(v) There are no Environmental Claims pending or, to the Company's knowledge, threatened against the Company, any Subsidiary or the Real Property, and to the Company's knowledge, there are no environmental conditions that can reasonably be expected to form the basis of any such Environmental Claim, including with respect to any off site disposal location currently or formerly used by the Company or any Subsidiary or any of its predecessors or with respect to previously owned or operated facilities.

(b) The Company has provided or made available to the Purchaser copies of (i) any material environmental assessment or audit reports or other similar studies or analyses in its possession relating to the Business, the Real Property, the Company or any Subsidiary, and (ii) all insurance policies that may provide coverage to the Company or any Subsidiary or the Business for environmental matters.

(c) Neither the execution of this Agreement or the Ancillary Agreements nor the consummation of the Transactions will require any (i) Remedial Action by the Company or any Subsidiary or (ii) notice to or consent of Governmental Authorities or third parties pursuant to any applicable Environmental Law or Environmental Permit, except, in the case of this clause (ii), as would not reasonably be expected to have a Material Adverse Effect. Notwithstanding anything to the contrary herein, the Purchaser acknowledges that (A) the representations and warranties contained in this Section 3.11 are the only representations and warranties being made with respect to compliance with or liability under Environmental Laws or with respect to any environmental, health or safety matter, including natural resources, related in any way to the Business, including the Assets, or to this Agreement or its subject matter, and (B) no other representation contained in this Agreement shall apply to any such matters and no other representation or warranty, express or implied, is being made with respect thereto.

SECTION 3.12. Material Contracts. (a) Except as would not reasonably be expected to have a Material Adverse Effect, each Material Contract (subject to the Enforceability Exceptions): (i) is valid and binding on the Company (or the applicable Subsidiary) and, to the knowledge of the Company, the counterparties thereto, and is in full force and effect; and (ii) upon consummation of the Transactions, except to the extent that any consents set forth in Section 3.05 of the Disclosure Schedule are not obtained, shall continue in full force and effect without penalty or other adverse consequence. The Company (or the applicable Subsidiary) and, to the Company's knowledge, the counterparties thereto, are not in breach of, or default under, any Material Contract to which any of them is a party except for breaches or defaults that, upon entry of the Confirmation Order, would not reasonably be expected to preclude the consummation of the Transactions and that would be cured or rendered unenforceable in accordance with the Confirmation Order, except as would not reasonably be expected to have a Material Adverse Effect.

(b) There is no Contract granting any Person any preferential right to purchase any of the material Assets (other than in the ordinary course of business consistent with past practice) or any of the Reorganized Company Shares.

SECTION 3.13. Intellectual Property. (a) Except as would not reasonably be expected to have a Material Adverse Effect, the Company and the Subsidiaries have the

necessary rights to use the Company Intellectual Property and Company IT Assets in connection with the operation of the Business, all of which rights shall survive materially unchanged upon the consummation of the Transactions. The Company Intellectual Property includes all Intellectual Property used or held for use in connection with the operation of the Business, and, to the knowledge of the Company or a Subsidiary, there are no other items of Intellectual Property that are material and necessary for the operation of the Business or for the continued operation of the Business immediately after the Closing in substantially the same manner as operated prior to the Closing, except for such items the lack of which would not reasonably be expected to have a Material Adverse Effect. The Company or a Subsidiary is the owner of all right, title and interest in and to each item of Owned Intellectual Property, free and clear of all exclusive licenses, non-exclusive licenses, and Encumbrances (other than Permitted Encumbrances) not granted in the ordinary course of business consistent with past practice, or any obligation to grant any of the foregoing, except as would not reasonably be expected to have a Material Adverse Effect. Except as would not reasonably be expected to have a Material Adverse Effect, the Company and each Subsidiary has an apparently valid license to use the Licensed Intellectual Property in connection with the operation of the Business, subject only to the terms of the Company IP Agreements.

(b) To the knowledge of the Company, except as would not reasonably be expected to have a Material Adverse Effect, the Owned Intellectual Property is (i) valid, subsisting and enforceable, and (ii) not subject to any outstanding order, judgment, injunction, decree, ruling or agreement (other than licenses granted in the ordinary course of business) adversely affecting the Company's or any Subsidiary's use thereof or rights thereto, or that impair the validity or enforceability thereof. The Registered Owned Intellectual Property that is material to the Business is currently in compliance in all material respects with any and all formal legal requirements necessary to record and perfect the Company's and the Subsidiaries' interest therein and the chain of title thereof.

(c) The Company, the Subsidiaries, the operation of the Business and the use of the Company Intellectual Property and Company IT Assets in connection therewith do not infringe or misappropriate the Intellectual Property rights of any other Person, except as would not reasonably be expected to have a Material Adverse Effect. To the knowledge of the Company and the Subsidiaries, no Person is engaging in any activity that infringes or misappropriates any Owned Intellectual Property, except as would not reasonably be expected to have a Material Adverse Effect.

(d) To the knowledge of the Company, (i) the Company and the Subsidiaries have taken all reasonable measures to maintain the confidentiality and value of all material confidential information used or held for use in the operation of the Business; and (ii) no material confidential information, trade secrets or other material confidential Company Intellectual Property have been disclosed by the Company or any Subsidiary to or discovered by any Person except pursuant to appropriate non-disclosure agreements that (A) contain reasonable terms to obligate such Person to keep such confidential information, trade secrets or other confidential Company Intellectual Property confidential, and (B) (x) are valid, subsisting, in full force and effect and binding on the parties thereto and (y) with respect to which no party thereto is in material default thereunder and no condition exists that with notice or the lapse of time or both could constitute a material default thereunder.

(e) To the knowledge of the Company and the Subsidiaries, the Company IT Assets that are material to the Business are adequate for, and operate and perform in all material respects in accordance with their documentation and functional specifications and otherwise as required in connection with, the operation of the Business. To the knowledge of the Company and the Subsidiaries, the Company IT Assets are free from bugs or other defects, have not materially malfunctioned or failed within the past three years, in each case, except as would not reasonably be expected to have a Material Adverse Effect. To the knowledge of the Company and the Subsidiaries, except as would not reasonably be expected to have a Material Adverse Effect, the Company and the Subsidiaries have implemented reasonable backup, security and disaster recovery measures and technology consistent with industry practices and no Person has gained unauthorized access to any Company IT Assets.

(f) Neither the negotiation, execution, delivery or performance of this Agreement or the Ancillary Agreements, nor the consummation of the Transactions, will result in (i) the grant or transfer to any third party of any license or other interest under, the abandonment, assignment to any third party or modification or loss of any rights with respect to, or the creation of any Encumbrance on, any Company Intellectual Property that are material to the Business, or (ii) Purchaser or any of its Affiliates, or the Company or any Subsidiary, being (A) bound by or subject to any non-compete or licensing obligation, covenant not to sue, or other restriction on or modification of the current or contemplated operation or scope of its business, which such party was not bound by or subject to prior to the Closing, or (B) obligated to (1) pay any royalties, honoraria, fees or other payments to any Person in excess of those payable by such party prior to the Closing, or (2) provide or offer any discounts or other reduced payment obligations to any Person in excess of those provided to such Person prior to the Closing, in each case arising from or relating to any Company Contract that is material to the Business.

SECTION 3.14. Real Property. (a) Each parcel of Owned Real Property or Leased Real Property that, in each case, is material to the Business, is owned or leased free and clear of all Encumbrances, other than Permitted Encumbrances.

(b) Section 3.14(b) of the Disclosure Schedule lists: (i) the street address of each parcel of Owned Real Property, (ii) the current owner of each parcel of Owned Real Property, and (iii) the current use of each parcel of Owned Real Property, in each case, that is material to the Business.

(c) Except as would not reasonably be expected to have a Material Adverse Effect, there is no violation of any Law (including any building, planning or zoning law) with respect to the Real Property. The Company has made available to the Purchaser true, legible and complete copies of, to the extent each is in the Company's possession or otherwise reasonably available to the Company, (i) each deed for each parcel of material Owned Real Property, (ii) each lease (including all amendments, modifications, supplements, exhibits, schedules, addenda and restatements thereto and thereof and all extensions, first refusals and first offers and evidence of commencement dates and expiration dates thereof) for each parcel of Leased Real Property, and (iii) all existing title insurance policies, title reports, surveys, certificates of occupancy, environmental reports and audits, appraisals, permits, other Encumbrances, title documents and other documents relating to or otherwise affecting the Real Property, the operations of the Company or any Subsidiary thereon or any other uses thereof (collectively, the

"Real Estate Disclosure Documentation"). Except as may be set forth in the Real Estate Disclosure Documentation or as would not reasonably be expected to have a Material Adverse Effect, either the Company or a Subsidiary, as the case may be, is in peaceful and undisturbed possession of each parcel of Real Property, and there are no contractual or legal restrictions that preclude or restrict the ability to use the Real Property for the purposes for which it is currently being used. All existing water, sewer, steam, gas, electricity, telephone, cable, fiber optic cable, Internet access and other utilities required for the construction, use, occupancy, operation and maintenance of the Real Property are adequate for the conduct of the Business as it has been and currently is conducted except to the extent that any of the foregoing would not reasonably be expected to have a Material Adverse Effect. There are no material latent defects or material adverse physical conditions affecting the Real Property or any of the facilities, buildings, structures, erections, improvements, fixtures, fixed assets and personalty of a permanent nature annexed, affixed or attached to, located on or forming part of the Real Property, except such defects or conditions that would not reasonably be expected to have a Material Adverse Effect. Neither the Company nor any Subsidiary has leased, as landlord or sublandlord, any parcel or any portion of any parcel of Real Property to any other Person, and no other Person has any rights to the use, occupancy or enjoyment thereof pursuant to any lease, license, occupancy or other agreement, nor has the Company or any Subsidiary assigned its interest under any material lease listed in Section 3.14(b) of the Disclosure Schedule to any third party, except as may be set forth in the Real Estate Disclosure Documentation or as would not be material to the Business.

(d) Section 3.14(d) of the Disclosure Schedule sets forth a true and complete list of all material leases relating to the Real Property (including the street address of the Real Property and, the identity of the lessor, lessee and current occupant (if different from lessee) of the Real Property). As of the date hereof, with respect to each of such leases, neither the Company nor any Subsidiary has exercised or given any written notice of exercise of, nor to the Company's knowledge has any lessor or landlord exercised or received any notice of exercise by a lessor or landlord of, any option, right of first offer or right of first refusal contained in any such lease or sublease, including any such option or right pertaining to purchase, expansion, renewal, extension or relocation.

(e) As of the date hereof, there are no condemnation proceedings or eminent domain proceedings of any kind pending or, to the knowledge of the Company, threatened against the Real Property, except, in either case, as would not reasonably be expected to have a Material Adverse Effect.

(f) To the Company's knowledge, there are no facts that would prevent the Real Property from being occupied by the Company or any Subsidiary, as the case may be, after the Closing in the same manner as occupied by the Company or such Subsidiary immediately prior to the Closing.

(g) Except as may otherwise be set forth in the Real Estate Disclosure Documentation, all improvements on the Real Property constructed by or on behalf of the Company or any Subsidiary or, to the knowledge of the Company, constructed by or on behalf of any other Person, were constructed in compliance with all applicable Laws (including any building, planning or zoning Laws) affecting such Real Property, except as would not reasonably be expected to have a Material Adverse Effect.

SECTION 3.15. Assets. Except as would not reasonably be expected to have a Material Adverse Effect, the Company or a Subsidiary, as the case may be, has sufficient title to (or, in the case of leased Assets, sufficient leasehold interests in) all the properties and assets, including the Company Intellectual Property, the Company IT Assets, the Company IP Agreements, the Real Property and the Tangible Personal Property, that are used to conduct the Business, and, with respect to contract rights, is a party to and enjoys the right to the benefits of all Material Contracts used by the Company or any Subsidiary or in the conduct of the Business, all of which properties, assets and rights constitute Assets. All the material Assets are free and clear of all Encumbrances, except Permitted Encumbrances.

SECTION 3.16. Customers. The Company has provided or made available to the Purchaser a list of the names and addresses of each of the ten most significant customers (by revenue) of the Business for the twelve-month period ended July 25, 2009 and the amount for which each such customer was invoiced during such period. As of the date hereof, neither the Company nor any Subsidiary has received any notice or has any knowledge that any such significant customer of the Business has ceased, or will cease, to use the products, equipment, goods or services of the Business, or has substantially reduced, or will substantially reduce, the use of such products, equipment, goods or services at any time.

SECTION 3.17. Suppliers. The Company has provided or made available to the Purchaser a list of the names and addresses of each of the ten most significant suppliers of raw materials, supplies, merchandise, livestock and other goods for the Business for the twelve-month period ended July 25, 2009 and the amount for which each such supplier invoiced the Company or any of the Subsidiaries during such period. As of the date hereof, neither the Company nor any Subsidiary has received any notice or has any knowledge that any such significant supplier will not sell raw materials, supplies, merchandise, livestock and other goods to the Company or any Subsidiary at any time after the Closing on terms and conditions substantially similar to those used in its current sales to the Business, subject only to general and customary price increases.

SECTION 3.18. Employee Benefit Matters. (a) Plans and Documents. The Company has provided or made available to the Purchaser a list of (i) all material employee benefit plans (as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended, ("ERISA")) and all material bonus, stock option, stock purchase, restricted stock, incentive, retention, change of control, deferred compensation, retiree medical or life insurance, supplemental retirement, severance, vacation, paid time-off or other material benefit plans, programs, policies or arrangements and all material employment, termination, severance or other contracts or agreements, to which the Company or any Subsidiary is a party and with respect to which the Company or any Subsidiary has any obligation, or which are maintained, contributed to or sponsored by the Company or any Subsidiary for the benefit of any current or former employee, officer, independent contractor, consultant or director of the Company or any Subsidiary, (ii) each employee benefit plan for which the Company or any Subsidiary could incur any material liability under Section 4069 or 4212(c) of ERISA, and (iii) any other material contracts, arrangements or understandings between the Company or any of its Subsidiaries and any current or former employee, officer, independent contractor, consultant or director of the Company or of any Subsidiary, including any contracts, arrangements or understandings relating to the sale of the Company (collectively, the "Plans"). The Company has furnished or made

available to the Purchaser a complete and accurate copy of each written Plan and a complete and accurate copy of each material document prepared in connection with each such Plan, including a copy of (if applicable) (A) each trust or other funding arrangement, (B) each summary plan description and summary of material modifications, (C) the three most recently filed IRS Form 5500, (D) the most recently received IRS determination letter for each such Plan and (E) the most recently prepared actuarial report and financial statement in connection with each such Plan. Neither the Company nor any Subsidiary has any express or implied commitment (I) to create, incur material liability with respect to, or cause to exist, any other employee benefit plan, program or arrangement, (II) to enter into any contract or agreement to provide material compensation or benefits to any individual or (III) to modify, change or terminate any material Plan, other than with respect to a modification, change or termination required by ERISA and the Code.

(b) Compliance with Applicable Law. Each Plan is now and has been operated in all material respects in accordance with its terms and the requirements of applicable Law, including ERISA and the Code, and, to the knowledge of the Company, all Plan "fiduciaries" (within the meaning of Section 3(21) of ERISA) for each Plan that is subject to ERISA have acted in accordance with the provisions of applicable Law, including ERISA and the Code. No Action is pending or, to the knowledge of the Company, threatened with respect to any Plan (other than claims for benefits in the ordinary course), and, to the knowledge of the Company, no fact or event exists that could give rise to any such Action which would reasonably be expected to have a Material Adverse Effect.

(c) Qualification of Certain Plans. Each Plan that is intended to be qualified under Section 401(a) of the Code or Section 401(k) of the Code has received, with respect to the cycle applicable to such Plan pursuant to Revenue Procedure 2005-66, a favorable determination letter from the IRS covering all of the provisions applicable to the Plan for which determination letters are currently available, that the Plan is so qualified, and each trust established in connection with any Plan which is intended to be exempt from federal income taxation under Section 501(a) of the Code has received a determination letter from the IRS that it is so exempt. To the Company's knowledge, as of the date hereof, no circumstance and no fact or event exists that could reasonably be expected to materially and adversely affect the qualified or tax exempt status of any Plan or that could reasonably be expected to result in the revocation of a trust's exemption from United States federal income taxation. Each trust maintained or contributed to by the Company or any Subsidiary that is intended to be qualified as a voluntary employees' beneficiary association and that is intended to be exempt from federal income taxation under Section 501(c)(9) of the Code has received a favorable determination letter from the IRS that it is so qualified and so exempt, and, to the Company's knowledge, as of the date hereof, no fact, event or circumstance has occurred since the date of such determination letter by the IRS which could reasonably be expected to materially and adversely affect such qualified or exempt status.

(d) Absence of Certain Types of Plans. At no time has the Company or any ERISA Affiliate maintained, established, sponsored, participated in or contributed to any multiemployer plan (within the meaning of Section 3(37) or 4001(a)(3) of ERISA) (a "Multiemployer Plan") or a single employer pension plan (within the meaning of Section 4001(a)(15) of ERISA) for which the Company or any Subsidiary would reasonably be expected to incur liability under Section 4063 or 4064 of ERISA (a "Multiple Employer Plan"). None of

the Plans provide for or promise medical, disability or life insurance coverage to any current or former employee, officer or director of the Company or any Subsidiary following retirement or other termination of services (other than coverage mandated by applicable Law).

(e) Absence of Certain Liabilities and Events. There has been no prohibited transaction (within the meaning of Section 406 of ERISA or Section 4975 of the Code) other than a transaction that is subject to a statutory, class or individual exemption with respect to any Plan. Except as would not reasonably be expected to have a Material Adverse Effect, neither the Company nor any Subsidiary has incurred any liability for any penalty or tax arising under Section 4971, 4972, 4979, 4980, 4980B, 4980D, 4980E, 4980F, 4980G or 6652 of the Code or any liability under Section 502 of ERISA. Except as would not reasonably be expected to have a Material Adverse Effect, neither the Company nor any of its ERISA Affiliates has incurred any liability under, arising out of or by operation of Title IV of ERISA (other than liability for premiums to the Pension Benefit Guaranty Corporation arising in the ordinary course), including any liability in connection with (i) the termination or reorganization of any employee benefit plan subject to Title IV of ERISA or (ii) the withdrawal from any Multiemployer Plan or Multiple Employer Plan. No complete or partial termination has occurred within the five years preceding the date hereof with respect to any Plan that is a pension plan qualified under Section 401(a) of the Code and subject to ERISA (except that any such representation as to any Multiemployer Plan is made only to the knowledge of the Company). No reportable event (within the meaning of Section 4043 of ERISA) for which the reportable event has not been waived has occurred within the past five years or, to the knowledge of the Company, is reasonably expected to occur with respect to any Plan subject to Title IV of ERISA. None of the assets of the Company or any of its ERISA Affiliates is the subject of any lien arising under Section 303(k) of ERISA or Section 430(k) of the Code, and, to the knowledge of the Company, no fact or event exists which could reasonably be expected to give rise to any such lien. None of the Plans is subject to the limitations on Plan benefits or benefit accruals set forth in Section 436 of the Code, and, to the knowledge of the Company, no facts exist which could reasonably be expected to result in the imposition of such limitations in the current Plan year. No written or oral communication has been received during the past three years from the Pension Benefit Guaranty Corporation in respect of any Plan subject to Title IV of ERISA concerning the funded status of any such plan or in connection with the transactions contemplated by this Agreement.

(f) Plan Contributions and Funding. Except as set forth in a list that has been previously provided or made available by the Company to the Purchaser, each Plan, other than a Multiemployer Plan, subject to Title IV of ERISA has satisfied the minimum funding standard in Section 412 of the Code and Section 302 of ERISA, and no such Plan has requested a waiver of the minimum funding standards under Section 412(c) of the Code or Section 302(c) of ERISA. No such Plan is in "at risk" status within the meaning of Section 430(i) of the Code or Section 303 of ERISA and there has been no material increase in benefit liabilities under any such Plan since the last day of the most recent plan year.

(g) Acceleration and Vesting. Except as set forth in a list that has been previously provided or made available by the Company to the Purchaser, neither the execution of this Agreement nor the consummation of the Transactions will (either alone or in connection with the termination of employment or service of any officer, employee, director, independent contractor or consultant following, or in connection with the Transactions) (i) entitle any current

or former employee, independent contractor or consultant of the Company or any Subsidiary to severance pay or any increase in severance pay upon any termination of employment after the date of this Agreement or (ii) accelerate the time of payment or vesting or trigger any payment or funding (through a grantor trust or otherwise) of compensation or benefits under, or increase the amount payable or trigger any other obligation pursuant to, any of the Plans. Except as set forth in a list that has been previously provided or made available by the Company to the Purchaser, none of the Plans in effect immediately prior to the Closing would result separately or in the aggregate (including, without limitation, as a result of this Agreement or the Transactions) in the payment of any "excess parachute payment" within the meaning of Section 280G of the Code.

(h) Non-U.S. Benefit Plans. With respect to each Plan that is not subject to United States Law (a "Non-U.S. Benefit Plan"):

(i) all employer and employee contributions to each Non-U.S. Benefit Plan required by Law or by the terms of such Non-U.S. Benefit Plan have been made or, if applicable, accrued in accordance with normal accounting practices;

(ii) the fair market value of the assets of each funded Non-U.S. Benefit Plan, the liability of each insurer for any Non-U.S. Benefit Plan funded through insurance or the book reserve established for any Non-U.S. Benefit Plan, together with any accrued contributions, is sufficient to procure or provide for the accrued benefit obligations, as of the date of this Agreement, with respect to all current and former participants in such plan according to the actuarial assumptions and valuations most recently used to determine employer contributions to such Non-U.S. Benefit Plan, and no transaction contemplated by this Agreement shall cause such assets or insurance obligations to be less than such benefit obligations; and

(iii) each Non-U.S. Benefit Plan required to be registered has been registered and has been maintained in good standing with applicable regulatory authorities.

SECTION 3.19. Labor Matters. (a) Neither the Company nor any Subsidiary is a party to any collective bargaining agreement, collective agreement, trade union, works council agreement or other labor union contract applicable to persons employed by the Company or any Subsidiary, and, to the Company's knowledge, there are no formal organizational campaigns, petitions or other unionization activities seeking recognition of a collective bargaining unit which would reasonably be expected to affect the Company or any Subsidiary; (b) except as would not reasonably be expected to have a Material Adverse Effect, there are no material controversies, strikes, slowdowns or work stoppages pending or threatened between the Company or any Subsidiary and any of their respective employees, and neither the Company nor any Subsidiary has experienced any such controversy, strike, slowdown or work stoppage within the past five years; (c) except as would not reasonably be expected to have a Material Adverse Effect, neither the Company nor any Subsidiary has breached or otherwise failed to comply in any material respect with the provisions of any collective bargaining or union contract, and there are no grievances outstanding or threatened against the Company or any Subsidiary under any such agreement or contract; (d) except as would not reasonably be expected to have a Material Adverse Effect, there are no unfair labor practice complaints pending or, to the Company's knowledge, threatened against the Company or any Subsidiary before the National Labor

Relations Board or any other Governmental Authority, or any current union representation questions involving employees of the Company or any Subsidiary; (e) except as would not reasonably be expected to have a Material Adverse Effect, the Company and each Subsidiary are currently in compliance in all material respects with all Laws relating to the employment of labor, including those related to wages, hours, collective bargaining and the payment and withholding of Taxes; (f) except as would not reasonably be expected to have a Material Adverse Effect, there is no charge of discrimination in employment or employment practices, for any reason, including age, gender, race, religion or other legally protected category, which has been asserted or is now pending before the United States Equal Employment Opportunity Commission, or any other Governmental Authority in any jurisdiction in which the Company or any Subsidiary has employed or currently employs any Person; (g) except as would not reasonably be expected to have a Material Adverse Effect, the Company has no material Liability with respect to any misclassification of any person as an independent contractor, temporary employee, lease employee or any other servant or agent compensated other than through reportable wages (as an employee) paid by the Company (each a "Contingent Worker") and no Contingent Worker has been improperly excluded from any Plan and the Company does not employ or engage any volunteer workers, paid or unpaid interns or any other unpaid workers; and (h) the consent of, consultation of or the rendering of formal advice by any labor or trade union, works council or any other employee representative body is not required for the Company to enter into this Agreement or to consummate any of the transactions contemplated by this Agreement.

SECTION 3.20. Critical Employees. The Company has provided or made available a list of the name, place of employment, title, the current annual salary rate, bonuses, deferred or contingent compensation, change in control, retention and other like benefits paid or payable (in cash or otherwise) in 2009 of each current salaried employee, officer or director of the Company or any Subsidiary whose annual compensation is expected to exceed $100,000 in 2009 as of the date hereof.

SECTION 3.21. Certain Interests. All transactions, agreements, arrangements or understandings between the Company or any of its Subsidiaries, on the one hand, and the Company's Affiliates (other than Subsidiaries of the Company) or other Persons, on the other hand (an "Affiliate Transaction"), that were required to be disclosed in the Company SEC Documents in accordance with Item 404 of Regulation S-K under the Securities Act have been so disclosed. Since September 27, 2008 and through the date hereof, there have been no Affiliate Transactions that are required to be disclosed under the Exchange Act pursuant to Item 404 of Regulation S-K under the Securities Act which have not already been disclosed in the Company SEC Documents.

SECTION 3.22. Taxes. (a) (i) All Tax Returns required to be filed by or with respect to the Company and each Subsidiary (including any consolidated federal income Tax Return of the Company and any state, local, foreign or other Tax Return that includes the Company or any Subsidiary on a consolidated, combined or unitary basis) have been timely filed; (ii) all Taxes required to be shown on such Tax Returns or otherwise due in respect of the Company or any Subsidiary have been timely paid; (iii) all such Tax Returns are true, correct and complete in all material respects; (iv) no adjustment relating to such Tax Returns has been proposed formally or informally by any Governmental Authority and, to the Company's

knowledge, no basis exists for any such adjustment; (v) there are no pending or, to the Company's knowledge, threatened Actions for the assessment or collection of Taxes against the Company or any Subsidiary or (insofar as either relates to the activities or income of the Company or any Subsidiary or could result in liability of the Company or any Subsidiary on the basis of joint and/or several liability) any Person that was included in the filing of a Tax Return with the Company on a consolidated, combined or unitary basis; (vi) all sales and license transactions between the Company and any Subsidiary and between any of the Subsidiaries, have been conducted on an arm's length basis; (vii) there are no Tax liens on any assets of the Company or any Subsidiary (other than Permitted Encumbrances); (viii) neither the Company nor any Affiliate is a party to any agreement or arrangement that would result, separately or in the aggregate, in the actual or deemed payment by the Company or a Subsidiary of any "excess parachute payments" within the meaning of Section 280G of the Code (without regard to Section 280G(b)(4) of the Code); (ix) no acceleration of the vesting schedule for any property that is substantially unvested within the meaning of the regulations under Section 83 of the Code will occur in connection with the transactions contemplated by this Agreement; (x) the Company and each Subsidiary formed under the Laws of one of the States of the United States or the District of Columbia have been at all times and continue to be members of the affiliated group (within the meaning of Section 1504(a)(1) of the Code) for which the Company files a consolidated Tax Return as the common parent, and has not been includible in any other consolidated Tax Return for any taxable period for which the statute of limitations has not expired; (xi) the Company and the Subsidiaries have each properly and timely withheld, collected and deposited all Taxes that are required to be withheld, collected and deposited under applicable Law; (xii) neither the Company nor any Subsidiary is doing business in or engaged in a trade or business in any jurisdiction outside of the United States in which it has not filed all required Tax Returns, and no notice or inquiry has been received from any jurisdiction in which Tax Returns have not been filed by the Company or any Subsidiary to the effect that the filing of Tax Returns may be required; (xiii) neither the Company nor any Subsidiary is a member of any partnership or joint venture that is material to the Business or a holder of any beneficial interest in any trust (as defined for U.S. federal income tax purposes); (xiv) the financial statements of the Company contain reserves determined in accordance with GAAP for all unpaid Taxes of the Company and its Subsidiaries through the periods covered thereby; and (xv) to the knowledge of the Company, neither the Company nor any Subsidiary is subject to any accumulated earnings tax, personal holding company Tax or similar Tax except, in the case of clauses (i), (ii), (iv), (v), (vi), (vii), (viii), (ix), (xi) and (xii) of this Section 3.22(a), as would not reasonably be expected to have a Material Adverse Effect.

(b) Except as set forth with reasonable specificity in Section 3.22(b) of the Disclosure Schedule: (i) there are no outstanding waivers or agreements extending the statute of limitations for any period with respect to any material Tax to which the Company or any Subsidiary may be subject; (ii) there are no requests for information currently outstanding that could materially affect the Taxes of the Company or any Subsidiary; (iii) there are no proposed reassessments of any property owned by the Company or any Subsidiary or other proposals that could reasonably be expected to increase the amount of any property Tax to which the Company or any Subsidiary or other proposals that could reasonably be expected to increase the amount of any property Tax to which the Company or any Subsidiary would be subject; (iv) neither the Company nor any Subsidiary has participated in or cooperated with an international boycott

within the meaning of section 999 of the Code; and (v) neither the Company nor any Subsidiary has any material deferred gain or loss arising out of any deferred intercompany transaction.

(c) (i) The Company has delivered or made available to the Purchaser correct and complete copies of all federal, state and foreign income, franchise and similar material Tax Returns, examination reports, and statements of deficiencies assessed against or agreed to by the Company or any Subsidiary since December 31, 2005; and (ii) the Company has delivered or made available to the Purchaser a true and complete copy of any tax sharing or allocation agreement or arrangement involving the Company or any Subsidiary.

SECTION 3.23. Insurance. Except as has not had, and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, (a) each insurance policy under which the Company or any of its Subsidiaries is an insured or otherwise the principal beneficiary of coverage (collectively, the "Insurance Policies") is in full force and effect, all premiums due thereon have been paid in full and the Company and its Subsidiaries are in compliance with the terms and conditions of such Insurance Policy, (b) neither the Company nor any of its Subsidiaries is in breach or default under any Insurance Policy, and (c) no event has occurred which, with notice or lapse of time, would constitute such breach or default, or permit termination or modification, under the Insurance Policy.

SECTION 3.24. Certain Business Practices. Except as would not reasonably be expected to have a Material Adverse Effect, none of the Company or any of the Subsidiaries or any of their respective directors or officers (in their capacity as directors or officers) has: (a) used any funds for unlawful contributions, gifts, entertainment or other unlawful expenses relating to political activity in respect of the Business; (b) directly or indirectly, paid or delivered any fee, commission or other sum of money or item of property, however characterized, to any finder, agent, or other party acting on behalf of or under the auspices of a governmental official or Governmental Authority, in the United States or any other country, which is illegal under any Law of the United States or any other country having jurisdiction; or (c) made any payment to any customer or supplier of the Company or any Subsidiary or any officer, director, partner, employee or agent of any such customer or supplier for an unlawful reciprocal practice, or made any other unlawful payment or given any other unlawful consideration to any such customer or supplier or any such officer, director, partner, employee or agent, in respect of the Business.

SECTION 3.25. Brokers. Except for Lazard Frères & Co. LLC, no broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the Transactions based upon arrangements made by or on behalf of the Company. The Company is solely responsible for the fees and expenses of Lazard Frères & Co. LLC.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES

OF THE PURCHASER

As an inducement to the Company to enter into this Agreement, the Purchaser hereby represents and warrants to the Company as follows:

SECTION 4.01. Organization and Authority of the Purchaser. The Purchaser is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation and has all necessary corporate power and authority to enter into this Agreement and the Ancillary Agreements to which it is a party, to carry out its obligations hereunder and thereunder and to consummate the Transactions. The execution and delivery by the Purchaser of this Agreement and the Ancillary Agreements to which it is a party, the performance by the Purchaser of its obligations hereunder and thereunder and the consummation by the Purchaser of the Transactions have been duly authorized by all requisite corporate action on the part of the Purchaser. This Agreement has been, and upon their execution the Ancillary Agreements to which the Purchaser is a party shall have been, duly executed and delivered by the Purchaser, and (assuming due authorization, execution and delivery by the Company) this Agreement constitutes, and upon their execution the Ancillary Agreements to which the Purchaser is a party shall constitute, legal, valid and binding obligations of the Purchaser, enforceable against the Purchaser in accordance with their respective terms.

SECTION 4.02. No Conflict. Assuming compliance with the pre-merger notification and waiting period requirements of the HSR Act and the making and obtaining of all filings, notifications, consents, approvals, authorizations and other actions referred to in Section 4.03, except as may result from any facts or circumstances relating solely to the Company, the execution, delivery and performance by the Purchaser of this Agreement and the Ancillary Agreements to which it is a party do not and will not (a) violate, conflict with or result in the breach of any provision of the Certificate of Incorporation or Bylaws of the Purchaser, (b) conflict with or violate any Law or Governmental Order applicable to the Purchaser, or (c) conflict with, or result in any breach of, constitute a default (or event which with the giving of notice or lapse of time, or both, would become a default) under, require any consent under, or give to others any rights of termination, amendment, acceleration, suspension, revocation or cancellation of, any note, bond, mortgage or indenture, contract, agreement, lease, sublease, license, permit, franchise or other instrument or arrangement to which the Purchaser is a party, which would materially and adversely affect the ability of the Purchaser to carry out its obligations under and to consummate the Transactions. The Purchaser has complied with all of its obligations under the confidentiality agreement between the Purchaser and the Company dated March 13, 2009 (the "Purchaser Confidentiality Agreement" and, together with the Company Confidentiality Agreement, the "Confidentiality Agreements") at all times since its execution.

SECTION 4.03. Governmental Consents and Approvals. The execution, delivery and performance by the Purchaser of this Agreement and each Ancillary Agreement to which the Purchaser is a party do not and will not require any consent, approval, authorization or other

order of, action by, filing with, or notification to any Governmental Authority by the Purchaser or any of its subsidiaries, except (a) the entry of the Confirmation Order, (b) as described in a writing given to the Company by the Purchaser on the date of this Agreement, (c) compliance with and filing under the pre-merger notification and waiting period requirements of the HSR Act, the Mexican Federal Law of Economic Competition, the Russian Federal Law on Competition Protection No. 135-FZ (July 2006), the Chinese Anti-Monopoly Law of 2008 and any compliance with, filings under or approval required under, the antitrust laws of any other relevant jurisdiction, or (d) where failure to obtain such consent, approval, authorization, order or action, or to make such filing or notification would not prevent or materially delay the consummation by the Purchaser of the Transactions.

SECTION 4.04. Investment Purpose. The Purchaser is acquiring the Purchaser Shares solely for the purpose of investment and not with a view to, or for offer or sale in connection with, any distribution thereof other than in compliance with all applicable Laws, including United States federal securities laws. The Purchaser, either alone or together with its advisors, has sufficient knowledge and experience in financial and business matters so as to be capable of evaluating the merits and risk of their investment.

SECTION 4.05. Litigation. Other than (a) matters before the Bankruptcy Court involving the Company or (b) matters that will otherwise be resolved by the Confirmation Order, no Action by or against the Purchaser is pending or, to the knowledge of the Purchaser after due inquiry, threatened, which could affect the legality, validity or enforceability of this Agreement, any Ancillary Agreement or the consummation of the Transactions.

SECTION 4.06. Brokers. Except for Rothschild Inc. and Rabo Securities USA, Inc., no broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the Transactions based upon arrangements made by or on behalf of the Purchaser. The Purchaser shall be solely responsible for payment of the fees and expenses of Rothschild Inc. and Rabo Securities USA, Inc.

SECTION 4.07. Financing. The Purchaser has sufficient immediately available funds or has access to such funds without any restrictions or conditions on use thereon or access thereto and without the need to incur short-term Indebtedness to pay, in cash, the Purchase Price. Upon the consummation of the Transactions, (a) the Purchaser will not be insolvent, (b) the Purchaser will not be left with unreasonably small capital and (c) the Purchaser will not have incurred debts beyond its ability to pay such debts as they mature.

ARTICLE V

ADDITIONAL AGREEMENTS

SECTION 5.01. Conduct of Business Prior to the Closing. (a) The Company covenants and agrees that, except as described in Section 5.01(a) of the Disclosure Schedule, as required by Law or the Bankruptcy Court, as otherwise contemplated by this Agreement or the Reorganization Plan or as consented to in writing by the Purchaser (which consent shall not be

unreasonably withheld), between the date hereof and the time of the Closing, the Company and each Subsidiary shall conduct itself in a reasonable manner consistent in nature, scope and magnitude with its past practice, and will only take actions usually taken in the ordinary course, taking into account the Bankruptcy Cases. Without limiting the generality of the foregoing, except as described in Section 5.01(a) of the Disclosure Schedule, as required by Law or the Bankruptcy Court, as otherwise contemplated by this Agreement or the Reorganization Plan or as consented to in writing by the Purchaser (which consent shall not be unreasonably withheld), the Company, shall and shall cause each Subsidiary to (i) continue in all material respects their advertising and promotional activities, and pricing and purchasing policies, in accordance with past practice; (ii) not shorten or lengthen in any material respect the customary payment cycles for any of their receivables; (iii) use their commercially reasonable efforts to (A) preserve intact their business organizations and the business organization of the Business, (B) keep available to the Purchaser the services of key employees of the Company and each Subsidiary, (C) continue in full force and effect without material modification all existing material Insurance Policies currently maintained in respect of the Company, each Subsidiary and the Business, and (D) preserve their current relationships with their customers, suppliers and other Persons, in each case, with which they have had significant business relationships; (iv) exercise, but only after notice to the Purchaser and receipt of the Purchaser's prior written approval, any rights of renewal pursuant to the terms of any of the material leases or subleases which by their terms would otherwise expire; and (v) not engage in or seek Bankruptcy Court approval of any practice, take any action, fail to take any action or enter into any transaction which could reasonably be expected to cause any representation or warranty of the Company to be untrue, except where the failure of such representation or warranty to be true, individually or in the aggregate, would not have a Material Adverse Effect or result in a breach, in any material respect, of any covenant made by the Company in this Agreement.

(b) By way of amplification and not limitation, except as expressly contemplated by any other provision of this Agreement, any Ancillary Agreement or the Reorganization Plan, or as described in Section 5.01(b) of the Disclosure Schedule, the Company covenants and agrees that, between the date hereof and the Closing, without the prior written consent of the Purchaser (which consent shall not be unreasonably withheld), neither the Company nor any Subsidiary will do any of the following:

(i) make any new commitments for any capital expenditures in excess of $5,000,000 individually;

(ii) other than in the ordinary course of business and other than with respect to Material Contracts relating to matters otherwise permitted under this Section 5.01(b), enter into any Material Contract that is material to the Business or amend or modify in any way that is materially adverse to the Company;

(iii) make or receive any payment in excess of $2,500,000 individually in connection with the settlement of any Action, including with respect to Taxes (other than interest or penalties imposed by the IRS or other state or local Governmental Authority that do not exceed 35% of $2,500,000);

(iv) sell, transfer, lease, sublease, license or otherwise dispose of any properties or assets, real, personal or mixed (including leasehold interests and intangible property) with a value in excess of $2,000,000 individually, other than the sale of Inventories in the ordinary course of business consistent with past practice;

(v) other than with respect to the Post-Petition Credit Agreement, the ING Credit Agreement or renewals, extensions or replacements of any letters of credit, incur any Indebtedness, or make any loan to, guarantee any Indebtedness of, or otherwise incur any Indebtedness on behalf of, any Person (other than an Affiliate);

(vi) issue or sell any capital stock, notes, bonds or other securities, or any option, warrant or other right to acquire the same, of the Company or any Subsidiary (other than to the Company or another Subsidiary);

(vii) redeem any of the capital stock or declare, make or pay any dividends or distributions (whether in cash, securities or other property) to the holders of capital stock of the Company or any Subsidiary or otherwise, other than dividends, distributions and redemptions declared, made or paid by any Subsidiary solely to the Company or another Subsidiary;

(viii) merge with, enter into a consolidation with or acquire an interest of 5% or more in any Person or acquire a substantial portion of the assets or business of any Person or any division or line of business thereof, or otherwise acquire any material assets, other than in the ordinary course of business consistent with past practice;

(ix) make any material change in the customary methods of operations of the Company or any Subsidiary, including practices and policies relating to manufacturing, growing, raising, slaughtering, purchasing, Inventories, marketing, selling and pricing;

(x) make, revoke or change any material Tax election or method of Tax accounting, file an amended material Tax Return or request or grant an extension of the statute of limitations for the assessment of any material Tax;

(xi) (A) except in the ordinary course of business or as would be required by applicable Law, increase in any material respect the compensation payable or to become payable or the benefits provided to current or former officers, employees, directors, independent contractors or consultants of the Company; (B) grant any retention, severance or termination pay to (unless the Company was contractually obligated to make such grant), or enter into any employment, bonus, consulting, change of control or severance agreement, in each case providing for material compensation and benefits, with any current or former officers, employees, directors, independent contractors or consultants of the Company; (C) except in the ordinary course of business consistent with past practice, loan or advance any money or other property to any officers, employees, directors, independent contractors or consultants of the Company; (D) grant any equity or equity-based awards (provided that equity awards may be transferred in accordance with the terms of the applicable plan document or agreement); or (E) establish, adopt, enter into, terminate or amend in any way that is materially adverse to the Company any Plan,

or any plan or other arrangement that would be a Plan if it were in existence as of the date hereof;

(xii) (A) exercise discretion with respect to or otherwise voluntarily accelerate the lapse of restriction or vesting of any Company equity awards as a result of this Agreement, any other change of control of the Company or otherwise; or (B) exercise discretion with respect to or otherwise amend, modify or supplement the Employee Stock Purchase Plan;

(xiii) terminate, discontinue, close or dispose of any plant, facility or other business operation, or lay off any employees (other than layoffs of less than 100 employees in the ordinary course of business consistent with past practice) or implement any early retirement or separation program, or any program providing early retirement window benefits within the meaning of Section 1.401(a)(4)-3(f)(4)(ii) of the Regulations or announce or plan any such action or program for the future;

(xiv) hire employees in the position of Executive Vice President or above, or terminate the employment of employees in the position of Executive Vice President or above other than for "cause";

(xv) fail to maintain the Company's and each Subsidiary's material plant, property and equipment in good repair and operating condition in all material respects, ordinary wear and tear excepted;

(xvi) amend or restate the Certificate of Incorporation, Articles of Incorporation or Bylaws (or other organizational documents) of the Company or any Subsidiary;

(xvii) (A) grant to any third party any license, or enter into any covenant not to sue, with respect to any material Company Intellectual Property or Company IT Asset, except in the ordinary course of business consistent with past practice or (B) develop, create or invent any material Intellectual Property jointly with any third party, except in the ordinary course of business consistent with past practice;

(xviii) permit or allow any of the material Assets to be subjected to any Encumbrance, other than Permitted Encumbrances and Encumbrances that will be released at or prior to the Closing;

(xix) except in the ordinary course of business consistent with past practice, discharge or otherwise obtain the release of any Encumbrance (other than Permitted Encumbrances) related to the Company or any Subsidiary or pay or otherwise discharge any Liability related to the Company or any Subsidiary, other than current liabilities reflected in the Company SEC Documents and current liabilities incurred in the ordinary course of business consistent with past practice since September 27, 2008 and other Liabilities approved to be paid pursuant to orders of the Bankruptcy Court entered prior to the date hereof;

(xx) write down or write up (or fail to write down or write up) the value of any Inventories or Receivables or revalued any of the Assets, in each case other than in the

ordinary course of business consistent with past practice and in accordance with GAAP or other accounting requirements applicable to the Company or any Subsidiary;

(xxi) make any material change in any material method of accounting or accounting practice or policy used by the Company or any Subsidiary, other than such changes required by GAAP or other accounting requirements applicable to the Company or any of its Subsidiaries; or

(xxii) commit or agree to take, or seek Bankruptcy Court approval of, whether in writing or otherwise, any of the actions specified in this Section 5.01(b).

SECTION 5.02. Contracts. (a) Pursuant to the Reorganization Plan, all Contracts that are not listed as specifically assumed (either as a group or individually) shall be deemed rejected by the Debtors as of the Effective Date. As soon as practicable after the date hereof, the Company shall provide the Purchaser with a list of Contracts that have been specifically assumed or rejected in connection with the Bankruptcy Cases prior to the date hereof. The Purchaser acknowledges that any assumptions and rejections occurring prior to the date hereof, including any automatic rejections occurring as a result of the Bankruptcy Code, are final.

(b) In accordance with the Reorganization Plan, the Company shall prepare a schedule of all Assumption-Pending Pre-Petition Contracts (the "Assumption Schedule") and such Contracts shall be assumed on the Effective Date pursuant to the Reorganization Plan. As soon as practicable after the entry of the order approving the Disclosure Statement, the Company shall provide the Purchaser with a draft Assumption Schedule. The Company shall consult and cooperate with the Purchaser, and consider in good faith the views of the Purchaser, with respect to the inclusion or exclusion of Contracts on the Assumption Schedule.

(c) At any time and from time to time after the date hereof, but in no event later than twenty-five Business Days prior to the Confirmation Hearing, the Purchaser may, by written notice to the Company, notify the Company that it wishes to include or exclude specific Contracts from the Assumption Schedule. The Company and the Purchaser shall use their respective commercially reasonable efforts to agree on the final list of Contracts included in the Assumption Schedule.

(d) To the extent any counterparty to an Assumption-Pending Pre-Petition Contract files an objection to the cure amounts thereof and the alleged cure costs exceed $300,000 for such Contract, the Company shall notify the Purchaser of such objection. Within five days of receipt of such notification, the Purchaser may, by written notice to the Company, elect to participate in the resolution of such objection and the Company and the Purchaser shall use their respective commercially reasonable efforts to resolve such objection, including filing or supporting any brief(s) filed or requested to be filed by the Company or the Purchaser in respect thereof.

SECTION 5.03. Indemnification; Directors' and Officers' Insurance. (a) For a period of six years after the Closing Date, the Purchaser shall cause the Reorganized Company to, and the Reorganized Company shall, indemnify, defend and hold harmless, to the fullest extent permitted under applicable Law, the present and former directors and officers of the

Company and each Subsidiary (the "Indemnified Parties") from and against all Liabilities incurred in connection with any Action, whether civil, criminal, administrative or investigative related to the fact that such person was a director or officer of the Company or any Subsidiary, arising out of or pertaining to matters existing or occurring at or prior to the Closing (including the Transactions), or taken by them at the request of the Company or any Subsidiary, whether asserted or claimed prior to, at or after Closing. Each Indemnified Party will be entitled to advancement of expenses incurred in the defense of any Action from the Reorganized Company within ten Business Days of receipt by the Reorganized Company from the Indemnified Party of a request therefor; provided that any person to whom expenses are advanced provides an undertaking, if and only to the extent required by applicable Law, to repay such advances if it is ultimately determined that such person is not entitled to indemnification. The Reorganized Company shall not settle, compromise or consent to the entry of any judgment in any proceeding or threatened Action (and in which indemnification could be sought by such Indemnified Party), unless such settlement, compromise or consent includes an unconditional release of an Indemnified Party from all Liability arising out of such Action or such Indemnified Party otherwise consents.

(b) For a period of six years following the Closing Date, the Purchaser and the Reorganized Company shall cause the Bylaws (or other similar organizational documents) of the Reorganized Company and each Subsidiary to contain provisions with respect to indemnification and exculpation that are at least as favorable as the indemnification and exculpation provisions contained in the Bylaws (or other similar organizational documents) of the Reorganized Company and each Subsidiary as of the Closing, and during such six year period, such provisions shall not be amended, repealed or otherwise modified in any respect, adverse to the Indemnified Parties, except as required by Law. All rights to exculpation and indemnification for acts or omissions in favor of the Indemnified Parties occurring prior to or at the Closing as provided in the Company's Bylaws or in any agreement listed in the Disclosure Schedule shall be assumed by the Reorganized Company from and after the Closing and shall continue in full force and effect in accordance with their terms from the Closing until the sixth anniversary of the Closing Date.

(c) The Company may obtain as of the Closing "tail" insurance policies with a claims period of at least six years from the Closing Date with respect to the directors' and officers' liability insurance in amount and scope at least as favorable as the coverage applicable to the Company's directors and officers as of the date hereof (the "Tail Policy"). If the Company does not obtain the Tail Policy prior to the Closing, for a period of six years from the Closing Date, the Purchaser shall cause to be maintained in effect policies of at least the same coverage as the policies of directors' and officers' liability insurance maintained by the Company or any Subsidiary as of the date hereof (the "D&O Insurance") for the benefit of those persons who are covered by such policies on the Closing Date with respect to matters occurring at or prior to the Closing, to the extent that such liability insurance can be maintained at a cost to the Company not greater than 300% of the last annualized premium for the current directors' and officers' liability insurance; provided that, if such insurance cannot be so maintained or obtained at such cost, the Purchaser shall cause the Reorganized Company to maintain or obtain as much of such insurance as can be so maintained or obtained (not to exceed six years from the Closing Date) at a cost equal to 300% of the last annualized premium for such insurance.

(d) Notwithstanding anything herein to the contrary, if any Action (whether arising before, at or after the Closing Date) is made against any Indemnified Party, on or prior to the sixth anniversary of the Closing Date, the provisions of this Section 5.03 shall continue in effect until the final disposition of such Action.

(e) If the Reorganized Company or any of its successors or assigns (i) merges or consolidates with or into any other Person and shall not be the continuing or surviving Person of such transaction or (ii) transfers all or substantially all of its properties and assets to any Person, then, and in each such case, proper provision shall be made so that the successors and assigns of the Reorganized Company shall assume all of the obligations of the Reorganized Company set forth in this Section 5.03.

(f) The obligations under this Section 5.03 shall not be terminated, amended or otherwise modified in such a manner as to adversely affect any Indemnified Party (or any other person who is a beneficiary under the D&O Insurance or the Tail Policy (and their heirs and representatives)) without the prior written consent of such affected Indemnified Party or other person who is a beneficiary under the D&O Insurance or the Tail Policy (and their heirs and representatives). Each of the Indemnified Parties or other persons who are beneficiaries under the D&O Insurance or the Tail Policy (and their heirs and representatives) are intended to be third party beneficiaries of this Section 5.03, with full rights of enforcement as if a party thereto. The rights of the Indemnified Parties (and other persons who are beneficiaries under the D&O Insurance or the Tail Policy (and their heirs and representatives)) under this Section 5.03 shall be in addition to, and not in substitution for, any other rights that such persons may have under the certificate of incorporation, by-laws or other organizational documents, any and all indemnification agreements of or entered into by the Company or any Subsidiary, or applicable Law (whether at law or in equity).

SECTION 5.04. Access to Information. (a) From the date hereof until the Closing, upon reasonable notice, the Company shall cause its officers, directors, employees, agents, representatives, accountants and counsel, and shall cause the Subsidiaries and each of the Subsidiaries' officers, directors, employees, agents, representatives, accountants and counsel to: (i) afford the officers, key employees, agents, accountants, counsel, financing sources and representatives of the Purchaser reasonable access, during normal business hours, to the offices, properties, plants, other facilities, books and records of the Company and each Subsidiary and to those officers, directors, key employees, agents, accountants and counsel of the Company and of each Subsidiary who have any knowledge relating to the Company, any Subsidiary or the Business and (ii) furnish to the officers, employees, agents, accountants, counsel, financing sources and representatives of the Purchaser such additional financial and operating data and other information regarding the assets, properties, liabilities and goodwill of the Company, the Subsidiaries and the Business (or legible copies thereof) as the Purchaser may from time to time reasonably request; provided, however, that the Company may restrict the foregoing access and the disclosure of information to the extent that (A) in the reasonable judgment of the Company, any Law applicable to the Company requires the Company or any Subsidiary to restrict or prohibit access to any such properties or information, (B) in the reasonable judgment of the Company, the information is subject to confidentiality obligations to a third party, (C) such disclosure would result in disclosure of any trade secrets of third parties or (D) disclosure of any such information or document could result in the loss of attorney-client privilege; provided

further that, without the Company's prior written consent, no meetings and conversations with any officers, directors, agents, accountants or counsel of the Company or any Subsidiary shall take place without an officer or other designated representative of the Company being present and participating; provided, however, that with respect to clauses (A) through (D) of this Section 5.04(a), the Company shall use all reasonable efforts (without any obligation to make any payments) (x) to obtain the required consent of such third party to provide such access or disclosure or (y) to develop an alternative to providing such information so as to address such matters that is reasonably acceptable to the Purchaser and the Company.

(b) The Purchaser shall provide the Company with reasonable access to information regarding the Purchaser for inclusion in Company materials and filings relating to this Agreement or the Transactions (including the Disclosure Statement) if the Company requests such information and the inclusion of the requested Purchaser information is required to be included in such materials or filings by applicable Law or the Bankruptcy Code as required for the listing of the Reorganized Company Shares on a national securities exchange.

(c) In order to facilitate the resolution of any claims made against or incurred by the Company prior to the Closing, for a period of seven years after the Closing, the Purchaser shall retain the books and records relating to the Business, the Company and the Subsidiaries relating to periods prior to the Closing in a manner reasonably consistent with the prior practice of the Company and the Subsidiaries.

SECTION 5.05. Confidentiality. Each of the Purchaser and the Company acknowledges that the Evaluation Material provided to them and exchanged between them in connection with this Agreement and the consummation of the Transactions, including to the Purchaser under Section 5.04, is subject to the terms of the Confidentiality Agreements, the terms of each of which are incorporated herein by reference. Effective upon, and only upon, the Closing, the Confidentiality Agreements shall terminate. For purposes of this Section 5.05, the term "Evaluation Material" shall have the meaning ascribed to such term in each of the Confidentiality Agreements. Notwithstanding the foregoing, this Section 5.05 shall not in any way limit (a) the disclosure of information by the Purchaser, the Company or the Subsidiaries in connection with the administration of the Bankruptcy Cases, pursuant to any provision of the Bankruptcy Code or any Order of the Bankruptcy Court, or (b) any other action or disclosure permitted to be made by the Purchaser, the Company or the Subsidiaries pursuant to this Article V.

SECTION 5.06. Regulatory and Other Authorizations; Notices and Consents. (a) Each of the parties hereto shall use its reasonable best efforts to promptly obtain all authorizations, consents, orders and approvals of all Governmental Authorities that are necessary for its execution and delivery of, and the performance of its obligations pursuant to, this Agreement and the Ancillary Agreements and will cooperate fully with the other party in promptly seeking to obtain all such authorizations, consents, orders and approvals. Each party hereto agrees to make its filing pursuant to the HSR Act with respect to the Transactions within ten Business Days of the date hereof and to supply as promptly as practicable to the appropriate Governmental Authorities any information and documentary material that may be requested pursuant to the HSR Act. The Purchaser and the Company shall each pay their respective filing or other fees required to be paid by each of them in connection with all authorizations, consents,

orders and approvals contemplated by this Section 5.06; provided, however, that the Purchaser shall pay all fees payable in connection with all filings under the HSR Act, the Mexican Federal Law of Economic Competition, the Russian Federal Law on Competition Protection No. 135-FZ (July 2006) and the Chinese Anti-Monopoly Law of 2008.

(b) Nothing contained in this Agreement shall give the Purchaser, directly or indirectly, the right to control or direct the operations of the Company or the Subsidiaries or shall give the Company, directly or indirectly, the right to control or direct the operations of the Purchaser or its subsidiaries prior to the Closing. Prior to the Closing, each of the Company and the Purchaser shall exercise, consistent with the terms and conditions of this Agreement, complete control and supervision over its and its Affiliates' respective operations.

(c) The Company shall, and shall cause the Subsidiaries to, give promptly such notices to third parties and use its reasonable efforts (without any obligation to make any payments) to obtain such third-party consents and estoppel certificates as the Purchaser may in its reasonable discretion deem necessary in connection with the Transactions.

(d) The Purchaser shall cooperate and use all reasonable efforts (without any obligation to make any payment) to assist the Company in giving such notices and obtaining such consents and estoppel certificates; provided, however, that the Purchaser shall have no obligation to give any guarantee or other consideration of any nature in connection with any such notice, consent or estoppel certificate or to consent to any change in the terms of any agreement or arrangement which the Purchaser in its reasonable discretion may deem adverse to the interests of the Purchaser, the Company, any Subsidiary or the Business.

(e) If the Purchaser so requests, the Company shall use commercially reasonable efforts (without any obligation to make any payments or incur out-of-pocket expenses) to assist the Purchaser in the preparation of its registration statement on Form S-1 to be filed with the SEC in connection with the issuance of the Purchaser's shares.

SECTION 5.07. Notice of Developments. Prior to the Closing, the Company shall promptly notify the Purchaser, and the Purchaser shall promptly notify the Company, in writing of all events, circumstances, facts and occurrences arising subsequent to the date of this Agreement which could result in any breach of a representation or warranty or covenant of such party contained in this Agreement or which could have the effect of making any representation or warranty of such party contained in this Agreement untrue or incorrect in any material respect. The Company agrees to hold weekly (or such other intervals as may be agreed to by the parties from time to time) conference calls with the Purchaser with one or more officers to discuss all other material developments affecting the assets, Liabilities, business, financial condition, operations, results of operations, customer or supplier relations, employee relations, projections or prospects of the Company or any Subsidiary.

SECTION 5.08. Bankruptcy Matters. (a) The Company shall file with the Bankruptcy Court, as soon as practicable following the execution of this Agreement but in no event later than five days following the date hereof, a motion and supporting papers seeking the entry of an order of the Bankruptcy Court that approves the Company's obligations under

Sections 5.01, 5.02, 5.08, 5.09, 9.02(b) and 9.02(c) (the "Plan Sponsor Order"). The Plan Sponsor Order shall be in form and substance reasonably satisfactory to the Purchaser.

(b) The Disclosure Statement, the Confirmation Order, and the Reorganization Plan shall be, insofar as such documents relate to or concern this Agreement, any of the Ancillary Agreements or the Transactions, in form and substance reasonably satisfactory to the Purchaser. The Company shall consult and cooperate with the Purchaser, and consider in good faith the views of the Purchaser, with respect to all such filings. Without the prior written consent of the Purchaser, the Company shall not seek to amend or modify any provision in the Plan Sponsor Order, the Disclosure Statement, the Reorganization Plan or the Confirmation Order to effect a change in the terms and conditions of the Transactions which would reasonably be expected to have a material adverse effect on the Purchaser or on the ability of the Company and Purchaser to consummate the Transactions except for actions taken consistent with this Agreement with respect to a Superior Proposal.

(c) The Company and the Purchaser shall use commercially reasonable efforts to cooperate, assist and consult with each other to secure the prompt entry of the Confirmation Order as soon as practicable following the date hereof, and to consummate the Transactions, and will furnish affidavits or other documents or information for filing with the Bankruptcy Court for the purposes, among others, of providing necessary assurances of performance by the Purchaser and under this Agreement. In the event that any Governmental Orders relating to this Agreement shall be appealed by any Person (or a petition for certiorari or motion for reconsideration, amendment, clarification, modification, vacation, stay, rehearing or reargument shall be filed with respect to any such Governmental Order) the Company and the Purchaser will cooperate in taking such steps to diligently defend against such appeal, petition or motion, and the Company and the Purchaser shall use their commercially reasonable efforts to obtain an expedited resolution of any such appeal, petition or motion. Nothing in this Section 5.08 shall be construed as altering the rights and obligations of the Company under Section 5.09.

SECTION 5.09. Non-Solicitation. (a) The Company agrees that between the date of this Agreement and the entry of the Plan Sponsor Order, neither it nor any of its Affiliates nor any of their respective directors or officers shall, and that it shall direct its and their respective key employees and representatives (including any investment banker, attorney or accountant retained by it or any of its Affiliates) not to, directly or indirectly, solicit any Acquisition Proposal; provided, however, that nothing shall prevent the Company or its Board of Directors from taking any of the following actions before the entry of the Plan Sponsor Order:

(i) complying with its obligations under Law with regard to an Acquisition Proposal;

(ii) or (A) engaging in any negotiations or discussions with, or providing any information or materials to, any Person who has made an unsolicited bona fide written Acquisition Proposal, (B) recommending an unsolicited Acquisition Proposal, or (C) after compliance with Section 5.09(d), approving or entering into an unsolicited Acquisition Proposal, if, prior to taking any of the actions in (A), (B) or (C), the Board of Directors of the Company determines in good faith (after consultation with its legal and financial advisors) that (1) such action would be reasonably likely to be required in order to

comply with its fiduciary duties under applicable Law and (2) such Acquisition Proposal is a Superior Proposal or would be reasonably likely to lead to a Superior Proposal.

(b) The Company shall, within two Business Days of receipt by the Company of an Acquisition Proposal, provide the Purchaser with the material terms and conditions of any such Acquisition Proposal.

(c) In the event the Board of Directors of the Company determines, in accordance with paragraph (a) above, to take any affirmative action to approve, or authorize negotiations of, a definitive agreement in respect of an Acquisition Proposal, the Company shall provide notice of such determination to the Purchaser as soon as practicable.

(d) The Company agrees that between the date of this Agreement and the entry of the Plan Sponsor Order, the Purchaser shall have the right (a "Matching Right"), within ten days after the Purchaser receives a copy of the notice provided by the Company pursuant to Section 5.09(c), to deliver to the Company an unconditional written offer to improve the terms and conditions contained in this Agreement so long as the Deemed Value of such improved offer (which Deemed Value will include the value of the amounts that would be owed to the Purchaser under Section 9.02(b) if such Acquisition Proposal were accepted and consummated) is at least equal to the Deemed Value of such pending Acquisition Proposal. The Purchaser shall be under no obligation to exercise its Matching Right or to participate in any proceedings designed to elicit from the Purchaser an equal or higher and better offer.

SECTION 5.10. Affiliate Arrangements. Prior to the Closing, the Company shall use its commercially reasonable efforts to cause any contract or arrangement that is identified in Section 5.10 of the Disclosure Schedule to be terminated or otherwise amended to exclude the Company and any Subsidiaries as a party thereto.

SECTION 5.11. Further Action. Each of the parties hereto shall use all reasonable efforts to take, or cause to be taken, all appropriate action, do or cause to be done all things necessary, proper or advisable under applicable Law, and to execute and deliver such documents and other papers, as may be required to carry out the provisions of this Agreement and the Ancillary Agreements to which it is a party and consummate and make effective the Transactions.

SECTION 5.12. National Securities Exchange Listing. Prior to the Closing Date, the Purchaser and the Company shall use their respective reasonable best efforts in good faith cooperation with each other to obtain approval for the listing, subject to official notice of issuance, of the Reorganized Company Shares on The New York Stock Exchange or, if such approval is not reasonably likely to be obtained on or prior to the Closing Date, such other national securities exchange registered with the SEC as the Reorganized Company shall reasonably determine. Following such listing, if any, the Purchaser and the Reorganized Company shall use their respective commercially reasonable efforts to cause the Reorganized Company to comply with all applicable continued listing standards of The New York Stock Exchange or other national securities exchange so that the Reorganized Company Shares will continue to be listed and traded thereon, provided that the Purchaser shall have no obligation to

ensure the share price or market value of the Reorganized Company Shares is sufficient to maintain the listing of such shares.

SECTION 5.13. Stockholders Agreement. As of the Closing Date, the Purchaser and the Reorganized Company shall enter into the Stockholders Agreement.

SECTION 5.14. Section 16 Matters. (a) Each of the Company and the Purchaser shall take, and the Company shall use commercially reasonable efforts to cause its Insiders (defined below) to take, all such commercially reasonable actions, and obtain such approvals or consents, as may be required to cause any dispositions of Existing Shares (including derivative securities with respect thereto), any acquisitions and dispositions of Reorganized Company Shares (including derivative securities with respect thereto) pursuant to Section 2.01(b) and the Mandatory Exchange Transaction (as defined in the Stockholders Agreement) by each holder of Existing Shares who is an officer, director or beneficial owner of ten percent (10%) or more of the Existing Shares (each, an "Insider") to be exempt transactions under Section 16(b) of the Exchange Act, and the regulations promulgated with respect thereto, such actions to be taken in accordance with the interpretive guidance set forth by the SEC.

(b) The Company and the Purchaser shall cooperate, and the Company shall use commercially reasonable efforts to cause its Insiders to cooperate with one another to identify, analyze and implement such actions as may be agreed upon to effect the exemption of the transactions described in Section 5.14(a). If the Company and the Purchaser are able to agree upon, and implement, a course of action to effect the exemption of such transactions on or before the tenth (10th) day prior to the date of the Confirmation Hearing, the Company and the Purchaser will agree in good faith to such amendments to the Form of Restated Certificate of Incorporation, Form of Stockholders Agreement and this Agreement as required in furtherance of such course of action. If the Company and the Purchaser are unable to agree upon, and implement, a course of action to effect the exemption of the transactions on or before the tenth (10th) day prior to the date of the Confirmation Hearing, the Restated Certificate of Incorporation shall be in substantially the form attached as Exhibit B.

ARTICLE VI

EMPLOYEE MATTERS

SECTION 6.01. Benefits. (a) From and after the Closing Date, the Purchaser shall, or shall cause the Company to, honor the severance payments, change in control payments, bonuses, benefits and other compensation accrued or payable under (i) the Plans set forth in Section 6.01(a)(i) of the Disclosure Schedule in accordance with the terms of such Plans as in effect on the date hereof, and (ii) the equity plan, annual cash bonus plans and change in control and severance agreements and other Contracts as described in Section 6.01(a)(ii) of the Disclosure Schedule. The Purchaser acknowledges and agrees that the consummation of the Transactions will constitute a "change of control" of the Company for purposes of the Plans and Contracts described in Sections 6.01(a)(i) and 6.01(a)(ii) of the Disclosure Schedule. On the Closing Date, the Reorganized Company shall be deemed to have expressly assumed and agreed

to perform such Plans and Contracts described in Sections 6.01(a)(i) and 6.01(a)(ii) of the Disclosure Schedule relating to a change in control in the same manner and to the same extent that the Company would be required to perform such Plans and Contracts if no change of control had taken place. To the extent not paid by the Company prior to Closing, the Purchaser agrees that it shall make the payments of the bonuses under the Plan as described in Item 1 of Section 6.01(a)(ii) of the Disclosure Schedule on the Closing Date. The Purchaser and the Company acknowledge and agree that any resignation tendered in connection with the Closing at the request of the Purchaser by an officer who is a party to any change in control or similar agreement with the Company shall (A) be deemed a resignation for "good reason" for purposes of such agreement and (B) not be effective unless and until any amounts payable under such agreement shall have been received by such officer.

(b) With respect to any benefit plans of the Purchaser or its Affiliates in which employees of the Company and its Subsidiaries ("Covered Employees"), participate after the Closing, the Purchaser shall: (i) use commercially reasonable efforts to waive any limitations as to pre-existing conditions, exclusions and waiting periods with respect to participation and coverage requirements applicable to the Covered Employees under any such plan in which such Covered Employees may be eligible to participate after the Closing; provided, however, that no such waiver shall apply to a pre-existing condition of any Covered Employee or any dependent thereof, who was, immediately prior to the Closing, excluded from participation in a Plan maintained or contributed to for the benefit of such Covered Employee by nature of such pre-existing condition, (ii) use commercially reasonable efforts to provide each Covered Employee with credit for any co-payments and deductibles paid prior to the Closing during the year in which the Closing occurs in satisfying any applicable deductible or out-of-pocket requirements under any welfare benefit plan in which such Covered Employees may be eligible to participate after the Closing, provided that such Covered Employees submit documentation evidencing any co-payments and deductibles within six months following the Closing, and (iii) recognize all service of the Covered Employees with the Company or any Subsidiary or predecessor thereof for purposes of eligibility to participate, vesting credit, entitlement for benefits and benefit accrual (other than benefit accrual under a defined benefit pension plan) in any benefit plan in which such Covered Employees may be eligible to participate on or after the Closing, except to the extent such treatment would result in duplicative benefits. In addition, the Reorganized Company shall continue its current Market Place Chaplaincy Program at all of its facilities following the Closing.

ARTICLE VII

TAX MATTERS

SECTION 7.01. Tax Returns & Compliance. From the date of this Agreement until the Closing, the Company shall prepare and file or otherwise furnish in proper form to the appropriate Governmental Authority (or cause to be prepared and filed or so furnished) in a timely manner (after giving effect to any applicable extensions) all material Tax Returns relating to the Company and the Subsidiaries that are due on or before or relate to any taxable period ending on or before the Closing Date. Such Tax Returns shall be prepared in a manner

consistent with past practices employed with respect to the Company and the Subsidiaries (except to the extent that counsel for the Company renders a legal opinion that there is no reasonable basis in law therefor or determines that a Tax Return cannot be so prepared and filed without being subject to penalties). The Company shall keep the Purchaser reasonably informed as to any audits, examinations, litigations or similar proceedings relating to the Taxes of the Company or any Subsidiary.

SECTION 7.02. Opinion of Counsel of the Purchaser. The Purchaser shall use its reasonable best efforts to deliver to the Company, at or prior to the Closing, the opinion of Shearman & Sterling LLP, counsel to the Purchaser, in the form reasonably acceptable to the Company, based upon representations of the Purchaser and the Company, and normal assumptions, to the effect that, for federal income tax purposes, the Mandatory Exchange Transaction should qualify as a reorganization within the meaning of Section 368 of the Code, which opinion shall not have been withdrawn or modified in any material respect. The opinion will be based upon reasonable and customary representations that one would expect to see in a reorganization that qualifies under section 368(a)(1)(B) of the Code provided in IRS rulings and guidelines.

SECTION 7.03. Opinion of the Counsel of the Company. The Company shall use its reasonable best efforts to deliver to the Purchaser, at or prior to the Closing, the opinion of Baker & McKenzie LLP, counsel to the Company, in the form reasonably acceptable to the Purchaser, based upon representations of the Purchaser and the Company, and normal assumptions, to the effect that, for federal income tax purposes, the Mandatory Exchange Transaction should qualify as a reorganization within the meaning of Section 368 of the Code, which opinion shall not have been withdrawn or modified in any material respect. The opinion will be based upon reasonable and customary representations that one would expect to see on a reorganization that qualifies under section 368(a)(1)(B) of the Code provided in IRS rulings and guidelines.

ARTICLE VIII

CONDITIONS TO CLOSING

SECTION 8.01. Conditions to Obligations of the Company. The obligations of the Company to consummate the Transactions shall be subject to the fulfillment or written waiver (to the extent permitted by Law), at or prior to the Closing, of each of the following conditions:

(a) Representations, Warranties and Covenants. (i) The representations and warranties of the Purchaser contained in this Agreement shall have been true and correct when made and shall be true and correct in all material respects as of the Closing, except to the extent such representations and warranties are as of another date, in which case, such representations and warranties shall be true and correct as of that date, in each case, with the same force and effect as if made as of the Closing, other than such representations and warranties as are made as of another date, and (ii) the covenants and agreements contained in this Agreement to be

complied with by the Purchaser on or before the Closing shall have been complied with in all material respects;

(b) Bankruptcy Court Approval. The Bankruptcy Court shall have entered the Confirmation Order which shall be a Final Order;

(c) Competition Laws. Any waiting period (and any extension thereof) under the HSR Act applicable to the purchase of the Purchaser Shares contemplated by this Agreement shall have expired or shall have been terminated, and the requirements of any material competition law regimes applicable to the purchase of the Purchaser Shares contemplated by this Agreement shall have been satisfied; and

(d) No Order. (i) No Governmental Authority shall have enacted, issued, promulgated, enforced or entered any Law or Governmental Order (whether temporary, preliminary or permanent) that has the effect of making the Transactions illegal or otherwise restraining or prohibiting the consummation of the Transactions and (ii) no Governmental Authority shall have threatened to enact, issue, promulgate, enforce or enter any Law or Governmental Order (whether temporary, preliminary or permanent) that would have the effect of making the Transactions illegal or otherwise restraining or prohibiting the consummation of the Transactions and that is reasonably likely to have a Material Adverse Effect; provided, however, that this Section 8.01(d) shall not apply if the Company has directly or indirectly solicited or encouraged any Action that results in any such Governmental Order or threat.

(e) Consents and Approvals. The Purchaser and the Company shall have received, each in form and substance satisfactory to the Company in its reasonable discretion, all authorizations, consents, Governmental Orders and approvals of all Governmental Authorities and all material third party consents required under any Company Contracts, in each case, set forth in Section 8.02(f) of the Disclosure Schedule.

SECTION 8.02. Conditions to Obligations of the Purchaser. The obligations of the Purchaser to consummate the Transactions shall be subject to the fulfillment or written waiver (to the extent permitted by Law), at or prior to the Closing, of each of the following conditions:

(a) No Material Adverse Effect. No Material Adverse Effect shall have occurred since the date of this Agreement;

(b) Representations, Warranties and Covenants. (i) Each of the representations and warranties of the Company contained in this Agreement shall be true and correct (without giving effect to any exception or qualification contained therein relating to materiality or a Material Adverse Effect) as of the date of this Agreement and as of the Closing Date, as if made as of such date (except for those representations and warranties which address matters only as of an earlier date which shall have been true and correct as of such earlier date), except where the failure of such representations and warranties to be true and correct, individually or in the aggregate, has not had and would not be reasonably expected to have a Material Adverse Effect; and (ii) the covenants and agreements contained in this Agreement to

be complied with by the Company on or before the Closing shall have been complied with in all material respects;

(c) Bankruptcy Court Approval. The Bankruptcy Court shall have entered the Confirmation Order which shall be a Final Order;

(d) Competition Laws. Any waiting period (and any extension thereof) under the HSR Act applicable to the purchase of the Purchaser Shares contemplated by this Agreement shall have expired or shall have been terminated, and the requirements of any material competition law regimes applicable to the purchase of the Purchaser Shares contemplated by this Agreement shall have been satisfied;

(e) No Order. (i) No Governmental Authority shall have enacted, issued, promulgated, enforced or entered any Law or Governmental Order (whether temporary, preliminary or permanent) that has the effect of making the Transactions illegal or otherwise restraining or prohibiting the consummation of the Transactions and (ii) no Governmental Authority shall have threatened to enact, issue, promulgate, enforce or enter any Law or Governmental Order (whether temporary, preliminary or permanent) that would have the effect of making the Transactions illegal or otherwise restraining or prohibiting the consummation of the Transactions and that is reasonably likely to have a Material Adverse Effect; provided, however, that this Section 8.02(e) shall not apply if the Purchaser has directly or indirectly solicited or encouraged any Action that results in any such Governmental Order or threat;

(f) Consents and Approvals. The Purchaser and the Company shall have received, each in form and substance satisfactory to the Purchaser in its reasonable discretion, all authorizations, consents, Governmental Orders and approvals of all Governmental Authorities and officials and all material third party consents required under any Company Contracts set forth in Section 8.02(f) of the Disclosure Schedule; and

(g) Financing. The conditions precedent to the effectiveness of the agreements, documents and instruments to be dated on or about the Effective Date and to be entered into among the Reorganized Company and certain of its Subsidiaries, as borrowers, in respect of a credit facility for a commitment of not less than $1,650,000,000 shall have been satisfied or waived by the parties thereto and the Reorganized Company shall have access to funding thereunder, including for repayment of the Secured Credit Facilities.

ARTICLE IX

TERMINATION

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

(a) by the Purchaser, upon written notice to the Company, if (i) there exists a breach of any representation or warranty of the Company contained in this Agreement such that the closing condition set forth in Section 8.02(b)(i) would not be satisfied or (ii) the Company

shall have breached any of the covenants or agreements contained in this Agreement to be complied with by the Company such that the closing condition set forth in Section 8.02(b)(ii) would not be satisfied, and, in the case of both (i) and (ii), such breach is incapable of being cured by the earlier of (A) the fifteenth (15th) day after notice by the Purchaser to the Company and (B) the Termination Date;

(b) by the Company, upon written notice to the Purchaser, if (i) there exists a breach of any representation or warranty of the Purchaser contained in this Agreement such that the closing condition set forth in Section 8.01(a)(i) would not be satisfied or (ii) the Purchaser shall have breached any of the covenants or agreements contained in this Agreement to be complied with by the Purchaser such that the closing condition set forth in Section 8.01(a)(ii) would not be satisfied, and, in the case of both (i) and (ii), such breach is incapable of being cured by the earlier of (A) the fifteenth (15th) day after notice by the Company to the Purchaser and (B) the Termination Date;

(c) by the Purchaser, upon written notice to the Company, if the Reorganization Plan and the Disclosure Statement have not been filed by October 15, 2009;

(d) by the Purchaser, upon written notice to the Company, if the Plan Sponsor Order has not been entered by the Bankruptcy Court within 20 days of the date of this Agreement;

(e) by the Purchaser or the Company, upon written notice to the other party, if the Disclosure Statement Order has not been entered by the Bankruptcy Court by November 16, 2009; provided, however, that the Company shall not have the right to terminate this Agreement pursuant to this Section 9.01(e) if the Disclosure Statement Order has not been entered by the Bankruptcy Court due to any act or omission of the Company in violation of this Agreement;

(f) by the Purchaser or the Company, upon written notice to the other party, if the Confirmation Order has not been entered into by the Bankruptcy Court by December 31, 2009; provided, however, that the Company shall not have the right to terminate this Agreement pursuant to this Section 9.01(f) if the Confirmation Order has not been entered by the Bankruptcy Court due to any act or omission of the Company in violation of this Agreement;

(g) by either the Purchaser or the Company, upon written notice to the other party, if the Closing shall not have occurred on or prior to March 31, 2010 (the "Initial Termination Date"); provided, however, that the right to terminate this Agreement under this Section 9.01(g) shall not be available to any party whose failure to fulfill any obligation under this Agreement shall have been the cause of, or shall have resulted in, the failure of the Closing to occur on or prior to the Termination Date; provided further that neither party may terminate this Agreement pursuant to this Section 9.01(g) prior to May 1, 2010 if the conditions to Closing set forth in Sections 8.01(c) or 8.02(d) shall not have been fulfilled but all other conditions to Closing shall be capable of being fulfilled. As used in this Agreement, the term "Termination Date" shall mean the Initial Termination Date, unless the Initial Termination Date has been extended pursuant to the foregoing proviso, in which case, the term "Termination Date" shall mean the last date to which the Initial Termination Date has been so extended;

(h) by the Company, upon written notice to the Purchaser, if the Board of Directors of the Company determines, in its good faith judgment after consultation with independent legal counsel and not in violation of Section 5.09, to enter into an agreement with respect to a Superior Proposal;

(i) by either the Purchaser or the Company, upon written notice to the other party, in the event that any Governmental Authority shall have issued a Governmental Order or taken any other action restraining, enjoining or otherwise prohibiting the Transactions, and such Governmental Order or other action shall have become final and nonappealable; or

(j) by the mutual written consent of the Company and the Purchaser.

SECTION 9.02. Effect of Termination. (a) In the event of termination of this Agreement as provided in Section 9.01, this Agreement shall forthwith become void and there shall be no Liability on the part of either party hereto except (i) as set forth in Section 5.05, this Section 9.02 and Article X and (ii) with respect to any Liabilities incurred or suffered by a party, to the extent such Liabilities were the result of fraud or the willful and material breach by the other party of any of its representations, warranties, covenants or other agreements set forth in this Agreement.

(b) A termination fee in the amount of $45,000,000 (the "Termination Fee") shall be payable by the Company to the Purchaser in the event that this Agreement is terminated pursuant to Section 9.01(h), provided, however, that payment of the Termination Fee shall be due by wire transfer of same-day funds upon the earlier of (i) the date on which the Company consummates any transaction that was a result of a Superior Proposal and (ii) the effective date of any chapter 11 plan for the Company.

(c) In addition to any amounts paid by the Company pursuant to Section 9.02(b), in the event that this Agreement is terminated pursuant to Section 9.01(h), the Company shall reimburse the Purchaser as promptly as reasonably practical (and in any event, within two Business Days following such termination), by wire transfer of same day funds, $5,000,000 with respect to expenses (including, without limitation, the fees and expenses of its advisors) incurred by the Purchaser in connection with this Agreement and the Transactions.

ARTICLE X

GENERAL PROVISIONS

SECTION 10.01. Expenses. Except as otherwise specified in this Agreement, all costs and expenses, including fees and disbursements of counsel, financial advisors and accountants, incurred in connection with this Agreement and the Transactions shall be paid by the party incurring such costs and expenses, whether or not the Closing shall have occurred.

SECTION 10.02. Notices. All notices, requests, claims, demands and other communications hereunder shall be in writing and shall be given or made (and shall be deemed to have been duly given or made upon receipt) by delivery in person, by an internationally

recognized overnight courier service, by facsimile or by registered or certified mail (postage prepaid, return receipt requested) to the respective parties hereto at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this Section 10.02):

(a) if to the Company:

Pilgrim's Pride Corporation
4845 US Highway 271 North
Pittsburg, TX 75686
Facsimile: 972-290-8950
Attention: Chief Executive Officer

with a copy to:

Baker & McKenzie LLP
2300 Trammell Crow Center
2001 Ross Avenue
Dallas, Texas 75201
Facsimile: 214-965-5914
Attention: Alan G. Harvey
W. Crews Lott

and to:

Weil, Gotshal & Manges LLP
200 Crescent Court, Suite 300
Dallas, Texas 75201
Facsimile: 214-746-7700
Attention: Stephen A. Youngman

(b) if to the Purchaser:

JBS USA Holdings, Inc.
1770 Promontory Circle
Greeley, Colorado 80634
Facsimile: 970-347-1962
Attention: Christopher C. Gaddis

with a copy to:

Shearman & Sterling LLP
599 Lexington Avenue
New York, NY 10022-6069

Facsimile: 212-848-7179
Attention: Douglas P. Bartner
Michael J. McGuinness

SECTION 10.03. Public Announcements. Neither party hereto shall, on or prior to the Closing Date, issue or make any press release or other public announcement with respect to this Agreement or the Transactions, or otherwise make any public disclosures relating thereto, without the prior consultation in good faith with the other party before issuing such press release or making such public announcement and providing the other party a reasonable opportunity to comment thereon; provided, however, that such consultation shall not be required to the extent any such disclosures are required by Law, applicable stock exchange regulation or made in any filing with the SEC and such disclosure is not materially different than any previous release, announcement or disclosure with respect to this Agreement or the Transactions for which the other party has been consulted. Notwithstanding the foregoing, the Purchaser acknowledges that the Company will file a copy of this Agreement with the Bankruptcy Court.

SECTION 10.04. Non-Survival of Representations, Warranties and Agreements. None of the representations, warranties, covenants and other agreements in this Agreement or in any instrument delivered pursuant to this Agreement, including any rights arising out of any breach of such representations, warranties, covenants and other agreements, shall survive the Closing Date, except for those covenants and agreements contained herein and therein that by their terms are to be performed in whole or in part after the Closing Date, Sections 5.05, 9.02(b) and 9.02(c) and this Article X.

SECTION 10.05. Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any Law or public policy, all other terms and provisions of this Agreement shall nevertheless remain in full force and effect for so long as the economic or legal substance of the Transactions is not affected in any manner materially adverse to either party hereto. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner in order that the Transactions are consummated as originally contemplated to the greatest extent possible.

SECTION 10.06. Entire Agreement. This Agreement and the Ancillary Agreements and the Confidentiality Agreement constitute the entire agreement of the parties hereto with respect to the subject matter hereof and thereof and supersede all prior agreements and undertakings, both written and oral, between the Company and the Purchaser with respect to the subject matter hereof and thereof.

SECTION 10.07. Assignment. This Agreement may not be assigned by operation of Law or otherwise without the express written consent of the Company and the Purchaser (which consent may be granted or withheld in the sole discretion of the Company or the Purchaser) and any such assignment or attempted assignment without such consent shall be void; provided, however, that the Purchaser may assign this Agreement or any of its rights and obligations hereunder to one or more Affiliates of the Purchaser without the consent of the Company, but no such assignment shall relieve the Purchaser of any of its obligations under this

Agreement. Subject to the preceding sentence, this Agreement will be binding upon, inure to the benefit of and be enforceable by the parties hereto and their respective successors and assigns.

SECTION 10.08. Amendment. This Agreement may not be amended or modified except (a)(i) by an instrument in writing signed by, or on behalf of, the Company and the Purchaser or (ii) by a waiver in accordance with Section 10.09, and (b) to the extent such amendment or modification is material, by an order of the Bankruptcy Court.

SECTION 10.09. Waiver. Either party to this Agreement may (a) extend the time for the performance of any of the obligations or other acts of the other party, (b) waive any inaccuracies in the representations and warranties of the other party contained herein or in any document delivered by the other party pursuant hereto, or (c) waive compliance with any of the agreements of the other party or conditions to such party's obligations contained herein. Any such extension or waiver shall be valid only if set forth in an instrument in writing signed by the party to be bound thereby. Any waiver of any term or condition shall not be construed as a waiver of any subsequent breach or a subsequent waiver of the same term or condition, or a waiver of any other term or condition of this Agreement. The failure of either party hereto to assert any of its rights hereunder shall not constitute a waiver of any of such rights. All rights and remedies existing under this Agreement are cumulative to, and not exclusive of, any rights or remedies otherwise available.

SECTION 10.10. No Third-Party Beneficiaries. Except for Section 5.03 and only to the extent set forth therein, this Agreement shall be binding upon and inure solely to the benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person, including any union or any employee or former employee of the Company, any legal or equitable right, benefit or remedy of any nature whatsoever, including any rights of employment for any specified period, under or by reason of this Agreement.

SECTION 10.11. Bankruptcy Court Approval. The obligations of the Company under this Agreement are subject to approval of the Bankruptcy Court to the extent (and only to the extent) required by Law.

SECTION 10.12. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware applicable to contracts executed in and to be performed in that State, including all matter of construction, validity and performance, and shall, to the extent applicable, be governed by and interpreted, construed, and determined in accordance with the applicable provisions of the Bankruptcy Code.

SECTION 10.13. Submission to Jurisdiction. (a) Without limiting any party's right to appeal any order of the Bankruptcy Court, (i) the Bankruptcy Court shall retain exclusive jurisdiction to enforce the terms of this Agreement and to decide any claims or disputes which may arise or result from, or be connected with, this Agreement, any breach or default hereunder, or the Transactions, and (ii) any and all legal proceedings related to the foregoing shall be filed and maintained only in the Bankruptcy Court, and the parties hereby consent to and submit to the jurisdiction and venue of the Bankruptcy Court and shall receive notices at such locations indicated in Section 10.02; provided, however, that if the Bankruptcy Cases have been closed,

the parties agree to exclusive jurisdiction in the Chancery Court of the State of Delaware (for the avoidance of doubt, including with respect to any matters described in Section 10.16 below).

(b) The parties hereby unconditionally and irrevocably waive, to the fullest extent permitted by applicable Law, any objection which they may now or hereafter have to the laying of venue of any dispute arising out of or relating to this Agreement or any of the Transactions brought in any court specified in paragraph (a) above, or any defense of inconvenient forum for the maintenance of such dispute. Each of the parties hereto agrees that a judgment in any such dispute may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law.

(c) Each of the parties hereto hereby consents to process being served by any party to this Agreement in any suit, action or proceeding by the mailing of a copy thereof in accordance with the provisions of Section 10.02.

SECTION 10.14. Waiver of Jury Trial. Each of the parties hereto hereby waives to the fullest extent permitted by applicable Law any right it may have to a trial by jury with respect to any litigation directly or indirectly arising out of, under or in connection with this Agreement or the Transactions. Each of the parties hereto hereby (a) certifies that no representative, agent or attorney of the other party has represented, expressly or otherwise, that such other party would not, in the event of litigation, seek to enforce the foregoing waiver and (b) acknowledges that it has been induced to enter into this Agreement and the Transactions, as applicable, by, among other things, the mutual waivers and certifications in this Section 10.14.

SECTION 10.15. Currency. Unless otherwise specified in this Agreement, all references to currency, monetary values and dollars set forth herein shall mean United States (U.S.) dollars, and all payments hereunder shall be made in United States dollars.

SECTION 10.16. Specific Performance. The parties hereto agree that irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms hereof and that the parties shall be entitled to seek an injunction or injunctions to prevent breaches of this Agreement or to enforce specifically the performance of the terms and provisions hereof.

SECTION 10.17. Counterparts. This Agreement may be executed and delivered (including by facsimile transmission) in one or more counterparts, and by the different parties hereto in separate counterparts, each of which when executed shall be deemed to be an original, but all of which taken together shall constitute one and the same agreement.

IN WITNESS WHEREOF, the Company and the Purchaser have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

PILGRIM'S PRIDE CORPORATION

By: _____
Name: Don Jackson
Title: President and Chief Executive Officer

JBS USA HOLDINGS, INC.

By: _____
Name: Wesley M. Batista
Title: President and Chief Executive Officer