of Directors may be evidenced to the Purchase Contract Agent by a Board Resolution;

(c) the Purchase Contract Agent may consult with counsel of its selection and any advice of such counsel promptly confirmed in writing shall be full and complete authorization and protection in respect of any action taken, suffered or omitted to be taken by it hereunder in good faith and in reliance thereon in accordance with such advice or Opinion of Counsel;

(d) the Purchase Contract Agent shall be under no obligation to exercise any of the rights or powers vested in it by this Agreement at the request, order or direction of any of the Holders pursuant to the provisions of this Agreement (including, without limitation, pursuant to Section 7.08), unless such Holders shall have offered to the Purchase Contract Agent satisfactory security or indemnity against the costs, expenses and liabilities which might be incurred therein or thereby;

(e) the Purchase Contract Agent shall not be liable for any action taken or omitted by it in good faith and believed by it to be authorized or within the discretion, rights or powers conferred upon it by this Agreement;

(f) the Purchase Contract Agent shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, approval, appraisal, bond, debenture, note, coupon, security, or other paper or document unless requested in writing so to do by the Holders of not less than a majority in aggregate principal amount of the Outstanding Purchase Contracts; *provided* that, if the payment within a reasonable time to the Purchase Contract Agent of the costs, expenses or liabilities likely to be incurred by it in the making of such investigation is, in the opinion of the Purchase Contract Agent, not reasonably assured to the Purchase Contract Agent by the security afforded to it by the terms of this Agreement, the Purchase Contract Agent may require indemnity against such expenses or liabilities as a condition to proceeding; the reasonable expenses of every such investigation shall be paid by the Company or, if paid by the Purchase Contract Agent or any predecessor Purchase Contract Agent, shall be repaid by the Company upon demand;

(g) the Purchase Contract Agent may execute any of the rights or powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys not regularly in its employ and the Purchase Contract Agent shall not be responsible for any misconduct or negligence on the part of any such agent or attorney appointed with due care by it hereunder;

(h) the Purchase Contract Agent shall not be charged with knowledge of any default with respect to a series of Securities unless either a Responsible Officer of the Purchase Contract Agent assigned to the Corporate Trust Office of the Purchase Contract Agent (or any successor division or department of the Purchase Contract Agent) shall have received written notice of such default from the Company or any Holder;

(i) the Purchase Contract Agent shall not be liable for any action taken, suffered or omitted by it in good faith and believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Agreement and in no case shall the Purchase Contract Agent be liable for any losses, costs or liabilities of any kind except for those arising directly out of its own gross negligence or willful misconduct;

(j) the permissive rights of the Purchase Contract Agent hereunder shall not be construed as duties;

(k) in no event shall the Purchase Contract Agent be liable for any consequential, special, punitive or indirect loss or damages, even if advised of the likelihood thereof in advance and regardless of the form of action;

(l) the rights, privileges, protections, immunities and benefits given to the Purchase Contract Agent, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Purchase Contract Agent and the Trustee (whether or not the Trustee is expressly referred to in connection with any such rights, privileges, protections, immunities and benefits) in each of their capacities hereunder, and to each agent, custodian and other Person employed to act hereunder;

(m) each of the Purchase Contract Agent and the Trustee may request that the Company deliver an Officers' Certificate setting forth the name of the individuals and/or titles of Officers authorized at such time to take specific actions pursuant to this Agreement, which Officers' Certificate may be signed by any Person authorized to sign an Officers' Certificate, including any Person specified as so authorized in any such Officers' Certificate previously delivered and not superseded;

(n) neither the Purchase Contract Agent nor the Trustee shall be responsible for delays or failures in performance of its obligations hereunder resulting from acts beyond its reasonable

control. Such acts shall include but not be limited to acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental regulations superimposed after the fact, fire, communication line failures, computer viruses, power failures, earthquakes, terrorist attacks or other disasters, it being understood that each of the Purchase Contract Agent and the Trustee shall use reasonable best efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances; and

(o) the Purchase Contract Agent shall not be required to exercise discretion in exercising its rights, powers or authorizations hereunder and the Purchase Contract Agent shall be entitled to refrain from any such act unless and until the Purchase Contract Agent has received written direction from a majority in number of the Outstanding Purchase Contracts and indemnification satisfactory to it and shall not be liable for any delay in acting caused while awaiting such direction.

Section 8.04. Not Responsible for Recitals. The recitals contained herein and in the Certificates shall be taken as the statements of the Company and neither the Purchase Contract Agent nor the Trustee assumes any responsibility for their accuracy. Neither the Purchase Contract Agent nor the Trustee makes any representations as to the validity or sufficiency of either this Agreement or of the Purchase Contracts. Neither the Purchase Contract Agent nor the Trustee shall be accountable for the use or application by the Company of the proceeds in respect of the Purchase Contracts.

Section 8.05. May Hold Units and Purchase Contracts. Any Security Registrar or any other agent of the Company, or the Purchase Contract Agent, the Trustee and any of their Affiliates, in their individual or any other capacity, may become the owner of Units, Separate Purchase Contracts and Separate Notes and may otherwise deal with the Company or any other Person with the same rights it would have if it were not Security Registrar or such other agent, or the Purchase Contract Agent. The Company may become the owner of Units, Separate Purchase Contracts and Separate Notes.

Section 8.06. Money Held in Custody. Money held by the Purchase Contract Agent in custody hereunder need not be segregated from other funds except to the extent required by law or provided herein. The Purchase Contract Agent shall be under no obligation to invest or pay interest on any money received by it hereunder except as specifically instructed by the Company in an Issuer Order.

Section 8.07. Compensation, Reimbursement and Indemnification. The Company covenants and agrees to pay to the Purchase Contract Agent from time to time, and the Purchase Contract Agent shall be entitled to, such compensation as shall be agreed to in writing between the Company and the Purchase Contract Agent and the Company covenants and agrees to pay or reimburse the Purchase Contract Agent and each predecessor Purchase Contract Agent upon its request for all reasonable expenses, disbursements and advances incurred or made by or on behalf of it in accordance with any of the provisions of this Agreement (including the reasonable compensation and the expenses and disbursements of its counsel and of all agents and other Persons not regularly in its employ) except any such expense, disbursement or advance as may arise from its gross negligence or bad faith. The Company also covenants to indemnify the Purchase Contract Agent and each predecessor Purchase Contract Agent for, and to hold it harmless against, any and all loss, liability, damage, claim or expense, including taxes (other than taxes based on the income of the Purchase Contract Agent), incurred without gross negligence or bad faith on its part, arising out of or in connection with the acceptance or administration of this Agreement and its duties hereunder, including the costs and expenses of defending itself against or investigating any claim or liability (regardless of whether such claim is brought by the Company or any third party). The provisions of this Section 8.07 shall survive the resignation or removal of the Purchase Contract Agent and the termination of this Agreement. If the Purchase Contract Agent incurs any expenses, or if the Purchase Contract Agent is entitled to any compensation for services rendered (including fees and expenses of its agent and counsel), in each case, in connection with the

performance of its obligations under this Agreement after the occurrence of a Bankruptcy Event, then any such expenses or compensation are intended to constitute expenses of administration under applicable Bankruptcy Laws. As security for the performance of the obligations of the Company under this Section the Purchase Contract Agent shall have a lien prior to the Holders upon all property and funds held or collected by the Purchase Contract Agent as such, except funds or property held in trust for payment to the Holders.

Section 8.08. Corporate Purchase Contract Agent Required; Eligibility . There shall at all times be a Purchase Contract Agent hereunder. The Purchase Contract Agent shall at all times be a corporation organized and doing business under the laws of the United States of America or of any state thereof or the District of Columbia having a combined capital and surplus of at least \$25,000,000, and which is authorized under such laws to exercise corporate trust powers and is subject to supervision or examination by federal, state or District of Columbia authority, or a corporation or other Person permitted to act as trustee by the Commission. If such corporation publishes reports of condition at least annually, pursuant to law or to the requirements of the aforesaid supervising or examining authority, then for the purposes of this Section, the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. In case at any time the Purchase Contract Agent shall cease to be eligible in accordance with the provisions of this Section, it shall resign immediately in the manner and with the effect specified in this Article.

Section 8.09. Resignation and Removal; Appointment of Successor . (a) No resignation or removal of the Purchase Contract Agent and no appointment of a successor Purchase Contract Agent pursuant to this Article shall become effective until the acceptance of appointment by the successor Purchase Contract Agent in accordance with the applicable requirements of Section 8.10.

(b) The Purchase Contract Agent may resign at any time by giving written notice thereof to the Company 60 days prior to the effective date of such resignation. If the instrument of acceptance by a successor Purchase Contract Agent required by Section 8.10 shall not have been delivered to the Purchase Contract Agent within 30 days after the giving of such notice of resignation, the resigning Purchase Contract Agent may petition, at the expense of the Company, any court of competent jurisdiction for the appointment of a successor Purchase Contract Agent.

(c) The Purchase Contract Agent may be removed at any time the Holders of a majority in number of the Outstanding Purchase Contracts. If the instrument of acceptance by a successor Purchase Contract Agent required by Section 8.10 shall not have been delivered to the Purchase Contract Agent within 30 days after evidence of such removal is delivered to the Company and Purchase Contract Agent, the removed Purchase Contract Agent may petition, at the expense of the Company, any court of competent jurisdiction for the appointment of a successor Purchase Contract Agent.

(d) If at any time:

(i) the Purchase Contract Agent shall cease to be eligible under Section 8.08 and shall fail to resign after written request therefor by the Company or by any such Holder; or

(ii) the Purchase Contract Agent shall be adjudged bankrupt or insolvent or a receiver of the Purchase Contract Agent or of its property shall be appointed or any public officer shall take charge or control of the Purchase Contract Agent or of its property or affairs for the purpose of rehabilitation, conservation or liquidation, then, in any such case, (x) the Company by a Board Resolution may remove the Purchase Contract Agent, or (y) any Holder who has been a bona fide Holder of a Purchase Contract for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Purchase Contract Agent and the appointment of a successor Purchase Contract Agent.

(e) If the Purchase Contract Agent shall resign, be removed or become incapable of acting, or if a vacancy shall occur in the office of Purchase Contract Agent for any cause, the Company shall promptly appoint a successor Purchase Contract Agent and shall comply with the applicable requirements of Section 8.10. If no successor Purchase Contract Agent shall have been so appointed by the Company and accepted appointment in the manner required by Section 8.10, any Holder who has been a bona fide Holder of a Purchase Contract for at least six months, on behalf of itself and all others similarly situated, or the Purchase Contract Agent may petition at the expense of the Company, any court of competent jurisdiction for the appointment of a successor Purchase Contract Agent.

(f) The Company shall give, or shall cause such successor Purchase Contract Agent to give, notice of each resignation and each removal of the Purchase Contract Agent and each appointment of a successor Purchase Contract Agent by mailing written notice of such event by first-class mail, postage prepaid, to Holders as their names and addresses appear in the applicable Security Register. Each notice shall include the name of the successor Purchase Contract Agent and the address of its Corporate Trust Office.

Section 8.10. Acceptance of Appointment by Successor. (a) In case of the appointment hereunder of a successor Purchase Contract Agent, every such successor Purchase Contract Agent so appointed shall execute, acknowledge and deliver to the Company and to the retiring Purchase Contract Agent an instrument accepting such appointment, and thereupon the resignation or removal of the retiring Purchase Contract Agent shall become effective and such successor Purchase Contract Agent, without any further act, deed or conveyance, shall become vested with all the rights, powers, agencies and duties of the retiring Purchase Contract Agent. At the request of the Company or the successor Purchase Contract Agent, such retiring Purchase Contract Agent shall, upon its receipt of payment or reimbursement of any amounts due to it hereunder, execute and deliver an instrument transferring to such successor Purchase Contract Agent all the rights, powers and trusts of the retiring Purchase Contract Agent and shall duly assign, transfer and deliver to such successor Purchase Contract Agent all property and money held by such retiring Purchase Contract Agent hereunder.

(b) Upon request of any such successor Purchase Contract Agent, the Company shall execute any and all instruments for more fully and certainly vesting in and confirming to such successor Purchase Contract Agent all such rights, powers and agencies referred to in paragraph (a) of this Section.

(c) No successor Purchase Contract Agent shall accept its appointment unless at the time of such acceptance such successor Purchase Contract Agent shall be qualified and eligible under this Article.

Section 8.11. Merger; Conversion; Consolidation or Succession to Business. Any corporation into which the Purchase Contract Agent may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Purchase Contract Agent shall be a party, or any corporation succeeding to all or substantially all the corporate trust business of the Purchase Contract Agent, shall be the successor of the Purchase Contract Agent hereunder; *provided* that such corporation shall be otherwise qualified and eligible under this Article, without the execution or filing of any paper or any further act on the part of any of the parties hereto. If any Equity-Linked Securities shall have been authenticated on behalf of the Holders by the Trustee and Purchase Contract Agent then in office, but not delivered, any successor by merger, conversion or consolidation to such Purchase Contract Agent may adopt such Purchase Contract Agent's authentication and deliver the Equity-Linked Securities so authenticated with the same effect as if such successor Purchase Contract Agent had itself authenticated such Equity-Linked Securities.

Section 8.12. Preservation of Information; Communications to Holders. (a) The Purchase Contract Agent shall preserve, in as current a form as is reasonably practicable, the names and addresses of Holders as received by the Purchase Contract Agent in its capacity as Security Registrar.

(b) If three or more Holders (such three or more Holders, the “ **Applicants** ”) apply in writing to the Purchase Contract Agent, and furnish to the Purchase Contract Agent reasonable proof that each such Applicant has owned a Unit or Separate Purchase Contract for a period of at least six months preceding the date of such application, and such application states that the Applicants desire to communicate with other Holders with respect to their rights under this Agreement or under the Units or Separate Purchase Contracts and is accompanied by a copy of the form of proxy or other communication that such Applicants propose to transmit, then the Purchase Contract Agent shall mail to all the Holders copies of the form of proxy or other communication that is specified in such request, with reasonable promptness after a tender to the Purchase Contract Agent of the materials to be mailed and of payment, or provision for the payment, of the reasonable expenses of such mailing.

Section 8.13. No Other Obligations of Purchase Contract Agent or Trustee. Except to the extent otherwise expressly provided in this Agreement, neither the Purchase Contract Agent nor Trustee assumes any obligations, and neither the Purchase Contract Agent nor Trustee shall be subject to any liability, under this Agreement or any Security evidencing a Unit or Purchase Contract in respect of the obligations of the Holder of any Unit or Purchase Contract thereunder. The Company agrees, and each Holder of a Security, by his or her acceptance thereof, shall be deemed to have agreed, that the Purchase Contract Agent’s and/or Trustee’s authentication, as applicable, of the Securities on behalf of the Holders shall be solely as agent and attorney-in-fact for the Holders, and that neither the Purchase Contract Agent nor Trustee shall have any obligation to perform such Purchase Contracts (whether held as components of Units or Separate Purchase Contracts) on behalf of the Holders, except to the extent expressly provided in Article 3 hereof.

Section 8.14. Tax Compliance. (a) The Purchase Contract Agent shall comply with all applicable certification, information reporting and withholding (including “backup” withholding) requirements imposed by applicable tax laws, regulations or administrative practice with respect to (i) any shares of Class A Common Stock delivered upon settlement of the Purchase Contracts, any amounts paid in lieu of fractional shares of Class A Common Stock upon settlement or redemption of the Purchase Contracts, and any other amounts included in the Purchase Contract Settlement Fund paid to Holders upon settlement or redemption of any Purchase Contracts or (ii) the issuance, delivery, holding, transfer or exercise of rights under the Purchase Contracts. Such compliance shall include, without limitation, the preparation and timely filing of required returns and the timely payment of all amounts required to be withheld to the appropriate taxing authority or its designated agent. Notwithstanding anything to the contrary, the Purchase Contract Agent’s obligations under this Section 8.14 shall extend only to form 1099 reporting and any applicable withholding unless and until the Purchase Contract Agent is otherwise notified by the Company pursuant to paragraph (b) below.

(b) The Purchase Contract Agent shall, in accordance with the terms hereof, comply with any written direction received from the Company with respect to the execution or certification of any required documentation and the application of such requirements to particular payments or Holders or in other particular circumstances, and may for purposes of this Agreement conclusively rely on any such direction in accordance with the provisions of Section 8.01(b)(ii).

(c) The Purchase Contract Agent shall maintain all appropriate records documenting compliance with such requirements, and shall make such records available, on written request, to the Company or its authorized representative within a reasonable period of time after receipt of such request. For the avoidance of doubt, any costs or expenses incurred by the Purchase Contract Agent in connection with complying with its obligations under this Section 8.14 shall be covered by Section 8.07.

ARTICLE IX SUPPLEMENTAL AGREEMENTS

Section 9.01. Supplemental Agreements Without Consent of Holders. Without the consent of any Holders, the Company, the Purchase Contract Agent and the Trustee at any time and from time to time, may enter into one or more agreements supplemental hereto, in form satisfactory to the Company and the Purchase Contract Agent, to:

- (i) evidence the succession of another Person to the Company and the assumption by any such successor of the covenants and obligations of the Company under this Agreement and the Units and Separate Purchase Contracts, if any;
- (ii) add to the covenants for the benefit of Holders or to surrender any of the Company's rights or powers under this Agreement;
- (iii) evidence and provide for the acceptance of appointment of a successor Purchase Contract Agent;
- (iv) upon the occurrence of a Reorganization Event, solely (i) to provide that each Purchase Contract will become a contract to purchase Exchange Property and (ii) to effect the related changes to the terms of the Purchase Contracts, in each case, as required by the applicable provisions of this Agreement;
- (v) conform the terms of the Purchase Contracts or the provisions of this Agreement to the "Description of the Purchase Contracts," and "Description of the Units" sections in the Prospectus Supplement;
- (vi) cure any ambiguity or manifest error, to correct or supplement any provisions that may be inconsistent; or
- (vii) to make any other provisions with respect to such matters or questions, so long as such action does not adversely affect the interest of the Holders.

Section 9.02. Supplemental Agreements With Consent of Holders. With the consent of the Holders of not less than a majority in number of the Outstanding Purchase Contracts, the Company, when authorized by a Board Resolution, and the Purchase Contract Agent and Trustee may enter into an agreement or agreements supplemental hereto for the purpose of modifying in any manner the terms of the Purchase Contracts, or the provisions of this Agreement or the rights of the Holders in respect of the Purchase Contracts; *provided, however*, that, except as contemplated herein, no such supplemental agreement shall, without the consent of each Holder of an Outstanding Purchase Contract affected thereby:

- (i) reduce the number of shares of Class A Common Stock deliverable upon settlement of the Purchase Contracts (except to the extent expressly provided in Section 5.01);

(ii) change the Mandatory Settlement Date, the right to settle Purchase Contracts early or the Fundamental Change Early Settlement Right;

(iii) reduce the Redemption Amount or impair the right of any Holder to receive such amount if the Company elects to redeem the Purchase Contract in connection with a Merger Termination Redemption;

(iv) reduce the above-stated percentage of Outstanding Purchase Contracts the consent of the Holders of which is required for the modification or amendment of the provisions of the Purchase Contracts or the Purchase Contract Agreement; or

(v) impair the right to institute suit for the enforcement of the Purchase Contracts.

It shall not be necessary for any consent of Holders under this Section to approve the particular form of any proposed supplemental agreement, but it shall be sufficient if such consent shall approve the substance thereof.

Section 9.03. Execution of Supplemental Agreements. In executing, or accepting the additional agencies created by, any supplemental agreement permitted by this Article or the modifications thereby of the agencies created by this Agreement, the Purchase Contract Agent and Trustee shall be provided, and (subject to Section 8.01) shall be fully protected in relying upon, an Officers' Certificate and an Opinion of Counsel stating that the execution of such supplemental agreement is authorized or permitted by this Agreement and does not violate the Indenture, and that any and all conditions precedent to the execution and delivery of such supplemental agreement have been satisfied. The Purchase Contract Agent and Trustee may, but shall not be obligated to, enter into any such supplemental agreement that affects the Purchase Contract Agent's or Trustee's own rights, duties or immunities under this Agreement or otherwise.

Section 9.04. Effect of Supplemental Agreements. Upon the execution of any supplemental agreement under this Article, this Agreement shall be modified in accordance therewith, and such supplemental agreement shall form a part of this Agreement for all purposes; and every Holder of Securities theretofore or thereafter authenticated on behalf of the Holders and delivered hereunder, shall be bound thereby.

Section 9.05. Reference to Supplemental Agreements. Securities authenticated on behalf of the Holders and delivered after the execution of any supplemental agreement pursuant to this Article may, and shall if required by the Purchase Contract Agent, bear a notation in form approved by the Purchase Contract Agent as to any matter provided for in such supplemental agreement. If the Company shall so determine, new Securities so modified as to conform, in the opinion of the Purchase Contract Agent, the Trustee and the Company, to any such supplemental agreement may be prepared and executed by the Company and authenticated on behalf of the Holders and delivered by the Purchase Contract Agent in exchange for outstanding Securities.

Section 9.06. Notice of Supplemental Agreements. After any supplemental agreement under this Article becomes effective, the Company shall mail to the Holders a notice briefly describing such supplemental agreement; *provided, however*, that the failure to give such notice to all Holders, or any defect therein, shall not impair or affect the validity of such supplemental agreement.

ARTICLE X
CONSOLIDATION, MERGER, CONVEYANCE, TRANSFER OR LEASE

Section 10.01. Covenant Not to Consolidate, Merge, Convey, Transfer or Lease Property Except Under Certain Conditions. The Company covenants that it will not merge with and into, consolidate with any other Person or sell, assign, transfer, lease or convey all or substantially all of its properties and assets to any Person, unless:

(i) the resulting, surviving or transferee entity (if not the Company) is a corporation or limited liability company that is treated as a corporation for U.S. federal income tax purposes, organized and existing under the laws of the United States of America, any State thereof or the District of Columbia, and such corporation or limited liability company (if not the Company) expressly assumes in writing all of the Company's obligations under the Units, the Purchase Contracts and this Agreement; and

(ii) immediately after the merger, consolidation, sale, assignment, transfer, lease or conveyance, no default has occurred and is continuing under the Units, the Purchase Contracts or this Agreement.

Section 10.02. Rights and Duties of Successor Entity. In case of any such merger, consolidation, sale, assignment, transfer or conveyance (but not any such lease) and upon any such assumption by a successor entity in accordance with Section 10.01, such successor entity shall succeed to and be substituted for the Company with the same effect as if it had been named herein as the Company. Such successor entity thereupon may cause to be signed, and may issue either in its own name or in the name of the Company, any or all of the Securities evidencing Units or Purchase Contracts issuable hereunder which theretofore shall not have been signed by the Company and delivered to the Purchase Contract Agent; and, upon the order of such successor entity, instead of the Company, and subject to all the terms, conditions and limitations in this Agreement prescribed, the Purchase Contract Agent and Trustee (if applicable) shall authenticate on behalf of the Holders and deliver any Securities that previously shall have been signed and delivered by the officers of the Company to the Purchase Contract Agent and Trustee for authentication, and any Security evidencing Units or Purchase Contracts that such successor corporation thereafter shall cause to be signed and delivered to the Purchase Contract Agent and Trustee for that purpose. All the Securities issued shall in all respects have the same legal rank and benefit under this Agreement as the Securities theretofore or thereafter issued in accordance with the terms of this Agreement as though all of such Securities had been issued at the date of the execution hereof.

In the event of any such merger, consolidation, sale, assignment, transfer, lease or conveyance, such change in phraseology and form (but not in substance) may be made in the Securities evidencing Units or Purchase Contracts thereafter to be issued as may be appropriate.

Section 10.03. Officers' Certificate and Opinion of Counsel Given to Purchase Contract Agent. The Purchase Contract Agent, subject to Section 8.01 and Section 8.03, shall receive an Officers' Certificate and an Opinion of Counsel as conclusive evidence that any such merger, consolidation, sale, assignment, transfer, lease or conveyance, and any such assumption, complies with the provisions of this Article and that all conditions precedent to the consummation of any such merger, consolidation, sale, assignment, transfer, lease or conveyance have been met.

ARTICLE XI
COVENANTS OF THE COMPANY

Section 11.01. Performance Under Purchase Contracts. The Company covenants and agrees for the benefit of the Holders from time to time of the Units and Purchase Contracts, as the case may be, that it will duly and punctually perform its obligations under the Units and Purchase Contracts, as the case may be, in accordance with the terms of the Units and Purchase Contracts and this Agreement.

Section 11.02. Maintenance of Office Or Agency. The Company will maintain in the Borough of Manhattan, New York City an office or agency where Securities may be presented or surrendered for acquisition of shares of Class A Common Stock (and/or in the case of a Merger Termination Redemption, any cash included in the Redemption Amount) upon settlement or redemption of the Purchase Contracts on any Settlement Date, and where notices and demands to or upon the Company in respect of the Purchase Contracts and this Agreement may be served. The Company will give prompt written notice to the Purchase Contract Agent of the location, and any change in the location, of such office or agency. If at any time the Company shall fail to maintain any such required office or agency or shall fail to furnish the Purchase Contract Agent with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office, and the Company hereby appoints the Purchase Contract Agent as its agent to receive all such presentations, surrenders, notices and demands.

The Company may also from time to time designate one or more other offices or agencies where Securities may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; *provided, however*, that no such designation or rescission shall in any manner relieve the Company of its obligation to maintain an office or agency in the Borough of Manhattan, New York City for such purposes. The Company will give prompt written notice to the Purchase Contract Agent of any such designation or rescission and of any change in the location of any such other office or agency. The Company hereby designates as the place of payment for the Purchase Contracts the Corporate Trust Office and appoints the Purchase Contract Agent at its Corporate Trust Office as paying agent in such city.

Section 11.03. Statements of Officers of the Company as to Default; Notice of Default. (a) The Company will deliver to the Purchase Contract Agent, within 120 days after the end of each fiscal year of the Company (which fiscal year ends, as of the Issue Date, on September 27, 2014) ending after the date hereof, an Officers' Certificate (one of the signers of which shall be the principal executive officer, principal financial officer or principal accounting officer of the Company), stating whether or not to the knowledge of the signers thereof the Company is in default in the performance and observance of any of the terms, provisions and conditions hereof, and if the Company shall be in default, specifying all such defaults and the nature and status thereof of which they may have knowledge and what action the Company is taking or proposes to take with respect thereto.

(b) The Company shall promptly deliver to the Purchase Contract Agent written notice of the occurrence of any default in the performance and observance of any of the terms, provisions and conditions hereof and the status thereof.

Section 11.04. Existence. The Company shall do or cause to be done all things necessary to preserve and keep in full force and effect its existence in accordance with its organizational documents; *provided* that this Section 11.04 shall not prohibit any transaction otherwise permitted by Article 10.

Section 11.05. Company to Reserve Class A Common Stock. The Company shall at all times reserve and keep available out of its authorized but unissued Class A Common Stock, solely for issuance upon settlement or redemption of the Purchase Contracts, that number of shares of Class A Common Stock as shall from time to time be issuable upon the settlement of all Outstanding Purchase Contracts (whether or not included in a Unit), assuming settlement at the Maximum Settlement Rate.

Section 11.06. Covenants as to Class A Common Stock. (a) The Company covenants that all shares of Class A Common Stock issuable upon settlement or redemption of any Outstanding Purchase Contract will, upon issuance, be duly authorized, validly issued, fully paid and nonassessable, free from all taxes, liens and charges and not subject to any preemptive rights.

The Company further covenants that, if at any time the Class A Common Stock shall be listed on the NYSE or any other national securities exchange, the Company will, if permitted by the rules of such exchange, list and keep listed, so long as the Class A Common Stock shall be so listed on such exchange, all Class A Common Stock issuable upon settlement or redemption of the Purchase Contracts; *provided*, *however*, that, if the rules of such exchange system permit the Company to defer the listing of such Class A Common Stock until the first delivery of Class A Common Stock upon settlement or redemption of Purchase Contracts in accordance with the provisions of this Agreement, the Company covenants to list such Class A Common Stock issuable upon settlement or redemption of the Purchase Contracts in accordance with the requirements of such exchange at such time.

(b) The Company shall apply to list the Units on the NYSE, subject to satisfaction of the NYSE's minimum listing standards with respect to the Units. In addition, if (i) a sufficient number of Units are separated into Separate Purchase Contracts and Separate Notes and traded separately such that applicable listing requirements are met and (ii) the Holders of a sufficient number of such Separate Purchase Contracts and Separate Notes request that the Company list such Separate Purchase Contracts and Separate Notes, the Company may endeavor to list such Separate Purchase Contracts and Separate Notes on an exchange of the Company's choosing (which may or may not be the NYSE) subject to applicable listing requirements.

Section 11.07. Tax Treatment. The Company agrees, and by purchasing a Unit each Beneficial Holder agrees, for United States federal income tax purposes, to (a) treat a Unit as an investment unit composed of two separate instruments, in accordance with its form, (b) treat the Notes as indebtedness of the Company and (c) in the case of each Beneficial Holder acquiring the Units at original issuance, allocate the Stated Amount of each Unit between the Note and the Purchase Contract so that such Beneficial Holder's initial tax basis in each Note will be \$6.82854 and each such Beneficial Holder's initial tax basis in each Purchase Contract will be \$43.17146.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

TYSON FOODS, INC.

By: /s/ Susan White

Name: Susan White

Title: Vice President and Treasurer

THE BANK OF NEW YORK MELLON TRUST
COMPANY, N.A., as Purchase Contract Agent

By: /s/ Jonathan Glover

Name: Jonathan Glover

Title: Vice President

THE BANK OF NEW YORK MELLON TRUST
COMPANY, N.A., as Trustee under the Indenture

By: /s/ Jonathan Glover

Name: Jonathan Glover

Title: Vice President

THE BANK OF NEW YORK MELLON TRUST
COMPANY, N.A., as Attorney-in-Fact of the Holders
from time to time as provided under the Purchase
Contract Agreement

By: /s/ Jonathan Glover

Name: Jonathan Glover

Title: Vice President

[FORM OF FACE OF UNIT]

[THIS SECURITY IS A GLOBAL UNIT WITHIN THE MEANING OF THE PURCHASE CONTRACT AGREEMENT HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF A DEPOSITARY OR A NOMINEE OF A DEPOSITARY OR A SUCCESSOR DEPOSITARY. UNLESS AND UNTIL IT IS EXCHANGED IN WHOLE OR IN PART FOR SECURITIES IN CERTIFICATED FORM, THIS SECURITY MAY NOT BE TRANSFERRED EXCEPT AS A WHOLE BY THE DEPOSITARY TRUST COMPANY, A NEW YORK CORPORATION (THE “**DEPOSITARY**”) TO THE NOMINEE OF THE DEPOSITARY OR BY A NOMINEE OF THE DEPOSITARY TO THE DEPOSITARY OR ANOTHER NOMINEE OF THE DEPOSITARY OR BY THE DEPOSITARY OR ANY SUCH NOMINEE TO A SUCCESSOR DEPOSITARY OR A NOMINEE OF SUCH SUCCESSOR DEPOSITARY.

UNLESS THIS SECURITY IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY TO THE COMPANY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE, OR PAYMENT, AND ANY SECURITY ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.]*

* Include if a Global Unit.

TYSON FOODS, INC.
4.75% TANGIBLE EQUITY UNITS

CUSIP No. 902494 301
ISIN No. US9024943014
No. _____

[Initial] * Number of Units _____

This Unit certifies that [CEDE & CO., as nominee of The Depository Trust Company]*[]** (the “ **Holder** ”), or registered assigns, is the registered owner of the number of Units set forth above[, which number may from time to time be reduced or increased, as set forth on Schedule A, as appropriate, in accordance with the terms of the Purchase Contract Agreement (as defined below), but which number, taken together with the number of all other outstanding Units, shall not exceed 30,000,000 Units at any time]*.

Each Unit consists of (i) a Purchase Contract issued by the Company, and (ii) a Note issued by the Company. Each Unit evidenced hereby is governed by a Purchase Contract Agreement, dated as of August 5, 2014 (as may be supplemented from time to time, the “ **Purchase Contract Agreement** ”), between the Company and The Bank of New York Mellon Trust Company, N.A., as Purchase Contract Agent (including its successors hereunder, the “ **Purchase Contract Agent** ”), as Trustee (including its successors hereunder, the “ **Trustee** ”) under the Indenture and as attorney-in-fact for the Holders of Purchase Contracts from time to time.

Reference is hereby made to the Purchase Contract Agreement and the Indenture and, in each case supplemental agreements thereto, for a description of the respective rights, limitations of rights, obligations, duties and immunities thereunder of the Purchase Contract Agent, the Trustee, the Company and the Holders and of the terms upon which the Units are, and are to be, executed and delivered.

Upon the conditions and under the circumstances set forth in the Purchase Contract Agreement, Holders of Units shall have the right to separate a Unit into its component parts, and a Holder of a Separate Purchase Contract and Separate Note shall have the right to re-create a Unit.

The Company agrees, and by purchasing a Unit each Beneficial Holder agrees, for United States federal income tax purposes, to (1) treat each Unit as an investment unit composed of two separate instruments, in accordance with its form, (2) treat each Note as indebtedness of the Company and (3) in the case of each Beneficial Holder acquiring the Units at original issuance, allocate the Stated Amount of each Unit between the Note and the Purchase Contract so that such Beneficial Holder’s initial tax basis in each Note will be \$6.82854 and each such Beneficial Holder’s initial tax basis in each Purchase Contract will be \$43.17146.

The Units, and any claim, controversy or dispute arising under or related to the Units, shall be governed by, and construed in accordance with, the laws of the State of New York.

* Include only if a Global Unit.

** Include only if not a Global Unit.

Capitalized terms used herein and not defined have the meanings given to such terms in the Purchase Contract Agreement.

In the event of any inconsistency between the provisions of this Unit and the provisions of the Purchase Contract Agreement, the Purchase Contract Agreement shall prevail.

[SIGNATURES ON THE FOLLOWING PAGE]

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IN WITNESS WHEREOF, the Company has caused this instrument to be duly executed.

Dated: _____

TYSON FOODS, INC.

By: _____
Name:
Title:

UNIT CERTIFICATE OF AUTHENTICATION
OF PURCHASE CONTRACT AGENT AND TRUSTEE UNDER THE INDENTURE

This is one of the Units referred to in the within mentioned Purchase Contract Agreement.

Dated: _____

THE BANK OF NEW YORK MELLON TRUST
COMPANY, N.A., as Purchase Contract Agent

By: _____
Authorized Signatory

THE BANK OF NEW YORK MELLON TRUST
COMPANY, N.A., as Trustee under the Indenture

By: _____
Authorized Signatory

[FORM OF REVERSE OF UNIT]

[Intentionally Blank]

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[FORM OF SEPARATION NOTICE]

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.
601 Travis Street, 16th Floor
Houston, Texas 77002
Facsimile: (713) 483-6954
Attention: Corporate Trust Services, re: Tyson Foods, Inc.

Re: Separation of [Global]* Units

The undersigned [Beneficial Holder]* hereby notifies you that it wishes to separate _____ Units [as to which it holds a Book-Entry Interest]* (the “ **Relevant Units** ”) into a number of Notes equal to the number of Relevant Units and a number of Purchase Contracts equal to the number of Relevant Units in accordance with the Purchase Contract Agreement (the “ **Purchase Contract Agreement** ”) dated August 5, 2014 among the Company and The Bank of New York Mellon Trust Company, N.A., as Purchase Contract Agent, as Trustee under the Indenture and as attorney-in-fact for the Holders of Purchase Contracts from time to time. Terms used and not defined herein have the meaning assigned to such terms in the Purchase Contract Agreement.

The undersigned [includes herewith] ** [Beneficial Holder has instructed the undersigned Depository Participant to transfer to you its Book-Entry Interests in] * the number of Units specified in the immediately succeeding paragraph. The undersigned [includes herewith] ** [Beneficial Holder has furnished the undersigned Depository Participant with] * the appropriate endorsements and documents and paid all applicable transfer or similar taxes, if any, to the extent required by the Purchase Contract Agreement.

Please [deliver to the undersigned’s address specified below] ** [transfer to the account of the undersigned Beneficial Holder with the undersigned Depository Participant the beneficial interests in] * (i) the number of Separate Notes and (ii) number of Separate Purchase Contracts represented by the number of Units specified above.

[SIGNATURES ON THE FOLLOWING PAGE]

* Include only if a Global Unit.

** Include only if not a Global Unit.

IN WITNESS WHEREOF, the [undersigned has caused this instrument to be duly executed]* [Depository Participant has caused this instrument to be duly executed on behalf of itself and the undersigned Beneficial Holder]**.

Dated: _____

[NAME OF BENEFICIAL HOLDER]

By: _____

Name:
Title:
Address:

[NAME OF DEPOSITORY PARTICIPANT]*

By: _____

Name:
Address:

Attest By:

* Include only if not a Global Unit
** Include only if a Global Unit

[FORM OF RECREATION NOTICE]

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.
601 Travis Street, 16th Floor
Houston, Texas 77002
Facsimile: (713) 483-6954
Attention: Corporate Trust Services, re: Tyson Foods, Inc.

Re: Recreation of [Global] * Units

The undersigned [Beneficial Holder]* hereby notifies you that it wishes to recreate _____ Units [as to which it holds a Book-Entry Interest]* (the “ **New Units** ”) from a number of Separate Notes equal to the number of New Units and a number of Separate Purchase Contracts equal to the number of New Units in accordance with the Purchase Contract Agreement (the “ **Purchase Contract Agreement** ”) dated as of August 5, 2014 among the Company and The Bank of New York Mellon Trust Company, N.A., as Purchase Contract Agent, as Trustee under the Indenture and as attorney-in-fact for the Holders of Purchase Contracts from time to time. Terms used and not defined herein have the meaning assigned to such terms in the Purchase Contract Agreement.

The undersigned [includes herewith]** [Beneficial Holder has instructed the undersigned Depository Participant to transfer to you its Book-Entry Interests in]* the applicable number of Separate Notes and the applicable number of Separate Purchase Contracts sufficient for the recreation of the number of Units specified above. The undersigned [includes herewith]** [Beneficial Holder has furnished the undersigned Depository Participant with]* the appropriate endorsements and documents and paid all applicable transfer or similar taxes, if any, to the extent required by the Purchase Contract Agreement.

Please [deliver to the undersigned’s address specified below]** [transfer to the account of the undersigned Beneficial Holder with the undersigned Depository Participant the beneficial interests in]* the number of Units specified above.

[SIGNATURES ON THE FOLLOWING PAGE]

* Include only if a Global Unit.

** Include only if not a Global Unit.

IN WITNESS WHEREOF, the [undersigned has caused this instrument to be duly executed]* [Depository Participant has caused this instrument to be duly executed on behalf of itself and the undersigned Beneficial Holder]**.

Dated: _____

[NAME OF BENEFICIAL HOLDER]

By: _____

Name:
Title:
Address:

[NAME OF DEPOSITORY PARTICIPANT] *

By: _____

Name:
Address:

Attest By:

* Include only if not a Global Unit.
** Include only if a Global Unit.

TYSON FOODS, INC.
PURCHASE CONTRACTS

No. _____

Initial Number of Purchase Contracts: _____

This Purchase Contract certifies that, The Bank of New York Mellon Trust Company, N.A., as attorney-in-fact of holder(s) of the Purchase Contracts evidenced hereby, or its registered assigns (the “**Holder**”) is the registered owner of the number of Purchase Contracts set forth above, which number may from time to time be reduced or increased as set forth on Schedule A hereto, as appropriate, in accordance with the terms of the Purchase Contract Agreement (as defined below), but which number of Purchase Contracts, taken together with the number of all other Outstanding Purchase Contracts, shall not exceed 30,000,000 Purchase Contracts at any time.

Each Purchase Contract consists of the rights of the Holder under such Purchase Contract with the Company. All capitalized terms used herein which are defined in the Purchase Contract Agreement (as defined on the reverse hereof) have the meaning set forth therein.

Each Purchase Contract evidenced hereby obligates the Company to deliver to the Holder of this Purchase Contract on the Mandatory Settlement Date a number shares of Class A common stock, \$0.10 par value (“**Class A Common Stock**”), of the Company equal to the Settlement Rate, unless such Purchase Contract has settled or been redeemed prior to the Mandatory Settlement Date, all as provided in the Purchase Contract Agreement and more fully described on the reverse hereof.

Reference is hereby made to the further provisions set forth on the reverse hereof, which further provisions shall for all purposes have the same effect as if set forth at this place.

[SIGNATURES ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the Company has caused this instrument to be duly executed.

TYSON FOODS, INC.

By: _____
Name:
Title:

Dated: _____

REGISTERED HOLDER(S) (as to obligations of such holder(s) under the Purchase Contracts evidenced hereby)

By: THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.,
not individually but solely as Attorney-in-Fact of such holder(s)

By: _____
Name:
Title:

PURCHASE CONTRACT CERTIFICATE OF AUTHENTICATION OF
PURCHASE CONTRACT AGENT

This is one of the Purchase Contracts referred to in the within-mentioned Purchase Contract Agreement.

THE BANK OF NEW YORK MELLON TRUST
COMPANY, N.A. as Purchase Contract Agent

By: _____
Authorized Signatory

Dated:

[REVERSE OF PURCHASE CONTRACT]

Each Purchase Contract evidenced hereby is governed by a Purchase Contract Agreement, dated as of August 5, 2014 (as may be supplemented from time to time, the “**Purchase Contract Agreement**”), between Tyson Foods, Inc., a Delaware corporation (the “**Company**”) and The Bank of New York Mellon Trust Company, N.A., as Purchase Contract Agent (including its successors hereunder, the “**Purchase Contract Agent**”), as Trustee under the Indenture and as attorney-in-fact for the Holders of Purchase Contracts from time to time. Reference is hereby made to the Purchase Contract Agreement and supplemental agreements thereto for a description of the respective rights, limitations of rights, obligations, duties and immunities thereunder of the Purchase Contract Agent, the Company and the Holders and of the terms upon which the Purchase Contracts are, and are to be, executed and delivered.

Each Purchase Contract evidenced hereby obligates the Company to deliver to the Holder of this Purchase Contract, on the Mandatory Settlement Date, a number of shares of Class A Common Stock equal to the Settlement Rate, unless such Purchase Contract has settled or been redeemed prior to the Mandatory Settlement Date, in either case, pursuant to the terms of the Purchase Contract Agreement.

No fractional shares of Class A Common Stock will be issued upon settlement or redemption of Purchase Contracts, as provided in Section 4.13 of the Purchase Contract Agreement.

The Purchase Contracts are issuable only in registered form and only in denominations of a single Purchase Contract and any integral multiple thereof. The transfer of any Purchase Contract will be registered and Purchase Contracts may be exchanged as provided in the Purchase Contract Agreement.

The Purchase Contracts are initially being issued as part of the 4.75% Tangible Equity Units (the “**Units**”) issued by the Company pursuant to the Purchase Contract Agreement. Holders of the Units have the right to separate such Units into their constituent parts, consisting of Separate Notes and Separate Purchase Contracts, during the times, and under the circumstances, described in the Purchase Contract Agreement. Following separation of any Unit into its constituent parts, the Separate Purchase Contracts are transferable independently from the Separate Notes. In addition, Separate Purchase Contracts can be recombined with Separate Notes to recreate Units, as provided for in the Purchase Contract Agreement.

The Holder of this Purchase Contract, by its acceptance hereof, authorizes the Purchase Contract Agent to enter into and perform the Purchase Contract Agreement on its behalf as its attorney-in-fact and agrees to be bound by the terms and provisions thereof.

Subject to certain exceptions set forth in the Purchase Contract Agreement, the provisions of the Purchase Contract Agreement may be amended with the consent of the Holders of a majority of the Purchase Contracts.

The Purchase Contracts, and any claim, controversy or dispute arising under or related to the Purchase Contracts, shall be governed by, and construed in accordance with, the laws of the State of New York.

The Company, the Purchase Contract Agent, and any agent of the Company or the Purchase Contract Agent, may treat the Person in whose name this Purchase Contract is registered as the owner of the Purchase Contracts, evidenced hereby, for the purpose of performance of the Purchase Contracts evidenced by such Purchase Contracts and for all other purposes whatsoever, and neither the Company nor the Purchase Contract Agent, nor any agent of the Company or the Purchase Contract Agent, shall be affected by notice to the contrary.

The Purchase Contracts shall not entitle the Holder to any of the rights of a holder of the Class A Common Stock or other Exchange Property, except as provided by the Purchase Contract Agreement.

Each Purchase Contract (whether or not included in a Unit) is a security governed by Article 8 of the Uniform Commercial Code as in effect in the State of New York on the date hereof.

A copy of the Purchase Contract Agreement is available for inspection at the offices of the Company.

In the event of any inconsistency between the provisions of this Purchase Contract and the provisions of the Purchase Contract Agreement, the Purchase Contract Agreement shall prevail.

ABBREVIATIONS

The following abbreviations, when used in the inscription on the face of this instrument, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM: as tenants in common
 UNIF GIFT MIN ACT: _____ Custodian _____
 (cust) (minor)
 Under Uniform Gifts to Minors
 Act of _____

TENANT: as tenants by the entireties
 JT TEN: as joint tenants with rights of survivorship and not as tenants in
 common

Additional abbreviations may also be used though not in the above list.

FOR VALUE RECEIVED, the undersigned hereby sell(s), assign(s) and transfer(s) unto

(Please insert Social Security or Taxpayer I.D. or other Identifying Number of Assignee)

(Please Print or Type Name and Address Including Postal Zip Code of Assignee)

the within Purchase Contracts and all rights thereunder, hereby irrevocably constituting and appointing attorney _____, to transfer said Purchase Contracts on the books of the Company with full power of substitution in the premises.

DATED: _____ Signature _____

Notice : The signature to this assignment must correspond with the name as it appears upon the face of the within Purchase Contracts in every particular, without alteration or enlargement or any change whatsoever.

Signature Guarantee: _____

SETTLEMENT INSTRUCTIONS

The undersigned Holder directs that a certificate for shares of Class A Common Stock or other securities, as applicable, deliverable upon settlement or redemption of the number of Purchase Contracts evidenced by this Purchase Contract be registered in the name of, and delivered, together with a check in payment for any fractional share (or cash included in the Redemption Amount, if applicable), to the undersigned at the address indicated below unless a different name and address have been indicated below. If shares of Class A Common Stock or other securities, as applicable, are to be registered in the name of a Person other than the undersigned, the undersigned will pay any transfer tax payable incidental thereto, as provided in the Purchase Contract Agreement.

Dated: _____

Signature
Signature Guarantee: _____
(if assigned to another Person)

If shares are to be registered in the name of and delivered to (or cash is to be paid to) a Person other than the Holder, please (i) print such Person's name and address and (ii) provide a guarantee of your signature:

Name

Name

Address

Address

Social Security or other Taxpayer
Identification Number, if any

ELECTION TO SETTLE EARLY

The undersigned Holder of this Purchase Contract hereby irrevocably exercises the option to effect Early Settlement (which Early Settlement may, as applicable, be deemed to be in connection with a Fundamental Change pursuant to Section 4.07 of the Purchase Contract Agreement) in accordance with the terms of the Purchase Contract Agreement with respect to the Purchase Contracts evidenced by this Purchase Contract as specified below. The undersigned Holder directs that a certificate for shares of Class A Common Stock or other securities, as applicable, deliverable upon such Early Settlement be registered in the name of, and delivered, together with a check in payment for any fractional share and any Purchase Contract representing any Purchase Contracts evidenced hereby as to which Early Settlement is not effected, to the undersigned at the address indicated below unless a different name and address have been indicated below. If shares of Class A Common Stock or other securities, as applicable, are to be registered in the name of a Person other than the undersigned, the undersigned will pay any transfer tax payable incident thereto, as provided in the Purchase Contract Agreement.

Dated: _____

Signature

Signature Guarantee: _____

Number of Purchase Contracts evidenced hereby as to which Early Settlement is being elected:

If shares of Class A Common Stock or Purchase Contracts are to be registered in the name of and delivered to a Person other than the Holder, please print such Person's name and address:

Name

Address

Social Security or other Taxpayer
Identification Number, if any

REGISTERED HOLDER

Please print name and address of Registered Holder:

Name

Address

TYSON FOODS, INC.
1.50% SENIOR AMORTIZING NOTES DUE 2017

No. _____

[Initial] * Number of Notes: _____

TYSON FOODS, INC., a Delaware corporation (the “**Issuer**”, which term includes any successor under the Indenture hereinafter referred to), for value received, hereby promises to pay to [CEDE & CO., as nominee of The Depository Trust Company] * [_____] **, or registered assigns (the “**Holder**”), the initial principal amount of \$6.82854 for each of the number of Notes set forth above[, which number of Notes may from time to time be reduced or increased as set forth in Schedule A hereto, as appropriate, in accordance with the terms of the Indenture, but which number of Notes, taken together with the number of all other outstanding Notes, shall not exceed 30,000,000 Notes at any time] *, in equal quarterly installments (except for the first such payment) (each such payment, an “**Installment Payment**”), constituting a payment of interest (at a rate of 1.50% per annum) and a partial repayment of principal, payable on each January 15, April 15, July 15 and October 15, commencing on October 15, 2014 (each such date, an “**Installment Payment Date**”), and the period from, and including, August 5, 2014 to, but excluding, such first Installment Payment Date and in the case of any other Installment Payment Date, the quarterly period from, and including, the immediately preceding Installment Payment Date to, but excluding, such other Installment Payment Date, an “**Installment Payment Period**,” with the final Installment Payment due and payable on July 15, 2017, all as set forth on the reverse hereof and in the Indenture referred to on the reverse hereof.

Each Installment Payment for any Installment Payment Period shall be computed on the basis of a 360-day year of twelve 30-day months. If an Installment Payment is payable for any period shorter than a full Installment Payment Period, such Installment Payment shall be computed on the basis of the actual number of days elapsed per 30-day month. Furthermore, if any date on which an Installment Payment is payable is not a Business Day, then payment of the Installment Payment on such date shall be made on the next succeeding day that is a Business Day, and without any interest or other payment in respect of any such delay. Installment Payments shall be paid to the Person in whose name the Note is registered, with limited exceptions, at the close of business on the Business Day immediately preceding the related Installment Payment Date (each, a “**Regular Record Date**”). If the Notes do not remain in book-entry only form, the Issuer shall have the right to select Regular Record Dates, noticed in writing in advance, to the Trustee and Holders, which will be more than 14 days but not more than 60 days prior to the relevant Installment Payment Date. Installment Payments shall be payable at the office or agency of the Issuer maintained for that purpose in the Borough of Manhattan, The City of New York; *provided, however*, that payment of Installment Payments may be made at the option of the Issuer by check mailed to the registered Holder at such address as shall appear in the security register or by wire transfer to an account appropriately designated by the Holder entitled to payment.

* Include only if a Global Note.

** Include only if not a Global Note.

This Note shall not be entitled to any benefit under the Indenture hereinafter referred to or be valid or obligatory for any purpose until the Certificate of Authentication shall have been manually signed by or on behalf of the Trustee.

Reference is hereby made to the further provisions of this Note set forth on the reverse hereof, which further provisions shall for all purposes have the same effect as if set forth at this place.

[SIGNATURES ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the Issuer has caused this instrument to be duly executed.

Dated: _____

TYSON FOODS, INC.

By: _____
Name:
Title:

By: _____
Name:
Title:

CERTIFICATE OF AUTHENTICATION

The Bank of New York Mellon Trust Company, N.A., as Trustee, certifies that this is one of the Securities of the series designated herein referred to in the within mentioned Indenture.

Dated:

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., as
Trustee

By: _____
Authorized Signatory

[REVERSE OF NOTE]

TYSON FOODS, INC.

1.50% Senior Amortizing Notes due 2017

This Note is one of a duly authorized series of Securities of the Note Issuer designated as its 1.50% Senior Amortizing Notes due 2017 (herein sometimes referred to as the “**Notes**”), issued under the Indenture, dated as of June 1, 1995, among the Issuer and The Bank of New York Mellon Trust Company, N.A. (as successor to JPMorgan Chase Bank, N.A. (formerly The Chase Manhattan Bank)), as trustee (the “**Trustee**,” which term includes any successor trustee under the Indenture) (including any provisions of the TIA that are deemed incorporated therein) (the “**Original Indenture**”), as supplemented by the Supplemental Indenture, dated as of August 5, 2014 (the “**Supplemental Indenture**”), among the Issuer and the other Guarantors from time to time party thereto, and the Trustee (the Original Indenture and, as supplemented by such Supplemental Indenture, the “**Indenture**”), to which Indenture reference is hereby made for a description of the rights, limitations of rights, obligations, duties and immunities thereunder of the Trustee, the Issuer and the Holders. The terms of other series of Securities issued under the Indenture may vary with respect to interest rates, issue dates, maturity, redemption, repayment, currency of payment and otherwise as provided in the Indenture. The Indenture further provides that securities of a single series may be issued at various times, with different maturity dates and may bear interest at different rates. This series of Securities is limited in initial aggregate principal amount as specified in the Supplemental Indenture.

Each Installment Payment shall constitute a payment of interest (at a rate of 1.50% per annum) and a partial repayment of principal on the Note, allocated as set forth in Section 2.02(c) of the Supplemental Indenture.

<u>Installment Payment Date</u>	<u>Amount of</u> <u>Principal</u>	<u>Amount of</u> <u>Interest</u>
October 15, 2014	\$0.44189	\$0.01992
January 15, 2015	\$0.56980	\$0.02395
April 15, 2015	\$0.57194	\$0.02181
July 15, 2015	\$0.57408	\$0.01967
October 15, 2015	\$0.57623	\$0.01752
January 15, 2016	\$0.57840	\$0.01535
April 15, 2016	\$0.58056	\$0.01319
July 15, 2016	\$0.58274	\$0.01101
October 15, 2016	\$0.58493	\$0.00882
January 15, 2017	\$0.58712	\$0.00663
April 15, 2017	\$0.58932	\$0.00443
July 15, 2017	\$0.59153	\$0.00222

The Notes shall not be subject to redemption at the option of the Issuer. However, a Holder shall have the right to require the Issuer to repurchase some or all of its Notes for cash at the Repurchase Price per Note and on the Repurchase Date, upon the occurrence of certain events and subject to the conditions set forth in the Indenture.

This Note is not entitled to the benefit of any sinking fund. The Indenture contains provisions for Legal Defeasance and Covenant Defeasance at any time of the indebtedness on this Note upon compliance by the Issuer with certain conditions set forth therein, which provisions apply to this Note.

If an Event of Default with respect to the Notes shall occur and be continuing, then (unless no declaration of acceleration or notice is required for such Event of Default) either the Trustee or the Holders of not less than 25% in principal amount of the Notes then outstanding may declare the aggregate principal amount of the Notes, and all interest accrued thereon, to be due and payable immediately, in the manner, subject to the conditions and with the effect provided in the Indenture.

The Indenture permits, with certain exceptions as therein provided, the Issuer and the Trustee, with the consent of the Holders of not less than a majority in principal amount of the Securities at the time outstanding, to execute supplemental indentures for certain purposes as described therein.

No provision of this Note or of the Indenture shall alter or impair the obligation of the Issuer, which is absolute and unconditional, to pay Installment Payments on this Note at the time, place and rate, and in the coin or currency, herein and in the Indenture prescribed.

The Notes are Guaranteed on the Issue Date, on a senior basis, by the Guarantor as set forth in the Indenture.

The Notes are originally being issued as part of the 4.75% Tangible Equity Units (the “**Units**”) issued by the Issuer pursuant to that certain Purchase Contract Agreement, dated as of August 5, 2014, between the Issuer and The Bank of New York Mellon Trust Company, N.A., as Purchase Contract Agent, as Trustee and as attorney-in-fact for the holders of Purchase Contracts from time to time (the “**Purchase Contract Agreement**”). Holders of the Units have the right to separate such Units into their constituent parts, consisting of Separate Purchase Contracts (as defined in the Purchase Contract Agreement) and Separate Notes, during the times, and under the circumstances, described in the Purchase Contract Agreement. Following separation of any Unit into its constituent Separate Note and Separate Purchase Contract, the Separate Notes are transferable independently from the Separate Purchase Contracts. In addition, Separate Notes can be recombined with Separate Purchase Contracts to recreate Units, as provided for in the Purchase Contract Agreement. Reference is hereby made to the Purchase Contract Agreement for a more complete description of the terms thereof applicable to the Units.

As provided in the Indenture and subject to certain limitations therein set forth, the transfer of this Note shall be registered on the security register of the Issuer, upon due presentation of this Note for registration of transfer at the office or agency of the Issuer in the Borough of Manhattan, The City of New York, duly endorsed by, or accompanied by a written instrument or instruments of transfer in form satisfactory to the Issuer and the Trustee duly executed by, the Holder hereof or by his attorney duly authorized in writing, and thereupon the Issuer shall execute and the Trustee shall authenticate and deliver in the name of the transferee or transferees a new Note or Notes in authorized denominations and for a like aggregate principal amount.

The Notes are initially issued in registered, global form without coupons in denominations initially equal to \$6.82854 and integral multiples in excess thereof.

The Issuer or Trustee may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any registration of transfer of this Note. No service charge shall be made for any such transfer or for any exchange of this Note as contemplated by the Indenture.

The Issuer, the Trustee and any agent of the Issuer or the Trustee may deem and treat the Person in whose name this Note is registered upon the security register for the Notes as the absolute owner of this Note (whether or not this Note shall be overdue and notwithstanding any notation of ownership or other writing thereon) for the purpose of receiving payment of or on account of the principal of and, subject to the provisions of the Indenture, interest, if any, on this Note and for all other purposes; and neither the Issuer nor the Trustee nor any agent of the Issuer or the Trustee shall be affected by any notice to the contrary.

This Note, the Indenture and the Guarantee, and any claim, controversy or dispute arising under or related to this Note, the Indenture and the Guarantee, shall be governed by, and construed in accordance with, the laws of the State of New York .

Capitalized terms used but not defined in this Note shall have the meanings ascribed to such terms in the Indenture.

No recourse shall be had for the payment of any Installment Payment on this Note, or for any claim based hereon, or upon any obligation, covenant or agreement of the Issuer in the Indenture, against any incorporator, stockholder, officer or director, past, present or future of the Issuer or of any predecessor or successor, either directly or through the Issuer or of any successor, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment of penalty or otherwise; and all such personal liability is expressly released and waived as a condition of, and as part of the consideration for, the issuance of this Note.

The Issuer and each Beneficial Holder agrees, for United States federal income tax purposes, to treat the Notes as indebtedness of the Issuer.

In the event of any inconsistency between the provisions of this Note and the provisions of the Indenture, the Indenture shall prevail.

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned assigns and transfers this Note to:

(Insert assignee's social security or tax identification number)
(Insert address and zip code of assignee)
and irrevocably appoints

agent to transfer this Note on the books of the Issuer. The agent may substitute another to act for him or her.

Date: _____

Signature:

Signature Guarantee:

(Sign exactly as your name appears on the other side of this Note)

SIGNATURE GUARANTEE

Signatures must be guaranteed by an “eligible guarantor institution” meeting the requirements of the Registrar, which requirements include membership or participation in the Security Transfer Agent Medallion Program (“STAMP”) or such other “signature guarantee program” as may be determined by the Registrar in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.

By: _____
Name:
Title:

as Trustee

By: _____
Name:
Title:

Attest

By: _____
Name:
Title:

FORM OF REPURCHASE NOTICE

TO: TYSON FOODS, INC.
THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., as Trustee

The undersigned registered Holder hereby irrevocably acknowledges receipt of a notice from Tyson Foods, Inc. (the “**Issuer**”) regarding the right of Holders to elect to require the Issuer to repurchase the Notes and requests and instructs the Issuer to pay, for each Note designated below, the Repurchase Price for such Notes (determined as set forth in the Indenture), in accordance with the terms of the Indenture and the Notes, to the registered holder hereof. Capitalized terms used herein but not defined shall have the meanings ascribed to such terms in the Indenture. The Notes shall be repurchased by the Issuer as of the Repurchase Date pursuant to the terms and conditions specified in the Indenture.

Dated: _____

Signature:

NOTICE: The above signature of the Holder hereof must correspond with the name as written upon the face of the Notes in every particular without alteration or enlargement or any change whatever.

Notes Certificate Number (if applicable): _____

Number of Notes to be repurchased (if less than all, must be one Note or integral multiples in excess thereof): _____

Social Security or Other Taxpayer Identification Number: _____

SCHEDULE A
[SCHEDULE OF INCREASES OR DECREASES IN GLOBAL NOTE]*

The initial number of Notes evidenced by this Global Note is _____. The following increases or decreases in this Global Note have been made:

<u>Date</u>	<u>Amount of decrease in number of Notes evidenced hereby</u>	<u>Amount of increase in number of Notes evidenced hereby</u>	<u>Number of Notes evidenced hereby following such decrease (or increase)</u>	<u>Signature of authorized officer of Trustee</u>
-------------	---	---	---	---

* Include only if a Global Note.

[FORM OF FACE OF PURCHASE CONTRACT]

[THIS SECURITY IS A GLOBAL PURCHASE CONTRACT WITHIN THE MEANING OF THE PURCHASE CONTRACT AGREEMENT HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF A DEPOSITARY OR A NOMINEE OF A DEPOSITARY OR A SUCCESSOR DEPOSITARY. UNLESS AND UNTIL IT IS EXCHANGED IN WHOLE OR IN PART FOR SECURITIES IN CERTIFICATED FORM, THIS SECURITY MAY NOT BE TRANSFERRED EXCEPT AS A WHOLE BY THE DEPOSITARY TRUST COMPANY, A NEW YORK CORPORATION (THE “**DEPOSITARY**”) TO THE NOMINEE OF THE DEPOSITARY OR BY A NOMINEE OF THE DEPOSITARY TO THE DEPOSITARY OR ANOTHER NOMINEE OF THE DEPOSITARY OR BY THE DEPOSITARY OR ANY SUCH NOMINEE TO A SUCCESSOR DEPOSITARY OR A NOMINEE OF SUCH SUCCESSOR DEPOSITARY.

UNLESS THIS SECURITY IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY TO THE COMPANY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE, OR PAYMENT, AND ANY SECURITY ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.] *

* Include only if a Global Purchase Contract.

TYSON FOODS, INC.
PURCHASE CONTRACTS

CUSIP No. 902494 111
ISIN No. US9024941117

No. _____ [Initial]* Number of Purchase Contracts: _____

This Purchase Contract certifies that [CEDE & CO., as nominee of The Depository Trust Company]* [_____]**, or its registered assigns (the “**Holder**”) is the registered owner of the number of Purchase Contracts set forth above[, which number may from time to time be reduced or increased as set forth on Schedule A hereto, as appropriate, in accordance with the terms of the Purchase Contract Agreement (as defined below), but which number of Purchase Contracts, taken together with the number of all other Outstanding Purchase Contracts, shall not exceed 30,000,000 Purchase Contracts at any time]*.

Each Purchase Contract consists of the rights of the Holder under such Purchase Contract with the Company. All capitalized terms used herein which are defined in the Purchase Contract Agreement (as defined on the reverse hereof) have the meaning set forth therein.

Each Purchase Contract evidenced hereby obligates the Company to deliver to the Holder of this Purchase Contract on the Mandatory Settlement Date a number shares of Class A common stock, \$0.10 par value (“**Class A Common Stock**”), of the Company equal to the Settlement Rate, unless such Purchase Contract has settled or been redeemed prior to the Mandatory Settlement Date, all as provided in the Purchase Contract Agreement and more fully described on the reverse hereof.

Reference is hereby made to the further provisions set forth on the reverse hereof, which further provisions shall for all purposes have the same effect as if set forth at this place.

[SIGNATURES ON THE FOLLOWING PAGE]

-
- * Include only if a Global Purchase Contract.
 - ** Include only not if a Global Purchase Contract.

IN WITNESS WHEREOF, the Company has caused this instrument to be duly executed.

TYSON FOODS, INC.

By: _____
Name:
Title:

Dated: _____

REGISTERED HOLDER(S) (as to obligations of such holder(s) under the Purchase Contracts evidenced hereby)

By: THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., not individually but solely as Attorney-in-Fact of such holder(s)

By: _____

Name:

Title:

PURCHASE CONTRACT CERTIFICATE OF AUTHENTICATION OF
PURCHASE CONTRACT AGENT

This is one of the Purchase Contracts referred to in the within-mentioned Purchase Contract Agreement.

THE BANK OF NEW YORK MELLON TRUST
COMPANY, N.A., as Purchase Contract Agent

By: _____
Authorized Signatory

Dated: _____

[REVERSE OF PURCHASE CONTRACT]

Each Purchase Contract evidenced hereby is governed by a Purchase Contract Agreement, dated as of August 5, 2014 (as may be supplemented from time to time, the “ **Purchase Contract Agreement** ”), between Tyson Foods, Inc., a Delaware corporation (the “ **Company** ”) and The Bank of New York Mellon Trust Company, N.A., as Purchase Contract Agent (including its successors hereunder, the “ **Purchase Contract Agent** ”), as Trustee under the Indenture and as attorney-in-fact for the Holders of Purchase Contracts from time to time. Reference is hereby made to the Purchase Contract Agreement and supplemental agreements thereto for a description of the respective rights, limitations of rights, obligations, duties and immunities thereunder of the Purchase Contract Agent, the Company and the Holders and of the terms upon which the Purchase Contracts are, and are to be, executed and delivered.

Each Purchase Contract evidenced hereby obligates the Company to deliver to the Holder of this Purchase Contract, on the Mandatory Settlement Date, a number of shares of Class A Common Stock equal to the Settlement Rate, unless such Purchase Contract has settled or been redeemed prior to the Mandatory Settlement Date, in either case, pursuant to the terms of the Purchase Contract Agreement.

No fractional shares of Class A Common Stock will be issued upon settlement or redemption of Purchase Contracts, as provided in Section 4.13 of the Purchase Contract Agreement.

The Purchase Contracts are issuable only in registered form and only in denominations of a single Purchase Contract and any integral multiple thereof. The transfer of any Purchase Contract will be registered and Purchase Contracts may be exchanged as provided in the Purchase Contract Agreement.

The Purchase Contracts are initially being issued as part of the 4.75% Tangible Equity Units (the “ **Units** ”) issued by the Company pursuant to the Purchase Contract Agreement. Holders of the Units have the right to separate such Units into their constituent parts, consisting of Separate Notes and Separate Purchase Contracts, during the times, and under the circumstances, described in the Purchase Contract Agreement. Following separation of any Unit into its constituent parts, the Separate Purchase Contracts are transferable independently from the Separate Notes. In addition, Separate Purchase Contracts can be recombined with Separate Notes to recreate Units, as provided for in the Purchase Contract Agreement.

The Holder of this Purchase Contract, by its acceptance hereof, authorizes the Purchase Contract Agent to enter into and perform the Purchase Contract Agreement on its behalf as its attorney-in-fact and agrees to be bound by the terms and provisions thereof.

Subject to certain exceptions set forth in the Purchase Contract Agreement, the provisions of the Purchase Contract Agreement may be amended with the consent of the Holders of a majority of the Purchase Contracts.

The Purchase Contracts, and any claim, controversy or dispute arising under or related to the Purchase Contracts, shall be governed by, and construed in accordance with, the laws of the State of New York.

The Company, the Purchase Contract Agent, and any agent of the Company or the Purchase Contract Agent, may treat the Person in whose name this Purchase Contract is registered as the owner of the Purchase Contracts, evidenced hereby, for the purpose of performance of the Purchase Contracts evidenced by such Purchase Contracts and for all other purposes whatsoever, and neither the Company nor the Purchase Contract Agent, nor any agent of the Company or the Purchase Contract Agent, shall be affected by notice to the contrary.

The Purchase Contracts shall not entitle the Holder to any of the rights of a holder of the Class A Common Stock or other Exchange Property, except as provided by the Purchase Contract Agreement.

Each Purchase Contract (whether or not included in a Unit) is a security governed by Article 8 of the Uniform Commercial Code as in effect in the State of New York on the date hereof.

A copy of the Purchase Contract Agreement is available for inspection at the offices of the Company.

In the event of any inconsistency between the provisions of this Purchase Contract and the provisions of the Purchase Contract Agreement, the Purchase Contract Agreement shall prevail.

ABBREVIATIONS

The following abbreviations, when used in the inscription on the face of this instrument, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM: as tenants in common
 UNIF GIFT MIN ACT: _____ Custodian _____
 (cust) (minor)
 Under Uniform Gifts to Minors
 Act of _____

 TENANT: as tenants by the entireties
 JT TEN: as joint tenants with rights of survivorship and not as tenants in common

Additional abbreviations may also be used though not in the above list.

FOR VALUE RECEIVED, the undersigned hereby sell(s), assign(s) and transfer(s) unto

(Please insert Social Security or Taxpayer I.D. or other Identifying Number of Assignee)

(Please Print or Type Name and Address Including Postal Zip Code of Assignee)

the within Purchase Contracts and all rights thereunder, hereby irrevocably constituting and appointing attorney , to transfer said Purchase Contracts on the books of the Company with full power of substitution in the premises.

DATED: _____

Signature _____

Notice : The signature to this assignment must correspond with the name as it appears upon the face of the within Purchase Contracts in every particular, without alteration or enlargement or any change whatsoever.

Signature Guarantee: _____

SETTLEMENT INSTRUCTIONS

The undersigned Holder directs that a certificate for shares of Class A Common Stock or other securities, as applicable, deliverable upon settlement or redemption of the number of Purchase Contracts evidenced by this Purchase Contract be registered in the name of, and delivered, together with a check in payment for any fractional share (or cash included in the Redemption Amount, if applicable), to the undersigned at the address indicated below unless a different name and address have been indicated below. If shares of Class A Common Stock or other securities, as applicable, are to be registered in the name of a Person other than the undersigned, the undersigned will pay any transfer tax payable incidental thereto, as provided in the Purchase Contract Agreement.

Dated: _____

Signature
Signature Guarantee: _____
(if assigned to another Person)

If shares are to be registered in the name of and delivered to (or cash is paid to) a Person other than the Holder, please (i) print such Person's name and address and (ii) provide a guarantee of your signature:

Name

Name

Address

Address

Social Security or other Taxpayer
Identification Number, if any

ELECTION TO SETTLE EARLY

The undersigned Holder of this Purchase Contract hereby irrevocably exercises the option to effect Early Settlement (which Early Settlement may, as applicable, be deemed to be in connection with a Fundamental Change pursuant to Section 4.07 of the Purchase Contract Agreement) in accordance with the terms of the Purchase Contract Agreement with respect to the Purchase Contracts evidenced by this Purchase Contract as specified below. The undersigned Holder directs that a certificate for shares of Class A Common Stock or other securities, as applicable, deliverable upon such Early Settlement be registered in the name of, and delivered, together with a check in payment for any fractional share and any Purchase Contract representing any Purchase Contracts evidenced hereby as to which Early Settlement is not effected, to the undersigned at the address indicated below unless a different name and address have been indicated below. If shares of Class A Common Stock or other securities, as applicable, are to be registered in the name of a Person other than the undersigned, the undersigned will pay any transfer tax payable incident thereto, as provided in the Purchase Contract Agreement.

Dated: _____

Signature

Signature Guarantee: _____

Number of Purchase Contracts evidenced hereby as to which Early Settlement is being elected:

If shares of Class A Common Stock or Purchase Contracts are to be registered in the name of and delivered to a Person other than the Holder, please print such Person's name and address:

Name

Address

Social Security or other Taxpayer
Identification Number, if any

REGISTERED HOLDER

Please print name and address of Registered Holder:

Name

Address

TYSON FOODS, INC. ,

as Issuer,

TYSON FRESH MEATS, INC. ,

as Guarantor,

AND

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.

(as successor to JPMorgan Chase Bank, N.A. (formerly The Chase Manhattan Bank, N.A.))

as Trustee

Supplemental Indenture

Dated as of August 5, 2014

Supplemental to Indenture

Dated as of June 1, 1995

1.50% Senior Amortizing Notes due 2017

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EXHIBIT:	
A. Form of Note	

SUPPLEMENTAL INDENTURE dated as of August 5, 2014 (“**Supplemental Indenture**”) by and among TYSON FOODS, INC., a Delaware corporation (the “**Issuer**”), TYSON FRESH MEATS, INC., a Delaware Corporation (the “**Guarantor**”) and THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., a national banking association, as trustee (the “**Trustee**”), supplementing the Indenture dated as of June 1, 1995 by and among the Issuer and The Bank of New York Mellon Trust Company, N.A. (as successor to JPMorgan Chase Bank, N.A. (formerly The Chase Manhattan Bank)) (the “**Original Indenture**” and, as supplemented by this Supplemental Indenture, the “**Indenture**”).

RECITALS OF THE ISSUER:

WHEREAS, the Issuer executed and delivered the Original Indenture to the Trustee to provide, among other things, for the future issuance of the Issuer’s unsecured Securities from time to time in one or more series as might be determined by the Issuer under the Original Indenture, in an unlimited aggregate principal amount which may be authenticated and delivered as provided in the Original Indenture;

WHEREAS, Section 9.1 of the Original Indenture provides for various matters with respect to any series of Securities issued under the Original Indenture to be established in an indenture supplemental to the Original Indenture;

WHEREAS, Section 9.1(5) of the Original Indenture provides for the Issuer and the Trustee to enter into an indenture supplemental to the Original Indenture to establish the form or forms or terms of Securities of any series or of the coupons appertaining to such series as permitted by Section 2.3 of the Original Indenture;

WHEREAS, the Board of Directors has duly adopted resolutions authorizing the Issuer to execute and deliver this Supplemental Indenture;

WHEREAS, the Board of Directors of the Guarantor has duly adopted resolutions authorizing the Guarantor to execute and deliver this Supplemental Indenture;

WHEREAS, the Issuer and the Guarantor desire and have requested the Trustee to join them in the execution and delivery of this Supplemental Indenture in order to establish and provide for the issuance by the Issuer of a series of Securities designated as its 1.50% Senior Amortizing Notes due 2017 (the “**Notes**,” and each \$6.82854 of initial principal amount of such Securities, a “**Note**”), substantially in the form attached hereto as Exhibit A and initially guaranteed by the Guarantor, on the terms set forth herein;

WHEREAS, the Issuer now wishes to issue Notes in an initial aggregate principal amount of \$204,856,200, each Note initially to be issued as a component of the Units (as defined herein) being issued on the date hereof by the Issuer pursuant to the Purchase Contract Agreement, dated as of August 5, 2014, among the Issuer and The Bank of New York Mellon Trust Company, N.A., as Purchase Contract Agent, as Trustee and as attorney-in-fact for the holders of Purchase Contracts from time to time (the “**Purchase Contract Agreement**”);

WHEREAS, the Guarantor is willing to provide on the Issue Date a Guarantee with respect to the Notes;

WHEREAS, the Form of Note is to be substantially in the form hereinafter provided for; and

WHEREAS, the Issuer has requested that the Trustee execute and deliver this Supplemental Indenture, and all requirements necessary to make (i) this Supplemental Indenture a valid instrument in accordance with its terms, (ii) the Notes, when executed by the Issuer and authenticated and delivered by the Trustee, the valid obligations of the Issuer, and (iii) the Guarantee, when this Supplemental Indenture is executed by the Guarantor, the valid obligation of the Guarantor, have been performed, and the execution and delivery of this Supplemental Indenture has been duly authorized in all respects.

NOW, THEREFORE, THIS SUPPLEMENTAL INDENTURE WITNESSETH, for and in consideration of the premises and the purchases of the Notes by the Holders thereof, it is mutually agreed, for the benefit of the parties hereto and the equal and proportionate benefit of all Holders of the Notes, as follows:

ARTICLE 1

DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

Section 1.01 *Scope of Supplemental Indenture; General*. The changes, modifications and supplements to the Original Indenture effected by this Supplemental Indenture shall be applicable only with respect to, and govern the terms of, the Notes (which shall be initially in the aggregate principal amount of \$204,856,200) and shall not apply to any other Securities that may be issued under the Original Indenture unless a supplemental indenture with respect to such other Securities specifically incorporates such changes, modifications and supplements. This Supplemental Indenture shall supersede any corresponding provisions in the Original Indenture.

Section 1.02 *Definitions* . For all purposes of the Indenture, except as otherwise expressly provided or unless the context otherwise requires:

(i) the terms defined in this Article 1 shall have the meanings assigned to them in this Article and include the plural as well as the singular;

(ii) all words, terms and phrases defined in the Original Indenture (but not otherwise defined herein) shall have the same meaning herein as in the Original Indenture;

(iii) all other terms used herein that are defined in the TIA, either directly or by reference therein, shall have the meanings assigned to them therein;

(iv) all accounting terms not otherwise defined herein shall have the meanings assigned to them in accordance with GAAP; and

(v) the words “herein,” “hereof” and “hereunder” and other words of similar import refer to this Supplemental Indenture as a whole and not to any particular Article, Section or other subdivision.

“ **Affiliate** ” means, when used with reference to a specified Person, any Person directly or indirectly controlling, or controlled by or under direct or indirect common control with the Person specified.

“ **Agent Members** ” has the meaning ascribed to such term in Section 2.01(d).

“ **Attributable Debt** ” means, as to any particular lease under which any Person is at the time liable, other than a capital lease, and at any date as of which the amount of such lease is to be determined, the total net amount of rent required to be paid by such Person under such lease during the initial term of such lease as determined in accordance with generally accepted accounting principles, discounted from the last date of such initial term to the date of determination at a rate per annum equal to the discount rate which would be applicable to a capital lease with like term in accordance with generally accepted accounting principles. The net amount of rent required to be paid under any such lease for any such period shall be the aggregate amount of rent payable by the lessee with respect to such period after excluding amounts required to be paid on account of insurance, taxes, assessments, utility, operating and labor costs and similar charges. In the case of any lease which is terminable by the lessee upon the payment of a penalty, such net amount shall also include the amount of such penalty, but no rent shall be considered as required to be paid under such lease subsequent to the first date upon which it may be so terminated. “ **Attributable Debt** ” means, as to a capital lease under which any Person is at the time liable and at any date as of which the amount of such lease is to be determined, the capitalized amount of such lease that would appear on the face of a balance sheet of such Person in accordance with generally accepted accounting principles.

“ **Beneficial Holder** ” means, with respect to a Global Note, a Person who is the beneficial owner of such Book-Entry Interest as reflected on the books of the Depository or on the books of a Person maintaining an account with the Depository (directly as a Depository Participant or as an indirect participant, in each case in accordance with the rules of the Depository).

“ **Board of Directors** ” means the board of directors of the Issuer or any duly authorized committee of that board or any director or directors and/or, with respect to the Notes, any officer or officers to whom that board or committee shall have duly delegated its authority.

“ **Book-Entry Interest** ” means a beneficial interest in a Global Note, registered in the name of a Depository or a nominee thereof, ownership and transfers of which shall be maintained and made through book entries by such Depository.

“ **Business Day** ” means any day other than a Saturday, Sunday or any day on which banking institutions in New York, New York are authorized or obligated by applicable law or executive order to close or be closed.

“ **Capital Lease Obligation** ” means an obligation that is required to be classified and accounted for as a capital lease for financial reporting purposes in accordance with GAAP, and the amount of Indebtedness represented by such obligation shall be the capitalized amount of such obligation determined in accordance with GAAP; and the maturity thereof shall be the date of the last payment of rent or any other amount due under such lease prior to the first date upon which such lease may be terminated by the lessee without payment of a penalty.

“ **Capital Stock** ” means, with respect to any Person, any and all shares, interests, participations or other equivalents (however designated) of or in such Person’s capital stock or other equity interests, and options, rights or warrants to purchase such capital stock or other equity interests, whether now outstanding or issued after the Issue Date.

“ **Certificated Note** ” means a Note in definitive registered form without interest coupons.

“ **Class A Common Stock** ” means the Class A common stock, par value \$0.10 per share, of the Issuer as it existed on the Issue Date.

“ **close of business** ” means 5:00 p.m. (New York City time).

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

“ **Commodity Price Protection Agreement** ” means, with respect to any Person, any forward contract, commodity swap, commodity option or other similar agreement or arrangement entered into with respect to fluctuations in commodity prices.

“ **Component Note** ” means a Note in global form and attached to a Global Unit that (a) shall evidence the number of Notes specified therein that are components of the Units evidenced by such Global Unit, (b) shall be registered on the security register for the Notes in the name of The Bank of New York Mellon Trust Company, N.A., as attorney-in-fact of holder(s) of the Units of which such Notes form a part, and (c) shall be held by the Purchase Contract Agent as attorney-in-fact for such holder(s), together with the Global Unit, as custodian of such Global Unit for the Depository.

“ **control** ” when used with respect to any Person, means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms “ **controlling** ” and “ **controlled** ” have meanings correlative to the foregoing.

“ **Covenant Defeasance** ” has the meaning ascribed to it in Section 6.03.

“ **Credit Agreement** ” means the Credit Agreement, dated as of August 9, 2012, as amended on June 27, 2014, among the Issuer, the lenders party thereto, JPMorgan Chase Bank, N.A., as administrative agent, J.P. Morgan Securities LLC, Merrill Lynch, Pierce, Fenner & Smith Incorporated, Barclays Bank plc, CoBank, ACB, Cooperatieve Centrale Raiffeisen-Boerenleenbank B.A., “Rabobank Nederland”, New York Branch, and RBC Capital Markets, as joint lead arrangers and joint bookrunners, Bank of America, N.A. and Barclays Bank plc, as syndication agents, and CoBank, ACB, Cooperatieve Centrale Raiffeisen-Boerenleenbank B.A., “Rabobank Nederland”, New York Branch, and RBC Capital Markets, as documentation agents, together with the related

documents thereto (including any guarantees and security documents), as amended, extended, renewed, restated, supplemented or otherwise modified (in whole or in part, and without limitation as to amount, terms, conditions, covenants and other provisions) from time to time, and any agreement (and related document) governing Indebtedness Incurred to Refinance, in whole or in part, the borrowings and commitments then outstanding or permitted to be outstanding thereunder or under successor Credit Agreements, whether by the same or any other lender or group of lenders.

“ **Currency Agreement** ” means any foreign exchange contract, currency swap agreement or other similar agreement with respect to currency values.

“ **Default** ” means any event which is, or after notice or passage of time or both would be, an Event of Default.

“ **Depository** ” means The Depository Trust Company until a successor Depository shall have become such pursuant to the applicable provisions of the Indenture, and thereafter “Depository” shall mean such successor Depository.

“ **Depository Participant** ” means a broker, dealer, bank, other financial institution or other Person for whom from time to time the Depository effects book-entry transfers of securities deposited with the Depository.

“ **Disqualified Stock** ” means, with respect to any Person, any Capital Stock which by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable at the option of the holder) or upon the happening of any event:

(1) matures or is mandatorily redeemable (other than redeemable only for Capital Stock of such Person which is not itself Disqualified Stock) pursuant to a sinking fund obligation or otherwise;

(2) is convertible or exchangeable at the option of the holder for Indebtedness or Disqualified Stock; or

(3) is mandatorily redeemable or must be purchased upon the occurrence of certain events or otherwise, in whole or in part;

in each case on or prior to the first anniversary of the maturity of the Notes; *provided, however*, that any Capital Stock that would not constitute Disqualified Stock but for provisions thereof giving holders thereof the right to require such Person to purchase or redeem such Capital Stock upon the occurrence of an “asset sale” or “change of control” occurring prior to the first anniversary of the maturity of the Notes shall not constitute Disqualified Stock if any such requirement only becomes operative after compliance with such terms applicable to the Notes, including the purchase of any Notes tendered pursuant thereto.

The amount of any Disqualified Stock that does not have a fixed redemption, repayment or repurchase price will be calculated in accordance with the terms of such Disqualified Stock as if such Disqualified Stock were redeemed, repaid or repurchased on any date on which the amount of such Disqualified Stock is to be determined pursuant to the Indenture; provided, however, that if such Disqualified Stock could not be required to be redeemed, repaid or repurchased at the time of such determination, the redemption, repayment or repurchase price will be the book value of such Disqualified Stock as reflected in the most recent financial statements of such Person.

“ **Early Mandatory Settlement Date** ” has the meaning ascribed to it in the Purchase Contract Agreement.

“ **Early Mandatory Settlement Notice** ” has the meaning ascribed to it in the Purchase Contract Agreement.

“ **Early Mandatory Settlement Right** ” has the meaning ascribed to it in the Purchase Contract Agreement.

“ **Event of Default** ” means any event specified as such in Section 4.01(a) hereof.

“ **Exchange Act** ” means the Securities Exchange Act of 1934, as amended, and any statute successor thereto, in each case as amended from time to time, together with the rules and regulations promulgated thereunder.

“ **Fair Market Value** ” means, with respect to any asset or property, the price which could be negotiated in an arm’s length, free market transaction, for cash, between a willing seller and a willing and able buyer, neither of whom is under undue pressure or compulsion to complete the transaction, Fair Market Value will be determined in good faith by the Board of Directors, whose determination will be conclusive and evidenced by a resolution of such Board of Directors.

“ **Fundamental Change** ” has the meaning ascribed to such term in the Purchase Contract Agreement.

“ **GAAP** ” means generally accepted accounting principles in the United States of America as in effect as of the Issue Date, including those set forth in:

- (1) the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants;
- (2) statements and pronouncements of the Financial Accounting Standards Board;
- (3) such other statements by such other entity as approved by a significant segment of the accounting profession; and

(4) the rules and regulations of the SEC governing the inclusion of financial statements (including pro forma financial statements) in periodic reports required to be filed pursuant to Section 13 of the Exchange Act, including opinions and pronouncements in staff accounting bulletins and similar written statements from the accounting staff of the SEC.

“ **Global Note** ” means any Note that is a Registered Global Security.

“ **Global Unit** ” has the meaning ascribed to such term in the Purchase Contract Agreement.

“ **Guarantee** ” means any obligation, contingent or otherwise, of any Person directly or indirectly guaranteeing any Indebtedness of any other Person and any obligation, direct or indirect, contingent or otherwise, of such other Person:

- (1) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness of such other Person (whether arising by virtue of partnership arrangements, or by agreements to keep-well, to purchase assets, goods, securities or services, to take-or-pay or to maintain financial statement conditions or otherwise); or
- (2) entered into for the purpose of assuring in any other manner the obligee of such Indebtedness of the payment thereof or to protect such obligee against loss in respect thereof (in whole or in part);

provided, however, that the term “ **Guarantee** ” shall not include endorsements for collection or deposit in the ordinary course of business. The term “ **Guarantee** ” used as a verb has a corresponding meaning. References in the Indenture to “any Guarantee,” “such Guarantee” or “the Guarantees” prior to the delivery of a Guarantee by a Subsidiary of the Issuer (other than Tyson Fresh Meats, Inc.) with respect to the Notes shall be deemed to refer, *mutatis mutandis*, only to the Guarantee of Tyson Fresh Meats, Inc., as the sole Guarantor of the Notes on the Issue Date.

“ **Guaranteed Obligations** ” has the meaning specified in Section 5.01.

“ **Guarantor** ” means each of (i) Tyson Fresh Meats, Inc. and (ii) each other Subsidiary of the Issuer, if any, that thereafter Guarantees the Notes pursuant to the terms of this Supplemental Indenture, unless and until Tyson Fresh Meats, Inc. or such other Subsidiary is released from its Guarantee pursuant to the Indenture (it being

understood that (i) only Tyson Fresh Meats, Inc. is delivering a Guarantee with respect to the Notes on the Issue Date and (ii) nothing in the Indenture requires the Issuer to cause any of its Subsidiaries to deliver a Guarantee with respect to the Notes). References in the Indenture to “any Guarantor,” “such Guarantor” or “the Guarantors” prior to the delivery of a Guarantee by a Subsidiary of the Issuer (other than Tyson Fresh Meats, Inc.) with respect to the Notes shall be deemed to refer, *mutatis mutandis*, only to Tyson Fresh Meats, Inc., as the sole Guarantor of the Notes on the Issue Date.

“ **Hedging Obligations** ” of any Person means the obligations of such Person pursuant to any Interest Rate Agreement, Currency Agreement or Commodity Price Protection Agreement.

“ **Holder** ” means the Person in whose name a Note is registered on the Registrar’s books.

“ **Incur** ” means issue, assume, Guarantee, incur or otherwise become liable for.

“ **Indebtedness** ” means, with respect to any Person on any date of determination (without duplication):

(1) the principal in respect of (A) indebtedness of such Person for money borrowed and (B) indebtedness evidenced by notes, debentures, bonds or other similar instruments for the payment of which such Person is responsible or liable, including, in each case, any premium on such indebtedness to the extent such premium has become due and payable;

(2) all Capital Lease Obligations of such Person and all Attributable Debt in respect of all sale and lease-back transactions entered into by such Person;

(3) all obligations of such Person issued or assumed as the deferred purchase price of property, all conditional sale obligations of such Person and all obligations of such Person under any title retention agreement (but excluding any trade accounts payable or other liability to trade creditors arising in the ordinary course of business);

(4) all obligations of such Person for the reimbursement of any obligor on any letter of credit, bankers’ acceptance or similar credit transaction (other than obligations with respect to letters of credit securing obligations (other than obligations of other Persons described in clauses (1) through (3) above) entered into in the ordinary course of business of such Person to the extent such letters of credit are not drawn upon or, if and to the extent drawn upon, such drawing is reimbursed no later than the tenth Business Day following payment on the letter of credit);

(5) the amount of all obligations of such Person with respect to the redemption, repayment or other repurchase of any Disqualified Stock of such Person or, with respect to any Preferred Stock of any Subsidiary of such Person that is not 100% owned by such Person, the principal amount of such Preferred Stock to be the liquidation preference thereof (but excluding, in each case, any accrued dividends);

(6) all obligations of the type referred to in clauses (1) through (5) of other Persons and all dividends of other Persons for the payment of which, in either case, such Person is responsible or liable, directly or indirectly, as obligor, guarantor or otherwise, including by means of any Guarantee, other than endorsements of negotiable instruments for collection in the ordinary course of business;

(7) all obligations of the type referred to in clauses (1) through (6) of other Persons secured by any Lien on any property or asset of such Person (whether or not such obligation is assumed by such Person), the amount of such obligation being deemed to be the lesser of the Fair Market Value of such property or assets and the amount of the obligation so secured; and

(8) to the extent not otherwise included in this definition, the net obligations pursuant to any Hedging Obligations of such Person.

Notwithstanding the foregoing, in connection with the purchase by the Issuer or any Subsidiary of the Issuer of any business, the term “**Indebtedness**” will exclude post-closing payment adjustments to which the seller may become entitled to the extent such payment is determined by a final closing balance sheet or such payment depends on the performance of such business after the closing; provided, however, that, at the time of closing, the amount of any such payment is not determinable and, to the extent such payment thereafter becomes fixed and determined, the amount is paid within 60 days thereafter.

The amount of Indebtedness of any Person at any date shall be the outstanding balance at such date of all unconditional obligations as described above; provided, however, that, in the case of Indebtedness sold at a discount, the amount of such Indebtedness at any time shall be the accreted value thereof at such time. Except as otherwise expressly provided herein, the term “Indebtedness” shall not include cash interest thereon.

“**Indenture**” means the Original Indenture, as supplemented by this Supplemental Indenture as originally executed or as it may from time to time be supplemented or amended by one or more indentures supplemental hereto entered into pursuant to the applicable provisions hereof, including, for all purposes of this instrument and any such supplemental indenture, the provisions of the TIA that are deemed to be a part of and govern this Supplemental Indenture and any such supplemental indenture, respectively.

“**Initial Principal Amount**” means \$6.82854 per Note.

“**Installment Payment**” has the meaning ascribed to it in Section 2.02(a).

“**Installment Payment Date**” means each January 15, April 15, July 15 and October 15, commencing on October 15, 2014 and ending on the Maturity Date.

“**Installment Payment Period**” means (i) in the case of the first Installment Payment Date on October 15, 2014, the period from, and including, the Issue Date to, but excluding, such first Installment Payment Date and (ii) in the case of any other Installment Payment Date, the quarterly period from, and including, the immediately preceding Installment Payment Date to, but excluding, such other Installment Payment Date.

“**Interest Rate Agreement**” means any interest rate swap agreement, interest rate cap agreement or other financial agreement or arrangement with respect to exposure to interest rates.

“**Issue Date**” means August 5, 2014.

“**Issuer**” has the meaning ascribed to it in the preamble hereof and shall also refer to any successor obligor under the Indenture.

“**Legal Defeasance**” has the meaning ascribed to it in Section 6.02.

“**Lien**” means any mortgage, pledge, security interest, encumbrance, lien or charge of any kind (including any conditional sale or other title retention agreement or lease in the nature thereof).

“**Maturity Date**” means July 15, 2017.

“**Merger Redemption Notice**” has the meaning ascribed to it in the Purchase Contract Agreement.

“**Merger Redemption Settlement Date**” has the meaning ascribed to it in the Purchase Contract Agreement.

“**Merger Termination Redemption**” has the meaning ascribed to it in the Purchase Contract Agreement.

“**Note**” and “**Notes**” have the respective meanings ascribed to such terms in the preamble hereof and includes, for the avoidance of doubt, both Separate Notes and Notes that constitute part of a Unit.

“ **Officer** ” means the Chief Executive Officer, the Chief Financial Officer, the President, any Vice President, the Treasurer, the Assistant Treasurer or the Secretary of the Issuer.

“ **Officers’ Certificate** ” means a certificate signed by two Officers.

“ **Opinion of Counsel** ” means an opinion in writing signed by the chief counsel of the Issuer or by such other legal counsel who may be an employee of or counsel to the Issuer and who shall be reasonably satisfactory to the Trustee.

“ **Original Indenture** ” has the meaning ascribed to it in the preamble hereof.

“ **Paying Agent** ” means any Person (including the Issuer) authorized by the Issuer to pay the principal amount of or interest on any Notes on behalf of the Issuer. The Paying Agent shall initially be the Trustee.

“ **Person** ” means any individual, corporation, partnership, limited liability company, joint venture, association, joint-stock company, trust, unincorporated organization, government or any agency or political subdivision thereof or any other entity.

“ **Preferred Stock** ”, as applied to the Capital Stock of any Person, means Capital Stock of any class or classes (however designated) which is preferred as to the payment of dividends or distributions, or as to the distribution of assets upon any voluntary or involuntary liquidation or dissolution of such Person, over shares of Capital Stock of any other class of such Person.

“ **Prospectus Supplement** ” means the final prospectus supplement related to the offering and sale of the Notes dated July 30, 2014 and filed by the Issuer and the Guarantor with the SEC on July 30, 2014.

“ **Purchase Contract** ” means a prepaid stock purchase contract obligating the Issuer to deliver shares of Class A Common Stock on the terms and subject to the conditions set forth in the Purchase Contract Agreement.

“ **Purchase Contract Agent** ” means The Bank of New York Mellon Trust Company, N.A., until a successor Purchase Contract Agent shall have become such pursuant to the applicable provisions of the Purchase Contract Agreement, and thereafter “ **Purchase Contract Agent** ” shall mean such Person.

“ **Purchase Contract Agreement** ” has the meaning ascribed to it in the preamble hereof.

“ **Refinance** ” means, in respect of any Indebtedness, to refinance, extend, renew, refund, repay, prepay, purchase, redeem, defease or retire, or to issue other Indebtedness in exchange or replacement for, such Indebtedness.

“ **Registrar** ” means a Person engaged to maintain the security register for the Notes.

“ **Regular Record Date** ” means, with respect to any Installment Payment Date (a) the close of business on the Business Day immediately preceding such Installment Payment Date, or (b) if the Notes are not then in book-entry form, a date selected by the Issuer, and notified in writing, in advance, to the Trustee and Holders, which date shall be more than 14 days but less than 60 days prior to such Installment Payment Date.

“ **Repurchase Date** ” shall be a date specified by the Issuer in the Early Mandatory Settlement Notice or Merger Redemption Notice, as the case may be, which date shall be at least 20 but not more than 45 Business Days following the date of the Early Mandatory Settlement Notice or the date of the Merger Redemption Notice, as the case may be (and which may or may not fall on the Early Mandatory Settlement Date or Merger Redemption Settlement Date, as the case may be).

“ **Repurchase Notice** ” means a notice in the form entitled “Form of Repurchase Notice” attached to the Notes.

“ **Repurchase Price** ” means, with respect to a Note to be repurchased pursuant to Article 8, an amount equal to the principal amount of such Note as of the Repurchase Date, *plus* accrued and unpaid interest, if any, on such principal amount from, and including, the most recent Installment Payment Date (or, if none, from, and including, the Issue Date) to, but not including, such Repurchase Date, calculated at an annual rate of 1.50%; *provided* that, if the Repurchase Date falls after a Regular Record Date and on or prior to the immediately succeeding Installment Payment Date, the Installment Payment payable on such Installment Payment Date will be paid on such Installment Payment Date to the Holder as of such Regular Record Date and shall not be included in the Repurchase Price per Note.

“ **Repurchase Right** ” has the meaning ascribed to it in Section 8.01.

“ **SEC** ” means the U.S. Securities and Exchange Commission.

“ **Securities Act** ” means the Securities Act of 1933, as amended, and any statute successor thereto, in each case as amended from time to time, and the rules and regulations promulgated thereunder.

“ **Separate Note** ” means a Note that has been separated from a Unit in accordance with the terms of the Purchase Contract Agreement.

“ **Separate Purchase Contract** ” means a Purchase Contract that has been separated from a Unit in accordance with the terms of the Purchase Contract Agreement.

“ **Significant Subsidiary** ” means any subsidiary that would be a “Significant Subsidiary” of the Issuer within the meaning of Rule 1-02 under Regulation S-X promulgated by the SEC.

“ **Subsidiary** ” of any Person means any corporation or other entity of which a majority of the Capital Stock having ordinary voting power to elect a majority of the board of directors or other Persons performing similar functions of such corporation or other entity is at the time directly or indirectly owned or controlled by such Person.

“ **Successor** ” has the meaning ascribed to it in Section 3.01(b)(i).

“ **Supplemental Indenture** ” has the meaning ascribed to it in the preamble hereof.

“ **TIA** ” means the Trust Indenture Act of 1939, as amended from time to time.

“ **Trustee** ” means the party named in the preamble hereof until a successor replaces such party in accordance with the applicable provisions of the Indenture and thereafter means the successor serving hereunder.

“ **Unit** ” means the collective rights of a Holder of a 4.75% Tangible Equity Unit, with a stated amount of \$50, issued by the Issuer pursuant to the Purchase Contract Agreement, each consisting of a single Purchase Contract and a single Note prior to separation or subsequent recreation thereof pursuant to the Purchase Contract Agreement.

“ **U.S.** ” means United States of America.

“ **U.S. Government Obligations** ” means direct obligations (or certificates representing an ownership interest in such obligations) of the United States of America (including any agency or instrumentality thereof) for the payment of which the full faith and credit of the United States of America is pledged and which are not callable at the issuer’s option.

ARTICLE 2
THE SECURITIES

Section 2.01 *Title and Terms* .

(a) There is hereby authorized a series of Securities designated the “1.50% Senior Amortizing Notes due 2017” initially limited in aggregate principal amount to \$204,856,200, which amount shall be as set forth in any written order of the Issuer for authentication and delivery of Notes pursuant to Section 2.2 of the Original Indenture.

(b) The Notes will initially be issued as Component Notes in substantially the form of Attachment 4 to the form of Global Unit attached as Exhibit A to the Purchase Contract Agreement, with such appropriate insertions, omissions, substitutions and other variations as are required or permitted by the Indenture, and may have such letters, numbers or other marks of identification and such legends or endorsements placed thereon as may be required to comply with the rules of any securities exchange or as may, consistently herewith, be determined by the officers of the Issuer executing such Notes, as evidenced by their execution of the Notes. The Notes will initially be attached to the related Global Unit and registered in the name of The Bank of New York Mellon Trust Company, N.A., as attorney-in-fact of the holder(s) of such Global Unit.

(c) Holders of Units have the right to separate such Units into their constituent parts, consisting of Separate Purchase Contracts and Separate Notes, during the times, and under the circumstances, described in Section 2.03 of the Purchase Contract Agreement. Upon separation of any Unit into its constituent parts, (i) if such Unit is a Global Unit, the Separate Notes will initially be evidenced by a Global Note (the “**Global Note**”) in substantially the form of Exhibit A hereto, which is incorporated into and shall be deemed a part of this Supplemental Indenture, and deposited with the Trustee as custodian for the Depository and registered in the name of the Depository or its nominee, or (ii) if such Unit is in definitive, registered form, the Separate Notes will be evidenced by a Certificated Note, in each case, as provided in Section 2.03 of the Purchase Contract Agreement. Following separation of any Unit into its constituent Separate Note and Separate Purchase Contract, the Separate Notes are transferable independently from the Separate Purchase Contracts. In addition, Separate Notes can be recombined with Separate Purchase Contracts to recreate Units, as provided for in Section 2.04 of the Purchase Contract Agreement.

(d) The Global Note (which shall initially have a balance of zero Notes) shall be registered in the name of Cede & Co., as nominee of the Depository and delivered to the Trustee, as custodian for the Depository. Members of, or participants in, the Depository (“**Agent Members**”) shall have no rights under this Supplemental Indenture or the Original Indenture with respect to any Global Note (or any Global Unit in the case of Component Notes) held on their behalf by the Depository, or the Trustee as its custodian, or under the Global Note (or such Global Unit), and the Depository may be treated by the Issuer, the Trustee and any agent of the Issuer or the Trustee as the absolute owner of the Global Note (or such Global Unit) for all purposes whatsoever. Notwithstanding the foregoing, nothing herein shall prevent the Issuer, the Trustee or any agent of the Issuer or the Trustee from giving effect to any written certification, proxy or other authorization furnished by the Depository or impair, as between the Depository and its Agent Members, the operation of customary practices governing the exercise of the rights of any Holder.

(e) The Notes shall be issuable in denominations initially equal to the Initial Principal Amount and integral multiples in excess thereof.

Section 2.02 *Installment Payments*. (a) The Issuer shall pay installments on the Notes (each such payment, an “**Installment Payment**”) in cash at the place, at the respective times and in the manner provided in the Notes. The Issuer has initially designated the Trustee as its Paying Agent and Registrar in respect of the Notes and its agency in New York, New York as a place where Notes may be presented for payment or for registration of transfer. The Issuer may, however, change the Paying Agent or Registrar for the Notes without prior notice to the Holders thereof, and the Issuer may act as Paying Agent or Registrar.

(b) On the first Installment Payment Date occurring on October 15, 2014, the Issuer shall pay, in cash, an Installment Payment with respect to each Note in an amount equal to \$0.46181 per Note, and on each Installment Payment Date thereafter, the Issuer shall pay, in cash, equal quarterly Installment Payments with respect to each Note in an amount equal to \$0.59375 per Note; *provided* that, in respect of any Notes in definitive registered form, the final Installment Payment shall be made only against surrender of such Note to the Paying Agent.

(c) Each Installment Payment shall constitute a payment of interest (at a rate of 1.50% per annum) and a partial repayment of principal on the Note, allocated as set forth in the schedule below:

<u>Installment Payment Date</u>	<u>Amount of</u> <u>Principal</u>	<u>Amount of</u> <u>Interest</u>
October 15, 2014	\$0.44189	\$0.01992
January 15, 2015	\$0.56980	\$0.02395
April 15, 2015	\$0.57194	\$0.02181
July 15, 2015	\$0.57408	\$0.01967
October 15, 2015	\$0.57623	\$0.01752
January 15, 2016	\$0.57840	\$0.01535
April 15, 2016	\$0.58056	\$0.01319
July 15, 2016	\$0.58274	\$0.01101
October 15, 2016	\$0.58493	\$0.00882
January 15, 2017	\$0.58712	\$0.00663
April 15, 2017	\$0.58932	\$0.00443
July 15, 2017	\$0.59153	\$0.00222

(d) Each Installment Payment for any Installment Payment Period shall be computed on the basis of a 360-day year of twelve 30-day months. If an Installment Payment is payable for any period shorter than a full Installment Payment Period, such Installment Payment shall be computed on the basis of the actual number of days elapsed per 30-day month. Furthermore, if any date on which an Installment Payment is payable is not a Business Day, then payment of the Installment Payment on such date shall be made on the next succeeding day that is a Business Day, and without any interest or other payment in respect of any such delay. However, if such Business Day is in the next succeeding calendar year, then such Installment Payment shall be made on the immediately preceding Business Day, in each case with the same force and effect as if made on the date when such Installment Payment was originally due.

Section 2.03 *Maturity Date*. The date on which the final Installment Payment on the Notes shall be due, unless the Notes are accelerated pursuant to the terms hereof or otherwise paid prior to maturity in connection with a Holder's exercise of the Repurchase Right, shall be the Maturity Date.

Section 2.04 *Right to Exchange or Register a Transfer*. (a) The Issuer shall not be required to exchange or register a transfer of any Note if the Holder thereof has exercised his, her or its right, if any, to require the Issuer to repurchase such Note in whole or in part, except the portion of such Note not required to be repurchased.

(b) In addition to the rights of Holders to receive Certificated Notes as described in Section 2.7 of the Original Indenture, if an Event of Default, or any failure on the part of the Issuer to observe or perform any covenant or agreement in the Indenture has occurred and is continuing and the beneficial owner of any Notes represented by a Global Note requests that its Notes be issued in physical, certificated form, then the Issuer shall execute, and the Trustee, upon receipt of the Issuer's order for the authentication and delivery of Certificated Notes, shall authenticate and deliver Certificated Notes in any authorized denominations, in an aggregate principal amount equal to the principal amount of the Global Note or Notes representing such Notes (or in an aggregate principal amount equal to the principal amount of the Notes in respect of which a beneficial owner has requested the issuance of Notes in physical, certificated form pursuant to this clause (b)) in exchange for such Global Note or Notes (or relevant portion thereof).

ARTICLE 3
ADDITIONAL COVENANTS

Section 3.01 *Limitations on Mergers, Consolidations and Sales of Assets.* (a) This Section 3.01 shall replace the provisions contained in Section 5.1 of the Original Indenture in their entirety and all references to Section 5.1 in the Original Indenture or any provision thereof shall be deemed, for the purposes of the Notes, to be references to this Section 3.01.

(b) Neither the Issuer nor any Guarantor shall consolidate or merge with or into, or sell, lease, convey or otherwise dispose of all or substantially all of its assets (including, without limitation, by way of liquidation or dissolution), or assign any of its obligations under the Notes, the Guarantee or the Indenture (as an entirety or substantially as an entirety in one transaction or in a series of related transactions), to any Person (in each case other than in a transaction in which the Issuer or any Guarantor is the survivor of a consolidation or merger, or the transferee in a sale, lease, conveyance or other disposition) unless:

(i) the Person formed by or surviving such consolidation or merger (if other than the Issuer or any Guarantor, as the case may be), or to which such sale, lease, conveyance or other disposition or assignment will be made (collectively, the “**Successor**”), is a corporation or other legal entity organized and existing under the laws of the United States or any state thereof or the District of Columbia, and the Successor assumes by supplemental indenture in a form reasonably satisfactory to the Trustee all of the obligations of the Issuer or any Guarantor, as the case may be, under the Notes or a Guarantee, as the case may be, and the Indenture; and

(ii) immediately after giving effect to such transaction, no Default or Event of Default has occurred and is continuing.

The foregoing provisions shall not apply to (A) a transaction involving the sale or disposition of Capital Stock of a Guarantor, or the consolidation or merger of a Guarantor, or the sale, lease, conveyance or other disposition of all or substantially all of the assets of a Guarantor, that in any such case results in such Guarantor being released from its Guarantee pursuant to Section 5.06, or (B) a transaction the purpose of which is to change the state of incorporation of the Issuer or any Guarantor.

Section 3.02 *Applicability of Covenants Contained in the Original Indenture.* Each of the agreements and covenants of the Issuer, as applicable, contained in Article Four of the Original Indenture shall apply to the Notes.

ARTICLE 4
DEFAULTS AND REMEDIES

Section 4.01 *Events of Default .*

(a) “**Event of Default**” means any one or more of the following events:

(i) the failure by the Issuer and the Guarantors to pay the Repurchase Price of any Notes when the same shall become due and payable;

(ii) the failure by the Issuer and the Guarantors to pay any Installment Payment on any Notes as and when the same shall become due and payable and continuance of such failure for a period of 30 days;

(iii) the failure by the Issuer to give notice of a Fundamental Change when any such notice is due pursuant to the terms of the Purchase Contract Agreement and continuance of such failure for a period of five Business Days;

(iv) the failure by the Issuer or any Guarantor to comply with any of its other agreements or covenants in, or provisions of, the Notes, the Guarantees or the Indenture and such failure continues for the period and after the notice specified in the second immediately succeeding paragraph;

(v) an involuntary case or other proceeding shall be commenced against the Issuer or any Guarantor that is a Significant Subsidiary with respect to it or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, and such involuntary case or other proceeding shall remain undismissed and unstayed for a period of 60 days; or an order for relief shall be entered against the Issuer or any such Guarantor under the federal bankruptcy laws as now or hereafter in effect;

(vi) the Issuer or any Guarantor that is a Significant Subsidiary (A) commences a voluntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or consents to the entry of an order for relief in an involuntary case under any such law, (B) consents to the appointment of or taking possession by a receiver, liquidator, assignee, custodian, trustee, sequestrator or similar official of the Issuer or any such Guarantor or for all or substantially all of the property and assets of the Issuer or any such Guarantor or (C) effects any general assignment for the benefit of creditors; or

(vii) the Guarantee of any Guarantor, to the extent that such Guarantor constitutes a Significant Subsidiary (or the Guarantees, if any, of any group of Subsidiaries that, taken together, would constitute a Significant Subsidiary), ceases to be in full force and effect (other than in accordance with the terms of such Guarantee) or such Guarantor denies or disaffirms its obligations under its Guarantee other than by reason of the termination of the Indenture or the release of any such Guarantee in accordance with the Indenture.

The foregoing will constitute Events of Default whatever the reason for any such Event of Default and whether it is voluntary or involuntary or is effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body.

A Default under clause (iv) above shall not be deemed an Event of Default until the Trustee notifies the Issuer, or the Holders of at least 25% in principal amount of the then outstanding Notes notify the Issuer and the Trustee, of the Default and the Issuer does not cure such Default within 60 calendar days after receipt of the notice. The notice must specify the Default, demand that it be remedied and state that such notice is a "Notice of Default." If such a Default is cured within such time period, it ceases.

The Trustee shall not be charged with knowledge of any Default or Event of Default or knowledge of any cure of any Default or Event of Default unless an authorized officer of the Trustee with direct responsibility for the administration of the Indenture has received written notice of such Default or Event of Default.

Section 4.02 *Acceleration* . If an Event of Default (other than an Event of Default with respect to the Issuer specified in Section 4.01(a)(v) or (vi) shall have occurred and be continuing, the Trustee by notice to the Issuer, or the Holders of at least 25% in principal amount of the Notes then outstanding by notice to the Issuer and the Trustee, may declare the principal of and accrued but unpaid interest on all the Notes to be due and payable immediately. Upon such declaration of acceleration, all future scheduled Installment Payments on the Notes shall be due and payable immediately. If an Event of Default with respect to the Issuer specified in Section 4.01(a)(v) or (vi) occurs, the principal of and interest on all the Notes shall become automatically and immediately due and payable without any declaration, notice or other act on the part of the Trustee, the Issuer, any Guarantor or any Holder. The Holders of a majority in principal amount of the Notes then outstanding by written notice to the Trustee and the Issuer may waive any continuing Default or Event of Default (other than any Default or Event of Default pursuant to Section 4.01(a)(ii)). The Holders of a majority in principal amount of the Notes then outstanding by written notice to the Trustee and the Issuer may rescind an acceleration and its consequence (except an acceleration due to nonpayment of Installment Payments on the Notes) if the rescission would not conflict with any judgment or decree, if all existing Events of Default (other than non-payment of accelerated Installment Payments) have been cured or waived and if there has been deposited with the Trustee a sum sufficient to pay its fees and expenses in connection with such Event of Default.

Section 4.03 *Remaining Provisions*. Section 6.1 and the first paragraph of Section 6.2 of the Original Indenture shall not apply with respect to the Notes, and any references in the Original Indenture to Section 6.1 or the first paragraph of Section 6.2 thereof shall be deemed to refer instead to Sections 4.01 or 4.02 hereof, respectively. Other than as provided in Sections 4.01 and 4.02, the provisions of Article 6 of the Original Indenture shall govern with respect to Defaults and related remedies.

ARTICLE 5

GUARANTEES; RELEASE OF GUARANTOR

Section 5.01 *Guarantees*. Each Guarantor hereby unconditionally and irrevocably guarantees, jointly and severally, to each Holder and to the Trustee and its successors and assigns (a) the full and punctual payment of principal of and interest on the Notes when due, whether at maturity, by acceleration, upon repurchase or otherwise, and all other monetary obligations of the Issuer under the Indenture and the Notes and (b) the full and punctual performance within applicable grace periods of all other obligations of the Issuer under the Indenture and the Notes (all the foregoing being hereinafter collectively called the “**Guaranteed Obligations**”). Each Guarantor further agrees that the Guaranteed Obligations may be extended or renewed, in whole or in part, without notice or further assent from such Guarantor and that such Guarantor will remain bound under this Article 5 notwithstanding any extension or renewal of any Guaranteed Obligation.

Each Guarantor waives presentation to, demand of, payment from and protest to the Issuer of any of the Guaranteed Obligations and also waives notice of protest for nonpayment. Each Guarantor waives notice of any default under the Notes or the Guaranteed Obligations. The obligations of each Guarantor hereunder shall not be affected by (1) the failure of any Holder or the Trustee to assert any claim or demand or to enforce any right or remedy against the Issuer or any other Person (including any Guarantor) under the Indenture, the Notes or any other agreement or otherwise; (2) any extension or renewal of any thereof; (3) any rescission, waiver, amendment or modification of any of the terms or provisions of the Indenture, the Notes or any other agreement; (4) the release of any security held by any Holder or the Trustee for the Guaranteed Obligations or any of them; (5) the failure of any Holder or the Trustee to exercise any right or remedy against any other guarantor of the Guaranteed Obligations; or (6) except as set forth in Section 5.06, any change in the ownership of such Guarantor.

Each Guarantor further agrees that its Guarantee herein constitutes a guarantee of payment, performance and compliance when due (and not a guarantee of collection) and waives any right to require that any resort be had by any Holder or the Trustee to any security held for payment of the Guaranteed Obligations.

Except as expressly set forth in Section 5.02, Section 5.06, Section 6.02 and Section 6.03 hereof, the obligations of each Guarantor hereunder shall not be subject to any reduction, limitation, impairment or termination for any reason, including any claim of waiver, release, surrender, alteration or compromise, and shall not be subject to any defense of setoff, counterclaim, recoupment or termination whatsoever or by reason of the invalidity, illegality or unenforceability of the Guaranteed Obligations or otherwise. Without limiting the generality of the foregoing, the obligations of each Guarantor herein shall not be discharged or impaired or otherwise affected by the failure of any Holder or the Trustee to assert any claim or demand or to enforce any remedy under the Indenture, the Notes or any other agreement, by any waiver or modification of any thereof, by any default, failure or delay, willful or otherwise, in the performance of the obligations, or by any other act or thing or omission or delay to do any other act or thing which may or might in any manner or to any extent vary the risk of such Guarantor or would otherwise operate as a discharge of such Guarantor as a matter of law or equity.

Each Guarantor further agrees that its Guarantee herein shall continue to be effective or be reinstated, as the case may be, if at any time payment, or any part thereof, of principal of or interest on any Guaranteed Obligation is rescinded or must otherwise be restored by any Holder or the Trustee upon the bankruptcy or reorganization of the Issuer or otherwise.

In furtherance of the foregoing and not in limitation of any other right which any Holder or the Trustee has at law or in equity against any Guarantor by virtue hereof, upon the failure of the Issuer to pay the principal of or interest on any Guaranteed Obligation when and as the same shall become due, whether at maturity, by acceleration, by redemption or otherwise, or to perform or comply with any other Guaranteed Obligation, each Guarantor hereby

promises to and shall, upon receipt of written demand by the Trustee, forthwith pay, or cause to be paid, in cash, to the Holders or the Trustee an amount equal to the sum of (A) the unpaid amount of such Guaranteed Obligations, (B) accrued and unpaid interest on such Guaranteed Obligations (but only to the extent not prohibited by law) and (C) all other monetary Guaranteed Obligations of the Issuer to the Holders and the Trustee.

Each Guarantor agrees that, as between it, on the one hand, and the Holders and the Trustee, on the other hand, (i) the maturity of the Guaranteed Obligations may be accelerated as provided in Article 4 hereof for the purposes of such Guarantor's Guarantee herein, notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the Guaranteed Obligations, and (ii) in the event of any declaration of acceleration of such Guaranteed Obligations as provided in Article 4 hereof, such Guaranteed Obligations (whether or not due and payable) shall forthwith become due and payable by such Guarantor for the purposes of this Section.

Each Guarantor also agrees to pay any and all costs and expenses (including reasonable attorneys' fees) Incurred by the Trustee or any Holder in enforcing any rights under this Section.

Section 5.02 *Limitation on Liability*. Any term or provision of the Indenture to the contrary notwithstanding, the maximum aggregate amount of the Guaranteed Obligations guaranteed hereunder by any Guarantor shall not exceed the maximum amount that can be hereby Guaranteed without rendering the Indenture, as it relates to such Guarantor, voidable under applicable law relating to fraudulent conveyance or fraudulent transfer or similar laws affecting the rights of creditors generally.

Section 5.03 *Successors and Assigns*. This Article 5 shall be binding upon each Guarantor and its successors and assigns and shall inure to the benefit of the successors and assigns of the Trustee and the Holders and, in the event of any transfer or assignment of rights by any Holder or the Trustee, the rights and privileges conferred upon that party in the Indenture and in the Notes shall automatically extend to and be vested in such transferee or assignee, all subject to the terms and conditions of the Indenture.

Section 5.04 *No Waiver*. Neither a failure nor a delay on the part of either the Trustee or the Holders in exercising any right, power or privilege under this Article 5 shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise of any right, power or privilege. The rights, remedies and benefits of the Trustee and the Holders herein expressly specified are cumulative and not exclusive of any other rights, remedies or benefits which either may have under this Article 5 at law, in equity, by statute or otherwise.

Section 5.05 *Modification*. No modification, amendment or waiver of any provision of this Article 5, nor the consent to any departure by any Guarantor therefrom, shall in any event be effective unless the same shall be in writing and signed by the Trustee, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice to or demand on any Guarantor in any case shall entitle such Guarantor to any other or further notice or demand in the same, similar or other circumstances.

Section 5.06 *Release of Guarantor*. A Guarantor will be released from its obligations under this Article 5 (other than any obligation that may have arisen under Section 5.07 hereof):

(a) upon the sale or other disposition (including by way of consolidation or merger) of such Guarantor, including the sale or disposition of Capital Stock of such Guarantor following which such Guarantor is no longer a Subsidiary of the Issuer,

(b) upon the sale or disposition of all or substantially all the assets of such Guarantor,

(c) upon the release or discharge of all Guarantees and Indebtedness, as applicable, of such Guarantor outstanding as of the Issue Date (i) under the Credit Agreement and (ii) in relation to any Indebtedness of the Issuer,

(d) upon Legal Defeasance or Covenant Defeasance of the Notes pursuant to Article 6 hereof, or

(e) upon the full satisfaction or discharge of the Issuer's obligations under the Indenture;

provided, however, that in the case of clauses (a) and (b) above, (i) such sale or other disposition is made to a Person other than the Issuer or an Affiliate of the Issuer and (ii) such sale or disposition is otherwise permitted by the Indenture.

At the request of the Issuer, and upon the Trustee's receipt of an Officers' Certificate and Opinion of Counsel meeting the requirements of Section 10.3 of the Original Indenture and stating that such release is authorized or permitted by the Indenture, the Trustee shall execute and deliver an appropriate instrument evidencing such release.

Section 5.07 *Contribution*. Each Guarantor that makes a payment under its Guarantee shall be entitled upon payment in full of all Guaranteed Obligations under the Indenture to a contribution from each other Guarantor in an amount equal to such other Guarantor's pro rata portion of such payment based on the respective net assets of all the Guarantors at the time of such payment determined in accordance with GAAP.

ARTICLE 6 DEFEASANCE

Section 6.01 *Applicability of Article Eight of the Original Indenture*. Article Eight of the Original Indenture shall not apply to the Notes. Instead, the defeasance and discharge provisions set forth in this Article 6 shall, with respect to the Notes, supersede in their entirety Article Eight of the Original Indenture, and all references in the Original Indenture to such Article and Sections thereof and defeasance and discharge provisions therein, as the case may be, shall, with respect to the Notes, be deemed to be references to this Article 6 and the defeasance and discharge provisions set forth in this Article 6.

Section 6.02 *Legal Defeasance and Discharge*. Each of the Issuer and the Guarantors shall, subject to the satisfaction of the conditions set forth in Section 6.05 hereof, be deemed to have been discharged from its obligations with respect to the outstanding Notes on the date the conditions set forth below are satisfied with respect to such series (hereinafter, "**Legal Defeasance**"). For this purpose, Legal Defeasance means that the Issuer shall be deemed to have paid and discharged the entire Indebtedness represented by the outstanding Notes, which shall thereafter be deemed to be outstanding only for the purposes of Section 6.06 hereof and the other provisions of this Indenture referred to in Section 6.04, and to have satisfied all of its obligations under such Notes and this Indenture (and the Trustee, on demand of and at the expense of the Issuer, shall execute proper instruments delivered to it by the Issuer and any Guarantor acknowledging the same).

Section 6.03 *Covenant Defeasance*. Each of the Issuer and the Guarantors shall, subject to the satisfaction of the conditions set forth in Section 6.05 hereof, be released from their obligations under the covenants contained in the Original Indenture and this Supplemental Indenture, and on and after the date that the conditions set forth in Section 6.05 are satisfied with respect to the Notes (hereinafter, "**Covenant Defeasance**"), the Notes shall thereafter be deemed not outstanding for the purposes of any direction, waiver, consent or declaration or act of Holders (and the consequences of any thereof) in connection with such covenants, but shall continue to be deemed outstanding for all other purposes hereunder (it being understood that such Notes shall not be deemed outstanding for accounting purposes). For this purpose, Covenant Defeasance means that, with respect to the outstanding Notes, the Issuer may omit to comply with and shall have no liability in respect of any term, condition or limitation set forth in any such covenant, whether directly or indirectly, by reason of any reference elsewhere herein to any such covenant or by reason of any reference in any such covenant to any other provision herein or in any other document and such omission to comply shall not constitute a Default or an Event of Default under Section 4.01 hereof, but, except as specified above, the remainder of this Indenture and such Notes shall be unaffected thereby. Subject to the satisfaction of the conditions set forth in Section 6.05 hereof, Sections 4.01 (a)(iv) (with respect to the covenants so defeased), 4.01(a)(v), 4.01(a)(vi) and 4.01(a)(vii) hereof shall not constitute Events of Default or defaults hereunder.

Section 6.04 *Provisions to Survive Legal Defeasance, Covenant Defeasance and Discharge* . Notwithstanding the foregoing, no discharge pursuant to Section 6.02, Legal Defeasance or Covenant Defeasance shall affect the following obligations to, or rights of, the Holders of the Notes:

- (a) the rights of registration of transfer and exchange of the Notes;
- (b) the Issuer's obligations with respect to the Notes concerning mutilated, defaced, destroyed, lost or stolen Notes;
- (c) the rights of Holders of outstanding Notes to receive Installment Payments thereon, upon the original due dates therefor, but not upon acceleration;
- (d) the rights, powers, trusts, duties and immunities of the Trustee, and the Issuer's obligations in connection therewith;
- (e) the rights of Holders of Notes that are beneficiaries with respect to property so deposited with the Trustee payable to all or any of them; and
- (f) obligations of the Issuer and each Guarantor to maintain an office or agency in respect of the Notes.

Section 6.05 *Conditions to Legal or Covenant Defeasance* . The following shall be the conditions to the application of either Section 6.02 or 6.03 hereof to the outstanding Notes:

In order to exercise either Legal Defeasance or Covenant Defeasance:

- (a) the Issuer must irrevocably deposit, or cause to be deposited, with the Trustee, in trust, for the benefit of the Holders of the Notes, cash in U.S. dollars, U.S. Government Obligations, or a combination thereof, in such amounts as will be sufficient, in the opinion of a nationally recognized firm of independent public accountants, to pay, without reinvestment, all future, scheduled Installment Payments on the Notes through the Maturity Date;
- (b) in the case of Legal Defeasance, the Issuer must deliver to the Trustee an Opinion of Counsel reasonably acceptable to the Trustee confirming that the Issuer has received from, or there has been published by, the Internal Revenue Service a ruling, or there has been a change in the applicable United States federal income tax law after the date of this Supplemental Indenture, in each case, to the effect that, and based thereon such Opinion of Counsel shall confirm that, the beneficial owners of the outstanding Notes will not recognize income, gain or loss for United States federal income tax purposes as a result of such Legal Defeasance, and will be subject to United States federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Legal Defeasance had not occurred;
- (c) in the case of Covenant Defeasance, the Issuer must deliver to the Trustee an Opinion of Counsel or a ruling from the Internal Revenue Service, in each case, reasonably acceptable to the Trustee confirming that the beneficial owners of the outstanding Notes will not recognize income, gain or loss for United States federal income tax purposes as a result of such Covenant Defeasance, and such beneficial owners will be subject to United States federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Covenant Defeasance had not occurred;
- (d) no Default or Event of Default shall have occurred and be continuing on the date of such deposit (other than a Default or Event of Default resulting from the borrowing of funds to be applied to such deposit) or insofar as Events of Default from bankruptcy or insolvency events are concerned, at any time in the period ending on the 91st day after the date of deposit;
- (e) such Legal Defeasance or Covenant Defeasance will not result in a breach or violation of, or constitute a default under, any material agreement or instrument (other than the Indenture) to which the Issuer or any of its Significant Subsidiaries is a party or by which the Issuer or any of its Significant Subsidiaries is bound;

(f) the Issuer must deliver to the Trustee an Officers' Certificate stating that the deposit was not made by the Issuer with the intent of preferring the Holders of the Notes over other creditors of the Issuer, or with the intent of defeating, hindering, delaying or defrauding creditors of the Issuer or others;

(g) the Issuer must deliver to the Trustee an Officers' Certificate and an Opinion of Counsel in the United States reasonably acceptable to the Trustee, each stating that the conditions precedent provided for or relating to Legal Defeasance or Covenant Defeasance, as applicable, in the case of the Officers' Certificate, in clauses (a) through (f) and, in the case of the Opinion of Counsel, in clauses (b) and (c) of this paragraph, have been complied with.

Section 6.06 *Deposited Money and Government Securities to be Held in Trust; Other Miscellaneous Provisions* . Subject to Section 6.07 hereof, all money and U.S. Government Obligations (including the proceeds thereof) deposited with the Trustee (or other qualifying trustee, collectively, and solely for purposes of this Section 6.06, the "Trustee") pursuant to this Section 6.06 in respect of the outstanding Notes shall be held in trust and applied by the Trustee, in accordance with the provisions of the Notes and this Indenture, to the payment, either directly or through any Paying Agent (including the Issuer acting as Paying Agent) as the Trustee may determine, to the Holders of the Notes of all sums due and to become due thereon in respect of Installment Payments due on the Notes, but such money need not be segregated from other funds except to the extent required by law.

The Issuer shall pay and indemnify the Trustee against any tax, fee or other charge imposed on or assessed against the cash or non-callable U.S. Government Obligations deposited pursuant to this Section 6.06 in respect of the Notes or the Installment Payments received in respect thereof other than any such tax, fee or other charge which by law is for the account of the Holders of the outstanding Notes.

Anything in this Article Six to the contrary notwithstanding, the Trustee shall deliver or pay to the Issuer from time to time upon the request of the Issuer any money or non-callable U.S. Government Obligations held by it as provided in this Section 6.06 which, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, are in excess of the amount thereof that would then be required to be deposited to effect an equivalent Legal Defeasance or Covenant Defeasance.

Section 6.07 *Repayment to Issuer* . Any money deposited with the Trustee or any Paying Agent, or then held by the Issuer, in trust for the payment of the Installment Payments on any Notes and remaining unclaimed for two years after such Installment Payments have become due and payable shall be paid to the Issuer on its request or (if then held by the Issuer) shall be discharged from such trust; and the Holder of such Notes shall thereafter, as an unsecured creditor, look only to the Issuer for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Issuer as trustee thereof, shall thereupon cease; provided, however, that the Trustee or such Paying Agent, before being required to make any such repayment, may at the expense of the Issuer cause to be published once, in the New York Times and The Wall Street Journal (national edition), notice that such money remains unclaimed and that, after a date specified therein, which shall not be less than 30 days from the date of such notification or publication, any unclaimed balance of such money then remaining will be repaid to the Issuer.

Section 6.08 *Reinstatement* . If the Trustee or Paying Agent is unable to apply any money or non-callable U.S. Government Obligations in accordance with Section 6.02 or 6.03 hereof, as the case may be, by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, then the Issuer's obligations under this Indenture and the Notes shall be revived and reinstated as though no deposit had occurred pursuant to Section 6.02 or 6.03 hereof until such time as the Trustee or Paying Agent is permitted to apply all such money in accordance with Section 6.02 or 6.03 hereof, as the case may be; provided, however, that, if the Issuer makes any Installment Payment on any Note following the reinstatement of its obligations, the Issuer shall be subrogated to the rights of the Holders of such Notes to receive such payment from the money held by the Trustee or Paying Agent.

Section 6.09 *Survival* . The Trustee's rights under this Article Six shall survive termination of this Indenture.

Section 6.10 *Satisfaction and Discharge of Indenture*. If at any time (a)(i) the Issuer shall have paid or caused to be paid all Installment Payments or Repurchase Price on all the Notes outstanding (other than Notes which have been destroyed, lost or stolen and which have been replaced or paid as provided in Section 2.8 of the Original Indenture) as and when the same shall have become due and payable, or (ii) the Issuer shall have delivered to the Trustee for cancellation all Notes theretofore authenticated (other than Notes which have been destroyed, lost or stolen and which have been replaced or paid as provided in Section 2.8 of the Original Indenture), or (b)(i) the Notes mature within one year, (ii) the Issuer irrevocably deposits in trust with the Trustee, as trust funds solely for the benefit of the Holders, money or U.S. Government Obligations or a combination thereof sufficient, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certificate delivered to the Trustee, without consideration of any reinvestment, to pay all Installment Payments on the Notes to maturity and to pay all other sums payable by it hereunder, (iii) no Event of Default has occurred and is continuing on the date of the deposit, (iv) the deposit will not result in a breach or violation of, or constitute a default under, the Indenture or any other agreement or instrument to which the Issuer is a party or by which it is bound, and (v) the Issuer delivers to the Trustee an Officers' Certificate and an Opinion of Counsel, in each case stating that all conditions precedent provided for herein relating to the satisfaction and discharge of the Indenture have been complied with; and if, in any such case, the Issuer shall also pay or cause to be paid all other sums payable hereunder by the Issuer (including all amounts, payable to the Trustee pursuant to Section 7.7 of the Original Indenture), then, (x) after satisfying the conditions in clause (a), only the Issuer's obligations under Sections 7.7 of the Original Indenture and Section 6.06 hereof, as applicable, will survive or (y) after satisfying the conditions in clause (b), only the Issuer's obligations in Article Two of the Original Indenture and Sections 4.1, 4.2, 7.7, 7.8 of the Original Indenture and Sections 6.06, 6.07 and 6.08 hereof will survive, and, in either case, the Trustee, on demand of the Issuer accompanied by an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent relating to the satisfaction and discharge contemplated by this provision have been complied with, and at the cost and expense of the Issuer, shall execute proper instruments acknowledging such satisfaction and discharging of this Indenture. The Issuer agrees to reimburse the Trustee for any costs or expenses thereafter reasonably and properly incurred, and to compensate the Trustee for any services thereafter reasonably and properly rendered, by the Trustee in connection with the Indenture or the Notes. If the Issuer exercises its Legal Defeasance option or its Covenant Defeasance option pursuant to this Article 6, each Guarantor, shall be released from all its obligations with respect to its Guarantee.

ARTICLE 7
NO REDEMPTION

Section 7.01 *Article Three of the Original Indenture Inapplicable*. The Notes shall not be redeemable and Article Three of the Original Indenture shall not apply to the Notes.

ARTICLE 8
REPURCHASE OF NOTES AT THE OPTION OF THE HOLDER

Section 8.01 *Offer to Repurchase*. If the Issuer elects to exercise its Early Mandatory Settlement Right with respect to, or causes a Merger Termination Redemption of, the Purchase Contracts pursuant to the terms of the Purchase Contract Agreement, then each Holder of Notes (whether any such Note is a Separate Note or a Component Note) shall have the right (the "**Repurchase Right**") to require the Issuer to repurchase some or all of its Notes for cash at the Repurchase Price per Note to be repurchased on the Repurchase Date, pursuant to Section 8.03. The Issuer shall not be required to repurchase a portion of a Note. Holders shall not have the right to require the Issuer to repurchase any or all of such Holders' Notes in connection with any Early Settlement (as such term is defined in the Purchase Contract Agreement) of such Holder's Purchase Contracts at the Holder's option pursuant to the terms of the Purchase Contract Agreement.

Section 8.02 *Early Mandatory Settlement Notice and Merger Redemption Notice*. If the Issuer elects to exercise its Early Mandatory Settlement Right or cause a Merger Termination Redemption in respect of the Purchase Contracts pursuant to the terms of the Purchase Contract Agreement, the Issuer shall provide the Trustee and the Holders of the Notes with a copy of the Early Mandatory Settlement Notice or Merger Redemption Notice, as the case may be, delivered pursuant to the Purchase Contract Agreement.

Section 8.03 *Procedures for Exercise* .

(a) To exercise the Repurchase Right, a Holder must deliver, prior to the close of business on the Business Day immediately preceding the Repurchase Date, the Notes to be repurchased to the Paying Agent (or the Units to the Purchase Contract Agent, if (x) the Early Mandatory Settlement Date or Merger Redemption Settlement Date, as the case may be, falls on the same day as the Repurchase Date and (y) the relevant Notes have not been separated from the Units), together with a duly completed written Repurchase Notice, in each case in accordance with appropriate procedures of the Depository, unless the Notes are not in the form of a Global Note (or the Units are not in the form of Global Units, as the case may be), in which case such Holder must deliver the Notes to be repurchased to the Paying Agent or the Units that include the Notes to be repurchased to the Purchase Contract Agent (if (i) the Early Mandatory Settlement Date or Merger Redemption Settlement Date, as the case may be, occurs on or after the Repurchase Date and (ii) the Notes have not been separated from the Units), duly endorsed for transfer to the Issuer, together with a Repurchase Notice, to the Paying Agent.

(b) The Repurchase Notice must state the following:

(i) if Certificated Notes or Units have been issued, the certificate numbers of the Notes or Units, or if the Notes or Units are in the form of a Global Note or a Global Unit, as the case may be, the Repurchase Notice must comply with appropriate procedures of the Depository;

(ii) the number of Notes to be repurchased; and

(iii) that the Notes are to be repurchased by the Issuer pursuant to the applicable provisions of the Notes and this Article 8.

(c) In the event that the Issuer exercises its Early Mandatory Settlement Right or in the event that a Merger Termination Redemption occurs with respect to Purchase Contracts that are a component of Units prior to the Repurchase Date, upon such exercise or redemption the Issuer shall execute and the Trustee shall authenticate on behalf of the Holder and deliver to the Holder thereof, at the expense of the Issuer, Separate Notes in same form and in the same number as the Notes comprising part of the Units.

Section 8.04 *Withdrawal of Repurchase Notice*.

(a) A Holder may withdraw any Repurchase Notice (in whole or in part) by a written, irrevocable notice of withdrawal delivered to the Paying Agent, with a copy to the Trustee and the Issuer, prior to the close of business on the Business Day immediately preceding the Repurchase Date.

(b) The notice of withdrawal must state the following:

(i) the number of the withdrawn Notes;

(ii) if Certificated Notes or Units have been issued, the certificate numbers of the withdrawn Notes or Units, as applicable, or if the Notes or Units are in the form of a Global Note or a Global Unit, as the case may be, the notice of withdrawal must comply with appropriate Depository procedures; and

(iii) the number of Notes, if any, that remain subject to the Repurchase Notice.

Section 8.05 *Effect of Repurchase*. (a) The Issuer shall be required to repurchase the Notes with respect to which the Repurchase Right has been exercised on the Repurchase Date. To effectuate such repurchase, the Issuer shall deposit immediately available funds with the Paying Agent, on or prior to 11:00 a.m., New York City time, on the Repurchase Date, an amount or amounts sufficient to pay the Repurchase Price with respect to those Notes for which the Repurchase Right has been exercised. A Holder electing to exercise the Repurchase Right shall receive payment of the Repurchase Price on the later of (i) the Repurchase Date and (ii) the time of book-entry transfer or the delivery of the Notes (or Units, as applicable).

(b) If the Paying Agent holds money on the Repurchase Date sufficient to pay the Repurchase Price with respect to those Notes for which the Repurchase Right has been exercised, then (i) such Notes shall cease to be outstanding and interest shall cease to accrue thereon (whether or not book-entry transfer of the Notes or Units, as applicable, is made or whether or not the Notes or Units, as applicable, are delivered as required herein), and (ii) all other rights of the Holder shall terminate (other than the right to receive the Repurchase Price and, if the Repurchase Date falls between a Regular Record Date and the corresponding Installment Payment Date, the related Installment Payment).

(c) The Issuer shall, in connection with any repurchase offer pursuant to this Article 8, if required, (i) comply with the provisions of the tender offer rules under the Exchange Act that may then be applicable, and (ii) file a Schedule TO or any other required schedule under the Exchange Act.

(d) Notwithstanding anything to the contrary herein, no Notes may be repurchased at the option of Holders if the principal amount thereof has been accelerated, and such acceleration has not been rescinded, on or prior to the Repurchase Date (except in the case of an acceleration resulting from a Default by the Issuer in the payment of the Repurchase Price with respect to such Notes).

Section 8.06 *No Sinking Fund*. The Notes are not entitled to the benefit of any sinking fund.

ARTICLE 9 TAX TREATMENT

Section 9.01 *Tax Treatment*. The Issuer and each Beneficial Holder agree, for United States federal income tax purposes, to treat the Notes as indebtedness of the Issuer.

ARTICLE 10 AMENDMENTS, SUPPLEMENTS AND WAIVERS

Section 10.01 *Amendments or Supplements Without Consent of Holders*. Section 9.1 of the Original Indenture shall not apply with respect to the Notes, and any reference in the Original Indenture to Section 9.1 thereof shall be deemed to be a reference to Section 10.01 hereof. The Issuer and the Trustee may amend or supplement the Indenture or the Notes without notice to or the consent of any Holder of the Notes to:

(a) cure any ambiguity, omission, defect or inconsistency in the Indenture;

(b) provide for the assumption of the obligations of the Issuer or any Guarantor by a successor of the Issuer or such Guarantor as set forth in Section 3.01;

(c) comply with any requirements of the SEC in connection with the qualification of the indenture under the TIA;

(d) evidence and provide for the acceptance of appointment with respect to the Notes by a successor Trustee in accordance with the Indenture, and add to or change any of the provisions of the Indenture as shall be necessary to provide for or facilitate the administration of the trusts under the Indenture by more than one trustee;

(e) provide for uncertificated or unregistered securities and to make all appropriate changes for such purpose; *provided* that the uncertificated Notes are issued in registered form for purposes of Section 163(f) of the Code;

(f) secure the Notes;

(g) add Guarantees with respect to the Notes, including any senior guarantees;

(h) add to the covenants of the Issuer or any Guarantor or Events of Default for the benefit of the Holders or surrender any right or power conferred upon the Issuer or any Guarantor;

(i) make any change that does not adversely affect the rights of any Holder;

(j) to provide for the issuance of additional Notes in accordance with the limitation set forth in the Indenture as of the date thereof;

(k) conform the provisions of the Indenture, the Notes or any Guarantee to any provision of the “Description of the Amortizing Notes” of the Prospectus Supplement to the extent that such provision of the Indenture, the Notes or such Guarantee was intended to be a verbatim recitation of such provision in the “Description of the Amortizing Notes”; or

(l) make any amendment to the provisions of the Indenture relating to the transfer and legending of Notes; provided, however, that (a) compliance with the Indenture as so amended would not result in Notes being transferred in violation of the Securities Act, or any other applicable securities law and (b) such amendment does not materially and adversely affect the rights of holders to transfer Notes.

Section 10.02 *Amendments, Supplements or Waivers With Consent of Holders*. Section 9.2 of the Original Indenture shall not apply with respect to the Notes, and any reference in the Original Indenture to Section 9.2 thereof shall be deemed to be a reference to Section 10.02 hereof. Without prior notice to any Holders, the Issuer and the Trustee may amend the Indenture with respect to the Notes with the written consent of the Holders of a majority in principal amount of the Notes then outstanding (including, without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for, the Notes), and the Holders of a majority in principal amount of the Notes then outstanding by written notice to the Trustee may waive any past Default or compliance by the Issuer with any provision of the Indenture, with respect to the Notes. However, without the consent of each Holder of an outstanding Note affected thereby, an amendment or waiver, including a waiver in relation to a past Event of Default, may not:

(a) change any Installment Payment Date or the amount owed on any Installment Payment Date;

(b) reduce the principal amount of the Notes or the rate of interest thereon or change the Maturity Date;

(c) impair the right of any Holder of the Notes to receive payment of principal of and interest on such Holder’s Notes on or after the due dates therefor or to institute suit for the enforcement of any payment on or with respect to such Holder’s Notes;

(d) make any change to this Section 10.02;

(e) reduce the above-stated percentage in principal amount of outstanding Notes the consent of whose Holders is necessary to modify or amend the Indenture with respect to the Notes;

(f) reduce the percentage in principal amount of outstanding Notes the consent of whose Holders is required for any supplemental indenture or for any waiver of compliance with certain provisions of the Indenture or certain Events of Default and their consequences provided for in the Indenture, or make any change to this sentence;

(g) make any change in the ranking or priority of the Notes that would adversely affect the Holders;

(h) make the Notes payable in a currency other than that stated in the Notes;

(i) reduce the Repurchase Price or amend or modify in any manner adverse to the Holders of the Notes the obligation of the Issuer or any Guarantor to make such payment; or

(j) make any change in, or release other than in accordance with the Indenture, any Guarantee if such change or release would adversely affect the Holders.

It shall not be necessary for the consent of any Holder to approve the particular form of any proposed amendment, supplement or waiver, but it shall be sufficient if such consent approves the substance thereof. After an amendment, supplement or waiver becomes effective, the Issuer shall give to the Holders affected thereby a notice briefly describing the amendment, supplement or waiver. The Issuer shall mail supplemental indentures to Holders upon request. Any failure of the Issuer to mail such notice, or any defect therein, shall not, however, in any way impair or affect the validity of any such supplemental indenture or waiver.

Section 10.03 *Payment for Consent*. Neither the Issuer nor any Affiliate of the Issuer shall, directly or indirectly, pay or cause to be paid any consideration, whether by way of interest, fee or otherwise, to any Holder for or as an inducement to any consent, waiver or amendment of any of the terms or provisions of the Indenture or the Notes unless such consideration is offered to all Holders and is paid to all Holders that so consent, waive or agree to amend in the time frame set forth in solicitation documents relating to such consent, waiver or agreement.

ARTICLE 11 MISCELLANEOUS

Section 11.01 *Governing Law and Jury Trial Waiver*. THIS SUPPLEMENTAL INDENTURE, THE NOTES AND THE GUARANTEES, AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS SUPPLEMENTAL INDENTURE, THE NOTES AND THE GUARANTEES, SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK. The parties hereto hereby waive their respective rights to trial by jury in any action or proceeding arising out of or related to the Indenture, the Notes or the transactions contemplated hereby or thereby, to the extent permitted by law.

Section 11.02 *No Security Interest Created*. Nothing in this Supplemental Indenture or in the Notes, expressed or implied, shall be construed to constitute a security interest under the Uniform Commercial Code or similar legislation, as now or hereafter enacted and in effect, in any jurisdiction.

Section 11.03 *Trust Indenture Act*. This Supplemental Indenture is hereby made subject to, and shall be governed by, the provisions of the TIA required to be part of and to govern indentures qualified under the TIA. If any provision hereof limits, qualifies or conflicts with another provision hereof or the Original Indenture that is required to be included in an indenture qualified under the TIA, such required provision shall control.

Section 11.04 *Notices*. The addresses for notice in Section 10.2 of the Original Indenture shall be deemed to be as follows:

if to the Issuer or any Guarantor:

Tyson Foods, Inc.
2200 Don Tyson Parkway
Springdale, Arkansas 72762-6999
Attention: Chief Financial Officer

with a copy to:

Davis Polk & Wardwell LLP
450 Lexington Avenue
New York, New York 10017
Attention: Richard Truesdell

if to the Trustee:

The Bank of New York Mellon Trust Company, N.A.
601 Travis Street, 16th Floor
Houston, Texas 77002
Attention: Corporate Trust Services, re: Tyson Foods, Inc.

The Issuer, any Guarantor or the Trustee by notice to the others may designate additional or different addresses for subsequent notices or communications.

The Trustee agrees to accept and act upon instructions or directions pursuant to this Supplemental Indenture sent by unsecured e-mail, pdf, facsimile transmission or other similar unsecured electronic methods, provided, however, that the Trustee shall have received an incumbency certificate listing persons designated to give such instructions or directions and containing specimen signatures of such designated persons, which such incumbency certificate shall be amended and replaced whenever a person is to be added or deleted from the listing. If the Issuer elects to give the Trustee e-mail or facsimile instructions (or instructions by a similar electronic method) and the Trustee in its discretion elects to act upon such instructions, the Trustee's understanding of such instructions shall be deemed controlling. The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee's reliance upon and compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction. The Issuer agrees to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Trustee, including without limitation the risk of the Trustee acting on unauthorized instructions, and the risk of interception and misuse by third parties.

Section 11.05 *Benefits of Indenture*. Nothing in this Supplemental Indenture or in the Notes, expressed or implied, shall give to any Person, other than the parties hereto, any Paying Agent, any authenticating agent, any Registrar and their successors hereunder or the Holders of the Notes, any benefit or any legal or equitable right, remedy or claim under this Supplemental Indenture.

Section 11.06 *Successors*. All agreements of the Issuer or any Guarantor in the Indenture and the Notes shall bind its successors. All agreements of the Trustee in the Indenture shall bind its successors.

Section 11.07 *Table of Contents, Headings, Etc* . The table of contents and the titles and headings of the Articles and Sections of this Supplemental Indenture have been inserted for convenience of reference only, are not to be considered a part hereof, and shall in no way modify or restrict any of the terms or provisions hereof.

Section 11.08 *Execution in Counterparts*. This Supplemental Indenture may be executed in any number of counterparts, each of which shall be an original, but such counterparts shall together constitute but one and the same instrument.

Section 11.09 *Severability*. In the event any provision of this Supplemental Indenture or in the Notes shall be invalid, illegal or unenforceable, then (to the extent permitted by law) the validity, legality or enforceability of the remaining provisions shall not in any way be affected or impaired.

Section 11.10 *The Trustee*. The Trustee shall not be responsible in any manner whatsoever for or in respect of the validity or sufficiency of this Supplemental Indenture or for or in respect of the recitals contained herein, all of which are made solely by the Issuer. In acting as Trustee under this Supplemental Indenture and with respect to the Notes, the Trustee shall be entitled to, in addition to all rights, benefits, protections, indemnities and immunities granted to it under the Original Indenture, the benefit of the following provisions:

(a) The permissive right of the Trustee to take any action under this Supplemental Indenture shall not be construed as a duty to so act.

(b) In no event shall the Trustee be responsible or liable for special, indirect, or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit) irrespective of whether the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action.

(c) In no event shall the Trustee be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services (it being understood that the Trustee shall use reasonable efforts which are consistent with accepted practices in the banking industry to avoid and mitigate the effects of such occurrences and to resume performance as soon as practicable under the circumstances).

(d) The rights, privileges, protections, immunities and benefits given to the Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder, and to each agent, custodian and other Person employed to act hereunder.

[Remainder of the page intentionally left blank]

SIGNATURES

IN WITNESS WHEREOF, the parties hereto have caused this Supplemental Indenture to be duly executed, all as of the date first above written.

TYSON FOODS, INC., as
the Issuer

By: /s/ Susan White
Name: Susan White
Title: Vice President and Treasurer

TYSON FRESH MEATS, INC., as
Guarantor

By: /s/ Susan White
Name: Susan White
Title: Vice President and Treasurer

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., as Trustee

By: /s/ Jonathan Glover
Name: Jonathan Glover
Title: Vice President

[FORM OF FACE OF NOTE]

[THIS NOTE IS A GLOBAL NOTE WITHIN THE MEANING OF THE INDENTURE HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF A DEPOSITARY OR A NOMINEE OF A DEPOSITARY. THIS NOTE IS EXCHANGEABLE FOR NOTES REGISTERED IN THE NAME OF A PERSON OTHER THAN THE DEPOSITARY OR ITS NOMINEE ONLY IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE INDENTURE, AND NO TRANSFER OF THIS NOTE (OTHER THAN A TRANSFER OF THIS NOTE AS A WHOLE BY THE DEPOSITARY TO A NOMINEE OF THE DEPOSITARY OR BY A NOMINEE OF THE DEPOSITARY TO THE DEPOSITARY OR ANOTHER NOMINEE OF THE DEPOSITARY) MAY BE REGISTERED EXCEPT IN LIMITED CIRCUMSTANCES.

UNLESS THIS NOTE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION (“**DTC**”), TO THE ISSUER OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY NOTE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT HEREON IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.] *

* Include only if a Global Note.

TYSON FOODS, INC.
1.50% SENIOR AMORTIZING NOTES DUE 2017

CUSIP No. 902494 AV5
ISIN No.: US902494AV52

No. _____

[Initial] * Number of Notes: _____

TYSON FOODS, INC., a Delaware corporation (the “**Issuer**”, which term includes any successor under the Indenture hereinafter referred to), for value received, hereby promises to pay to [CEDE & CO., as nominee of The Depository Trust Company] * [] **, or registered assigns (the “**Holder**”), the initial principal amount of \$6.82854 for each of the number of Notes set forth above[, which number of Notes may from time to time be reduced or increased as set forth in Schedule A hereto, as appropriate, in accordance with the terms of the Indenture, but which number of Notes, taken together with the number of all other outstanding Notes, shall not exceed 30,000,000 Notes at any time] *, in equal quarterly installments (except for the first such payment) (each such payment, an “**Installment Payment**”), constituting a payment of interest (at a rate of 1.50% per annum) and a partial repayment of principal, payable on each January 15, April 15, July 15 and October 15, commencing on October 15, 2014 (each such date, an “**Installment Payment Date**”), and the period from, and including, August 5, 2014 to, but excluding, such first Installment Payment Date and in the case of any other Installment Payment Date, the quarterly period from, and including, the immediately preceding Installment Payment Date to, but excluding, such other Installment Payment Date, an “**Installment Payment Period**,” with the final Installment Payment due and payable on July 15, 2017, all as set forth on the reverse hereof and in the Indenture referred to on the reverse hereof.

Each Installment Payment for any Installment Payment Period shall be computed on the basis of a 360-day year of twelve 30-day months. If an Installment Payment is payable for any period shorter than a full Installment Payment Period, such Installment Payment shall be computed on the basis of the actual number of days elapsed per 30-day month. Furthermore, if any date on which an Installment Payment is payable is not a Business Day, then payment of the Installment Payment on such date shall be made on the next succeeding day that is a Business Day, and without any interest or other payment in respect of any such delay. Installment Payments shall be paid to the Person in whose name the Note is registered, with limited exceptions, at the close of business on the Business Day immediately preceding the related Installment Payment Date (each, a “**Regular Record Date**”). If the Notes do not remain in book-entry only form, the Issuer shall have the right to select Regular Record Dates, noticed in writing in advance, to the Trustee and Holders, which will be more than 14 days but not more than 60 days prior to the relevant Installment Payment Date. Installment Payments shall be payable at the office or agency of the Issuer maintained for that purpose in the Borough of Manhattan, The City of New York; *provided, however*, that payment of Installment Payments may be made at the option of the Issuer by check mailed to the registered Holder at such address as shall appear in the security register or by wire transfer to an account appropriately designated by the Holder entitled to payment.

This Note shall not be entitled to any benefit under the Indenture hereinafter referred to or be valid or obligatory for any purpose until the Certificate of Authentication shall have been manually signed by or on behalf of the Trustee.

Reference is hereby made to the further provisions of this Note set forth on the reverse hereof, which further provisions shall for all purposes have the same effect as if set forth at this place.

[SIGNATURES ON THE FOLLOWING PAGE]

* Include only if a Global Note.

** Include only if not a Global Note.

IN WITNESS WHEREOF, the Issuer has caused this instrument to be duly executed.

Dated: _____

TYSON FOODS, INC.

By: _____
Name:
Title:

By: _____
Name:
Title:

CERTIFICATE OF AUTHENTICATION

The Bank of New York Mellon Trust Company, N.A., as Trustee, certifies that this is one of the Securities of the series designated herein referred to in the within mentioned Indenture.

Dated:

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., as
Trustee

By: _____
Authorized Signatory

[REVERSE OF NOTE]

TYSON FOODS, INC.

1.50% Senior Amortizing Notes due 2017

This Note is one of a duly authorized series of Securities of the Note Issuer designated as its 1.50% Senior Amortizing Notes due 2017 (herein sometimes referred to as the “**Notes**”), issued under the Indenture, dated as of June 1, 1995, among the Issuer and The Bank of New York Mellon Trust Company, N.A. (as successor to JPMorgan Chase Bank, N.A. (formerly The Chase Manhattan Bank)), as trustee (the “**Trustee**,” which term includes any successor trustee under the Indenture) (including any provisions of the TIA that are deemed incorporated therein) (the “**Original Indenture**”), as supplemented by the Supplemental Indenture, dated as of August 5, 2014 (the “**Supplemental Indenture**”), among the Issuer and the other Guarantors from time to time party thereto, and the Trustee (the Original Indenture and, as supplemented by such Supplemental Indenture, the “**Indenture**”), to which Indenture reference is hereby made for a description of the rights, limitations of rights, obligations, duties and immunities thereunder of the Trustee, the Issuer and the Holders. The terms of other series of Securities issued under the Indenture may vary with respect to interest rates, issue dates, maturity, redemption, repayment, currency of payment and otherwise as provided in the Indenture. The Indenture further provides that securities of a single series may be issued at various times, with different maturity dates and may bear interest at different rates. This series of Securities is limited in initial aggregate principal amount as specified in the Supplemental Indenture.

Each Installment Payment shall constitute a payment of interest (at a rate of 1.50% per annum) and a partial repayment of principal on the Note, allocated as set forth in Section 2.02(c) of the Supplemental Indenture.

<u>Installment Payment Date</u>	<u>Amount of</u>	<u>Amount of</u>
	<u>Principal</u>	<u>Interest</u>
October 15, 2014	\$0.44189	\$0.01992
January 15, 2015	\$0.56980	\$0.02395
April 15, 2015	\$0.57194	\$0.02181
July 15, 2015	\$0.57408	\$0.01967
October 15, 2015	\$0.57623	\$0.01752
January 15, 2016	\$0.57840	\$0.01535
April 15, 2016	\$0.58056	\$0.01319
July 15, 2016	\$0.58274	\$0.01101
October 15, 2016	\$0.58493	\$0.00882
January 15, 2017	\$0.58712	\$0.00663
April 15, 2017	\$0.58932	\$0.00443
July 15, 2017	\$0.59153	\$0.00222

The Notes shall not be subject to redemption at the option of the Issuer. However, a Holder shall have the right to require the Issuer to repurchase some or all of its Notes for cash at the Repurchase Price per Note and on the Repurchase Date, upon the occurrence of certain events and subject to the conditions set forth in the Indenture.

This Note is not entitled to the benefit of any sinking fund. The Indenture contains provisions for Legal Defeasance and Covenant Defeasance at any time of the indebtedness on this Note upon compliance by the Issuer with certain conditions set forth therein, which provisions apply to this Note.

If an Event of Default with respect to the Notes shall occur and be continuing, then (unless no declaration of acceleration or notice is required for such Event of Default) either the Trustee or the Holders of not less than 25% in principal amount of the Notes then outstanding may declare the aggregate principal amount of the Notes, and all interest accrued thereon, to be due and payable immediately, in the manner, subject to the conditions and with the effect provided in the Indenture.

The Indenture permits, with certain exceptions as therein provided, the Issuer and the Trustee, with the consent of the Holders of not less than a majority in principal amount of the Securities at the time outstanding, to execute supplemental indentures for certain purposes as described therein.

No provision of this Note or of the Indenture shall alter or impair the obligation of the Issuer, which is absolute and unconditional, to pay Installment Payments on this Note at the time, place and rate, and in the coin or currency, herein and in the Indenture prescribed.

The Notes are Guaranteed on the Issue Date, on a senior basis, by the Guarantor as set forth in the Indenture.

The Notes are originally being issued as part of the 4.75% Tangible Equity Units (the “**Units**”) issued by the Issuer pursuant to that certain Purchase Contract Agreement, dated as of August 5, 2014, between the Issuer and The Bank of New York Mellon Trust Company, N.A., as Purchase Contract Agent, as Trustee and as attorney-in-fact for the holders of Purchase Contracts from time to time (the “**Purchase Contract Agreement**”). Holders of the Units have the right to separate such Units into their constituent parts, consisting of Separate Purchase Contracts (as defined in the Purchase Contract Agreement) and Separate Notes, during the times, and under the circumstances, described in the Purchase Contract Agreement. Following separation of any Unit into its constituent Separate Note and Separate Purchase Contract, the Separate Notes are transferable independently from the Separate Purchase Contracts. In addition, Separate Notes can be recombined with Separate Purchase Contracts to recreate Units, as provided for in the Purchase Contract Agreement. Reference is hereby made to the Purchase Contract Agreement for a more complete description of the terms thereof applicable to the Units.

As provided in the Indenture and subject to certain limitations therein set forth, the transfer of this Note shall be registered on the security register of the Issuer, upon due presentation of this Note for registration of transfer at the office or agency of the Issuer in the Borough of Manhattan, The City of New York, duly endorsed by, or accompanied by a written instrument or instruments of transfer in form satisfactory to the Issuer and the Trustee duly executed by, the Holder hereof or by his attorney duly authorized in writing, and thereupon the Issuer shall execute and the Trustee shall authenticate and deliver in the name of the transferee or transferees a new Note or Notes in authorized denominations and for a like aggregate principal amount.

The Notes are initially issued in registered, global form without coupons in denominations initially equal to \$6.82854 and integral multiples in excess thereof.

The Issuer or Trustee may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any registration of transfer of this Note. No service charge shall be made for any such transfer or for any exchange of this Note as contemplated by the Indenture.

The Issuer, the Trustee and any agent of the Issuer or the Trustee may deem and treat the Person in whose name this Note is registered upon the security register for the Notes as the absolute owner of this Note (whether or not this Note shall be overdue and notwithstanding any notation of ownership or other writing thereon) for the purpose of receiving payment of or on account of the principal of and, subject to the provisions of the Indenture, interest, if any, on this Note and for all other purposes; and neither the Issuer nor the Trustee nor any agent of the Issuer or the Trustee shall be affected by any notice to the contrary.

This Note, the Indenture and the Guarantee, and any claim, controversy or dispute arising under or related to this Note, the Indenture and the Guarantee, shall be governed by, and construed in accordance with, the laws of the State of New York .

Capitalized terms used but not defined in this Note shall have the meanings ascribed to such terms in the Indenture.

No recourse shall be had for the payment of any Installment Payment on this Note, or for any claim based hereon, or upon any obligation, covenant or agreement of the Issuer in the Indenture, against any incorporator, stockholder, officer or director, past, present or future of the Issuer or of any predecessor or successor, either directly

or through the Issuer or of any successor, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment of penalty or otherwise; and all such personal liability is expressly released and waived as a condition of, and as part of the consideration for, the issuance of this Note.

The Issuer and each Beneficial Holder agrees, for United States federal income tax purposes, to treat the Notes as indebtedness of the Issuer.

In the event of any inconsistency between the provisions of this Note and the provisions of the Indenture, the Indenture shall prevail.

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned assigns and transfers this Note to:

(Insert assignee's social security or tax identification number)

(Insert address and zip code of assignee)

and irrevocably appoints

agent to transfer this Note on the books of the Issuer. The agent may substitute another to act for him or her.

Date: _____

Signature:

Signature Guarantee:

(Sign exactly as your name appears on the other side of this Note)

SIGNATURE GUARANTEE

Signatures must be guaranteed by an “eligible guarantor institution” meeting the requirements of the Registrar, which requirements include membership or participation in the Security Transfer Agent Medallion Program (“STAMP”) or such other “signature guarantee program” as may be determined by the Registrar in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.

By: _____

Name:

Title:

as Trustee

By: _____

Name:

Title:

Attest

By: _____

Name:

Title:

FORM OF REPURCHASE NOTICE

TO: TYSON FOODS, INC.
THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., as Trustee

The undersigned registered Holder hereby irrevocably acknowledges receipt of a notice from Tyson Foods, Inc. (the “**Issuer**”) regarding the right of Holders to elect to require the Issuer to repurchase the Notes and requests and instructs the Issuer to pay, for each Note designated below, the Repurchase Price for such Notes (determined as set forth in the Indenture), in accordance with the terms of the Indenture and the Notes, to the registered holder hereof. Capitalized terms used herein but not defined shall have the meanings ascribed to such terms in the Indenture. The Notes shall be repurchased by the Issuer as of the Repurchase Date pursuant to the terms and conditions specified in the Indenture.

Dated: _____

Signature:

NOTICE: The above signature of the Holder hereof must correspond with the name as written upon the face of the Notes in every particular without alteration or enlargement or any change whatever.

Notes Certificate Number (if applicable): _____

Number of Notes to be repurchased (if less than all, must be one Note or integral multiples in excess thereof): _____

Social Security or Other Taxpayer Identification Number: _____

SCHEDULE A
[SCHEDULE OF INCREASES OR DECREASES IN GLOBAL NOTE]*

The initial number of Notes evidenced by this Global Note is _____. The following increases or decreases in this Global Note have been made:

<u>Date</u>	<u>Amount of decrease in number of Notes evidenced hereby</u>	<u>Amount of increase in number of Notes evidenced hereby</u>	<u>Number of Notes evidenced hereby following such decrease (or increase)</u>	<u>Signature of authorized officer of Trustee</u>
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* Include only if a Global Note.

OPINION OF DAVIS POLK & WARDWELL LLP

New York	Paris
Menlo Park	Madrid
Washington DC	Tokyo
São Paulo	Beijing
London	Hong Kong



Davis Polk & Wardwell LLP	212 450 4000 tel
450 Lexington Avenue	212 701 5800 fax
New York, NY 10017	

August 5, 2014

Tyson Foods, Inc.
2200 Don Tyson Parkway
Springdale, Arkansas 72762-6999

Ladies and Gentlemen:

Tyson Foods, Inc., a Delaware corporation (the “**Company**”), has filed with the Securities and Exchange Commission a Registration Statement on Form S-3 (File No. 333-197661) (the “**Registration Statement**”) for the purpose of registering under the Securities Act of 1933, as amended (the “**Securities Act**”), certain securities, including (i) up to 27,381,500 shares of its common stock, par value \$0.10 per share (the “**Shares**”) and (ii) 30,000,000 of its 4.75% tangible equity units (the “**Units**”). The Shares are to be sold pursuant to the Underwriting Agreement dated July 30, 2014 (the “**Shares Underwriting Agreement**”) among the Company and the several underwriters named therein (the “**Shares Underwriters**”), and the Units are to be sold pursuant to the Underwriting Agreement dated July 30, 2014 (the “**Units Underwriting Agreement**”) among the Company and the several underwriters named therein (the “**Units Underwriters**”). Each Unit has a stated amount of \$50 and is comprised of (i) a prepaid stock purchase contract issued by the Company (each, a “**Purchase Contract**”) under which the holder has purchased and the Company has agreed to automatically deliver on July 15, 2017 (subject to postponement in certain limited circumstances and subject to early redemption or settlement of such Purchase Contract, in each case, pursuant to the provisions of such Purchase Contract and of the Purchase Contract Agreement (the “**Purchase Contract Agreement**”) dated August 5, 2014 between the Company and The Bank of New York Mellon Trust Company, N.A., as purchase contract agent (the “**Purchase Contract Agent**”), as Trustee (as defined below) and as attorney-in-fact for the holders of the Purchase Contracts from time to time) a number of shares of the Company’s Class A Common Stock, par value \$0.10 per share (the “**Underlying Securities**”), determined pursuant to the terms of the Purchase Contract and the Purchase Contract Agreement, and (ii) a senior amortizing note issued by the Company with a final installment payment date of July 15, 2017 (each, an “**Amortizing Note**”), which will have an initial principal amount of \$6.82854 and will pay equal quarterly installments of \$0.59375 (except for the October 15, 2014 installment payment, which will be \$0.46181), and will be guaranteed (the “**Guarantees**”) and, together with the Amortizing Notes, the “**Securities**”) by Tyson Fresh Meats, Inc. (the “**Guarantor**”). The Securities will be issued pursuant to an indenture dated as of June 1, 1995 between the Company and The Bank

of New York Mellon Trust Company, N.A. (as successor to JPMorgan Chase Bank, N.A. (formerly The Chase Manhattan Bank)), as trustee (the “**Trustee**”), as amended and supplemented by the supplemental indenture thereto dated as of August 5, 2014 among the Company, the Guarantor and the Trustee (such indenture as so amended and supplemented, the “**Indenture**”). The Purchase Contracts will be issued pursuant to the Purchase Contract Agreement. The Shares include 3,571,500 shares that the Shares Underwriters have the option to purchase pursuant to the Shares Underwriting Agreement to cover over-allotments, if any.

We, as your counsel, have examined originals or copies of such documents, corporate records, certificates of public officials and other instruments as we have deemed necessary or advisable for the purpose of rendering this opinion.

In rendering the opinions expressed herein, we have, without independent inquiry or investigation, assumed that (i) all documents submitted to us as originals are authentic and complete, (ii) all documents submitted to us as copies conform to authentic, complete originals, (iii) all signatures on all documents that we reviewed are genuine, (iv) all natural persons executing documents had and have the legal capacity to do so, (v) all statements in certificates of public officials and officers of the Company and the Guarantor that we reviewed were and are accurate and (vi) all representations made by the Company and the Guarantor as to matters of fact in the documents that we reviewed were and are accurate.

Based on the foregoing, and subject to the additional assumptions and qualifications set forth below, we advise you that, in our opinion:

1. The Shares to be sold by the Company have been duly authorized and, when issued and delivered to and paid for by the Shares Underwriters pursuant to the Shares Underwriting Agreement, will be validly issued, fully paid and non-assessable.
2. The Securities have been duly authorized by the Company and the Guarantor and, when executed and authenticated in accordance with the provisions of the Indenture and delivered to and paid for by the Units Underwriters pursuant to the Units Underwriting Agreement as components of the Units purchased by the Units Underwriters, will be valid and binding obligations of the Company and the Guarantor, as applicable, enforceable in accordance with their terms, subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally, concepts of reasonableness and equitable principles of general applicability, and the Amortizing Notes will be entitled to the benefits of the Indenture pursuant to which such Amortizing Notes are to be issued; provided that we express no opinion as to the (x) enforceability of any waiver of rights under any usury or stay law, (y) effect of fraudulent conveyance, fraudulent transfer or similar provision of applicable law on the conclusions expressed above or (z) validity, legally binding effect or enforceability of any provision that permits holders to collect any portion of stated principal amount upon acceleration of the Amortizing Notes to the extent determined to constitute unearned interest.
3. The Units have been duly authorized by the Company and, when executed and authenticated in accordance with the provisions of the Purchase Contract Agreement and delivered to and paid for by the Units Underwriters pursuant to the Units Underwriting Agreement, will be valid and binding obligations of the

- Company, enforceable in accordance with their terms, subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally, concepts of reasonableness and equitable principles of general applicability, and will be entitled to the benefits of the Purchase Contract Agreement pursuant to which such Units are to be issued; *provided* that we express no opinion as to (x) the enforceability of any waiver of rights under any stay law or (y) the validity, legally binding effect or enforceability of any provision in the Purchase Contract Agreement that requires or relates to adjustments to the settlement rate at a rate or in an amount that a court would determine in the circumstances under applicable law to be commercially unreasonable or a penalty or forfeiture.
4. The Purchase Contracts have been duly authorized by the Company and, when executed and delivered in accordance with the provisions of the Purchase Contract Agreement and delivered to and paid for by the Units Underwriters pursuant to the Units Underwriting Agreement as components of the Units purchased by the Units Underwriters, will be valid and binding obligations of the Company, enforceable in accordance with their terms, subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally, concepts of reasonableness and equitable principles of general applicability, and will be entitled to the benefits of the Purchase Contract Agreement pursuant to which such Purchase Contracts are to be issued; *provided* that we express no opinion as to (x) the enforceability of any waiver of rights under any stay law or (y) the validity, legally binding effect or enforceability of any provision in the Purchase Contracts that requires or relates to adjustments to the settlement rate at a rate or in an amount that a court would determine in the circumstances under applicable law to be commercially unreasonable or a penalty or forfeiture.
 5. The Underlying Securities initially issuable upon settlement of the Purchase Contracts have been duly authorized and reserved and, when issued and delivered upon settlement of the Purchase Contracts in accordance with the terms of the Purchase Contracts and the Purchase Contract Agreement, will be validly issued, fully paid and non-assessable.

In connection with the opinions expressed above, we have assumed that the Purchase Contract Agreement, the Indenture, the Shares, the Units, the Purchase Contracts, the Amortizing Notes and the Guarantees (collectively, the "**Documents**") are valid, binding and enforceable agreements of each party thereto (other than as expressly covered above in respect of the Company and the Guarantor). We have also assumed that the execution, delivery and performance by each party to each Document to which it is a party (a) are within its corporate powers, (b) do not contravene, or constitute a default under, the certificate of incorporation or bylaws or other constitutive documents of such party, (c) require no action by or in respect of, or filing with, any governmental body, agency or official and (d) do not contravene, or constitute a default under, any provision of applicable law or regulation or any judgment, injunction, order or decree or any agreement or other instrument binding upon such party, *provided* that we make no such assumption to the extent that we have specifically opined as to such matters with respect to the Company and the Guarantor.

We are members of the Bar of the State of New York and the foregoing opinion is limited to the laws of the State of New York and the General Corporation Law of the State of Delaware, except that we express no opinion as to any law, rule or regulation that is applicable to the Company or the Guarantor, the Documents or such transactions solely because such law, rule or regulation is part of a regulatory regime applicable to any party to any of the Documents or any of its affiliates due to the specific assets or business of such party or such affiliate.

We hereby consent to the filing of this opinion as an exhibit to a report on Form 8-K to be filed by the Company on the date hereof and its incorporation by reference into the Registration Statement and further consent to the reference to our name under the caption "Legal Matters" in the prospectus supplements which are parts of the Registration Statement. In giving this consent, we do not admit that we are in the category of persons whose consent is required under Section 7 of the Securities Act.

Very truly yours,

/s/ Davis Polk & Wardwell LLP