

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION**

**In re**

**PILGRIM'S PRIDE CORPORATION, *et al.*,**

**Debtors.**

§  
§  
§  
§  
§  
§  
§  
§  
§  
§

**Chapter 11**

**Case No. 08-45664 (DML)**

**JOINTLY ADMINISTERED**

**DEBTORS' AMENDED JOINT PLAN OF REORGANIZATION  
UNDER CHAPTER 11 OF THE BANKRUPTCY CODE (AS MODIFIED)**

**WEIL, GOTSHAL & MANGES LLP**

200 Crescent Court, Suite 300  
Dallas, Texas 75201  
(214) 746-7700

767 Fifth Avenue  
New York, New York 10153  
(212) 310-8000

Attorneys for Debtors and  
Debtors in Possession

Dated: October 21, 2009  
(modified November 17, 2009)



0845664091117000000000038

## TABLE OF CONTENTS

|   | Page |
|---|------|
| ARTICLE I    DEFINITIONS AND INTERPRETATION .....             | 1    |
| A.        Definitions .....                                   | 1    |
| 1.1.    7 5/8% Indenture .....                                | 1    |
| 1.2.    7 5/8% Indenture Trustee .....                        | 1    |
| 1.3.    8 3/8% Indenture .....                                | 1    |
| 1.4.    8 3/8% Indenture Trustee .....                        | 1    |
| 1.5.    9 1/4% Indenture .....                                | 2    |
| 1.6.    9 1/4% Indenture Trustee .....                        | 2    |
| 1.7.    Administrative Expense Claims Bar Date.....           | 2    |
| 1.8.    Administrative Expense Claims Objection Deadline..... | 2    |
| 1.9.    Administrative Expense Claim.....                     | 2    |
| 1.10.   ADR Procedures Order .....                            | 2    |
| 1.11.   Affiliate .....                                       | 2    |
| 1.12.   Allowed .....   | 2    |
| 1.13.   Avoidance Actions .....                               | 3    |
| 1.14.   BMO .....   | 3    |
| 1.15.   BMO Guarantee Agreement.....                          | 3    |
| 1.16.   BMO Secured Claim .....                               | 3    |
| 1.17.   Bankruptcy Code .....                                 | 3    |
| 1.18.   Bankruptcy Court .....                                | 3    |
| 1.19.   Bankruptcy Rules .....                                | 3    |
| 1.20.   Business Day .....                                    | 3    |
| 1.21.   Cash .....  | 3    |
| 1.22.   Chapter 11 Cases .....                                | 3    |
| 1.23.   Charging Lien .....                                   | 3    |
| 1.24.   Chief Restructuring Officer.....                      | 3    |
| 1.25.   Claim.....  | 3    |
| 1.26.   Claims Agent.....                                     | 3    |
| 1.27.   Class .....   | 3    |
| 1.28.   CoBank .....  | 4    |
| 1.29.   CoBank Guarantee Agreement.....                       | 4    |

**TABLE OF CONTENTS**  
**(continued)**

|  | <b>Page</b> |
|--|-------------|
| 1.30. CoBank Secured Claim .....             | 4           |
| 1.31. Collateral .....                       | 4           |
| 1.32. Commencement Date .....                | 4           |
| 1.33. Committees .....                       | 4           |
| 1.34. Compensation and Benefit Programs..... | 4           |
| 1.35. Compensation-Related Obligation.....   | 4           |
| 1.36. Confirmation Date .....                | 4           |
| 1.37. Confirmation Hearing .....             | 5           |
| 1.38. Confirmation Order .....               | 5           |
| 1.39. Contingent Claim .....                 | 5           |
| 1.40. Covered Professionals.....             | 5           |
| 1.41. Creditors' Committee .....             | 5           |
| 1.42. Debtors .....                          | 5           |
| 1.43. Debtors in Possession .....            | 5           |
| 1.44. DIP Claims .....                       | 5           |
| 1.45. DIP Credit Agreement .....             | 5           |
| 1.46. DIP Financing Order .....              | 5           |
| 1.47. DIP Lenders .....                      | 5           |
| 1.48. Disallowed Claim .....                 | 5           |
| 1.49. Disbursing Agent .....                 | 5           |
| 1.50. Disclosure Statement .....             | 5           |
| 1.51. Disputed .....                         | 6           |
| 1.52. Distribution Record Date .....         | 6           |
| 1.53. Effective Date .....                   | 6           |
| 1.54. Entity .....                           | 6           |
| 1.55. Equity Committee.....                  | 6           |
| 1.56. Equity Interest .....                  | 6           |
| 1.57. Exit Facility.....                     | 6           |
| 1.58. Exit Facility Agent.....               | 6           |
| 1.59. Exit Facility Documents.....           | 6           |
| 1.60. Exit Financing .....                   | 7           |

**TABLE OF CONTENTS**  
**(continued)**

|   | <b>Page</b> |
|---|-------------|
| 1.61. Exit Lenders .....                        | 7           |
| 1.62. Fee Review Committee.....                 | 7           |
| 1.63. Final Order .....                         | 7           |
| 1.64. Flow-Through Claim .....                  | 7           |
| 1.65. General Unsecured Claim .....             | 7           |
| 1.66. Governmental Unit .....                   | 7           |
| 1.67. Guarantee Agreements.....                 | 7           |
| 1.68. Indenture Trustees .....                  | 7           |
| 1.69. Indenture Trustee Fee Claim .....         | 7           |
| 1.70. Indentures .....                          | 7           |
| 1.71. Intercompany Claim .....                  | 7           |
| 1.72. Lien .....                                | 8           |
| 1.73. LTIP.....                                 | 8           |
| 1.74. Mandatory Exchange Transaction .....      | 8           |
| 1.75. New Employee Incentive Plans.....         | 8           |
| 1.76. New PPC Common Stock .....                | 8           |
| 1.77. Note Claims.....                          | 8           |
| 1.78. Notes .....                               | 8           |
| 1.79. Ordinary Course Customer Obligation ..... | 8           |
| 1.80. Other Secured Claim .....                 | 8           |
| 1.81. Pilgrim’s Pride.....                      | 8           |
| 1.82. Plan .....                                | 8           |
| 1.83. Plan Sponsor.....                         | 8           |
| 1.84. Plan Supplement .....                     | 8           |
| 1.85. PPC .....                                 | 8           |
| 1.86. PPC Common Stock .....                    | 8           |
| 1.87. Prepetition BMO Credit Agreement .....    | 8           |
| 1.88. Prepetition CoBank Credit Agreement ..... | 9           |
| 1.89. Priority Non-Tax Claim .....              | 9           |
| 1.90. Priority Tax Claim .....                  | 9           |
| 1.91. Proof of Claim.....                       | 9           |

**TABLE OF CONTENTS**  
**(continued)**

|   | <b>Page</b> |
|---|-------------|
| 1.92. Reorganized Debtors .....   | 9           |
| 1.93. Reorganized Debtor Constituent Documents .....  | 9           |
| 1.94. Reorganized PPC .....   | 9           |
| 1.95. Reorganized To-Ricos .....  | 9           |
| 1.96. Reorganized To-Ricos Distribution .....   | 9           |
| 1.97. Restated Bylaws .....   | 9           |
| 1.98. Restated Certificate of Incorporation .....   | 9           |
| 1.99. Schedules .....   | 9           |
| 1.100. Secured Claim .....  | 10          |
| 1.101. Secured Tax Claim .....  | 10          |
| 1.102. Senior Notes .....   | 10          |
| 1.103. Senior Note Claims .....   | 10          |
| 1.104. Senior Subordinated Notes .....  | 10          |
| 1.105. Senior Subordinated Note Claims .....  | 10          |
| 1.106. Settling Unions .....  | 10          |
| 1.107. SPA .....  | 10          |
| 1.108. STIP .....   | 10          |
| 1.109. Stockholders Agreement .....   | 10          |
| 1.110. Subordinated Notes .....   | 10          |
| 1.111. Subordinated Note Claims .....   | 10          |
| 1.112. To-Ricos .....   | 10          |
| 1.113. To-Ricos Distribution .....  | 10          |
| 1.114. Unliquidated Claim .....   | 11          |
| 1.115. Voting Record Date .....   | 11          |
| B. Interpretation; Application of Definitions and Rules of Construction .....                       | 11          |
| ARTICLE II PROVISIONS FOR PAYMENT OF ADMINISTRATIVE EXPENSE CLAIMS<br>AND PRIORITY TAX CLAIMS ..... | 11          |
| 2.1. Administrative Expense Claims .....  | 11          |
| 2.2. Professional Compensation and Reimbursement Claims .....                                       | 12          |
| 2.3. Indenture Trustee Fee Claims .....   | 12          |
| 2.4. DIP Claims .....   | 12          |
| 2.5. Priority Tax Claims .....  | 13          |

**TABLE OF CONTENTS**  
**(continued)**

|   | <b>Page</b> |
|---|-------------|
| ARTICLE III CLASSIFICATION OF CLAIMS AND EQUITY INTERESTS.....  | 13          |
| ARTICLE IV TREATMENT OF CLAIMS AND EQUITY INTERESTS.....  | 14          |
| 4.1. Classes 1(a)–(g): Priority Non-Tax Claims against the Debtors .....  | 14          |
| 4.2. Classes 2(a)–(c): Bank of Montreal Secured Claims against PPC, To-<br>Ricos, and To-Ricos Distribution ..... | 14          |
| 4.3. Class 3: CoBank Secured Claims against PPC.....  | 15          |
| 4.4. Classes 4(a)–(g): Secured Tax Claims against the Debtors.....  | 15          |
| 4.5. Classes 5(a)–(g): Other Secured Claims against the Debtors.....  | 16          |
| 4.6. Classes 6(a)–(c): Note Claims against PPC .....  | 16          |
| 4.7. Classes 7(a)–(g): General Unsecured Claims against the Debtors .....   | 17          |
| 4.8. Class 8: Intercompany Claims.....  | 17          |
| 4.9. Classes 9(a)–(g): Flow-Through Claims against the Debtors .....  | 17          |
| 4.10. Class 10(a): Equity Interests in PPC.....   | 17          |
| 4.11. Classes 10(b)–(g): Equity Interests in the Debtors (Other than PPC).....                                    | 18          |
| ARTICLE V MEANS FOR IMPLEMENTATION.....   | 18          |
| 5.1. Operations Between the Confirmation Date and the Effective Date .....  | 18          |
| 5.2. Corporate Action .....   | 19          |
| 5.3. Continued Corporate Existence of the Debtors .....   | 19          |
| 5.4. Cancellation and Surrender of Existing Securities and Agreements .....                                       | 19          |
| 5.5. Restated Certificate of Incorporation and Restated Bylaws.....   | 20          |
| 5.6. Stock Purchase Agreement.....  | 20          |
| 5.7. Exit Financing .....   | 20          |
| 5.8. Issuance of New PPC Common Stock.....  | 21          |
| 5.9. Effectuating Documents and Further Transactions.....   | 21          |
| 5.10. Exemption from Securities Laws .....  | 21          |
| ARTICLE VI VOTING AND DISTRIBUTIONS.....  | 21          |
| 6.1. Voting of Equity Interests .....   | 21          |
| 6.2. Nonconsensual Confirmation .....   | 21          |
| 6.3. Distribution Record Date .....   | 22          |
| 6.4. Date of Distributions.....   | 22          |
| 6.5. Disbursing Agent.....  | 22          |
| 6.6. Rights and Powers of Disbursing Agent .....  | 22          |

**TABLE OF CONTENTS**  
**(continued)**

|  | <b>Page</b> |
|--|-------------|
| 6.7. Expenses of the Disbursing Agent.....   | 22          |
| 6.8. Delivery of Distributions .....   | 22          |
| 6.9. Unclaimed Distributions .....   | 23          |
| 6.10. Manner of Payment.....   | 23          |
| 6.11. Fractional Shares .....  | 23          |
| 6.12. Minimum Cash Distributions .....   | 24          |
| 6.13. Setoffs and Recoupment .....   | 24          |
| ARTICLE VII PROCEDURES FOR DISPUTED CLAIMS .....   | 24          |
| 7.1. Objections / Objection Deadline.....  | 24          |
| 7.2. No Payment Pending Allowance .....  | 24          |
| 7.3. Distributions After Allowance .....   | 24          |
| 7.4. Resolution of Disputed Claims.....  | 25          |
| 7.5. Estimation of Claims .....  | 25          |
| ARTICLE VIII TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES .....   | 25          |
| 8.1. Assumption or Rejection of Executory Contracts and Unexpired Leases .....   | 25          |
| 8.2. Approval of Assumption, Assumption and Assignment, or Rejection of<br>Executory Contracts and Unexpired Leases.....             | 26          |
| 8.3. Inclusiveness .....   | 26          |
| 8.4. Cure of Defaults .....  | 26          |
| 8.5. Bar Date for Filing Proofs of Claim Relating to Executory Contracts and<br>Unexpired Leases Rejected Pursuant to the Plan ..... | 27          |
| 8.6. Indemnification Obligations.....  | 27          |
| 8.7. Insurance Policies .....  | 28          |
| 8.8. Compensation and Benefit Programs.....  | 28          |
| 8.9. Other Contracts to be Assumed.....  | 28          |
| 8.10. Retiree Benefits .....   | 29          |
| ARTICLE IX CORPORATE GOVERNANCE AND MANAGEMENT OF THE<br>REORGANIZED DEBTORS.....  | 29          |
| 9.1. General.....  | 29          |
| 9.2. Initial Board of Directors .....  | 29          |
| 9.3. Officers. ....  | 30          |
| 9.4. New Employee Incentive Plans.....   | 30          |

**TABLE OF CONTENTS**  
**(continued)**

|   | <b>Page</b> |
|---|-------------|
| 9.5. Issuance of Non-Voting Securities .....                            | 30          |
| ARTICLE X EFFECT OF CONFIRMATION.....                                   | 30          |
| 10.1. Vesting of Assets .....   | 30          |
| 10.2. Discharge of Claims and Termination of Equity Interests .....     | 31          |
| 10.3. Discharge of Debtors .....  | 31          |
| 10.4. Injunction or Stay .....  | 31          |
| 10.5. Term of Injunctions or Stays .....                                | 32          |
| 10.6. Injunction Against Interference With Plan.....                    | 32          |
| 10.7. Exculpation .....   | 32          |
| 10.8. Releases by Holders of Claims and Equity Interests .....          | 32          |
| 10.9. Releases by Debtors and Reorganized Debtors .....                 | 33          |
| 10.10. Retention of Avoidance Actions.....                              | 33          |
| 10.11. Retention of Causes of Action/Reservation of Rights .....        | 33          |
| 10.12. Limitations on Exculpation and Releases of Representatives ..... | 34          |
| ARTICLE XI CONDITIONS PRECEDENT TO EFFECTIVE DATE.....                  | 34          |
| 11.1. Conditions Precedent to Effectiveness.....                        | 34          |
| 11.2. Waiver of Conditions .....  | 35          |
| 11.3. Effect of Failure of Conditions to Effective Date.....            | 35          |
| ARTICLE XII RETENTION OF JURISDICTION .....                             | 35          |
| ARTICLE XIII MISCELLANEOUS PROVISIONS .....                             | 37          |
| 13.1. Effectuating Documents and Further Transactions.....              | 37          |
| 13.2. [Intentionally Omitted.] .....                                    | 37          |
| 13.3. Corporate Action .....  | 37          |
| 13.4. Exemption from Transfer Taxes.....                                | 38          |
| 13.5. Expedited Tax Determination.....                                  | 38          |
| 13.6. Payment of Statutory Fees .....                                   | 38          |
| 13.7. Post-Confirmation Date Professional Fees and Expenses.....        | 38          |
| 13.8. Dissolution of Committees.....                                    | 39          |
| 13.9. Indenture Trustees as Claim Holders .....                         | 39          |
| 13.10. Plan Supplement.....   | 39          |
| 13.11. Substantial Consummation.....                                    | 39          |



**TABLE OF CONTENTS**  
**(continued)**

|  | <b>Page</b> |
|--|-------------|
| 13.12. Amendments or Modifications of the Plan ..... | 39          |
| 13.13. Revocation or Withdrawal of the Plan .....    | 40          |
| 13.14. Severability. ....                            | 40          |
| 13.15. Governing Law.....                            | 40          |
| 13.16. Binding Effect .....                          | 40          |
| 13.17. Exhibits/Schedules.....                       | 41          |
| 13.18. Notices .....                                 | 41          |
| 13.19. Time .....                                    | 41          |
| 13.20. Section Headings .....                        | 42          |
| 13.21. No Admissions .....                           | 42          |

## **EXHIBITS**

Exhibit A – Summary of Terms of Exit Facility

Exhibit B – Stock Purchase Agreement

Exhibit C – Restated Certificate of Incorporation and Restated Bylaws

Exhibit D – Summary of New Employee Incentive Plans

Exhibit D-1 – Short Term Management Incentive Plan

Exhibit D-2 – Long Term Incentive Plan

Exhibit E – List of Initial Directors for the Reorganized Debtors

## **SCHEDULES**

Schedule 1.34 – Compensation and Benefit Programs

Schedule 8.1 – Assumed Executory Contracts and Unexpired Leases

Schedule 8.7 – Insurance Policies to be Rejected

Schedule 8.9 – Certain Contracts to be Rejected

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION**

|   |  |  |
|---|--|--|
| <b>In re</b><br><br><b>PILGRIM'S PRIDE CORPORATION, <i>et al.</i>,</b><br><br><br><b>Debtors.</b> | §<br>§<br>§<br>§<br>§<br>§<br>§<br>§<br>§<br>§ | <b>Chapter 11</b><br><br><b>Case No. 08-45664 (DML)</b><br><br><br><br><br><br><br><br><b>JOINTLY ADMINISTERED</b> |
|---|--|--|

**DEBTORS' AMENDED JOINT PLAN OF REORGANIZATION  
UNDER CHAPTER 11 OF THE BANKRUPTCY CODE**

Pilgrim's Pride Corporation, PFS Distribution Company, PPC Transportation Company, To-Ricos, Ltd., To-Ricos Distribution, Ltd., Pilgrim's Pride Corporation of West Virginia, Inc., and PPC Marketing, Ltd. (collectively, the "Debtors") propose the following amended joint chapter 11 plan of reorganization, pursuant to section 1121(a) of title 11 of the United States Code:

**ARTICLE I**

**DEFINITIONS AND INTERPRETATION**

**A. Definitions.**

The following terms used herein shall have the respective meanings defined below (such meanings to be equally applicable to both the singular and plural):

1.1. **7 5/8% Indenture** means that certain indenture, dated as of January 24, 2007, between PPC and the 7 5/8% Indenture Trustee, pursuant to which the Senior Notes were issued, as such Indenture is or has been amended, modified or supplemented from time to time.

1.2. **7 5/8% Indenture Trustee** means HSBC Bank USA, National Association, in its capacity as the successor indenture trustee for the Senior Notes pursuant to the 7 5/8% Indenture, or any successor thereto.

1.3. **8 3/8% Indenture** means that certain indenture, dated as of January 24, 2007, between PPC and the 8 3/8% Indenture Trustee, pursuant to which the Subordinated Notes were issued, as such Indenture is or has been amended, modified or supplemented from time to time.

1.4. **8 3/8% Indenture Trustee** means The Bank of New York, in its capacity as the successor indenture trustee for the Subordinated Notes pursuant to the 8 3/8% Indenture, or any successor thereto.

1.5. **9 1/4% Indenture** means that certain indenture, dated as of November 21, 2003, between PPC and the 9 1/4% Indenture Trustee, pursuant to which the Senior Subordinated Notes were issued, as such Indenture is or has been amended, modified or supplemented from time to time.

1.6. **9 1/4% Indenture Trustee** means The Bank of New York, in its capacity as the indenture trustee for the Senior Subordinated Notes pursuant to the 9 1/4% Indenture, or any successor thereto.

1.7. **Administrative Expense Claims Bar Date** means the deadline for filing proofs of or requests for payment of Administrative Expense Claims, which shall be 60 days after the Effective Date, unless otherwise ordered by the Bankruptcy Court.

1.8. **Administrative Expense Claims Objection Deadline** means, as applicable, (a) the day that is the later of (i) the first Business Day that is at least 30 days after the Administrative Expense Claims Bar Date and (ii) as to Administrative Expense Claims filed after the Administrative Expense Claims Bar Date, the first Business Day that is at least 30 days after a Final Order is entered deeming the late filed claim to be treated as timely filed or (b) such later date as may be established by the Bankruptcy Court upon request of the Reorganized Debtors without further notice to parties-in-interest.

1.9. **Administrative Expense Claim** means any Claim constituting a cost or expense of administration of the Chapter 11 Cases allowed under sections 503(b) (including 503(b)(9)), 507(a)(2) and 507(b) of the Bankruptcy Code, including, without limitation, any actual and necessary costs and expenses of preserving the Debtors' estates, any actual and necessary costs and expenses of operating the Debtors' business, any actual and necessary costs and expenses of the administration and implementation of the Plan, any indebtedness or obligations incurred or assumed by the Debtors, as Debtors in Possession, during the Chapter 11 Cases, including, without limitation, for the acquisition or lease of property or an interest in property or the rendition of services, any allowances of compensation and reimbursement of expenses to the extent allowed by Final Order under section 330 or 503 of the Bankruptcy Code, and any fees or charges assessed against the Debtors' estates under section 1930 of chapter 123 of title 28 of the United States Code.

1.10. **ADR Procedures Order** means the Order Pursuant to Section 105(a) of the Bankruptcy Code, Bankruptcy Rule 9019 and Local Rule 9019.2(I) Establishing Alternative Dispute Resolution Procedures for Resolution of Personal Injury Claims and (II) Granting Related Relief, entered by the Bankruptcy Court on April 9, 2009 [Docket No. 1435].

1.11. **Affiliate** shall have the meaning ascribed in section 101 of the Bankruptcy Code.

1.12. **Allowed** means, (i) with respect to a Claim, that (a) such Claim has been listed by the Debtors in the Schedules, as such Schedules may be amended by the Debtors from time to time in accordance with Bankruptcy Rule 1009, as liquidated in amount and not disputed or contingent and no contrary Proof of Claim has been filed or objection interposed by the Debtors prior to the Effective Date, (b) a Proof of Claim with respect to such Claim has been timely filed and no objection thereto has been interposed within the time period set forth in Sections 2.1 or 7.1 of the Plan, as applicable, or such other applicable period of limitation fixed by the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court, or an objection thereto has been interposed and such Claim has been allowed in whole or in part by a Final Order, (c) such Claim has been expressly allowed by a Final Order or under the Plan, or (d) such Claim has been compromised, settled, or otherwise resolved pursuant to the authority granted to the Debtors and Reorganized Debtors pursuant to a Final Order or under Sections 7.1, 7.4, or 7.5 of the Plan; and (ii) with respect to an Equity Interest, that such an Equity Interest is reflected in the stock transfer ledger or similar register of the applicable Debtor on either the Voting Record Date or the Distribution Record Date, as applicable.

1.13. **Avoidance Actions** means any actions commenced, or that may be commenced before or after the Effective Date, pursuant to section 544, 545, 547, 548, 550, or 551 of the Bankruptcy Code.

1.14. **BMO** means Bank of Montreal, as agent for the lenders that are party, from time to time, to the Prepetition BMO Credit Agreement, and as agent for the DIP Lenders.

1.15. **BMO Guarantee Agreement** means the Pilgrim's Pride Corporation Second Amended and Restated Guaranty Agreement, dated as of February 8, 2007.

1.16. **BMO Secured Claim** means all Claims arising under the Prepetition BMO Credit Agreement and all Claims of BMO, as agent, and lenders thereunder arising under the DIP Financing Order, less all payments made subsequent to the Commencement Date in respect of such Claims under the DIP Financing Order.

1.17. **Bankruptcy Code** means title 11 of the United States Code, as amended from time to time, as applicable to the Chapter 11 Cases.

1.18. **Bankruptcy Court** means the United States Bankruptcy Court for the Northern District of Texas, Fort Worth Division, or such other court that exercises jurisdiction over the Chapter 11 Cases.

1.19. **Bankruptcy Rules** means the Federal Rules of Bankruptcy Procedure as promulgated by the United States Supreme Court under section 2075 of title 28 of the United States Code, as amended from time to time, and any Local Rules of the Bankruptcy Court, as applicable to the Chapter 11 Cases.

1.20. **Business Day** means any day other than a Saturday, a Sunday, or any other day on which banking institutions in New York, New York are required or authorized to close by law or executive order.

1.21. **Cash** means legal tender of the United States of America.

1.22. **Chapter 11 Cases** means the cases under chapter 11 of the Bankruptcy Code commenced by the Debtors on December 1, 2008 in the Bankruptcy Court and styled *In re Pilgrim's Pride Corporation, et al.*, Chapter 11 Case No. 08-45664 (DML) (Jointly Administered).

1.23. **Charging Lien** means any right of any Indenture Trustee to a Lien upon or other priority in payment with respect to distributions to be made to holders of Note Claims for payment of any Indenture Trustee Fees arising prior to the Effective Date.

1.24. **Chief Restructuring Officer** means William Snyder of CRG Partners Group LLC, in his capacity as chief restructuring officer for PPC in these Chapter 11 Cases, and CRG Partners Group LLC.

1.25. **Claim** shall have the meaning ascribed to such term in section 101 of the Bankruptcy Code.

1.26. **Claims Agent** means Kurtzman Carson Consultants LLC, in its capacity as the claims and noticing agent appointed in these Chapter 11 Cases.

1.27. **Class** means any group of Claims or Equity Interests classified by the Plan as set forth in Article III of the Plan.

1.28. **CoBank** means CoBank, ACB, as administrative, documentation and collateral agent for the benefit of present and future syndication parties, lead arranger and book manager under the Prepetition CoBank Credit Agreement.

1.29. **CoBank Guarantee Agreement** means the Amended and Restated Guaranty of Pilgrim Interests, Ltd. to the Lender Group and CoBank, ACB, as Agent, dated as of September 21, 2006.

1.30. **CoBank Secured Claim** means all Claims arising under the Prepetition CoBank Credit Agreement and all Claims of CoBank, as agent, and lenders thereunder arising under the DIP Financing Order, less all payments made subsequent to the Commencement Date in respect of such Claims under the DIP Financing Order.

1.31. **Collateral** means any property or interest in property of the Debtors' estates subject to a Lien, charge, or other encumbrance to secure the payment or performance of a Claim, which Lien, charge, or other encumbrance is not subject to avoidance under the Bankruptcy Code.

1.32. **Commencement Date** means December 1, 2008, the date on which the Debtors commenced the Chapter 11 Cases.

1.33. **Committees** means, collectively, the Creditors' Committee, the Equity Committee, and the Fee Review Committee.

1.34. **Compensation and Benefit Programs** means the following compensation and benefit programs: the Debtors' workers' compensation programs, the Debtors' 2005 Deferred Compensation Plan, Retirement Plan for Union Employees, Retirement Plan for El Dorado Union Employees, UFCW Pension Plan, the Debtors' 401k Plan, Severance Plan, programs related to paid time off, vacation, sick and personal days, holiday pay, 2009 Performance Bonus Plan, the Debtors' Medical, Dental and Vision Plans, the Debtors' Basic Life, AD&D, and Business Travel Accident Insurance, the Debtors' Voluntary Accident Insurance Policy, Voluntary Whole Life Insurance Policy, Voluntary Critical Illness Insurance Policy, the Debtors' Disability Benefits, Flexible Spending Programs, Key Employee Incentive Compensation Agreements, Performance Improvement Plan, Professional Drivers Incentive Program, Attendance Award Program, Incentive Education Program, Referral and Sign-On Awards, Service Awards, Tuition Reimbursement, Chaplain Program, Nurse Line Program, Special Beginnings Maternity Program, Car Allowance Program, and Relocation Program, the Gold Kist Director Emeritus Agreement for Medical Benefits, the Gold Kist Director Emeritus Life Benefits Agreement, the Gold Kist Deferred Compensation Agreements, the Gold Kist Supplemental Executive Retirement Plan, the Gold Kist Executive Savings Plan, the Gold Kist Directors Savings Plan, the Gold Kist Enhanced Defined Contribution Plan, and the Pilgrim's Pride Pension Plan for Legacy Gold Kist Employees, all as more fully described on Schedule 1.34 hereof.

1.35. **Compensation-Related Obligation** means a Claim of a present or former employee, officer or director of any of the Debtors in his or her capacity as such, (i) for current or future wages, salary, commissions, or benefits, or (ii) with respect to any Compensation and Benefit Program or any other employment or severance program that has not been rejected or otherwise terminated under this Plan or pursuant to another order of the Bankruptcy Court.

1.36. **Confirmation Date** means the date on which the Clerk of the Bankruptcy Court enters the Confirmation Order on the docket of the Bankruptcy Court with respect to the Chapter 11 Cases.

1.37. **Confirmation Hearing** means the hearing to be held by the Bankruptcy Court regarding confirmation of the Plan in accordance with section 1129 of the Bankruptcy Code, as such hearing may be adjourned or continued from time to time.

1.38. **Confirmation Order** means the order of the Bankruptcy Court confirming the Plan pursuant to section 1129 of the Bankruptcy Code.

1.39. **Contingent Claim** means any Claim, the liability for which attaches or is dependent upon the occurrence of, or is triggered by, an event, which event has not yet occurred as of the date on which such Claim is sought to be estimated or an objection to such Claim is filed, whether or not such event is within the actual or presumed contemplation of the holder of such Claim and whether or not a relationship between the holder of such Claim and the applicable Debtor now or hereafter exists or previously existed.

1.40. **Covered Professionals** has the meaning ascribed to such term in the Order Granting Motion for (I) Appointment of a Fee Review Committee and (II) Amendment of the Interim Compensation Order entered by the Bankruptcy Court on April 29, 2009 [Docket No. 1624].

1.41. **Creditors' Committee** means the statutory committee of unsecured creditors appointed pursuant to section 1102 of the Bankruptcy Code in the Chapter 11 Cases, as may be reconstituted from time to time.

1.42. **Debtors** means PPC, PFS Distribution Company, PPC Transportation Company, To-Ricos, To-Ricos Distribution, Pilgrim's Pride Corporation of West Virginia, Inc., and PPC Marketing, Ltd.

1.43. **Debtors in Possession** means the Debtors in their capacity as debtors in possession in the Chapter 11 Cases pursuant to sections 1101, 1107(a), and 1108 of the Bankruptcy Code.

1.44. **DIP Claims** means all Claims arising under the DIP Credit Agreement and the DIP Financing Order.

1.45. **DIP Credit Agreement** means that certain amended and restated postpetition credit agreement entered into as of December 1, 2008, by and among PPC, To-Ricos and To-Ricos Distribution, as guarantors, the DIP Lenders, and BMO, as agent for the DIP Lenders, as amended from time to time.

1.46. **DIP Financing Order** means the Final Order of the Bankruptcy Court entered on December 30, 2008 authorizing the Debtors to make borrowings under the DIP Credit Agreement [Docket No. 396].

1.47. **DIP Lenders** means the several lenders party from time to time to the DIP Credit Agreement.

1.48. **Disallowed Claim** means a Claim or a portion of a Claim that is disallowed by an order of the Bankruptcy Court or any other court of competent jurisdiction.

1.49. **Disbursing Agent** means such Entity as is designated pursuant to Section 6.5 of the Plan to be a disbursing agent.

1.50. **Disclosure Statement** means the disclosure statement with respect to the Plan filed with and approved by the Bankruptcy Court in accordance with section 1125 of the Bankruptcy Code, as such disclosure statement may be amended, modified or supplemented.



1.51. ***Disputed*** means, with respect to a Claim or Equity Interest, any such Claim (including any Administrative Expense Claim) or Equity Interest (a) to the extent neither Allowed nor disallowed under the Plan or a Final Order nor deemed Allowed under section 502, 503 or 1111 of the Bankruptcy Code, (b) which has been or hereafter is listed by a Debtor on its Schedules as unliquidated, disputed or contingent and which has not been resolved by written agreement of the parties or a Final Order, or (c) for which a Proof of Claim has been timely filed with the Bankruptcy Court or a written request for payment has been made and the Debtors or the Reorganized Debtors, as applicable, have interposed a timely objection and/or request for estimation in accordance with the Plan, which objection or request for estimation has not been withdrawn or determined by a Final Order. Prior to the earlier of the time an objection has been timely filed and the expiration of the time within which to object to such Claim set forth herein or otherwise established by order of the Bankruptcy Court, a Claim shall be considered a Disputed Claim to the extent that (i) the amount of the Claim specified in a Proof of Claim exceeds the amount of the Claim scheduled by the Debtor as not disputed, contingent or unliquidated, and/or (ii) to the extent that any such Claim is classified differently in the Proof of Claim than as set forth on the Debtors' schedules.

1.52. ***Distribution Record Date*** means, (a) with respect to holders of Claims (other than Note Claims), the date that is three (3) days after the Confirmation Date, and (b) with respect to Equity Interests, the Effective Date.

1.53. ***Effective Date*** means the Closing Date (as specified in section 2.03 of the SPA); provided, however, that the conditions to the effectiveness of the Plan specified in Article 11 of the Plan have been satisfied or waived.

1.54. ***Entity*** means a person, corporation, general partnership, limited partnership, limited liability company, limited liability partnership, association, joint stock company, joint venture, estate, trust, unincorporated organization, Governmental Unit or any subdivision thereof, including, without limitation, the Office of the United States Trustee.

1.55. ***Equity Committee*** means the statutory committee of equity security holders appointed pursuant to section 1102 of the Bankruptcy Code in the Chapter 11 Cases, as may be reconstituted from time to time.

1.56. ***Equity Interest*** means the interest of any holder of an equity security of any of the Debtors represented by any issued and outstanding shares of common stock or any other instrument evidencing an ownership interest in any of the Debtors, whether or not transferable, or any option, warrant, or right, contractual or otherwise, to acquire any such interest.

1.57. ***Exit Facility*** means the credit facility pursuant to the Exit Facility Documents, the material terms of which shall be substantially the same as those set forth on Exhibit A.

1.58. ***Exit Facility Agent*** means CoBank, as administrative agent for the Exit Lenders under the Exit Facility.

1.59. ***Exit Facility Documents*** means the agreements, documents and instruments to be dated on or about the Effective Date and to be entered into among Reorganized PPC, Reorganized To-Ricos and Reorganized To-Ricos Distribution, as borrowers, the Exit Facility Agent and the Exit Lenders, in respect of a credit facility for an amount not less than \$1,650,000,000, and all related documents, instruments and agreements entered into or executed in connection therewith, the proceeds of which shall be available for use by the Reorganized Debtors to, among other things, make distributions under the Plan to the holders of Allowed Claims against the Debtors and to satisfy general working capital requirements of the Reorganized Debtors on and after the Effective Date.



1.60. **Exit Financing** means any financing arrangement that the Reorganized Debtors enter into on or about the Effective Date in connection with the consummation of the Plan, including the Exit Facility, and any amendments, modifications or supplements thereto.

1.61. **Exit Lenders** means the lenders under the Exit Facility.

1.62. **Fee Review Committee** means the committee appointed pursuant to sections 105(a) and 331 of the Bankruptcy Code, Rule 2016(a) of the Federal Rules of Bankruptcy Procedure, and the Guidelines for Compensation and Expense Reimbursement of Professionals as incorporated in General Order 2006-02 to review the fees of Covered Professionals retained by the Debtors in connection with the Chapter 11 Cases.

1.63. **Final Order** means an order or judgment of the Bankruptcy Court or any other court of competent jurisdiction that has not been reversed, vacated, or stayed, and as to which (i) the time to appeal, petition for *certiorari*, or move for a new trial, reargument, or rehearing has expired, and as to which no appeal, petition for *certiorari*, or other proceedings for a new trial, reargument, or rehearing shall then be pending, or (ii) if an appeal, writ of *certiorari*, new trial, reargument, or rehearing thereof has been sought, such order or judgment shall have been affirmed by the highest court to which such order was appealed, or *certiorari* shall have been denied, or a new trial, reargument, or rehearing shall have been denied or resulted in no modification of such order, and the time to take any further appeal, petition for *certiorari* or move for a new trial, reargument, or rehearing shall have expired; provided, however, that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be filed relating to such order shall not cause such order to not be a Final Order.

1.64. **Flow-Through Claim** means an Allowed Claim arising from (a) an Ordinary Course Customer Obligation, or (b) a Compensation-Related Obligation; provided, however, that all defenses to any Flow-Through Claim shall be fully preserved and that nothing herein is an admission that any person has a Flow-Through Claim.

1.65. **General Unsecured Claim** means any Claim against any of the Debtors other than a Priority Non-Tax Claim, a BMO Secured Claim, a CoBank Secured Claim, a Secured Tax Claim, an Other Secured Claim, a Note Claim, an Intercompany Claim, or an Equity Interest.

1.66. **Governmental Unit** has the meaning ascribed to such term in section 101(27) of the Bankruptcy Code.

1.67. **Guarantee Agreements** means collectively, the BMO Guarantee Agreement and the CoBank Guarantee Agreement.

1.68. **Indenture Trustees** means the 7 5/8% Indenture Trustee, the 8 3/8% Indenture Trustee, and the 9 1/4% Indenture Trustee, collectively.

1.69. **Indenture Trustee Fee Claim** means any Claim of any Indenture Trustee for the reimbursement of its reasonable accrued and unpaid fees and expenses under the applicable Indenture.

1.70. **Indentures** means the 7 5/8% Indenture, the 8 3/8% Indenture, and the 9 1/4% Indenture, collectively.

1.71. **Intercompany Claim** means any Claim against any Debtor held by another Debtor.

1.72. **Lien** means any charge against or interest in property to secure payment of a debt or performance of an obligation.

1.73. **LTIP** means the Long Term Incentive Plan, substantially in the form attached hereto as Exhibit D-2 and having the material terms set forth on Exhibit D.

1.74. **Mandatory Exchange Transaction** means that right of the Plan Sponsor to convert New PPC Common Stock into equity interests in the Plan Sponsor, as set forth in the Restated Certificate of Incorporation.

1.75. **New Employee Incentive Plans** means the STIP and the LTIP.

1.76. **New PPC Common Stock** means the shares of common stock to be issued by Reorganized PPC, having the material terms set forth in the Restated Certificate of Incorporation.

1.77. **Note Claims** means all Senior Note Claims, Subordinated Note Claims and Senior Subordinated Note Claims, collectively.

1.78. **Notes** means the Senior Notes, Subordinated Notes, and the Senior Subordinated Notes.

1.79. **Ordinary Course Customer Obligation** means any obligation of any Debtor or Debtors to any customer of such Debtor or Debtors incurred in the ordinary course of business conducted between such Debtor or Debtors and such customer.

1.80. **Other Secured Claim** means any Secured Claim other than a Secured Tax Claim, a BMO Secured Claim, or a CoBank Secured Claim.

1.81. **Pilgrim's Pride** means, collectively, PPC and its debtor and non-debtor affiliates.

1.82. **Plan** means this Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code, including the Plan Documents, the Plan Supplement, and the exhibits and schedules hereto and thereto, as the same may be amended or modified from time to time in accordance with the provisions of the Bankruptcy Code and the terms of the Plan.

1.83. **Plan Sponsor** means JBS USA Holdings, Inc.

1.84. **Plan Supplement** means the document (as may be amended, modified or supplemented) containing the forms of documents specified in Section 13.10 of the Plan.

1.85. **PPC** means Pilgrim's Pride Corporation, a Delaware corporation.

1.86. **PPC Common Stock** means the shares of common stock of PPC issued and outstanding immediately prior to the Effective Date, excluding any shares of restricted stock of PPC as to which any conditions to vesting shall not have lapsed or shall not have been satisfied as of the Effective Date.

1.87. **Prepetition BMO Credit Agreement** means that certain Fourth Amended and Restated Credit Agreement, dated as of February 8, 2007, among PPC, BMO, as agent, the lenders from time to time party thereto, SunTrust Bank, as syndication agent and U.S. Bank National Association and Wells Fargo Bank, National Association, as co-documentation agents, as may have been amended from time to time.

1.88. ***Prepetition CoBank Credit Agreement*** means that 2006 Amended and Restated Credit Agreement (Convertible Revolving Loan and Term Loan), dated as of September 21, 2006, by and among PPC, CoBank, as administrative, documentation and collateral agent for the benefit of present and future syndication parties, lead arranger and book manager, Agriland, FCS, as co-syndication agent and a syndication party, the other agents and syndication parties signatory thereto, as may have been amended from time to time.

1.89. ***Priority Non-Tax Claim*** means a Claim entitled to priority in payment as specified in section 507(a) of the Bankruptcy Code (other than a Priority Tax Claim or an Administrative Expense Claim).

1.90. ***Priority Tax Claim*** means any Claim of a Governmental Unit of the kind entitled to priority in payment as specified in sections 502(i) and 507(a)(8) of the Bankruptcy Code.

1.91. ***Proof of Claim*** means any proof of Claim or request for payment of an Administrative Expense Claim filed by any holder of a Claim in these Bankruptcy Cases.

1.92. ***Reorganized Debtors*** means each of the Debtors, as reorganized as of the Effective Date in accordance with the Plan, and their successors.

1.93. ***Reorganized Debtor Constituent Documents*** means the bylaws, certificates and/or articles of incorporation, partnership agreements, limited liability company membership agreements, and other organizational documents as applicable, for each of the Reorganized Debtors, as amended and restated as of the Effective Date, among other things, to (a) prohibit the issuance of non-voting equity securities by such Debtor as required by section 1123(a)(6) of the Bankruptcy Code, and (b) otherwise give effect to the provisions of the Plan including, without limitation, the Restated Certificate of Incorporation and Restated Bylaws.

1.94. ***Reorganized PPC*** means PPC, as reorganized as of the Effective Date in accordance with the Plan.

1.95. ***Reorganized To-Ricos*** means To-Ricos, Ltd., as reorganized as of the Effective Date in accordance with the Plan.

1.96. ***Reorganized To-Ricos Distribution*** means To-Ricos Distribution, Ltd., as reorganized as of the Effective Date in accordance with the Plan.

1.97. ***Restated Bylaws*** means the amended and restated bylaws to be adopted by PPC, which will be effective upon the Effective Date, substantially in the form of Exhibit C, as may be amended prior to the Confirmation Date with the consent of the Plan Sponsor.

1.98. ***Restated Certificate of Incorporation*** means the amended and restated certificate of incorporation to be adopted by PPC and filed with the Secretary of State of Delaware on the Effective Date or as soon as practicable thereafter, substantially in the form of Exhibit C, as may be amended prior to the Confirmation Date with the consent of the Plan Sponsor.

1.99. ***Schedules*** means the schedules of assets and liabilities and the statements of financial affairs filed by the Debtors pursuant to section 521 of the Bankruptcy Code, Bankruptcy Rule 1007, and the Official Bankruptcy Forms of the Bankruptcy Rules, as such schedules and statements may be supplemented or amended on or prior to the Effective Date.

1.100. **Secured Claim** means any Claim (other than a DIP Claim) that is secured by a Lien on Collateral, to the extent such lien is valid, perfected, and enforceable under applicable law and is not subject to avoidance under the Bankruptcy Code or applicable non-bankruptcy law, and only to the extent of the value of such Collateral, as determined in accordance with section 506(a) of the Bankruptcy Code, or, in the event that such Claim is subject to a permissible setoff under section 553 of the Bankruptcy Code, to the extent of such permissible setoff; provided that to the extent that the value of such interest is less than the amount of the Claim which has the benefit of such security, the unsecured portion of such Claim shall be treated as an Unsecured Claim unless, in any such case, the class of which such Claim is a part makes a valid and timely election in accordance with section 1111(b) of the Bankruptcy Code to have such Claim treated as a Secured Claim to the extent allowed.

1.101. **Secured Tax Claim** means any Secured Claim that, absent its secured status, would be entitled to priority in right of payment under section 507(a)(8) of the Bankruptcy Code (determined irrespective of any time limitations therein).

1.102. **Senior Notes** means those certain 7 5/8% senior notes due May 1, 2015, issued on January 24, 2007 by PPC in the aggregate amount of \$400 million.

1.103. **Senior Note Claims** means all Claims arising under any of the Senior Notes.

1.104. **Senior Subordinated Notes** means those certain 9 1/4% senior subordinated notes due November 15, 2013, issued on November 21, 2003 by PPC in the aggregate amount of \$6.996 million.

1.105. **Senior Subordinated Note Claims** means all Claims arising under any of the Senior Subordinated Notes.

1.106. **Settling Unions** means collectively, the United Food and Commercial Workers International Union and its various local affiliates, including the Retail, Wholesale, and Department Store Union, the Bakery, Confectionery, Tobacco Workers and Grain Millers International Union, and the United Steel Workers of America.

1.107. **SPA** means the Stock Purchase Agreement between the Plan Sponsor and PPC, as the same may be amended, modified, or supplemented from time to time, attached hereto as Exhibit B, and all documents executed in connection therewith pursuant to which the Plan Sponsor shall purchase New PPC Common Stock in the amount set forth in the SPA.

1.108. **STIP** means the Short Term Management Incentive Plan, substantially in the form attached hereto as Exhibit D-1 having the material terms set forth on Exhibit D.

1.109. **Stockholders Agreement** means the Stockholders Agreement between Reorganized PPC and the Plan Sponsor to be entered into on the Effective Date or as soon as practicable thereafter, in the form of Exhibit A that is attached to the SPA.

1.110. **Subordinated Notes** means those certain 8 3/8% senior subordinated notes due May 1, 2017, issued on January 24, 2007 by PPC in the aggregate amount of \$250 million.

1.111. **Subordinated Note Claims** means all Claims arising under any of the Subordinated Notes.

1.112. **To-Ricos** means To-Ricos, Ltd., a Bermuda company.

1.113. **To-Ricos Distribution** means To-Ricos Distribution, Ltd., a Bermuda company.

1.114. ***Unliquidated Claim*** means any Claim, the amount of liability for which has not been fixed, whether pursuant to agreement, applicable law, or otherwise, as of the date on which such Claim is sought to be estimated or an objection is filed.

1.115. ***Voting Record Date*** means the record date or dates(s) for voting on the Plan that is designated in the order of the Bankruptcy Court approving the Disclosure Statement.

**B. Interpretation; Application of Definitions and Rules of Construction.**

Unless otherwise specified, all section or exhibit references in the Plan are to the respective section in, or exhibit to, the Plan, as the same may be amended, waived, or modified from time to time. The words “herein,” “hereof,” “hereto,” “hereunder,” and other words of similar import refer to the Plan as a whole and not to any particular section, subsection, or clause contained therein. Whenever the words “include,” “includes” or “including” are used in the Plan, they are deemed to be followed by the words “without limitation.” A term used herein that is not defined herein shall have the meaning ascribed to that term in the Bankruptcy Code. The rules of construction contained in section 102 of the Bankruptcy Code shall apply to the Plan. Words denoting the singular number shall include the plural number and vice versa, as appropriate, and words denoting one gender shall include the other gender and the neuter and words denoting the neuter shall include any applicable gender. In the event that a particular term of the Plan (including any exhibits or schedules hereto) conflicts with a particular term of the definitive documentation required to be implemented pursuant to the terms of the Plan or any settlement or other agreement contemplated hereunder, the definitive documentation shall control and shall be binding on the parties thereto. The headings in the Plan are for convenience of reference only and shall not limit or otherwise affect the provisions of the Plan.

**ARTICLE II**

**PROVISIONS FOR PAYMENT OF ADMINISTRATIVE  
EXPENSE CLAIMS AND PRIORITY TAX CLAIMS**

Administrative Expense Claims and Priority Tax Claims are not designated as classes of Claims for purposes of the Plan or for purposes of sections 1123, 1124, 1125, 1126 or 1129 of the Bankruptcy Code, and are not entitled to vote on the Plan.

**2.1. *Administrative Expense Claims.***

(a) **Time for Filing Administrative Expense Claims.** The holder of an Administrative Expense Claim, other than (i) a claim covered by sections 2.2, 2.3, or 2.4 hereof, (ii) a liability incurred and payable in the ordinary course of business by a Debtor (and not past due), (iii) an Administrative Expense Claim that has been Allowed on or before the Effective Date, or (iv) a claim subject to section 503(b)(9) of the Bankruptcy Code, must file with the Bankruptcy Court and serve on the Debtors, the Reorganized Debtors, and the Office of the United States Trustee, notice of such Administrative Expense Claim on or prior to the Administrative Expense Claim Bar Date. Such notice must include at a minimum (A) the name of the Debtor(s) which are purported to be liable for the Claim, (B) the name of the holder of the Claim, (C) the amount of the Claim, and (D) the basis of the Claim. **Failure to file and serve such notice timely and properly shall result in the Administrative Expense Claim being forever barred and discharged.**

(b) **Allowance of Administrative Expense Claims.** An Administrative Expense Claim with respect to which notice has been properly filed and served pursuant to Section 2.1(a) shall become an Allowed Administrative Expense Claim if no objection is filed on or prior to the Administrative Expense Claims Objection Deadline. If an objection is timely filed, the Administrative



Expense Claim shall become an Allowed Administrative Expense Claim only to the extent allowed by Final Order or settled, compromised, otherwise resolved by the Debtors or Reorganized Debtors pursuant to section 7.4 of the Plan.

(c) Payment of Allowed Administrative Expense Claims. Except to the extent that a holder of an Allowed Administrative Expense Claim (other than a claim covered by sections 2.2, 2.3, or 2.4 hereof) agrees to a less favorable treatment, each Allowed Administrative Expense Claim (including any Allowed Claim asserted under section 503(b)(9) of the Bankruptcy Code) shall be paid by the Reorganized Debtors in full, in Cash, in an amount equal to the unpaid portion of such Allowed Administrative Expense Claim on or as soon as reasonably practicable following the later to occur of (a) the Effective Date and (b) the date on which such Administrative Expense Claim shall become an Allowed Claim; *provided, however*, that Allowed Administrative Expense Claims (other than a claim covered by sections 2.2, 2.3, or 2.4 hereof) against any of the Debtors representing liabilities incurred in the ordinary course of business by any of the Debtors, as Debtors in Possession, shall be paid by the Debtors in the ordinary course of business, consistent with past practice and in accordance with the terms and subject to the conditions of any agreements governing, instruments evidencing, or other documents relating to such transactions; *provided further, however*, that upon payment of the Allowed BMO Secured Claims and the Allowed CoBank Secured Claims (both as defined below), as applicable, any Allowed Administrative Expense Claims of BMO and CoBank, as agents for the lenders that are party from time to time to the Prepetition BMO Credit Agreement and the Prepetition CoBank Credit Agreement, respectively, shall be deemed satisfied in full.

## **2.2. *Professional Compensation and Reimbursement Claims.***

The Bankruptcy Court shall fix in the Confirmation Order a date for the filing of, and a date to hear and determine, all applications for final allowance of compensation for services rendered or reimbursement of expenses incurred through and including the Confirmation Date under sections 328 and 330 of the Bankruptcy Code or applications for allowance of Administrative Expense Claims arising under section 503(b)(2), 503(b)(3), 503(b)(4), or 503(b)(5) of the Bankruptcy Code. Unless otherwise agreed to by the claimant and the Debtors or the Reorganized Debtors, as applicable, the Allowed Administrative Expense Claims arising under section 330, 331, 503(b)(2), 503(b)(3), 503(b)(4), and 503(b)(5) of the Bankruptcy Code shall be paid in full, in Cash, as soon as practicable following the later to occur of (a) the Effective Date and (b) the date upon which any such Administrative Expense Claim becomes an Allowed Administrative Expense Claim. The Debtors and the Reorganized Debtors, as applicable, are authorized to pay compensation for services rendered or reimbursement of expenses incurred after the Confirmation Date and until the Effective Date in the ordinary course of business and without the need for Bankruptcy Court or Fee Review Committee approval.

## **2.3. *Indenture Trustee Fee Claims.***

Notwithstanding any provision contained in this Plan to the contrary, unless otherwise agreed to by an Indenture Trustee and Reorganized PPC, all Indenture Trustee Fee Claims and fees for services related to distributions pursuant to the Plan shall be paid in Cash on the Effective Date by Reorganized PPC as Administrative Expense Claims, without the need for application to, or approval of, any court. The Indenture Trustee's Charging Lien will be discharged solely upon payment in full of the Indenture Trustee Fee Claims. Nothing herein shall be deemed to impair, waive or discharge the Charging Lien for any fees and expenses not paid by Reorganized PPC.

## **2.4. *DIP Claims.***

Except to the extent that a DIP Lender agrees to a different treatment, the DIP Claims shall be paid in full, in Cash, on the Effective Date and all fees and expenses of attorneys and financial

advisors for BMO, as agent for the DIP Lenders, shall be paid in accordance with the DIP Financing Order and DIP Credit Agreement on the later of (i) the Effective Date and (ii) presentment of the relevant invoices to the Debtors or the Reorganized Debtors, as applicable.

## 2.5. *Priority Tax Claims.*

Except to the extent that a holder of an Allowed Priority Tax Claim has been paid by the Debtors prior to the Effective Date or agrees to a less favorable treatment, each holder of an Allowed Priority Tax Claim shall receive, (A) at the sole option of the Reorganized Debtors, (a) Cash in an amount equal to such Allowed Priority Tax Claim, including any interest on such Allowed Priority Tax Claim required to be paid pursuant to the Bankruptcy Code, on or as soon as reasonably practicable following the later to occur of (i) the Effective Date and (ii) the date on which such Priority Tax Claim shall become an Allowed Priority Tax Claim, (b) equal semi-annual Cash payments with interest at the applicable non-bankruptcy rate in an aggregate amount equal to such Allowed Priority Tax Claim, including any interest on such Allowed Priority Tax Claim required to be paid pursuant to the Bankruptcy Code, with payments commencing upon the later of the Effective Date and the date such Priority Tax Claim becomes an Allowed Priority Tax Claim, or as soon thereafter as is practicable and continuing over a period ending no later than five (5) years after the Commencement Date, or (c) such other treatment as shall be determined by the Bankruptcy Court to provide the holder of such Allowed Priority Tax Claim deferred Cash payments having a value, as of the Effective Date, equal to such Allowed Priority Tax Claim, or (B) such other distribution as necessary to satisfy the requirements of section 1129(a)(9)(C) of the Bankruptcy Code.

## ARTICLE III

### CLASSIFICATION OF CLAIMS AND EQUITY INTERESTS

The following table designates the Classes of Claims against and Equity Interests in the Debtors and specifies which of those Classes are (i) impaired or unimpaired by the Plan and (ii) entitled to vote to accept or reject the Plan in accordance with section 1126 of the Bankruptcy Code or either deemed to accept or deemed to reject the Plan.

| Class                    | Designation  | Status     | Entitled to Vote?     |
|--------------------------|--|------------|-----------------------|
| <b>Classes 1 (a)-(g)</b> | Priority Non-Tax Claims against PPC, PFS Distribution Company, PPC Transportation Company, To-Ricos, To-Ricos Distribution, Pilgrim's Pride Corporation of West Virginia, Inc., and PPC Marketing, Ltd., as applicable | Unimpaired | No (deemed to accept) |
| <b>Classes 2 (a)-(c)</b> | BMO Secured Claims against PPC, To-Ricos and To-Ricos Distribution, as applicable  | Unimpaired | No (deemed to accept) |
| <b>Class 3</b>           | CoBank Secured Claims against PPC  | Unimpaired | No (deemed to accept) |
| <b>Classes 4(a)-(g)</b>  | Secured Tax Claims against PPC, PFS Distribution Company, PPC Transportation Company, To-Ricos, To-Ricos Distribution, Pilgrim's Pride Corporation of West Virginia, Inc., and PPC Marketing, Ltd., as applicable      | Unimpaired | No (deemed to accept) |
| <b>Classes 5(a)-(g)</b>  | Other Secured Claims against PPC, PFS Distribution Company, PPC Transportation Company, To-Ricos, To-Ricos Distribution, Pilgrim's Pride Corporation of West Virginia, Inc., and PPC Marketing, Ltd., as applicable    | Unimpaired | No (deemed to accept) |

|                         |   |            |                       |
|-------------------------|---|------------|-----------------------|
| <b>Classes 6(a)-(c)</b> | Note Claims against PPC   | Unimpaired | No (deemed to accept) |
| <b>Classes 7(a)-(g)</b> | General Unsecured Claims against PPC, PFS Distribution Company, PPC Transportation Company, To-Ricos, To-Ricos Distribution, Pilgrim's Pride Corporation of West Virginia, Inc., and PPC Marketing, Ltd., as applicable | Unimpaired | No (deemed to accept) |
| <b>Class 8</b>          | Intercompany Claims   | Unimpaired | No (deemed to accept) |
| <b>Classes 9(a)-(g)</b> | Flow-Through Claims   | Unimpaired | No (deemed to accept) |
| <b>Classes 10(a)</b>    | Equity Interests in PPC   | Impaired   | Yes                   |
| <b>Class 10(b)-(g)</b>  | Equity Interests in PFS Distribution Company, PPC Transportation Company, To-Ricos, To-Ricos Distribution, Pilgrim's Pride Corporation of West Virginia, Inc., and PPC Marketing, Ltd., as applicable                   | Unimpaired | No (deemed to accept) |

## ARTICLE IV

### TREATMENT OF CLAIMS AND EQUITY INTERESTS

#### 4.1. *Classes 1(a)–(g): Priority Non-Tax Claims against the Debtors.*

(a) Impairment and Voting. Classes 1(a) through (g) are unimpaired by the Plan. Each holder of an Allowed Priority Non-Tax Claim is conclusively presumed to have accepted the Plan and is not entitled to vote to accept or reject the Plan.

(b) Distributions. Except to the extent that a holder of an Allowed Priority Non-Tax Claim agrees to a less favorable treatment, each such holder shall receive, in full satisfaction of such Claim, Cash in an amount equal to such Claim, on or as soon as reasonably practicable after the later of (i) the Effective Date, and (ii) the date such Claim becomes Allowed.

#### 4.2. *Classes 2(a)–(c): Bank of Montreal Secured Claims against PPC, To-Ricos, and To-Ricos Distribution.*

(a) Allowed Claim. On the Effective Date, BMO, in its capacity as agent for the lenders that are party, from time to time, to the Prepetition BMO Credit Agreement, shall be deemed to have an allowed BMO Secured Claim in an amount to be agreed upon by the Debtors and BMO prior to the Confirmation Hearing, which will be fully secured and not subject to any avoidance, recharacterization, disallowance, subordination, recoupment, setoff, defense or counterclaim (the "Allowed BMO Secured Claim").

(b) Impairment and Voting. Classes 2(a) through 2(c) are unimpaired by the Plan. Each holder of an Allowed BMO Secured Claim is conclusively presumed to have accepted the Plan and is not entitled to vote to accept or reject the Plan.

(c) Distributions. Except to the extent that a holder of an Allowed BMO Secured Claim agrees to a less favorable treatment, each such holder shall receive, in full satisfaction of such Claim, Cash in an amount equal to such Claim on the Effective Date. Letters of credit issued by BMO and outstanding as of the Effective Date shall be cancelled and returned to the issuing bank with notice to BMO, or cash in an amount of 105% of the face amount of the letter of credit shall be placed with the letter of credit bank, or replacement letters of credit shall be issued under the Exit Facility. Upon satisfaction of the Allowed BMO Secured Claims as set forth herein, the obligations set forth in the BMO Guarantee Agreement shall be cancelled.



**4.3. *Class 3: CoBank Secured Claims against PPC.***

(a) Allowed Claim. On the Effective Date, CoBank, in its capacity as agent for the lenders that are party, from time to time, to the Prepetition CoBank Credit Agreement, shall be deemed to have an allowed CoBank Secured Claim in an amount to be agreed upon by the Debtors and CoBank prior to the Confirmation Hearing, which will be fully secured and not subject to any avoidance, recharacterization, disallowance, subordination, recoupment, setoff, defense or counterclaim (the “Allowed CoBank Secured Claim”).

(b) Impairment and Voting. Class 3 is unimpaired by the Plan. Each holder of an Allowed CoBank Secured Claim is conclusively presumed to have accepted the Plan and is not entitled to vote to accept or reject the Plan.

(c) Distributions. Except to the extent that a holder of an Allowed CoBank Secured Claim agrees to a less favorable treatment, each Allowed CoBank Secured Claim shall be, at the sole option of the Reorganized PPC, (i) satisfied in full in Cash in an amount equal to such Allowed CoBank Secured Claim, on or as soon as reasonably practicable after the later of (a) the Effective Date, and (b) the date such Claim becomes Allowed, (ii) reinstated pursuant to amended terms and conditions to be negotiated, or (iii) reinstated and rendered unimpaired in accordance with section 1124 of the Bankruptcy Code, notwithstanding any contractual provision or applicable nonbankruptcy law that entitles the holder of an Allowed CoBank Secured Claim to demand or receive payment of such Claim prior to its stated maturity from and after the occurrence of default. To the extent that any holder of an Allowed CoBank Secured Claim is entitled to accrued and unpaid postpetition interest on account of such Claim, such holder will receive, at the sole option of the Reorganized PPC, either (i) Cash in an amount equal to such accrued and unpaid postpetition default interest, or (ii) satisfaction of such accrued and unpaid postpetition interest on such other terms as may be negotiated between PPC or Reorganized PPC and CoBank.

**4.4. *Classes 4(a)–(g): Secured Tax Claims against the Debtors.***

(a) Impairment and Voting. Classes 4(a) through (g) are unimpaired by the Plan. Each holder of an Allowed Secured Tax Claim is conclusively presumed to have accepted the Plan and is not entitled to vote to accept or reject the Plan.

(b) Distributions. Except to the extent that a holder of an Allowed Secured Tax Claim agrees to a less favorable treatment, each such holder shall receive, in full satisfaction of such Claim, (A) at the sole option of the Reorganized Debtors, either (a) Cash in an amount equal to such Allowed Secured Tax Claim, including any interest on such Allowed Secured Tax Claim required to be paid pursuant to the Bankruptcy Code, on or as soon as reasonably practicable after the later of (i) the Effective Date, and (ii) the date such Secured Tax Claim becomes an Allowed Secured Tax Claim, (b) equal semi-annual Cash payments with interests at the applicable non-bankruptcy rate in an aggregate amount equal to such Allowed Secured Tax Claim, including any interest on such Allowed Secured Tax Claim required to be paid pursuant to the Bankruptcy Code, with payments commencing upon the later of the Effective Date and the date such Secured Tax Claim becomes an Allowed Secured Tax Claim, or as soon thereafter as is practicable and continuing over a period ending no later than five (5) years after the Commencement Date, or (c) such other treatment as shall be determined by the Bankruptcy Court to provide the holder of such Allowed Secured Tax Claim deferred Cash payments having a value, as of the Effective Date, equal to such Allowed Secured Tax Claim, or (B) such other distribution as necessary to satisfy the requirements of section 1124 of the Bankruptcy Code.

4.5. *Classes 5(a)–(g): Other Secured Claims against the Debtors.*

(a) Impairment and Voting. Classes 5(a) through (g) are unimpaired by the Plan. Each holder of an Allowed Other Secured Claim is conclusively presumed to have accepted the Plan and is not entitled to vote to accept or reject the Plan.

(b) Distributions. Except to the extent that a holder of an Allowed Other Secured Claim agrees to a less favorable treatment, at the sole option of the relevant Reorganized Debtor, (i) each Allowed Other Secured Claim shall be reinstated and rendered unimpaired in accordance with section 1124 of the Bankruptcy Code, notwithstanding any contractual provision or applicable nonbankruptcy law that entitles the holder of an Allowed Other Secured Claim to demand or receive payment of such Claim prior to the stated maturity of such Claim from and after the occurrence of a default, or (ii) each holder of an Allowed Other Secured Claim shall receive, in full satisfaction of such Allowed Other Secured Claim, either (a) Cash in an amount equal to such Allowed Other Secured Claim, including any interest on such Allowed Other Secured Claim required to be paid pursuant to the Bankruptcy Code, (b) the proceeds of the sale or disposition of the Collateral securing such Allowed Other Secured Claim to the extent of the value of the holder's interest in such Collateral, (c) the Collateral securing such Allowed Other Secured Claim and any interest on such Allowed Other Secured Claim required to be paid pursuant to the Bankruptcy Code, or (d) such other distribution as necessary to satisfy the requirements of section 1124 of the Bankruptcy Code. In the event the Debtors (in consultation with the Plan Sponsor) or Reorganized Debtors elect to treat a Claim under clause (a) or (b) of this Section, the Liens securing such Other Secured Claim shall be deemed released without the need for any further action by the Debtors or the Reorganized Debtors.

4.6. *Classes 6(a)–(c): Note Claims against PPC.*

(a) Impairment and Voting. Classes 6(a) through (c) are unimpaired by the Plan. Each holder of an Allowed Note Claim is conclusively presumed to have accepted the Plan and is not entitled to vote to accept or reject the Plan.

(b) Distributions.

(i) Unless the Cash-Out Election is made with respect to a Note pursuant to section 4.6(b)(ii) hereof, each Note shall be reinstated and each Allowed Note Claim with respect thereto shall be rendered unimpaired in accordance with section 1124 of the Bankruptcy Code, notwithstanding any contractual provision or applicable nonbankruptcy law that entitles the holder of such Allowed Note Claim to demand or receive payment of such Claim prior to the stated maturity of the Notes from and after the occurrence of a default (the "Note Reinstatement").

(ii) Instead of having its Note(s) reinstated pursuant to section 4.6(b)(i) hereof, a holder of an Allowed Note Claim may elect to receive Cash on account of its Allowed Note Claim in an amount equal to the sum of (1) the principal amount of its Notes, (2) the unpaid prepetition interest with interest accruing thereon at the default, contract rate as provided under the applicable Note through the Effective Date and (3) the accrued unpaid postpetition interest calculated at the non-default, contract rate as provided under the applicable Note through the Effective Date (the "Cash-Out Election").

(iii) Any holder of an Allowed Note Claim that makes the Cash-Out Election shall be deemed to have waived any and all subordination rights under the applicable Indenture or applicable law.

4.7. ***Classes 7(a)–(g): General Unsecured Claims against the Debtors.***

(a) **Impairment and Voting.** Classes 8(a) through (g) are unimpaired by the Plan. Each holder of an Allowed General Unsecured Claim is conclusively presumed to have accepted the Plan and is not entitled to vote to accept or reject the Plan.

(b) **Distributions.** Except to the extent that a holder of an Allowed General Unsecured Claim agrees to a less favorable treatment, each holder of an Allowed General Unsecured Claim shall receive, in full satisfaction of such Claim, Cash equal to (i) the full amount of such Allowed General Unsecured Claim plus (ii) postpetition interest on such Allowed General Unsecured Claim from the Commencement Date through the later of the Effective Date and the date such General Unsecured Claim becomes Allowed at either the federal judgment rate, the contract rate, or the post-judgment rate, as applicable, or such other rate as determined by the Bankruptcy Court to be necessary to satisfy the requirements of section 1124 of the Bankruptcy Code, on or as soon as reasonably practicable after the later of (a) the Effective Date, and (b) the date the General Unsecured Claim becomes Allowed; *provided, however*, that if a holder of a General Unsecured Claim believes that it is entitled to contract rate interest, it must have either (x) attached the relevant contract to its Proof of Claim or (y) filed a supplemental or a new Proof of Claim solely for the purpose of attaching such relevant contract..

4.8. ***Class 8: Intercompany Claims.***

(a) **Impairment and Voting.** Class 8 is unimpaired by the Plan. Each holder of an Intercompany Claim is conclusively presumed to have accepted the Plan and is not entitled to vote to accept or reject the Plan.

(b) **Distributions.** Except to the extent that a holder of an Intercompany Claim accepts less favorable treatment, each Intercompany Claim shall be reinstated and carried forward for financial reporting and tax purposes, as may be further determined by the Debtors in consultation with the Debtors' auditors and tax accountants.

4.9. ***Classes 9(a)–(g): Flow-Through Claims against the Debtors.***

(a) **Impairment and Voting.** Classes 9(a) through (g) are unimpaired by the Plan. Each holder of a Flow-Through Claim is conclusively presumed to have accepted the Plan and is not entitled to vote to accept or reject the Plan.

(b) **Distributions.** The legal, equitable, and contractual rights of each holder of a Flow-Through Claim, if any, shall be unaltered by the Plan and shall be satisfied in the ordinary course of business at such time and in such manner as the applicable Reorganized Debtor is obligated to satisfy each Flow-Through Claim (subject to the preservation and flow-through of all Avoidance Actions and defenses with respect thereto, which shall be fully preserved). The Debtors' failure to object to a Flow-Through Claim in their Chapter 11 Cases shall be without prejudice to the Reorganized Debtors' right to contest or otherwise object to the merits or classification of such Claim in Bankruptcy Court or outside the Bankruptcy Court.

4.10. ***Class 10(a): Equity Interests in PPC.***

(a) **Impairment and Voting.** Class 10(a) is impaired by the Plan. Each holder of an Allowed Equity Interest in Class 11(a) is entitled to vote to accept or reject the Plan.

(b) Distributions.

(i) On and as of the Effective Date, each share of PPC Common Stock issued and outstanding immediately prior to the Effective Date (other than any shares to be cancelled pursuant to Section 4.10(b)(iii)) (the “Existing Shares”) shall be cancelled and converted automatically into the right to receive a number of fully paid and nonassessable shares of New PPC Common Stock equal to the Share Conversion Factor.

(ii) For purposes of this Plan, “Share Conversion Factor” means the number determined by application of the following formula:

|     |   |   |
|-----|---|---|
| SCF | = | $(0.36 \times \text{NNS}) / \text{NES}$ |
|-----|---|---|

where:

|     |   |   |
|-----|---|---|
| NNS | = | The number of shares necessary to cause SCF to be 1, or such other number of shares agreed in writing by the parties. |
| NES | = | The total number of Existing Shares   |
| SCF | = | Share Conversion Factor   |

(iii) Each share of PPC Common Stock held in the treasury of PPC or any subsidiary thereof immediately prior to the Effective Date and each share of restricted stock of PPC as to which any conditions to vesting shall not have lapsed or shall not have been satisfied at or immediately prior to the Effective Date shall be canceled without any conversion thereof and no distribution shall be made with respect thereto.

4.11. ***Classes 10(b)–(g): Equity Interests in the Debtors (Other than PPC).***

(a) Impairment and Voting. Classes 10(b) through (g) are unimpaired by the Plan. Each holder of an Allowed Equity Interest in Classes 10(b) through (g) is conclusively presumed to have accepted the Plan and is not entitled to vote to accept or reject the Plan.

(b) Distributions. The Equity Interests in Classes 12(b) through (g) shall be reinstated in their entirety pursuant to the Plan.

## ARTICLE V

### MEANS FOR IMPLEMENTATION

5.1. ***Operations Between the Confirmation Date and the Effective Date.***

During the period from the Confirmation Date through and until the Effective Date, the Debtors shall continue to operate their businesses as Debtors in Possession, subject to the oversight of the Bankruptcy Court as provided in the Bankruptcy Code, the Bankruptcy Rules and all orders of the Bankruptcy Court that are then in full force and effect, and in accordance with the terms of the SPA.

## **5.2. *Corporate Action.***

The entry of the Confirmation Order shall constitute authorization for the Reorganized Debtors to take or cause to be taken all corporate actions necessary or appropriate to implement all provisions of, and to consummate, the Plan and the Plan Documents prior to, on and after the Effective Date and all such actions taken or caused to be taken shall be deemed to have been authorized and approved by the Bankruptcy Court without further approval, act or action under any applicable law, order, rule or regulation, including, without limitation, any action required by the stockholders or directors of the Reorganized Debtors, including, among other things, (a) the adoption of the Reorganized Debtor Constituent Documents, including the Restated Certificate of Incorporation and Restated Bylaws, (b) the termination and cancellation of any outstanding instrument, document or agreement evidencing the Note Claims or Equity Interests in PPC, if applicable, (c) issuance of any New PPC Common Stock, (d) the execution and delivery of all documents arising in connection with the Exit Financing and the SPA and performance of the Reorganized Debtors' obligations thereunder, (e) approval of the New Employee Incentive Plans, (f) all transfers of assets that are to occur pursuant to the Plan, (g) the incurrence of all obligations contemplated by the Plan and the making of all distributions under the Plan, (h) the implementation of all settlements and compromises as set forth in or contemplated by the Plan, (i) taking of all actions to preserve and provide for the prosecution of the Avoidance Actions as contemplated by sections 10.10 and 10.11 hereof and of all other causes of action, and (j) entering into any and all transactions, contracts, or arrangements permitted by applicable law, order, rule or regulation. The officers of the Debtors are authorized and directed to do all things and to execute and deliver all agreements, documents, instruments, notices and certificates as are contemplated by the Plan and the Plan Documents and to take all necessary action required in connection therewith, in the name of and on behalf of the Debtors.

## **5.3. *Continued Corporate Existence of the Debtors.***

Each of the Debtors shall continue to exist after the Effective Date as a separate entity, with all the powers available to such legal entity, in accordance with applicable law and pursuant to the Reorganized Debtor Constituent Documents, which shall become effective upon the occurrence of the Effective Date. On or after the Effective Date, the Reorganized Debtors may, in their sole discretion, take such action as permitted by applicable law, their respective constituent documents and the Stockholders Agreement, as they determine is reasonable and appropriate, including (a) causing any or all of the Reorganized Debtors to be merged into one or more of the other Reorganized Debtors or other legal entities, and (b) changing the legal name of any one or more of the Reorganized Debtors.

## **5.4. *Cancellation and Surrender of Existing Securities and Agreements.***

(a) Except (i) as otherwise expressly provided in the Plan, (ii) with respect to executory contracts or unexpired leases that have been assumed by the Debtors, (iii) for purposes of evidencing a right to distributions under the Plan, or (iv) with respect to any Claim that is reinstated and rendered unimpaired under the Plan, on the Effective Date, any document, agreement, or debt instrument evidencing any Claim, including without limitation, the Prepetition BMO Credit Agreement, the Prepetition CoBank Credit Agreement, the DIP Credit Agreement, the Indentures and all Notes issued thereunder (if all holders of Note Claims elect the Cash-Out Option), and the PPC Common Stock, shall be deemed automatically cancelled without further act or action under any applicable agreement, law, regulation, order or rule and the obligations of the Debtors thereunder shall be discharged.

(b) Unless waived by PPC or Reorganized PPC, and except for holders of Notes that will be reinstated pursuant to the Note Reinstatement, each holder of the Notes shall surrender such Note(s) to the applicable Indenture Trustees, or in the event such Note(s) are held in the name of, or by a nominee of, the Depository Trust Company, the Debtors shall follow the applicable procedures of the



Depository Trust Company for book-entry transfer of the Note(s) to the applicable Indenture Trustees. Except in the event of a Note Reinstatement, no distributions hereunder shall be made for or on behalf of any such holder with respect to any Note unless and until such Note is received by the applicable Indenture Trustee or appropriate instructions from Depository Trust Company shall be received by the applicable Indenture Trustee, or the loss, theft or destruction of such Note is established to the reasonable satisfaction of the applicable Indenture Trustee, which satisfaction may require such holder to (i) submit a lost instrument affidavit and an indemnity bond and (ii) hold the Debtors and the applicable Indenture Trustee harmless in respect of such Note and any distributions made in respect thereof. Upon compliance with this section by a holder of any Note, such holder shall, for all purposes under this Plan, be deemed to have surrendered such Note. Except in the event of a Note Reinstatement, any holder of Notes that fails to surrender such Note or satisfactorily explain its non-availability to the applicable Indenture Trustee within one (1) year of the Effective Date shall be deemed to have no further Claim against the Debtors, or their property or against the applicable Indenture Trustee in respect of such Claim and shall not participate in any distribution hereunder, and the distribution that would have otherwise been made to such holder shall be returned to Reorganized PPC by the applicable Indenture Trustee.

**5.5. *Restated Certificate of Incorporation and Restated Bylaws.***

On the Effective Date or as soon as practicable thereafter, PPC will file the Restated Certificate of Incorporation with the Secretary of State of the State of Delaware and will adopt the Restated Bylaws, each substantially in the form attached hereto as Exhibit C, as each may be amended prior to the Confirmation Date with the consent of the Plan Sponsor. The Restated Certificate of Incorporation will, among other things, authorize issuance of New PPC Common Stock (which will be subject to the Mandatory Exchange Transaction). PPC is hereby authorized to file the Restated Certificate of Incorporation and adopt the Restated Bylaws without the need for any further corporate action or further order of the Bankruptcy Court and without any further action by holders of Claims or Equity Interests.

**5.6. *Stock Purchase Agreement.***

Pursuant and subject to the terms and conditions of the SPA, the Plan Sponsor will purchase 64% of the New PPC Common Stock in exchange for a cash contribution of \$800 million. Cash proceeds from the Plan Sponsor's participation in the Plan will be utilized by the Debtors and Reorganized Debtors to make Cash distributions to the holders of Allowed Claims against the Debtors and to satisfy general working capital requirements of the Reorganized Debtors on and after the Effective Date. The Debtors' entry into the SPA, and the terms thereof (to the extent not already approved by the Bankruptcy Court), are hereby authorized and approved without the need for any further corporate action or further order of the Bankruptcy Court and without any further action by holders of Claims and Equity Interests. A copy of the SPA is attached as Exhibit B to the Plan.

**5.7. *Exit Financing.***

On or about the Effective Date, Reorganized PPC, Reorganized To-Ricos and Reorganized To-Ricos Distribution, as borrowers, shall enter into the Exit Facility pursuant to the Exit Facility Documents and shall incur indebtedness thereunder in an amount not less than \$1,650,000,000, the proceeds of which shall be available, among other things, for use by the Reorganized Debtors to make distributions under the Plan to the holders of Allowed Claims against the Debtors and to satisfy general working capital requirements of the Reorganized Debtors on and after the Effective Date. The Reorganized Debtors' entry into the Exit Facility pursuant to the Exit Facility Documents and the incurrence of the indebtedness thereunder on or as soon as reasonably practicable following the Effective Date are hereby authorized without the need for any further corporate action or further order of the Bankruptcy Court and without any further action by holders of Claims or Equity Interests. The material

terms of the Exit Facility are set forth in more detail on Exhibit A to be included in the Plan Supplement. The Debtors shall consult with the Plan Sponsor on any amendments or modifications to the material terms of the Exit Facility set forth on Exhibit A.

**5.8. *Issuance of New PPC Common Stock.***

The issuance by Reorganized PPC of New PPC Common Stock on or as soon as reasonably practicable following the Effective Date is hereby authorized without the need for any further corporate action or further order of the Bankruptcy Court and without any further action by holders of Claims or Equity Interests. Newly-issued shares of New PPC Common Stock, which shall be subject to the Mandatory Exchange Transaction, will be distributed to holders of Allowed Equity Interests in PPC pursuant to Section 4.10 of the Plan and purchased by the Plan Sponsor pursuant to the SPA.

**5.9. *Effectuating Documents and Further Transactions.***

On and after the Effective Date, the Reorganized Debtors and the board and the officers of Reorganized PPC are authorized to and may issue, execute, deliver, file, or record such contracts, securities, instruments, releases, and other agreements or documents and take such other actions as may be necessary or appropriate to effectuate, implement, and further evidence the terms and conditions of the Plan and the securities issued pursuant to the Plan in the name of and on behalf of the Reorganized Debtors, without the need for any approvals, authorizations or consents except for those expressly required pursuant to the Plan.

**5.10. *Exemption from Securities Laws.***

To the maximum extent provided by section 1145 of the Bankruptcy Code and applicable non-bankruptcy law, the offer and sale under the Plan of New PPC Common Stock, and the offer and sale under the Plan of equity interests in the Plan Sponsor pursuant to the Mandatory Exchange Transaction, will be exempt from registration under the Securities Act of 1933, as amended, and all rules and regulations promulgated thereunder, and under applicable state securities laws. The issuance of New PPC Common Stock shall be exempt from the requirements of section 16(b) of the Securities Exchange Act of 1934 (pursuant to Rule 16b-3 promulgated thereunder) with respect to any acquisition of such securities or pecuniary interest therein by an officer or director as of the Effective Date.

## **ARTICLE VI**

### **VOTING AND DISTRIBUTIONS**

**6.1. *Voting of Equity Interests.***

Each holder of an Allowed Equity Interest in PPC, which is the only impaired Class that is entitled to vote on the Plan pursuant to Article III of the Plan, shall be entitled to vote to accept or reject the Plan, as provided in such order as is entered by the Bankruptcy Court establishing procedures with respect to the solicitation and tabulation of votes to accept or reject the Plan, or any other order or orders of the Bankruptcy Court.

**6.2. *Nonconsensual Confirmation.***

If Class 10(a) (Equity Interests in PPC) shall not accept the Plan by the requisite statutory majority provided in section 1126(d) of the Bankruptcy Code, the Debtors reserve the right to undertake to have the Bankruptcy Court confirm the Plan under section 1129(b) of the Bankruptcy Code.

**6.3. *Distribution Record Date.***

On the Distribution Record Date (i) the claims register shall be closed and any transfer of any Claim therein shall be prohibited and (ii) the stock transfer ledger or similar register of the Debtors shall be closed. The Disbursing Agent shall instead be authorized and entitled to recognize and deal for all purposes under the Plan with only those record holders stated on the claims register and the stock transfer ledger as of the close of business on the Distribution Record Date. The record date for distributions shall be the Distribution Record Date.

**6.4. *Date of Distributions.***

Distributions shall be made on the date specified in Article IV with respect to each Allowed Claim or Allowed Equity Interest. In the event that any payment or act under the Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date.

**6.5. *Disbursing Agent.***

All distributions under the Plan (other than with respect to the Allowed Note Claims, Allowed BMO Secured Claims and the DIP Claims) shall be made by Reorganized PPC as the Disbursing Agent or such other Entity designated by the Debtors or Reorganized Debtors as a Disbursing Agent for certain or all such distributions. The applicable Indenture Trustee, or such other entity designated by PPC or the Reorganized PPC, shall be the Disbursing Agent for the Notes. BMO shall be the Disbursing Agent for the Allowed BMO Secured Claims and the DIP Claims. The Disbursing Agent shall not be required to give any bond or surety or other security for the performance of its duties unless otherwise ordered by the Bankruptcy Court and, in the event that a Disbursing Agent is so otherwise ordered, all costs and expenses of procuring any such bond or surety shall be borne by the Reorganized Debtors.

**6.6. *Rights and Powers of Disbursing Agent.***

The Disbursing Agent shall be empowered to (a) effect all actions and execute all agreements, instruments and other documents necessary to perform its duties under the Plan, (b) make all distributions contemplated hereby, and (c) exercise such other powers as may be vested in the Disbursing Agent by order of the Bankruptcy Court, pursuant to the Plan or as deemed by the Disbursing Agent to be necessary and proper to implement the provisions hereof.

**6.7. *Expenses of the Disbursing Agent.***

Except as otherwise ordered by the Bankruptcy Court, any reasonable fees and expenses incurred by the Disbursing Agent on or after the Effective Date shall be paid in Cash by the Reorganized Debtors in the ordinary course of business.

**6.8. *Delivery of Distributions.***

(a) General. Subject to Bankruptcy Rule 9010, all distributions to a holder of an Allowed Claim or Allowed Equity Interest shall be made to the address of the holder thereof as set forth (i) on such holder's Proof of Claim, or if no Proof of Claim has been filed, (ii) on the Schedules filed with the Bankruptcy Court, (iii) on the books and records of the Debtors or their agents, or (iv) in a letter of transmittal by such holder, unless the Debtors have been notified in writing of a change of address.



(b) Distributions to holders of Allowed Note Claims. Reorganized PPC shall deliver all distributions in respect of Allowed Note Claims under the Cash-Out Option to the applicable Indenture Trustee or such other entity or entities designated by the applicable Indenture Trustee. Upon delivery of the foregoing distributions to the applicable Indenture Trustee or such designee(s), Reorganized PPC shall be released of all liability with respect to the delivery of such distributions. The applicable Indenture Trustee or such designee(s) shall transmit the distributions to the holders of the Allowed Note Claims. Reorganized PPC shall provide whatever reasonable assistance may be required by the applicable Indenture Trustee or such designee(s) with respect to such distributions.

(c) Distributions to holders of Allowed BMO Secured Claims and DIP Claims. BMO will deliver all distributions in respect of Allowed BMO Secured Claims and DIP Claims pursuant to the terms of the relevant credit agreement to those lenders who are lenders under the terms of the relevant credit agreements as of the date of distributions to BMO on account of the Allowed BMO Secured Claims and DIP Claims.

(d) Withholding and Reporting Requirements. In connection with the Plan and all instruments issued in connection therewith and distributed thereon, any party issuing any instrument or making any distribution under the Plan, including any party described in Section 6.5 above, shall comply with all applicable withholding and reporting requirements imposed by any federal, state or local taxing authority, and all distributions under the Plan shall be subject to any such withholding or reporting requirements. Notwithstanding the above, each holder of an Allowed Claim that is to receive a distribution under the Plan shall have the sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed by any Governmental Unit, including income, withholding and other tax obligations, on account of such distribution. Any party issuing any instrument or making any distribution under the Plan has the right, but not the obligation, to not make a distribution until such holder has made arrangements satisfactory to such issuing or disbursing party for payment of any such tax obligations.

#### 6.9. ***Unclaimed Distributions.***

In the event that any distribution to any holder is returned as undeliverable, the Reorganized Debtors shall use reasonable efforts to determine the current address of such holder, but no distribution to such holder shall be made unless and until the Reorganized Debtors have determined the then-current address of such holder, at which time such distribution shall be made to such holder without interest from the original distribution date through the new distribution date; provided that such distributions shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code at the expiration of one year from the Effective Date. After such date, all unclaimed property or interest in property (including any stock) shall revert to the applicable Reorganized Debtor, and the Claim of any other Entity to such property or interest in property shall be discharged and forever barred.

#### 6.10. ***Manner of Payment.***

At the option of the Disbursing Agent, any Cash payment to be made hereunder may be made by a check or wire transfer or as otherwise required or provided in applicable agreements.

#### 6.11. ***Fractional Shares.***

No fractional shares of New PPC Common Stock shall be distributed under the Plan. When any distribution pursuant to the Plan on account of an Allowed Equity Interest would otherwise result in the issuance of a number of shares of New PPC Common Stock that is not a whole number, the actual distribution of shares of New PPC Common Stock shall be rounded as follows: (i) fractions of one-half ( $\frac{1}{2}$ ) or greater shall be rounded to the next higher whole number and (ii) fractions of less than one-

half (½) shall be rounded to the next lower whole number with no further payment or other distribution therefor. The total number of authorized shares of New PPC Common Stock to be distributed to holders of Allowed Equity Interests shall be adjusted as necessary to account for the rounding provided in this Section 6.11.

**6.12. *Minimum Cash Distributions.***

Notwithstanding anything set forth herein to the contrary, no payment of Cash less than \$25 shall be made to any holder of an Allowed Claim unless a request therefor is made in writing to the Disbursing Agent. If no request is made as provided in the preceding sentence within sixty (60) days of the Effective Date, such Cash shall revert to the applicable Reorganized Debtor.

**6.13. *Setoffs and Recoupment.***

Other than with respect to Allowed BMO Secured Claims, the Debtors may, but shall not be required to, set off or recoup against any Claim (for purposes of determining the Allowed amount of such Claim on which distribution shall be made) any Claims of any nature whatsoever that the Debtors may have against the holder of such Claim, but neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtors of any such Claim the Debtors may have against the holder of such Claim.

## **ARTICLE VII**

### **PROCEDURES FOR DISPUTED CLAIMS**

**7.1. *Objections / Objection Deadline.***

(a) Objections to all Claims against the Debtors may be interposed and prosecuted only by the Debtors and the Reorganized Debtors (except for Claims asserted under sections 330, 331, 503(b)(2), 503(b)(3), 503(b)(4) and 503(b)(5), in which case the Committees may also interpose and prosecute objections). Prior to the Effective Date, except for objections that in the reasonable determination of the Debtors need to be filed on an emergency basis, the Debtors shall provide three (3) calendar days prior notice to the Plan Sponsor of their intent to file an objection to Claims and if timely requested by the Plan Sponsor, shall work with the Plan Sponsor in interposing such an objection.

(b) The Reorganized Debtors shall be entitled to object to any Claim through and after the Effective Date. Any objections to Claims shall be served and filed with the Bankruptcy Court on or before the later of (i) one hundred and fifty (150) days after the Effective Date, as such time may be extended by order of the Bankruptcy Court and (ii) such later date as may be fixed by the Bankruptcy Court, whether fixed before or after the date specified in clause (i) above.

**7.2. *No Payment Pending Allowance.***

Notwithstanding any other provision in the Plan, if any portion of a Claim is disputed, then no payment or distribution provided hereunder shall be made on account of any portion of such Claim unless and until such Disputed Claim becomes an Allowed Claim.

**7.3. *Distributions After Allowance.***

To the extent that a Disputed Claim becomes an Allowed Claim, the Disbursing Agent shall distribute to the holder of such Claim the property distributable with respect to such Claim in accordance with Article IV of the Plan. Such distributions shall be made as soon as practicable after the

later of (i) the date that the order or judgment of the Bankruptcy Court allowing such Disputed Claim (or portion thereof) becomes a Final Order, (ii) the date on which any objection to such Disputed Claim has been withdrawn, or (iii) the date on which such Disputed Claim has been settled, compromised or otherwise resolved. To the extent that all or a portion of a Disputed Claim is disallowed, the holder of such Claim shall not receive any distribution on account of the portion of such Claim that is disallowed and any property withheld, if any, pending the resolution of such Claim shall revert in the applicable Reorganized Debtor.

#### **7.4. *Resolution of Disputed Claims.***

Notwithstanding any prior order of the Bankruptcy Court, on and after the Effective Date, the Reorganized Debtors shall have the authority to compromise, settle, otherwise resolve, or withdraw any objections to Disputed Claims and to compromise, settle, or otherwise resolve any Disputed Claims without approval of the Bankruptcy Court, other than with respect to Administrative Expense Claims relating to compensation of professionals.

#### **7.5. *Estimation of Claims.***

Requests for estimation of any Claim against the Debtors may be interposed and prosecuted only by the Debtors or the Reorganized Debtors. Prior to the Effective Date, except for estimation requests that in the reasonable determination of the Debtors need to be made on an emergency basis, the Debtors shall provide three (3) calendar days prior notice to the Plan Sponsor of their intent to request estimation of any Claim and if timely requested by the Plan Sponsor, shall work with the Plan Sponsor in interposing such a request. The Debtors or the Reorganized Debtors may at any time request that the Bankruptcy Court estimate any Contingent Claim, Unliquidated Claim, or Disputed Claim pursuant to section 502(c) of the Bankruptcy Code regardless of whether any of the Debtors or the Reorganized Debtors previously objected to such Claim or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court will retain jurisdiction to estimate any Claim at any time during litigation concerning any objection to any Claim, including, without limitation, during the pendency of any appeal relating to any such objection; provided, however, that the Bankruptcy Court shall not have jurisdiction to estimate a Claim with respect to which a reference has been withdrawn. In the event that the Bankruptcy Court estimates any Contingent Claim, Unliquidated Claim, or Disputed Claim, the amount so estimated shall constitute either the Allowed amount of such Claim or a maximum limitation on such Claim, as determined by the Bankruptcy Court. If the estimated amount constitutes a maximum limitation on the amount of such Claim, the Debtors or the Reorganized Debtors may pursue supplementary proceedings to object to the allowance of such Claim. The objection, estimation and resolution procedures set forth in Article VII of the Plan are intended to be cumulative and not exclusive of one another. Claims may be estimated and subsequently compromised, settled, withdrawn, or resolved by any mechanism approved by the Bankruptcy Court.

### **ARTICLE VIII**

#### **TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

##### **8.1. *Assumption or Rejection of Executory Contracts and Unexpired Leases.***

Pursuant to sections 365(a) and 1123(b)(2) of the Bankruptcy Code, all executory contracts and unexpired leases that exist between the Debtors and any person or entity shall be deemed rejected by the Debtors as of the Effective Date, except for any executory contract or unexpired lease (i) that has been assumed, assumed and assigned, or rejected pursuant to an order of the Bankruptcy Court entered on or before the Effective Date, (ii) as to which a motion for approval of the assumption, assumption and assignment, or rejection has been filed and served prior to the Confirmation Date, (iii)

that is specifically designated as a contract or lease to be assumed or assumed and assigned on Schedule 8.1, which Schedule shall be contained in the Plan Supplement and shall be prepared in accordance with Section 5.02(b) of the SPA, or (iv) that is designated as assumed pursuant to sections 8.6 through 8.9 of this Plan; provided, however, that the Debtors reserve the right, in consultation with the Plan Sponsor, as provided in Section 5.02(c) of the SPA, on or prior to the Confirmation Date, to amend Schedule 8.1 to delete therefrom or add thereto any executory contract or unexpired lease, in which event such executory contract(s) or unexpired lease(s) shall be deemed to be, respectively, either rejected or assumed (or assumed and assigned) as of the Effective Date. The Debtors shall provide notice of any amendments to Schedule 8.1 to the parties to the executory contracts and unexpired leases affected thereby. The listing of a document on Schedule 8.1 shall not constitute an admission by the Debtors that such document is an executory contract or an unexpired lease or that the Debtors have any liability thereunder.

**8.2. *Approval of Assumption, Assumption and Assignment, or Rejection of Executory Contracts and Unexpired Leases.***

Entry of the Confirmation Order shall, subject to and upon the occurrence of the Effective Date, constitute (i) the approval, pursuant to sections 365(a) and 1123(b)(2) of the Bankruptcy Code, of the assumption, or the assumption and assignment, as applicable, of the executory contracts and unexpired leases listed on Schedule 8.1 or assumed pursuant to sections 8.6 through 8.9 of this Plan, and (ii) the approval, pursuant to sections 365(a) and 1123(b)(2) of the Bankruptcy Code, of the rejection of the executory contracts and unexpired leases rejected pursuant to Section 8.1 of the Plan.

**8.3. *Inclusiveness.***

Unless otherwise specified on Schedule 8.1, each executory contract and unexpired lease listed or to be listed on Schedule 8.1 shall include any and all modifications, amendments, supplements, restatements, or other agreements made directly or indirectly by any agreement, instrument, or other document that in any manner affects such executory contract or unexpired lease, without regard to whether such agreement, instrument or other document is listed on Schedule 8.1.

**8.4. *Cure of Defaults.***

(a) Except to the extent that different treatment has been agreed to by the non-debtor party or parties to any executory contract or unexpired lease that is being assumed under the Plan, the Debtors shall, pursuant to the provisions of sections 1123(a)(5)(G) and 1123(b)(2) of the Bankruptcy Code and consistent with the requirements of section 365 of the Bankruptcy Code, at least 20 days prior to the Confirmation Hearing, file with the Bankruptcy Court and serve by first class mail on each non-debtor party to such executory contracts or unexpired leases, a notice (the “Assumption Notice”), which shall list the cure amount as to each executory contract or unexpired lease to be assumed or assumed and assigned; provided, however, that if the Debtors, in consultation with the Plan Sponsor, subsequently amend Schedule 8.1 or any other list of assumed executory contracts and unexpired leases prior to the Confirmation Hearing to add new executory contracts or unexpired leases or to unilaterally amend any cure amounts listed on the original Assumption Notice, the Debtors shall as soon as practicable after such amendment mail each non-debtor party to each such executory contract or unexpired lease a supplemental notice (each, a “Supplemental Assumption Notice”), which shall list the cure amount as to each executory contract or unexpired lease to be assumed or assumed and assigned. The parties to such executory contracts or unexpired leases to be assumed or assumed and assigned by the Debtors shall have ten (10) days from the date of service of the Assumption Notice or Supplemental Assumption Notice, as applicable, to file and serve any objection to either the cure amounts listed by the Debtors or the assumption or assumption and assignment of such contract or lease. If there are any objections filed, the Bankruptcy Court may either schedule such objection to be heard at the Confirmation Hearing or at a later hearing on a date to be set by the Bankruptcy Court. Notwithstanding anything to the contrary in the

Plan, the Debtors, in consultation with the Plan Sponsor, shall retain their rights to reject any of their executory contracts or unexpired leases that are subject to a dispute concerning amounts necessary to cure any defaults through the Effective Date.

(b) To the extent any non-Debtor party to an executory contract or an unexpired lease files an objection to the Debtors' proposed cure amounts and the alleged cure amount exceeds \$300,000, the Debtors shall provide notice thereof to the Plan Sponsor as provided in Section 5.02(d) of the SPA.

(c) Except as may otherwise be agreed to by the counterparty to the executory contract or unexpired lease, as soon as practicable after the Effective Date, the Reorganized Debtors shall pay all undisputed cure amounts. All disputed defaults that are required to be cured shall be cured either within thirty (30) days of the entry of a Final Order determining the amount, if any, of the Debtors' liability with respect to such cure amount, or as may otherwise be agreed to with the counterparty to such executory contract or unexpired lease.

**8.5. *Bar Date for Filing Proofs of Claim Relating to Executory Contracts and Unexpired Leases Rejected Pursuant to the Plan.***

In the event that the rejection of an executory contract or unexpired lease by the Debtors pursuant to the Plan results in damages to the other party or parties to such contract or lease, a Claim for such damages, if not heretofore evidenced by a timely filed Proof of Claim, shall be forever barred and shall not be enforceable against the Debtors or the Reorganized Debtors, or their properties or interests in property as agents, successors, or assigns, unless a Proof of Claim is filed with the Claims Agent and served upon the attorneys for the Debtors on or before the thirtieth (30th) day after the later of (i) the date of service of notice of the Effective Date, or (ii) the date of service of notice of such later rejection date that occurs as a result of a dispute concerning amounts necessary to cure any defaults (solely with respect to the party directly affected by such modification).

**8.6. *Indemnification Obligations.***

Subject to the occurrence of the Effective Date, the obligations of the Debtors as of the Commencement Date to indemnify, defend, reimburse or limit the liability of directors, officers or employees who are directors, officers or employees of the Debtors on or before the Effective Date against any claims or causes of action, as provided in the Debtors' certificates of incorporation, bylaws, other organizational documents or applicable law, shall be assumed by the Debtors on the Effective Date with the same effect as though such obligations constituted executory contracts that are assumed under section 365 of the Bankruptcy Code, and all such obligations shall survive confirmation of the Plan, remain unaffected thereby and not be discharged, irrespective of whether such indemnification, defense, reimbursement or limitation is owed in connection with an event occurring before or after the Commencement Date. The prosecution of any indemnified cause of action against the Debtors or any non-debtor shall upon the Effective Date be enjoined and prohibited, except solely for the purpose of obtaining a recovery from any available insurance policy proceeds. This Plan is intended to effect the assumption of the indemnification obligations of the Debtors as provided in the Debtors' certificates of incorporation, bylaws, other organizational documents and applicable law, and this Plan shall not, in and of itself, be deemed to create any new indemnification obligations on the part of the Debtors to directors, officers or employees of the Debtors who were directors, officers or employees of the Debtors on or before the Effective Date.



**8.7. Insurance Policies.**

Notwithstanding anything contained in the Plan to the contrary, unless specifically listed on Schedule 8.7 as being rejected or specifically rejected by order of the Bankruptcy Court, or unless subject to a motion for approval of rejection that has been filed and served prior to the Confirmation Date, all of the Debtors' insurance policies and any agreements, documents or instruments relating thereto (collectively, the "Insurance Policy Documents"), are treated as executory contracts under the Plan and will be assumed pursuant to the Plan, effective as of the Effective Date. Nothing contained in this section 8.7 shall constitute or be deemed a waiver of any cause of action that the Debtors may hold against any entity, including, without limitation, the insurer, under any of the Debtors' insurance policies. Nothing in the Disclosure Statement, the Plan, the Confirmation Order, any exhibit to the Plan or any other Plan document (including any provision that purports to be preemptory or supervening), shall in any way operate to, or have the effect of, impairing in any respect the legal, equitable or contractual rights and defenses, if any, of the Debtors, the Reorganized Debtors or any insurer with respect to any Insurance Policy Documents (except with respect to those set forth on Schedule 8.7). The rights and obligations of the Debtors, the Reorganized Debtors, and insurers shall be determined under the Insurance Policy Documents and under applicable non-bankruptcy law. The transfer herein of the Insurance Policy Documents by the Debtors to the Reorganized Debtors will not enlarge the pre-petition rights of the Reorganized Debtors thereunder, and such transfer is subject to all pre-petition rights and defenses available to the insurers thereunder. Regardless of whether the Insurance Policy Documents are executory, the Reorganized Debtors will perform the Debtors' obligations thereunder, including any that remain unperformed as of the Effective Date of the Plan.

**8.8. Compensation and Benefit Programs.**

Notwithstanding anything contained in the Plan to the contrary, unless specifically rejected by order of the Bankruptcy Court, or unless subject to a motion for approval of rejection that has been filed and served prior to the Confirmation Date, the Compensation and Benefit Programs shall be deemed to be, and shall be treated as though they are, executory contracts that are deemed assumed under the Plan on the same terms, and the Debtors' obligations under the Compensation and Benefit Programs shall be deemed assumed pursuant to section 365(a) of the Bankruptcy Code, shall survive confirmation of the Plan, shall remain unaffected thereby, and shall not be discharged in accordance with section 1141 of the Bankruptcy Code. Any default existing under the Compensation and Benefit Programs shall be cured promptly after it becomes known by the Reorganized Debtors.

**8.9. Other Contracts to be Assumed.**

Notwithstanding anything in the Plan to the contrary, unless specifically listed on Schedule 8.9 as being rejected or specifically rejected by order of the Bankruptcy Court, or unless subject to a motion for approval of rejection that has been filed and served prior to the Confirmation Date, the following Debtor contracts shall be assumed under the Plan, provided that they are unexpired as of the Effective Date and have not been terminated pursuant to their terms prior to the Effective Date:

- (a) The change in control agreements and severance agreements, including those that have been executed or amended during the Chapter 11 Cases;
- (b) The employee agreements, as may have been executed or amended during the Chapter 11 Cases;
- (c) Contracts with growers;

(d) Contracts with vendors for live operations using the Debtors' contract forms entitled "Independent Contractor Agreement," "Catching and Loading Agreement," and "Live Haul Agreement";

(e) Contracts with customers of one or more of the Debtors;

(f) Contracts with vendors using the Debtors' contract forms entitled "Pilgrim's Pride Corporation Construction Agreement and General Conditions";

(g) Contracts with vendors using the Debtors' contract forms entitled "Master Vendor Agreement" and/or "Supplemental Vendor Terms and Conditions";

(h) Contracts with vendors for transportation services using the Debtors' contract forms entitled "Transportation Agreement," "Feed Haul Agreement," "Trailer Interchange Agreement" and "Transportation Broker Agreement";

(i) Contracts with vendors using the Debtors' contract form entitled "Broker Sales Agreements";

(j) Collective bargaining agreements where modifications to those agreements have been approved by the Bankruptcy Court, including agreements with the Settling Unions; and

(k) Confidentiality agreements.

#### 8.10. ***Retiree Benefits.***

On and after the Effective Date, pursuant to section 1129(a)(13) of the Bankruptcy Code, the Reorganized Debtors shall continue to pay all retiree benefits (as that term is defined in section 1114 of the Bankruptcy Code) of the Debtors, except with respect to any retiree benefits of the Debtors (i) that were terminated or rejected prior to the Confirmation Date (to the extent such termination or rejection did not violate section 1114 of the Bankruptcy Code) or (ii) are subject to a motion to reject as of the Confirmation Date or have been specifically waived by the beneficiaries of such retiree benefits, for the duration of the period for which the Debtors had obligated themselves to provide such benefits and subject to the right of the Reorganized Debtors to modify or terminate such retiree benefits in accordance with the terms thereof.

## ARTICLE IX

### CORPORATE GOVERNANCE AND MANAGEMENT OF THE REORGANIZED DEBTORS

#### 9.1. ***General.***

On the Effective Date, the management, control, and operation of the Reorganized Debtors shall become the general responsibility of the Board of Directors of the respective Reorganized Debtor.

#### 9.2. ***Initial Board of Directors.***

(a) The identity of the initial board of directors for each Debtor is attached as Exhibit E, to be included with the Plan Supplement; provided; however, that the identity of the independent director of the Reorganized PPC to be designated by the Plan Sponsor shall be disclosed no later than 3 calendar days before the Confirmation Hearing.

(b) Pursuant to the Stockholders Agreement and the Restated Certificate of Incorporation, on the Effective Date, the board of directors of Reorganized PPC shall consist of 9 members comprised as follows:

(i) 6 members, including the Chairman of the Board, shall be designated by the Plan Sponsor (the “Plan Sponsor Designees”). The Chief Executive Officer of Reorganized PPC shall be appointed to the initial board of directors of the Reorganized PPC and shall be included in the Plan Sponsor Designees.

(ii) 2 members (the “Equity Directors”) shall be designated by the Equity Committee. The Equity Directors shall qualify as “independent directors” pursuant to the definition set forth in Section 303A.02 of the New York Stock Exchange Listed Company Manual.

(iii) 1 member shall be Lonnie “Bo” Pilgrim.

(c) From and after the Effective Date, the members of the board of directors of Reorganized PPC and its Affiliates shall be selected and determined in accordance with the provisions of the respective Reorganized Debtor Constituent Documents, the Stockholders Agreement, and applicable law.

### 9.3. *Officers.*

As of the Effective Date, the officers of the Debtors shall be the officers of the Reorganized Debtors.

### 9.4. *New Employee Incentive Plans.*

On the Effective Date, Reorganized PPC shall adopt the New Employee Incentive Plans, substantially in the forms attached hereto as Exhibit D-1 and Exhibit D-2. Reorganized PPC shall, on the Effective Date, implement these programs for certain of its employees and board members, pursuant to which such employees and board members may receive New PPC Common Stock and annual cash bonuses. The material terms of the New Employee Incentive Plans are attached as Exhibit D. Holders of Equity Interests in PPC shall vote separately on the New Employee Incentive Plans in conjunction with the solicitation of votes on the Plan, which shall constitute approval of the New Employee Incentive Plans for purposes of all shareholder approval requirements under the Internal Revenue Code, as well as section 16 of the Securities Exchange Act of 1934 and any applicable stock exchange listing requirements.

### 9.5. *Issuance of Non-Voting Securities.*

On the Effective Date or as soon as reasonably practicable thereafter, the Reorganized Debtors, as applicable, shall file amended certificates of incorporation (or similar organization documents), which shall, among other things, prohibit the issuance of non-voting equity securities to the extent prohibited by section 1123(a)(6) of the Bankruptcy Code, subject to further amendment as permitted by applicable law.

## ARTICLE X

### EFFECT OF CONFIRMATION

#### 10.1. *Vesting of Assets.*

Upon the Effective Date, pursuant to section 1141(b) and (c) of the Bankruptcy Code, all property of the Debtors shall vest in each of the Reorganized Debtors free and clear of all Claims, Liens, encumbrances, charges, and other interests, except as provided in the Plan. From and after the Effective



Date, the Reorganized Debtors may operate their businesses and may use, acquire, and dispose of property free of any restrictions of the Bankruptcy Code or the Bankruptcy Rules and in all respects as if there were no pending case under any chapter or provision of the Bankruptcy Code.

**10.2. *Discharge of Claims and Termination of Equity Interests.***

Except as provided in the Plan, the rights afforded in and the payments and distributions to be made under the Plan shall be in exchange for and in complete satisfaction, discharge, release, termination, and cancellation of all existing debts, Claims and Equity Interests of any kind, nature, or description whatsoever, including any interest accrued on any Claims from and after the Commencement Date, against the Debtors or any of their assets or properties to the fullest extent permitted by section 1141 of the Bankruptcy Code. Except as provided in the Plan, upon the Effective Date, all existing Claims against and Equity Interests in the Debtors shall be, and shall be deemed to be, discharged, terminated, and cancelled, as applicable, and all holders of Claims and Equity Interests shall be precluded and enjoined from asserting against the Reorganized Debtors, their successors or assignees, or any of their assets or properties, any other or further Claim based upon any act or omission, transaction, or other activity of any kind or nature that occurred prior to the Effective Date, whether or not such holder has filed a proof of Claim, and whether or not the facts or legal bases therefor were known or existed prior to the Effective Date.

**10.3. *Discharge of Debtors.***

**Upon the Effective Date and in consideration of the distributions to be made under the Plan, except as otherwise expressly provided in the Plan, each holder (as well as any trustee or agent on behalf of any holder) of a Claim and any affiliate of such holder shall be deemed to have forever waived, released and discharged the Debtors, to the fullest extent permitted by section 1141 of the Bankruptcy Code, of and from any and all Claims, rights, and liabilities that arose prior to the Effective Date. As provided in section 524 of the Bankruptcy Code, such discharge shall void any judgment against the Debtors, their estates, or any successor thereto at any time obtained to the extent it relates to a Claim discharged. Upon the Effective Date, all persons shall be forever precluded and enjoined, pursuant to section 524 of the Bankruptcy Code, from prosecuting or asserting any discharged Claim against the Debtors, the estates, or any successor thereto.**

**10.4. *Injunction or Stay.***

**Except as otherwise expressly provided in the Plan, all persons or entities who have held, hold or may hold Claims against or Equity Interests in the Debtors and all other parties in interest, along with their respective present and former employees, agents, officers, directors, principals and affiliates, are permanently enjoined, from and after the Effective Date, from taking any of the following actions against the Debtors, the Reorganized Debtors, their respective estates, any debtor who is indemnifiable by the Debtors or Reorganized Debtors, and their respective property, (i) commencing or continuing in any manner any action or other proceeding of any kind with respect to any such Claim or Equity Interest, (ii) enforcing, attaching, collecting or recovering by any manner or means, whether directly or indirectly, of any judgment, award, decree or order, (iii) creating, perfecting, or enforcing, in any manner, directly or indirectly, any encumbrance of any kind, (iv) asserting any right of setoff, subrogation or recoupment of any kind with respect to any such Claim or Equity Interest, or (v) pursuing any Claim released pursuant to Article XII of the Plan. Such injunction shall extend to any successors of the Debtors and the Reorganized Debtors and their respective properties and interests in properties.**

10.5. *Term of Injunctions or Stays.*

Unless otherwise provided, all injunctions or stays arising under or entered during the Chapter 11 Cases under section 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the later of the Effective Date and the date indicated in the order providing for such injunction or stay.

10.6. *Injunction Against Interference With Plan.*

Upon the entry of the Confirmation Order, all holders of Claims and Equity Interests, and other parties in interest, along with their respective present and former employees, agents, officers, directors, principals and affiliates shall be enjoined from taking any actions to interfere with the implementation or consummation of the Plan.

10.7. *Exculpation.*

Notwithstanding anything herein to the contrary, as of the Effective Date, none of the Debtors, the Reorganized Debtors, the Committees, the Chief Restructuring Officer, the agents and lenders under the Prepetition BMO Credit Agreement and the Prepetition CoBank Credit Agreement, the agents and lenders party to the DIP Credit Agreement, the Settling Unions, the Plan Sponsor, and their respective directors, officers, employees, partners, members, agents, representatives, accountants, financial advisors, investment bankers, or attorneys (but solely in their capacities as such) shall have or incur any liability for any claim, cause of action or other assertion of liability for any act taken or omitted to be taken since the Commencement Date in connection with, or arising out of, the Chapter 11 Cases, the formulation, dissemination, confirmation, consummation, or administration of the Plan, property to be distributed under the Plan, or any other act or omission in connection with the Chapter 11 Cases, the Plan, the Disclosure Statement or any contract, instrument, document or other agreement related thereto; provided, however, that the foregoing shall not affect the liability of any person that would otherwise result from any such act or omission to the extent such act or omission is determined by a Final Order to have constituted willful misconduct, gross negligence, fraud, criminal conduct, intentional unauthorized misuse of confidential information that causes damages, or *ultra vires* act.

10.8. *Releases by Holders of Claims and Equity Interests.*

Except as otherwise expressly provided in the Plan, on the Effective Date, and in consideration for the obligations of the Debtors and the Reorganized Debtors under the Plan, each holder of a Claim or an Equity Interest that votes to accept the Plan (or is deemed to accept the Plan), and to the fullest extent permissible under applicable law, as such law may be extended or integrated after the Effective Date, each holder of a Claim or Equity Interest that does not vote to accept the Plan, shall release and discharge unconditionally and forever each of (a) the Debtors and the Reorganized Debtors, (b) the Chief Restructuring Officer, (c) the Committees, (d) the agents and lenders under the Prepetition BMO Credit Agreement, (e) the agents and lenders under the Prepetition CoBank Credit Agreement, and (f) the agents and lenders under the DIP Credit Agreement, (g) Pilgrim Interests, Ltd. (solely in its capacity as guarantor under the Guarantee Agreements), (h) the Plan Sponsor, and (i) the present and former directors, officers, employees, affiliates, agents, financial advisors, investment bankers, attorneys, and representatives of each of the foregoing, as applicable, from any and all claims or causes of action that exist as of the Effective Date and arise from or relate to, in any manner, in whole or in part, the operation of the business of the Debtors, the subject matter of, or the transaction or event giving rise to, the Claim or Equity Interest of such holder, the business or contractual arrangements between any Debtor and such holder, any restructuring of such Claim or Equity Interest prior to the Chapter 11 Cases, or any

act, omission, occurrence, or event in any manner related to such subject matter, transaction or obligation, or arising out of the Chapter 11 Cases, including, but not limited to, the pursuit of confirmation of the Plan, the consummation thereof, the administration thereof, or the property to be distributed thereunder; *provided*, that the foregoing shall not operate as a waiver of or release from any causes of action arising out of the willful misconduct, gross negligence, fraud, criminal conduct, intentional unauthorized misuse of confidential information that causes damages, or *ultra vires* acts of any such person or entity; *provided further* that the foregoing shall not operate as a waiver of or a release of any causes of action held by a Governmental Unit against any non-Debtor existing as of the Effective Date based on any securities laws of the United States or any domestic state.

**10.9. *Releases by Debtors and Reorganized Debtors.***

Upon the Effective Date, and in consideration of the services provided to the Debtors by such persons, each Debtor and Reorganized Debtor shall release and discharge unconditionally and forever each of (a) the present and former directors, officers, employees, affiliates, agents, financial advisors, investment bankers, attorneys, and representatives of the Debtors (including the Chief Restructuring Officer), (b) the Committees, (c) the agents and lenders under the Prepetition BMO Credit Agreement, (d) the agents and lenders under the Prepetition CoBank Credit Agreement, (e) the agents and lenders under the DIP Credit Agreement, (f) Pilgrim Interests, Ltd. (solely in its capacity as guarantor under the Guarantee Agreements), (g) the Plan Sponsor (except with respect to the Plan Sponsor's obligations under the Stock Purchase Agreement), and (h) the present and former directors, officers, employees, affiliates, agents, financial advisors, investment bankers, attorneys, and representatives of each of the foregoing in clauses (b) through (g) of this Section 10.9, as applicable, from any and all claims or causes of action that exist as of the Effective Date and arise from or relate to, in any manner, in whole or in part, the operation of the business of the Debtors, the business or contractual arrangements between any Debtor and any such person or entity, or any act, omission, occurrence, or event in any manner related to such subject matter, transaction or obligation, or arising out of the Chapter 11 Cases, including, but not limited to, the pursuit of confirmation of the Plan, the consummation thereof, the administration thereof, or the property to be distributed thereunder; *provided*, that the foregoing shall not operate as a waiver of or release from any causes of action arising out of the willful misconduct, gross negligence, fraud, criminal conduct, intentional unauthorized misuse of confidential information that causes damages, or *ultra vires* acts of any such person or entity.

**10.10. *Retention of Avoidance Actions.***

From and after the Confirmation Date, the Debtors shall retain the exclusive right to pursue, prosecute and enforce any and all Avoidance Actions, equitable subordination actions or recovery actions under sections 105, 502(d), 510, 542 through 551, and 553 of the Bankruptcy Code that belonged to the Debtors or Debtors in Possession prior to the Confirmation Date, other than with respect to any cause of action or Avoidance Action released herein, in the Confirmation Order, or in any other Final Order of the Bankruptcy Court. On the Effective Date, the Debtors' right to pursue, prosecute and enforce the actions listed in the immediately preceding sentence shall transfer to the Reorganized Debtors, which on and after the Effective Date shall have the exclusive right to pursue, prosecute and enforce such actions.

**10.11. *Retention of Causes of Action/Reservation of Rights.***

(a) Except as provided in sections 10.7 and 10.9 hereof, from and after the Confirmation Date, the Debtors shall retain the right to pursue, prosecute and enforce any rights or causes of action that the Debtors have under any provision of the Bankruptcy Code or any applicable

nonbankruptcy law, including, without limitation, (i) any and all Claims against any Entity, to the extent such Entity asserts a crossclaim, a counterclaim, and/or a Claim for setoff that seeks affirmative relief against the Debtors, the Reorganized Debtors, their officers, directors, or representatives, (ii) any and all Claims and causes of action for turnover of any property of the Debtors' estates, (iii) any and all Claims and causes of actions that are listed on the Debtors' Schedules, and (iv) any and all Claims and causes of action that are subject to pending litigation in either the Bankruptcy Court or a non-bankruptcy forum. On the Effective Date, the Debtors' right to pursue, prosecute and enforce the actions listed in the immediately preceding sentence shall transfer to the Reorganized Debtors, which on and after the Effective Date shall have the exclusive right to pursue, prosecute and enforce such actions. Nothing contained in the Plan or the Confirmation Order shall be deemed to be a waiver or relinquishment of any rights or causes of action that the Debtors or the Reorganized Debtors may have.

(b) Nothing contained in the Plan or the Confirmation Order shall be deemed to be a waiver or relinquishment of any claim, cause of action, right of setoff, or other legal or equitable defense that the Debtors had immediately prior to the Commencement Date, against or with respect to any Claim. After the Confirmation Date, the Debtors and the Reorganized Debtors, as applicable, shall have, retain, reserve, and be entitled to assert all such claims, causes of action, rights of setoff, and other legal or equitable defenses that the Debtors had immediately prior to the Commencement Date as fully as if the Chapter 11 Cases had not been commenced, and all of the Debtors' and the Reorganized Debtors' legal and equitable rights respecting any Claim may be asserted after the Confirmation Date to the same extent as if the Chapter 11 Cases had not been commenced.

#### **10.12. *Limitations on Exculpation and Releases of Representatives.***

Nothing in Sections 10.7, 10.8 or 10.9 of the Plan shall (i) be construed to release or exculpate any entity from fraud, malpractice, criminal conduct, intentional unauthorized misuse of confidential information that causes damages, or *ultra vires* acts, or (ii) limit the liability of the professionals of the Debtors, the Reorganized Debtors, and the Committees to their respective clients pursuant to the relevant provisions of the Code of Professional Responsibility.

### **ARTICLE XI**

#### **CONDITIONS PRECEDENT TO EFFECTIVE DATE**

##### **11.1. *Conditions Precedent to Effectiveness.***

The Effective Date shall not occur and the Plan shall not become effective unless and until the following conditions are satisfied in full or waived in accordance with Section 11.2 of the Plan:

(a) The Confirmation Order, in form and substance reasonably satisfactory to the Debtors, and, in so far as the Confirmation Order relates to the SPA or any matter set forth therein, reasonably satisfactory to the Plan Sponsor, shall have been entered and shall not be subject to any stay or injunction;

(b) All actions, documents, and agreements necessary to implement the Plan shall have been effected or executed;

(c) Other than those conditions that by their nature can only be satisfied at the closing of the transactions contemplated by the SPA, the conditions precedent to the SPA shall have been satisfied or waived by the parties thereto and the Reorganized Debtors shall have access to the Cash contributed by the Plan Sponsor; and

(d) The Allowed BMO Secured Claims, the Allowed CoBank Secured Claims, and the DIP Claims shall have been paid in full pursuant to Sections 4.2, 4.3 and 2.4 hereof, respectively; *provided, however*, that payment in full of such Claims and effectiveness of the Plan may occur simultaneously.

#### 11.2. ***Waiver of Conditions.***

Each of the conditions precedent in Section 11.1 hereof (other than entry of the Confirmation Order) may be waived in whole or in part, as applicable, by the Debtors or the Plan Sponsor; *provided, however*, that the condition precedent in Section 11.1(d) of the Plan may only be waived by the Debtors with the consent of, as applicable, BMO or CoBank, as agents for the lenders from time to time party to the Prepetition BMO Credit Agreement, the DIP Credit Agreement, and the Prepetition CoBank Credit Agreement, respectively. Any such waiver may be effected at any time, without notice or leave or order of the Bankruptcy Court and without any formal action.

#### 11.3. ***Effect of Failure of Conditions to Effective Date.***

In the event the conditions precedent specified in Section 11.1 hereof have not been satisfied or waived pursuant to Section 11.2 hereof on or prior to the date to be specified in the Confirmation Order, then (i) the Confirmation Order shall be vacated, (ii) no distributions under the Plan shall be made, (iii) the Debtors and all holders of Claims and Equity Interests shall be restored to the *status quo ante* as of the day immediately preceding the Confirmation Date as though the Confirmation Date had never occurred, (iv) all of the Debtors' obligations with respect to the Claims and Equity Interests shall remain unchanged and nothing contained herein shall be deemed to constitute a waiver or release of any claims by or against the Debtors or any other Entity or to prejudice in any manner the rights of the Debtors or any other Entity in any further proceedings involving the Debtors, and (v) nothing contained herein shall prejudice in any manner the rights of the Debtors, including, without limitation, the right to seek a further extension of the exclusive periods under section 1121(d) of the Bankruptcy Code.

## ARTICLE XII

### RETENTION OF JURISDICTION

On and after the Effective Date, the Bankruptcy Court shall have exclusive jurisdiction over all matters arising out of, arising under, and related to the Chapter 11 Cases and the Plan pursuant to, and for the purpose of, sections 105(a) and 1142 of the Bankruptcy Code, including, without limitation:

(a) To hear and determine pending applications for the assumption or rejection of executory contracts or unexpired leases, the allowance of Claims resulting therefrom and any disputes with respect to executory contracts or unexpired leases relating to the facts and circumstances arising out of or relating to the Chapter 11 Cases;

(b) To determine any motion, adversary proceeding, application, contested matter, and other litigated matter pending on or commenced after the Confirmation Date;

(c) To ensure that distributions to holders of Allowed Claims and Allowed Equity Interests are accomplished as provided herein;

(d) To consider Claims and Equity Interests or the allowance, classification, priority, compromise, estimation, or payment of any Claim or Equity Interest;



(e) To enforce the terms of the ADR Procedures Order and hear any matter arising from the alternative dispute resolution procedures established therein;

(f) To enter, implement, or enforce such orders as may be appropriate in the event the Confirmation Order is stayed, reversed, revoked, modified, or vacated for any reason;

(g) To issue injunctions, enter and implement other orders, and take such other actions as may be necessary or appropriate to prevent interference by any person with the consummation, implementation, or enforcement of the Plan, the Confirmation Order, or any other order of the Bankruptcy Court;

(h) To hear and determine any application to modify the Plan in accordance with section 1127 of the Bankruptcy Code, to remedy any defect or omission or reconcile any inconsistency in the Plan, the Disclosure Statement, or any order of the Bankruptcy Court, including the Confirmation Order, in such a manner as may be necessary to carry out the purposes and effects thereof;

(i) To hear and determine all applications under sections 330, 331, and 503(b) of the Bankruptcy Code for awards of compensation for services rendered and reimbursement of expenses incurred prior to the Confirmation Date;

(j) To consider any amendments to or modifications of the Plan or to cure any defect or omission, or reconcile any inconsistency, in any order of the Bankruptcy Court, including, without limitation, the Confirmation Order;

(k) To hear and determine disputes arising in connection with the interpretation, implementation, or enforcement of the Plan and the Confirmation Order; provided, however, that notwithstanding anything to the contrary in this Article XII, disputes arising in connection with the interpretation, implementation or enforcement of the SPA or the Exit Financing or any other transactions or payments contemplated thereby shall be heard and determined as set forth therein.

(l) Subject to paragraph (k) of this Article XII, to take any action and issue such orders as may be necessary to construe, enforce, implement, execute, and consummate the Plan or to maintain the integrity of the Plan following the Effective Date;

(m) To issue injunctions, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any Person with consummation, implementation or enforcement of the Plan or the Confirmation Order;

(n) To determine such other matters and for such other purposes as may be provided in the Confirmation Order;

(o) To hear and determine matters concerning state, local, and federal taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code (including the expedited determination of tax under section 505(b) of the Bankruptcy Code);

(p) To determine the scope of any discharge of any Debtor under the Plan or the Bankruptcy Code;

(q) To recover all assets of the Debtors and all property of the Debtors' estates, wherever located;

(r) Subject to paragraph (k) of this Article XII, to hear and determine any matters arising out of or related to confidentiality agreements entered into by the Debtors during the Chapter 11 Cases;

(s) To hear and determine any rights, claims or causes of action held by or accruing to the Debtors pursuant to the Bankruptcy Code, any other federal or state statute, or any legal theory;

(t) To enter a final decree closing the Chapter 11 Cases;

(u) Subject to paragraph (k) of this Article XII, to determine any other matters that may arise in connection with or are related to the Plan, the Disclosure Statement, the Confirmation Order any of the Plan Documents, or any other contract, instrument, release or other agreement or document related to the Plan, the Disclosure Statement or the Plan Supplement; and

(v) To hear and determine any other matter not inconsistent with the Bankruptcy Code.

## ARTICLE XIII

### MISCELLANEOUS PROVISIONS

#### 13.1. *Effectuating Documents and Further Transactions.*

The Reorganized Debtors are authorized to execute, deliver, file, or record such contracts, instruments, releases, and other agreements or documents (including, without limitation, the Restated Certificate of Incorporation, the Restated Bylaws and any other Reorganized Debtor Constituent Documents) and take such actions as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan and any securities issued pursuant to the Plan.

#### 13.2. *[Intentionally Omitted.]*

#### 13.3. *Corporate Action.*

Upon the Effective Date, the following transactions shall be deemed to occur:

(a) General. All actions contemplated by the Plan shall be deemed authorized and approved in all respects, including, without limitation, (i) the execution and entry into the Exit Facility, (ii) adoption and approval of those terms of the SPA that have not already been approved pursuant to a Final Order of the Bankruptcy Court, (iii) the distribution of the New PPC Common Stock, (iv) adoption of the New Employee Incentive Plans, (v) selection of the board and the officers of the Reorganized Debtors, and (vi) all other actions contemplated by the Plan (whether to occur before, on or after the Effective Date). All matters provided for in the Plan involving the corporate structure of the Debtors or the Reorganized Debtors or any corporate action required by the Debtors or the Reorganized Debtors in connection with the Plan shall be deemed to have occurred and shall be in effect without any requirement of further action by the security holders, directors, or officers of the Debtors or the Reorganized Debtors. On or (as applicable) prior to the Effective Date, the appropriate officers of the Debtors or the Reorganized Debtors, as applicable, shall be authorized and directed to issue, execute and deliver the agreements, documents, securities and instruments contemplated by the Plan, necessary for or desirable to effect the transactions contemplated by the Plan, in the name of and on behalf of the Reorganized Debtors, including, without limitation, (x) the Exit Facility Documents, (y) the SPA, and (z) any and all other agreements, documents, securities and instruments relating to the foregoing.



(b) Restated Certificate of Incorporation and Restated Bylaws. On the Effective Date or as soon as practicable thereafter, each of the applicable Reorganized Debtors shall adopt amended certificates of incorporation and, as deemed necessary, amended bylaws (or similar organization documents) and shall file the amended certificates of incorporation with the Secretary of State of the State of Delaware or, if such Debtor is organized under the laws of another jurisdiction, file similar organization documents with the appropriate authority in the applicable jurisdiction. In addition, on or before the Effective Date, pursuant to and only to the extent required by section 1123(a)(6) of the Bankruptcy Code, the amended certificates of incorporation shall satisfy the provisions of the Bankruptcy Code and shall include, among other things, pursuant to section 1123(a)(6) of the Bankruptcy Code, (i) a provision prohibiting the issuance of non-voting equity securities and (ii) a provision setting forth an appropriate distribution of voting power among classes of equity securities possessing voting power. On the Effective Date, the boards of directors of each of the Reorganized Debtors shall be deemed to have adopted amended bylaws for each Reorganized Debtor.

**13.4. *Exemption from Transfer Taxes.***

Pursuant to section 1146(a) of the Bankruptcy Code, the issuance, transfer, or exchange of equity securities under the Plan, the creation of any mortgage, deed of trust, or other security interest, the making or assignment of any lease or sublease, or the making or delivery of any deed or other instrument of transfer under, in furtherance of, or in connection with the Plan, including, without limitation, the New PPC Common Stock, the Exit Facility, the SPA, any merger agreements or agreements of consolidation, deeds, bills of sale, or assignments executed in connection with any of the transactions contemplated under the Plan, shall not be subject to any stamp, real estate transfer, mortgage recording, or other similar tax. All sale transactions consummated by the Debtors and approved by the Bankruptcy Court on and after the Commencement Date through and including the Effective Date, including, without limitation, the transfers effectuated under the Plan, the sale by the Debtors of owned property pursuant to section 363(b) of the Bankruptcy Code, and the assumption, assignment, and sale by the Debtors of unexpired leases of non-residential real property pursuant to section 365(a) of the Bankruptcy Code, shall be deemed to have been made under, in furtherance of, or in connection with the Plan and, thus, shall not be subject to any stamp, real estate transfer, mortgage recording, or other similar tax.

**13.5. *Expedited Tax Determination.***

The Debtors and the Reorganized Debtors are authorized to request an expedited determination of taxes under section 505(b) of the Bankruptcy Code for any and all returns filed for, or on behalf of, the Debtors for any and all taxable periods (or portions thereof) through the Effective Date.

**13.6. *Payment of Statutory Fees.***

On the Effective Date, and thereafter as may be required, the Debtors shall pay all fees payable pursuant to section 1930 of chapter 123 of title 28 of the United States Code.

**13.7. *Post-Confirmation Date Professional Fees and Expenses.***

From and after the Confirmation Date, the Reorganized Debtors shall, in the ordinary course of business and without the necessity for any approval by the Bankruptcy Court, pay the reasonable fees and expenses of professional persons thereafter incurred by Reorganized Debtors.

### 13.8. *Dissolution of Committees.*

On the Effective Date, the Committees shall be dissolved and the members thereof shall be released and discharged of and from all further authority, duties, responsibilities and obligations relating to and arising from and in connection with the Chapter 11 Cases; *provided, however*, that in the event the Confirmation Order is appealed, any Committee may elect to delay its dissolution until the conclusion of the appeal so as to participate in such appeal. On the Effective Date, the retention or employment of all attorneys, financial advisors, accountants and other agents of the Creditors' Committee and Equity Committee shall terminate other than for purposes of (i) filing, prosecuting and objecting to applications for final allowances of compensation for professional services rendered and reimbursement of expenses incurred in connection therewith, and (ii) participating in any appeal of the Confirmation Order. To the extent not discharged and released on or prior to the Confirmation Date, on the eleventh (11<sup>th</sup>) day following the entry of an order in respect of the last of any outstanding fee applications, the Fee Review Committee shall be released and discharged from its obligations pursuant to the Order Granting Motion for (I) Appointment of a Fee Review Committee and (II) Amendment of the Interim Compensation Order [Docket No. 1624].

### 13.9. *Indenture Trustees as Claim Holders.*

Consistent with Bankruptcy Rule 3003(c), the Reorganized Debtors shall recognize proofs of claim timely filed by any Indenture Trustee in respect of any Claims under the Indentures. Accordingly, any Claim, proof of which is filed by the registered or beneficial holder of a Claim, may be disallowed as duplicative of the Claim of the applicable Indenture Trustees, without any further action of the Bankruptcy Court.

### 13.10. *Plan Supplement.*

A draft form of the following documents and any other appropriate documents, to the extent not already attached to the Plan, shall be contained in the Plan Supplement and filed with the Clerk of the Bankruptcy Court no later than ten (10) days prior to the last date by which holders of impaired Equity Interests may vote to accept or reject the Plan: (i) Summary of Terms of Exit Facility, (ii) Restated Certificate of Incorporation, (iii) Restated Bylaws, (iv) Summary of New Employee Incentive Plans, (v) list of certain assumed executory contracts and unexpired leases, (vi) list of certain rejected executory contracts and unexpired leases, (vii) list of initial directors for the Reorganized Debtors, (viii) list of initial officers of Reorganized PPC, and (vix) the Plan Sponsor's more recent financial statements. Upon its filing with the Bankruptcy Court, the Plan Supplement may be inspected in the office of the Clerk of the Bankruptcy Court during normal court hours. Documents to be included in the Plan Supplement will be posted at a website identified in the Disclosure Statement as they become available, but no later than five (5) days prior to the last date by which votes to accept or reject the Plan must be received. Notwithstanding the foregoing, the Debtors may amend Schedule 8.1, 8.7 and 8.9 prior to the Confirmation Date and each of the other documents contained in the Plan Supplement (in a manner consistent with the Plan and Disclosure Statement) through and including the Effective Date.

### 13.11. *Substantial Consummation.*

On the Effective Date, the Plan shall be deemed to be substantially consummated under sections 1101 and 1127(b) of the Bankruptcy Code.

### 13.12. *Amendments or Modifications of the Plan.*

Alterations, amendments, or modifications of or to the Plan may be proposed in writing by the Debtors at any time prior to the Confirmation Date, provided that the Plan, as altered, amended, or

modified, satisfies the conditions of sections 1122 and 1123 of the Bankruptcy Code, and the Debtors shall have complied with section 1125 of the Bankruptcy Code; provided further that without the prior written consent of the Plan Sponsor, the Debtors may not propose amendments or modifications to any provision in the Plan that would reasonably be expected to have a material adverse effect on the Plan Sponsor or on the ability of the Company and the Plan Sponsor to consummate the transactions contemplated by the SPA except that no consent shall be required for any amendments or modifications to the Plan proposed by the Debtors that are consistent with the rights of PPC under the SPA. After the Confirmation Date, so long as such action does not materially and adversely affect the treatment of holders of Claims or Equity Interests under the Plan, the Debtors or the Reorganized Debtors may institute proceedings in the Bankruptcy Court to remedy any defect or omission or reconcile any inconsistencies in the Plan or the Confirmation Order, with respect to such matters as may be necessary to carry out the purposes and effects of the Plan. A holder of a Claim or Equity Interest that has accepted the Plan shall be deemed to have accepted the Plan, as altered, amended, or modified, if the proposed alteration, amendment, or modification does not materially and adversely change the treatment of the Claim or Equity Interest of such holder.

**13.13. *Revocation or Withdrawal of the Plan.***

The Debtors reserve the right to revoke or withdraw the Plan prior to the Effective Date. If the Debtors take such action, the Plan shall be deemed null and void. In such event, nothing contained in the Plan shall constitute or be deemed a waiver or release of any Claims against the Debtors, any claims or rights of the Debtors against any other person or to prejudice in any manner the rights of the Debtors or any other person in any further proceedings involving the Debtors.

**13.14. *Severability.***

If, prior to the entry of the Confirmation Order, any term or provision of the Plan is held by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court, at the request of the Debtors, shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision as altered or interpreted shall then be applicable. Notwithstanding any such holding, alteration, or interpretation, the remainder of the terms and provisions of the Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

**13.15. *Governing Law.***

Except to the extent that the Bankruptcy Code or other federal law is applicable, or to the extent an exhibit hereto or a schedule or document in the Plan Supplement provides otherwise, the rights, duties, and obligations arising under the Plan shall be governed by, and construed and enforced in accordance with, the laws of the State of Texas, without giving effect to the principles of conflict of laws thereof; provided, however, that the SPA shall be governed by the laws as set forth therein.

**13.16. *Binding Effect.***

The Plan shall be binding upon the Debtors, the holders of Claims and Equity Interests and other parties in interest, and their respective successors and assigns, including, without limitation, the Reorganized Debtors.

13.17. ***Exhibits/Schedules.***

All exhibits and schedules to the Plan, including the Plan Supplement, are incorporated into and are a part of the Plan as if set forth in full herein.

13.18. ***Notices.***

In order to be effective, all notices, requests, and demands to or upon the Debtors must be in writing (including by facsimile transmission) and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered or, in the case of notice by facsimile transmission, when received and telephonically confirmed, addressed as follows:

Pilgrim's Pride Corporation  
4585 US Highway 271 North  
Pittsburg, TX 75868-0093  
Attn: Richard A. Cogdill  
Title: Chief Financial Officer  
Telephone: (903) 434-1000  
Facsimile: (972) 290-8950

With a copy to:

Weil, Gotshal & Manges LLP  
200 Crescent Court, Suite 300  
Dallas, Texas 75201  
Attn: Stephen A. Youngman  
Telephone: (214) 746-7700  
Facsimile: (214) 746-7777

- and -

Weil, Gotshal & Manges LLP  
767 Fifth Avenue  
New York, New York 10153  
Attn: Victoria Vron  
Telephone: (212) 310-8000  
Facsimile: (212) 310-8007

13.19. ***Time.***

In computing any period of time prescribed or allowed by the Plan, unless otherwise set forth herein or determined by the Bankruptcy Court, the provisions of Bankruptcy Rule 9006 shall apply.

13.20. *Section Headings.*

The section headings contained in the Plan are for reference purposes only and shall not affect in any way the meaning or interpretation of the Plan.

13.21. *No Admissions.*

**AS TO CONTESTED MATTERS, ADVERSARY PROCEEDINGS AND OTHER CAUSES OF ACTION OR THREATENED CAUSES OF ACTIONS, THE PLAN SHALL NOT CONSTITUTE OR BE CONSTRUED AS AN ADMISSION OF ANY FACT OR LIABILITY, STIPULATION, OR WAIVER, BUT RATHER AS A STATEMENT MADE IN SETTLEMENT NEGOTIATIONS. THE PLAN SHALL NOT BE ADMISSIBLE IN ANY NON-BANKRUPTCY PROCEEDING NOR SHALL IT BE CONSTRUED TO BE CONCLUSIVE ADVICE ON THE TAX, SECURITIES, AND OTHER LEGAL EFFECTS OF THE PLAN AS TO HOLDERS OF CLAIMS AGAINST, AND EQUITY INTERESTS IN, PPC OR ANY OF ITS SUBSIDIARIES AND AFFILIATES, AS DEBTORS AND DEBTORS IN POSSESSION IN THE CHAPTER 11 CASES.**

Dated: November 17, 2009  
Fort Worth, Texas

Respectfully submitted,

PILGRIM'S PRIDE CORPORATION

By: /s/ Richard A. Cogdill  
Name: Richard A. Cogdill  
Title: Chief Financial Officer

PFS DISTRIBUTION COMPANY

By: /s/ Richard A. Cogdill  
Name: Richard A. Cogdill  
Title: Chief Financial Officer

PPC TRANSPORTATION COMPANY

By: /s/ Richard A. Cogdill  
Name: Richard A. Cogdill  
Title: Chief Financial Officer

TO-RICOS, LTD.

By: /s/ Richard A. Cogdill  
Name: Richard A. Cogdill  
Title: Chief Financial Officer

TO-RICOS DISTRIBUTION, LTD.

By: /s/ Richard A. Cogdill  
Name: Richard A. Cogdill  
Title: Chief Financial Officer

PILGRIM'S PRIDE CORPORATION OF WEST VIRGINIA,  
INC.

By: /s/ Richard A. Cogdill  
Name: Richard A. Cogdill  
Title: Chief Financial Officer

PPC MARKETING, LTD.

By: Pilgrim's Pride Corporation  
Its General Partner  
  
/s/ Richard A. Cogdill  
Name: Richard A. Cogdill  
Title: Chief Financial Officer



**EXHIBIT A**

**Summary of Terms of Exit Facility**

**[To be filed with Plan Supplement]**

**EXHIBIT B**

**Stock Purchase Agreement**

---

**STOCK PURCHASE AGREEMENT**

---

Between

**PILGRIM'S PRIDE CORPORATION**

and

**JBS USA HOLDINGS, INC.**

Dated as of September 16, 2009

## TABLE OF CONTENTS

### Page

#### ARTICLE I DEFINITIONS

|   |    |
|---|----|
| SECTION 1.01. CERTAIN DEFINED TERMS.....                    | 2  |
| SECTION 1.02. DEFINITIONS.....                              | 14 |
| SECTION 1.03. INTERPRETATION AND RULES OF CONSTRUCTION..... | 15 |

#### ARTICLE II PURCHASE AND SALE

|   |    |
|---|----|
| SECTION 2.01. TRANSACTION; PURCHASE PRICE .....             | 16 |
| SECTION 2.02. EXCHANGE PROCEDURES .....                     | 17 |
| SECTION 2.03. CLOSING.....                                  | 17 |
| SECTION 2.04. CLOSING DELIVERIES BY THE COMPANY.....        | 17 |
| SECTION 2.05. CLOSING DELIVERIES BY THE PURCHASER .....     | 18 |
| SECTION 2.06. CERTIFICATE OF INCORPORATION AND BYLAWS ..... | 18 |
| SECTION 2.07. DIRECTORS AND OFFICERS .....                  | 18 |

#### ARTICLE III REPRESENTATIONS AND WARRANTIES OF THE COMPANY

|  |    |
|--|----|
| SECTION 3.01. ORGANIZATION, AUTHORITY AND QUALIFICATION OF<br>THE COMPANY .....                          | 19 |
| SECTION 3.02. SUBSIDIARIES .....   | 20 |
| SECTION 3.03. CAPITALIZATION.....  | 21 |
| SECTION 3.04. NO CONFLICT .....  | 21 |
| SECTION 3.05. GOVERNMENTAL CONSENTS AND APPROVALS.....   | 22 |
| SECTION 3.06. SEC FILINGS; FINANCIAL STATEMENTS; UNDISCLOSED<br>LIABILITIES .....                        | 22 |
| SECTION 3.07. CONDUCT IN THE ORDINARY COURSE; ABSENCE OF<br>CERTAIN CHANGES, EVENTS AND CONDITIONS ..... | 23 |
| SECTION 3.08. LITIGATION .....   | 23 |
| SECTION 3.09. COMPLIANCE WITH LAWS.....  | 23 |
| SECTION 3.10. PERMITS .....  | 24 |
| SECTION 3.11. ENVIRONMENTAL MATTERS .....  | 24 |
| SECTION 3.12. MATERIAL CONTRACTS.....  | 25 |
| SECTION 3.13. INTELLECTUAL PROPERTY .....  | 25 |
| SECTION 3.14. REAL PROPERTY .....  | 27 |
| SECTION 3.15. ASSETS.....  | 29 |
| SECTION 3.16. CUSTOMERS .....  | 29 |
| SECTION 3.17. SUPPLIERS.....   | 29 |
| SECTION 3.18. EMPLOYEE BENEFIT MATTERS .....   | 29 |

|  |    |
|--|----|
| SECTION 3.19. LABOR MATTERS.....               | 32 |
| SECTION 3.20. CRITICAL EMPLOYEES .....         | 33 |
| SECTION 3.21. CERTAIN INTERESTS.....           | 33 |
| SECTION 3.22. TAXES .....                      | 33 |
| SECTION 3.23. INSURANCE .....                  | 35 |
| SECTION 3.24. CERTAIN BUSINESS PRACTICES ..... | 35 |
| SECTION 3.25. BROKERS.....                     | 35 |

#### ARTICLE IV REPRESENTATIONS AND WARRANTIES OF THE PURCHASER

|  |    |
|--|----|
| SECTION 4.01. ORGANIZATION AND AUTHORITY OF THE PURCHASER..... | 36 |
| SECTION 4.02. NO CONFLICT .....                                | 36 |
| SECTION 4.03. GOVERNMENTAL CONSENTS AND APPROVALS .....        | 36 |
| SECTION 4.04. INVESTMENT PURPOSE .....                         | 37 |
| SECTION 4.05. LITIGATION .....                                 | 37 |
| SECTION 4.06. BROKERS.....                                     | 37 |
| SECTION 4.07. FINANCING .....                                  | 37 |

#### ARTICLE V ADDITIONAL AGREEMENTS

|  |    |
|--|----|
| SECTION 5.01. CONDUCT OF BUSINESS PRIOR TO THE CLOSING .....                     | 37 |
| SECTION 5.02. CONTRACTS.....   | 41 |
| SECTION 5.03. INDEMNIFICATION; DIRECTORS' AND OFFICERS'<br>INSURANCE .....       | 41 |
| SECTION 5.04. ACCESS TO INFORMATION .....  | 43 |
| SECTION 5.05. CONFIDENTIALITY .....  | 44 |
| SECTION 5.06. REGULATORY AND OTHER AUTHORIZATIONS; NOTICES<br>AND CONSENTS ..... | 44 |
| SECTION 5.07. NOTICE OF DEVELOPMENTS .....                                       | 45 |
| SECTION 5.08. BANKRUPTCY MATTERS .....   | 45 |
| SECTION 5.09. NON-SOLICITATION .....   | 46 |
| SECTION 5.10. AFFILIATE ARRANGEMENTS .....                                       | 47 |
| SECTION 5.11. FURTHER ACTION .....   | 47 |
| SECTION 5.12. NATIONAL SECURITIES EXCHANGE LISTING.....                          | 47 |
| SECTION 5.13. STOCKHOLDERS AGREEMENT .....                                       | 48 |
| SECTION 5.14. SECTION 16 MATTERS.....  | 48 |

#### ARTICLE VI EMPLOYEE MATTERS

|                             |    |
|-----------------------------|----|
| SECTION 6.01. BENEFITS..... | 48 |
|-----------------------------|----|

#### ARTICLE VII TAX MATTERS

|   |    |
|---|----|
| SECTION 7.01. TAX RETURNS & COMPLIANCE .....              | 49 |
| SECTION 7.02. OPINION OF COUNSEL OF THE PURCHASER. ....   | 50 |
| SECTION 7.03. OPINION OF THE COUNSEL OF THE COMPANY. .... | 50 |

## ARTICLE VIII CONDITIONS TO CLOSING

|  |    |
|--|----|
| SECTION 8.01. CONDITIONS TO OBLIGATIONS OF THE COMPANY.....    | 50 |
| SECTION 8.02. CONDITIONS TO OBLIGATIONS OF THE PURCHASER ..... | 51 |

## ARTICLE IX TERMINATION

|   |    |
|---|----|
| SECTION 9.01. TERMINATION.....            | 52 |
| SECTION 9.02. EFFECT OF TERMINATION ..... | 54 |

## ARTICLE X GENERAL PROVISIONS

|  |    |
|--|----|
| SECTION 10.01. EXPENSES.....   | 54 |
| SECTION 10.02. NOTICES .....   | 54 |
| SECTION 10.03. PUBLIC ANNOUNCEMENTS .....  | 56 |
| SECTION 10.04. NON-SURVIVAL OF REPRESENTATIONS, WARRANTIES<br>AND AGREEMENTS ..... | 56 |
| SECTION 10.05. SEVERABILITY .....  | 56 |
| SECTION 10.06. ENTIRE AGREEMENT .....  | 56 |
| SECTION 10.07. ASSIGNMENT.....   | 56 |
| SECTION 10.08. AMENDMENT.....  | 57 |
| SECTION 10.09. WAIVER .....  | 57 |
| SECTION 10.10. NO THIRD-PARTY BENEFICIARIES.....                                   | 57 |
| SECTION 10.11. BANKRUPTCY COURT APPROVAL .....                                     | 57 |
| SECTION 10.12. GOVERNING LAW .....   | 57 |
| SECTION 10.13. SUBMISSION TO JURISDICTION .....                                    | 57 |
| SECTION 10.14. WAIVER OF JURY TRIAL .....  | 58 |
| SECTION 10.15. CURRENCY.....   | 58 |
| SECTION 10.16. SPECIFIC PERFORMANCE.....   | 58 |
| SECTION 10.17. COUNTERPARTS .....  | 58 |



## EXHIBITS

- A Form of Stockholders Agreement
- B Form of Certificate of Incorporation of the Reorganized Company
- C Form of Bylaws of the Reorganized Company

## STOCK PURCHASE AGREEMENT

STOCK PURCHASE AGREEMENT, dated as of September 16, 2009, between PILGRIM'S PRIDE CORPORATION, a Delaware corporation (the "Company"), and JBS USA Holdings, Inc., a Delaware corporation (the "Purchaser").

### RECITALS

WHEREAS, the Company, directly and through its Subsidiaries, is engaged in the business of poultry product production at various locations in the United States and Mexico (the "Business");

WHEREAS, the Debtors commenced the Bankruptcy Cases in the Bankruptcy Court for relief under the Bankruptcy Code;

WHEREAS, the Company has determined that the transactions set forth in this Agreement support the preservation of the value inherent in the Company and its Assets ultimately available to the creditors of the Company;

WHEREAS, in connection with the Bankruptcy Cases, the Company intends to file the Reorganization Plan, pursuant to which the Company intends to seek the approval of the Bankruptcy Court of this Agreement and the Transactions, and authority to perform all of its obligations under this Agreement and the Ancillary Agreements;

WHEREAS, pursuant to the Reorganization Plan and this Agreement, at the Closing, (i) the Purchaser shall pay the Company the Purchase Price, (ii) all of the existing equity interests in the Company will be cancelled, (iii) the Company shall issue the Reorganized Company Shares to the Purchaser representing 100% of the outstanding equity of the Reorganized Company less the Stock Consideration (such shares, the "Purchaser Shares") and (iv) the Company shall issue to each holder of Existing Shares a number of Reorganized Company Share(s) in accordance with the Share Conversion Factor, all upon the terms and subject to the conditions set forth herein;

WHEREAS, the offer and issuance under the Reorganization Plan of Reorganized Company Shares will be exempt from registration under the Securities Act and under applicable state securities laws pursuant to section 1145 of the Bankruptcy Code and applicable non-bankruptcy Law; and

WHEREAS, the Company and the Purchaser intend that the exchange by the holders of Existing Shares for Reorganized Company Shares of the same class shall be considered a tax-free reorganization.

NOW, THEREFORE, in consideration of the premises and the mutual agreements and covenants hereinafter set forth, and intending to be legally bound, the Company and the Purchaser hereby agree as follows:

## ARTICLE I

### DEFINITIONS

SECTION 1.01. Certain Defined Terms. For purposes of this Agreement:

“Acquisition Proposal” means any inquiry, proposal or offer for a merger, recapitalization, share exchange, stock purchase (including a rights offering with respect to the Company’s securities), debt-for-equity exchange, distribution of securities for the benefit of the stockholders of the Company, consolidation or similar transaction involving a sale or purchase (directly or through a proposed investment in equity securities, debt securities or claims of creditors) of 40% or more of the equity securities or Assets of the Company or the Subsidiaries, other than the Transactions.

“Action” means any claim, action, suit, arbitration, inquiry, proceeding or investigation by or before any Governmental Authority.

“Affiliate” means, with respect to any specified Person, any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such specified Person.

“Agreement” or “this Agreement” means this Stock Purchase Agreement between the parties hereto (including the Exhibits and Schedules hereto and the Disclosure Schedule) and all amendments hereto made in accordance with the provisions of Section 10.08.

“Ancillary Agreements” means the Stockholders Agreement.

“Assets” means the assets and properties of the Company and the Subsidiaries.

“Assumption-Pending Pre-Petition Contracts” means all Contracts that were entered into prior to the filing of the Bankruptcy Cases to which one of the Debtors is a party that, as of the date hereof, have not been assumed or rejected by the respective Debtor.

“Bankruptcy Cases” means the cases under chapter 11 of the Bankruptcy Code commenced by the Debtors on December 1, 2008 in the Bankruptcy Court and styled *In re Pilgrim’s Pride Corporation, et al.*, Chapter 11 Case No. 08-45664 (DML) (Jointly Administered).

“Bankruptcy Code” means title 11 of the United States Code, as amended from time to time, as applicable to the Bankruptcy Cases.

“Bankruptcy Court” means the United States Bankruptcy Court for the Northern District of Texas, Fort Worth Division, or such other court that exercises jurisdiction over the Bankruptcy Cases.

“Bankruptcy Rules” means the Federal Rules of Bankruptcy Procedure as promulgated by the United States Supreme Court under section 2075 of title 28 of the United

States Code, as amended from time to time, and any Local Rules of the Bankruptcy Court, as applicable to the Bankruptcy Cases.

“Business Day” means any day that is not a Saturday, a Sunday or other day on which banks are required or authorized by Law to be closed in The City of New York.

“Bylaws” means the restated bylaws to be adopted by the Company on the Effective Date or as soon as practicable thereafter, in the form of Exhibit C to this Agreement.

“CERCLA” means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended through the Closing.

“CERCLIS” means the Comprehensive Environmental Response, Compensation and Liability Information System, as updated through the Closing.

“Claim” shall have the meaning ascribed to such term in section 101 of the Bankruptcy Code.

“Code” means the Internal Revenue Code of 1986, as amended through the date hereof.

“Company Contract” means any Contract that relates to, or is used or useful in or held for use in, the business conducted by the Company and its Subsidiaries.

“Company Intellectual Property” means Owned Intellectual Property and the Licensed Intellectual Property.

“Company IP Agreements” means all written contracts with terms affecting the rights to Intellectual Property or IT Assets to which the Company or any Subsidiary is a party or beneficiary, or by which the Company or any Subsidiary, or any of its Intellectual Property or IT Assets, is or may be bound, including all (i) licenses of Intellectual Property by the Company or any Subsidiary to any Person, (ii) licenses of Intellectual Property by any Person to the Company or any Subsidiary, (iii) contracts between any Person and the Company or any Subsidiary providing for the transfer, development, maintenance or use of Intellectual Property or IT Assets or the use, modification, framing, linking, advertisement or other practices with respect to Internet websites, and (iv) consents, settlements, decrees, orders, injunctions, judgments or rulings governing the use, validity or enforceability of Company Intellectual Property or Company IT Assets.

“Company IT Assets” means any IT Asset that is used in or held for use in, the Business.

“Company SEC Documents” means all forms, reports, schedules, statements and other documents (including, in each case, exhibits, schedules, amendments or supplements thereto, and any other information incorporated by reference therein) required to be filed with the SEC by the Company since January 1, 2006 under the Exchange Act or the Securities Act (as such documents have been amended or supplemented between the time of their respective filings and the date of this Agreement).

“Confirmation Date” means the date on which the Clerk of the Bankruptcy Court enters the Confirmation Order on the docket of the Bankruptcy Court with respect to the Bankruptcy Cases.

“Confirmation Hearing” means the hearing to be held by the Bankruptcy Court regarding confirmation of the Reorganization Plan in accordance with section 1129 of the Bankruptcy Code, as such hearing may be adjourned or continued from time to time.

“Confirmation Order” means the order of the Bankruptcy Court confirming the Reorganization Plan pursuant to section 1129 of the Bankruptcy Code and stating that the offer and issuance under the Reorganization Plan of Reorganized Company Shares (and the issuance of any Exchange Shares (as defined in the Restated Certificate of Incorporation)) will be exempt from registration under the Securities Act and under applicable state securities laws pursuant to section 1145 of the Bankruptcy Code and applicable non-bankruptcy Law.

“Contract” means any contract, arrangement, note, bond, commitment, purchase order, sales order, franchise, guarantee, indemnity, indenture, instrument, lease, license or other agreement, understanding, instrument or obligation, whether written or oral, all amendments, supplements and modifications of or for any of the foregoing and all rights and interests arising thereunder or in connection therewith, other than any Plans.

“control” (including the terms “controlled by” and “under common control with”), with respect to the relationship between or among two or more Persons, means the possession, directly or indirectly or as trustee, personal representative or executor, of the power to direct or cause the direction of the affairs or management of a Person, whether through the ownership of voting securities, as trustee, personal representative or executor, by contract, credit arrangement or otherwise.

“Debtors” means the Company, PFS Distribution Company, PPC Transportation Company, To-Ricos, Ltd., To-Ricos Distribution, Ltd., Pilgrim’s Pride Corporation of West Virginia, Inc., and PPC Marketing, Ltd.

“Deemed Value” means, in respect of a Superior Proposal or the Transactions, as applicable, the aggregate dollar value to the Company and its bankruptcy estate of all cash and non-cash, as applicable, consideration comprising the Superior Proposal or Transactions, as applicable, as determined by the Board of Directors of the Company after consultation with its financial and legal advisors, and such other advisors as the Board of Directors of the Company chooses to consult.

“Determined Cure Costs” means the amounts required to be paid to counterparties of Assumption-Pending Pre-Petition Contracts on account of the assumption thereof pursuant to section 365 of the Bankruptcy Code and Section 5.02(b) hereof, which amounts shall be determined in accordance with Section 5.02 or pursuant to a Final Order.

“Disclosure Schedule” means the Disclosure Schedule attached hereto, dated as of the date hereof, delivered by the Company to the Purchaser in connection with this Agreement.

“Disclosure Statement” means the disclosure statement relating to the Reorganization Plan to be filed by the Company pursuant to section 1125 of the Bankruptcy Code (including all schedules and amendments thereto), as such disclosure statement may be amended or modified from time to time, in form and substance satisfactory to the Company, and insofar as it relates to or concerns this Agreement or any of the Ancillary Agreements and the Transactions, and to the extent it describes the Purchaser, in form and substance reasonably satisfactory to the Purchaser.

“Disclosure Statement Order” means an order of the Bankruptcy Court approving, among other things, the Disclosure Statement and establishing certain procedures with respect to the solicitation and tabulation of votes to accept or reject the Reorganization Plan.

“Effective Date” means a Business Day specified by the Debtors on or after the Confirmation Date, on which (a) no stay of the Confirmation Order is in effect and (b) the conditions to the effectiveness of the Reorganization Plan specified in Article 11 of the Reorganization Plan have been satisfied or waived.

“Employee Stock Purchase Plan” means the Pilgrim’s Pride Corporation Employee Monthly Stock Investment Plan.

“Encumbrance” means any security interest, pledge, hypothecation, mortgage, deed of trust, leasehold mortgage, leasehold deed of trust, lien (including environmental and tax liens), violation, charge, lease, license, encumbrance, servient easement, adverse claim, reversion, reverter, preferential arrangement, restrictive covenant, condition or restriction of any kind, including any restriction on the use, voting, transfer, receipt of income or other exercise of any attributes of ownership.

“Enforceability Exceptions” means, with reference to the enforcement of the terms and provisions of this Agreement or any other Contract, that the enforcement thereof is or may be subject to the effect of (a) general principles of equity (regardless of whether such enforceability is considered in a proceeding at law or in equity) and the exercise of equitable powers by a court of competent jurisdiction, and (b) applicable Laws or public policy limiting the enforcement of provisions providing for the indemnification of any Person.

“Environment” means surface waters, groundwaters, soil, subsurface strata and ambient air.

“Environmental Claims” means any Actions relating in any way to any Environmental Law or any Environmental Permit, including (a) any and all Actions by Governmental Authorities for enforcement, cleanup, removal, response, remedial or other actions or damages pursuant to any applicable Environmental Law, and (b) any and all Claims by any Person seeking damages, contribution, indemnification, cost recovery, compensation or injunctive relief resulting from Hazardous Materials or arising from alleged injury or threat of injury to health, safety or the Environment.

“Environmental Laws” means all Laws and any legally binding judicial or administrative interpretation thereof, including any judicial or administrative order, consent decree or judgment, relating to the environment, health, safety, natural resources or Hazardous



Materials, including CERCLA; the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. §§ 6901 et seq.; the Clean Water Act, 33 U.S.C. §§ 1251 et seq.; the Toxic Substances Control Act, 15 U.S.C. §§ 2601 et seq.; the Clean Air Act, 42 U.S.C. §§ 7401 et seq.; the Safe Drinking Water Act, 42 U.S.C. §§ 300f et seq.; the Atomic Energy Act, 42 U.S.C. §§ 2011 et seq.; the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §§ 136 et seq.; and the Federal Food, Drug and Cosmetic Act, 21 U.S.C. §§ 301 et seq.

“Environmental Permits” means all permits, approvals, identification numbers, licenses and other authorizations required under or issued pursuant to any applicable Environmental Law.

“ERISA Affiliate” means any entity that is a member of a controlled group for purposes of Section 4001(a)(14) of ERISA.

“Exchange Act” means the Securities Exchange Act of 1934, as amended, including the rules and regulations promulgated thereunder.

“Final Order” means an order or judgment of the Bankruptcy Court, entered by the Clerk of the Bankruptcy Court on the docket in the Bankruptcy Cases, that has not been reversed, vacated, or stayed, and as to which (a) the time to appeal, petition for certiorari, or move for a new trial, reargument, or rehearing has expired, and as to which no appeal, petition for certiorari, or other proceedings for a new trial, reargument, or rehearing shall then be pending, or (b) if an appeal, writ of certiorari, new trial, reargument, or rehearing thereof has been sought, such order or judgment of the Bankruptcy Court shall have been affirmed by the highest court to which such order was appealed, or certiorari shall have been denied, or a new trial, reargument, or rehearing shall have been denied or resulted in no modification of such order, and the time to take any further appeal, petition for certiorari or move for a new trial, reargument, or rehearing shall have expired; provided, however, that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules or the local court rules, may be filed relating to such order shall not cause such order to not be a Final Order.

“GAAP” means United States generally accepted accounting principles and practices in effect from time to time applied consistently throughout the periods involved.

“Governmental Authority” means any federal, national, supranational, state, provincial, local, or similar government, governmental, regulatory or administrative authority, agency or commission or any court, tribunal, or judicial or arbitral body.

“Governmental Order” means any order, writ, ruling, judgment, injunction, decree, stipulation, determination or award entered by or with any Governmental Authority.

“Hazardous Materials” means (a) petroleum and petroleum products, radioactive materials, asbestos-containing materials, urea formaldehyde foam insulation, transformers or other equipment that contain polychlorinated biphenyls, toxic mold, greenhouse gases and radon gas, (b) any other chemicals, materials or substances defined as or included in the definition of “hazardous substances”, “hazardous wastes”, “hazardous materials”, “extremely hazardous

wastes”, “restricted hazardous wastes”, “toxic substances”, “toxic pollutants”, “contaminants” or “pollutants”, or words of similar import, under any applicable Environmental Law, and (c) any other chemical, material or substance that is regulated by any Environmental Law.

“HSR Act” means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the rules and regulations promulgated thereunder.

“Indebtedness” means, with respect to any Person, (a) all indebtedness of such Person, whether or not contingent, for borrowed money, (b) all obligations of such Person for the deferred purchase price of property or services, (c) all obligations of such Person evidenced by notes, bonds, debentures or other similar instruments, (d) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property), (e) all obligations of such Person as lessee under leases that have been or should be, in accordance with GAAP, recorded as capital leases, (f) all obligations, contingent or otherwise, of such Person under banker acceptance, letter of credit or similar facilities, (g) all obligations of such Person to purchase, redeem, retire, defease or otherwise acquire for value any capital stock of such Person or any warrants, rights or options to acquire such capital stock, valued, in the case of redeemable preferred stock, at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends, (h) all Indebtedness of others referred to in clauses (a) through (g) above guaranteed directly or indirectly in any manner by such Person, or in effect guaranteed directly or indirectly by such Person through an agreement (I) to pay or purchase such Indebtedness or to advance or supply funds for the payment or purchase of such Indebtedness, (II) to purchase, sell or lease (as lessee or lessor) property, or to purchase or sell services, primarily for the purpose of enabling the debtor to make payment of such Indebtedness or to assure the holder of such Indebtedness against loss, (III) to supply funds to or in any other manner invest in the debtor (including any agreement to pay for property or services irrespective of whether such property is received or such services are rendered), or (IV) otherwise to assure a creditor against loss, and (i) all Indebtedness referred to in clauses (a) through (g) above secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Encumbrance on property (including accounts and contract rights) owned by such Person, even though such Person has not assumed or become liable for the payment of such Indebtedness.

“ING Credit Agreement” means that certain Credit Agreement, dated September 25, 2006, by and among Avicola Pilgrim’s Pride de Mexico, S. de R.L. de C.V., as borrower, the Company and certain Subsidiaries of the Company, as guarantors, ING Capital LLC, as Administrative Agent, the lenders party thereto from time to time, and others, as amended.

“Intellectual Property” means, in any and all jurisdictions worldwide, all (a) patents, utility models, inventions and discoveries, statutory invention registrations, mask works, invention disclosures, and industrial designs, community designs and other designs, (b) trademarks, service marks, domain names, uniform resource locators, trade dress, trade names, geographical indications and other identifiers of source or goodwill, including the goodwill symbolized thereby or associated therewith, (c) works of authorship (including software) and copyrights, and moral rights, design rights and database rights therein and thereto, (d) confidential and proprietary information, including trade secrets, know-how and invention

rights subject to intellectual property right protection, (e) rights of privacy and publicity and, (f) registrations, applications, renewals and extensions for any of the foregoing in (a)-(e).

“Inventories” means all inventory, merchandise, finished goods, and raw materials, packaging, labels, supplies and other personal property maintained, held or stored by or for the Company or any Subsidiary at the Closing, and any prepaid deposits for any of the same.

“IRS” means the Internal Revenue Service of the United States.

“IT Assets” means software, systems, servers, computers, hardware, firmware, middleware, networks, data communications lines, routers, hubs, switches and all other information technology equipment, and all associated documentation.

“knowledge” means the actual knowledge of any Executive Vice President or more senior officer of the Company.

“Law” means any federal, national, supranational, state, provincial, local or similar statute, law, ordinance, regulation, rule, code, order, requirement or rule of law (including common law).

“Leased Real Property” means the real property leased or subleased by the Company or any Subsidiary as tenant or subtenant, as applicable, together with, to the extent leased or subleased by the Company or any Subsidiary, all buildings and other structures, facilities or improvements currently or hereafter located thereon, all fixtures, systems, equipment and items of personal property of the Company or any Subsidiary attached or appurtenant thereto and all easements, rights of way, servitudes, licenses, tenements, privileges and appurtenances relating to the foregoing.

“Liabilities” means any and all debts, liabilities and obligations, whether accrued or fixed, absolute or contingent, matured or unmatured or determined or determinable, including those arising under any Law (including any Environmental Law), Action or Governmental Order and those arising under any contract, agreement, arrangement, commitment or undertaking.

“Licensed Intellectual Property” means Intellectual Property licensed to the Company or any Subsidiary pursuant to the Company IP Agreements.

“Mandatory Exchange Transaction” shall have the meaning ascribed to such term in the Restated Certificate of Incorporation.

“Material Adverse Effect” means any circumstance, change or effect that, individually or in the aggregate with all other circumstances, changes or effects: (a) is or is reasonably likely to be materially adverse to the business, operations, assets or liabilities (including contingent liabilities), results of operations or the condition (financial or otherwise) of the Business, or the Company and the Subsidiaries taken as a whole, or (b) is reasonably likely to materially and adversely affect the ability of the Purchaser to operate or conduct the Business in the manner in which it is currently operated or contemplated by the Company to be operated as of the date hereof, provided, however, that in no event shall any of the following be taken into

account in determining whether there has been a Material Adverse Effect on the Company or whether there has been a breach of a representation, warranty, covenant or agreement that is qualified by the term “Material Adverse Effect” (except with respect to clauses (i), (iii), and (iv) below, to the extent that such circumstance, change or effect affects the Company and the Subsidiaries in a disproportionately adverse manner relative to other participants in the poultry industry):

- (i) any effect that results from changes in general economic conditions or changes in financial or securities markets or political conditions, in general;
- (ii) any effect caused by a material worsening of current conditions caused by acts of terrorism or war (whether or not declared);
- (iii) any changes in the poultry industry or markets in which the Company or any of its Subsidiaries operate, including as a result of diseases or export and import restrictions or embargos;
- (iv) any changes or proposed changes in Law, or the interpretation thereof, or GAAP, or the interpretation thereof, or other accounting requirements applicable to the Company or its Subsidiaries;
- (v) any changes attributable to the negotiation, execution or announcement of the Transactions, or the Company’s compliance with this Agreement or act or omission taken pursuant to the terms of this Agreement or with the approval or consent of the Purchaser or any act or omission taken at the direction or request of the Purchaser;
- (vi) any failure by the Company to meet any internal or published projections or forecasts for any period, in and of itself (as distinguished from any circumstance, change or effect giving rise or contributing to such failure);
- (vii) any change in the price or trading volume of the Company’s common stock, in and of itself (as distinguished from any circumstance, change or effect giving rise or contributing to such change);
- (viii) any changes to chicken, feed, feed ingredient and other commodity prices;
- (ix) any operating losses of a nature and in an amount similar to those prevailing prior to the date hereof;
- (x) the existence of the Bankruptcy Cases; and
- (xi) any expenses incurred in connection with the negotiation, documentation and execution of this Agreement and the consummation of the Transactions.

“Material Contract” means:

- (a) all Contracts for the purchase or sale of assets, Inventory or other personal property, products or services that have a material effect on the Business;

(b) all distributor, dealer, franchise, agency, sales promotion, market research, marketing, consulting and advertising Contracts that have a material effect on the Business;

(c) all management Contracts and Contracts with independent contractors or consultants (or similar agreements) to which the Company or any Subsidiary is a party and which cannot be cancelled by the Company or such Subsidiary without penalty or further payment and without more than 30 days' notice and all contracts and agreements providing for benefits under any Plan;

(d) all Contracts relating to Indebtedness of the Company or any Subsidiary that have a material effect on the Business;

(e) all Contracts and agreements with any Governmental Authority that have a material effect on the Business;

(f) all Contracts that limit or restrict the ability of the Company or any Subsidiary to compete in any line of business or with any Person or in any geographic area or during any period of time, in each case, that have a material effect on the Business;

(g) all Contracts between or among the Company or any Subsidiary on the one hand, and any Affiliate of the Company or such Subsidiary (other than the Company or a Subsidiary), on the other hand;

(h) all Contracts outside the ordinary course of business providing for indemnification by the Company or any Subsidiary, other than in connection with respect to standard terms and conditions of a Contract for the purchase or sale of assets, Inventory or other personal property, products or services in the ordinary course of business;

(i) all Contracts for the lease of equipment or other Tangible Personal Property that have a material effect on the Business;

(j) all Contracts relating to the occupancy of the Leased Real Property that have a material effect on the Business;

(k) all Contracts with any director, officer, independent contractor or employee of the Company or any of the Subsidiaries to which the Company or any Subsidiary is a party and which cannot be cancelled by the Company or such Subsidiary without penalty or further payment or without more than 30 days notice (in each case, other than (i) employment agreements covered in clause (c) above and (ii) Plans);

(l) all Contracts providing for benefits under any Plan;

(m) all Contracts not made in the ordinary course of business that have a material effect on the Business; and

(n) all other Contracts, whether or not made in the ordinary course of business, that are material to the Company, any Subsidiary or the conduct of the Business, or the absence of which would reasonably be expected to have a Material Adverse Effect.



“national securities exchange” means a national securities exchange registered with the SEC pursuant to Section 6 of the Exchange Act.

“Owned Intellectual Property” means all Intellectual Property owned by or under obligation of assignment to the Company or any Subsidiary.

“Owned Real Property” means the real property in which the Company or any Subsidiary has fee title (or equivalent) interest, together with all buildings and other structures, facilities or improvements currently or hereafter located thereon, all fixtures, systems, equipment and items of personal property of the Company or any Subsidiary attached or appurtenant thereto and all easements, rights of way, servitudes, licenses, tenements, privileges and appurtenances relating to the foregoing.

“Permits” means all franchises, permits, consents, certificates, clearances, approvals, exceptions, variances, permissions, filings, publications, declarations, notices, licenses, agreements, waivers and authorizations, including Environmental Permits, of or with any Governmental Authority related to the Business or used, useful or held for use by any of the Company or the Subsidiaries in connection with the Business, and all rights and benefits accruing thereunder.

“Permitted Encumbrances” means such of the following as to which no execution, levy or foreclosure proceeding shall have been commenced which are not otherwise stayed or, with respect to any Subsidiary that is not a Debtor, diligently being prosecuted: (a) liens for Taxes not yet due and payable for which adequate reserves have been maintained in accordance with GAAP; (b) Encumbrances imposed by Law, such as materialmen’s, mechanics’, carriers’, warehousemen’s, workmen’s and repairmen’s liens and other similar liens arising in the ordinary course of business; (c) pledges or deposits to secure obligations under workers’ compensation laws or similar legislation or to secure public or statutory obligations; (d) minor survey exceptions, reciprocal easement agreements and other customary encumbrances on title to real property that (i) were not incurred in connection with any Indebtedness, (ii) do not render title to the property encumbered thereby unmarketable or uninsurable, and (iii) do not, individually or in the aggregate, materially and adversely affect the value of or the use of such property for its current purposes; (e) Encumbrances that are released on or prior to the Closing Date; (f) Encumbrances arising under this Agreement and the Ancillary Agreements; (g) Encumbrances securing Indebtedness under the Secured Credit Facilities and the ING Credit Agreement; (h) all matters of record, Encumbrances and other imperfections or defects of title and encumbrances that, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect; (i) any Encumbrances created by an act or omission of the Purchaser; and (j) Encumbrances securing Indebtedness to repay the Secured Credit Facilities.

“Person” means any individual, partnership, firm, corporation, limited liability company, association, trust, unincorporated organization or other entity, as well as any syndicate or group that would be deemed to be a person under Section 13(d)(3) of the Exchange Act.

“Plan Documents” means the documents to be executed, delivered, assumed, and/or performed in conjunction with the consummation of the Reorganization Plan on the Effective Date, which will be included in draft form in the Plan Supplement.

“Plan Supplement” means the document (as may be amended, modified or supplemented) containing the forms of documents specified in Section 13.10 of the Reorganization Plan.

“Post-Petition Credit Agreement” means the Amended and Restated Post-Petition Credit Agreement, dated December 31, 2008, among the Company, as borrower, certain Subsidiaries, as guarantors, the Bank of Montreal, as DIP Agent, the lenders party thereto from time to time, and others, as amended.

“Purchase Price” means \$800,000,000.

“Purchase Price Bank Account” means a bank account in the United States to be designated by the Company in a written notice to the Purchaser at least five Business Days before the Closing.

“Real Property” means the Leased Real Property and the Owned Real Property.

“Receivables” means any and all accounts receivable, notes and other amounts receivable from third parties, including customers and employees, arising from the conduct of the Business before the Closing, whether or not in the ordinary course, together with any unpaid financing charges accrued thereon.

“Registered” means issued by, registered, recorded or filed with, renewed by or the subject of a pending application before any Governmental Authority or Internet domain name registrar.

“Regulations” means the Treasury Regulations (including Temporary Regulations) promulgated by the United States Department of Treasury with respect to the Code or other federal tax statutes.

“Release” means disposing, discharging, injecting, spilling, leaking, leaching, dumping, emitting, escaping, emptying, seeping, placing and the like into or upon any land or water or air or otherwise entering into the Environment.

“Remedial Action” means all action to (a) clean up, remove, treat or handle in any other way Hazardous Materials in the Environment; (b) prevent the Release of Hazardous Materials so that they do not migrate, endanger or threaten to endanger public health or the Environment; or (c) perform remedial investigations, feasibility studies, corrective actions, closures and post-remedial or post-closure studies, investigations, operations, maintenance and monitoring.

“Reorganization Plan” means the Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code, including the Plan Documents, the Plan Supplement, and the exhibits and schedules hereto and thereto, as the same may be amended or modified from time to time in accordance with the provisions of the Bankruptcy Code and the terms of the Reorganization Plan.



“Reorganized Company” means the Company, as reorganized as of the Effective Date in accordance with the Reorganization Plan.

“Reorganized Company Shares” means the shares of common stock to be issued by the Reorganized Company, having the material terms set forth in the Restated Certificate of Incorporation.

“Restated Certificate of Incorporation” means the restated certificate of incorporation to be adopted by the Company and filed with the Secretary of State of the State of Delaware on the Effective Date or as soon as practicable thereafter, in the form of Exhibit B to this Agreement.

“SEC” means the United States Securities and Exchange Commission.

“Secured Credit Facilities” means the Company’s secured credit facilities, including (a) that certain Amended and Restated Credit Agreement, dated September 21, 2006, among the Company, CoBank, ACB, and others, as amended, (b) that certain Fourth Amended and Restated Secured Credit Agreement, dated February 8, 2007, among the Company, To-Ricos, Ltd., the Bank of Montreal, and others, as amended and (c) the Post-Petition Credit Agreement.

“Securities Act” means the Securities Act of 1933, as amended, including the rules and regulations promulgated thereunder.

“Stockholders” means the stockholders of the Company on or prior to the Closing Date.

“Stockholders Agreement” means the Stockholders Agreement between the Reorganized Company and the Purchaser in the form of Exhibit A.

“Subsequent SEC Filings” means, collectively, all subsequent filings made after the date of this Agreement amending or superseding any Company SEC Documents (including any statements or schedules therein) and any forms, reports, schedules, statements, registration statements, proxy statements, or other documents (including, in each case, exhibits, schedules, amendments or supplements thereto, and any other information incorporated by reference therein) filed with the SEC after the date of this Agreement.

“Subsidiaries” means any subsidiary of the Company and any and all entities listed on Section 3.02 of the Disclosure Schedule.

“Superior Proposal” means a bona fide written Acquisition Proposal for 51% or more of the equity or assets of the Company and with a Deemed Value in excess of \$800,000,000 that the Board of Directors of the Company determines (after consultation with its legal, financial and other advisors) in good faith (a) is reasonably likely to be consummated, taking into account all factors deemed relevant by the Board of Directors of the Company (including all legal, financial and regulatory aspects of the proposal and the Person making the Acquisition Proposal), (b) if consummated would, taking into account all factors deemed relevant by the Board of Directors of the Company (including the amounts that would be owed to

the Purchaser pursuant to Section 9.02(b), Section 9.02(c), the likelihood that such Acquisition Proposal would be consummated in a timely manner, the costs reasonably likely to be incurred in connection with any negotiation of an Acquisition Proposal, the type and quality of the consideration to be received by the Company and its bankruptcy estate and the existence of any condition that the purported counterparty obtain financing in order to consummate the Acquisition Proposal), result in a transaction more favorable in the aggregate to the Company and its bankruptcy estate than the Transactions, and (c) provide a Deemed Value in the aggregate that exceeds the Deemed Value of this Agreement and the Transactions by at least \$10,000,000.

“Tangible Personal Property” means machinery, equipment, tools, supplies, furniture, fixtures, personalty, vehicles, rolling stock and other tangible personal property.

“Taxes” means (a) any and all taxes, fees, levies, duties, tariffs, imposts, and other charges of any kind (together with any and all interest, penalties, additions to tax and additional amounts imposed with respect thereto) imposed by any Government Authority, including taxes or other charges on or with respect to income, franchises, windfall or other profits, gross receipts, property, sales, use, capital stock, payroll, employment, social security, workers’ compensation, unemployment compensation, or net worth; taxes or other charges in the nature of excise, withholding, ad valorem, stamp, transfer, value-added, or gains taxes; license, registration and documentation fees; and customs’ duties, tariffs, and similar charges and (b) liability for the payment of any Tax (i) as a result of being a member of a consolidated, combined, unitary or affiliated group that includes any other Person, (ii) by reason of any obligation to indemnify or otherwise assume or succeed to the liability of any other Person for Taxes, including a Tax sharing, Tax indemnity or similar agreement, or (iii) by reason of transferee or successor liability.

“Tax Returns” means any return, declaration, report, election, claim for refund or information return or other statement or form relating to, filed or required to be filed with respect to Taxes, including any schedule or attachment thereto or any amendment thereof.

“Transactions” means the transactions contemplated by this Agreement and the Ancillary Agreements.

SECTION 1.02. Definitions. The following terms have the meanings set forth in the Sections listed below:

| <u>Definition</u>                                | <u>Location</u> |
|--|-----------------|
| <u>“Affiliate Transaction”</u> .....             | 3.21            |
| <u>“Assumption Schedule”</u> .....               | 5.02(b)         |
| <u>“Business”</u> .....                          | Recitals        |
| <u>“Closing”</u> .....                           | 2.03            |
| <u>“Closing Date”</u> .....                      | 2.03            |
| <u>“Company”</u> .....                           | Preamble        |
| <u>“Company Confidentiality Agreement”</u> ..... | 3.04            |
| <u>“Confidentiality Agreements”</u> .....        | 4.02            |
| <u>“Contingent Worker”</u> .....                 | 3.19            |

|  |          |
|--|----------|
| “Covered Employees” .....                    | 6.01(b)  |
| “D&O Insurance” .....                        | 5.03(c)  |
| “Debtor” .....                               | Recitals |
| “ERISA” .....                                | 3.18(a)  |
| “Existing Shares” .....                      | 2.01(b)  |
| “Evaluation Material” .....                  | 5.05     |
| “Indemnified Parties” .....                  | 5.03(a)  |
| “Initial Termination Date” .....             | 9.01(g)  |
| “Insider” .....                              | 5.14(a)  |
| “Insurance Policies” .....                   | 3.23     |
| “Matching Right” .....                       | 5.09(d)  |
| “Multiemployer Plan” .....                   | 3.18(d)  |
| “Multiple Employer Plan” .....               | 3.18(d)  |
| “Non-U.S. Benefit Plan” .....                | 3.18(h)  |
| “Plan Sponsor Order” .....                   | 5.08(a)  |
| “Plans” .....                                | 3.18(a)  |
| “Purchaser” .....                            | Preamble |
| “Purchaser Confidentiality Agreement” .....  | 4.02     |
| “Purchaser Shares” .....                     | Recitals |
| “Real Estate Disclosure Documentation” ..... | 3.14(c)  |
| “Share Conversion Factor” .....              | 2.01(c)  |
| “Stock Consideration” .....                  | 2.01(b)  |
| “Tail Policy” .....                          | 5.03(c)  |
| “Termination Date” .....                     | 9.01(g)  |
| “Termination Fee” .....                      | 9.02(b)  |

SECTION 1.03. Interpretation and Rules of Construction. In this Agreement, except to the extent otherwise provided or that the context otherwise requires:

- (i) when a reference is made in this Agreement to an Article, Section, Exhibit or Schedule, such reference is to an Article or Section of, or an Exhibit or Schedule to, this Agreement unless otherwise indicated;
- (ii) the table of contents and headings for this Agreement are for reference purposes only and do not affect in any way the meaning or interpretation of this Agreement;
- (iii) whenever the words “include”, “includes” or “including” are used in this Agreement, they are deemed to be followed by the words “without limitation”;
- (iv) the words “hereof”, “herein” and “hereunder” and words of similar import, when used in this Agreement, refer to this Agreement as a whole and not to any particular provision of this Agreement;
- (v) all terms defined in this Agreement have the defined meanings when used in any certificate or other document made or delivered pursuant hereto, unless otherwise defined therein;

(vi) the definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms;

(vii) any Law defined or referred to herein or in any agreement or instrument that is referred to herein means such Law or statute as from time to time amended, modified or supplemented, including by succession of comparable successor Laws;

(viii) references to a Person are also to its successors and permitted assigns; and

(ix) the use of “or” is not intended to be exclusive unless expressly indicated otherwise.

## ARTICLE II

### PURCHASE AND SALE

SECTION 2.01. Transaction; Purchase Price. (a) Upon the terms and subject to the conditions of this Agreement, at the Closing, the Purchaser shall purchase from the Company, and the Company shall sell to the Purchaser, the Purchaser Shares in consideration for the Purchase Price and the representations, warranties and covenants contained herein.

(b) On and as of the Closing Date, pursuant to the Reorganization Plan, each share of common stock, par value \$.01 per share, of the Company issued and outstanding immediately prior to Closing (other than any shares to be cancelled pursuant to Section 2.01(d)) (the “Existing Shares”) shall be cancelled and converted automatically into the right to receive a number of fully paid and nonassessable Reorganized Company Share(s) equal to the Share Conversion Factor (the total number of shares issuable pursuant to this Section 2.01(b), the “Stock Consideration”).

(c) For purposes of this Agreement, “Share Conversion Factor” means the number determined by application of the following formula:

$$\text{SCF} = (0.36 \times \text{NNS}) / \text{NES}$$

where:

NNS = The number of shares necessary to cause SCF to be 1, or such other number of shares agreed in writing by the parties.

NES = The total number of Existing Shares

SCF = Share Conversion Factor

(d) Each share of common stock, par value \$.01 per share, of the Company held in the treasury of the Company or any Subsidiary immediately prior to the Closing and each share of restricted stock of the Company as to which any conditions to vesting shall not have lapsed or shall not have been satisfied at or immediately prior to the Closing shall be canceled without any conversion thereof and no distribution shall be made with respect thereto.

SECTION 2.02. Exchange Procedures. The procedures pursuant to which holders of Existing Shares shall exchange certificates representing Existing Shares for Stock Consideration shall be set forth in the Disclosure Statement Order.

SECTION 2.03. Closing. Subject to the terms and conditions of this Agreement, the sale and purchase of the Purchaser Shares contemplated by this Agreement shall take place at a closing (the “Closing”) to be held at the offices of Shearman & Sterling LLP, 599 Lexington Avenue, New York, New York at 10:00 A.M. New York time the first Monday next succeeding the fifth day following the satisfaction or waiver of all conditions to the obligations of the parties set forth in Article VIII (excluding conditions that, by their nature, cannot be satisfied until the Closing Date, but subject to the fulfillment or waiver of those conditions), but no earlier than the eleventh day following entry of the Confirmation Order, or at such other place or at such other time or on such other date as the Company and the Purchaser may mutually agree upon in writing; provided that the Closing shall be deemed to have occurred at 11:59 P.M. Central time on the Saturday immediately preceding the closing held in accordance herewith (the “Closing Date”).

SECTION 2.04. Closing Deliveries by the Company. At or prior to the Closing, the Company shall deliver or cause to be delivered to the Purchaser:

- (a) stock certificates evidencing the Purchaser Shares duly endorsed in blank, or accompanied by stock powers duly executed in blank, in form satisfactory to the Purchaser and with all required stock transfer tax stamps affixed;
- (b) executed counterparts of each Ancillary Agreement to which the Company is a party;
- (c) a true and complete copy, certified by the Secretary or an Assistant Secretary of the Company, of the resolutions duly and validly adopted by the Board of Directors of the Company evidencing its authorization of the execution and delivery of this Agreement and the Ancillary Agreements and the consummation of the Transactions;
- (d) a certificate of the Secretary or an Assistant Secretary of the Company certifying the names and signatures of the officers of the Company authorized to sign this Agreement and the Ancillary Agreements and the other documents to be delivered hereunder and thereunder;
- (e) a certificate of a duly authorized officer of the Company certifying as to the matters set forth in Section 8.02(b); and
- (f) a copy of the Confirmation Order and a copy of the docket sheet for the Bankruptcy Cases showing its entry.

SECTION 2.05. Closing Deliveries by the Purchaser. At or prior to the Closing, the Purchaser shall deliver to the Company:

- (a) the Purchase Price by wire transfer in immediately available funds to the Purchase Price Bank Account;
- (b) executed counterparts of each Ancillary Agreement to which the Purchaser is a party;
- (c) a true and complete copy, certified by the Secretary or an Assistant Secretary of the Purchaser, of the resolutions duly and validly adopted by the Board of Directors of the Purchaser evidencing its authorization of the execution and delivery of this Agreement and the Ancillary Agreements to which the Purchaser is a party and the consummation of the Transactions;
- (d) a certificate of the Secretary or an Assistant Secretary of the Purchaser certifying the names and signatures of the officers of the Purchaser authorized to sign this Agreement and the Ancillary Agreements and the other documents to be delivered hereunder and thereunder; and
- (e) a certificate of a duly authorized officer of the Purchaser certifying as to the matters set forth in Section 8.01(a).

SECTION 2.06. Certificate of Incorporation and Bylaws. At the Closing,

- (a) the certificate of incorporation of the Company shall be amended so as to read in its entirety as set forth on Exhibit B and, as so amended, shall be the Restated Certificate of Incorporation of the Reorganized Company; and
- (b) the bylaws of the Company shall be amended so as to read in their entirety as set forth in Exhibit C and, as so amended, shall be the Bylaws of the Reorganized Company.

SECTION 2.07. Directors and Officers. As of the Closing, the officers of the Company shall be the officers of the Reorganized Company. No later than the day after the Confirmation Date, the Purchaser shall deliver to the Company a list of the directors of the Reorganized Company, who shall be the directors of the Reorganized Company immediately following the Closing; provided that the Company shall not have objected in writing to any one or more individuals appearing on such list within five days of the Company's receipt thereof, in which case the directors of the Reorganized Company shall be as agreed to by the parties hereto.



ARTICLE III  
REPRESENTATIONS AND WARRANTIES  
OF THE COMPANY

Except as set forth in the Disclosure Schedule (which Disclosure Schedule shall be arranged in sections corresponding to the numbered and lettered sections of this Article III, and any information disclosed in any such section of the Disclosure Schedule shall be deemed to be disclosed only for purposes of the corresponding section of this Article III, unless it is reasonably apparent that the disclosure contained in such section of the Disclosure Schedule contains enough information regarding the subject matter of other representations and warranties contained in this Article III as to qualify or otherwise apply to such other representations and warranties, in which case the information disclosed shall also be deemed to be disclosed for purposes of such other representations and warranties) or as disclosed in Company SEC Documents prior to the date of this Agreement, the Company hereby represents and warrants to the Purchaser as follows:

SECTION 3.01. Organization, Authority and Qualification of the Company. (a) Except as a result of the commencement of the Bankruptcy Cases, the Company is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation and, subject to the entry of the Confirmation Order, has all necessary corporate power and authority to enter into this Agreement and the Ancillary Agreements, to carry out its obligations hereunder and thereunder, and to consummate the Transactions. The Company has all necessary corporate power and authority to own, operate or lease the properties and assets now owned, operated or leased by it and to carry on the Business as it is currently conducted. The Company is duly licensed or qualified to do business as a foreign corporation and is in good standing in each jurisdiction in which the properties owned or leased by it or the operation of its respective business makes such licensing or qualification necessary, except to the extent that the failure to be so licensed, qualified or in good standing: (a) has resulted from the commencement or continuance of the Bankruptcy Cases; or (b) would not reasonably be expected to have a Material Adverse Effect. Subject to the entry of the Confirmation Order, the execution and delivery of this Agreement and the Ancillary Agreements by the Company, the performance by the Company of its obligations hereunder and thereunder, and the consummation by the Company of the Transactions have been duly authorized by all requisite corporate action on the part of the Company and its stockholders, and no other corporate action or proceeding on the part of the Company is necessary to authorize the execution and delivery of this Agreement and the Ancillary Agreements, or the consummation of the Transactions. This Agreement has been, and upon their execution, the Ancillary Agreements shall have been, duly executed and delivered by the Company, and (assuming due authorization, execution and delivery by the Purchaser), subject to the entry of the Confirmation Order, this Agreement constitutes, and, upon their execution, the Ancillary Agreements shall constitute, legal, valid and binding obligations of the Company, enforceable against the Company in accordance with their respective terms, subject to the Enforceability Exceptions.

(b) The minute books of the Company contain records, which are accurate in all material respects, of all meetings and all actions taken by the stockholders, Board of Directors



and all committees of the Board of Directors of the Company. Complete and accurate copies of all such minute books have been provided or made available to the Purchaser.

SECTION 3.02. Subsidiaries. (a) Section 3.02(a) of the Disclosure Schedule sets forth a true and complete list of all of the Subsidiaries, listing for each Subsidiary its name, type of entity, the jurisdiction of its incorporation or organization, its authorized capital stock, partnership capital or equivalent, the number and type of its issued and outstanding shares of capital stock, partnership interests or similar ownership interests and the current ownership of such shares, partnership interests or similar ownership interests.

(b) Other than the Subsidiaries and those entities set forth in Section 3.02(b) of the Disclosure Schedule, there are no other corporations, partnerships, joint ventures, associations or other entities in which the Company or any Subsidiary owns, of record or beneficially, any direct or indirect equity or other similar interest or any right (contingent or otherwise) to acquire the same that are material to the Business.

(c) Except as a result of the commencement of the Bankruptcy Cases, each Subsidiary that is a corporation: (i) is a corporation duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation, (ii) has all necessary corporate power and authority to own, operate or lease the properties and assets owned, operated or leased by such Subsidiary and to carry on its business as it is currently conducted by such Subsidiary and (iii) is duly licensed or qualified to do business as a foreign corporation and is in good standing in each jurisdiction in which the properties owned or leased by it or the operation of its business makes such licensing or qualification necessary, except to the extent that the failure to be so organized, existing or in good standing or to have such power and authority or license or qualification (A) has resulted from the commencement or continuance of the Bankruptcy Cases, or (B) would not reasonably be expected to have a Material Adverse Effect. Except as a result of the commencement of the Bankruptcy Cases, each Subsidiary that is not a corporation: (i) is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization, (ii) has all necessary entity power and authority to own, operate or lease the properties and assets owned, operated or leased by such Subsidiary and to carry on its business as it has been and is currently conducted by such Subsidiary and (iii) is duly licensed or qualified to do business as a foreign entity and is in good standing in each jurisdiction in which the properties owned or leased by it or the operation of its business makes such licensing or qualification necessary, except, in each case, to the extent that the failure to be so organized, existing or in good standing or to have such power and authority or license or qualification (A) has resulted from the commencement or continuance of the Bankruptcy Cases, or (B) would not reasonably be expected to have a Material Adverse Effect.

(d) Subject to the entry of the Confirmation Order, all corporate actions taken by each Subsidiary with respect to the Transactions have been duly authorized and no Subsidiary has taken any action with respect to the Transactions that in any respect conflicts with, constitutes a default under or results in a violation of any provision of its Certificate of Incorporation, Articles of Incorporation or Bylaws (or similar organizational documents). True and complete copies of the Certificate of Incorporation and Bylaws (or similar organizational documents), in each case as in effect on the date hereof, of each Subsidiary have been delivered or made available by the Company to the Purchaser.

(e) Except as would not reasonably be expected to have a Material Adverse Effect, the minute books of the Subsidiaries contain accurate records of all meetings and accurately reflect all actions taken by the stockholders, Board of Directors and all committees of the Board of Directors of the Company.

SECTION 3.03. Capitalization. (a) Upon the Closing, the Reorganized Company Shares will constitute all the issued and outstanding shares of capital stock of the Reorganized Company. Upon the Closing, the Reorganized Company Shares will be duly authorized and validly issued and will be fully paid and nonassessable and will not have been issued in violation of any preemptive rights. Upon the Closing, there will be no options, warrants, convertible securities or other rights, agreements, arrangements or commitments of any character relating to the shares or obligating the Reorganized Company to issue or sell any shares, or any other interest, in the Reorganized Company. As of the Closing, there will be no outstanding contractual obligations of the Reorganized Company to repurchase, redeem or otherwise acquire any shares of common stock or to provide funds to, or make any investment (in the form of a loan, capital contribution or otherwise) in, any other Person. As of the Closing, the Reorganized Company Shares will be owned of record and beneficially by the Purchaser and the Stockholders free and clear of all Encumbrances (other than Encumbrances arising under this Agreement, the Reorganized Company's Certificate of Incorporation, the Reorganized Company's Bylaws, the Stockholders Agreement and applicable federal and state securities Laws). Upon consummation of the Transactions and registration of the Purchaser Shares in the name of the Purchaser in the stock records of the Reorganized Company, the Purchaser, assuming it shall have purchased the Purchaser Shares for value in good faith and without notice of any adverse claim, will, together with the Stockholders, own all the issued and outstanding capital stock of the Reorganized Company free and clear of all Encumbrances (other than Encumbrances arising under this Agreement, the Reorganized Company's Certificate of Incorporation, the Reorganized Company's Bylaws, the Stockholders Agreement and applicable federal and state securities Laws). Upon consummation of the Transactions, the Purchaser Shares will be fully paid and nonassessable.

(b) Except as set forth in Section 3.03(b) of the Disclosure Schedule, all the outstanding shares of capital stock of each Subsidiary that is a corporation are validly issued, fully paid, nonassessable and except with respect to wholly-owned Subsidiaries, free of preemptive rights and are owned by the Company, whether directly or indirectly, free and clear of all Encumbrances. There are no options, warrants, convertible securities or other rights, agreements, arrangements or commitments of any character relating to the capital stock of any Subsidiary or obligating the Company or any Subsidiary to issue or sell any shares of capital stock of or any other interests in any Subsidiary. There are no outstanding contractual obligations of the Company or any Subsidiary to acquire any shares of common stock or to provide funds to, or make any investment (in the form of a loan, capital contribution or otherwise) in, any other Person. Except as set forth in Section 3.03(b) of the Disclosure Schedule, there are no voting trusts, stockholder agreements, proxies or other agreements or understandings in effect with respect to the voting or transfer of any shares of capital stock of or any other interests in any Subsidiary.

SECTION 3.04. No Conflict. Subject to the entry of the Confirmation Order, and assuming that all consents, approvals, authorizations and other actions described in Section 3.05

have been obtained, all filings and notifications listed in Section 3.05 of the Disclosure Schedule have been made and any applicable waiting period has expired or been terminated, and except as may result from any facts or circumstances relating solely to the Purchaser, the execution, delivery and performance of this Agreement and the Ancillary Agreements and the consummation of the Transaction by the Company do not and will not, except as set forth in Section 3.04 of the Disclosure Schedule, (a) violate, conflict with or result in the breach of any provision of the certificate of incorporation, articles of incorporation or bylaws (or similar organizational documents) of the Company or any Subsidiary, (b) conflict with or violate any Law or Governmental Order applicable to the Company or any Subsidiary or any of their respective assets, properties or businesses, or (c) conflict with, 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, or result in the creation of any Encumbrance (other than Encumbrances arising under this Agreement and the Ancillary Agreements) on any of the Reorganized Company Shares or any of the Assets pursuant to, any note, bond, mortgage or indenture, contract, agreement, lease, sublease, license, permit, franchise or other instrument or arrangement to which the Company or any Subsidiary is a party or by which any of the Reorganized Company Shares or any of such assets or properties is bound or affected, except to the extent that any such rights and such Encumbrances are not enforceable due to operation of the Bankruptcy Code and, except in the case of clauses (b) and (c), as would not reasonably be expected to have a Material Adverse Effect. The Company has complied with all of its obligations under the confidentiality agreement between the Company and the Purchaser dated March 13, 2009 (the “Company Confidentiality Agreement”) at all times since its execution.

SECTION 3.05. Governmental Consents and Approvals. The execution, delivery and performance of this Agreement and each Ancillary Agreement by the Company 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 Company or any Subsidiary, except (a) the entry of the Confirmation Order, (b) as described in Section 3.05 of the Disclosure Schedule, (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, (d) where failure to obtain such consent, approval, authorization, order or action, or to make such filing or notification, would not (i) reasonably be expected to have a Material Adverse Effect or (ii) prevent or materially delay the consummation by the Company of the Transactions or (e) as may be necessary as a result of any facts or circumstances relating solely to the Purchaser or any of its Affiliates.

SECTION 3.06. SEC Filings; Financial Statements; Undisclosed Liabilities.  
(a) The Company has filed with the SEC all Company SEC Documents. Except to the extent amended or superseded by a subsequent filing with the SEC made prior to the date hereof, as of their respective dates (and if so amended or superseded, then on the date of such filing prior to the date hereof), the Company SEC Documents (i) did not, and in the case of Subsequent SEC Filings will not, contain any untrue statement of a material fact or omit, or in the case of Subsequent SEC Filings will not omit, to state a material fact required to be stated therein or

necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading, and (ii) complied, and in the case of Subsequent SEC Filings will comply, in all material respects with the applicable requirements of the Exchange Act and the Securities Act, as the case may be. None of the Subsidiaries is required to file any forms, reports or other documents with the SEC.

(b) Each of the financial statements contained or to be contained in the Company SEC Documents (including, in each case, any related notes and schedules) has (i) at the time at which they were prepared, been prepared from, and in accordance with, the books and records of the Company and the consolidated Subsidiaries, and (ii) been prepared in accordance with GAAP applied on a consistent basis throughout the periods indicated (except as may be indicated in the notes thereto and in the case of unaudited quarterly financial statements, as permitted by Form 10-Q under the Exchange Act) and fairly presents in all material respects the consolidated financial position and the consolidated results of operations and cash flows of the Company and the consolidated Subsidiaries as at the dates and for the periods covered thereby, except that the unaudited interim financial statements may not contain footnotes and were or are subject to normal year-end adjustments.

SECTION 3.07. Conduct in the Ordinary Course; Absence of Certain Changes, Events and Conditions. Other than as a result of or in connection with the Bankruptcy Cases, since September 27, 2008, except as contemplated by this Agreement or as otherwise disclosed in the Company SEC Documents, the Business has been conducted in the ordinary course in all material respects. As amplification and not limitation of the foregoing, except as set forth in Section 3.07 of the Disclosure Schedule and except with respect to Sections 5.01(b)(i), (ii), (iii), (v), (ix), (x), (xi), (xiii), (xv) and (xviii), none of the Company or any Subsidiary has taken, since September 27, 2008, any action that, if taken after the date of this Agreement, would constitute a breach of any covenants set forth in Section 5.01(b).

SECTION 3.08. Litigation. Except for the Bankruptcy Cases, there is no Action by or against the Company or any Subsidiary or affecting any of the Assets or the Business pending before any Governmental Authority (or, to the Company's knowledge, threatened to be brought by or before any Governmental Authority) that would reasonably be expected to have a Material Adverse Effect. Except for the Bankruptcy Cases, none of the Company, the Subsidiaries or any of their respective assets or properties, including the Assets, is subject to any Governmental Order (nor, to the Company's knowledge, are there any such Governmental Orders threatened to be imposed by any Governmental Authority) which would reasonably be expected to have a Material Adverse Effect.

SECTION 3.09. Compliance with Laws. Except as would not reasonably be expected to have a Material Adverse Effect, (a) the Company and the Subsidiaries have each conducted and continue to conduct the Business in accordance with all Laws and Governmental Orders applicable to the Company or any Subsidiary or the Business, (b) neither the Company nor any Subsidiary is in violation of any such Law or Governmental Order, and (c) neither the Company nor any Subsidiary has received any written notice that any violation of any such Law or Governmental Order is being or could reasonably be expected to be alleged.

SECTION 3.10. Permits. Except as would not have a Material Adverse Effect, (a) the Company and the Subsidiaries have obtained and possess all Permits and have made all registrations or filings with or notices to any Governmental Authority necessary for the lawful conduct of the Business as presently conducted and operated or necessary for the lawful ownership of their properties and assets or the operation of the Business as presently conducted and operated; (b) each such Permit is valid and in full force and effect and the Company and the Subsidiaries are in material compliance with all such Permits and have made such Permits available to the Purchaser; (c) any applications for the renewal of any such Permit that are due prior to the Closing will be timely made or filed by the Company or the applicable Subsidiary prior to the Closing; (d) no proceeding to modify, suspend, revoke, withdraw, terminate or otherwise limit any such Permit is pending or threatened, and there is no valid basis for any such proceeding; and (e) no administrative or governmental action or proceeding has been taken in connection with the expiration, continuance or renewal of any such Permit, and there is no valid basis for any such proceeding.

SECTION 3.11. Environmental Matters. Except as set forth in a list that has been previously provided or made available by the Company to the Purchaser:

(a) Except as would not reasonably be expected to result in a Material Adverse Effect:

(i) The Company and each Subsidiary are in compliance, and for the past three years have been in compliance with, all applicable Environmental Laws and all Environmental Permits, and all past noncompliance with Environmental Laws or Environmental Permits has been resolved without any pending, ongoing or future obligation, cost or liability.

(ii) There has been no Release of any Hazardous Material on any of the Real Property in connection with the conduct of the Business by the Company or any Subsidiary or, to the Company's knowledge, prior to the conduct of such Business, or, during the period of the Company's or any Subsidiary's ownership, lease, use or occupancy thereof, on any property formerly owned, leased, used or occupied by the Company or any Subsidiary, that can reasonably be expected to give rise to any obligation to report or conduct any Remedial Action with respect to such Release pursuant to the requirements of any Environmental Law.

(iii) Neither the Company nor any Subsidiary is conducting, and none of them has undertaken or completed, any Remedial Action relating to any Release or threatened Release of any Hazardous Material at the Real Property or at any other site, location or operation, either voluntarily or pursuant to the order of any Governmental Authority or the requirements of any Environmental Law or Environmental Permit.

(iv) None of the Real Property is listed or, to the knowledge of the Company, is proposed for listing on the National Priorities List or CERCLIS or on any analogous federal, state or local list.



(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 (15<sup>th</sup>) 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 (15<sup>th</sup>) 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

**STOCKHOLDERS AGREEMENT**

**between**

**JBS USA HOLDINGS, INC.**

**and**

**PILGRIM'S PRIDE CORPORATION**

**dated**

**[\_\_\_\_\_], 20\_\_**

## TABLE OF CONTENTS

|  | <b>Page</b>   |
|--|---|
| ARTICLE 1  |   |
| CERTAIN DEFINITIONS                                  |   |
| SECTION 1.01   | Certain Definitions..... 1  |
| ARTICLE 2  |   |
| RESTRICTIONS ON TRANSFERABILITY                      |   |
| SECTION 2.01   | Standstill..... 2   |
| ARTICLE 3  |   |
| CORPORATE GOVERNANCE                                 |   |
| SECTION 3.01   | Composition of the Board ..... 3  |
| SECTION 3.02   | Certificate of Incorporation and Bylaws to Be Consistent..... 4                           |
| SECTION 3.03   | Approval of Equity Directors and Founder Director Required for<br>Certain Actions ..... 4 |
| SECTION 3.04   | Agreement with Respect to Voting of Common Stock..... 5                                   |
| ARTICLE 4  |   |
| REPRESENTATIONS AND WARRANTIES                       |   |
| SECTION 4.01   | Representations of the Reorganized Company..... 5   |
| SECTION 4.02   | Representations of JBS USA..... 6   |
| ARTICLE 5  |   |
| MANDATORY EXCHANGE TRANSACTION; TAX-FREE TRANSACTION |   |
| SECTION 5.01   | Affirmative Covenants ..... 6   |
| SECTION 5.02   | Negative Covenants ..... 7  |
| SECTION 5.03   | Permitted Redemptions and Repurchases ..... 7   |
| ARTICLE 6  |   |
| MISCELLANEOUS  |   |
| SECTION 6.01   | Termination ..... 8   |
| SECTION 6.02   | Public Filings ..... 8  |
| SECTION 6.03   | Market Listing ..... 8  |

|              |   |    |
|--------------|---|----|
| SECTION 6.04 | Notices.....                                    | 8  |
| SECTION 6.05 | Amendments and Waivers.....                     | 9  |
| SECTION 6.06 | Binding Effect.....                             | 9  |
| SECTION 6.07 | Expenses.....                                   | 9  |
| SECTION 6.08 | Governing Law .....                             | 10 |
| SECTION 6.09 | Submission to Jurisdiction.....                 | 10 |
| SECTION 6.10 | Waiver of Jury Trial.....                       | 10 |
| SECTION 6.11 | Counterparts.....                               | 10 |
| SECTION 6.12 | Entire Agreement .....                          | 11 |
| SECTION 6.13 | Headings .....                                  | 11 |
| SECTION 6.14 | Severability .....                              | 11 |
| SECTION 6.15 | Public Announcements.....                       | 11 |
| SECTION 6.16 | Cumulative Remedies .....                       | 11 |
| SECTION 6.17 | Interpretation.....                             | 11 |
| SECTION 6.18 | No Third Party Beneficiaries .....              | 11 |
| SECTION 6.19 | Construction.....                               | 12 |
| SECTION 6.20 | Specific Performance .....                      | 12 |
| SECTION 6.21 | Enforcement of Reorganized Company Rights ..... | 12 |
| SECTION 6.22 | Section 16 Matters .....                        | 12 |

## **SCHEDULES**

Schedule 3.01(a)(i) Initial JBS Directors  
Schedule 3.01(a)(iii) Initial Equity Directors



## STOCKHOLDERS AGREEMENT

Stockholders Agreement (this “Agreement”), dated as of [\_\_\_\_], 20\_\_, between Pilgrim’s Pride Corporation, a Delaware corporation (the “Reorganized Company”), and JBS USA Holdings, Inc., a Delaware corporation (“JBS USA”, together with the Reorganized Company, the “Parties”).

### RECITALS

WHEREAS, pursuant to the Stock Purchase Agreement, dated September 16, 2009, between the Company and JBS USA (the “Stock Purchase Agreement”) and the Reorganization Plan, all of the existing shares of capital stock of the Company were cancelled, and the Reorganized Company issued shares of new common stock, par value \$.01 per share (the “Common Stock”);

WHEREAS, pursuant to the Stock Purchase Agreement and the Reorganization Plan and as of the date hereof, JBS USA holds 64% of the issued and outstanding Common Stock; and

WHEREAS, the Parties wish to enter into this Agreement to set forth (i) certain of their rights, duties and obligations following the Closing and (ii) restrictions on certain activities in respect of the Common Stock, corporate governance, and other related corporate matters.

NOW, THEREFORE, in consideration of the premises and the mutual agreements and covenants hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

### ARTICLE 1

#### CERTAIN DEFINITIONS

SECTION 1.01 Certain Definitions. Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in the Stock Purchase Agreement. In addition, as used in this Agreement, the following terms shall have the following respective meanings:

“Board” means the board of directors of the Reorganized Company.

“Bylaws” means the bylaws of the Reorganized Company.

“Certificate of Incorporation” means the amended and restated certificate of incorporation of the Reorganized Company, as it may be amended from time to time.

“Equity Director” has the meaning ascribed to such term in the Certificate of Incorporation.

“Equity Nominating Committee” has the meaning ascribed to such term in the Certificate of Incorporation.

“Exchange” means any national securities exchange registered under Section 6 of the Exchange Act.

“Founder Director” has the meaning ascribed to such term in the Certificate of Incorporation.

“independent director” has the meaning ascribed to such term in the Certificate of Incorporation.

“JBS Nominating Committee” has the meaning ascribed to such term in the Certificate of Incorporation.

“JBS Stockholder” has the meaning ascribed to such term in the Certificate of Incorporation.

“Mandatory Exchange Transaction” has the meaning ascribed to such term in the Certificate of Incorporation.

“Minority Investors” has the meaning ascribed to such term in the Certificate of Incorporation.

“Standstill Period” means the period commencing on the date hereof and ending [\_\_\_\_\_] .<sup>1</sup>

## ARTICLE 2

### RESTRICTIONS ON TRANSFERABILITY

SECTION 2.01 Standstill. During the Standstill Period, neither JBS USA nor any of its Affiliates shall acquire, directly or indirectly, beneficial ownership of any equity interests of the Reorganized Company, including any shares of Common Stock, except by way of (a) stock splits, stock dividends, reclassifications, recapitalizations, or other distributions by the Reorganized Company to all holders of Common Stock on a pro rata basis, (b) acquisition by JBS USA of shares of Common Stock pursuant to the Mandatory Exchange Transaction and (c) as permitted under Section 5.03. Unless otherwise specified, as used in this Agreement, a Person shall be deemed the “beneficial owner” of, shall be deemed to have “beneficial ownership” of and shall be deemed to “beneficially own” any Common Stock which such Person or any of such Person’s Affiliates is deemed to beneficially own, directly or indirectly, within the meaning of Rule 13d-3 under the Exchange Act, as well as any Common Stock with respect to which such Person (i) directly or indirectly, owns, exercises or has the right to exercise any voting or economic rights, whether fixed or contingent or (ii) is treated as the owner thereof for U.S. federal income tax purposes.

---

<sup>1</sup> The Standstill Period shall end two years and 30 days after the Closing.

## ARTICLE 3

### CORPORATE GOVERNANCE

SECTION 3.01      Composition of the Board. (a) Pursuant to the Reorganization Plan, from and as of the date hereof the authorized number of directors comprising the Board shall be nine, unless changed in accordance with the provisions of this Agreement, the Certificate of Incorporation and the Bylaws. The Board shall initially be composed of: (i) the six (6) directors listed on Schedule 3.01(a)(i) hereto, who have been designated by JBS USA (the “JBS Directors”), (ii) the Founder Director, and (iii) the two (2) Equity Directors listed on Schedule 3.01(a)(iii) hereto. For so long as the JBS Stockholder is the beneficial owner (as that term is used with respect to the JBS Stockholder in the Certificate of Incorporation) of 35% or more of the outstanding Common Stock, no person shall be nominated as an Equity Director pursuant to the Certificate of Incorporation if JBS USA reasonably determines that such person (A) is unethical or lacks integrity or (B) is a competitor or is affiliated with a competitor of the Reorganized Company. The directors shall serve in a manner consistent with the terms of the Certificate of Incorporation and Bylaws.

(b)      The Reorganized Company and JBS USA acknowledge that, based upon information regarding the individuals listed on Schedule 3.01(a)(iii) that has been provided to the Reorganized Company and to JBS USA as of the date hereof, the individuals so listed are independent directors and are satisfactory to JBS USA.

(c)      If applicable Law or, at any time while the Reorganized Company’s equity securities are traded on an Exchange, the rules of such Exchange require a greater number or proportion of independent directors on the Board, then (i) if the JBS Stockholder beneficially owns (as that term is used with respect to the JBS Stockholder in the Certificate of Incorporation) at least 50% of the issued and outstanding Common Stock, then, at the option of the JBS Nominating Committee, either (A) one or more of the then-existing JBS Directors who are not independent directors shall be replaced (if necessary, by removing or procuring the resignation of each such JBS Director in accordance with the procedures set forth in Section 3.01(d)(ii) and (d)(iii)) with one or more JBS Directors who are independent directors such that, after such replacement, the number or proportion of independent directors on the Board will comply with such requirement or (B) the number of directors on the Board shall be increased by two (2) and the vacancies created by such increase shall be filled with persons designated by the JBS Nominating Committee who are independent directors such that the number or proportion of independent directors on the Board will comply with such requirement; or (ii) if the JBS Stockholder beneficially owns (as that term is used with respect to the JBS Stockholder in the Certificate of Incorporation) less than 50% of the issued and outstanding Common Stock, then one or more of the then-existing JBS Directors who are not independent directors shall be replaced (if necessary, by removing or procuring the resignation of each such JBS Director in accordance with the procedures set forth in Section 3.01(d)(ii) and (d)(iii)) with one or more JBS Directors who are independent directors such that, after such replacement, the number or proportion of independent directors on the Board will comply with such requirement. In the event that the size of the Board is expanded pursuant to this Section 3.01(c), no person shall be nominated or appointed as a director if the Equity Nominating Committee reasonably determines

that such person (A) is unethical or lacks integrity or (B) is a competitor or is affiliated with a competitor of the Reorganized Company or any material Subsidiaries.

(d) If at any time the number or proportion of JBS Directors, Equity Directors or Founder Director on the Board is required to be reduced pursuant to Section 5.2(b) of the Certificate of Incorporation or a director is required to be replaced pursuant to Section 3.01(c), then (i) the JBS Nominating Committee, if any JBS Directors shall be required to be removed or resign, or the Equity Nominating Committee, if any Equity Directors or the Founder Director shall be required to be removed or resign, shall promptly determine which of the JBS Directors or Equity Directors or the Founder Director, as applicable, shall be required to tender his, her or their resignation or resignations in order to so modify the composition of the Board, (ii) the Parties shall exercise their respective commercially reasonable efforts to cause such director or directors to tender promptly his, her or their unconditional resignation or resignations from the Board, with any such resignation being immediately effective without being required to be accepted by the Board, and (iii) if any director who is required to resign from the Board pursuant to Section 3.01(c) or this Section 3.01(d) refuses or otherwise fails to tender his, her or their resignation in accordance with the foregoing within ten (10) days of the date of the change in ownership of Common Stock or change in applicable Law or Exchange rule giving rise to the obligation to change the Board pursuant to Section 5.2(b) of the Certificate of Incorporation or Section 3.01(c), then (if not called by the Equity Nominating Committee) JBS USA shall use its commercially reasonable efforts to cause the Reorganized Company to call and hold a special meeting of stockholders of the Reorganized Company as promptly as practicable for the purpose of removing such director or directors, and, notwithstanding anything to the contrary contained in Section 3.04, JBS USA shall cause all shares of Common Stock beneficially owned by JBS USA and its Affiliates to be voted in support of such removal.

(e) The Reorganized Company and the Board will include the persons nominated in accordance with the Certificate of Incorporation in the Reorganized Company proxy materials. The Reorganized Company and JBS USA will use all reasonable efforts to cause the election of such persons nominated. To the fullest extent permitted by Law, the Reorganized Company agrees to use all reasonable efforts to solicit proxies for such nominees for director from all holders of Common Stock.

**SECTION 3.02**      Certificate of Incorporation and Bylaws to Be Consistent.  
JBS USA and the Reorganized Company shall, to the extent permitted by Law, take or cause to be taken all action necessary or appropriate to ensure that none of the Certificate of Incorporation or the Bylaws contain any provisions inconsistent with this Agreement or which would in any way nullify or impair the terms of this Agreement or the rights promulgated hereunder.

**SECTION 3.03**      Approval of Equity Directors and Founder Director Required for Certain Actions. Neither JBS USA nor the Reorganized Company will (a) without the approval of at least a majority of the Equity Directors and any Founder Director, as a group, approve or authorize any amendment or repeal of Sections 5.2, 5.3, 5.4, 5.5 or 5.6 or Articles VI, VIII, IX, X, XI, XII or XIII of the Certificate of Incorporation, or any other amendment to the Certificate of Incorporation or Bylaws that, individually or taken as a whole with any other amendments, would adversely affect, or could reasonably be expected to adversely affect, in any material respect, the rights of the Minority Investors, as a class (whether by merger,

consolidation or otherwise), or (b) until the occurrence of any Founder Triggering Event (as defined in the Certificate of Incorporation), without the approval of the Founder Director, approve or authorize any amendment to Section 5.2, Section 5.4, Article X, Article XIII or the third to last sentence of Section 5.5 of the Certificate of Incorporation or Section 3.3, Section 3.6, Section 3.10(f) or Article 9 of the Bylaws that would adversely affect, or could reasonably be expected to adversely affect, in any material respect, the rights of the Founder Director in his role as a director of the Reorganized Company (whether by merger, consolidation or otherwise). Notwithstanding the foregoing, actions which are permitted by this Agreement or the Certificate of Incorporation (including, without limitation, the Mandatory Exchange Transaction), shall not require the approvals set forth in this Section 3.03.

**SECTION 3.04      Agreement with Respect to Voting of Common Stock.** (a) Except as provided in Section 3.01(d), in any election of directors, or proposal to remove directors, of the Reorganized Company or in any proposal to adopt, amend or repeal the Bylaws or any provision thereof at a meeting of the stockholders of the Reorganized Company, JBS USA shall cause all shares of Common Stock beneficially owned by it or its Affiliates to be represented at any such meeting either in person or by proxy and (i) shall cause such shares of Common Stock to be voted for or against, to be not voted, or to abstain, (A) with respect to all directorships for which the Equity Nominating Committee is entitled to make nominations, including, without limitation, directorships covered by Section 5.3 of the Certificate of Incorporation, or (B) with respect to proposals to adopt, amend or repeal the Bylaws or any provisions thereof that, if adopted, amended or repealed, individually or taken as a whole, would adversely affect, or could reasonably be expected to adversely affect, in any material respect, the rights of the Minority Investors, as a class, in the same proportion as the shares held by the Minority Investors are voted for or against, not voted, or abstained on any such matter, or (ii) until the occurrence of the Founder Triggering Event, with respect to the Founder Director, shall cause such shares of Common Stock to be voted for his election or against his removal, as the case may be.

(b) With respect to all matters submitted to a vote of holders of Common Stock (except as provided in Section 3.04(a)), JBS USA may vote, or abstain from voting, or fail to vote, some or all shares of Common Stock held by it, in its sole and absolute discretion.

## **ARTICLE 4**

### **REPRESENTATIONS AND WARRANTIES**

**SECTION 4.01      Representations of the Reorganized Company.** The Reorganized Company hereby represents and warrants that:

(a) The execution, delivery and performance by the Reorganized Company of this Agreement and the consummation by the Reorganized Company of the transactions contemplated hereby are within the Reorganized Company's power and authority and have been duly authorized by all necessary corporate action. This Agreement constitutes a valid and binding agreement of the Reorganized Company, enforceable against the Reorganized Company in accordance with its terms.

(b) The execution, delivery and performance by the Reorganized Company of this Agreement requires no action by or in respect of, or filing with, any governmental body, agency, official or authority, other than (i) compliance with any applicable requirements of the federal securities Laws; and (ii) compliance with any applicable foreign or state securities or blue sky Laws.

(c) The execution, delivery and performance by the Reorganized Company of this Agreement and the consummation by the Reorganized Company of the transactions contemplated hereby do not and will not (i) contravene or conflict with the Certificate of Incorporation or the Bylaws, and (ii) assuming compliance with the matters referred to in Section 4.01(b), contravene or conflict with or constitute a violation of, any material provision of any Law applicable to the Reorganized Company.

SECTION 4.02      Representations of JBS USA. JBS USA hereby represents and warrants that:

(a) The execution, delivery and performance by JBS USA of this Agreement and the consummation by JBS USA of the transactions contemplated hereby are within JBS USA's power and authority and have been duly authorized by all necessary corporate action. This Agreement constitutes a valid and binding agreement of JBS USA, enforceable against JBS USA in accordance with its terms.

(b) The execution, delivery and performance by JBS USA of this Agreement requires no action by or in respect of, or filing with, any governmental body, agency, official or authority, other than (i) compliance with any applicable requirements of the federal securities Laws; and (ii) compliance with any applicable foreign or state securities or blue sky Laws.

(c) The execution, delivery and performance by JBS USA of this Agreement and the consummation by JBS USA of the transactions contemplated hereby do not and will not (i) contravene or conflict with JBS USA's organizational documents, and (ii) assuming compliance with the matters referred to in Section 4.02(b), contravene or conflict with or constitute a violation of, any material provision of any Law.

## **ARTICLE 5**

### **MANDATORY EXCHANGE TRANSACTION; TAX-FREE TRANSACTION**

SECTION 5.01      Affirmative Covenants.

(a) JBS USA will control the Reorganized Company (within the meaning of section 368(c) of the Code) immediately after the Mandatory Exchange Transaction.

(b) The Parties covenant and agree to report the Mandatory Exchange Transaction as a non-taxable transaction described in section 368 of the Code to all taxing authorities, unless counsel of either Party advises that there is no reasonable basis for taking such position.



(c) The Parties will each use commercially reasonable efforts to ensure that the Mandatory Exchange Transaction will not result in the recognition of gain or loss by the Minority Investors.

#### SECTION 5.02 Negative Covenants.

(a) Neither JBS USA nor its Affiliates shall redeem or repurchase (or enter into any agreement to redeem or repurchase) any of the shares issued to the Minority Investors in the Mandatory Exchange Transaction for a period of one year following the Mandatory Exchange Transaction.

(b) From the date hereof through the date the Mandatory Exchange Transaction is completed, the Reorganized Company shall not declare or distribute any non pro-rata dividends (other than stock dividends), or redeem (or agree to redeem) any of its capital stock.

(c) From the date hereof through the date ending one year after the Mandatory Exchange Transaction is completed, JBS USA shall not cause the Reorganized Company to cease operating its historic business or cease to use its historic assets in a business.

SECTION 5.03 Permitted Redemptions and Repurchases. Notwithstanding Section 5.02(b), the Reorganized Company is permitted to redeem or repurchase shares of Common Stock held by Persons other than JBS USA and its Affiliates in the ordinary course, provided the following requirements are satisfied:

(a) none of JBS USA and its Affiliates (other than the Reorganized Company) provides the cash or property used to effectuate the redemption or repurchase directly or indirectly;

(b) the cash or property used to effectuate the redemption or repurchase is derived solely from the Reorganized Company's operating cash flows, and not borrowings, equity issuances or sale or exchange transactions occurring outside of the ordinary course of business;

(c) the redemption or repurchase qualifies for the safe harbor from liability available under Rule 10b-18 of the Exchange Act (or any successor rule); and

(d) the redemption or repurchase does not, and is not reasonably likely to, cause the Reorganized Company to cease to comply with the applicable continued listing standards of the Exchange on which the Common Stock is listed;

*provided* that, for the avoidance of doubt, the acquisition of the Purchaser Shares by JBS USA shall not constitute a violation of this Article 5.

## ARTICLE 6

### MISCELLANEOUS

SECTION 6.01      Termination. This Agreement shall terminate only:

(a)      by virtue of a written agreement to that effect, signed by both of the Parties; or

(b)      on the consummation of the Mandatory Exchange Transaction, or in the event that JBS USA shall own 100% of the Common Stock (except with respect to Article 5, which shall survive until the periods specified therein shall have expired);

*provided* that no termination of this Agreement pursuant to this Section 6.01 shall affect the right of any Party to recover damages or collect indemnification for any breach of the representations, warranties or covenants herein that occurred prior to such termination.

SECTION 6.02      Public Filings. JBS USA shall use commercially reasonable efforts to cause the Reorganized Company to file with the SEC in a timely manner all reports and other documents required to be filed or submitted by the Reorganized Company under the Securities Act and the Exchange Act and to comply with the rules thereunder.

SECTION 6.03      Market Listing. The Reorganized Company shall, and JBS USA shall cause its Affiliates and the Reorganized Company to, use their respective commercially reasonable efforts to maintain the listing on an Exchange, and registration under Section 12 of the Exchange Act, of the Common Stock. The Reorganized Company shall not, and JBS USA shall cause its Affiliates and the Reorganized Company not to, take any action that is reasonably likely to cause the Common Stock to be delisted from the Exchange on which the Common Stock is listed, *provided* that neither the Reorganized Company nor JBS USA shall have any obligation to ensure the share price or market value of the Common Stock is sufficient to maintain such listing. If the Common Stock is delisted from an Exchange, the Reorganized Company and JBS USA shall, and JBS USA shall cause its Affiliates to, use their respective commercially reasonable efforts to cause the Common Stock to be listed on another Exchange. Notwithstanding the foregoing, neither JBS USA and its Affiliates nor the Reorganized Company shall be prohibited from taking any action which is permitted by this Agreement or the Certificate of Incorporation (including, without limitation, the Mandatory Exchange Transaction).

SECTION 6.04      Notices. All notices, requests, claims, demands and other communications hereunder shall be given by the means specified in the Stock Purchase Agreement (and shall be deemed given as specified therein):

- (a)      if to JBS USA, as provided in the Stock Purchase Agreement;
- (b)      if to the Reorganized Company:

Pilgrim's Pride Corporation  
4845 US Highway 271 North

Pittsburg, TX 75686  
Facsimile: 972-290-8950  
Attention: Chief Executive Officer  
Equity Directors of the Board  
Founder Director

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

SECTION 6.05 Amendments and Waivers. (a) Subject to Section 6.21, any provision of this Agreement may be amended or waived if, and only if, such amendment or waiver is (i) in writing and signed, in the case of an amendment, by both Parties, or in the case of a waiver, by the Party or Parties against whom the waiver is to be effective, (ii) with respect to any amendment or waiver that would adversely affect, or could reasonably be expected to adversely affect, in any material respect, the rights of the Minority Investors, as a class, approved by the affirmative vote of the holders of at least a majority of the voting power of all of the then outstanding capital stock entitled to vote generally in the election of directors (other than shares of capital stock of the Reorganized Company beneficially owned by JBS USA and its Affiliates), voting together as a single class and (iii) with respect to any amendment or waiver of Sections 1.01, 3.01, 3.03, 3.04, 6.04 and this Section 6.05 that would adversely affect, or could reasonably be expected to adversely affect, in any material respect, the rights of the Founder Director in his role as a director of the Reorganized Company, approved by the Founder Director.

(b) No failure or delay by any Party in exercising any right, power or privilege hereunder (other than a failure or delay beyond a period of time specified herein) shall operate as a waiver thereof and no single or partial exercise thereof shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by Law.

(c) This Agreement and the rights, duties and obligations of the Parties hereunder may not be assigned or delegated by the Parties in whole or in part.

SECTION 6.06 Binding Effect. This Agreement shall be binding upon and inure to the benefit of both of the Parties and their respective successors, executors, administrators, heirs and legal representatives.

SECTION 6.07 Expenses. Except as otherwise specified in this Agreement, all costs and expenses, including, without limitation, fees and disbursements of

counsel, financial advisors and accountants, incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the Party incurring such costs or expenses.

SECTION 6.08      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 matters of construction, validity and performance.

SECTION 6.09      Submission to Jurisdiction. (a) The Parties agree to exclusive jurisdiction in the Chancery Court of the State of Delaware, or in any federal court sitting in the State of Delaware.

(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 Action arising out of or relating to this Agreement or any of the transactions contemplated hereby 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 agrees that a judgment in any such Action may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law.

(c) Each of the Parties hereby consents to process being served by any Party in any suit, action or proceeding by the mailing of a copy thereof in accordance with the provisions of Section 6.04.

SECTION 6.10      Waiver of Jury Trial. THE PARTIES EACH ACKNOWLEDGE AND AGREE THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE EACH SUCH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR THE BREACH, TERMINATION OR VALIDITY OF THIS AGREEMENT, OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT. EACH SUCH PARTY CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, (B) EACH SUCH PARTY UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (C) EACH SUCH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (D) EACH SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 6.10.

SECTION 6.11      Counterparts. This Agreement may be executed and delivered (including by facsimile transmission) in one or more counterparts, and by the different Parties in separate counterparts, each of which when executed and delivered shall be deemed to be an original but all of which taken together shall constitute one and the same agreement.

Copies of executed counterparts transmitted by telecopy or other electronic transmission service shall be considered original executed counterparts for purposes of this Section 6.11.

SECTION 6.12      Entire Agreement. This Agreement and the Stock Purchase Agreement, together with the Certificate of Incorporation, the Bylaws and any other Ancillary Agreement, constitute the entire agreement among the Parties pertaining to the subject matter hereof and supersede all prior agreements and understandings pertaining thereto.

SECTION 6.13      Headings. The headings and subheadings in this Agreement are included for convenience and identification only and are in no way intended to describe, interpret, define or limit the scope, extent or intent of this Agreement or any provision hereto.

SECTION 6.14      Severability. If any term or other provision of this Agreement is held to be invalid, illegal or incapable of being enforced by any rule of Law or public policy, all other conditions 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 any Party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Agreement as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the fullest extent possible.

SECTION 6.15      Public Announcements. Except as required by Law or by the requirements of any Exchange on which the securities of a Party hereto are listed, no Party shall make, or cause to be made, any press release or public announcement in respect of this Agreement or otherwise communicate with any news media without the prior written consent of the other Party, and the Parties shall cooperate as to the timing and contents of any such press release or public announcement.

SECTION 6.16      Cumulative Remedies. The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by any Party shall not preclude or waive its right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the Parties may have by Law or otherwise.

SECTION 6.17      Interpretation. Throughout this Agreement, nouns, pronouns and verbs shall be construed as masculine, feminine, neuter, singular or plural, whichever shall be applicable. Unless otherwise specified, all references herein to “Articles”, “Sections” and paragraphs shall refer to corresponding provisions of this Agreement.

SECTION 6.18      No Third Party Beneficiaries. Subject to Section 6.21, this Agreement shall be binding upon and inure solely to the benefit of the Parties and their permitted successors, and nothing herein, express or implied, is intended to or shall confer upon any other Person, any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

SECTION 6.19      Construction. Each Party acknowledges and agrees it has had the opportunity to draft, review and edit the language of this Agreement and that no presumption for or against any Party arising out of drafting all or any part of this Agreement will be applied in any Action relating to, in connection with or involving this Agreement. Accordingly, the Parties hereby waive the benefit of any rule of Law or any legal decision that would require, in cases of uncertainty, that the language of a contract should be interpreted most strongly against the party who drafted such language.

SECTION 6.20      Specific Performance. The Parties 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 6.21      Enforcement of Reorganized Company Rights. Notwithstanding anything herein to the contrary, to the maximum extent permitted by Law, the Equity Nominating Committee, acting by majority vote, shall have the right to control the Reorganized Company's exercise of its rights and remedies hereunder, including, without limitation, (a) the granting of (or refusal to grant) any approvals, consents or waivers by the Reorganized Company hereunder, (b) the giving (or withholding) of any notices by the Reorganized Company hereunder, (c) the approval (or disapproval) of the Reorganized Company's entry into any amendment or supplement to this Agreement and (d) the initiation, prosecution or settlement of any Actions arising in connection herewith.

SECTION 6.22      Section 16 Matters. Prior to the Mandatory Exchange Transaction, each of JBS USA and the Reorganized Company shall take all such commercially reasonable steps and obtain such approvals or consents as may be required to cause any dispositions of the Common Stock (including pecuniary interests in, and derivative securities with respect to, Common Stock) or acquisitions of JBS USA Common Stock (including any pecuniary interest therein) resulting from the Mandatory Exchange Transaction by each individual, whether on his or her behalf or as deputy for another holder of Common Stock, who is subject to the reporting requirements of Section 16(a) of the Exchange Act with respect to the Reorganized Company, to be exempt under Rule 16b-3 promulgated under the Exchange Act, such steps to be taken in accordance with the interpretive guidance set forth by the SEC.



IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first set forth above.

PILGRIM'S PRIDE CORPORATION

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

JBS USA HOLDINGS, INC.

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

### **SCHEDULE 3.01(a)(i) – INITIAL JBS DIRECTORS**

- ▶ Don Jackson
- ▶ [Others to come]

### **SCHEDULE 3.01(a)(iii) – INITIAL EQUITY DIRECTORS**

► [To come]

**AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION  
OF  
PILGRIM'S PRIDE CORPORATION**

This Amended and Restated Certificate of Incorporation (this "Certificate of Incorporation") was duly adopted in accordance with Sections 242, 245 and 303 of the General Corporation Law of the State of Delaware (the "DGCL") and provision for the making of this Amended and Restated Certificate of Incorporation is contained in a decree or order of a court or judge having jurisdiction of a proceeding under the United States Bankruptcy Code (the "Bankruptcy Code"). The original certificate of incorporation of the corporation was filed with the Secretary of State of the State of Delaware on September 9, 1986.

**ARTICLE I**

**NAME**

The name of the corporation is Pilgrim's Pride Corporation (the "Corporation").

**ARTICLE II**

**REGISTERED OFFICE AND REGISTERED AGENT**

The address of the registered office of the Corporation in the State of Delaware is 1209 Orange Street in the City of Wilmington, County of New Castle. The name of the registered agent of the Corporation at that address is The Corporation Trust Company.

**ARTICLE III**

**CORPORATE PURPOSE**

The purpose of the Corporation is to engage in any lawful act or activity for which a corporation may be organized under the DGCL.

**ARTICLE IV**

**CAPITAL STOCK**

Section 4.1. Shares and Classes Authorized. The total number of shares of all classes of stock which the Corporation shall have authority to issue is 850,000,000, consisting of 800,000,000 shares of Common Stock, par value \$.01 per share (the "Common Stock") and 50,000,000 shares of Preferred Stock, par value \$.01 per share (the "Preferred Stock").

Section 4.2. Preferred Stock. The Board of Directors of the Corporation (the "Board") is authorized, subject to any limitations prescribed by law, to provide for the issuance of shares of Preferred Stock in series and, by filing a certificate pursuant to the applicable law of the State of

Delaware (a “Preferred Stock Designation”), to establish from time to time the number of shares to be included in each such series, and to fix the designation, voting rights, powers, preferences, and rights of the shares of each such series and any qualifications, limitations or restrictions thereof. The number of authorized shares of Preferred Stock may be increased or decreased (but not below sum of the number of shares thereof then outstanding and the number of shares into which any preferred or other securities may be converted or for which they may be exchanged) by the affirmative vote of the holders of a majority of the voting power of all of the then-outstanding shares of capital stock of the Corporation entitled to vote thereon, without a vote of the holders of the Preferred Stock, or of any series thereof, irrespective of the provisions of Section 242(b)(2) of the DGCL, unless a vote of any such holders is required pursuant to the terms of any Preferred Stock Designation.

Section 4.3. Common Stock. Each outstanding share of Common Stock shall entitle the holder thereof to one vote on each matter properly submitted to the stockholders of the Corporation for their vote; *provided, however*, that, except as otherwise required by law, holders of Common Stock shall not be entitled to vote on any amendment to this Certificate of Incorporation (including any Preferred Stock Designation relating to any series of Preferred Stock) that relates solely to the terms of one or more outstanding series of Preferred Stock if the holders of such affected series are entitled, either separately or together as a class with the holders of one or more other such series, to vote thereon pursuant to this Certificate of Incorporation (including any Preferred Stock Designation relating to any series of Preferred Stock).

## ARTICLE V

### DIRECTORS

Section 5.1. General Powers. The business and affairs of the Corporation shall be managed by or under the direction of the Board. In addition to the powers and authority expressly conferred upon them by statute or by this Certificate of Incorporation or the bylaws of the Corporation (the “Bylaws”), the directors are hereby empowered to exercise all such powers and do all such acts and things as may be exercised or done by the Corporation.

Section 5.2. Number; Composition and Term of Office.

(a) Subject to Section 5.2(b), the number of directors shall be nine (9).

(b) The Board shall consist of six (6) JBS Directors, two (2) Equity Directors and one (1) Founder Director; *provided* that, if at any time the beneficial ownership by the JBS Stockholder of the issued and outstanding Common Stock as a percentage of the total issued and outstanding Common Stock changes to an amount set forth below, then there shall be the following changes in the composition of the Board:

| <u>% Owned by the<br/>JBS Stockholder</u> | <u>No. of JBS<br/>Directors</u> | <u>No. of Equity<br/>Directors</u> | <u>No. of Founder<br/>Directors</u> |
|---|---------------------------------|------------------------------------|-------------------------------------|
| ≥ 90%                                     | 8                               | 0                                  | 1                                   |

|                 |   |   |   |
|-----------------|---|---|---|
| ≥ 80% but < 90% | 7 | 1 | 1 |
| ≥ 50% but < 80% | 6 | 2 | 1 |
| ≥ 40% but < 50% | 5 | 3 | 1 |
| ≥ 35% but < 40% | 4 | 4 | 1 |
| > 10% but < 35% | 3 | 5 | 1 |
| ≤ 10%           | 0 | 8 | 1 |

*provided* that, upon the occurrence of the Founder Triggering Event, there shall no longer be a Founder Director on the Board, and the number of Equity Directors on the Board as set forth above shall be increased by one (1); *provided further* that during the Exchange Period (defined in Section 8.2(a)) there shall be at least two (2) Equity Directors; *provided further* that, if applicable law or, at any time while the Corporation's equity securities are traded on an Exchange, the rules of such Exchange require a greater number or proportion of independent directors on the Board, then

(i) if the JBS Stockholder beneficially owns at least 50% of the issued and outstanding Common Stock, then, at the option of the JBS Nominating Committee, either (A) one or more of the then-existing JBS Directors who are not independent directors shall be replaced with one or more JBS Directors who are independent directors such that, after such replacement, the number or proportion of independent directors on the Board will comply with such requirement or (B) the number of directors on the Board shall be increased by two (2) and the vacancies created by such increase shall be filled with persons designated by the JBS Nominating Committee who are independent directors such that the number or proportion of independent directors on the Board will comply with such requirement; or

(ii) if the JBS Stockholder beneficially owns less than 50% of the issued and outstanding Common Stock, then one or more of the then-existing JBS Directors who are not independent directors shall be replaced with one or more JBS Directors who are independent directors such that, after such replacement, the number or proportion of independent directors on the Board will comply with such requirement.

In the event that the size of the Board is expanded pursuant to this Section 5.2, no person shall be nominated or appointed as a director if the Equity Nominating Committee reasonably determines that such person (A) is unethical or lacks integrity or (B) is a competitor or is affiliated with a competitor of the Corporation or any of its material subsidiaries. As used in this Certificate of Incorporation, a Person shall be deemed the "beneficial owner" of, shall be deemed to have "beneficial ownership" of and shall be deemed to "beneficially own" any Common Stock which such Person or any of such Person's Affiliates is deemed to beneficially own, directly or indirectly, within the meaning of Rule 13d-3 of the Exchange Act; provided, however, that beneficial ownership by the JBS Stockholder will not include shares of Common Stock held by members of a "group" (as that term is used in Rule 13d-5 under the Exchange Act) other than JBS USA and its Affiliates.



(c) At each annual meeting of stockholders, each director elected to succeed a director whose term expires shall be elected for a term of office to expire at the next annual meeting of stockholders after his or her election, with each director to hold office until his or her successor shall have been duly elected and qualified or until the earlier of his or her death, resignation or removal in accordance with this Certificate of Incorporation and the Bylaws. The election of directors need not be by written ballot unless the Bylaws so provide. Directors need not be stockholders.

Section 5.3. Vacancies. Subject to Section 5.2, any vacancy on the Board, howsoever resulting, shall be filled only by the affirmative vote of a majority of the remaining directors then in office, even if less than a quorum, or by the sole remaining director; *provided, however*, that (a) a vacancy in the directorship of a JBS Director may be filled only through the affirmative vote of a majority of directors on the JBS Nominating Committee, even if less than a quorum, or by the sole remaining director on the JBS Nominating Committee, or if no directors remain on the JBS Nominating Committee, by the stockholders and (b) a vacancy in the directorship of an Equity Director or a Founder Director may be filled only by the affirmative vote of a majority of directors on the Equity Nominating Committee, even if less than a quorum, or by the sole remaining director on the Equity Nominating Committee or if no directors remain on the Equity Nominating Committee, by the stockholders. The term of office of any director elected to fill a vacancy shall expire at the next annual meeting of stockholders after his or her election, with each director to hold office until his or her successor shall have been duly elected and qualified or until the earlier of his or her death, resignation or removal in accordance with this Certificate of Incorporation and the Bylaws.

Section 5.4. Special Nominating Committees.

(a) The Board shall establish two committees (collectively, the “Special Nominating Committees”), which shall be designated as the “JBS Nominating Committee” and the “Equity Nominating Committee,” each of which shall have the power and authority of the Board with respect to the matters described in Sections 5.3 and 5.4. The JBS Nominating Committee shall consist solely of JBS Directors, and the Equity Nominating Committee shall consist solely of all of the Equity Directors. The JBS Nominating Committee shall have the exclusive authority to nominate the JBS Directors, fill vacancies pursuant to Section 5.3 and select the members of the JBS Nominating Committee; and the Equity Nominating Committee shall have the exclusive authority to nominate the Equity Directors, fill vacancies pursuant to Section 5.3, select the members of the Equity Nominating Committee, and shall be entitled to call a special meeting of stockholders of the Corporation to comply with Section 3.01(d) of the Stockholders Agreement; *provided* that, prior to the occurrence of the Founder Triggering Event, the Equity Nominating Committee shall, to the fullest extent permitted by law and subject to any applicable fiduciary duties, nominate the Founder Director. Any member or alternate member of the Equity Nominating Committee shall be removed only by the approval of a majority of the members of the Equity Nominating Committee. For so long as the JBS Stockholder is the beneficial owner of 35% or more of the outstanding Common Stock, no person shall be nominated as an Equity Director pursuant to this Certificate of Incorporation if JBS USA reasonably determines that such person (i) is unethical or lacks integrity or (ii) is a competitor or is affiliated with a competitor of the Corporation. Two (2) Equity Directors (or one (1) if there is only one (1) Equity Director on the Board) shall satisfy the independence requirements of Rule 10A-3 under

the Exchange Act and be financially literate for purposes of the applicable listing standards of the Exchange on which the Common Stock is then listed, or if the Common Stock is not then listed, then for purposes of Section 303A.07 of The New York Stock Exchange Listed Company Manual (or any successor rule) (“financially literate”), and, for so long as there are two (2) or more Equity Directors on the Board, at least one (1) Equity Director shall qualify as an “audit committee financial expert” as that term is used in Item 407 of Regulation S-K under the Exchange Act (or any successor rule). If the JBS Stockholder beneficially owns at least 50% of the issued and outstanding Common Stock, at least one (1) JBS Director shall (A) be an independent director, (B) satisfy the independence requirements of Rule 10A-3 under the Exchange Act and (C) be financially literate.

(b) Notwithstanding anything herein to the contrary, to the maximum extent permitted by law, the Equity Nominating Committee, acting by majority vote, shall have the right to control the Corporation’s exercise of its rights and remedies under the Stockholders Agreement, including, without limitation, (i) the granting of (or refusal to grant) any approvals, consents or waivers by the Corporation thereunder, (ii) the giving (or withholding) of any notices by the Corporation thereunder, (iii) the approval (or disapproval) of the Corporation’s entry into any amendment or supplement to the Stockholders Agreement and (iv) the initiation, prosecution or settlement of any claim, action, suit, arbitration, inquiry, proceeding or investigation arising in connection therewith. The Equity Directors shall be permitted to retain separate advisors (legal or financial) at the expense of the Corporation in connection with the performance of their duties under Sections 5.3, 5.4, 5.5, 8.1 and 8.4 and Articles VI and X of this Certificate of Incorporation or under Sections 3.01(d), 3.03 and 6.21 of the Stockholders Agreement.

(c) Except for the JBS Nominating Committee, any committee designated or appointed by the Board shall have at least one Equity Director as a member thereof.

Section 5.5. Approval of Certain Matters. The approval of any of the following matters shall require, in addition to any approval required by law, (a) the affirmative vote of a majority of the directors present at a meeting of the Board at which a quorum is present and (b) the affirmative vote of at least a majority of the Equity Directors and any Founder Director, as a group:

(i) the creation of any committee of the Board with, or the delegation to any committee of the Board of, any power or authority which, individually or taken as a whole with any other power and/or authority, would adversely affect, or could reasonably be expected to adversely affect, in any material respect, the rights of the Minority Investors;

(ii) any change in the size of the Board;

(iii) any action that would reasonably be expected to cause the Corporation to no longer satisfy the listing requirements of any Exchange on which any shares of capital stock of the Corporation are listed or quoted;

(iv) any amendment or repeal of this Section 5.5, Sections 5.2, 5.3, 5.4 or 5.6 or Articles VI, VIII, IX, X, XI, XII or XIII, or any other amendment to this Certificate of Incorporation that, individually or taken as a whole with any other amendments, would adversely

affect, or could reasonably be expected to adversely affect, in any material respect the rights of the Minority Investors, as a class (whether by merger, consolidation or otherwise);

(v) any creation, authorization or issuance of any series of Preferred Stock that, individually or taken as a whole with any other issuances of Preferred Stock, would adversely affect, or could reasonably be expected to adversely affect, in any material respect the Minority Investors, as a class, in a disproportionately adverse manner relative to all holders of Common Stock (whether by merger, consolidation or otherwise); or

(vi) agreeing to do any of the foregoing.

In addition to the foregoing, prior to the occurrence of the Founder Triggering Event, the approval of the Founder Director shall be required for the Board to validly approve and authorize any amendment (whether by merger, consolidation or otherwise) to Section 5.2, Section 5.4, Article X, Article XIII and this sentence of this Certificate of Incorporation that would adversely affect, or could reasonably be expected to adversely affect, in any material respect, the rights of the Founder Director in his role as a director of the Corporation. Notwithstanding anything to the contrary in this Section 5.5, actions which are permitted by this Certificate of Incorporation or the Stockholders Agreement (including, without limitation, the Mandatory Exchange Transaction), shall not require the approvals set forth in this Section 5.5. If at any time any stockholder of the Corporation owns 100% of the issued and outstanding Common Stock, this Section 5.5 shall be of no further force or effect.

Section 5.6. Director Fees and Expenses. Each of the directors of the Corporation shall be entitled to receive reasonable and customary fees for his or her service as a director (which fees shall be set by the Board from time to time). Each of the directors shall be entitled to be reimbursed by the Corporation for his or her reasonable out-of-pocket expenses incurred in connection with the performance of his or her duties as a director of the Corporation.

## **ARTICLE VI**

### **MEETINGS OF STOCKHOLDERS**

Subject to the rights of the holders of any series of Preferred Stock, any action required or permitted to be taken by the stockholders of the Corporation must be effected at a duly called annual or special meeting of stockholders of the Corporation and may not be effected by any consent in writing by such stockholders. Special meetings of stockholders of the Corporation may be called only by the Chairman of the Board, the Chief Executive Officer, the President, the affirmative vote of a majority of the whole Board or, as provided in Section 5.4, the Equity Nominating Committee.

## **ARTICLE VII**

### **NON-VOTING EQUITY SECURITIES**

The Corporation shall not issue any class of non-voting equity securities unless and solely to the extent permitted by Section 1123(a)(6) of the Bankruptcy Code as in effect on the date of filing this Certificate of Incorporation with the Secretary of State of the State of

Delaware; *provided, however*, that this Article VII: (a) will have no further force and effect beyond that required under Section 1123(a)(6) of the Bankruptcy Code; (b) will have such force and effect, if any, only for so long as Section 1123(a)(6) of the Bankruptcy Code is in effect and applicable to the Corporation; and (c) in all events may be amended or eliminated in accordance with applicable law from time to time in effect.

## ARTICLE VIII

### TRANSFER RESTRICTIONS; MANDATORY EXCHANGE

#### Section 8.1. Restrictions on Transfer on the JBS Stockholder.

(a) At any time prior to \_\_\_\_\_, 20\_\_\_\_,<sup>1</sup> no shares of capital stock of the Corporation shall be Transferred to the JBS Stockholder if such Transfer would cause the JBS Stockholder to be in violation of Article 2 of the Stockholders Agreement (a “Prohibited Transfer”). The prior sentence is not intended to prevent the shares of capital stock of the Corporation from being DTC-eligible and shall not preclude the settlement of any transactions in shares of capital stock of the Corporation entered into through the facilities of any Exchange, *provided* that, if the settlement of a transaction would result in a Prohibited Transfer, such Transfer shall nonetheless be a Prohibited Transfer. The Corporation shall not, and no employee or agent of the Corporation shall, recognize or record upon its books any Prohibited Transfer. Any purported transaction in violation of this Article VIII shall be void *ab initio*, and the purported transferee of such shares (the “Purported Transferee”) shall not be recognized as a stockholder of the Corporation for any purpose whatsoever in respect of such shares that are the subject of the Prohibited Transfer (the “Prohibited Securities”), including the right to vote such Prohibited Securities and to receive dividends or distributions, whether liquidating or otherwise, in respect thereof. Once the Prohibited Securities have been acquired in a Transfer that is not a Prohibited Transfer, such securities shall cease to be Prohibited Securities. Any or all of the Equity Directors shall have the authority to direct and cause the officers of the Corporation to take all action reasonably necessary or advisable to enforce the terms of this Section 8.1, including, without limitation, to require as a condition to the registration of the Transfer of any shares of capital stock of the Corporation or the payment of any distribution on any such shares that the proposed transferee or payee furnish to the Corporation all information reasonably requested by the Corporation. The Corporation may make such arrangements or issue such instructions to its stock transfer agent as may be necessary or advisable to implement this Section 8.1, including, without limitation, authorizing such agent to require an affidavit from a purported transferee regarding such Person’s beneficial or record ownership of stock and other evidence that a Transfer will not be prohibited by this Section 8.1.

(b) If a Prohibited Transfer has been recorded by an agent or employee of the Corporation notwithstanding the prohibition in this Section 8.1, such recording and the Prohibited Transfer shall be void *ab initio* and have no legal effect and, upon written demand by the Corporation, the Purported Transferee shall transfer or cause to be transferred any certificate or other evidence of ownership, whether direct or indirect, of the Prohibited Securities within the Purported Transferee’s possession or control, together with any dividends or other distributions

---

<sup>1</sup> Two years and 30 days after the effective date of the Plan of Reorganization.

that were received by the Purported Transferee from the Corporation with respect to the Prohibited Securities (the “Prohibited Distributions”), to an agent designated by the Equity Directors (the “Agent”). The Agent shall thereupon sell to a buyer or buyers, which may include the purported transferor, the Prohibited Securities transferred to it in one or more arm’s-length transactions (including over a national securities exchange or national securities quotation system on which the securities of the Corporation may be traded); *provided, however*, that the Agent, in its sole discretion, shall effect such sale or sales in an orderly fashion and shall not be required to effect any such sale within any specific time frame if, in the Agent’s discretion, such sale or sales would disrupt the market for the securities of the Corporation, would adversely affect the value of the securities of the Corporation or would be in violation of applicable securities laws. If the Purported Transferee has resold the Prohibited Securities before receiving the Corporation’s demand to surrender the Prohibited Securities to the Agent, the Purported Transferee shall be deemed to have sold the Prohibited Securities for the Agent, and shall be required to transfer to the Agent any Prohibited Distributions and proceeds of such sale, except to the extent that the Corporation grants written permission to the Purported Transferee to retain a portion of such sales proceeds not exceeding the amount that the Purported Transferee would have received from the Agent pursuant to Section 8.1(c) if the Agent, rather than the Purported Transferee, had resold the Prohibited Securities.

(c) The Agent shall apply any proceeds of a sale by it of Prohibited Securities and, if the Purported Transferee had previously resold the Prohibited Securities, any amounts received by it from a Purported Transferee, as follows: (i) first, to reimburse itself to the extent necessary to cover its costs and expenses incurred in accordance with its duties hereunder; (ii) second, to reimburse the Purported Transferee for the amounts paid by the Purported Transferee for the Prohibited Securities (or in the case of any Prohibited Transfer by gift, devise or inheritance or any other Prohibited Transfer without consideration, the fair market value, calculated on the basis of the closing market price for the securities of the Corporation on the day before the Prohibited Transfer); and (iii) third, the remainder, if any, to the original transferor, or, if the original transferor cannot be readily identified, to an entity designated by the Equity Directors that is described in Section 501(c) of the Internal Revenue Code of 1986, as amended (the “Code”), contributions to which must be eligible for deduction under each of Sections 170(b)(1)(A), 2055 and 2522 of the Code. The recourse of any Purported Transferee with respect of any Prohibited Transfer shall be limited to the amount payable to the Purported Transferee pursuant to clause (ii) of this Section 8.1(c). Except as may be required by law, in no event shall the proceeds of any sale of Prohibited Securities pursuant to this Section 8.1(c) inure to the benefit of the Corporation or the Agent, except to the extent used to cover expenses incurred by the Agent in performing its duties hereunder.

(d) If the Purported Transferee fails to surrender the Prohibited Securities or the proceeds of a sale thereof to the Agent within thirty (30) days from the date on which the Corporation makes a demand pursuant to Section 8.1(b), then the Corporation may take such actions as it deems necessary to enforce the provisions hereof, including the institution of legal proceedings to compel such surrender.

(e) This Section 8.1 shall not limit or impair the rights of the JBS Stockholder with respect to any shares of Common Stock received by it pursuant to the Stock Purchase Agreement dated September 15, 2009 between JBS USA and the Corporation.



Section 8.2. Mandatory Exchange.

(a) In the event JBS USA completes an initial public offering (the “JBS USA IPO”) of the JBS USA Common Stock, then, at any time during an Exchange Window falling within the period commencing on the date of the closing of the JBS USA IPO (the “Exchange Period Commencement Date”) and ending \_\_\_\_\_, 20\_\_ [two years and 30 days from the effective date of the Corporation’s Plan of Reorganization confirmed by the United States Bankruptcy Court for the Northern District of Texas] (the “Exchange Period”), JBS USA will have the right to deliver written notice of a Mandatory Exchange Transaction to the Corporation at its principal place of business. Subject to Section 8.2(b), upon delivery to the Corporation of notice of the Mandatory Exchange Transaction each share of Common Stock held by stockholders other than JBS USA (the “Exchanged Holders”) shall automatically, without any further action on behalf of the Corporation or any of the Exchanged Holders, be transferred to JBS in exchange for a number of duly authorized, validly issued, fully paid and non-assessable shares of JBS USA Common Stock equal to the Exchange Offer Ratio (collectively, the “Exchange Shares”). The Mandatory Exchange Transaction shall be effected in compliance with all applicable laws.

(b) Notwithstanding anything herein to the contrary, shares of Common Stock held by the Founder Group shall not be subject to the Mandatory Exchange Transaction for a period of six months and one day after \_\_\_\_\_, 20\_\_ [the effective date of the Corporation’s Plan of Reorganization confirmed by the United States Bankruptcy Court for the Northern District of Texas] (“Deferral Period”). If the Mandatory Exchange Transaction will have been implemented with respect to the Exchanged Holders other than the Founder Group during the Deferral Period, then, immediately following expiration of the Deferral Period, all shares of Common Stock held by the Founder Group shall automatically, without any further action on behalf of the Corporation or any member of the Founder Group, be transferred to JBS in exchange for a number of duly authorized, validly issued, fully paid and non-assessable shares of JBS USA Common Stock equal to the Exchange Offer Ratio determined in Section 8.2(a).

(c) No certificates or scrip representing fractional shares of JBS USA Common Stock shall be issued upon the surrender for exchange of certificates representing shares of Common Stock, and such fractional share interests will not entitle the owner thereof to vote or to any other rights of a stockholder of the Corporation. When any distribution pursuant to this Section 8.2(c) would otherwise result in the issuance of a number of shares of JBS USA Common Stock that is not a whole number, the actual distribution of shares of JBS USA Common Stock shall be rounded as follows: (i) fractions of one-half ( $\frac{1}{2}$ ) or greater shall be rounded to the next higher whole number and (ii) fractions of less than one-half ( $\frac{1}{2}$ ) shall be rounded to the next lower whole number with no further payment or other distribution therefor. The total number of authorized shares of JBS USA Common Stock to be distributed to the Exchanged Holders shall be adjusted as necessary to account for the rounding provided in this Section 8.2(c).

Section 8.3. Legend. Each certificate representing shares of capital stock issued by the Corporation shall conspicuously bear the following legend:

“THE SECURITIES REPRESENTED HEREBY ARE SUBJECT TO CERTAIN  
RESTRICTIONS ON TRANSFER, INCLUDING AS SET FORTH IN A



STOCKHOLDERS AGREEMENT BETWEEN THE CORPORATION AND JBS USA HOLDINGS, INC. AND MANDATORY EXCHANGE PROVISIONS SET FORTH UNDER ARTICLE VIII OF THE CERTIFICATE OF INCORPORATION OF THE CORPORATION, AS AMENDED AND IN EFFECT FROM TIME TO TIME, COPIES OF WHICH MAY BE OBTAINED FROM THE CORPORATION UPON REQUEST.”

Section 8.4. Procedures and Transfer of Title. (a) Upon receipt of the notice of the Mandatory Exchange Transaction, the Corporation shall give notice to the Exchanged Holders that a Mandatory Exchange Transaction has occurred pursuant to this Article VIII. Such notice shall contain the date of the consummation of the Mandatory Exchange Transaction (the “Consummation Date”), the Exchange Offer Ratio and the manner in which the holders of Common Stock may exchange the certificates previously representing shares of Common Stock for certificates representing the shares of JBS USA Common Stock into which such shares of Common Stock shall have been mandatorily exchanged. On or before the Consummation Date, JBS USA shall deposit the Exchange Shares (including, if applicable, any shares to be issued to the Founder Group upon expiration of the Deferral Period) with a bank or similar entity designated by the Equity Directors to deliver the Exchange Shares to the Exchanged Holders (the “Exchange Agent”), such consideration to be deposited with the Exchange Agent and delivered in trust for the benefit of the Exchanged Holders and accompanied by irrevocable instructions to deliver, on or immediately after the Consummation Date (or, with respect to the Founder Group, if applicable, following expiration of the Deferral Period), the Exchange Shares for the shares of Common Stock held by the Exchanged Holders upon their surrender.

(b) Upon receipt of such notice (or, with respect to the Founder Group, if applicable, following expiration of the Deferral Period), each Exchanged Holder shall surrender his, her or its certificate or certificates for all such shares (or, if such holder alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to the Corporation to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate) to the Exchange Agent at the place designated in such notice, and shall thereafter receive Exchange Shares. At the Consummation Date (or, if applicable, following expiration of the Deferral Period), the shares of Common Stock held by the Exchanged Holders shall be owned of record by JBS USA, and Exchanged Holders shall cease to be stockholders of the Corporation and shall have no right or interest in such shares of Common Stock, excepting only the right of such Exchanged Holders to receive the Exchange Shares therefor. From and after the Consummation Date, certificates that previously represented shares of Common Stock held by the Exchanged Holders shall represent only the right to receive the Exchange Shares.

Section 8.5. Effect of Mandatory Exchange. From and after the Consummation Date, JBS USA shall be the sole holder of all of the issued and outstanding shares of Common Stock, notwithstanding the failure of any Exchanged Holders to surrender such certificates on or prior to such date to the Exchange Agent.

## **ARTICLE IX**

### **LIMITATION OF DIRECTORS' LIABILITY**

A director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (a) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (b) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (c) under Section 174 of the DGCL, or (d) for any transaction from which the director derived an improper personal benefit. If the DGCL is amended to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the DGCL, as so amended.

Any repeal or modification of the foregoing paragraph shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification.

## **ARTICLE X**

### **BYLAWS**

The Board is expressly empowered to adopt, amend or repeal the Bylaws. Any adoption, amendment or repeal by the Board of the Bylaws or any provisions thereof that, individually or taken as a whole, would adversely affect, or could reasonably be expected to adversely affect, in any material respect, the rights of the Minority Investors, as a class, in each case, shall require the approval of at least a majority of the total authorized number of directors, including the approval of at least a majority of the Equity Directors and any Founder Director, as a group. In addition to the foregoing, prior to the occurrence of the Founder Triggering Event, the approval of the Founder Director shall be required for the Board to validly approve and authorize any amendment (whether by merger, consolidation or otherwise) to Section 3.3, Section 3.6, Section 3.10(f) and Article 9 of the Bylaws that would adversely affect, or could reasonably be expected to adversely affect, in any material respect, the rights of the Founder Director in his role as a director of the Corporation. Subject to applicable law and the rights of the holders of any series of Preferred Stock, the stockholders shall also have the power to adopt, amend or repeal the Bylaws by the affirmative vote of the holders of a majority of the voting power of the then-outstanding shares of the capital stock of the Corporation entitled to vote generally in the election of directors, present in person or represented by proxy, at a meeting at which a quorum is present, voting together as a single class; *provided, however*, that, in addition to such vote, the affirmative vote of the holders of a majority of the voting power of all of the then-outstanding shares of the capital stock of the Corporation entitled to vote generally in the election of directors (other than shares of capital stock of the Corporation beneficially owned by the JBS Stockholder), voting together as a single class, shall be required to adopt, amend or repeal the Bylaws or any provisions thereof.

## ARTICLE XI

### RELATED-PARTY TRANSACTIONS

Section 11.1. Independent Committee Oversight. Neither the Corporation nor any of its subsidiaries shall enter into any transaction required to be disclosed under Item 404 of Regulation S-K under the Exchange Act unless the audit committee or another committee, in each case, comprised solely of independent directors first reviews, evaluates and approves the transaction, such approval to be evidenced by a resolution stating that such committee has, in good faith, unanimously determined that such transaction complies with the provisions of this Section 11.1.

Section 11.2. Terms of Transactions; Retention of Proceeds. Neither the Corporation nor any of its subsidiaries shall sell, lease, transfer or otherwise dispose of any of its properties or assets to, or for the benefit of, or purchase or lease any property or assets from, or for the benefit of, the JBS Stockholder, except on terms that are fair and reasonable to the Corporation and no less favorable to the Corporation or the relevant subsidiary than those that could have been obtained in a comparable transaction by the Corporation or such subsidiary on an arms'-length basis from an unrelated Person. The Corporation and its subsidiaries shall retain the proceeds of any sale or disposition by any of them of any of their respective properties or assets, whether now owned or hereafter acquired.

## ARTICLE XII

### AMENDMENT

Subject to Section 5.5, the Corporation reserves the right to amend or repeal any provision contained in this Certificate of Incorporation in the manner prescribed by the laws of the State of Delaware and all rights conferred upon stockholders are granted subject to this reservation.

## ARTICLE XIII

### DEFINITIONS

For purposes of this Certificate of Incorporation, the following terms have the meanings set forth below:

“Affiliate” has the meaning set forth in Rule 12b-2 under the Exchange Act.

“Equity Directors” means the two (2) directors designated as “Equity Directors” on Schedule 3.01(a)(iii) to the Stockholders Agreement, their successors as nominated by the Equity Nominating Committee and elected by the stockholders of the Corporation or appointed by the Equity Nominating Committee to fill any vacancy pursuant to Section 5.3 and any other person, other than a JBS Director, nominated by the Minority Investors to succeed an Equity Director in accordance with this Certificate of Incorporation and the Bylaws and elected by the stockholders of the Corporation; *provided* that, if at any time the ownership by the JBS Stockholder of the issued and outstanding Common Stock as a percentage of the total issued and outstanding

Common Stock changes to a threshold amount set forth in Section 5.2(b), then the number of Equity Directors shall be changed to the corresponding number of Equity Directors set forth in Section 5.2(b); *provided further* that, upon the occurrence of a Founder Triggering Event, there shall no longer be a Founder Director on the Board and the number of Equity Directors on the Board shall be increased by one (1); *provided further* that each person serving as an Equity Director must qualify as an independent director.

“Exchange” means any national securities exchange registered under Section 6 of the Exchange Act.

“Exchange Act” means the Securities Exchange Act of 1934, as amended.

“Exchange Offer Ratio” is a fraction, the numerator of which is the average volume-weighted daily trading price per share on the principal Exchange for the Common Stock, and the denominator of which is the average volume-weighted daily trading price per share on the principal Exchange for the JBS USA Common Stock, in each case as measured during the number of consecutive trading days immediately preceding the date on which JBS USA delivered notice of the Mandatory Exchange Transaction to the Corporation that is equal to the Measurement Period.

“Exchange Window” means a period of time beginning on the 6<sup>th</sup> trading day after the first day on which both the Corporation and JBS USA will have each made their respective Periodic Disclosure relating to the immediately preceding fiscal quarter or year, as applicable, and ending on the last day of the fiscal quarter during which the first day of the Exchange Window fell.

“Founder Director” means Lonnie “Bo” Pilgrim or, if a Founder Triggering Event will have occurred solely with respect to Lonnie “Bo” Pilgrim, then Lonnie Ken Pilgrim.

“Founder Group” means the Founder Director, his spouse, his issue, his estate and any trust, partnership or other entity established or existing primarily for the benefit of him, his spouse and/or issue, including, without limitation, Pilgrim Interests, Ltd., Pilgrim Family Trust I, Pilgrim Family Trust II, PFCP, Ltd, Lonnie Jaggers Pilgrim Minority Trust and Greta Gail Pilgrim Minority Trust.

“Founder Triggering Event” means the date on which any one or more of the following shall have occurred with respect to both of Lonnie “Bo” Pilgrim and Lonnie Ken Pilgrim: death, resignation or having been determined to be incapacitated by a court of competent jurisdiction with respect to his ability to serve as a director of the Corporation.

“independent director” has the meaning ascribed to such term in the applicable listing standards of the Exchange on which the Common Stock is then listed, or if the Common Stock is not then listed, then as such term is defined in Section 303A.02 of The New York Stock Exchange Listed Company Manual (or any successor rule).

“JBS Directors” means the six (6) initial directors designated as “JBS Directors” on Schedule 3.01(a)(i) to the Stockholders Agreement, their successors as nominated by the JBS Nominating Committee pursuant to this Certificate of Incorporation and elected by the

stockholders of the Corporation or appointed by the JBS Nominating Committee or the JBS Stockholder to fill any vacancy pursuant to Section 5.3; *provided* that, if at any time the ownership by the JBS Stockholder of the issued and outstanding Common Stock as a percentage of the total issued and outstanding Common Stock changes to a threshold amount set forth in Section 5.2(b), then the number of JBS Directors shall be changed to the corresponding number of JBS Directors set forth in Section 5.2(b).

“JBS Stockholder” means JBS USA or any of its Affiliates.

“JBS USA” means JBS USA Holdings, Inc., or any successor thereto.

“JBS USA Common Stock” means the common stock of JBS USA listed on an Exchange.

“Mandatory Exchange Transaction” means the mandatory exchange of the shares of Common Stock for the Exchange Shares in accordance with Section 8.2.

“Measurement Period” means a number of consecutive trading days which is equal to twice the number of consecutive trading days between (i) the first date on which both JBS USA and the Corporation shall have both made their respective Periodic Disclosure and (ii) the date on which JBS USA delivers to the Corporation the notice of the Mandatory Exchange Transaction.

“Minority Investors” means the stockholders of the Corporation other than the JBS Stockholder.

“Periodic Disclosure” for a given calendar quarter or year means the first to be filed with the Securities and Exchange Commission of an issuer’s Quarterly Report on Form 10-Q, Annual Report on Form 10-K or earnings release required to be disclosed under Item 2.02 of Form 8-K covering such quarter or fiscal year, which filing complies, in all material respects with the applicable requirements of the Exchange Act.

“Person” means any individual, partnership, company, firm, corporation, limited liability company, association, trust, unincorporated organization or other entity, as well as any syndicate or group that would be deemed to be a person under Section 13(d)(3) of the Exchange Act.

“Stockholders Agreement” means the Stockholders Agreement dated \_\_\_\_\_, 20\_\_ between the Corporation and JBS USA, a copy of which will be made available to any stockholder of the Corporation upon written request.

“Transfer” means to sell, transfer, convey, grant an option in or with respect to, otherwise dispose of or take any other similar action, directly or indirectly.

IN WITNESS WHEREOF, the Corporation has caused this Amended and Restated Certificate of Incorporation to be executed on its behalf on this \_\_ day of \_\_\_\_\_, 20\_\_.

PILGRIM'S PRIDE CORPORATION

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

DALDMS/666499.17



---

\* \* \* \* \*

**AMENDED AND RESTATED  
CORPORATE BYLAWS**

**OF**

**PILGRIM'S PRIDE CORPORATION  
(A Delaware corporation)**

\* \* \* \* \*

---

## TABLE OF CONTENTS

|   | Page |
|---|------|
| ARTICLE 1 NAME AND OFFICES .....            | 1    |
| 1.1 Name.....                               | 1    |
| 1.2 Registered Office and Agent.....        | 1    |
| 1.3 Other Offices.....                      | 1    |
| ARTICLE 2 STOCKHOLDERS .....                | 1    |
| 2.1 Place of Meetings .....                 | 1    |
| 2.2 Annual Meetings .....                   | 1    |
| 2.3 Special Meetings .....                  | 2    |
| 2.4 Notice.....                             | 2    |
| 2.5 Voting List .....                       | 2    |
| 2.6 Quorum.....                             | 3    |
| 2.7 Requisite Vote.....                     | 4    |
| 2.8 Withdrawal of Quorum.....               | 4    |
| 2.9 Voting at Meeting.....                  | 4    |
| (a) Voting Power.....                       | 4    |
| (b) Exercise of Voting Power; Proxies ..... | 4    |
| (c) Election of Directors .....             | 5    |
| 2.10 Record Date .....                      | 5    |
| 2.11 No Actions Without Meeting.....        | 6    |
| 2.12 Stockholder Proposals .....            | 6    |
| ARTICLE 3 DIRECTORS .....                   | 8    |
| 3.1 Management Powers .....                 | 8    |
| 3.2 Number and Qualification .....          | 8    |
| 3.3 Composition of the Board.....           | 8    |
| 3.4 Term of Office .....                    | 10   |
| 3.5 Voting on Directors .....               | 10   |
| 3.6 Vacancies .....                         | 11   |
| 3.7 Removal.....                            | 11   |
| 3.8 Meetings .....                          | 11   |
| (a) Place.....                              | 11   |
| (b) Annual Meeting .....                    | 12   |
| (c) Regular Meetings.....                   | 12   |
| (d) Special Meetings.....                   | 12   |
| (e) Notice and Waiver of Notice .....       | 12   |
| (f) Quorum .....                            | 12   |
| (g) Requisite Vote .....                    | 12   |

**TABLE OF CONTENTS**  
(continued)

|  | <b>Page</b> |
|--|-------------|
| 3.9 Action Without Meetings .....            | 13          |
| 3.10 Committees .....                        | 13          |
| (a) Designation and Appointment .....        | 13          |
| (b) Members; Alternate Members; Terms .....  | 13          |
| (c) Authority .....                          | 13          |
| (d) Records .....                            | 14          |
| (e) Change in Number .....                   | 14          |
| (f) Special Nominating Committees .....      | 14          |
| (g) Removal .....                            | 15          |
| (h) Meetings .....                           | 15          |
| (i) Quorum; Requisite Vote .....             | 15          |
| (j) Actions Without Meetings .....           | 16          |
| (k) Responsibility .....                     | 16          |
| 3.11 Compensation .....                      | 15          |
| 3.12 Maintenance of Records .....            | 15          |
| 3.13 Interested Directors and Officers ..... | 16          |
| ARTICLE 4 NOTICES .....                      | 17          |
| 4.1 Method of Notice .....                   | 17          |
| 4.2 Waiver .....                             | 18          |
| ARTICLE 5 OFFICERS AND AGENTS .....          | 18          |
| 5.1 Designation .....                        | 18          |
| 5.2 Election of Officers .....               | 19          |
| 5.3 Qualifications .....                     | 19          |
| 5.4 Term of Office .....                     | 19          |
| 5.5 Authority .....                          | 19          |
| 5.6 Removal .....                            | 19          |
| 5.7 Vacancies .....                          | 19          |
| 5.8 Compensation .....                       | 20          |
| 5.9 Chairman of the Board .....              | 20          |
| 5.10 Chief Executive Officer .....           | 20          |
| 5.11 Chief Financial Officer .....           | 20          |
| 5.12 Chief Operating Officer .....           | 21          |
| 5.13 President .....                         | 21          |
| 5.14 Vice Presidents .....                   | 22          |
| 5.15 Secretary .....                         | 22          |
| 5.16 Assistant Secretaries .....             | 22          |
| 5.17 Treasurer .....                         | 23          |
| 5.18 Assistant Treasurers .....              | 23          |

# **TABLE OF CONTENTS** (continued)

|   | <b>Page</b> |
|---|-------------|
| ARTICLE 6 INDEMNIFICATION .....                               | 24          |
| 6.1 Mandatory Indemnification .....                           | 24          |
| 6.2 Determination of Indemnification .....                    | 25          |
| 6.3 Advancement of Expenses .....                             | 25          |
| 6.4 Right of Indemnatee to Bring Suit .....                   | 26          |
| 6.5 Permissive Indemnification .....                          | 27          |
| 6.6 Nature of Indemnification .....                           | 27          |
| 6.7 Insurance .....   | 28          |
| ARTICLE 7 STOCK CERTIFICATES AND TRANSFER REGULATIONS.....    | 29          |
| 7.1 Description of Certificates .....                         | 29          |
| 7.2 Signatures.....   | 29          |
| 7.3 Registered Owners .....                                   | 30          |
| 7.4 Lost, Stolen or Destroyed Certificates.....               | 30          |
| (a) Proof of Loss .....                                       | 30          |
| (b) Timely Request .....                                      | 30          |
| (c) Bond.....   | 30          |
| (d) Other Requirements .....                                  | 31          |
| 7.5 Registration of Transfers .....                           | 31          |
| (a) Endorsement .....   | 31          |
| (b) Guaranty and Effectiveness of Signature.....              | 31          |
| (c) Adverse Claims.....                                       | 31          |
| (d) Collection of Taxes .....                                 | 31          |
| (e) Additional Requirements Satisfied .....                   | 31          |
| 7.6 Restrictions on Transfer and Legends on Certificates..... | 32          |
| (a) Shares in Classes or Series .....                         | 32          |
| (b) Restriction on Transfer.....                              | 32          |
| ARTICLE 8 GENERAL PROVISIONS .....                            | 32          |
| 8.1 Dividends .....   | 32          |
| 8.2 Reserves .....  | 32          |
| 8.3 Books and Records.....                                    | 33          |
| 8.4 Contracts and Negotiable Instruments.....                 | 33          |
| 8.5 Fiscal Year .....   | 34          |
| 8.6 Corporate Seal.....                                       | 34          |
| 8.7 Resignations .....  | 34          |

**TABLE OF CONTENTS**  
(continued)

|                                       | <b>Page</b> |
|---------------------------------------|-------------|
| 8.8 Amendment of Bylaws .....         | 34          |
| 8.9 Construction .....                | 35          |
| 8.10 Telephone Meetings .....         | 36          |
| 8.11 Table of Contents; Captions..... | 36          |
| ARTICLE 9 DEFINITIONS.....            | 36          |

**AMENDED AND RESTATED  
CORPORATE BYLAWS**

**OF**

**PILGRIM'S PRIDE CORPORATION  
(a Delaware Corporation)**

ARTICLE 1

NAME AND OFFICES

1.1 Name. The name of the Corporation is PILGRIM'S PRIDE CORPORATION, hereinafter referred to as the "Corporation."

1.2 Registered Office and Agent. The Corporation shall establish, designate and continuously maintain a registered office and agent in the State of Delaware.

1.3 Other Offices. The Corporation may also have offices at such other places within and without the State of Delaware as the Board of Directors may, from time to time, determine the business of the Corporation may require.

ARTICLE 2

STOCKHOLDERS

2.1 Place of Meetings. Each meeting of the stockholders of the Corporation is to be held at the principal offices of the Corporation or at such other place, either within or without the State of Delaware, as may be specified in the notice of the meeting or in a duly executed waiver of notice thereof.

2.2 Annual Meetings. An annual meeting of stockholders of the Corporation shall be held each calendar year on such date and at such time as shall be designated from time to time by the Board of Directors, which date shall be within thirteen (13) months of the last annual meeting



of stockholders, and stated in the notice of the meeting or in a duly executed waiver of notice of such meeting. At such meeting, the stockholders shall elect directors (each, a “Director”) and transact such other business as may properly be brought before the meeting.

2.3 Special Meetings. Special meetings of stockholders of the Corporation may be called only by the Chairman of the Board, the Chief Executive Officer, the President, the affirmative vote of a majority of the Whole Board or, as provided in Section 3.10(f), the Equity Nominating Committee. The notice of a special meeting shall state the purpose or purposes of the proposed meeting and the business to be transacted at any such special meeting of stockholders, and shall be limited to the purposes stated in the notice therefor.

2.4 Notice. Written or printed notice of the meeting stating the place, if any, day and hour of the meeting, and the means of remote communications, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such meeting, and in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten (10) nor more than sixty (60) days before the date of the meeting to each stockholder of record entitled to vote at such meeting as determined in accordance with the provisions of Section 2.10 hereof, except as otherwise provided herein or required by law (meaning, here and hereinafter, as required from time to time by the Delaware General Corporation Law or the Certificate of Incorporation). If mailed, such notice shall be deemed to be delivered when deposited in the United States Mail, with postage thereon prepaid, addressed to the stockholder entitled thereto at his address as it appears on the stock records of the Corporation.

2.5 Voting List. The officer having charge and custody of the stock records of the Corporation shall prepare, at least ten (10) days before each meeting of stockholders, a complete

list of the stockholders entitled to vote at such meeting, arranged in alphabetical order and showing the address of each stockholder and the number of shares registered in the name of each stockholder; *provided, however*, if the record date for determining the stockholders entitled to vote is less than ten (10) days before the meeting date, the list shall reflect the stockholders entitled to vote as of the tenth (10<sup>th</sup>) day before the meeting date. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours for a period of not less than ten (10) days prior to such meeting at the principal office of the Corporation. If the meeting is to be held at a place, such list shall also be produced and kept open at the time and place of the meeting and shall be subject to the inspection of any stockholder during the entire time of the meeting. The original stock records shall be the only evidence as to identity of the stockholders entitled to examine such list and to vote at any such meeting of the stockholders.

2.6 Quorum. The holders of a majority of the combined voting power of the capital stock issued and outstanding and entitled to vote thereat, represented in person or by proxy, shall be requisite and shall constitute a quorum at all meetings of the stockholders for the transaction of business except as otherwise required by law, the Certificate of Incorporation or these Bylaws. If, however, such quorum shall not be present or represented at any such meeting of the stockholders, (a) holders of a majority of the combined voting power of the capital stock entitled to vote thereat, present in person, or represented by proxy, or (b) the chairman of the meeting shall have the power to adjourn the meeting, from time to time, without notice other than announcement at the meeting, until a quorum shall be present or represented. If the adjournment is for more than thirty (30) days, or if after the adjournment a new record date is fixed for the reconvened meeting, a notice of said meeting shall be given to each stockholder entitled to vote

at said meeting. At any adjourned meeting, any business may be transacted which might have been transacted at the meeting as originally notified.

2.7 Requisite Vote. If a quorum is present at any meeting, the affirmative vote of the holders of a majority of the total outstanding voting power of capital stock, present in person or represented by proxy, shall determine any question brought before such meeting, unless the question is one upon which, by express provision of the Certificate of Incorporation or of these Bylaws, a different vote shall be required, in which case such express provision shall govern and control the determination of such question.

2.8 Withdrawal of Quorum. If a quorum is present at the time of commencement of any meeting, the stockholders present at such duly convened meeting may continue to transact any business which may properly come before said meeting until adjournment thereof, notwithstanding the withdrawal from such meeting of sufficient holders of the shares of capital stock entitled to vote thereat to leave less than a quorum remaining.

2.9 Voting at Meeting. Voting at meetings of stockholders shall be conducted and exercised subject to the following procedures and regulations:

(a) Voting Power. In the exercise of voting power with respect to each matter properly submitted to a vote at any meeting of stockholders, each holder of the capital stock of the Corporation having voting power shall be entitled to such number of votes as shall be specified in the Certificate of Incorporation.

(b) Exercise of Voting Power; Proxies. Each stockholder entitled to vote at a meeting may vote either in person or authorize another person or persons to act for him by proxy duly appointed by instrument in writing or by transmission permitted by law; *provided, however*, no such appointment of proxy shall be valid, voted or acted upon after the expiration of three (3) years from the date of such proxy, unless otherwise stated therein. A proxy shall be revocable unless expressly designated therein as irrevocable and coupled with an interest. Proxies coupled with an interest include the appointment as proxy of: (i) a pledgee; (ii) a person who purchased or agreed to purchase or owns or holds an option to purchase the shares voted; (iii) a creditor of the Corporation who extended its credit under terms requiring the appointment; (iv) an employee of the

Corporation whose employment contract requires the appointment; or (v) a party to a voting agreement created under Section 218 of the Delaware General Corporation Law. Each proxy shall be filed with the Secretary of the Corporation prior to or at the time of the meeting. Any vote may be taken by voice vote or by show of hands unless someone entitled to vote at the meeting objects, in which case written ballots shall be used.

(c) Election of Directors. In all elections of Directors, cumulative voting shall be prohibited.

2.10 Record Date. A record date shall be fixed or determined in the following manner. In order that the Corporation may determine the stockholders entitled to notice of any meeting of stockholders or any adjournment thereof, or to receive payment of any dividend or other distribution or allotment of any rights or to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board of Directors may, except as otherwise required by law, fix a record date, which record date shall not precede the date on which the resolution fixing the record date is adopted and which record date shall not be more than sixty (60) nor less than ten (10) days before the date of any meeting of stockholders, nor more than sixty (60) days prior to the time for such other action as hereinbefore described. If the Board of Directors so fixes a date, such date shall also be the record date for determining the stockholders entitled to vote at such meeting unless the Board of Directors determines, at the time it fixes such record date, that a later date on or before the date of the meeting shall be the date for making such determination. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of and to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held, and, for determining stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of

any other lawful action, the record date shall be at the close of business on the day on which the Board of Directors adopts a resolution relating thereto.

2.11 No Actions Without Meeting. Subject to the rights of the holders of any series of Preferred Stock, any action required or permitted to be taken by the stockholders of the Corporation must be effected at a duly called annual or special meeting of stockholders of the Corporation and may not be effected by any consent in writing by such stockholders.

2.12 Stockholder Proposals. At the annual meeting of stockholders of the Corporation, only such business shall be conducted and only such proposals shall be acted upon as shall have been properly brought before such annual meeting. To be properly brought before an annual meeting, business or proposals must (i) be specified in the notice relating to the meeting (or any supplement thereto) given by or at the direction of the Board of Directors in accordance with these Bylaws or (ii) be properly brought before the meeting by a stockholder of the Corporation who (A) is a stockholder of record at the time of the giving of such stockholder's notice provided for herein, (B) shall be entitled to vote at the annual meeting and (C) complies with the requirements of this Section, and otherwise be proper subjects for stockholder action under the Delaware General Corporation Law and be properly introduced at the annual meeting. For a proposal to be properly brought before the annual meeting by a stockholder of the Corporation, in addition to any other applicable requirements, such stockholder must have given timely advance notice thereof in writing to the Secretary of the Corporation. To be timely, such stockholder's notice must be delivered to, or mailed and received at, the principal executive offices of the Corporation not less than 120 days nor more than 270 days prior to the scheduled annual meeting date, regardless of any postponements, deferrals or adjournments of such annual meeting to a later date. Any such stockholder's notice to the Secretary of the Corporation shall

set forth as to each matter such stockholder proposes to bring before the annual meeting (i) a description of the proposal desired to be brought before the annual meeting, the reasons for conducting such business at the annual meeting and any material interest in such business of such stockholder and the beneficial owner, if any, on whose behalf the proposal is made; (ii) as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the proposal is made, the name and address, as they appear on the Corporation's books, of such stockholder proposing such business, any other stockholders of the Corporation known by such stockholder to be in favor of such proposal and of any such beneficial owner; and (iii) the class and number of shares of capital stock of the Corporation owned of record and beneficially by such stockholder and any such beneficial holder on the date of such notice. The presiding officer of the meeting of stockholders of the Corporation shall determine whether the requirements of this Section have been met with respect to any stockholder proposal. If the presiding officer determines that any stockholder proposal was not made in accordance with the terms of this Section, he shall so declare at the meeting and any such proposal shall not be acted upon at the meeting.

At a special meeting of stockholders of the Corporation, only such business shall be conducted and only such proposals shall be acted upon as shall have been properly brought before such special meeting. To be properly brought before such a special meeting, business or proposals must (i) be specified in the notice relating to the meeting (or any supplement thereto) given by or at the direction of the Board of Directors in accordance with these Bylaws or (ii) constitute matters incident to the conduct of the meeting as the presiding officer of the meeting shall determine to be appropriate. In addition to the foregoing provisions of this Section, a stockholder of the Corporation shall also comply with all applicable requirements of the



Exchange Act and the rules and regulations promulgated thereunder with respect to the matters set forth in this Section.

### ARTICLE 3

#### DIRECTORS

3.1 Management Powers. The powers of the Corporation shall be exercised by or under the authority of, and the business and affairs of the Corporation shall be managed by or under the direction of, its Board of Directors, which may exercise all such powers of the Corporation and do all such lawful acts and things as are not by statute, the Certificate of Incorporation or these Bylaws directed or required to be exercised or done by the stockholders.

3.2 Number and Qualification. Subject to Section 3.3, the Board of Directors shall consist of nine (9) Directors.

3.3 Composition of the Board of Directors. The Board of Directors shall consist of six (6) JBS Directors, two (2) Equity Directors and one (1) Founder Director; *provided* that, if at any time the beneficial ownership by the JBS Stockholder of the issued and outstanding Common Stock as a percentage of the total issued and outstanding Common Stock changes to an amount set forth below, then there shall be the following changes in the composition of the Board of Directors:

| <u>% Owned by the<br/>JBS Stockholder</u> | <u>No. of JBS<br/>Directors</u> | <u>No. of Equity<br/>Directors</u> | <u>No. of Founder<br/>Directors</u> |
|---|---------------------------------|------------------------------------|-------------------------------------|
| ≥ 90%                                     | 8                               | 0                                  | 1                                   |
| ≥ 80% but < 90%                           | 7                               | 1                                  | 1                                   |
| ≥ 50% but < 80%                           | 6                               | 2                                  | 1                                   |
| ≥ 40% but < 50%                           | 5                               | 3                                  | 1                                   |

|                          |   |   |   |
|--------------------------|---|---|---|
| $\geq 35\%$ but $< 40\%$ | 4 | 4 | 1 |
| $> 10\%$ but $< 35\%$    | 3 | 5 | 1 |
| $\leq 10\%$              | 0 | 8 | 1 |

*provided* that, upon the occurrence of the Founder Triggering Event, there shall no longer be a Founder Director on the Board of Directors, and the number of Equity Directors on the Board of Directors as set forth above shall be increased by one (1); *provided further* that during the Exchange Period there shall be at least two (2) Equity Directors; *provided further* that, if applicable law or, at any time while the Corporation's equity securities are traded on an Exchange, the rules of such Exchange require a greater number or proportion of independent directors on the Board of Directors, then

(i) if the JBS Stockholder beneficially owns at least 50% of the issued and outstanding Common Stock, then, at the option of the JBS Nominating Committee, either (A) one or more of the then-existing JBS Directors who are not independent directors shall be replaced with one or more JBS Directors who are independent directors such that, after such replacement, the number or proportion of independent directors on the Board of Directors will comply with such requirement or (B) the number of Directors shall be increased by two (2) and the vacancies created by such increase shall be filled with persons designated by the JBS Nominating Committee who are independent directors such that the number or proportion of independent directors on the Board of Directors will comply with such requirement; or

(ii) if the JBS Stockholder beneficially owns less than 50% of the issued and outstanding Common Stock, then one or more of the then-existing JBS Directors who are not independent directors shall be replaced with one or more JBS Directors who are

independent directors such that, after such replacement, the number or proportion of independent directors on the Board of Directors will comply with such requirement.

In the event that the size of the Board of Directors is expanded pursuant to this Section 3.3, no person shall be nominated or appointed as a Director if the Equity Nominating Committee reasonably determines that such person (A) is unethical or lacks integrity or (B) is a competitor or is affiliated with a competitor of the Corporation or any of its material subsidiaries. As used in these Bylaws, a Person shall be deemed the “beneficial owner” of, shall be deemed to have “beneficial ownership” of and shall be deemed to “beneficially own” any Common Stock which such Person or any of such Person’s Affiliates is deemed to beneficially own, directly or indirectly, within the meaning of Rule 13d-3 of the Exchange Act; *provided, however*, that beneficial ownership by the JBS Stockholder will not include shares of Common Stock held by members of a “group” (as that term is used in Rule 13d-5 under the Exchange Act) other than JBS USA and its Affiliates.

3.4 Term of Office. At each annual meeting of stockholders, each Director elected to succeed a Director whose term expires shall be elected for a term of office to expire at the next annual meeting of stockholders after his election, with each Director to hold office until his successor shall have been duly elected and qualified or until the earlier of his death, resignation or removal in accordance with these Bylaws and the Certificate of Incorporation. The election of Directors need not be by written ballot and Directors need not be stockholders.

3.5 Voting on Directors. Directors shall be elected by the vote of the holders of a plurality of the combined voting power of the shares entitled to vote in the election of Directors and represented in person or by proxy at a meeting of stockholders at which a quorum is present. Cumulative voting in the election of Directors is expressly prohibited.

3.6 Vacancies. Subject to Section 3.3, any vacancy on the Board of Directors, howsoever resulting, shall be filled only by the affirmative vote of a majority of the remaining Directors then in office, even if less than a quorum, or by the sole remaining Director; *provided, however,* that (a) a vacancy in the directorship of a JBS Director may be filled only through the affirmative vote of a majority of Directors on the JBS Nominating Committee (defined below), even if less than a quorum, or by the sole remaining Director on the JBS Nominating Committee, or if no Directors remain on the JBS Nominating Committee, by the stockholders and (b) a vacancy created in the directorship of an Equity Director or a Founder Director may be filled only by the affirmative vote of a majority of Directors on the Equity Nominating Committee (defined below), even if less than a quorum, or by the sole remaining Director on the Equity Nominating Committee, or if no Directors remain on the Equity Nominating Committee, by the stockholders. The term of office of any Director elected to fill a vacancy shall expire at the next annual meeting of stockholders after his election, with each Director to hold office until his successor shall have been duly elected and qualified or until the earlier of his death, resignation or removal in accordance with the Certificate of Incorporation and these Bylaws.

3.7 Removal. Except as otherwise required by law, any Director, or the entire Board of Directors, may be removed either for or without cause at any duly convened special or annual meeting of stockholders by the affirmative vote of a majority of the combined voting power of the shares of the stockholders entitled to vote at an election of Directors voting together as a single class.

3.8 Meetings. The meetings of the Board of Directors shall be held and conducted subject to the following regulations:

(a) Place. Meetings of the Board of Directors, annual, regular or special, are to be held at the principal office or place of business of the Corporation, or such other place, either within or without the State of Delaware, as may be specified in the respective notices, or waivers of notice, thereof.

(b) Annual Meeting. The Board of Directors shall meet each year immediately after the annual meeting of the stockholders, at the place where such meeting of the stockholders has been held (either within or without the State of Delaware), for the purpose of organization, election of officers, and consideration of any other business that may properly be brought before the meeting. No notice of any kind to either old or new members of the Board of Directors for such annual meeting shall be required.

(c) Regular Meetings. Regular meetings of the Board of Directors may be held at such times as designated by resolution of the Board of Directors or written consent of all of the Directors.

(d) Special Meetings. Special meetings of the Board of Directors may be called by the Chairman of the Board of the Corporation by notice to each Director. Special meetings of the Board of Directors shall be called by the Chairman of the Board in like manner and on like notice on the written request of at least two (2) Directors.

(e) Notice and Waiver of Notice. Notice provided by mailing or express delivery service shall be mailed at least five (5) business days before the meeting and notice by hand delivery, faxing, or other electronic transmission shall be given not later than 48 hours before the meeting; *provided, however*, that the five (5) business day and 48 hour notice periods set forth above shall be increased to seven (7) business days and four (4) business days, respectively, with respect to any meeting held outside of the United States. Neither the business to be transacted at, nor the purpose of, any regular meeting of the Board of Directors need be specified in the notice or waiver of notice of such meeting. The transaction of all business at any meeting of the Board of Directors, however called or noticed, or wherever held, shall be as valid as though had at a meeting duly held after regular call and notice, if a quorum be present and if, either before or after the meeting, each of the Directors not present shall sign a written or electronic waiver of notice. All such waivers shall be filed with the corporate records or made a part of the minutes of the meeting.

(f) Quorum. At all meetings of the Board of Directors, a majority of the Whole Board shall constitute a quorum for the transaction of business, unless a greater number is required by law or by the Certificate of Incorporation. If a quorum shall not be present at any meeting of Directors, the Directors present thereat may adjourn the meeting, from time to time, without notice other than announcement at the meeting, until a quorum shall be present.

(g) Requisite Vote. The act of a majority of the Directors present at any meeting at which a quorum is present shall be the act of the Board of Directors unless the act of a greater number of the Directors (or of a specific class of Directors) is required by statute, the Certificate of Incorporation or these Bylaws.

3.9 Action Without Meetings. Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, any action required or permitted by law to be taken at any meeting of the Board of Directors, or any committee thereof, may be taken without a meeting, without prior notice and without a vote, if all members of the Board of Directors or of such committee, as the case may be, consent thereto in writing or by electronic transmission, and such writing or electronic transmission sets forth the action so taken and is filed in the minutes of the proceedings of the Board of Directors or committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

3.10 Committees. Committees designated and appointed by the Board of Directors shall function subject to and in accordance with the following regulations and procedures:

(a) Designation and Appointment. Subject to the provisions of the Certificate of Incorporation and Section 3.10(f), the Board of Directors, by resolution adopted by a majority of the Whole Board, shall designate and appoint an Audit Committee and a Compensation Committee and may designate and appoint one or more other committees under such name or names and for such purpose or function as may be deemed appropriate.

(b) Members; Alternate Members; Terms. Each committee thus designated and appointed shall consist of one or more of the Directors of the Corporation, one of whom, in the case of any Executive Committee, shall be the Chief Executive Officer of the Corporation (so long as the Chief Executive Officer is also a Director). The Board of Directors may designate one or more of its members as alternate members of any committee, who may, subject to any limitations imposed by the Whole Board, replace absent or disqualified members at any meeting of that committee; *provided, however*, that any alternate member of the Equity Nominating Committee must be an Equity Director. The members or alternate members of any such committee shall serve at the pleasure of and subject to the discretion of the Board of Directors (other than members of the Equity Nominating Committee). Except for the JBS Nominating Committee, any committee



designated or appointed by the Board of Directors shall have at least one Equity Director as a member thereof.

(c) Authority. Subject to the provisions of the Certificate of Incorporation and the other provisions of these Bylaws, each committee, to the extent provided in the resolution of the Board of Directors creating same, shall have and may exercise such of the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation as the Board of Directors may direct and delegate, except, however, those matters which are required by statute to be reserved unto or acted upon by the Whole Board, and except that no such committee shall have the power or authority in reference to (i) adopting or approving, or recommending to the stockholders of the Corporation, any action or matter (other than the election or removal of Directors) expressly required by the Delaware General Corporation Law to be submitted to the stockholders for approval, or (ii) adopting, amending or repealing any bylaw of the Corporation; *provided further*, that no such committee shall have the power or authority to approve any action described in Section 5.5 of the Certificate of Incorporation.

(d) Records. Each such committee shall keep and maintain regular records or minutes of its meetings and report the same to the Board of Directors when required.

(e) Change in Number. Subject to the provisions of Section 3.10(f), the number of members or alternate members of any committee appointed by the Board of Directors, as herein provided, may be increased or decreased from time to time by appropriate resolution adopted by the Whole Board.

(f) Special Nominating Committees.

(i) The Board of Directors shall establish two (2) committees (collectively, the “Special Nominating Committees”), which shall be designated as the “JBS Nominating Committee” and the “Equity Nominating Committee,” each of which shall have the power and authority of the Board of Directors with respect to the matters described in Sections 3.6 and 3.10(f). The JBS Nominating Committee shall consist of solely of JBS Directors, and the Equity Nominating Committee shall consist solely of all of the Equity Directors. The JBS Nominating Committee shall have the exclusive authority to nominate the JBS Directors, fill vacancies pursuant to Section 3.6 and select the members of the JBS Nominating Committee; and the Equity Nominating Committee shall have the exclusive authority to nominate the Equity Directors, fill vacancies pursuant to Section 3.6, select the members of the Equity Nominating Committee, and shall be entitled to call a special meeting of stockholders of the Corporation to comply with Section 3.01(d) of the Stockholders Agreement; *provided* that, prior to the occurrence of the Founder Triggering Event, the Equity Nominating Committee shall, to the fullest extent permitted by applicable law and subject to any applicable fiduciary duties, nominate the Founder Director. For so long as the JBS Stockholder is the beneficial owner of 35% or more of the outstanding Common Stock, no person shall be nominated as an Equity Director pursuant to

these Bylaws if JBS USA reasonably determines that such person (A) is unethical or lacks integrity or (B) is a competitor or is affiliated with a competitor of the Corporation. Two (2) Equity Directors (or one (1) if there is only one (1) Equity Director on the Board of Directors) shall satisfy the independence requirements of Rule 10A-3 under the Exchange Act and be financially literate for purposes of the applicable listing standards of the Exchange on which the Common Stock is then listed, or if the Common Stock is not then listed, then for purposes of Section 303A.07 of The New York Stock Exchange Listed Company Manual (or any successor rule) (“financially literate”), and, for so long as there are two (2) or more Equity Directors on the Board of Directors, and at least one (1) Equity Director shall qualify as an “audit committee financial expert” as that term is used in Item 407 of Regulation S-K under the Exchange Act (or any successor rule). If the JBS Stockholder beneficially owns at least 50% of the issued and outstanding Common Stock, at least one (1) JBS Director shall (X) be an independent director, (Y) satisfy the independence requirements of Rule 10A-3 under the Exchange Act and (Z) be financially literate.

(ii) Notwithstanding anything in these Bylaws to the contrary, to the maximum extent permitted by law, the Equity Nominating Committee, acting by majority vote, shall have the right to control the Corporation’s exercise of its rights and remedies under the Stockholders Agreement, including, without limitation, (i) the granting of (or refusal to grant) any approvals, consents or waivers by the Corporation thereunder, (ii) the giving (or withholding) of any notices by the Corporation thereunder, (iii) the approval (or disapproval) of the Corporation’s entry into any amendment or supplement to the Stockholders Agreement and (iv) the initiation, prosecution or settlement of any claim, action, suit, arbitration, inquiry, proceeding or investigation arising in connection therewith. The Equity Directors shall be permitted to retain separate advisors (legal or financial) at the expense of the Corporation in connection with the performance of their duties under Sections 2.3, 3.6, 3.10(f) and 8.8 of these Bylaws or under Sections 3.01(d), 3.03 and 6.21 of the Stockholders Agreement.

(g) Removal. Any member or alternate member of any committee appointed hereunder may be removed by the Board of Directors by the affirmative vote of a majority of the Whole Board; *provided* that any removal of an Equity Director from the Equity Nominating Committee shall be approved by the majority of the members of Equity Nominating Committee.

(h) Meetings. The time, place and notice (if any) of committee meetings shall be determined by the members of such committee.

(i) Quorum; Requisite Vote. At meetings of any committee appointed hereunder, a majority of the number of members designated by the Board of Directors shall constitute a quorum for the transaction of business. The act of a majority of the members and alternate members of the committee present at any meeting at which a quorum is present shall be the act of such committee, except as otherwise specifically

provided by statute, the Certificate of Incorporation or these Bylaws. If a quorum is not present at a meeting of such committee, the members of such committee present may adjourn the meeting from time to time, without notice other than an announcement at the meeting, until a quorum is present.

(j) Action Without Meetings. Any action required or permitted to be taken at a meeting of any committee may be taken without a meeting if all members of such committee consent thereto in writing or by electronic transmission. Such consent shall have the same force and effect as a unanimous vote at a meeting.

(k) Responsibility. Notwithstanding any provision to the contrary herein, the designation and appointment of a committee and the delegation of authority to it shall not operate to relieve the Board of Directors, or any member thereof, of any responsibility imposed upon it or him by law.

3.11 Compensation. Each of the Directors shall be entitled to receive reasonable and customary fees for his service as a Director (which fees shall be set by the Board of Directors from time to time), including, without limitation, as a member of any standing or special committee of the Board of Directors. Each of the Directors shall be entitled to be reimbursed by the Corporation for his reasonable out-of-pocket expenses incurred in connection with the performance of his duties as a Director, including, without limitation, as a member of any standing or special committee of the Board of Directors. No such fees or reimbursements shall preclude any Director from serving the Corporation in another capacity and receiving compensation therefor.

3.12 Maintenance of Records. Except such as are required by law to be kept within the State of Delaware, the books and records of the Corporation may be kept outside the State of Delaware or at such place or places as the Board of Directors may, from time to time, determine.

3.13 Interested Directors and Officers. No contract or other transaction between the Corporation and one or more of its Directors or officers, or between the Corporation and any organization in which one or more of its Directors or officers are directors or officers, or have a

financial interest, shall be void or voidable solely for this reason, or solely because the Director or officer is present at or participates in the meeting of the Board of Directors (or committee of the Board of Directors), that authorizes the contract or transaction, or solely because such Director's or officer's votes are counted for such purpose, if (a) the material facts of such relationship or interest and as to the contract or transaction shall be disclosed or known to the Board of Directors (or the committee) and the Board of Directors (or the committee) shall, nevertheless in good faith, authorize such contract or transaction by the affirmative vote of a majority of disinterested Directors even though the disinterested Directors be less than a quorum; (b) the material facts of such relationship or interest and as to the contract or transaction are disclosed or are known to the stockholders entitled to vote thereon, and the contract or transaction is specifically approved in good faith by the vote of the stockholders; or (c) the contract or transaction is fair to the Corporation as of the time it is authorized, approved or ratified by the Board of Directors, a committee thereof or the stockholders. The provisions of this Section shall not be construed to invalidate any contract or other transaction which would otherwise be valid under the common and statutory law applicable thereto.

## ARTICLE 4

### NOTICES

4.1 Method of Notice. To the fullest extent permitted by law, whenever under the provisions of the Delaware General Corporation Law or of the Certificate of Incorporation or of these Bylaws, notice is required to be given to any Director or stockholder, it shall not be construed to require personal notice, but such notice may be given in writing and delivered personally, through the United States mail, by a nationally recognized delivery service (such as Federal Express) or by means of telegram, telex, facsimile transmission or electronic

transmission, addressed to such Director or stockholder, at his address or telex or facsimile transmission number, as the case may be, as it appears on the records of the Corporation, with postage and fees thereon prepaid. Such notice shall be deemed to be given at the time when the same shall be deposited in the United States mail or with an express delivery service (or, in the case of notice to Directors, such notice shall be deemed to be given when received) or when transmitted by telex, facsimile transmission, electronic transmission or personally delivered, as the case may be. Notice given by electronic transmission shall be effective as follows: (i) if by facsimile, when faxed to a number where the recipient has consented in writing to receive such notice; and (ii) if by electronic mail, when mailed electronically to an electronic mail address at which the recipient has consented in writing to receive such notice.

4.2 Waiver. Whenever any notice is required to be given under the provisions of the Delaware General Corporation Law or under the provisions of the Certificate of Incorporation or these Bylaws, a waiver thereof in writing signed by the Person or Persons entitled to such notice, or a waiver by electronic transmission by the Person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice. Attendance by such Person or Persons, whether in person or, if permitted by applicable law, by proxy, at any meeting requiring notice shall constitute a waiver of notice of such meeting, except where such Person attends the meeting for the express purpose of objecting at the beginning of the meeting to the transaction of any business because the meeting is not lawfully called or convened.

## ARTICLE 5

### OFFICERS AND AGENTS

5.1 Designation. The officers of the Corporation shall be chosen by the Board of Directors and shall include a President and a Secretary and may also include such other offices

and officers and assistant officers and agents as the Board of Directors shall deem necessary, including, without limitation, a Chairman of the Board, Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, one or more Vice Presidents and a Treasurer.

5.2 Election of Officers. The President and the Secretary shall be elected by the Board of Directors on the expiration of the term of office of such officer, as herein provided, or whenever a vacancy exists in such office. Each other officer or agent may be elected by the Board of Directors at any meeting.

5.3 Qualifications. No officer or agent need be a stockholder of the Corporation or a resident of Delaware. No officer or agent is required to be a Director, except the Chairman of the Board. Any two or more offices may be held by the same person.

5.4 Term of Office. Unless otherwise specified by the Board of Directors at the time of election or appointment, or by the express provisions of an employment contract approved by the Board of Directors, the term of office of each officer and each agent shall expire on the date of the first meeting of the Board of Directors next following the annual meeting of stockholders each year. Each such officer or agent, unless elected or appointed to an additional term, shall serve until the expiration of the term of his office or, if earlier, his death, resignation or removal.

5.5 Authority. Officers and agents shall have such authority and perform such duties in the management of the Corporation as are provided in these Bylaws or as may be determined by resolution of the Board of Directors not inconsistent with these Bylaws.

5.6 Removal. Any officer or agent elected or appointed by the Board of Directors may be removed with or without cause by the Board of Directors. Such removal shall be without prejudice to the contract rights, if any, of the person so removed. Election or appointment of an officer or agent shall not of itself create contract rights.



5.7 Vacancies. Any vacancy occurring in any office of the Corporation (by death, resignation, removal or otherwise) shall be filled by the Board of Directors.

5.8 Compensation. The compensation of all officers and agents of the Corporation shall be fixed from time to time by the Board of Directors.

5.9 Chairman of the Board. The Chairman of the Board shall be chosen from among the Directors. The Chairman of the Board shall have the power to call special meetings of the stockholders and of the Directors for any purpose or purposes, and he shall preside at all meetings of the stockholders and Board of Directors, unless he shall be absent or unless he shall, at his election, designate the Chief Executive Officer to preside in his stead. The Chairman of the Board shall also exercise such powers and perform such duties as shall be assigned to or required of him from time to time by the Board of Directors.

5.10 Chief Executive Officer. The Chief Executive Officer shall have general supervision, management, direction and control of the business and affairs of the Corporation and shall see that all orders and resolutions of the Board of Directors are carried into effect. The Chief Executive Officer shall be authorized to execute promissory notes, bonds, mortgages, leases and other contracts requiring a seal, under the seal of the Corporation, except where required or permitted by law to be otherwise executed and except where the execution thereof shall be expressly delegated by the Board of Directors to some other officer or agent of the Corporation. In the absence of the Chairman of the Board, the Chief Executive Officer shall preside at all meetings of the stockholders and the Board of Directors. The Chief Executive Officer shall have the general powers and duties of management usually vested in the office of chief executive officer of a corporation and shall perform such other duties and possess such other authority and powers as the Board of Directors may from time to time prescribe.

5.11 Chief Financial Officer. The Chief Financial Officer shall have general financial supervision, management, direction and control of the business and affairs of the Corporation and shall see that all financial orders and resolutions of the Board of Directors are carried into effect. The Chief Financial Officer shall be authorized to execute promissory notes, bonds, mortgages, leases and other contracts requiring a seal, under the seal of the Corporation, except where required or permitted by law to be otherwise executed and except where the execution thereof shall be expressly delegated by the Board of Directors to some other officer or agent of the Corporation. The Chief Financial Officer shall have the general financial powers and duties of management usually vested in the office of the chief financial officer of a corporation and shall perform such other duties and possess such other authority and powers as the Chief Executive Officer may from time to time prescribe.

5.12 Chief Operating Officer. The Chief Operating Officer shall have general supervision of the day to day operations of the Corporation. The Chief Operating Officer shall have the general powers and duties of management usually vested in the office of chief operating officer of a corporation and shall perform such other duties and possess such other authority and powers as the Chief Executive Officer may from time to time prescribe.

5.13 President. In the absence or disability of the Chief Operating Officer, the President shall perform all of the duties of the Chief Operating Officer and when so acting shall have all the powers and be subject to all the restrictions upon the Chief Operating Officer, including the power to sign all instruments and to take all actions which the Chief Operating Officer is authorized to perform by the Board of Directors or these Bylaws. The President shall have the general powers and duties vested in the office of President as the Board of Directors

may from time to time prescribe or as the Chief Executive Officer may from time to time delegate.

5.14 Vice Presidents. The Vice President, or if there shall be more than one, the Vice Presidents in the order determined by the requisite vote of the Board of Directors, shall, in the prolonged absence or disability of the President, perform the duties and exercise the powers of the President and shall perform such other duties and have such other powers as the Board of Directors may from time to time prescribe or as the Chief Executive Officer may from time to time delegate. The Board of Directors may designate one or more Vice Presidents as Executive Vice Presidents or Senior Vice Presidents.

5.15 Secretary. The Secretary shall attend all meetings of the Board of Directors and all meetings of the stockholders of the Corporation and record all proceedings of the meetings of the Corporation and of the Board of Directors in a book to be maintained for that purpose and shall perform like duties for the standing committees when required. The Secretary shall give, or cause to be given, notice of all meetings of the stockholders and special meetings of the Board of Directors, and shall perform such other duties as may be prescribed by the Board of Directors, Chief Executive Officer, Chief Financial Officer, Chief Operating Officer or President. The Secretary shall have custody of the corporate seal of the Corporation, and he, or an Assistant Secretary, shall have authority to affix the same to any instrument requiring it and when so affixed, it may be attested by his signature or by the signature of such Assistant Secretary. The Board of Directors may give general authority to any other officer to affix the seal of the Corporation and to attest the affixing by his signature.

5.16 Assistant Secretaries. The Assistant Secretary, or if there be more than one, the Assistant Secretaries in the order determined by the Board of Directors, shall in the absence or

disability of the Secretary, perform the duties and exercise the powers of the Secretary and shall perform such other duties and have such other powers as the Board of Directors may from time to time prescribe or as the Chief Executive Officer may from time to time delegate.

5.17 Treasurer. The Chief Financial Officer shall also be the Treasurer of the Corporation and shall have the custody of the corporate funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Corporation and shall deposit all moneys and other valuable effects in the name and to the credit of the Corporation in such depositories as may be designated by the Board of Directors. The Treasurer shall disburse the funds of the Corporation as may be ordered by the Board of Directors, taking proper vouchers for such disbursements, and shall render to the Chief Executive Officer and the Board of Directors, at its regular meetings, or when the Board of Directors so requires, an account of all his transactions as Treasurer and of the financial condition of the Corporation. If required by the Board of Directors, the Treasurer shall give the Corporation a bond in such sum and with such surety or sureties as shall be satisfactory to the Board of Directors for the faithful performance of the duties of his office and for the restoration to the Corporation, in case of his death, resignation, retirement or removal from office, of all books, papers, vouchers, money, and other property of whatever kind in his possession or under his control owned by the Corporation. The Treasurer shall perform such other duties and have such other authority and powers as the Board of Directors may from time to time prescribe or as the Chief Executive Officer may from time to time delegate.

5.18 Assistant Treasurers. The Assistant Treasurer, or if there shall be more than one, the Assistant Treasurers in the order determined by the Board of Directors, shall, in the absence or disability of the Treasurer, perform the duties and exercise the powers of the Treasurer and

shall perform such other duties and have such other powers as the Board of Directors may from time to time prescribe or as the Chief Executive Officer may from time to time delegate.

## ARTICLE 6

### INDEMNIFICATION

6.1 Mandatory Indemnification. Each person who was or is made a party or is threatened to be made a party, or who was or is a witness without being named a party, to, or is otherwise involved in, any threatened, pending or completed action, claim, suit or proceeding, whether civil, criminal, administrative or investigative, any appeal in such an action, claim, suit or proceeding, and any inquiry or investigation that could lead to such an action, claim, suit or proceeding (a “Proceeding”), by reason of the fact that such individual is or was a Director or officer of the Corporation, or while a Director or officer of the Corporation is or was serving at the request of the Corporation as a director, officer, partner, venturer, proprietor, trustee, employee, agent or similar functionary of another corporation, partnership, trust, employee benefit plan or other enterprise (hereinafter, an “indemnatee”), whether the basis of such Proceeding is alleged action in an official capacity as a Director or officer or in any other capacity while serving as a Director or officer, shall be indemnified and held harmless by the Corporation to the fullest extent permitted by Delaware law, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than such law permitted the Corporation to provide prior to such amendment), from and against any expense, liability, loss, judgments, penalties (including excise taxes), fines, amounts paid in settlement and reasonable expenses (including court costs and attorneys’ fees) actually incurred or suffered by such person in connection with such Proceeding.

6.2 Determination of Indemnification. Any indemnification under the foregoing Section 6.1 shall be made by the Corporation unless it has been determined that indemnification of such person is not proper in the circumstances by virtue of the fact that it shall have been determined that such person has not met the applicable standard of conduct. Such determination shall be made with respect to a person who is a Director or officer at the time of the determination (i) by a majority vote of the Directors who at the time of the vote are “independent directors” (as defined in the listing standards of the Exchange on which the Common Stock is then listed, or if the Common Stock is not then listed, then as such term is defined in Section 303A.02 of The New York Stock Exchange Listed Company Manual (or any successor rule)) and are not parties to such Proceeding, even though less than a quorum; (ii) if there are no such Directors, or if such Directors so direct, by independent legal counsel (in a written opinion); or (iii) by the stockholders of the Corporation.

6.3 Advancement of Expenses. In addition to the right to indemnification conferred in Section 6.1, an indemnitee shall also have the right to be paid by the Corporation the expenses (including attorney’s fees) incurred in defending any such Proceeding in advance of its final disposition (hereinafter an “advancement of expenses”); *provided, however*, that, if the Delaware General Corporation Law requires, an advancement of expenses incurred by an indemnitee in his capacity as a Director or officer (and not in any other capacity in which service was or is rendered by such indemnitee, including, without limitation, service to an employee benefit plan) shall be made only upon delivery to the Corporation of an undertaking (hereinafter an “undertaking”), by or on behalf of such indemnitee, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal



(hereinafter a “final adjudication”) that such indemnitee is not entitled to be indemnified for such expenses under this Section 6.3 or otherwise.

6.4 Right of Indemnitee to Bring Suit. If a claim under Section 6.1 or 6.3 is not paid in full by the Corporation within sixty (60) days after a written claim has been received by the Corporation, except in the case of a claim for an advancement of expenses, in which case the applicable period shall be twenty (20) days, the indemnitee may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim. To the fullest extent permitted by law, if successful in whole or in part in any such suit, or in a suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the indemnitee shall be entitled to be paid also the expense of prosecuting or defending such suit. In (i) any suit brought by the indemnitee to enforce a right to indemnification hereunder (but not in a suit brought by the indemnitee to enforce a right to an advancement of expenses) it shall be a defense that, and (ii) in any suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the Corporation shall be entitled to recover such expenses upon a final adjudication that, the indemnitee has not met any applicable standard for indemnification set forth in the Delaware General Corporation Law. Neither the failure of the Corporation (including its Directors who are not parties to such action, a committee of such Directors, independent legal counsel, or its stockholders) to have made a determination prior to the commencement of such suit that indemnification of the indemnitee is proper in the circumstances because the indemnitee has met the applicable standard of conduct set forth in the Delaware General Corporation Law, nor an actual determination by the Corporation (including its Directors who are not parties to such action, a committee of such Directors, independent legal counsel, or its stockholders) that the indemnitee has not met such applicable standard of conduct,

shall create a presumption that the indemnitee has not met the applicable standard of conduct or, in the case of such a suit brought by the indemnitee, be a defense to such suit. In any suit brought by the indemnitee to enforce a right to indemnification or to an advancement of expenses hereunder, or brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the burden of proving that the indemnitee is not entitled to be indemnified, or to such advancement of expenses, under this Article 6 or otherwise shall be on the Corporation.

6.5 Permissive Indemnification. The Board of Directors of the Corporation may authorize the Corporation to indemnify employees or agents of the Corporation, and to advance the reasonable expenses of such persons.

6.6 Nature of Indemnification. The indemnification and advancement of expenses provided hereunder shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under the Certificate of Incorporation, these Bylaws, any agreement, vote of stockholders or disinterested Directors or otherwise, both as to actions taken in an official capacity and as to actions taken in any other capacity while holding such office. The rights conferred upon indemnitees in this Article 6 shall be contract rights and such rights shall continue as to an indemnitee who has ceased to be a Director or officer and shall inure to the benefit of the indemnitee's heirs, executors and administrators. Any amendment, alteration or repeal of this Article 6 that adversely affects any right of an indemnitee or its successors shall be prospective only and shall not limit or eliminate any such right with respect to any proceeding involving any occurrence or alleged occurrence of any action or omission to act that took place prior to such amendment, alteration or repeal.

6.7 Insurance. The Corporation shall have the power and authority to purchase and maintain insurance or another arrangement on behalf of any person who is or was a Director, officer, employee or agent of the Corporation, or who is or was serving at the request of the Corporation as a director, officer, partner, venturer, proprietor, trustee, employee, agent, or similar functionary of another foreign or domestic corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan or other enterprise, against any liability, claim, damage, loss or risk asserted against such person and incurred by such person in any such capacity or arising out of the status of such person as such, irrespective of whether the Corporation would have the power to indemnify and hold such person harmless against such liability under the provisions hereof. Without limiting the power of the Corporation to procure or maintain any kind of insurance or other arrangement, the Corporation may, for the benefit of persons indemnified by the Corporation, (i) create a trust fund; (ii) establish any form of self-insurance; (iii) secure its indemnity obligation by grant of a security interest or other lien on the assets of the Corporation; or (iv) establish a letter of credit, guaranty, or surety arrangement. The insurance or other arrangement may be procured, maintained, or established within the Corporation or with any insurer or other Person deemed appropriate by the Board of Directors regardless of whether all or part of the stock or other securities of the insurer or other Person are owned in whole or part by the Corporation. In the absence of fraud, the judgment of the Board of Directors as to the terms and conditions of the insurance or other arrangement and the identity of the insurer or other Person participating in the arrangement shall be conclusive and the insurance or arrangement shall not be voidable and shall not subject the Directors approving the insurance or arrangement to liability, on any ground, regardless of whether any Director participating in the approval is a beneficiary of the insurance or arrangement.

## ARTICLE 7

### STOCK CERTIFICATES AND TRANSFER REGULATIONS

7.1 Description of Certificates. The shares of the capital stock of the Corporation shall be represented by certificates or shall be uncertificated. Each record holder of shares represented by certificates, upon request to the Corporation, shall be provided with a certificate of stock representing the number of shares owned by the holder. The shares of the capital stock of the Corporation represented by certificates shall be signed by, or in the name of the Corporation by, the Chairman of the Board, President or a Vice President and the Treasurer or the Secretary or an Assistant Secretary of the Corporation. Each certificate shall state on the face thereof the name of the holder, the number and class of shares, the par value of shares covered thereby or a statement that such shares are without par value, and such other matters as are required by law. At such time as the Corporation may be authorized to issue shares of more than one class, every certificate shall set forth upon the face or back of such certificate a statement of the designations, preferences, limitations and relative rights of the shares of each class authorized to be issued, as required by the laws of the State of Delaware, or may state that the Corporation will furnish a copy of such statement without charge to the holder of such certificate upon receipt of a written request therefor from such holder.

7.2 Signatures. The signatures of the Chairman of the Board, President, Vice President or Treasurer, Secretary or Assistant Secretary upon a certificate may be facsimiles. In case any officer or officers who have signed, or whose facsimile signature or signatures have been placed upon, any such certificate or certificates shall cease to serve as such officer or officers of the Corporation, or as transfer agent or registrar, whether because of death, resignation, removal or otherwise, before such certificate or certificates are issued by the

Corporation, such certificate or certificates may nevertheless be adopted by the Corporation and be issued and delivered with the same effect as though the person or persons who signed such certificate or certificates or whose facsimile signature or signatures have been used thereon had not ceased to serve as such officer or officers or as transfer agent or registrar of the Corporation.

7.3 Registered Owners. Prior to due presentment for registration of transfer of shares of the capital stock of the Corporation in the manner set forth in Section 7.5 hereof, the Corporation shall be entitled to recognize the Person registered as the owner of such shares on its books (or the books of its duly appointed transfer agent, as the case may be) as the Person exclusively entitled to vote, to receive notices and dividends with respect to, and otherwise exercise all rights and powers relative to such shares; and the Corporation shall not be bound or otherwise obligated to recognize any claim, direct or indirect, legal or equitable, to such shares by any other Person, whether or not it shall have actual, express or other notice thereof, except as otherwise provided by the laws of Delaware.

7.4 Lost, Stolen or Destroyed Certificates. The Corporation shall issue a new certificate in place of any certificate for shares previously issued, if the registered owner of the certificate satisfies the following conditions:

- (a) Proof of Loss. Submits proof in affidavit form satisfactory to the Corporation that such certificate has been lost, destroyed or wrongfully taken;
- (b) Timely Request. Requests the issuance of a new certificate before the Corporation has notice that the certificate has been acquired by a purchaser for value in good faith and without notice of an adverse claim;
- (c) Bond. Gives a bond in such form, and with such surety or sureties, with fixed or open penalty, as the Corporation may direct, to indemnify the Corporation (and its transfer agent and registrar, if any) against any claim that may be made or otherwise asserted by virtue of the alleged loss, destruction, or theft of such certificate or certificates; and

(d) Other Requirements. Satisfies any other reasonable requirements imposed by the Corporation.

In the event a certificate has been lost, apparently destroyed or wrongfully taken, and the registered owner of record fails to notify the Corporation within a reasonable time after he has notice of such loss, destruction, or wrongful taking, and the Corporation registers a transfer (in the manner set forth below) of the shares represented by the certificate before receiving such notification, such prior owner of record shall be precluded from making any claim against the Corporation for the transfer required hereunder or for a new certificate to the fullest extent permitted by law.

7.5 Registration of Transfers. Transfers of stock shall be made upon the books of the Corporation. Subject to the provisions hereof and the Certificate of Incorporation, the Corporation shall register the transfer of a certificate evidencing shares of its capital stock presented to it for transfer if:

(a) Endorsement. Upon surrender of the certificate to the Corporation (or its transfer agent, as the case may be) for transfer, the certificate (or an appended stock power) is properly endorsed by the registered owner, or by his duly authorized legal representative or attorney-in-fact, with proper written evidence of the authority and appointment of such representative, if any, accompanying the certificate;

(b) Guaranty and Effectiveness of Signature. The signature of such registered owner or his legal representative or attorney-in-fact, as the case may be, has been guaranteed by a national banking association or member of the New York Stock Exchange, and reasonable assurance in a form satisfactory to the Corporation is given that such endorsements are genuine and effective;

(c) Adverse Claims. The Corporation has no notice of an adverse claim or has otherwise discharged any duty to inquire into such a claim;

(d) Collection of Taxes. Any applicable law (local, state or federal) relating to the collection of taxes relative to the transaction has been complied with; and

(e) Additional Requirements Satisfied. Such additional conditions and documentation as the Corporation (or its transfer agent, as the case may be) shall

reasonably require, including, without limitation, the delivery with the surrender of such stock certificate or certificates of proper evidence of succession, assignment or other authority to obtain transfer thereof, as the circumstances may require, and such legal opinions with reference to the requested transfer as shall be required by the Corporation (or its transfer agent) pursuant to the provisions of these Bylaws, and applicable law shall have been satisfied.

In the case of uncertificated shares, transfers will be made upon receipt of proper transfer instructions from the record owner of such uncertificated shares, or from a duly authorized attorney or from an individual presenting proper evidence of succession, assignment or authority to transfer the stock, with such additional conditions and documentation as the Corporation (or its transfer agent, as the case may be) shall reasonably require.

#### 7.6 Restrictions on Transfer and Legends on Certificates.

(a) Shares in Classes or Series. If the Corporation is authorized to issue shares of more than one class or more than one series of any class, the certificate, if any, shall set forth, either on the face or back of the certificate, a full or summary statement of all of the powers, designations, preferences, limitations, and relative rights of the shares of each such class or series. In lieu of providing such a statement in full on the certificate, a statement on the face or back of the certificate may provide that the Corporation will furnish such information to any stockholder without charge upon request to the Corporation.

(b) Restriction on Transfer. If the Corporation imposes any restrictions on the sale or other disposition of its shares or on the amount of the Corporation's securities that may be owned by any Person, then the certificates, if any, representing shares to which any such restriction applies must conspicuously note such restriction.

## ARTICLE 8

### GENERAL PROVISIONS

8.1 Dividends. Dividends on the issued and outstanding shares of capital stock of the Corporation may be declared by the Board of Directors at any regular or special meeting and may be paid in cash, in property, or in shares of capital stock. Such declaration and payment shall be at the discretion of the Board of Directors.



8.2 Reserves. There may be created by resolution of the Board of Directors out of any funds of the Corporation available for dividends such reserve or reserves as the Board of Directors from time to time, in its discretion, shall think proper to provide for contingencies, or to repair or maintain any property of the Corporation, or for such other purposes as the Board of Directors shall think beneficial to the Corporation, and the Board of Directors may modify or abolish any such reserve in the manner in which it was created.

8.3 Books and Records. The Corporation shall maintain correct and complete books and records of account and shall prepare and maintain minutes of the proceedings of its stockholders, its Board of Directors and each committee of its Board of Directors. The Corporation shall keep at its registered office or principal place of business, or at the office of its transfer agent or registrar, a record of original issuance of shares issued by the Corporation and a record of each transfer of those shares that have been presented to the Corporation for registration or transfer. Such records shall contain the names and addresses of all past and present stockholders and the number and class of the shares issued by the Corporation held by each.

8.4 Contracts and Negotiable Instruments. Except as otherwise provided by law or these Bylaws, any contract or other instrument relative to the business of the Corporation may be executed and delivered in the name of the Corporation and on its behalf by the Chief Executive Officer, Chief Operating Officer, Chief Financial Officer, Treasurer or President of the Corporation. The Board of Directors may authorize any other officer or agent of the Corporation to enter into any contract or execute and deliver any contract in the name and on behalf of the Corporation, and such authority may be general or confined to specific instances as the Board of Directors may determine by resolution. All bills, notes, checks or other instruments for the

payment of money shall be signed or countersigned by such officer, officers, agent or agents and in such manner as are permitted by these Bylaws and/or as, from time to time, may be prescribed by resolution of the Board of Directors. Unless authorized to do so by these Bylaws or by the Board of Directors, no officer, agent or employee shall have any power or authority to bind the Corporation by any contract or engagement, or to pledge its credit, or to render it liable pecuniarily for any purpose or to any amount.

8.5 Fiscal Year. The fiscal year of the Corporation shall end on the last Sunday in December.

8.6 Corporate Seal. The Corporation seal shall be in such form as may be determined by the Board of Directors. The seal may be used by causing it or a facsimile thereof to be impressed or affixed or in any manner reproduced.

8.7 Resignations. Any Director, officer or agent may resign his office or position with the Corporation by delivering written notice or notice by electronic transmission thereof to the Chairman of the Board, Chief Executive Officer, Chief Operating Officer, President or Secretary of the Corporation. Such resignation shall be effective at the time specified therein, or immediately upon delivery if no time is specified. Unless otherwise specified therein, an acceptance of such resignation shall not be a necessary prerequisite of its effectiveness.

8.8 Amendment of Bylaws. The Board of Directors is expressly empowered to adopt, amend or repeal these Bylaws. Any adoption, amendment or repeal by the Board of Directors of the Bylaws or any provisions thereof that, individually or taken as a whole, would adversely affect, or could reasonably be expected to adversely affect, in any material respect, the rights of the Minority Investors, as a class (whether by merger, consolidation or otherwise), in each case, shall require the approval of at least a majority of the Whole Board, including the approval of at

least a majority of the Equity Directors and any Founder Director, as a group. In addition to the foregoing, prior to the occurrence of the Founder Director Triggering Event, the approval of the Founder Director shall be required for the Board of Directors to validly approve and authorize any amendment (whether by merger, consolidation or otherwise) to Section 3.3, Section 3.6, Section 3.10(f) or Article 9 of these Bylaws that would adversely affect, or could reasonably be expected to adversely affect, in any material respect, the rights of the Founder Director in his role as a Director. Notwithstanding the foregoing, actions which are permitted by the Stockholders Agreement or the Certificate of Incorporation (including, without limitation, the Mandatory Exchange Transaction) shall not require the approvals set forth above in this Section 8.8. Subject to applicable law and the rights of the holders of any series of Preferred Stock, the stockholders shall also have the power to adopt, amend or repeal these Bylaws by the affirmative vote of the holders of a majority of the voting power of the then-outstanding shares of the capital stock of the Corporation entitled to vote generally in the election of Directors, present in person or represented by proxy, at a meeting at which a quorum is present, voting together as a single class; *provided, however*, that, in addition to such vote, the affirmative vote of the holders of a majority of the voting power of all of the then-outstanding shares of the capital stock of the Corporation entitled to vote generally in the election of Directors (other than shares of capital stock of the Corporation beneficially owned by the JBS Stockholder), voting together as a single class, shall be required to adopt, amend or repeal the Bylaws or any provisions thereof.

8.9 Construction. Whenever the context so requires herein, the masculine shall include the feminine and neuter, and the singular shall include the plural, and conversely. If any portion or provision of these Bylaws shall be held invalid or inoperative, then, so far as is reasonable and possible: (i) the remainder of these Bylaws shall be considered valid and

operative, and (ii) effect shall be given to the intent manifested by the portion or provision held invalid or inoperative.

8.10 Telephone Meetings. Directors or members of any committee may hold or participate in any meeting of such Directors or committee by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other and participation in a meeting by such means shall constitute presence in person at such meeting.

8.11 Table of Contents; Captions. The table of contents and captions used in these Bylaws have been inserted for administrative convenience only and do not constitute matter to be construed in interpretation.

## ARTICLE 9

### DEFINITIONS

Capitalized terms used and not otherwise defined in these Bylaws shall have the meaning given or referenced below:

“Affiliates” has the meaning set forth in Rule 12b-2 under the Exchange Act.

“Certificate of Incorporation” means the Amended and Restated Certificate of Incorporation of the Corporation, as amended.

“Common Stock” means the common stock, par value \$.01 per share, of the Corporation.

“Delaware General Corporation Law” means the Delaware General Corporation Law, as amended, or any successor law.

“Equity Directors” means the two (2) Directors designated as “Equity Directors” on Schedule 3.01(a)(iii) to the Stockholders Agreement, their successors as nominated by the Equity Nominating Committee and elected by the stockholders of the Corporation or appointed by the

Equity Nominating Committee to fill any vacancy pursuant to Section 3.6 and any other person, other than a JBS Director, nominated by the Minority Investors to succeed an Equity Director in accordance with the Certificate of Incorporation and these Bylaws and elected by the stockholders of the Corporation; *provided* that, if at any time the ownership by the JBS Stockholder of the issued and outstanding Common Stock as a percentage of the total issued and outstanding Common Stock changes to a threshold amount set forth in Section 3.3, then the number of Equity Directors shall be changed to the corresponding number of Equity Directors set forth in Section 3.3; *provided further* that, upon the occurrence of a Founder Triggering Event, there shall no longer be a Founder Director on the Board of Directors and the number of Equity Directors on the Board of Directors shall be increased by one (1); *provided further*, that each person serving as an Equity Director must qualify as an independent director.

“Exchange” means any national securities exchange registered under Section 6 of the Exchange Act.

“Exchange Act” means the Securities Exchange Act of 1934, as amended.

“Exchange Period” has the meaning set forth in the Certificate of Incorporation.

“Founder Director” means Lonnie “Bo” Pilgrim or, if a Founder Triggering Event will have occurred solely with respect to Lonnie “Bo” Pilgrim, then Lonnie Ken Pilgrim.

“Founder Group” means the Founder Director, his spouse, his issue, his estate and any trust, partnership or other entity established or existing primarily for the benefit of him, his spouse and/or issue, including, without limitation, Pilgrim Interests, Ltd., Pilgrim Family Trust I, Pilgrim Family Trust II, PFCP, Ltd, Lonnie Jagers Pilgrim Minority Trust and Greta Gail Pilgrim Minority Trust.

“Founder Triggering Event” means the date on which any one or more of the following

shall have occurred with respect to both of Lonnie “Bo” Pilgrim and Lonnie Ken Pilgrim: death, resignation or having been determined to be incapacitated by a court of competent jurisdiction with respect to his ability to serve as a Director.

“independent director” has the meaning ascribed to such term in the applicable listing standards of the Exchange on which the Common Stock is then listed, or if the Common Stock is not then listed, then as such term is defined in Section 303A.02 of The New York Stock Exchange Listed Company Manual (or any successor rule).

“JBS Directors” means the six (6) initial Directors designated as “JBS Directors” on Schedule 3.01(a)(i) to the Stockholders Agreement, their successors as nominated by the JBS Nominating Committee pursuant to the Certificate of Incorporation and elected by the stockholders of the Corporation or appointed by the JBS Nominating Committee or the JBS Stockholder to fill any vacancy pursuant to Section 3.6; *provided* that, if at any time the ownership by the JBS Stockholder of the issued and outstanding Common Stock as a percentage of the total issued and outstanding Common Stock changes to a threshold amount set forth in Section 3.3, then the number of JBS Directors shall be changed to the corresponding number of JBS Directors set forth in Section 3.3.

“JBS Stockholder” means JBS USA Holdings, Inc. or any of its Affiliates.

“JBS USA” means JBS USA Holdings, Inc., or any successor thereto.

“Mandatory Exchange Transaction” has the meaning set forth in the Certificate of Incorporation.

“Minority Investors” means the stockholders of the Corporation other than the JBS Stockholder.

“Person” means any individual, partnership, company, firm, corporation, limited liability company, association, trust, unincorporated organization or other entity, as well as any syndicate or group that would be deemed to be a person under Section 13(d)(3) of the Exchange Act.

“Stockholders Agreement” means the Stockholders Agreement dated \_\_\_\_\_, 20\_\_ between the Corporation and JBS USA, a copy of which will be made available to any stockholder of the Corporation upon written request.

“Whole Board” means the total authorized number of Directors.

IN DUE CERTIFICATION WHEREOF, the undersigned, being the Secretary of PILGRIM’S PRIDE CORPORATION, confirms the adoption and approval of the foregoing Bylaws, effective as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
\_\_\_\_\_, Secretary



**EXHIBIT C**

**Restated Certificate of Incorporation**

**and**

**Restated Bylaws**

**AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION  
OF  
PILGRIM'S PRIDE CORPORATION**

This Amended and Restated Certificate of Incorporation (this "Certificate of Incorporation") was duly adopted in accordance with Sections 242, 245 and 303 of the General Corporation Law of the State of Delaware (the "DGCL") and provision for the making of this Amended and Restated Certificate of Incorporation is contained in a decree or order of a court or judge having jurisdiction of a proceeding under the United States Bankruptcy Code (the "Bankruptcy Code"). The original certificate of incorporation of the corporation was filed with the Secretary of State of the State of Delaware on September 9, 1986.

**ARTICLE I**

**NAME**

The name of the corporation is Pilgrim's Pride Corporation (the "Corporation").

**ARTICLE II**

**REGISTERED OFFICE AND REGISTERED AGENT**

The address of the registered office of the Corporation in the State of Delaware is 1209 Orange Street in the City of Wilmington, County of New Castle. The name of the registered agent of the Corporation at that address is The Corporation Trust Company.

**ARTICLE III**

**CORPORATE PURPOSE**

The purpose of the Corporation is to engage in any lawful act or activity for which a corporation may be organized under the DGCL.

**ARTICLE IV**

**CAPITAL STOCK**

Section 4.1. Shares and Classes Authorized. The total number of shares of all classes of stock which the Corporation shall have authority to issue is 850,000,000, consisting of 800,000,000 shares of Common Stock, par value \$.01 per share (the "Common Stock") and 50,000,000 shares of Preferred Stock, par value \$.01 per share (the "Preferred Stock").

Section 4.2. Preferred Stock. The Board of Directors of the Corporation (the "Board") is authorized, subject to any limitations prescribed by law, to provide for the issuance of shares of Preferred Stock in series and, by filing a certificate pursuant to the applicable law of the State of

Delaware (a “Preferred Stock Designation”), to establish from time to time the number of shares to be included in each such series, and to fix the designation, voting rights, powers, preferences, and rights of the shares of each such series and any qualifications, limitations or restrictions thereof. The number of authorized shares of Preferred Stock may be increased or decreased (but not below sum of the number of shares thereof then outstanding and the number of shares into which any preferred or other securities may be converted or for which they may be exchanged) by the affirmative vote of the holders of a majority of the voting power of all of the then-outstanding shares of capital stock of the Corporation entitled to vote thereon, without a vote of the holders of the Preferred Stock, or of any series thereof, irrespective of the provisions of Section 242(b)(2) of the DGCL, unless a vote of any such holders is required pursuant to the terms of any Preferred Stock Designation.

Section 4.3. Common Stock. Each outstanding share of Common Stock shall entitle the holder thereof to one vote on each matter properly submitted to the stockholders of the Corporation for their vote; *provided, however*, that, except as otherwise required by law, holders of Common Stock shall not be entitled to vote on any amendment to this Certificate of Incorporation (including any Preferred Stock Designation relating to any series of Preferred Stock) that relates solely to the terms of one or more outstanding series of Preferred Stock if the holders of such affected series are entitled, either separately or together as a class with the holders of one or more other such series, to vote thereon pursuant to this Certificate of Incorporation (including any Preferred Stock Designation relating to any series of Preferred Stock).

## ARTICLE V

### DIRECTORS

Section 5.1. General Powers. The business and affairs of the Corporation shall be managed by or under the direction of the Board. In addition to the powers and authority expressly conferred upon them by statute or by this Certificate of Incorporation or the bylaws of the Corporation (the “Bylaws”), the directors are hereby empowered to exercise all such powers and do all such acts and things as may be exercised or done by the Corporation.

Section 5.2. Number; Composition and Term of Office.

(a) Subject to Section 5.2(b), the number of directors shall be nine (9).

(b) The Board shall consist of six (6) JBS Directors, two (2) Equity Directors and one (1) Founder Director; *provided* that, if at any time the beneficial ownership by the JBS Stockholder of the issued and outstanding Common Stock as a percentage of the total issued and outstanding Common Stock changes to an amount set forth below, then there shall be the following changes in the composition of the Board:

| <u>% Owned by the<br/>JBS Stockholder</u> | <u>No. of JBS<br/>Directors</u> | <u>No. of Equity<br/>Directors</u> | <u>No. of Founder<br/>Directors</u> |
|---|---------------------------------|------------------------------------|-------------------------------------|
| ≥ 90%                                     | 8                               | 0                                  | 1                                   |

|                 |   |   |   |
|-----------------|---|---|---|
| ≥ 80% but < 90% | 7 | 1 | 1 |
| ≥ 50% but < 80% | 6 | 2 | 1 |
| ≥ 40% but < 50% | 5 | 3 | 1 |
| ≥ 35% but < 40% | 4 | 4 | 1 |
| > 10% but < 35% | 3 | 5 | 1 |
| ≤ 10%           | 0 | 8 | 1 |

*provided* that, upon the occurrence of the Founder Triggering Event, there shall no longer be a Founder Director on the Board, and the number of Equity Directors on the Board as set forth above shall be increased by one (1); *provided further* that during the Exchange Period (defined in Section 8.2(a)) there shall be at least two (2) Equity Directors; *provided further* that, if applicable law or, at any time while the Corporation's equity securities are traded on an Exchange, the rules of such Exchange require a greater number or proportion of independent directors on the Board, then

(i) if the JBS Stockholder beneficially owns at least 50% of the issued and outstanding Common Stock, then, at the option of the JBS Nominating Committee, either (A) one or more of the then-existing JBS Directors who are not independent directors shall be replaced with one or more JBS Directors who are independent directors such that, after such replacement, the number or proportion of independent directors on the Board will comply with such requirement or (B) the number of directors on the Board shall be increased by two (2) and the vacancies created by such increase shall be filled with persons designated by the JBS Nominating Committee who are independent directors such that the number or proportion of independent directors on the Board will comply with such requirement; or

(ii) if the JBS Stockholder beneficially owns less than 50% of the issued and outstanding Common Stock, then one or more of the then-existing JBS Directors who are not independent directors shall be replaced with one or more JBS Directors who are independent directors such that, after such replacement, the number or proportion of independent directors on the Board will comply with such requirement.

In the event that the size of the Board is expanded pursuant to this Section 5.2, no person shall be nominated or appointed as a director if the Equity Nominating Committee reasonably determines that such person (A) is unethical or lacks integrity or (B) is a competitor or is affiliated with a competitor of the Corporation or any of its material subsidiaries. As used in this Certificate of Incorporation, a Person shall be deemed the "beneficial owner" of, shall be deemed to have "beneficial ownership" of and shall be deemed to "beneficially own" any Common Stock which such Person or any of such Person's Affiliates is deemed to beneficially own, directly or indirectly, within the meaning of Rule 13d-3 of the Exchange Act; provided, however, that beneficial ownership by the JBS Stockholder will not include shares of Common Stock held by members of a "group" (as that term is used in Rule 13d-5 under the Exchange Act) other than JBS USA and its Affiliates.

(c) At each annual meeting of stockholders, each director elected to succeed a director whose term expires shall be elected for a term of office to expire at the next annual meeting of stockholders after his or her election, with each director to hold office until his or her successor shall have been duly elected and qualified or until the earlier of his or her death, resignation or removal in accordance with this Certificate of Incorporation and the Bylaws. The election of directors need not be by written ballot unless the Bylaws so provide. Directors need not be stockholders.

Section 5.3. Vacancies. Subject to Section 5.2, any vacancy on the Board, howsoever resulting, shall be filled only by the affirmative vote of a majority of the remaining directors then in office, even if less than a quorum, or by the sole remaining director; *provided, however*, that (a) a vacancy in the directorship of a JBS Director may be filled only through the affirmative vote of a majority of directors on the JBS Nominating Committee, even if less than a quorum, or by the sole remaining director on the JBS Nominating Committee, or if no directors remain on the JBS Nominating Committee, by the stockholders and (b) a vacancy in the directorship of an Equity Director or a Founder Director may be filled only by the affirmative vote of a majority of directors on the Equity Nominating Committee, even if less than a quorum, or by the sole remaining director on the Equity Nominating Committee or if no directors remain on the Equity Nominating Committee, by the stockholders. The term of office of any director elected to fill a vacancy shall expire at the next annual meeting of stockholders after his or her election, with each director to hold office until his or her successor shall have been duly elected and qualified or until the earlier of his or her death, resignation or removal in accordance with this Certificate of Incorporation and the Bylaws.

Section 5.4. Special Nominating Committees.

(a) The Board shall establish two committees (collectively, the “Special Nominating Committees”), which shall be designated as the “JBS Nominating Committee” and the “Equity Nominating Committee,” each of which shall have the power and authority of the Board with respect to the matters described in Sections 5.3 and 5.4. The JBS Nominating Committee shall consist solely of JBS Directors, and the Equity Nominating Committee shall consist solely of all of the Equity Directors. The JBS Nominating Committee shall have the exclusive authority to nominate the JBS Directors, fill vacancies pursuant to Section 5.3 and select the members of the JBS Nominating Committee; and the Equity Nominating Committee shall have the exclusive authority to nominate the Equity Directors, fill vacancies pursuant to Section 5.3, select the members of the Equity Nominating Committee, and shall be entitled to call a special meeting of stockholders of the Corporation to comply with Section 3.01(d) of the Stockholders Agreement; *provided* that, prior to the occurrence of the Founder Triggering Event, the Equity Nominating Committee shall, to the fullest extent permitted by law and subject to any applicable fiduciary duties, nominate the Founder Director. Any member or alternate member of the Equity Nominating Committee shall be removed only by the approval of a majority of the members of the Equity Nominating Committee. For so long as the JBS Stockholder is the beneficial owner of 35% or more of the outstanding Common Stock, no person shall be nominated as an Equity Director pursuant to this Certificate of Incorporation if JBS USA reasonably determines that such person (i) is unethical or lacks integrity or (ii) is a competitor or is affiliated with a competitor of the Corporation. Two (2) Equity Directors (or one (1) if there is only one (1) Equity Director on the Board) shall satisfy the independence requirements of Rule 10A-3 under

the Exchange Act and be financially literate for purposes of the applicable listing standards of the Exchange on which the Common Stock is then listed, or if the Common Stock is not then listed, then for purposes of Section 303A.07 of The New York Stock Exchange Listed Company Manual (or any successor rule) (“financially literate”), and, for so long as there are two (2) or more Equity Directors on the Board, at least one (1) Equity Director shall qualify as an “audit committee financial expert” as that term is used in Item 407 of Regulation S-K under the Exchange Act (or any successor rule). If the JBS Stockholder beneficially owns at least 50% of the issued and outstanding Common Stock, at least one (1) JBS Director shall (A) be an independent director, (B) satisfy the independence requirements of Rule 10A-3 under the Exchange Act and (C) be financially literate.

(b) Notwithstanding anything herein to the contrary, to the maximum extent permitted by law, the Equity Nominating Committee, acting by majority vote, shall have the right to control the Corporation’s exercise of its rights and remedies under the Stockholders Agreement, including, without limitation, (i) the granting of (or refusal to grant) any approvals, consents or waivers by the Corporation thereunder, (ii) the giving (or withholding) of any notices by the Corporation thereunder, (iii) the approval (or disapproval) of the Corporation’s entry into any amendment or supplement to the Stockholders Agreement and (iv) the initiation, prosecution or settlement of any claim, action, suit, arbitration, inquiry, proceeding or investigation arising in connection therewith. The Equity Directors shall be permitted to retain separate advisors (legal or financial) at the expense of the Corporation in connection with the performance of their duties under Sections 5.3, 5.4, 5.5, 8.1 and 8.4 and Articles VI and X of this Certificate of Incorporation or under Sections 3.01(d), 3.03 and 6.21 of the Stockholders Agreement.

(c) Except for the JBS Nominating Committee, any committee designated or appointed by the Board shall have at least one Equity Director as a member thereof.

Section 5.5. Approval of Certain Matters. The approval of any of the following matters shall require, in addition to any approval required by law, (a) the affirmative vote of a majority of the directors present at a meeting of the Board at which a quorum is present and (b) the affirmative vote of at least a majority of the Equity Directors and any Founder Director, as a group:

(i) the creation of any committee of the Board with, or the delegation to any committee of the Board of, any power or authority which, individually or taken as a whole with any other power and/or authority, would adversely affect, or could reasonably be expected to adversely affect, in any material respect, the rights of the Minority Investors;

(ii) any change in the size of the Board;

(iii) any action that would reasonably be expected to cause the Corporation to no longer satisfy the listing requirements of any Exchange on which any shares of capital stock of the Corporation are listed or quoted;

(iv) any amendment or repeal of this Section 5.5, Sections 5.2, 5.3, 5.4 or 5.6 or Articles VI, VIII, IX, X, XI, XII or XIII, or any other amendment to this Certificate of Incorporation that, individually or taken as a whole with any other amendments, would adversely

affect, or could reasonably be expected to adversely affect, in any material respect the rights of the Minority Investors, as a class (whether by merger, consolidation or otherwise);

(v) any creation, authorization or issuance of any series of Preferred Stock that, individually or taken as a whole with any other issuances of Preferred Stock, would adversely affect, or could reasonably be expected to adversely affect, in any material respect the Minority Investors, as a class, in a disproportionately adverse manner relative to all holders of Common Stock (whether by merger, consolidation or otherwise); or

(vi) agreeing to do any of the foregoing.

In addition to the foregoing, prior to the occurrence of the Founder Triggering Event, the approval of the Founder Director shall be required for the Board to validly approve and authorize any amendment (whether by merger, consolidation or otherwise) to Section 5.2, Section 5.4, Article X, Article XIII and this sentence of this Certificate of Incorporation that would adversely affect, or could reasonably be expected to adversely affect, in any material respect, the rights of the Founder Director in his role as a director of the Corporation. Notwithstanding anything to the contrary in this Section 5.5, actions which are permitted by this Certificate of Incorporation or the Stockholders Agreement (including, without limitation, the Mandatory Exchange Transaction), shall not require the approvals set forth in this Section 5.5. If at any time any stockholder of the Corporation owns 100% of the issued and outstanding Common Stock, this Section 5.5 shall be of no further force or effect.

Section 5.6. Director Fees and Expenses. Each of the directors of the Corporation shall be entitled to receive reasonable and customary fees for his or her service as a director (which fees shall be set by the Board from time to time). Each of the directors shall be entitled to be reimbursed by the Corporation for his or her reasonable out-of-pocket expenses incurred in connection with the performance of his or her duties as a director of the Corporation.

## **ARTICLE VI**

### **MEETINGS OF STOCKHOLDERS**

Subject to the rights of the holders of any series of Preferred Stock, any action required or permitted to be taken by the stockholders of the Corporation must be effected at a duly called annual or special meeting of stockholders of the Corporation and may not be effected by any consent in writing by such stockholders. Special meetings of stockholders of the Corporation may be called only by the Chairman of the Board, the Chief Executive Officer, the President, the affirmative vote of a majority of the whole Board or, as provided in Section 5.4, the Equity Nominating Committee.

## **ARTICLE VII**

### **NON-VOTING EQUITY SECURITIES**

The Corporation shall not issue any class of non-voting equity securities unless and solely to the extent permitted by Section 1123(a)(6) of the Bankruptcy Code as in effect on the date of filing this Certificate of Incorporation with the Secretary of State of the State of



Delaware; *provided, however*, that this Article VII: (a) will have no further force and effect beyond that required under Section 1123(a)(6) of the Bankruptcy Code; (b) will have such force and effect, if any, only for so long as Section 1123(a)(6) of the Bankruptcy Code is in effect and applicable to the Corporation; and (c) in all events may be amended or eliminated in accordance with applicable law from time to time in effect.

## ARTICLE VIII

### TRANSFER RESTRICTIONS; MANDATORY EXCHANGE

#### Section 8.1. Restrictions on Transfer on the JBS Stockholder.

(a) At any time prior to \_\_\_\_\_, 20\_\_\_\_,<sup>1</sup> no shares of capital stock of the Corporation shall be Transferred to the JBS Stockholder if such Transfer would cause the JBS Stockholder to be in violation of Article 2 of the Stockholders Agreement (a “Prohibited Transfer”). The prior sentence is not intended to prevent the shares of capital stock of the Corporation from being DTC-eligible and shall not preclude the settlement of any transactions in shares of capital stock of the Corporation entered into through the facilities of any Exchange, *provided* that, if the settlement of a transaction would result in a Prohibited Transfer, such Transfer shall nonetheless be a Prohibited Transfer. The Corporation shall not, and no employee or agent of the Corporation shall, recognize or record upon its books any Prohibited Transfer. Any purported transaction in violation of this Article VIII shall be void *ab initio*, and the purported transferee of such shares (the “Purported Transferee”) shall not be recognized as a stockholder of the Corporation for any purpose whatsoever in respect of such shares that are the subject of the Prohibited Transfer (the “Prohibited Securities”), including the right to vote such Prohibited Securities and to receive dividends or distributions, whether liquidating or otherwise, in respect thereof. Once the Prohibited Securities have been acquired in a Transfer that is not a Prohibited Transfer, such securities shall cease to be Prohibited Securities. Any or all of the Equity Directors shall have the authority to direct and cause the officers of the Corporation to take all action reasonably necessary or advisable to enforce the terms of this Section 8.1, including, without limitation, to require as a condition to the registration of the Transfer of any shares of capital stock of the Corporation or the payment of any distribution on any such shares that the proposed transferee or payee furnish to the Corporation all information reasonably requested by the Corporation. The Corporation may make such arrangements or issue such instructions to its stock transfer agent as may be necessary or advisable to implement this Section 8.1, including, without limitation, authorizing such agent to require an affidavit from a purported transferee regarding such Person’s beneficial or record ownership of stock and other evidence that a Transfer will not be prohibited by this Section 8.1.

(b) If a Prohibited Transfer has been recorded by an agent or employee of the Corporation notwithstanding the prohibition in this Section 8.1, such recording and the Prohibited Transfer shall be void *ab initio* and have no legal effect and, upon written demand by the Corporation, the Purported Transferee shall transfer or cause to be transferred any certificate or other evidence of ownership, whether direct or indirect, of the Prohibited Securities within the Purported Transferee’s possession or control, together with any dividends or other distributions

---

<sup>1</sup> Two years and 30 days after the effective date of the Plan of Reorganization.

that were received by the Purported Transferee from the Corporation with respect to the Prohibited Securities (the “Prohibited Distributions”), to an agent designated by the Equity Directors (the “Agent”). The Agent shall thereupon sell to a buyer or buyers, which may include the purported transferor, the Prohibited Securities transferred to it in one or more arm’s-length transactions (including over a national securities exchange or national securities quotation system on which the securities of the Corporation may be traded); *provided, however*, that the Agent, in its sole discretion, shall effect such sale or sales in an orderly fashion and shall not be required to effect any such sale within any specific time frame if, in the Agent’s discretion, such sale or sales would disrupt the market for the securities of the Corporation, would adversely affect the value of the securities of the Corporation or would be in violation of applicable securities laws. If the Purported Transferee has resold the Prohibited Securities before receiving the Corporation’s demand to surrender the Prohibited Securities to the Agent, the Purported Transferee shall be deemed to have sold the Prohibited Securities for the Agent, and shall be required to transfer to the Agent any Prohibited Distributions and proceeds of such sale, except to the extent that the Corporation grants written permission to the Purported Transferee to retain a portion of such sales proceeds not exceeding the amount that the Purported Transferee would have received from the Agent pursuant to Section 8.1(c) if the Agent, rather than the Purported Transferee, had resold the Prohibited Securities.

(c) The Agent shall apply any proceeds of a sale by it of Prohibited Securities and, if the Purported Transferee had previously resold the Prohibited Securities, any amounts received by it from a Purported Transferee, as follows: (i) first, to reimburse itself to the extent necessary to cover its costs and expenses incurred in accordance with its duties hereunder; (ii) second, to reimburse the Purported Transferee for the amounts paid by the Purported Transferee for the Prohibited Securities (or in the case of any Prohibited Transfer by gift, devise or inheritance or any other Prohibited Transfer without consideration, the fair market value, calculated on the basis of the closing market price for the securities of the Corporation on the day before the Prohibited Transfer); and (iii) third, the remainder, if any, to the original transferor, or, if the original transferor cannot be readily identified, to an entity designated by the Equity Directors that is described in Section 501(c) of the Internal Revenue Code of 1986, as amended (the “Code”), contributions to which must be eligible for deduction under each of Sections 170(b)(1)(A), 2055 and 2522 of the Code. The recourse of any Purported Transferee with respect of any Prohibited Transfer shall be limited to the amount payable to the Purported Transferee pursuant to clause (ii) of this Section 8.1(c). Except as may be required by law, in no event shall the proceeds of any sale of Prohibited Securities pursuant to this Section 8.1(c) inure to the benefit of the Corporation or the Agent, except to the extent used to cover expenses incurred by the Agent in performing its duties hereunder.

(d) If the Purported Transferee fails to surrender the Prohibited Securities or the proceeds of a sale thereof to the Agent within thirty (30) days from the date on which the Corporation makes a demand pursuant to Section 8.1(b), then the Corporation may take such actions as it deems necessary to enforce the provisions hereof, including the institution of legal proceedings to compel such surrender.

(e) This Section 8.1 shall not limit or impair the rights of the JBS Stockholder with respect to any shares of Common Stock received by it pursuant to the Stock Purchase Agreement dated September 15, 2009 between JBS USA and the Corporation.

Section 8.2. Mandatory Exchange.

(a) In the event JBS USA completes an initial public offering (the “JBS USA IPO”) of the JBS USA Common Stock, then, at any time during an Exchange Window falling within the period commencing on the date of the closing of the JBS USA IPO (the “Exchange Period Commencement Date”) and ending \_\_\_\_\_, 20\_\_ [two years and 30 days from the effective date of the Corporation’s Plan of Reorganization confirmed by the United States Bankruptcy Court for the Northern District of Texas] (the “Exchange Period”), JBS USA will have the right to deliver written notice of a Mandatory Exchange Transaction to the Corporation at its principal place of business. Subject to Section 8.2(b), upon delivery to the Corporation of notice of the Mandatory Exchange Transaction each share of Common Stock held by stockholders other than JBS USA (the “Exchanged Holders”) shall automatically, without any further action on behalf of the Corporation or any of the Exchanged Holders, be transferred to JBS in exchange for a number of duly authorized, validly issued, fully paid and non-assessable shares of JBS USA Common Stock equal to the Exchange Offer Ratio (collectively, the “Exchange Shares”). The Mandatory Exchange Transaction shall be effected in compliance with all applicable laws.

(b) Notwithstanding anything herein to the contrary, shares of Common Stock held by the Founder Group shall not be subject to the Mandatory Exchange Transaction for a period of six months and one day after \_\_\_\_\_, 20\_\_ [the effective date of the Corporation’s Plan of Reorganization confirmed by the United States Bankruptcy Court for the Northern District of Texas] (“Deferral Period”). If the Mandatory Exchange Transaction will have been implemented with respect to the Exchanged Holders other than the Founder Group during the Deferral Period, then, immediately following expiration of the Deferral Period, all shares of Common Stock held by the Founder Group shall automatically, without any further action on behalf of the Corporation or any member of the Founder Group, be transferred to JBS in exchange for a number of duly authorized, validly issued, fully paid and non-assessable shares of JBS USA Common Stock equal to the Exchange Offer Ratio determined in Section 8.2(a).

(c) No certificates or scrip representing fractional shares of JBS USA Common Stock shall be issued upon the surrender for exchange of certificates representing shares of Common Stock, and such fractional share interests will not entitle the owner thereof to vote or to any other rights of a stockholder of the Corporation. When any distribution pursuant to this Section 8.2(c) would otherwise result in the issuance of a number of shares of JBS USA Common Stock that is not a whole number, the actual distribution of shares of JBS USA Common Stock shall be rounded as follows: (i) fractions of one-half ( $\frac{1}{2}$ ) or greater shall be rounded to the next higher whole number and (ii) fractions of less than one-half ( $\frac{1}{2}$ ) shall be rounded to the next lower whole number with no further payment or other distribution therefor. The total number of authorized shares of JBS USA Common Stock to be distributed to the Exchanged Holders shall be adjusted as necessary to account for the rounding provided in this Section 8.2(c).

Section 8.3. Legend. Each certificate representing shares of capital stock issued by the Corporation shall conspicuously bear the following legend:

“THE SECURITIES REPRESENTED HEREBY ARE SUBJECT TO CERTAIN  
RESTRICTIONS ON TRANSFER, INCLUDING AS SET FORTH IN A

STOCKHOLDERS AGREEMENT BETWEEN THE CORPORATION AND JBS USA HOLDINGS, INC. AND MANDATORY EXCHANGE PROVISIONS SET FORTH UNDER ARTICLE VIII OF THE CERTIFICATE OF INCORPORATION OF THE CORPORATION, AS AMENDED AND IN EFFECT FROM TIME TO TIME, COPIES OF WHICH MAY BE OBTAINED FROM THE CORPORATION UPON REQUEST.”

Section 8.4. Procedures and Transfer of Title. (a) Upon receipt of the notice of the Mandatory Exchange Transaction, the Corporation shall give notice to the Exchanged Holders that a Mandatory Exchange Transaction has occurred pursuant to this Article VIII. Such notice shall contain the date of the consummation of the Mandatory Exchange Transaction (the “Consummation Date”), the Exchange Offer Ratio and the manner in which the holders of Common Stock may exchange the certificates previously representing shares of Common Stock for certificates representing the shares of JBS USA Common Stock into which such shares of Common Stock shall have been mandatorily exchanged. On or before the Consummation Date, JBS USA shall deposit the Exchange Shares (including, if applicable, any shares to be issued to the Founder Group upon expiration of the Deferral Period) with a bank or similar entity designated by the Equity Directors to deliver the Exchange Shares to the Exchanged Holders (the “Exchange Agent”), such consideration to be deposited with the Exchange Agent and delivered in trust for the benefit of the Exchanged Holders and accompanied by irrevocable instructions to deliver, on or immediately after the Consummation Date (or, with respect to the Founder Group, if applicable, following expiration of the Deferral Period), the Exchange Shares for the shares of Common Stock held by the Exchanged Holders upon their surrender.

(b) Upon receipt of such notice (or, with respect to the Founder Group, if applicable, following expiration of the Deferral Period), each Exchanged Holder shall surrender his, her or its certificate or certificates for all such shares (or, if such holder alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to the Corporation to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate) to the Exchange Agent at the place designated in such notice, and shall thereafter receive Exchange Shares. At the Consummation Date (or, if applicable, following expiration of the Deferral Period), the shares of Common Stock held by the Exchanged Holders shall be owned of record by JBS USA, and Exchanged Holders shall cease to be stockholders of the Corporation and shall have no right or interest in such shares of Common Stock, excepting only the right of such Exchanged Holders to receive the Exchange Shares therefor. From and after the Consummation Date, certificates that previously represented shares of Common Stock held by the Exchanged Holders shall represent only the right to receive the Exchange Shares.

Section 8.5. Effect of Mandatory Exchange. From and after the Consummation Date, JBS USA shall be the sole holder of all of the issued and outstanding shares of Common Stock, notwithstanding the failure of any Exchanged Holders to surrender such certificates on or prior to such date to the Exchange Agent.

## **ARTICLE IX**

### **LIMITATION OF DIRECTORS' LIABILITY**

A director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (a) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (b) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (c) under Section 174 of the DGCL, or (d) for any transaction from which the director derived an improper personal benefit. If the DGCL is amended to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the DGCL, as so amended.

Any repeal or modification of the foregoing paragraph shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification.

## **ARTICLE X**

### **BYLAWS**

The Board is expressly empowered to adopt, amend or repeal the Bylaws. Any adoption, amendment or repeal by the Board of the Bylaws or any provisions thereof that, individually or taken as a whole, would adversely affect, or could reasonably be expected to adversely affect, in any material respect, the rights of the Minority Investors, as a class, in each case, shall require the approval of at least a majority of the total authorized number of directors, including the approval of at least a majority of the Equity Directors and any Founder Director, as a group. In addition to the foregoing, prior to the occurrence of the Founder Triggering Event, the approval of the Founder Director shall be required for the Board to validly approve and authorize any amendment (whether by merger, consolidation or otherwise) to Section 3.3, Section 3.6, Section 3.10(f) and Article 9 of the Bylaws that would adversely affect, or could reasonably be expected to adversely affect, in any material respect, the rights of the Founder Director in his role as a director of the Corporation. Subject to applicable law and the rights of the holders of any series of Preferred Stock, the stockholders shall also have the power to adopt, amend or repeal the Bylaws by the affirmative vote of the holders of a majority of the voting power of the then-outstanding shares of the capital stock of the Corporation entitled to vote generally in the election of directors, present in person or represented by proxy, at a meeting at which a quorum is present, voting together as a single class; *provided, however*, that, in addition to such vote, the affirmative vote of the holders of a majority of the voting power of all of the then-outstanding shares of the capital stock of the Corporation entitled to vote generally in the election of directors (other than shares of capital stock of the Corporation beneficially owned by the JBS Stockholder), voting together as a single class, shall be required to adopt, amend or repeal the Bylaws or any provisions thereof.



## ARTICLE XI

### RELATED-PARTY TRANSACTIONS

Section 11.1. Independent Committee Oversight. Neither the Corporation nor any of its subsidiaries shall enter into any transaction required to be disclosed under Item 404 of Regulation S-K under the Exchange Act unless the audit committee or another committee, in each case, comprised solely of independent directors first reviews, evaluates and approves the transaction, such approval to be evidenced by a resolution stating that such committee has, in good faith, unanimously determined that such transaction complies with the provisions of this Section 11.1.

Section 11.2. Terms of Transactions; Retention of Proceeds. Neither the Corporation nor any of its subsidiaries shall sell, lease, transfer or otherwise dispose of any of its properties or assets to, or for the benefit of, or purchase or lease any property or assets from, or for the benefit of, the JBS Stockholder, except on terms that are fair and reasonable to the Corporation and no less favorable to the Corporation or the relevant subsidiary than those that could have been obtained in a comparable transaction by the Corporation or such subsidiary on an arms'-length basis from an unrelated Person. The Corporation and its subsidiaries shall retain the proceeds of any sale or disposition by any of them of any of their respective properties or assets, whether now owned or hereafter acquired.

## ARTICLE XII

### AMENDMENT

Subject to Section 5.5, the Corporation reserves the right to amend or repeal any provision contained in this Certificate of Incorporation in the manner prescribed by the laws of the State of Delaware and all rights conferred upon stockholders are granted subject to this reservation.

## ARTICLE XIII

### DEFINITIONS

For purposes of this Certificate of Incorporation, the following terms have the meanings set forth below:

“Affiliate” has the meaning set forth in Rule 12b-2 under the Exchange Act.

“Equity Directors” means the two (2) directors designated as “Equity Directors” on Schedule 3.01(a)(iii) to the Stockholders Agreement, their successors as nominated by the Equity Nominating Committee and elected by the stockholders of the Corporation or appointed by the Equity Nominating Committee to fill any vacancy pursuant to Section 5.3 and any other person, other than a JBS Director, nominated by the Minority Investors to succeed an Equity Director in accordance with this Certificate of Incorporation and the Bylaws and elected by the stockholders of the Corporation; *provided* that, if at any time the ownership by the JBS Stockholder of the issued and outstanding Common Stock as a percentage of the total issued and outstanding

Common Stock changes to a threshold amount set forth in Section 5.2(b), then the number of Equity Directors shall be changed to the corresponding number of Equity Directors set forth in Section 5.2(b); *provided further* that, upon the occurrence of a Founder Triggering Event, there shall no longer be a Founder Director on the Board and the number of Equity Directors on the Board shall be increased by one (1); *provided further* that each person serving as an Equity Director must qualify as an independent director.

“Exchange” means any national securities exchange registered under Section 6 of the Exchange Act.

“Exchange Act” means the Securities Exchange Act of 1934, as amended.

“Exchange Offer Ratio” is a fraction, the numerator of which is the average volume-weighted daily trading price per share on the principal Exchange for the Common Stock, and the denominator of which is the average volume-weighted daily trading price per share on the principal Exchange for the JBS USA Common Stock, in each case as measured during the number of consecutive trading days immediately preceding the date on which JBS USA delivered notice of the Mandatory Exchange Transaction to the Corporation that is equal to the Measurement Period.

“Exchange Window” means a period of time beginning on the 6<sup>th</sup> trading day after the first day on which both the Corporation and JBS USA will have each made their respective Periodic Disclosure relating to the immediately preceding fiscal quarter or year, as applicable, and ending on the last day of the fiscal quarter during which the first day of the Exchange Window fell.

“Founder Director” means Lonnie “Bo” Pilgrim or, if a Founder Triggering Event will have occurred solely with respect to Lonnie “Bo” Pilgrim, then Lonnie Ken Pilgrim.

“Founder Group” means the Founder Director, his spouse, his issue, his estate and any trust, partnership or other entity established or existing primarily for the benefit of him, his spouse and/or issue, including, without limitation, Pilgrim Interests, Ltd., Pilgrim Family Trust I, Pilgrim Family Trust II, PFCP, Ltd, Lonnie Jaggers Pilgrim Minority Trust and Greta Gail Pilgrim Minority Trust.

“Founder Triggering Event” means the date on which any one or more of the following shall have occurred with respect to both of Lonnie “Bo” Pilgrim and Lonnie Ken Pilgrim: death, resignation or having been determined to be incapacitated by a court of competent jurisdiction with respect to his ability to serve as a director of the Corporation.

“independent director” has the meaning ascribed to such term in the applicable listing standards of the Exchange on which the Common Stock is then listed, or if the Common Stock is not then listed, then as such term is defined in Section 303A.02 of The New York Stock Exchange Listed Company Manual (or any successor rule).

“JBS Directors” means the six (6) initial directors designated as “JBS Directors” on Schedule 3.01(a)(i) to the Stockholders Agreement, their successors as nominated by the JBS Nominating Committee pursuant to this Certificate of Incorporation and elected by the



stockholders of the Corporation or appointed by the JBS Nominating Committee or the JBS Stockholder to fill any vacancy pursuant to Section 5.3; *provided* that, if at any time the ownership by the JBS Stockholder of the issued and outstanding Common Stock as a percentage of the total issued and outstanding Common Stock changes to a threshold amount set forth in Section 5.2(b), then the number of JBS Directors shall be changed to the corresponding number of JBS Directors set forth in Section 5.2(b).

“JBS Stockholder” means JBS USA or any of its Affiliates.

“JBS USA” means JBS USA Holdings, Inc., or any successor thereto.

“JBS USA Common Stock” means the common stock of JBS USA listed on an Exchange.

“Mandatory Exchange Transaction” means the mandatory exchange of the shares of Common Stock for the Exchange Shares in accordance with Section 8.2.

“Measurement Period” means a number of consecutive trading days which is equal to twice the number of consecutive trading days between (i) the first date on which both JBS USA and the Corporation shall have both made their respective Periodic Disclosure and (ii) the date on which JBS USA delivers to the Corporation the notice of the Mandatory Exchange Transaction.

“Minority Investors” means the stockholders of the Corporation other than the JBS Stockholder.

“Periodic Disclosure” for a given calendar quarter or year means the first to be filed with the Securities and Exchange Commission of an issuer’s Quarterly Report on Form 10-Q, Annual Report on Form 10-K or earnings release required to be disclosed under Item 2.02 of Form 8-K covering such quarter or fiscal year, which filing complies, in all material respects with the applicable requirements of the Exchange Act.

“Person” means any individual, partnership, company, firm, corporation, limited liability company, association, trust, unincorporated organization or other entity, as well as any syndicate or group that would be deemed to be a person under Section 13(d)(3) of the Exchange Act.

“Stockholders Agreement” means the Stockholders Agreement dated \_\_\_\_\_, 20\_\_ between the Corporation and JBS USA, a copy of which will be made available to any stockholder of the Corporation upon written request.

“Transfer” means to sell, transfer, convey, grant an option in or with respect to, otherwise dispose of or take any other similar action, directly or indirectly.

IN WITNESS WHEREOF, the Corporation has caused this Amended and Restated Certificate of Incorporation to be executed on its behalf on this \_\_ day of \_\_\_\_\_, 20\_\_.

PILGRIM'S PRIDE CORPORATION

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

DALDMS/666499.17

---

\* \* \* \* \*

**AMENDED AND RESTATED  
CORPORATE BYLAWS**

**OF**

**PILGRIM'S PRIDE CORPORATION  
(A Delaware corporation)**

\* \* \* \* \*

---

## TABLE OF CONTENTS

|   | Page |
|---|------|
| ARTICLE 1 NAME AND OFFICES .....            | 1    |
| 1.1 Name.....                               | 1    |
| 1.2 Registered Office and Agent.....        | 1    |
| 1.3 Other Offices.....                      | 1    |
| ARTICLE 2 STOCKHOLDERS .....                | 1    |
| 2.1 Place of Meetings .....                 | 1    |
| 2.2 Annual Meetings .....                   | 1    |
| 2.3 Special Meetings .....                  | 2    |
| 2.4 Notice.....                             | 2    |
| 2.5 Voting List .....                       | 2    |
| 2.6 Quorum.....                             | 3    |
| 2.7 Requisite Vote.....                     | 4    |
| 2.8 Withdrawal of Quorum.....               | 4    |
| 2.9 Voting at Meeting.....                  | 4    |
| (a) Voting Power.....                       | 4    |
| (b) Exercise of Voting Power; Proxies ..... | 4    |
| (c) Election of Directors .....             | 5    |
| 2.10 Record Date .....                      | 5    |
| 2.11 No Actions Without Meeting.....        | 6    |
| 2.12 Stockholder Proposals .....            | 6    |
| ARTICLE 3 DIRECTORS .....                   | 8    |
| 3.1 Management Powers .....                 | 8    |
| 3.2 Number and Qualification .....          | 8    |
| 3.3 Composition of the Board.....           | 8    |
| 3.4 Term of Office .....                    | 10   |
| 3.5 Voting on Directors .....               | 10   |
| 3.6 Vacancies .....                         | 11   |
| 3.7 Removal.....                            | 11   |
| 3.8 Meetings .....                          | 11   |
| (a) Place.....                              | 11   |
| (b) Annual Meeting .....                    | 12   |
| (c) Regular Meetings.....                   | 12   |
| (d) Special Meetings.....                   | 12   |
| (e) Notice and Waiver of Notice .....       | 12   |
| (f) Quorum .....                            | 12   |
| (g) Requisite Vote .....                    | 12   |

**TABLE OF CONTENTS**  
(continued)

|  | <b>Page</b> |
|--|-------------|
| 3.9 Action Without Meetings .....            | 13          |
| 3.10 Committees .....                        | 13          |
| (a) Designation and Appointment .....        | 13          |
| (b) Members; Alternate Members; Terms .....  | 13          |
| (c) Authority .....                          | 13          |
| (d) Records .....                            | 14          |
| (e) Change in Number .....                   | 14          |
| (f) Special Nominating Committees .....      | 14          |
| (g) Removal .....                            | 15          |
| (h) Meetings .....                           | 15          |
| (i) Quorum; Requisite Vote .....             | 15          |
| (j) Actions Without Meetings .....           | 16          |
| (k) Responsibility .....                     | 16          |
| 3.11 Compensation .....                      | 15          |
| 3.12 Maintenance of Records .....            | 15          |
| 3.13 Interested Directors and Officers ..... | 16          |
| ARTICLE 4 NOTICES .....                      | 17          |
| 4.1 Method of Notice .....                   | 17          |
| 4.2 Waiver .....                             | 18          |
| ARTICLE 5 OFFICERS AND AGENTS .....          | 18          |
| 5.1 Designation .....                        | 18          |
| 5.2 Election of Officers .....               | 19          |
| 5.3 Qualifications .....                     | 19          |
| 5.4 Term of Office .....                     | 19          |
| 5.5 Authority .....                          | 19          |
| 5.6 Removal .....                            | 19          |
| 5.7 Vacancies .....                          | 19          |
| 5.8 Compensation .....                       | 20          |
| 5.9 Chairman of the Board .....              | 20          |
| 5.10 Chief Executive Officer .....           | 20          |
| 5.11 Chief Financial Officer .....           | 20          |
| 5.12 Chief Operating Officer .....           | 21          |
| 5.13 President .....                         | 21          |
| 5.14 Vice Presidents .....                   | 22          |
| 5.15 Secretary .....                         | 22          |
| 5.16 Assistant Secretaries .....             | 22          |
| 5.17 Treasurer .....                         | 23          |
| 5.18 Assistant Treasurers .....              | 23          |

# **TABLE OF CONTENTS** (continued)

|   | <b>Page</b> |
|---|-------------|
| ARTICLE 6 INDEMNIFICATION .....                               | 24          |
| 6.1 Mandatory Indemnification .....                           | 24          |
| 6.2 Determination of Indemnification .....                    | 25          |
| 6.3 Advancement of Expenses .....                             | 25          |
| 6.4 Right of Indemnitee to Bring Suit .....                   | 26          |
| 6.5 Permissive Indemnification .....                          | 27          |
| 6.6 Nature of Indemnification .....                           | 27          |
| 6.7 Insurance .....   | 28          |
| ARTICLE 7 STOCK CERTIFICATES AND TRANSFER REGULATIONS.....    | 29          |
| 7.1 Description of Certificates .....                         | 29          |
| 7.2 Signatures.....   | 29          |
| 7.3 Registered Owners .....                                   | 30          |
| 7.4 Lost, Stolen or Destroyed Certificates.....               | 30          |
| (a) Proof of Loss .....                                       | 30          |
| (b) Timely Request .....                                      | 30          |
| (c) Bond.....   | 30          |
| (d) Other Requirements .....                                  | 31          |
| 7.5 Registration of Transfers .....                           | 31          |
| (a) Endorsement .....   | 31          |
| (b) Guaranty and Effectiveness of Signature.....              | 31          |
| (c) Adverse Claims.....                                       | 31          |
| (d) Collection of Taxes .....                                 | 31          |
| (e) Additional Requirements Satisfied .....                   | 31          |
| 7.6 Restrictions on Transfer and Legends on Certificates..... | 32          |
| (a) Shares in Classes or Series .....                         | 32          |
| (b) Restriction on Transfer.....                              | 32          |
| ARTICLE 8 GENERAL PROVISIONS .....                            | 32          |
| 8.1 Dividends .....   | 32          |
| 8.2 Reserves .....  | 32          |
| 8.3 Books and Records.....                                    | 33          |
| 8.4 Contracts and Negotiable Instruments.....                 | 33          |
| 8.5 Fiscal Year .....   | 34          |
| 8.6 Corporate Seal.....                                       | 34          |
| 8.7 Resignations .....  | 34          |

**TABLE OF CONTENTS**  
(continued)

|                                       | <b>Page</b> |
|---------------------------------------|-------------|
| 8.8 Amendment of Bylaws .....         | 34          |
| 8.9 Construction .....                | 35          |
| 8.10 Telephone Meetings .....         | 36          |
| 8.11 Table of Contents; Captions..... | 36          |
| ARTICLE 9 DEFINITIONS.....            | 36          |



**AMENDED AND RESTATED  
CORPORATE BYLAWS**

**OF**

**PILGRIM'S PRIDE CORPORATION  
(a Delaware Corporation)**

ARTICLE 1

NAME AND OFFICES

1.1 Name. The name of the Corporation is PILGRIM'S PRIDE CORPORATION, hereinafter referred to as the "Corporation."

1.2 Registered Office and Agent. The Corporation shall establish, designate and continuously maintain a registered office and agent in the State of Delaware.

1.3 Other Offices. The Corporation may also have offices at such other places within and without the State of Delaware as the Board of Directors may, from time to time, determine the business of the Corporation may require.

ARTICLE 2

STOCKHOLDERS

2.1 Place of Meetings. Each meeting of the stockholders of the Corporation is to be held at the principal offices of the Corporation or at such other place, either within or without the State of Delaware, as may be specified in the notice of the meeting or in a duly executed waiver of notice thereof.

2.2 Annual Meetings. An annual meeting of stockholders of the Corporation shall be held each calendar year on such date and at such time as shall be designated from time to time by the Board of Directors, which date shall be within thirteen (13) months of the last annual meeting

of stockholders, and stated in the notice of the meeting or in a duly executed waiver of notice of such meeting. At such meeting, the stockholders shall elect directors (each, a “Director”) and transact such other business as may properly be brought before the meeting.

2.3 Special Meetings. Special meetings of stockholders of the Corporation may be called only by the Chairman of the Board, the Chief Executive Officer, the President, the affirmative vote of a majority of the Whole Board or, as provided in Section 3.10(f), the Equity Nominating Committee. The notice of a special meeting shall state the purpose or purposes of the proposed meeting and the business to be transacted at any such special meeting of stockholders, and shall be limited to the purposes stated in the notice therefor.

2.4 Notice. Written or printed notice of the meeting stating the place, if any, day and hour of the meeting, and the means of remote communications, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such meeting, and in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten (10) nor more than sixty (60) days before the date of the meeting to each stockholder of record entitled to vote at such meeting as determined in accordance with the provisions of Section 2.10 hereof, except as otherwise provided herein or required by law (meaning, here and hereinafter, as required from time to time by the Delaware General Corporation Law or the Certificate of Incorporation). If mailed, such notice shall be deemed to be delivered when deposited in the United States Mail, with postage thereon prepaid, addressed to the stockholder entitled thereto at his address as it appears on the stock records of the Corporation.

2.5 Voting List. The officer having charge and custody of the stock records of the Corporation shall prepare, at least ten (10) days before each meeting of stockholders, a complete

list of the stockholders entitled to vote at such meeting, arranged in alphabetical order and showing the address of each stockholder and the number of shares registered in the name of each stockholder; *provided, however*, if the record date for determining the stockholders entitled to vote is less than ten (10) days before the meeting date, the list shall reflect the stockholders entitled to vote as of the tenth (10<sup>th</sup>) day before the meeting date. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours for a period of not less than ten (10) days prior to such meeting at the principal office of the Corporation. If the meeting is to be held at a place, such list shall also be produced and kept open at the time and place of the meeting and shall be subject to the inspection of any stockholder during the entire time of the meeting. The original stock records shall be the only evidence as to identity of the stockholders entitled to examine such list and to vote at any such meeting of the stockholders.

2.6 Quorum. The holders of a majority of the combined voting power of the capital stock issued and outstanding and entitled to vote thereat, represented in person or by proxy, shall be requisite and shall constitute a quorum at all meetings of the stockholders for the transaction of business except as otherwise required by law, the Certificate of Incorporation or these Bylaws. If, however, such quorum shall not be present or represented at any such meeting of the stockholders, (a) holders of a majority of the combined voting power of the capital stock entitled to vote thereat, present in person, or represented by proxy, or (b) the chairman of the meeting shall have the power to adjourn the meeting, from time to time, without notice other than announcement at the meeting, until a quorum shall be present or represented. If the adjournment is for more than thirty (30) days, or if after the adjournment a new record date is fixed for the reconvened meeting, a notice of said meeting shall be given to each stockholder entitled to vote

at said meeting. At any adjourned meeting, any business may be transacted which might have been transacted at the meeting as originally notified.

2.7 Requisite Vote. If a quorum is present at any meeting, the affirmative vote of the holders of a majority of the total outstanding voting power of capital stock, present in person or represented by proxy, shall determine any question brought before such meeting, unless the question is one upon which, by express provision of the Certificate of Incorporation or of these Bylaws, a different vote shall be required, in which case such express provision shall govern and control the determination of such question.

2.8 Withdrawal of Quorum. If a quorum is present at the time of commencement of any meeting, the stockholders present at such duly convened meeting may continue to transact any business which may properly come before said meeting until adjournment thereof, notwithstanding the withdrawal from such meeting of sufficient holders of the shares of capital stock entitled to vote thereat to leave less than a quorum remaining.

2.9 Voting at Meeting. Voting at meetings of stockholders shall be conducted and exercised subject to the following procedures and regulations:

(a) Voting Power. In the exercise of voting power with respect to each matter properly submitted to a vote at any meeting of stockholders, each holder of the capital stock of the Corporation having voting power shall be entitled to such number of votes as shall be specified in the Certificate of Incorporation.

(b) Exercise of Voting Power; Proxies. Each stockholder entitled to vote at a meeting may vote either in person or authorize another person or persons to act for him by proxy duly appointed by instrument in writing or by transmission permitted by law; *provided, however*, no such appointment of proxy shall be valid, voted or acted upon after the expiration of three (3) years from the date of such proxy, unless otherwise stated therein. A proxy shall be revocable unless expressly designated therein as irrevocable and coupled with an interest. Proxies coupled with an interest include the appointment as proxy of: (i) a pledgee; (ii) a person who purchased or agreed to purchase or owns or holds an option to purchase the shares voted; (iii) a creditor of the Corporation who extended its credit under terms requiring the appointment; (iv) an employee of the

Corporation whose employment contract requires the appointment; or (v) a party to a voting agreement created under Section 218 of the Delaware General Corporation Law. Each proxy shall be filed with the Secretary of the Corporation prior to or at the time of the meeting. Any vote may be taken by voice vote or by show of hands unless someone entitled to vote at the meeting objects, in which case written ballots shall be used.

(c) Election of Directors. In all elections of Directors, cumulative voting shall be prohibited.

2.10 Record Date. A record date shall be fixed or determined in the following manner. In order that the Corporation may determine the stockholders entitled to notice of any meeting of stockholders or any adjournment thereof, or to receive payment of any dividend or other distribution or allotment of any rights or to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board of Directors may, except as otherwise required by law, fix a record date, which record date shall not precede the date on which the resolution fixing the record date is adopted and which record date shall not be more than sixty (60) nor less than ten (10) days before the date of any meeting of stockholders, nor more than sixty (60) days prior to the time for such other action as hereinbefore described. If the Board of Directors so fixes a date, such date shall also be the record date for determining the stockholders entitled to vote at such meeting unless the Board of Directors determines, at the time it fixes such record date, that a later date on or before the date of the meeting shall be the date for making such determination. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of and to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held, and, for determining stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of

any other lawful action, the record date shall be at the close of business on the day on which the Board of Directors adopts a resolution relating thereto.

2.11 No Actions Without Meeting. Subject to the rights of the holders of any series of Preferred Stock, any action required or permitted to be taken by the stockholders of the Corporation must be effected at a duly called annual or special meeting of stockholders of the Corporation and may not be effected by any consent in writing by such stockholders.

2.12 Stockholder Proposals. At the annual meeting of stockholders of the Corporation, only such business shall be conducted and only such proposals shall be acted upon as shall have been properly brought before such annual meeting. To be properly brought before an annual meeting, business or proposals must (i) be specified in the notice relating to the meeting (or any supplement thereto) given by or at the direction of the Board of Directors in accordance with these Bylaws or (ii) be properly brought before the meeting by a stockholder of the Corporation who (A) is a stockholder of record at the time of the giving of such stockholder's notice provided for herein, (B) shall be entitled to vote at the annual meeting and (C) complies with the requirements of this Section, and otherwise be proper subjects for stockholder action under the Delaware General Corporation Law and be properly introduced at the annual meeting. For a proposal to be properly brought before the annual meeting by a stockholder of the Corporation, in addition to any other applicable requirements, such stockholder must have given timely advance notice thereof in writing to the Secretary of the Corporation. To be timely, such stockholder's notice must be delivered to, or mailed and received at, the principal executive offices of the Corporation not less than 120 days nor more than 270 days prior to the scheduled annual meeting date, regardless of any postponements, deferrals or adjournments of such annual meeting to a later date. Any such stockholder's notice to the Secretary of the Corporation shall

set forth as to each matter such stockholder proposes to bring before the annual meeting (i) a description of the proposal desired to be brought before the annual meeting, the reasons for conducting such business at the annual meeting and any material interest in such business of such stockholder and the beneficial owner, if any, on whose behalf the proposal is made; (ii) as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the proposal is made, the name and address, as they appear on the Corporation's books, of such stockholder proposing such business, any other stockholders of the Corporation known by such stockholder to be in favor of such proposal and of any such beneficial owner; and (iii) the class and number of shares of capital stock of the Corporation owned of record and beneficially by such stockholder and any such beneficial holder on the date of such notice. The presiding officer of the meeting of stockholders of the Corporation shall determine whether the requirements of this Section have been met with respect to any stockholder proposal. If the presiding officer determines that any stockholder proposal was not made in accordance with the terms of this Section, he shall so declare at the meeting and any such proposal shall not be acted upon at the meeting.

At a special meeting of stockholders of the Corporation, only such business shall be conducted and only such proposals shall be acted upon as shall have been properly brought before such special meeting. To be properly brought before such a special meeting, business or proposals must (i) be specified in the notice relating to the meeting (or any supplement thereto) given by or at the direction of the Board of Directors in accordance with these Bylaws or (ii) constitute matters incident to the conduct of the meeting as the presiding officer of the meeting shall determine to be appropriate. In addition to the foregoing provisions of this Section, a stockholder of the Corporation shall also comply with all applicable requirements of the



Exchange Act and the rules and regulations promulgated thereunder with respect to the matters set forth in this Section.

### ARTICLE 3

#### DIRECTORS

3.1 Management Powers. The powers of the Corporation shall be exercised by or under the authority of, and the business and affairs of the Corporation shall be managed by or under the direction of, its Board of Directors, which may exercise all such powers of the Corporation and do all such lawful acts and things as are not by statute, the Certificate of Incorporation or these Bylaws directed or required to be exercised or done by the stockholders.

3.2 Number and Qualification. Subject to Section 3.3, the Board of Directors shall consist of nine (9) Directors.

3.3 Composition of the Board of Directors. The Board of Directors shall consist of six (6) JBS Directors, two (2) Equity Directors and one (1) Founder Director; *provided* that, if at any time the beneficial ownership by the JBS Stockholder of the issued and outstanding Common Stock as a percentage of the total issued and outstanding Common Stock changes to an amount set forth below, then there shall be the following changes in the composition of the Board of Directors:

| <u>% Owned by the<br/>JBS Stockholder</u> | <u>No. of JBS<br/>Directors</u> | <u>No. of Equity<br/>Directors</u> | <u>No. of Founder<br/>Directors</u> |
|---|---------------------------------|------------------------------------|-------------------------------------|
| ≥ 90%                                     | 8                               | 0                                  | 1                                   |
| ≥ 80% but < 90%                           | 7                               | 1                                  | 1                                   |
| ≥ 50% but < 80%                           | 6                               | 2                                  | 1                                   |
| ≥ 40% but < 50%                           | 5                               | 3                                  | 1                                   |

|                          |   |   |   |
|--------------------------|---|---|---|
| $\geq 35\%$ but $< 40\%$ | 4 | 4 | 1 |
| $> 10\%$ but $< 35\%$    | 3 | 5 | 1 |
| $\leq 10\%$              | 0 | 8 | 1 |

*provided* that, upon the occurrence of the Founder Triggering Event, there shall no longer be a Founder Director on the Board of Directors, and the number of Equity Directors on the Board of Directors as set forth above shall be increased by one (1); *provided further* that during the Exchange Period there shall be at least two (2) Equity Directors; *provided further* that, if applicable law or, at any time while the Corporation's equity securities are traded on an Exchange, the rules of such Exchange require a greater number or proportion of independent directors on the Board of Directors, then

(i) if the JBS Stockholder beneficially owns at least 50% of the issued and outstanding Common Stock, then, at the option of the JBS Nominating Committee, either (A) one or more of the then-existing JBS Directors who are not independent directors shall be replaced with one or more JBS Directors who are independent directors such that, after such replacement, the number or proportion of independent directors on the Board of Directors will comply with such requirement or (B) the number of Directors shall be increased by two (2) and the vacancies created by such increase shall be filled with persons designated by the JBS Nominating Committee who are independent directors such that the number or proportion of independent directors on the Board of Directors will comply with such requirement; or

(ii) if the JBS Stockholder beneficially owns less than 50% of the issued and outstanding Common Stock, then one or more of the then-existing JBS Directors who are not independent directors shall be replaced with one or more JBS Directors who are

independent directors such that, after such replacement, the number or proportion of independent directors on the Board of Directors will comply with such requirement.

In the event that the size of the Board of Directors is expanded pursuant to this Section 3.3, no person shall be nominated or appointed as a Director if the Equity Nominating Committee reasonably determines that such person (A) is unethical or lacks integrity or (B) is a competitor or is affiliated with a competitor of the Corporation or any of its material subsidiaries. As used in these Bylaws, a Person shall be deemed the “beneficial owner” of, shall be deemed to have “beneficial ownership” of and shall be deemed to “beneficially own” any Common Stock which such Person or any of such Person’s Affiliates is deemed to beneficially own, directly or indirectly, within the meaning of Rule 13d-3 of the Exchange Act; *provided, however*, that beneficial ownership by the JBS Stockholder will not include shares of Common Stock held by members of a “group” (as that term is used in Rule 13d-5 under the Exchange Act) other than JBS USA and its Affiliates.

3.4 Term of Office. At each annual meeting of stockholders, each Director elected to succeed a Director whose term expires shall be elected for a term of office to expire at the next annual meeting of stockholders after his election, with each Director to hold office until his successor shall have been duly elected and qualified or until the earlier of his death, resignation or removal in accordance with these Bylaws and the Certificate of Incorporation. The election of Directors need not be by written ballot and Directors need not be stockholders.

3.5 Voting on Directors. Directors shall be elected by the vote of the holders of a plurality of the combined voting power of the shares entitled to vote in the election of Directors and represented in person or by proxy at a meeting of stockholders at which a quorum is present. Cumulative voting in the election of Directors is expressly prohibited.

3.6 Vacancies. Subject to Section 3.3, any vacancy on the Board of Directors, howsoever resulting, shall be filled only by the affirmative vote of a majority of the remaining Directors then in office, even if less than a quorum, or by the sole remaining Director; *provided, however,* that (a) a vacancy in the directorship of a JBS Director may be filled only through the affirmative vote of a majority of Directors on the JBS Nominating Committee (defined below), even if less than a quorum, or by the sole remaining Director on the JBS Nominating Committee, or if no Directors remain on the JBS Nominating Committee, by the stockholders and (b) a vacancy created in the directorship of an Equity Director or a Founder Director may be filled only by the affirmative vote of a majority of Directors on the Equity Nominating Committee (defined below), even if less than a quorum, or by the sole remaining Director on the Equity Nominating Committee, or if no Directors remain on the Equity Nominating Committee, by the stockholders. The term of office of any Director elected to fill a vacancy shall expire at the next annual meeting of stockholders after his election, with each Director to hold office until his successor shall have been duly elected and qualified or until the earlier of his death, resignation or removal in accordance with the Certificate of Incorporation and these Bylaws.

3.7 Removal. Except as otherwise required by law, any Director, or the entire Board of Directors, may be removed either for or without cause at any duly convened special or annual meeting of stockholders by the affirmative vote of a majority of the combined voting power of the shares of the stockholders entitled to vote at an election of Directors voting together as a single class.

3.8 Meetings. The meetings of the Board of Directors shall be held and conducted subject to the following regulations:

(a) Place. Meetings of the Board of Directors, annual, regular or special, are to be held at the principal office or place of business of the Corporation, or such other place, either within or without the State of Delaware, as may be specified in the respective notices, or waivers of notice, thereof.

(b) Annual Meeting. The Board of Directors shall meet each year immediately after the annual meeting of the stockholders, at the place where such meeting of the stockholders has been held (either within or without the State of Delaware), for the purpose of organization, election of officers, and consideration of any other business that may properly be brought before the meeting. No notice of any kind to either old or new members of the Board of Directors for such annual meeting shall be required.

(c) Regular Meetings. Regular meetings of the Board of Directors may be held at such times as designated by resolution of the Board of Directors or written consent of all of the Directors.

(d) Special Meetings. Special meetings of the Board of Directors may be called by the Chairman of the Board of the Corporation by notice to each Director. Special meetings of the Board of Directors shall be called by the Chairman of the Board in like manner and on like notice on the written request of at least two (2) Directors.

(e) Notice and Waiver of Notice. Notice provided by mailing or express delivery service shall be mailed at least five (5) business days before the meeting and notice by hand delivery, faxing, or other electronic transmission shall be given not later than 48 hours before the meeting; *provided, however*, that the five (5) business day and 48 hour notice periods set forth above shall be increased to seven (7) business days and four (4) business days, respectively, with respect to any meeting held outside of the United States. Neither the business to be transacted at, nor the purpose of, any regular meeting of the Board of Directors need be specified in the notice or waiver of notice of such meeting. The transaction of all business at any meeting of the Board of Directors, however called or noticed, or wherever held, shall be as valid as though had at a meeting duly held after regular call and notice, if a quorum be present and if, either before or after the meeting, each of the Directors not present shall sign a written or electronic waiver of notice. All such waivers shall be filed with the corporate records or made a part of the minutes of the meeting.

(f) Quorum. At all meetings of the Board of Directors, a majority of the Whole Board shall constitute a quorum for the transaction of business, unless a greater number is required by law or by the Certificate of Incorporation. If a quorum shall not be present at any meeting of Directors, the Directors present thereat may adjourn the meeting, from time to time, without notice other than announcement at the meeting, until a quorum shall be present.

(g) Requisite Vote. The act of a majority of the Directors present at any meeting at which a quorum is present shall be the act of the Board of Directors unless the act of a greater number of the Directors (or of a specific class of Directors) is required by statute, the Certificate of Incorporation or these Bylaws.

3.9 Action Without Meetings. Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, any action required or permitted by law to be taken at any meeting of the Board of Directors, or any committee thereof, may be taken without a meeting, without prior notice and without a vote, if all members of the Board of Directors or of such committee, as the case may be, consent thereto in writing or by electronic transmission, and such writing or electronic transmission sets forth the action so taken and is filed in the minutes of the proceedings of the Board of Directors or committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

3.10 Committees. Committees designated and appointed by the Board of Directors shall function subject to and in accordance with the following regulations and procedures:

(a) Designation and Appointment. Subject to the provisions of the Certificate of Incorporation and Section 3.10(f), the Board of Directors, by resolution adopted by a majority of the Whole Board, shall designate and appoint an Audit Committee and a Compensation Committee and may designate and appoint one or more other committees under such name or names and for such purpose or function as may be deemed appropriate.

(b) Members; Alternate Members; Terms. Each committee thus designated and appointed shall consist of one or more of the Directors of the Corporation, one of whom, in the case of any Executive Committee, shall be the Chief Executive Officer of the Corporation (so long as the Chief Executive Officer is also a Director). The Board of Directors may designate one or more of its members as alternate members of any committee, who may, subject to any limitations imposed by the Whole Board, replace absent or disqualified members at any meeting of that committee; *provided, however*, that any alternate member of the Equity Nominating Committee must be an Equity Director. The members or alternate members of any such committee shall serve at the pleasure of and subject to the discretion of the Board of Directors (other than members of the Equity Nominating Committee). Except for the JBS Nominating Committee, any committee

designated or appointed by the Board of Directors shall have at least one Equity Director as a member thereof.

(c) Authority. Subject to the provisions of the Certificate of Incorporation and the other provisions of these Bylaws, each committee, to the extent provided in the resolution of the Board of Directors creating same, shall have and may exercise such of the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation as the Board of Directors may direct and delegate, except, however, those matters which are required by statute to be reserved unto or acted upon by the Whole Board, and except that no such committee shall have the power or authority in reference to (i) adopting or approving, or recommending to the stockholders of the Corporation, any action or matter (other than the election or removal of Directors) expressly required by the Delaware General Corporation Law to be submitted to the stockholders for approval, or (ii) adopting, amending or repealing any bylaw of the Corporation; *provided further*, that no such committee shall have the power or authority to approve any action described in Section 5.5 of the Certificate of Incorporation.

(d) Records. Each such committee shall keep and maintain regular records or minutes of its meetings and report the same to the Board of Directors when required.

(e) Change in Number. Subject to the provisions of Section 3.10(f), the number of members or alternate members of any committee appointed by the Board of Directors, as herein provided, may be increased or decreased from time to time by appropriate resolution adopted by the Whole Board.

(f) Special Nominating Committees.

(i) The Board of Directors shall establish two (2) committees (collectively, the “Special Nominating Committees”), which shall be designated as the “JBS Nominating Committee” and the “Equity Nominating Committee,” each of which shall have the power and authority of the Board of Directors with respect to the matters described in Sections 3.6 and 3.10(f). The JBS Nominating Committee shall consist of solely of JBS Directors, and the Equity Nominating Committee shall consist solely of all of the Equity Directors. The JBS Nominating Committee shall have the exclusive authority to nominate the JBS Directors, fill vacancies pursuant to Section 3.6 and select the members of the JBS Nominating Committee; and the Equity Nominating Committee shall have the exclusive authority to nominate the Equity Directors, fill vacancies pursuant to Section 3.6, select the members of the Equity Nominating Committee, and shall be entitled to call a special meeting of stockholders of the Corporation to comply with Section 3.01(d) of the Stockholders Agreement; *provided* that, prior to the occurrence of the Founder Triggering Event, the Equity Nominating Committee shall, to the fullest extent permitted by applicable law and subject to any applicable fiduciary duties, nominate the Founder Director. For so long as the JBS Stockholder is the beneficial owner of 35% or more of the outstanding Common Stock, no person shall be nominated as an Equity Director pursuant to



these Bylaws if JBS USA reasonably determines that such person (A) is unethical or lacks integrity or (B) is a competitor or is affiliated with a competitor of the Corporation. Two (2) Equity Directors (or one (1) if there is only one (1) Equity Director on the Board of Directors) shall satisfy the independence requirements of Rule 10A-3 under the Exchange Act and be financially literate for purposes of the applicable listing standards of the Exchange on which the Common Stock is then listed, or if the Common Stock is not then listed, then for purposes of Section 303A.07 of The New York Stock Exchange Listed Company Manual (or any successor rule) (“financially literate”), and, for so long as there are two (2) or more Equity Directors on the Board of Directors, and at least one (1) Equity Director shall qualify as an “audit committee financial expert” as that term is used in Item 407 of Regulation S-K under the Exchange Act (or any successor rule). If the JBS Stockholder beneficially owns at least 50% of the issued and outstanding Common Stock, at least one (1) JBS Director shall (X) be an independent director, (Y) satisfy the independence requirements of Rule 10A-3 under the Exchange Act and (Z) be financially literate.

(ii) Notwithstanding anything in these Bylaws to the contrary, to the maximum extent permitted by law, the Equity Nominating Committee, acting by majority vote, shall have the right to control the Corporation’s exercise of its rights and remedies under the Stockholders Agreement, including, without limitation, (i) the granting of (or refusal to grant) any approvals, consents or waivers by the Corporation thereunder, (ii) the giving (or withholding) of any notices by the Corporation thereunder, (iii) the approval (or disapproval) of the Corporation’s entry into any amendment or supplement to the Stockholders Agreement and (iv) the initiation, prosecution or settlement of any claim, action, suit, arbitration, inquiry, proceeding or investigation arising in connection therewith. The Equity Directors shall be permitted to retain separate advisors (legal or financial) at the expense of the Corporation in connection with the performance of their duties under Sections 2.3, 3.6, 3.10(f) and 8.8 of these Bylaws or under Sections 3.01(d), 3.03 and 6.21 of the Stockholders Agreement.

(g) Removal. Any member or alternate member of any committee appointed hereunder may be removed by the Board of Directors by the affirmative vote of a majority of the Whole Board; *provided* that any removal of an Equity Director from the Equity Nominating Committee shall be approved by the majority of the members of Equity Nominating Committee.

(h) Meetings. The time, place and notice (if any) of committee meetings shall be determined by the members of such committee.

(i) Quorum; Requisite Vote. At meetings of any committee appointed hereunder, a majority of the number of members designated by the Board of Directors shall constitute a quorum for the transaction of business. The act of a majority of the members and alternate members of the committee present at any meeting at which a quorum is present shall be the act of such committee, except as otherwise specifically

provided by statute, the Certificate of Incorporation or these Bylaws. If a quorum is not present at a meeting of such committee, the members of such committee present may adjourn the meeting from time to time, without notice other than an announcement at the meeting, until a quorum is present.

(j) Action Without Meetings. Any action required or permitted to be taken at a meeting of any committee may be taken without a meeting if all members of such committee consent thereto in writing or by electronic transmission. Such consent shall have the same force and effect as a unanimous vote at a meeting.

(k) Responsibility. Notwithstanding any provision to the contrary herein, the designation and appointment of a committee and the delegation of authority to it shall not operate to relieve the Board of Directors, or any member thereof, of any responsibility imposed upon it or him by law.

3.11 Compensation. Each of the Directors shall be entitled to receive reasonable and customary fees for his service as a Director (which fees shall be set by the Board of Directors from time to time), including, without limitation, as a member of any standing or special committee of the Board of Directors. Each of the Directors shall be entitled to be reimbursed by the Corporation for his reasonable out-of-pocket expenses incurred in connection with the performance of his duties as a Director, including, without limitation, as a member of any standing or special committee of the Board of Directors. No such fees or reimbursements shall preclude any Director from serving the Corporation in another capacity and receiving compensation therefor.

3.12 Maintenance of Records. Except such as are required by law to be kept within the State of Delaware, the books and records of the Corporation may be kept outside the State of Delaware or at such place or places as the Board of Directors may, from time to time, determine.

3.13 Interested Directors and Officers. No contract or other transaction between the Corporation and one or more of its Directors or officers, or between the Corporation and any organization in which one or more of its Directors or officers are directors or officers, or have a

financial interest, shall be void or voidable solely for this reason, or solely because the Director or officer is present at or participates in the meeting of the Board of Directors (or committee of the Board of Directors), that authorizes the contract or transaction, or solely because such Director's or officer's votes are counted for such purpose, if (a) the material facts of such relationship or interest and as to the contract or transaction shall be disclosed or known to the Board of Directors (or the committee) and the Board of Directors (or the committee) shall, nevertheless in good faith, authorize such contract or transaction by the affirmative vote of a majority of disinterested Directors even though the disinterested Directors be less than a quorum; (b) the material facts of such relationship or interest and as to the contract or transaction are disclosed or are known to the stockholders entitled to vote thereon, and the contract or transaction is specifically approved in good faith by the vote of the stockholders; or (c) the contract or transaction is fair to the Corporation as of the time it is authorized, approved or ratified by the Board of Directors, a committee thereof or the stockholders. The provisions of this Section shall not be construed to invalidate any contract or other transaction which would otherwise be valid under the common and statutory law applicable thereto.

## ARTICLE 4

### NOTICES

4.1 Method of Notice. To the fullest extent permitted by law, whenever under the provisions of the Delaware General Corporation Law or of the Certificate of Incorporation or of these Bylaws, notice is required to be given to any Director or stockholder, it shall not be construed to require personal notice, but such notice may be given in writing and delivered personally, through the United States mail, by a nationally recognized delivery service (such as Federal Express) or by means of telegram, telex, facsimile transmission or electronic

transmission, addressed to such Director or stockholder, at his address or telex or facsimile transmission number, as the case may be, as it appears on the records of the Corporation, with postage and fees thereon prepaid. Such notice shall be deemed to be given at the time when the same shall be deposited in the United States mail or with an express delivery service (or, in the case of notice to Directors, such notice shall be deemed to be given when received) or when transmitted by telex, facsimile transmission, electronic transmission or personally delivered, as the case may be. Notice given by electronic transmission shall be effective as follows: (i) if by facsimile, when faxed to a number where the recipient has consented in writing to receive such notice; and (ii) if by electronic mail, when mailed electronically to an electronic mail address at which the recipient has consented in writing to receive such notice.

4.2 Waiver. Whenever any notice is required to be given under the provisions of the Delaware General Corporation Law or under the provisions of the Certificate of Incorporation or these Bylaws, a waiver thereof in writing signed by the Person or Persons entitled to such notice, or a waiver by electronic transmission by the Person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice. Attendance by such Person or Persons, whether in person or, if permitted by applicable law, by proxy, at any meeting requiring notice shall constitute a waiver of notice of such meeting, except where such Person attends the meeting for the express purpose of objecting at the beginning of the meeting to the transaction of any business because the meeting is not lawfully called or convened.

## ARTICLE 5

### OFFICERS AND AGENTS

5.1 Designation. The officers of the Corporation shall be chosen by the Board of Directors and shall include a President and a Secretary and may also include such other offices

and officers and assistant officers and agents as the Board of Directors shall deem necessary, including, without limitation, a Chairman of the Board, Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, one or more Vice Presidents and a Treasurer.

5.2 Election of Officers. The President and the Secretary shall be elected by the Board of Directors on the expiration of the term of office of such officer, as herein provided, or whenever a vacancy exists in such office. Each other officer or agent may be elected by the Board of Directors at any meeting.

5.3 Qualifications. No officer or agent need be a stockholder of the Corporation or a resident of Delaware. No officer or agent is required to be a Director, except the Chairman of the Board. Any two or more offices may be held by the same person.

5.4 Term of Office. Unless otherwise specified by the Board of Directors at the time of election or appointment, or by the express provisions of an employment contract approved by the Board of Directors, the term of office of each officer and each agent shall expire on the date of the first meeting of the Board of Directors next following the annual meeting of stockholders each year. Each such officer or agent, unless elected or appointed to an additional term, shall serve until the expiration of the term of his office or, if earlier, his death, resignation or removal.

5.5 Authority. Officers and agents shall have such authority and perform such duties in the management of the Corporation as are provided in these Bylaws or as may be determined by resolution of the Board of Directors not inconsistent with these Bylaws.

5.6 Removal. Any officer or agent elected or appointed by the Board of Directors may be removed with or without cause by the Board of Directors. Such removal shall be without prejudice to the contract rights, if any, of the person so removed. Election or appointment of an officer or agent shall not of itself create contract rights.

5.7 Vacancies. Any vacancy occurring in any office of the Corporation (by death, resignation, removal or otherwise) shall be filled by the Board of Directors.

5.8 Compensation. The compensation of all officers and agents of the Corporation shall be fixed from time to time by the Board of Directors.

5.9 Chairman of the Board. The Chairman of the Board shall be chosen from among the Directors. The Chairman of the Board shall have the power to call special meetings of the stockholders and of the Directors for any purpose or purposes, and he shall preside at all meetings of the stockholders and Board of Directors, unless he shall be absent or unless he shall, at his election, designate the Chief Executive Officer to preside in his stead. The Chairman of the Board shall also exercise such powers and perform such duties as shall be assigned to or required of him from time to time by the Board of Directors.

5.10 Chief Executive Officer. The Chief Executive Officer shall have general supervision, management, direction and control of the business and affairs of the Corporation and shall see that all orders and resolutions of the Board of Directors are carried into effect. The Chief Executive Officer shall be authorized to execute promissory notes, bonds, mortgages, leases and other contracts requiring a seal, under the seal of the Corporation, except where required or permitted by law to be otherwise executed and except where the execution thereof shall be expressly delegated by the Board of Directors to some other officer or agent of the Corporation. In the absence of the Chairman of the Board, the Chief Executive Officer shall preside at all meetings of the stockholders and the Board of Directors. The Chief Executive Officer shall have the general powers and duties of management usually vested in the office of chief executive officer of a corporation and shall perform such other duties and possess such other authority and powers as the Board of Directors may from time to time prescribe.

5.11 Chief Financial Officer. The Chief Financial Officer shall have general financial supervision, management, direction and control of the business and affairs of the Corporation and shall see that all financial orders and resolutions of the Board of Directors are carried into effect. The Chief Financial Officer shall be authorized to execute promissory notes, bonds, mortgages, leases and other contracts requiring a seal, under the seal of the Corporation, except where required or permitted by law to be otherwise executed and except where the execution thereof shall be expressly delegated by the Board of Directors to some other officer or agent of the Corporation. The Chief Financial Officer shall have the general financial powers and duties of management usually vested in the office of the chief financial officer of a corporation and shall perform such other duties and possess such other authority and powers as the Chief Executive Officer may from time to time prescribe.

5.12 Chief Operating Officer. The Chief Operating Officer shall have general supervision of the day to day operations of the Corporation. The Chief Operating Officer shall have the general powers and duties of management usually vested in the office of chief operating officer of a corporation and shall perform such other duties and possess such other authority and powers as the Chief Executive Officer may from time to time prescribe.

5.13 President. In the absence or disability of the Chief Operating Officer, the President shall perform all of the duties of the Chief Operating Officer and when so acting shall have all the powers and be subject to all the restrictions upon the Chief Operating Officer, including the power to sign all instruments and to take all actions which the Chief Operating Officer is authorized to perform by the Board of Directors or these Bylaws. The President shall have the general powers and duties vested in the office of President as the Board of Directors



may from time to time prescribe or as the Chief Executive Officer may from time to time delegate.

5.14 Vice Presidents. The Vice President, or if there shall be more than one, the Vice Presidents in the order determined by the requisite vote of the Board of Directors, shall, in the prolonged absence or disability of the President, perform the duties and exercise the powers of the President and shall perform such other duties and have such other powers as the Board of Directors may from time to time prescribe or as the Chief Executive Officer may from time to time delegate. The Board of Directors may designate one or more Vice Presidents as Executive Vice Presidents or Senior Vice Presidents.

5.15 Secretary. The Secretary shall attend all meetings of the Board of Directors and all meetings of the stockholders of the Corporation and record all proceedings of the meetings of the Corporation and of the Board of Directors in a book to be maintained for that purpose and shall perform like duties for the standing committees when required. The Secretary shall give, or cause to be given, notice of all meetings of the stockholders and special meetings of the Board of Directors, and shall perform such other duties as may be prescribed by the Board of Directors, Chief Executive Officer, Chief Financial Officer, Chief Operating Officer or President. The Secretary shall have custody of the corporate seal of the Corporation, and he, or an Assistant Secretary, shall have authority to affix the same to any instrument requiring it and when so affixed, it may be attested by his signature or by the signature of such Assistant Secretary. The Board of Directors may give general authority to any other officer to affix the seal of the Corporation and to attest the affixing by his signature.

5.16 Assistant Secretaries. The Assistant Secretary, or if there be more than one, the Assistant Secretaries in the order determined by the Board of Directors, shall in the absence or

disability of the Secretary, perform the duties and exercise the powers of the Secretary and shall perform such other duties and have such other powers as the Board of Directors may from time to time prescribe or as the Chief Executive Officer may from time to time delegate.

5.17 Treasurer. The Chief Financial Officer shall also be the Treasurer of the Corporation and shall have the custody of the corporate funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Corporation and shall deposit all moneys and other valuable effects in the name and to the credit of the Corporation in such depositories as may be designated by the Board of Directors. The Treasurer shall disburse the funds of the Corporation as may be ordered by the Board of Directors, taking proper vouchers for such disbursements, and shall render to the Chief Executive Officer and the Board of Directors, at its regular meetings, or when the Board of Directors so requires, an account of all his transactions as Treasurer and of the financial condition of the Corporation. If required by the Board of Directors, the Treasurer shall give the Corporation a bond in such sum and with such surety or sureties as shall be satisfactory to the Board of Directors for the faithful performance of the duties of his office and for the restoration to the Corporation, in case of his death, resignation, retirement or removal from office, of all books, papers, vouchers, money, and other property of whatever kind in his possession or under his control owned by the Corporation. The Treasurer shall perform such other duties and have such other authority and powers as the Board of Directors may from time to time prescribe or as the Chief Executive Officer may from time to time delegate.

5.18 Assistant Treasurers. The Assistant Treasurer, or if there shall be more than one, the Assistant Treasurers in the order determined by the Board of Directors, shall, in the absence or disability of the Treasurer, perform the duties and exercise the powers of the Treasurer and

shall perform such other duties and have such other powers as the Board of Directors may from time to time prescribe or as the Chief Executive Officer may from time to time delegate.

## ARTICLE 6

### INDEMNIFICATION

6.1 Mandatory Indemnification. Each person who was or is made a party or is threatened to be made a party, or who was or is a witness without being named a party, to, or is otherwise involved in, any threatened, pending or completed action, claim, suit or proceeding, whether civil, criminal, administrative or investigative, any appeal in such an action, claim, suit or proceeding, and any inquiry or investigation that could lead to such an action, claim, suit or proceeding (a “Proceeding”), by reason of the fact that such individual is or was a Director or officer of the Corporation, or while a Director or officer of the Corporation is or was serving at the request of the Corporation as a director, officer, partner, venturer, proprietor, trustee, employee, agent or similar functionary of another corporation, partnership, trust, employee benefit plan or other enterprise (hereinafter, an “indemnatee”), whether the basis of such Proceeding is alleged action in an official capacity as a Director or officer or in any other capacity while serving as a Director or officer, shall be indemnified and held harmless by the Corporation to the fullest extent permitted by Delaware law, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than such law permitted the Corporation to provide prior to such amendment), from and against any expense, liability, loss, judgments, penalties (including excise taxes), fines, amounts paid in settlement and reasonable expenses (including court costs and attorneys’ fees) actually incurred or suffered by such person in connection with such Proceeding.

6.2 Determination of Indemnification. Any indemnification under the foregoing Section 6.1 shall be made by the Corporation unless it has been determined that indemnification of such person is not proper in the circumstances by virtue of the fact that it shall have been determined that such person has not met the applicable standard of conduct. Such determination shall be made with respect to a person who is a Director or officer at the time of the determination (i) by a majority vote of the Directors who at the time of the vote are “independent directors” (as defined in the listing standards of the Exchange on which the Common Stock is then listed, or if the Common Stock is not then listed, then as such term is defined in Section 303A.02 of The New York Stock Exchange Listed Company Manual (or any successor rule)) and are not parties to such Proceeding, even though less than a quorum; (ii) if there are no such Directors, or if such Directors so direct, by independent legal counsel (in a written opinion); or (iii) by the stockholders of the Corporation.

6.3 Advancement of Expenses. In addition to the right to indemnification conferred in Section 6.1, an indemnitee shall also have the right to be paid by the Corporation the expenses (including attorney’s fees) incurred in defending any such Proceeding in advance of its final disposition (hereinafter an “advancement of expenses”); *provided, however*, that, if the Delaware General Corporation Law requires, an advancement of expenses incurred by an indemnitee in his capacity as a Director or officer (and not in any other capacity in which service was or is rendered by such indemnitee, including, without limitation, service to an employee benefit plan) shall be made only upon delivery to the Corporation of an undertaking (hereinafter an “undertaking”), by or on behalf of such indemnitee, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal

(hereinafter a “final adjudication”) that such indemnitee is not entitled to be indemnified for such expenses under this Section 6.3 or otherwise.

6.4 Right of Indemnitee to Bring Suit. If a claim under Section 6.1 or 6.3 is not paid in full by the Corporation within sixty (60) days after a written claim has been received by the Corporation, except in the case of a claim for an advancement of expenses, in which case the applicable period shall be twenty (20) days, the indemnitee may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim. To the fullest extent permitted by law, if successful in whole or in part in any such suit, or in a suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the indemnitee shall be entitled to be paid also the expense of prosecuting or defending such suit. In (i) any suit brought by the indemnitee to enforce a right to indemnification hereunder (but not in a suit brought by the indemnitee to enforce a right to an advancement of expenses) it shall be a defense that, and (ii) in any suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the Corporation shall be entitled to recover such expenses upon a final adjudication that, the indemnitee has not met any applicable standard for indemnification set forth in the Delaware General Corporation Law. Neither the failure of the Corporation (including its Directors who are not parties to such action, a committee of such Directors, independent legal counsel, or its stockholders) to have made a determination prior to the commencement of such suit that indemnification of the indemnitee is proper in the circumstances because the indemnitee has met the applicable standard of conduct set forth in the Delaware General Corporation Law, nor an actual determination by the Corporation (including its Directors who are not parties to such action, a committee of such Directors, independent legal counsel, or its stockholders) that the indemnitee has not met such applicable standard of conduct,

shall create a presumption that the indemnitee has not met the applicable standard of conduct or, in the case of such a suit brought by the indemnitee, be a defense to such suit. In any suit brought by the indemnitee to enforce a right to indemnification or to an advancement of expenses hereunder, or brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the burden of proving that the indemnitee is not entitled to be indemnified, or to such advancement of expenses, under this Article 6 or otherwise shall be on the Corporation.

6.5 Permissive Indemnification. The Board of Directors of the Corporation may authorize the Corporation to indemnify employees or agents of the Corporation, and to advance the reasonable expenses of such persons.

6.6 Nature of Indemnification. The indemnification and advancement of expenses provided hereunder shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under the Certificate of Incorporation, these Bylaws, any agreement, vote of stockholders or disinterested Directors or otherwise, both as to actions taken in an official capacity and as to actions taken in any other capacity while holding such office. The rights conferred upon indemnitees in this Article 6 shall be contract rights and such rights shall continue as to an indemnitee who has ceased to be a Director or officer and shall inure to the benefit of the indemnitee's heirs, executors and administrators. Any amendment, alteration or repeal of this Article 6 that adversely affects any right of an indemnitee or its successors shall be prospective only and shall not limit or eliminate any such right with respect to any proceeding involving any occurrence or alleged occurrence of any action or omission to act that took place prior to such amendment, alteration or repeal.

6.7 Insurance. The Corporation shall have the power and authority to purchase and maintain insurance or another arrangement on behalf of any person who is or was a Director, officer, employee or agent of the Corporation, or who is or was serving at the request of the Corporation as a director, officer, partner, venturer, proprietor, trustee, employee, agent, or similar functionary of another foreign or domestic corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan or other enterprise, against any liability, claim, damage, loss or risk asserted against such person and incurred by such person in any such capacity or arising out of the status of such person as such, irrespective of whether the Corporation would have the power to indemnify and hold such person harmless against such liability under the provisions hereof. Without limiting the power of the Corporation to procure or maintain any kind of insurance or other arrangement, the Corporation may, for the benefit of persons indemnified by the Corporation, (i) create a trust fund; (ii) establish any form of self-insurance; (iii) secure its indemnity obligation by grant of a security interest or other lien on the assets of the Corporation; or (iv) establish a letter of credit, guaranty, or surety arrangement. The insurance or other arrangement may be procured, maintained, or established within the Corporation or with any insurer or other Person deemed appropriate by the Board of Directors regardless of whether all or part of the stock or other securities of the insurer or other Person are owned in whole or part by the Corporation. In the absence of fraud, the judgment of the Board of Directors as to the terms and conditions of the insurance or other arrangement and the identity of the insurer or other Person participating in the arrangement shall be conclusive and the insurance or arrangement shall not be voidable and shall not subject the Directors approving the insurance or arrangement to liability, on any ground, regardless of whether any Director participating in the approval is a beneficiary of the insurance or arrangement.



## ARTICLE 7

### STOCK CERTIFICATES AND TRANSFER REGULATIONS

7.1 Description of Certificates. The shares of the capital stock of the Corporation shall be represented by certificates or shall be uncertificated. Each record holder of shares represented by certificates, upon request to the Corporation, shall be provided with a certificate of stock representing the number of shares owned by the holder. The shares of the capital stock of the Corporation represented by certificates shall be signed by, or in the name of the Corporation by, the Chairman of the Board, President or a Vice President and the Treasurer or the Secretary or an Assistant Secretary of the Corporation. Each certificate shall state on the face thereof the name of the holder, the number and class of shares, the par value of shares covered thereby or a statement that such shares are without par value, and such other matters as are required by law. At such time as the Corporation may be authorized to issue shares of more than one class, every certificate shall set forth upon the face or back of such certificate a statement of the designations, preferences, limitations and relative rights of the shares of each class authorized to be issued, as required by the laws of the State of Delaware, or may state that the Corporation will furnish a copy of such statement without charge to the holder of such certificate upon receipt of a written request therefor from such holder.

7.2 Signatures. The signatures of the Chairman of the Board, President, Vice President or Treasurer, Secretary or Assistant Secretary upon a certificate may be facsimiles. In case any officer or officers who have signed, or whose facsimile signature or signatures have been placed upon, any such certificate or certificates shall cease to serve as such officer or officers of the Corporation, or as transfer agent or registrar, whether because of death, resignation, removal or otherwise, before such certificate or certificates are issued by the

Corporation, such certificate or certificates may nevertheless be adopted by the Corporation and be issued and delivered with the same effect as though the person or persons who signed such certificate or certificates or whose facsimile signature or signatures have been used thereon had not ceased to serve as such officer or officers or as transfer agent or registrar of the Corporation.

7.3 Registered Owners. Prior to due presentment for registration of transfer of shares of the capital stock of the Corporation in the manner set forth in Section 7.5 hereof, the Corporation shall be entitled to recognize the Person registered as the owner of such shares on its books (or the books of its duly appointed transfer agent, as the case may be) as the Person exclusively entitled to vote, to receive notices and dividends with respect to, and otherwise exercise all rights and powers relative to such shares; and the Corporation shall not be bound or otherwise obligated to recognize any claim, direct or indirect, legal or equitable, to such shares by any other Person, whether or not it shall have actual, express or other notice thereof, except as otherwise provided by the laws of Delaware.

7.4 Lost, Stolen or Destroyed Certificates. The Corporation shall issue a new certificate in place of any certificate for shares previously issued, if the registered owner of the certificate satisfies the following conditions:

- (a) Proof of Loss. Submits proof in affidavit form satisfactory to the Corporation that such certificate has been lost, destroyed or wrongfully taken;
- (b) Timely Request. Requests the issuance of a new certificate before the Corporation has notice that the certificate has been acquired by a purchaser for value in good faith and without notice of an adverse claim;
- (c) Bond. Gives a bond in such form, and with such surety or sureties, with fixed or open penalty, as the Corporation may direct, to indemnify the Corporation (and its transfer agent and registrar, if any) against any claim that may be made or otherwise asserted by virtue of the alleged loss, destruction, or theft of such certificate or certificates; and

(d) Other Requirements. Satisfies any other reasonable requirements imposed by the Corporation.

In the event a certificate has been lost, apparently destroyed or wrongfully taken, and the registered owner of record fails to notify the Corporation within a reasonable time after he has notice of such loss, destruction, or wrongful taking, and the Corporation registers a transfer (in the manner set forth below) of the shares represented by the certificate before receiving such notification, such prior owner of record shall be precluded from making any claim against the Corporation for the transfer required hereunder or for a new certificate to the fullest extent permitted by law.

7.5 Registration of Transfers. Transfers of stock shall be made upon the books of the Corporation. Subject to the provisions hereof and the Certificate of Incorporation, the Corporation shall register the transfer of a certificate evidencing shares of its capital stock presented to it for transfer if:

(a) Endorsement. Upon surrender of the certificate to the Corporation (or its transfer agent, as the case may be) for transfer, the certificate (or an appended stock power) is properly endorsed by the registered owner, or by his duly authorized legal representative or attorney-in-fact, with proper written evidence of the authority and appointment of such representative, if any, accompanying the certificate;

(b) Guaranty and Effectiveness of Signature. The signature of such registered owner or his legal representative or attorney-in-fact, as the case may be, has been guaranteed by a national banking association or member of the New York Stock Exchange, and reasonable assurance in a form satisfactory to the Corporation is given that such endorsements are genuine and effective;

(c) Adverse Claims. The Corporation has no notice of an adverse claim or has otherwise discharged any duty to inquire into such a claim;

(d) Collection of Taxes. Any applicable law (local, state or federal) relating to the collection of taxes relative to the transaction has been complied with; and

(e) Additional Requirements Satisfied. Such additional conditions and documentation as the Corporation (or its transfer agent, as the case may be) shall

reasonably require, including, without limitation, the delivery with the surrender of such stock certificate or certificates of proper evidence of succession, assignment or other authority to obtain transfer thereof, as the circumstances may require, and such legal opinions with reference to the requested transfer as shall be required by the Corporation (or its transfer agent) pursuant to the provisions of these Bylaws, and applicable law shall have been satisfied.

In the case of uncertificated shares, transfers will be made upon receipt of proper transfer instructions from the record owner of such uncertificated shares, or from a duly authorized attorney or from an individual presenting proper evidence of succession, assignment or authority to transfer the stock, with such additional conditions and documentation as the Corporation (or its transfer agent, as the case may be) shall reasonably require.

#### 7.6 Restrictions on Transfer and Legends on Certificates.

(a) Shares in Classes or Series. If the Corporation is authorized to issue shares of more than one class or more than one series of any class, the certificate, if any, shall set forth, either on the face or back of the certificate, a full or summary statement of all of the powers, designations, preferences, limitations, and relative rights of the shares of each such class or series. In lieu of providing such a statement in full on the certificate, a statement on the face or back of the certificate may provide that the Corporation will furnish such information to any stockholder without charge upon request to the Corporation.

(b) Restriction on Transfer. If the Corporation imposes any restrictions on the sale or other disposition of its shares or on the amount of the Corporation's securities that may be owned by any Person, then the certificates, if any, representing shares to which any such restriction applies must conspicuously note such restriction.

## ARTICLE 8

### GENERAL PROVISIONS

8.1 Dividends. Dividends on the issued and outstanding shares of capital stock of the Corporation may be declared by the Board of Directors at any regular or special meeting and may be paid in cash, in property, or in shares of capital stock. Such declaration and payment shall be at the discretion of the Board of Directors.

8.2 Reserves. There may be created by resolution of the Board of Directors out of any funds of the Corporation available for dividends such reserve or reserves as the Board of Directors from time to time, in its discretion, shall think proper to provide for contingencies, or to repair or maintain any property of the Corporation, or for such other purposes as the Board of Directors shall think beneficial to the Corporation, and the Board of Directors may modify or abolish any such reserve in the manner in which it was created.

8.3 Books and Records. The Corporation shall maintain correct and complete books and records of account and shall prepare and maintain minutes of the proceedings of its stockholders, its Board of Directors and each committee of its Board of Directors. The Corporation shall keep at its registered office or principal place of business, or at the office of its transfer agent or registrar, a record of original issuance of shares issued by the Corporation and a record of each transfer of those shares that have been presented to the Corporation for registration or transfer. Such records shall contain the names and addresses of all past and present stockholders and the number and class of the shares issued by the Corporation held by each.

8.4 Contracts and Negotiable Instruments. Except as otherwise provided by law or these Bylaws, any contract or other instrument relative to the business of the Corporation may be executed and delivered in the name of the Corporation and on its behalf by the Chief Executive Officer, Chief Operating Officer, Chief Financial Officer, Treasurer or President of the Corporation. The Board of Directors may authorize any other officer or agent of the Corporation to enter into any contract or execute and deliver any contract in the name and on behalf of the Corporation, and such authority may be general or confined to specific instances as the Board of Directors may determine by resolution. All bills, notes, checks or other instruments for the

payment of money shall be signed or countersigned by such officer, officers, agent or agents and in such manner as are permitted by these Bylaws and/or as, from time to time, may be prescribed by resolution of the Board of Directors. Unless authorized to do so by these Bylaws or by the Board of Directors, no officer, agent or employee shall have any power or authority to bind the Corporation by any contract or engagement, or to pledge its credit, or to render it liable pecuniarily for any purpose or to any amount.

8.5 Fiscal Year. The fiscal year of the Corporation shall end on the last Sunday in December.

8.6 Corporate Seal. The Corporation seal shall be in such form as may be determined by the Board of Directors. The seal may be used by causing it or a facsimile thereof to be impressed or affixed or in any manner reproduced.

8.7 Resignations. Any Director, officer or agent may resign his office or position with the Corporation by delivering written notice or notice by electronic transmission thereof to the Chairman of the Board, Chief Executive Officer, Chief Operating Officer, President or Secretary of the Corporation. Such resignation shall be effective at the time specified therein, or immediately upon delivery if no time is specified. Unless otherwise specified therein, an acceptance of such resignation shall not be a necessary prerequisite of its effectiveness.

8.8 Amendment of Bylaws. The Board of Directors is expressly empowered to adopt, amend or repeal these Bylaws. Any adoption, amendment or repeal by the Board of Directors of the Bylaws or any provisions thereof that, individually or taken as a whole, would adversely affect, or could reasonably be expected to adversely affect, in any material respect, the rights of the Minority Investors, as a class (whether by merger, consolidation or otherwise), in each case, shall require the approval of at least a majority of the Whole Board, including the approval of at

least a majority of the Equity Directors and any Founder Director, as a group. In addition to the foregoing, prior to the occurrence of the Founder Director Triggering Event, the approval of the Founder Director shall be required for the Board of Directors to validly approve and authorize any amendment (whether by merger, consolidation or otherwise) to Section 3.3, Section 3.6, Section 3.10(f) or Article 9 of these Bylaws that would adversely affect, or could reasonably be expected to adversely affect, in any material respect, the rights of the Founder Director in his role as a Director. Notwithstanding the foregoing, actions which are permitted by the Stockholders Agreement or the Certificate of Incorporation (including, without limitation, the Mandatory Exchange Transaction) shall not require the approvals set forth above in this Section 8.8. Subject to applicable law and the rights of the holders of any series of Preferred Stock, the stockholders shall also have the power to adopt, amend or repeal these Bylaws by the affirmative vote of the holders of a majority of the voting power of the then-outstanding shares of the capital stock of the Corporation entitled to vote generally in the election of Directors, present in person or represented by proxy, at a meeting at which a quorum is present, voting together as a single class; *provided, however*, that, in addition to such vote, the affirmative vote of the holders of a majority of the voting power of all of the then-outstanding shares of the capital stock of the Corporation entitled to vote generally in the election of Directors (other than shares of capital stock of the Corporation beneficially owned by the JBS Stockholder), voting together as a single class, shall be required to adopt, amend or repeal the Bylaws or any provisions thereof.

8.9 Construction. Whenever the context so requires herein, the masculine shall include the feminine and neuter, and the singular shall include the plural, and conversely. If any portion or provision of these Bylaws shall be held invalid or inoperative, then, so far as is reasonable and possible: (i) the remainder of these Bylaws shall be considered valid and



operative, and (ii) effect shall be given to the intent manifested by the portion or provision held invalid or inoperative.

8.10 Telephone Meetings. Directors or members of any committee may hold or participate in any meeting of such Directors or committee by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other and participation in a meeting by such means shall constitute presence in person at such meeting.

8.11 Table of Contents; Captions. The table of contents and captions used in these Bylaws have been inserted for administrative convenience only and do not constitute matter to be construed in interpretation.

## ARTICLE 9

### DEFINITIONS

Capitalized terms used and not otherwise defined in these Bylaws shall have the meaning given or referenced below:

“Affiliates” has the meaning set forth in Rule 12b-2 under the Exchange Act.

“Certificate of Incorporation” means the Amended and Restated Certificate of Incorporation of the Corporation, as amended.

“Common Stock” means the common stock, par value \$.01 per share, of the Corporation.

“Delaware General Corporation Law” means the Delaware General Corporation Law, as amended, or any successor law.

“Equity Directors” means the two (2) Directors designated as “Equity Directors” on Schedule 3.01(a)(iii) to the Stockholders Agreement, their successors as nominated by the Equity Nominating Committee and elected by the stockholders of the Corporation or appointed by the

Equity Nominating Committee to fill any vacancy pursuant to Section 3.6 and any other person, other than a JBS Director, nominated by the Minority Investors to succeed an Equity Director in accordance with the Certificate of Incorporation and these Bylaws and elected by the stockholders of the Corporation; *provided* that, if at any time the ownership by the JBS Stockholder of the issued and outstanding Common Stock as a percentage of the total issued and outstanding Common Stock changes to a threshold amount set forth in Section 3.3, then the number of Equity Directors shall be changed to the corresponding number of Equity Directors set forth in Section 3.3; *provided further* that, upon the occurrence of a Founder Triggering Event, there shall no longer be a Founder Director on the Board of Directors and the number of Equity Directors on the Board of Directors shall be increased by one (1); *provided further*, that each person serving as an Equity Director must qualify as an independent director.

“Exchange” means any national securities exchange registered under Section 6 of the Exchange Act.

“Exchange Act” means the Securities Exchange Act of 1934, as amended.

“Exchange Period” has the meaning set forth in the Certificate of Incorporation.

“Founder Director” means Lonnie “Bo” Pilgrim or, if a Founder Triggering Event will have occurred solely with respect to Lonnie “Bo” Pilgrim, then Lonnie Ken Pilgrim.

“Founder Group” means the Founder Director, his spouse, his issue, his estate and any trust, partnership or other entity established or existing primarily for the benefit of him, his spouse and/or issue, including, without limitation, Pilgrim Interests, Ltd., Pilgrim Family Trust I, Pilgrim Family Trust II, PFCP, Ltd, Lonnie Jagers Pilgrim Minority Trust and Greta Gail Pilgrim Minority Trust.

“Founder Triggering Event” means the date on which any one or more of the following

shall have occurred with respect to both of Lonnie “Bo” Pilgrim and Lonnie Ken Pilgrim: death, resignation or having been determined to be incapacitated by a court of competent jurisdiction with respect to his ability to serve as a Director.

“independent director” has the meaning ascribed to such term in the applicable listing standards of the Exchange on which the Common Stock is then listed, or if the Common Stock is not then listed, then as such term is defined in Section 303A.02 of The New York Stock Exchange Listed Company Manual (or any successor rule).

“JBS Directors” means the six (6) initial Directors designated as “JBS Directors” on Schedule 3.01(a)(i) to the Stockholders Agreement, their successors as nominated by the JBS Nominating Committee pursuant to the Certificate of Incorporation and elected by the stockholders of the Corporation or appointed by the JBS Nominating Committee or the JBS Stockholder to fill any vacancy pursuant to Section 3.6; *provided* that, if at any time the ownership by the JBS Stockholder of the issued and outstanding Common Stock as a percentage of the total issued and outstanding Common Stock changes to a threshold amount set forth in Section 3.3, then the number of JBS Directors shall be changed to the corresponding number of JBS Directors set forth in Section 3.3.

“JBS Stockholder” means JBS USA Holdings, Inc. or any of its Affiliates.

“JBS USA” means JBS USA Holdings, Inc., or any successor thereto.

“Mandatory Exchange Transaction” has the meaning set forth in the Certificate of Incorporation.

“Minority Investors” means the stockholders of the Corporation other than the JBS Stockholder.

“Person” means any individual, partnership, company, firm, corporation, limited liability company, association, trust, unincorporated organization or other entity, as well as any syndicate or group that would be deemed to be a person under Section 13(d)(3) of the Exchange Act.

“Stockholders Agreement” means the Stockholders Agreement dated \_\_\_\_\_, 20\_\_ between the Corporation and JBS USA, a copy of which will be made available to any stockholder of the Corporation upon written request.

“Whole Board” means the total authorized number of Directors.

IN DUE CERTIFICATION WHEREOF, the undersigned, being the Secretary of PILGRIM’S PRIDE CORPORATION, confirms the adoption and approval of the foregoing Bylaws, effective as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
\_\_\_\_\_, Secretary

## **EXHIBIT D**

### **Summary of New Employee Incentive Plans**

## **EXHIBIT D**

### **Summary of New Employee Incentive Plans**

The following is a summary of the material terms of the Short Term Management Incentive Plan and the Long Term Incentive Plan.

#### ***1. Short Term Management Incentive Plan***

The Debtors have incorporated the Short Term Management Incentive Plan (the “STIP”) into the Plan, and seek to have such program approved in the Confirmation Order and to be implemented by the Reorganized PPC as of the Effective Date. Regular, full-time salaried, exempt employees of the Reorganized PPC and its affiliates who are selected by the administering committee are eligible to participate in the STIP.

The principal features of the STIP are summarized below, but the summary is qualified in its entirety by reference to the STIP itself, which is in substantially the form attached to the Plan as Exhibit D-1.

The STIP is being included in the Plan in order to preserve the Reorganized PPC’s federal income tax deduction for incentive compensation paid to certain executive officers based on the attainment of established performance goals. Accordingly, the STIP has been structured in a manner such that payments under the plan to individuals covered by Section 162(m) of the Internal Revenue Code of 1986 (as amended, the “IRC”), can satisfy the requirements for “performance-based” compensation, within the meaning of Section 162(m) of the IRC.

#### **Administration**

A committee of the Reorganized PPC’s Board of Directors (the “STIP Committee”), consisting solely of members who are “outside directors,” within the meaning of Section 162(m) of the IRC, will administer the STIP with respect to bonus awards granted under the STIP that are intended to qualify as performance-based compensation for purposes of Section 162(m) of the IRC. The STIP Committee will have the authority to interpret all provisions of the STIP, to adopt, amend, and rescind rules pertaining to the administration, interpretation and application of the STIP, and to make all other determinations necessary or advisable for the administration of the STIP, and to reduce, in its discretion, the amount of any bonus awards otherwise payable under the STIP. While it is anticipated that the Reorganized PPC’s Board of Directors will delegate all aspects of administration of the STIP to the STIP Committee, the STIP provides that the Reorganized PPC’s Board of Directors may exercise the rights and duties of the STIP Committee under the STIP except with respect to matters which under Section 162(m) of the IRC are required to be determined in the sole and absolute discretion of the STIP Committee.

#### **Eligibility**

Regular, full-time salaried exempt employees of the Reorganized PPC and any of its affiliates who, in the opinion of the STIP Committee, are employees whose performance can contribute to the successful management and financial success of the Reorganized PPC or an affiliate are eligible to be selected by the STIP Committee to participate in the STIP. The Reorganized PPC estimates that approximately 3,000 employees are eligible to participate in the STIP. The STIP Committee will determine which employees will be participants in the STIP.

## **STIP Operation**

Under the STIP, the STIP Committee may grant bonus awards that are intended to qualify as performance-based compensation within the meaning of Section 162(m) of the IRC and awards that are not intended to so qualify. Awards granted under the STIP are payable upon achievement of performance goals established by the STIP Committee.

For awards to covered employees that are intended to qualify as performance-based compensation under Section 162(m) of the IRC, within the earlier of 90 days after commencement of a performance period or the expiration of 25% of the performance period, the STIP Committee will designate or approve the following in writing in connection with the grant of an award:

- the performance period, which may consist of one or more periods of times, and which may be of varying and overlapping durations (for instance, the STIP Committee may determine that the bonus award may have a performance period that coincides with the fiscal year);
- objectively determined performance goals applicable to the performance periods;
- the maximum amount that may be paid upon achievement of the performance goals.

## **Performance Goals**

The performance goals, which, for purposes of awards to covered employees that are intended to qualify as performance-based compensation under Section 162(m) of the IRC, must be objectively determinable and substantially uncertain at the time they are established, will be set by the STIP Committee. Depending on the performance criteria used to establish the performance goals, the performance goals may be expressed in terms of overall Reorganized PPC's performance or the performance of an affiliate of the Reorganized PPC, or division or business unit of the Reorganized PPC or an affiliate. The performance goals may be measured in absolute terms or as compared to any incremental increase or as compared to the results of a peer group. The following performance criteria may be considered for purposes of awards that are intended to qualify as "performance-based" compensation under 162(m) of the IRC: interest, taxes, depreciation, amortization, restructuring costs or rental expenses; sales; economic value-added; cash flow (including, but not limited to, operating cash flow and free cash flow); cash flow return on capital; earnings per share of common stock (including earnings before any one or more of the following: interest, taxes, depreciation, or amortization); return on equity; return on capital; total stockholder return; return on invested capital; return on assets or net assets; return on sales; income or net income (either before or after taxes); operating earnings; operating income reductions or savings or expense management; funds from operations; appreciation in the fair market value of shares of common stock; working capital; market share; productivity; expense; operating efficiency; customer satisfaction; and safety record.

## **Adjustments**

At the time of grant, the STIP Committee may specify one or more objectively determinable adjustments that may be made to one or more of the performance goals.

## **Annual Award Limit**

The maximum aggregate amount that may be paid under all awards granted under the STIP that are intended to constitute performance-based compensation under Section 162(m) of the IRC to a covered employee during any fiscal year may not exceed \$10,000,000. The Reorganized PPC does not currently



intend to grant individual awards that approach the maximum allowable amount, but is asking for approval of this maximum amount to preserve necessary flexibility over the next five years.

### **Payment of Awards; Form of Payment**

Following completion of each performance period and prior to the distribution of any payment for an award granted under the STIP, the STIP Committee will determine whether the performance goals for the performance period were satisfied. Awards that are intended to qualify as performance-based compensation under Section 162(m) of the Code will be paid as soon as practicable after the STIP Committee has certified in writing that the participant has met the applicable performance goals unless the participant is eligible and authorized to defer receipt of the payment. In the case of awards to covered employees that are intended to qualify as performance-based compensation under Section 162(m) of the IRC, the STIP Committee retains the discretion to reduce (but not increase) the amount otherwise payable under an award granted pursuant to the STIP (including a reduction to zero).

Awards may be paid, at the option of the STIP Committee, in cash, or common stock of the Reorganized PPC, or in any combination of the foregoing.

### **Termination of Employment**

If a participant's employment with the Reorganized PPC or any of its affiliates is terminated for any reason other than death or disability prior to the end of a performance period, the participant will not have a right to payment with respect to the award, unless expressly authorized by the STIP Committee and doing so will not have the effect of preventing the award from qualifying as performance-based compensation under Section 162(m) of the IRC.

### **Amendment and Termination**

The STIP Committee or the Reorganized PPC's Board of Directors may amend, suspend or terminate the STIP at any time and from time to time. An amendment will be subject to stockholder approval only if such approval is necessary to maintain the STIP in compliance with Section 162(m) of the IRC. The STIP Committee or the Reorganized PPC's Board of Directors may not modify performance goals or adjustments applicable to any outstanding awards to the extent such modification would cause the award to fail to constitute qualified performance-based compensation.

### **Effective Date**

The STIP is effective with respect to the Reorganized PPC's fiscal year beginning September 27, 2009. The STIP will remain in effect subject to termination by the Reorganized PPC's Board of Directors or the STIP Committee at any time. Awards may be granted once the STIP becomes effective, but any awards that are intended to constitute performance-based compensation under Section 162(m) of the IRC that are granted before the STIP is approved by Debtors' stockholders will not be paid unless and until the STIP is approved.

## **2. *Long Term Incentive Plan***

The Debtors have incorporated the Long Term Incentive Plan (the "LTIP") into this Plan, and seek to have such program approved in the Confirmation Order and to be implemented by the Reorganized PPC as of the Effective Date. The LTIP will be applicable to certain of the Reorganized

PPC's employees and board members, and may entitle such employees and board members to New Debtors Common Stock and annual cash bonuses.

The principal features of the LTIP are summarized below, but the summary is qualified in its entirety by reference to the LTIP itself, which is in substantially the form attached to the Plan as Exhibit D-2.

The LTIP is intended to assist the Reorganized PPC in recruiting and retaining the best available personnel and to link the personal interests of the Reorganized PPC's key employees, consultants and directors to those of the Reorganized PPC's stockholders by providing such individuals with an incentive to generate superior returns to such stockholders.

### **Shares Subject to the LTIP**

The Plan provides for issuance of an aggregate number of shares of common stock in the Reorganized PPC equal to the lesser of (i) a number of shares equal to the quotient arrived at by dividing \$50,000,000 by the average of the per share closing prices on the Pink OTC Markets, or if the shares are not then traded on the Pink OTC Markets, on the principal exchange, market or quotation system on which the shares are then traded or listed, of the shares during the 10 consecutive trading days ending on (and including) the trading day immediately preceding the effective date of PPC's emergence from bankruptcy under Chapter 11 of the United States Bankruptcy Code, and (ii) 10,000,000 shares, which will be held by the Reorganized PPC and may be issued for the purposes of granting awards pursuant to the LTIP, all of which may be issued pursuant to the exercise of "incentive stock options" within the meaning of Section 422 of the IRC.

Any shares subject to an award that terminate, expire or are settled in cash will be available again for grant under the LTIP. Shares tendered or withheld as payment of the exercise price under an award or as a tax withholding for a payment of an award will also be available again for future grant under the LTIP. Shares issued by the Reorganized PPC to assume or substitute for outstanding awards of an entity acquired by the Reorganized PPC or related entities will not be counted against the shares available for issuance under the LTIP. The payment of dividend equivalent rights in cash will not be counted against the number of shares available for issuance under the LTIP. The shares ultimately distributed under the LTIP may consist of authorized and unissued shares, treasury shares or shares purchased on the open market.

### **Administration**

The LTIP will be administered by the Board of Directors of the Reorganized PPC unless such Board of Directors chooses to delegate administration responsibilities to be constituted in such a manner that will satisfy applicable law and stock exchange rules (the Board of Directors acting in this capacity or any committee appointed to so act are referred to herein as the "LTIP Committee"). The LTIP Committee will determine which eligible individuals are to receive awards under the LTIP, the type or types of award granted, the time or times when such awards are made, exercise price, grant price, purchase price, award restrictions, and vesting schedules. The LTIP Committee will also determine whether the exercise price of an award will be paid in cash, shares, other awards, or other property, and whether an award may be canceled, forfeited, or surrendered. The LTIP Committee may amend the terms of the LTIP and outstanding awards, except that no amendment will be effective without stockholder approval if stockholder approval is required by applicable laws or by the listing standards of the principal exchange on which the Reorganized PPC's common stock is traded, and amendments to outstanding awards may not materially and adversely impact the rights of a participant without the participant's prior written consent. The LTIP Committee does not have the authority to accelerate or delay issuance of shares under

an award if the acceleration or delay would be considered a deferral of compensation under Section 409A of the IRC, except to the extent that such acceleration or delay may, in the LTIP Committee's discretion, take effect in a manner that will not cause any person to incur taxes, interest or penalties under Section 409A of the IRC.

## **Equity Awards**

The LTIP provides for the following types of awards:

*Stock Options.* The LTIP provides for the grant of incentive stock options, or "ISOs," within the meaning of Section 422 of the IRC, and non-qualified stock options, or "NSOs," to employees, directors and consultants. ISOs may only be granted to employees of the Reorganized PPC or its subsidiaries. Options are granted with terms determined by the LTIP Committee, provided that ISOs are subject to statutory ISO limitations. Thus, the LTIP Committee determines the exercise price for a stock option within the terms and conditions of the LTIP Committee and applicable law, provided that the exercise price may not be less than 100% of the fair market value of the Reorganized PPC's common stock on the date of grant. Any person who owns more than 10% of the total combined voting power of all classes of the Reorganized PPC's stock and the stock of any parent or of any of the Reorganized PPC's subsidiaries (referred to herein as a "10% owner") may not be granted an ISO unless the exercise price is at least 110% of the fair market value of the Reorganized PPC's common stock on the date of grant. "Fair market value" is defined in the LTIP.

Options granted under the LTIP will vest at the rate specified by the LTIP Committee. The LTIP Committee may also substitute a stock appreciation right for a stock option any time before the option is exercised.

The term of any stock option granted under the LTIP may not exceed ten years, and the term of any ISO granted to a 10% owner may not exceed five years. However, if a participant's employment with the Reorganized PPC ends within ten years from the date an ISO is granted to him or her, the ISO may not expire later than three months after the participant ceases working for the Reorganized PPC, unless the participant terminates employment on account of disability or death, in which case the ISO may not expire later than one year after the date employment terminates.

Participants in the LTIP may pay the exercise price for the shares of stock underlying the granted options in cash, in shares of the Reorganized PPC's common stock held by the participant, or in other property of the participant that is acceptable to the LTIP Committee. The option may also be exercised through a broker-dealer sale and remittance procedure pursuant to which the participant effects a same day exercise of the option and sale of the purchased shares in order to cover the exercise price for the purchased shares and the applicable withholding taxes. In addition, the LTIP Committee may provide financial assistance to a participant who wishes to exercise his or her outstanding options, provided that the participant is not an executive officer or member of the Reorganized PPC's Board of Directors, by allowing the participant to deliver an interest-bearing promissory note in the amount of the exercise price and any associated withholding taxes.

*Restricted Stock.* A restricted stock award is a right to receive shares of the Reorganized PPC's common stock that are subject to restrictions established by the LTIP Committee. Participants who are granted restricted stock awards under the LTIP Committee may have restrictions on transferability, voting rights and the right to receive dividends on restricted stock awarded under the LTIP. The price that participants will pay for each share of restricted stock will be set by the LTIP Committee and will be paid in a form approved by the LTIP Committee, which may be cash, services rendered or to be rendered to the Reorganized PPC or a related entity, or in another form of payment.

*Stock Appreciation Rights.* Stock appreciation rights, or “SARs,” typically provide for payments to the holder based upon increases in the price of the Reorganized PPC’s common stock from the date the SAR was granted to the date that the right is exercised. Unlike an option, the participant is not required to pay an exercise price to exercise a SAR, but simply receives the net amount of the increase in the stock price. The LTIP Committee may elect to settle SARs in cash, in common stock, or in a combination of cash and common stock. The term of a SAR may not exceed ten years.

*Performance Share Awards.* Performance share awards are awards of shares of Reorganized PPC’s common stock due to satisfaction of performance criteria and assessment of the recipient’s contributions, responsibilities and other compensation as determined by the LTIP Committee, as of a specified date or dates or over a period or periods determined by the LTIP Committee.

*Performance Stock Units.* Performance stock units are denominated in unit equivalent of shares of the Reorganized PPC’s common stock and/or units of value, including dollar value of shares of the Reorganized PPC’s common stock. They may provide for payment based on specific performance criteria and assessment of the recipient’s contributions, responsibilities and other compensation determined by the LTIP Committee, as of a specified date or dates or over a period or periods determined by the LTIP Committee.

*Dividend Equivalent Rights.* Dividend equivalent rights are rights to receive the equivalent value, in cash or common stock, of dividends paid on shares that are subject to any award under the LTIP. If dividend equivalent rights are granted, they would be credited as of the dividend payment dates, if any, that occur between an award’s date of grant and date of exercise, vesting, or expiration, as determined by the LTIP Committee. Dividend equivalents are converted to cash or shares by a formula, at a time and with the limitations that are set by the LTIP Committee.

*Restricted Stock Units.* Restricted stock units are denominated in unit equivalent of shares of the Reorganized PPC’s common stock and are typically awarded to participants without payment of consideration. They are subject to vesting conditions based upon a schedule or performance criteria established by the LTIP Committee. Unlike restricted stock, the stock underlying restricted stock units will not be issued until the restricted stock units have vested. In addition, recipients of restricted stock units generally have no voting or dividend rights until the vesting conditions are satisfied. Restricted stock units may be settled in shares of the Reorganized PPC’s common stock, cash or a combination of both.

*Performance Bonus Awards.* Performance bonus awards are cash bonuses that are paid upon achievement of performance goals that are established by the LTIP Committee as of a specified date or dates or over a period or periods determined by the LTIP Committee. These awards are intended to comply with IRS requirements under Section 162(m) of the IRC for performance-based compensation.

*Other Awards.* The LTIP Committee may make other types of awards under the LTIP as long as the awards are consistent with the terms of the LTIP, and they involve either issuance of shares, vesting based on the passing of time, occurrence of one or more events, satisfaction of performance criteria, or issuance of another security which derives its value from the value of the Reorganized PPC’s common stock.

*Performance-Based Awards.* Performance-based awards include awards other than options or SARs that comply with IRS requirements under Section 162(m) of the IRC for performance-based compensation. The LTIP Committee may designate employees as “covered employees” whose compensation for a given fiscal year may be subject to the limit on deductible compensation imposed by

Section 162(m) of the IRC. The LTIP Committee may grant to covered employees awards that are paid, vest or become exercisable upon the attainment of Reorganized PPC's performance criteria established by the LTIP Committee that are related to one or more performance goals as applicable to the Reorganized PPC or any of the Reorganized PPC's subsidiaries, divisions or operating units, or the performance of an individual. The following performance criteria may be considered for purposes of awards that are intended to qualify as "performance-based" compensation under 162(m) of the IRC: revenue; earnings or net earnings (including earnings before any one or more of the following: interest, taxes, depreciation, or amortization); sales; economic value-added; cash flow (including, but not limited to, operating cash flow and free cash flow); cash flow return on capital; earnings per share of common stock (including earnings before any one or more of the following: interest, taxes, depreciation, amortization, restructuring costs or rental expenses); return on equity; return on capital; total stockholder return; return on invested capital; return on assets or net assets; return on sales; income or net income (either before or after taxes); operating earnings; operating income or net operating income; operating profit or net operating profit; operating or net profit margin; cost reductions or savings or expense management; funds from operations; appreciation in the fair market value of shares of common stock; working capital; market share; productivity; expense; operating efficiency; customer satisfaction; and safety record.

At the time of grant, the LTIP Committee may specify one or more objectively determinable adjustments set forth in the LTIP that may be made to one or more of the performance goals.

No participant in the LTIP may receive more than 5 million shares of common stock per fiscal year pursuant to awards granted under the LTIP that are intended to comply with Section 162(m) of the IRC. The maximum cash amount paid during any fiscal year for awards that are intended to comply with Section 162(m) of the IRC (including performance bonus awards) to a single participant is \$10 million. If an award is canceled, the canceled award will continue to count against the maximum number of shares that the participant who was granted the award may receive for the fiscal year in which the cancellation occurs.

### **Eligibility**

The individuals eligible to participate in the LTIP include the Reorganized PPC's officers and other employees, members of the Reorganized PPC's Board of Directors and any consultants hired by the Reorganized PPC, as well as employees, members of the boards of, and any consultants to, the Reorganized PPC's affiliates, except that only employees of the Reorganized PPC or its subsidiaries may be granted ISOs.

### **Change in Control**

The LTIP contains a change in control provision, which may result in the accelerated vesting of outstanding awards. In the event of a change in control of the Reorganized PPC (for example, acquisition by merger or asset sale), each award outstanding under the LTIP will immediately vest, unless the award is converted, assumed or replaced by the successor corporation. In connection with a change in control, the LTIP Committee may permit a participant to exercise his or her awards during a period of time determined by the LTIP Committee. A change in control is generally defined as:

- a direct or indirect sale or other disposition of all or substantially all the assets of the Reorganized PPC other than to a direct or an indirect subsidiary of the Reorganized PPC;
- the consummation of any transaction (including, without limitation, any merger, consolidation or recapitalization) to which the Reorganized PPC is a party, the result of which is that immediately after the transaction the stockholders of the Reorganized PPC immediately prior to



the transaction hold less than 50.1% of the total voting power generally entitled to vote in the election of directors, managers or trustees of the Reorganized PPC that survives the transaction;

- the direct or indirect acquisition of more than 50% of the total voting stock of the Reorganized PPC;
- during any two consecutive years, individuals who at the beginning of the two-year period constituted the members of the Reorganized PPC's Board of Directors (together with any new directors whose election or nomination was approved by a vote of a majority of the directors then still in office who were either directors at the beginning of the two-year period or whose election or nomination for election was previously so approved) cease for any reason to constitute a majority of the members of the Reorganized PPC's Board of Directors then in office; or
- the adoption of a plan for the liquidation or dissolution of the Reorganized PPC.

### **Adjustment Upon Changes in Capitalization**

In the event of any stock dividend, stock split, combination or exchange of shares, merger, consolidation, other distribution (other than normal cash dividends) of assets to the Reorganized PPC's stockholders, or any other change affecting the Reorganized PPC's common stock other than certain equity restructurings enumerated in the LTIP, the LTIP Committee will make appropriate adjustments in the number and type of shares subject to the LTIP, the terms and conditions of any award outstanding under the LTIP, and the grant or exercise price of any such award. In the case of certain equity restructurings specified in the LTIP, the number and types of securities subject to each outstanding award and the grant or exercise price will be adjusted without any discretion on the part of the LTIP Committee.

### **Amendment and Termination of the LTIP**

With the approval of the Reorganized PPC's Board of Directors, the LTIP Committee may suspend or terminate the LTIP, or any part thereof, at any time and for any reason. With the approval of the Reorganized PPC's Board of Directors, the LTIP Committee may also amend the LTIP from time to time, except that the LTIP Committee may not, without prior stockholder approval, amend the LTIP in any manner which would require stockholder approval to comply with any applicable laws, regulations or rules. No action by the Reorganized PPC's Board of Directors, the LTIP Committee or the Reorganized PPC's stockholders may alter or impair any award previously granted under the LTIP without the consent of the participant. Unless terminated earlier, the LTIP shall terminate ten years from the date of its approval by the Reorganized PPC's stockholders, except that ISOs may not be granted following the tenth anniversary of the date the Reorganized PPC's Board of Directors adopted the LTIP.

### **Repricing of Certain Awards**

The LTIP permits the LTIP Committee in its sole discretion to amend the terms of any outstanding option or SAR under the LTIP to reduce its exercise price and to cancel and replace any outstanding options or SARs with grants having a lower exercise price.

**EXHIBIT D-1**

**Short Term Management Incentive Plan**



**PILGRIM'S PRIDE CORPORATION**  
**SHORT-TERM MANAGEMENT INCENTIVE PLAN**

Pilgrim's Pride Corporation, a Delaware corporation (the "Company"), hereby establishes the Pilgrim's Pride Corporation Short-Term Management Incentive Plan (the "Plan"). The purpose of the Plan is to advance the interests of Pilgrim's Pride Corporation and its stockholders by establishing a direct relationship between the payment of bonuses to certain of the officers and other employees of the Company or its Affiliates (as this term is hereinafter defined) and the financial success of the Company in order to enhance stockholder value.

**ARTICLE I.**

**DEFINITIONS**

Wherever the following terms are used in the Plan they shall have the meanings specified below, unless the context clearly indicates otherwise. The singular pronoun shall include the plural where the context so indicates.

Section 1.1 – Affiliate. "Affiliate" means any entity (a) in which the Company has a significant equity interest, or (b) that directly or through one or more intermediaries is controlled by the Company, in each case, as determined by the Committee.

Section 1.2 – Board. "Board" means the Board of Directors of the Company.

Section 1.3 – Bonus Award. "Bonus Award" shall be a bonus award granted pursuant to and in accordance with the terms and conditions of this Plan.

Section 1.4 – Code. "Code" shall mean the Internal Revenue Code of 1986, as amended.

Section 1.5 – Committee. "Committee" shall mean the Compensation Committee of the Board, or such other committee or subcommittee as may be appointed by the Board in accordance with Section 5.1 hereof.

Section 1.6 – Common Stock. "Common Stock" shall mean the common stock, par value \$0.01 per share, of the Company.

Section 1.7 – Director. "Director" shall mean a member of the Board.

Section 1.8 – Disability. "Disability" means that a Participant is unable to carry out the responsibilities and functions of the position held by the Participant by reason of any medically determined physical or mental impairment for a period of not less than ninety (90) consecutive days. A Participant shall not be considered to have incurred a Disability unless he or she furnishes proof of such impairment, such as a treating physician's written certification, sufficient to satisfy the Board in its discretion.

Section 1.9 – Eligible Individual. “Eligible Individual” shall mean a regular full-time salaried, exempt employee of the Company or any Affiliate who, in the opinion of the Committee, is a employee whose performance can contribute to the successful management and financial success of the Company or an Affiliate.

Section 1.10 – Fair Market Value. “Fair Market Value” shall have the meaning ascribed to such term in the Long Term Incentive Plan.

Section 1.11 – GAAP. “GAAP” shall mean United States generally accepted accounting principles.

Section 1.12 – Long Term Incentive Plan. “Long Term Incentive Plan” shall mean the Pilgrim’s Pride Corporation Long Term Incentive Plan, as amended from time to time.

Section 1.13 – Participant. “Participant” shall mean any Eligible Individual selected by the Committee, in its sole discretion, to be granted the right to earn a Bonus Award.

Section 1.14 – Performance Goals. “Performance Goals” shall have the meaning set forth in Section 2.2 hereof.

Section 1.15 – Performance Period. “Performance Period” shall mean one or more periods of time, which may be of varying and overlapping durations, as the Committee may select, over which the attainment of one or more Performance Goals will be measured for the purpose of determining a Participant’s right to, and payment of, a Bonus Award.

Section 1.16 – Qualified Performance-Based Compensation. “Qualified Performance-Based Compensation” means any compensation that is intended to qualify as “qualified performance-based compensation” as described in Section 162(m)(4)(C) of the Code.

## **ARTICLE II.**

### **BONUS AWARDS**

Section 2.1 – Participants; Bonus Awards. The Committee, in its sole discretion, may grant Bonus Awards with regard to any given Performance Period to one or more of the Eligible Individuals the Committee selects. At the time a Bonus Award is granted pursuant to this Section 2.1, the Committee shall specify the maximum bonus amount to be paid upon the achievement of the Performance Goals established in accordance Section 2.2 hereof, subject to Section 2.4 hereof.

Section 2.2 – Performance Goals. For each Performance Period with regard to which one or more Eligible Individuals is selected by the Committee to receive a Bonus Award, the Committee shall establish in writing one or more objectively determinable Performance Goals for such Bonus Award, based upon one or more of the following performance criteria, any of which may be measured either in absolute terms or as compared to any incremental increase or as compared to the results of a peer group: revenue; earnings or net earnings (including earnings before or after any one or more of the following: interest, taxes, depreciation,

amortization, restructuring costs or rental expenses); sales; economic value-added; cash flow (including, but not limited to, operating cash flow and free cash flow); cash flow return on capital; earnings per share of Common Stock (including earnings before any one or more of the following: interest, taxes, depreciation, or amortization); return on equity; return on capital; total stockholder return; return on invested capital; return on assets or net assets; return on sales; income or net income (either before or after taxes); operating earnings; operating income or net operating income; operating profit or net operating profit; operating or net profit margin; cost reductions or savings or expense management; funds from operations; appreciation in the Fair Market Value of shares of Common Stock; working capital; market share; productivity; expense; operating efficiency; customer satisfaction; and safety record.

In addition, for Bonus Awards not intended to qualify as Qualified Performance-Based Compensation, the Committee may establish Performance Goals based on other performance criteria as it deems appropriate in its sole discretion. Depending on the performance criteria used to establish such Performance Goals, the Performance Goals may be expressed in terms of overall Company performance or the performance of an Affiliate, a division or business unit. The Committee, in its sole discretion, may specify different Performance Goals for each Bonus Award. For Bonus Awards that are intended to constitute Qualified Performance-Based Compensation, the Committee shall, within the time prescribed by Section 162(m) of the Code, define in an objective fashion the manner of determining whether and to what extent the specified Performance Goal has been achieved for the Performance Period to the extent the Committee elects not to determine achievement of the Performance Goal in accordance with GAAP or in the event determination of achievement in accordance with GAAP would not satisfy the requirements of Section 162(m) of the Code.

Section 2.3 – Adjustments to Performance Goals. For each Bonus Award, the Committee, in its discretion, may, at the time of grant, specify in the Bonus Award that one or more objectively determinable adjustments shall be made to one or more of the Performance Goals established under Section 2.2 hereof. Such adjustments may include or exclude one or more of the following: items that are extraordinary or unusual in nature or infrequent in occurrence, including one-time or non-recurring items; items related to a change in accounting principles under GAAP; items related to financing activities; expenses for restructuring or productivity initiatives; other non-operating items; items related to acquisitions, including transaction-related charges and amortization; items attributable to the business operations of any entity acquired by the Company during the Performance Period; items related to the disposal of a business or segment of a business; items related to discontinued operations that do not qualify as a segment of a business under GAAP; taxes; stock-based compensation; non-cash items; and any other items of significant income or expense which are determined to be appropriate adjustments.

Section 2.4 – Award Limit. The maximum aggregate amount of all Bonus Awards intended to constitute Qualified Performance-Based Compensation granted to a Participant with regard to any fiscal year shall not exceed \$10,000,000. For purposes of this Section 2.4, Bonus Award payments made in shares of Common Stock shall count against the aggregate Bonus Award limit based upon the Fair Market Value of such shares on the date the Bonus Award is paid. For purposes of Bonuses Awards awarded in the Company's fiscal year beginning September 27, 2009, the amount of the Bonus Awards for achieving 100% of target shall be in accordance with the schedule attached hereto as Attachment A.

Section 2.5 – Other Incentive Awards. The Plan is not the exclusive means for the Committee to award incentive compensation to Participants and does not limit the Committee from making additional discretionary incentive awards. No employee of the Company or any Affiliate has a guaranteed right to any discretionary bonus as a substitute for a Bonus Award in the event that Performance Goals are not met.

### **ARTICLE III.**

#### **PAYMENT OF BONUS AWARD**

Section 3.1 – Form of Payment. Each Participant's Bonus Award may be paid, at the option of the Committee, in cash, or in Common Stock, or in any combination of cash and Common Stock. Bonus Award payments made in Common Stock shall be made in accordance with the provisions of the Long Term Incentive Plan.

Section 3.2 – Certification. Following the completion of each Performance Period and, subject to Section 3.4, prior to the distribution of any payment for a Bonus Award intended to constitute Qualified Performance-Based Compensation that is granted under the Plan with respect to such Performance Period, the Committee shall certify in writing whether the applicable Performance Goals were achieved for the Performance Period to which the Bonus Award relates.

Section 3.3 – Negative Discretion. In determining the amount payable to a Participant with respect to the Participant's Bonus Award that is intended to qualify as Qualified Performance-Based Compensation, the Committee shall have the right, in its sole discretion, to reduce or eliminate (but not increase) the amount otherwise payable under the Bonus Award to take into account recommendation of the Chief Executive Officer of the Company and such additional factors, if any, that the Committee may deem relevant to the assessment of individual or corporate performance for the Performance Period. In the case of Bonus Awards that are not intended to qualify as Qualified Performance-Based Compensation, the Committee shall retain the right, in its sole discretion, to reduce, increase or eliminate, the amount otherwise payable under the Bonus Award. Anything to the contrary in the foregoing notwithstanding, in no event shall any such reduction or elimination of the amount payable under a Bonus Award contemplated in the foregoing sentences increase the amount payable under a Bonus Award that is intended to qualify as a Qualified Performance-Based Compensation.

Section 3.4 – Timing of Payment. Unless otherwise determined by the Committee, each Bonus Award shall be paid as soon as practicable after the Committee certifies in writing that the Performance Goals specified for such Bonus Award were in fact satisfied; provided, however, that unless the Participant is eligible for (as determined by the Committee in its sole discretion) and has elected to defer receipt of a portion or all of the payment of the Bonus Award in accordance with the terms of the applicable deferred compensation plan of the Company, any Bonus Award that has been earned shall be paid within such period that would allow the payment to satisfy the "short-term deferral period," within the meaning of Section 409A of the Code.

Section 3.5 – Employment Termination. If a Participant's employment with the Company (or any of its Affiliates, as applicable) is terminated for any reason other than death

or Disability prior to the end of the Performance Period to which a Bonus Award relates, all of the Participant's rights under the Plan shall terminate and the Participant shall not have any right to receive any further payments with respect to any Bonus Award granted under the Plan; provided, however, that the Committee may, in its sole discretion, provide for full or partial payment of the Bonus Award upon a Participant's employment termination for any reason prior to the completion of a Performance Period to which a Bonus Award relates, provided the payment of the Bonus Award is made in compliance with Section 409A of the Code, and, in the case of a Bonus Award that is intended to qualify as Qualified Performance-Based Compensation, such payment would not prevent the Bonus Award to so qualify. The Committee, in its discretion, may determine what portion, if any, of the Participant's Bonus Award under the Plan should be paid if the Participant's employment has been terminated by reason of death or Disability.

#### **ARTICLE IV.**

##### **SECTION 162(M) OF THE CODE**

Section 4.1 – Qualified Performance-Based Compensation. The Committee, in its discretion, may determine whether a Bonus Award is to qualify as Qualified Performance-Based Compensation, and may take such actions as it may deem necessary to ensure that such Bonus Award will so qualify. Any such Bonus Award shall be subject to any additional limitations set forth in Section 162(m) of the Code (including any amendment to Section 162(m) of the Code) and any Treasury Regulations or rulings issued thereunder that are requirements for qualifications as Qualified Performance-Based Compensation, and the Plan shall be deemed amended to the extent necessary to conform to such requirements.

##### Section 4.2 – Performance Goals.

(a) The Committee may, in its discretion, establish the specific Performance Goal or Goals under Section 2.2 hereof that must be achieved in order for a Participant to become eligible to receive a Bonus Award payment (including any specific adjustments to be made under Section 2.3 hereof). The Performance Goals (including any adjustments) shall be established in writing by the Committee; provided, however, that the achievement of such Performance Goals shall be substantially uncertain at the time such Performance Goals are established in writing.

(b) With respect to any Bonus Award that the Committee determines should qualify as Qualified Performance-Based Compensation, the applicable Performance Goals described in Section 2.2 hereof (including any adjustments to be made under Section 2.3 hereof) shall be established in writing no later than the 90th day following the commencement of the Performance Period to which the Performance Goals relate; provided, however, that in no event shall the Performance Goals be established after 25% of the Performance Period (as scheduled in good faith at the time the Performance Goals are established) has elapsed.

## ARTICLE V.

### ADMINISTRATION

#### Section 5.1 – Committee.

(a) For Bonus Awards that are intended to qualify as Qualified Performance-Based Compensation, the Committee shall consist solely of two or more Directors appointed by and holding office at the pleasure of the Board, each of whom constitutes an “outside director” within the meaning of Section 162(m)(4)(C) of the Code and the Treasury Regulations thereunder. In the case of Bonus Awards that are not intended to constitute Qualified Performance-Based Compensation, the Committee may consist of two or more Directors appointed by and holding office at the pleasure of the Board; provided, that, to the extent permitted by applicable law, the Committee may also consist of one or more officers of the Company in the case of Bonus Awards not intended to constitute Qualified Performance-Based Compensation granted to Eligible Individuals who are not (i) subject to Section 16 of the Exchange Act of 1934, as amended, (ii) officers of the Company who have been appointed to serve on the Committee as contemplated hereunder.

(b) Unless otherwise provided in the Company’s certificate of incorporation or by-laws or in the charter of the Committee, appointment of Committee members shall be effective upon acceptance of appointment. Committee members may resign at any time by delivering written notice to the Board. Vacancies in the Committee shall be filled by the Board.

Section 5.2 – Duties and Powers of Committee. It shall be the duty of the Committee to conduct the general administration of the Plan in accordance with its provisions. The Committee shall have the power to interpret the Plan, and to adopt such rules for the administration, interpretation and application of the Plan as are consistent therewith and to interpret, amend or revoke any such rules. In its absolute discretion, the Board may at any time and from time to time exercise any and all rights and duties of the Committee under the Plan except with respect to matters which under Section 162(m) of the Code are required to be determined in the sole and absolute discretion of the Committee.

Section 5.3 – Determinations of the Committee or the Board. All actions taken and all interpretations and determinations made by the Committee or the Board in good faith shall be final and binding upon all Participants, the Company and all other interested persons. No members (or former members) of the Committee or the Board shall be personally liable for any action, inaction, determination or interpretation made in good faith with respect to the Plan or any Bonus Award, and all members of the Committee and the Board shall be fully protected by the Company in respect of any such action, determination or interpretation. The Committee may employ such accountants, legal counsel, consultants and agents as it may deem desirable for the administration of the Plan and may rely upon any opinion received from any counsel or consultant and any computation received from any consultant or agent.

Section 5.4 – Majority Rule; Unanimous Written Consent. The Committee shall act by a majority of its members in office. The Committee may act either by majority vote at a meeting or by a written consent or other written instrument signed by all of the members of the Committee.



## ARTICLE VI.

### **OTHER PROVISIONS**

Section 6.1 – Amendment, Suspension or Termination of the Plan. This Plan may be wholly or partially amended or otherwise modified, suspended or terminated at any time or from time to time by the Board or the Committee. However, with respect to Bonus Awards granted under the Plan which the Committee determines should constitute Qualified Performance-Based Compensation, no action of the Board or the Committee may modify the Performance Goals (or adjustments) applicable to any outstanding Bonus Award, to the extent such modification would cause the Bonus Award to fail to constitute Qualified Performance-Based Compensation.

Section 6.2 – Effective Date. This Plan shall be effective with respect to the Company's fiscal year beginning September 27, 2009, subject to, and conditioned upon, the issuance of an order of the United States Bankruptcy Court for the Northern District of Texas, Fort Worth Division, or another court having jurisdiction over the case pending under Chapter 11 of the United States Bankruptcy Code wherein the Company is debtor and debtor-in-possession, approving the terms of this Plan in the form hereof. The Committee may grant Bonus Awards at any time on or after the date the Plan becomes effective, provided that any Bonus Award that is intended to constitute Qualified Performance-Based Compensation shall not be paid unless and until the Plan is approved by the Company's stockholders in accordance with Section 6.3 hereof.

Section 6.3 – Approval of Plan by Stockholders.

(a) This Plan shall be submitted for the approval of the Company's stockholders as soon practicable following the date the Plan becomes effective.

(b) The Plan shall be subject to reapproval by the stockholders of the Company not later than the first stockholder meeting that occurs in the fifth year following the year in which the stockholders last approved the Plan, as required under the Treasury Regulations pursuant to Section 162(m) of the Code. In the event that the Plan is not so reapproved, no Bonus Award that is granted after the date contemplated by the foregoing sentence and that is intended to constitute Qualified Performance-Based Compensation shall become payable.

Section 6.4 – No Fiduciary Relationship. The Board and the officers of the Company shall have no duty to manage or operate in order to maximize the benefits granted to the Participants hereunder, but rather shall have full discretionary power to make all management and operational decisions based on their determination of their respective best interests. This Plan shall not be construed to create a fiduciary relationship between such Board or the officers of the Company and the Participants.

Section 6.5 – Governing Law. This Plan, and all controversies arising thereunder or related thereto, shall be governed by and construed in accordance with the laws of the State of Texas without regard to principles of conflict of laws that would apply any other law.



Section 6.6 – No Employment Guarantee. Nothing in this Plan shall be construed as an employment contract or a guarantee of continued employment. The rights of any Participant shall only be those as are expressly set forth in this Plan.

Section 6.7 – General Creditor Status. The Participants shall, in no event, be regarded as standing in any position, if at all, other than as a general creditor of the Company with respect to any rights derived from the existence of the Plan and shall receive only the Company's unfunded and unsecured promise to pay benefits under the Plan.

Section 6.8 – Nonalienation of Benefits. Except as expressly provided herein, no Participant or his beneficiaries shall have the power or right to transfer, anticipate, or otherwise encumber the Participant's interest under the Plan. The Company's obligation under this Plan are not assignable or transferable except to a corporation that acquires all or substantially all of the assets of the Company or any corporation into which the Company may be merged or consolidated. The provisions of the Plan shall inure to the benefit of each Participant and his beneficiaries, heirs, executors, administrators or successors in interest.

Section 6.9 – Severability. If any provision of this Plan is held unenforceable, the remainder of the Plan shall continue in full force and effect without regard to such unenforceable provision and shall be applied as though the unenforceable provision were not contained in the Plan.

Section 6.10 – Code Section 409A. The grant and payment of the Bonus Awards are intended to be exempt from Section 409A of the Code under the short-term deferral exception available under Section 409A of the Code, or, to the extent the receipt of payment of the Bonus Awards is deferred in accordance with Section 3.4 hereof, are intended to comply with Section 409A of the Code, and the Plan shall be administered, and any ambiguities thereunder shall be interpreted, consistent with the foregoing. In furtherance of this interest, any provision in the Plan to the contrary notwithstanding, the Committee may amend the terms of the Plan and/or of an outstanding Bonus Award, or take such other action the Committee determines is necessary or appropriate, in each case, without the Participant's consent, to exempt any outstanding Bonus Award from or to allow any such Bonus Award to comply with Section 409A of the Code, but only to the extent that any such amendments or action by the Board would not violate Section 409A of the Code. Anything in the foregoing to the contrary notwithstanding, - the Company shall have no liability to a Participant or any other party if the Bonus Award that is intended to be exempt from or comply with Section 409A of the Code is not so exempt or compliant or for any action taken by the Committee with respect thereto. The Company makes no representation that any Bonus Award is exempt from or complies with Section 409A of the Code.

Section 6.11 – Tax Withholding. The Company shall have the authority and the right to deduct or withhold, or require a Participant to remit to the Company, an amount sufficient to satisfy federal, state, local and foreign taxes required by law to be withheld with respect to any taxable event concerning a Participant arising in connection with a Bonus Award.

\* \* \* \*

I hereby certify that the foregoing Plan was duly adopted by the Board of Directors of Pilgrim's Pride Corporation on \_\_\_\_\_, 2009.

\* \* \* \* \*

I hereby certify that the foregoing Plan was approved by the stockholders of Pilgrim's Pride Corporation on \_\_\_\_\_, 2009 and by the United States Bankruptcy Court for the Northern District of Texas, Fort Worth Division, pursuant to a joint Chapter 11 plan of reorganization pursuant to Section 1121(a) of the United States Code, on \_\_\_\_\_, 2009.

Executed on this \_\_\_\_ day of \_\_\_\_\_, 2009.

---

Corporate Secretary

ATTACHMENT A

| <b>FY2010 Approved Target Bonus Award Amounts (% of Base Salary)</b> |      |
|--|------|
| CEO & CFO  | 100% |
| EVP Operations   | 75%  |
| EVP Sales and Marketing  | 75%  |
| EVP Human Resources  | 70%  |
| SVP and SRVP   | 70%  |
| VP   | 40%  |
| Complex Manager Grade 11   | 30%  |
| Other Grade 11 and 12  | 30%  |
| Grade 10   | 25%  |
| Grade 9  | 20%  |
| Grade 8  | 15%  |
| Grade 7  | 10%  |
| Grade 6  | 10%  |
| Grade 5  | 8%   |
| Grade 4  | 8%   |
| Grade 1, 2 & 3   | 5%   |

**EXHIBIT D-2**

**Long Term Incentive Plan**

## **PILGRIM'S PRIDE CORPORATION**

### **LONG TERM INCENTIVE PLAN**

#### **ARTICLE 1. PURPOSES OF THE PLAN**

The purposes of the Pilgrim's Pride Corporation Long Term Incentive Plan (the "Plan") are to attract and retain the best available personnel, to provide additional incentives to Employees, Directors and Consultants and to promote the success and enhance the value of the Company's business by linking the personal interests of the Directors, Employees, and Consultants to those of Company stockholders and by providing such individuals with an incentive for outstanding performance to generate superior returns to Company stockholders.

#### **ARTICLE 2. DEFINITIONS**

Wherever the following terms are used in the Plan they shall have the meanings specified below, unless the context clearly indicates otherwise. The singular pronoun shall include the plural where the context so indicates.

2.1 "Affiliate" means (a) a Subsidiary, (b) any entity in which the Company has a significant equity interest, or (c) any entity that directly or through one or more intermediaries is controlled by the Company, in each case, as determined by the Committee.

2.2 "Award" means an Option, an award of Restricted Stock, a Stock Appreciation Right, an award of Performance Shares, an award of Performance Stock Units, a Dividend Equivalent Right, an award of Restricted Stock Units, a Performance Bonus Award, a Performance-Based Award or any other right or benefit, including any other Award under Article 8, granted to a Participant pursuant to the Plan.

2.3 "Award Agreement" means any written agreement, contract, or other instrument or document evidencing the terms and conditions of an Award, including through electronic medium.

2.4 "Board" means the Board of Directors of the Company.

2.5 "Change in Control" shall mean the occurrence of any of the following events:

(a) a direct or indirect sale, transfer, conveyance or other disposition (other than by way of merger or consolidation) of all or substantially all the assets of the Company and its subsidiaries taken as a whole to any "person" or "group" (as such terms are used in Section 13(d)(3) of the Exchange Act) as an entirety or substantially as an entirety in one transaction or series of transactions;

(b) the consummation of any transaction (including, without limitation, any merger, consolidation or recapitalization) to which the Company is a party the result of which is that immediately after such transaction the stockholders of the Company immediately prior to

such transaction hold less than 50.1% of the total voting power generally entitled to vote in the election of directors, managers or trustees of the person surviving such transaction;

(c) any “person” or “group” (as such terms are used in Section 13(d)(3) of the Exchange Act) becomes the ultimate “beneficial owner,” as defined in Rule 13d-3 under the Exchange Act, of more than 50% of the total voting power generally entitled to vote in the election of directors, managers or trustees of the Company on a fully-diluted basis;

(d) during any period of two consecutive years, individuals who at the beginning of such period constituted the members of the Board (together with any new directors whose election by such Board or whose nomination for election by the stockholders of the Company was approved by a vote of a majority of the directors then still in office who were either directors at the beginning of such period or whose election or nomination for election was previously so approved) cease for any reason to constitute a majority of the members of the Board then in office; or

(e) the adoption of a plan for the liquidation or dissolution of the Company.

The Committee shall have full and final authority, which shall be exercised in its discretion, to determine conclusively whether a Change in Control of the Company has occurred pursuant to the above definition, and the date of the occurrence of such Change in Control and any incidental matters relating thereto.

2.6 “Code” means the U.S. Internal Revenue Code of 1986, as amended.

2.7 “Committee” means the committee of the Board appointed or described in Article 12 to administer the Plan.

2.8 “Common Stock” means the common stock of the Company, par value \$0.01 per share, and such other securities of the Company that may be substituted for the Common Stock pursuant to Article 11.

2.9 “Company” means Pilgrim’s Pride Corporation, a Delaware corporation.

2.10 “Consultant” means any consultant or adviser if: (a) the consultant or adviser renders bona fide services to the Company or any Affiliate; (b) the services rendered by the consultant or adviser are not in connection with the offer or sale of securities in a capital-raising transaction and do not directly or indirectly promote or maintain a market for the Company’s securities; and (c) the consultant or adviser is a natural person.

2.11 “Covered Employee” means an Employee who is, or could be, a “covered employee” within the meaning of Section 162(m) of the Code.

2.12 “Director” means a member of the Board, or as applicable, a member of the board of directors of a Subsidiary.

2.13 “Disability” means that a Participant is unable to carry out the responsibilities and functions of the position held by the Participant by reason of any medically determined physical

or mental impairment for a period of not less than ninety (90) consecutive days. A Participant shall not be considered to have incurred a Disability unless he or she furnishes proof of such impairment, such as a treating physician's written certification, sufficient to satisfy the Board in its discretion. Notwithstanding the foregoing, for purposes of Incentive Stock Options granted under the Plan, "Disability" means the Participant is disabled within the meaning of Section 22(e)(3) of the Code.

2.14 "Dividend Equivalent Right" means a right granted to a Participant pursuant to Section 8.3 hereof to receive the equivalent value (in cash or Shares) of dividends paid on the Shares.

2.15 "Effective Date" shall have the meaning set forth in Section 13.1 hereof.

2.16 "Eligible Individual" means any person who is an Employee, a Consultant or a Director, as determined by the Committee.

2.17 "Employee" means a full time or part time employee of the Company or any Affiliate, including an officer or Director, who is treated as an employee in the personnel records of the Company or Affiliate for the relevant period, but shall exclude individuals who are classified by the Company or Affiliate as (a) leased from or otherwise employed by a third party, (b) independent contractors or (c) intermittent or temporary, even if any such classification is changed retroactively as a result of an audit, litigation or otherwise. A Participant shall not cease to be an Employee in the case of (i) any vacation or sick time or otherwise approved paid time off in accordance with the Company or an Affiliate's policy or (ii) transfers between locations of the Company or between the Company and/or any Affiliate. Neither services as a Director nor payment of a director's fee by the Company or an Affiliate shall be sufficient to constitute "employment" by the Company or any Affiliate.

2.18 "Equity Restructuring" shall mean a nonreciprocal transaction between the company and its stockholders, such as a stock dividend, stock split, spin-off, rights offering or recapitalization through a large, nonrecurring cash dividend, that affects the Shares (or other securities of the Company) or the price of Shares (or other securities) and causes a change in the per share value of the Shares underlying outstanding Awards.

2.19 "Exchange Act" means the U.S. Securities Exchange Act of 1934, as amended.

2.20 "Fair Market Value" means, as of any given date, (a) if Shares are traded on any established stock exchange, the closing price of a Share as quoted on the principal exchange on which the Shares are listed, as reported in the *Wall Street Journal* (or such other source as the Company may deem reliable for such purposes) for such date, or if no sale occurred on such date, the first trading date immediately prior to such date during which a sale occurred; or (b) if Shares are not traded on an exchange but are regularly quoted on a national market or other quotation system, the closing sales price on such date as quoted on such market or system, or if no sales occurred on such date, then on the date immediately prior to such date on which sales prices are reported; or (c) in the absence of an established market for the Shares of the type described in (a) or (b) of this Section 2.20, the fair market value established by the Committee acting in good faith.



2.21 “Incentive Stock Option” means an Option that is intended to meet the requirements of Section 422 of the Code or any successor provision thereto.

2.22 “Independent Director” means a Director of the Company who is not an Employee.

2.23 “Non-Employee Director” means a Director of the Company who qualifies as a “Non-Employee Director” as defined in Rule 16b-3(b)(3) under the Exchange Act, or any successor rule.

2.24 “Non-Qualified Stock Option” means an Option that is not intended to be an Incentive Stock Option.

2.25 “Option” means a right granted to a Participant pursuant to Article 5 to purchase a specified number of Shares at a specified price during specified time periods. An Option may be either an Incentive Stock Option or a Non-Qualified Stock Option.

2.26 “Participant” means any Eligible Individual who, as an Independent Director, Consultant or Employee, has been granted an Award pursuant to the Plan.

2.27 “Performance-Based Award” means an Award granted pursuant to Article 9.

2.28 “Performance Bonus Award” has the meaning set forth in Section 8.5 hereof.

2.29 “Performance Criteria” means the criteria that the Committee selects for purposes of establishing the Performance Goal or Performance Goals for a Participant for a Performance Period. The Performance Criteria that will be used to establish Performance Goals are limited to the following: revenue; earnings or net earnings (including earnings before or after any one or more of the following: interest, taxes, depreciation, or amortization); sales; economic value-added; cash flow (including, but not limited to, operating cash flow and free cash flow); cash flow return on capital; earnings per share of Common Stock (including earnings before any one or more of the following: interest, taxes, depreciation, amortization, restructuring costs or rental expenses); return on equity; return on capital; total stockholder return; return on invested capital; return on assets or net assets; return on sales; income or net income (either before or after taxes); operating earnings; operating income or net operating income; operating profit or net operating profit; operating or net profit margin; cost reductions or savings or expense management; funds from operations; appreciation in the Fair Market Value of shares of Common Stock; working capital; market share; productivity; expense; operating efficiency; customer satisfaction; and safety record, any of which may be measured either in absolute terms or as compared to any incremental increase or as compared to results of a peer group. The Committee shall define in an objective fashion the manner of calculating the Performance Criteria it selects to use for such Performance Period for such Participant.

2.30 “Performance Goals” means, for a Performance Period, the goals established in writing by the Committee for the Performance Period based upon the Performance Criteria. Depending on the Performance Criteria used to establish such Performance Goals, the Performance Goals may be expressed in terms of overall Company performance, the performance of an Affiliate, the performance of a division or a business unit of the Company or

an Affiliate, or the performance of an individual. The Committee, in its discretion, may, to the extent consistent with, and within the time prescribed by, Section 162(m) of the Code, appropriately adjust or modify the calculation of Performance Goals for such Performance Period in order to prevent the dilution or enlargement of the rights of Participants (a) in the event of, or in anticipation of, any unusual or extraordinary corporate item, transaction, event, or development, or (b) in recognition of, or in anticipation of, any other unusual or nonrecurring events affecting the Company, or the financial statements of the Company, or in response to, or in anticipation of, changes in applicable laws, regulations, accounting principles, or business conditions.

2.31 “Performance Period” means the one or more periods of time, which may be of varying and overlapping durations, as the Committee may select, over which the attainment of one or more Performance Goals will be measured for the purpose of determining a Participant’s right to, and the payment of, a Performance-Based Award.

2.32 “Performance Share” means a right granted to a Participant pursuant to Section 8.1 hereof, to receive Shares, the payment of which is contingent upon achieving certain Performance Goals or other performance-based targets established by the Committee.

2.33 “Performance Stock Unit” means a right granted to a Participant pursuant to Section 8.2 hereof, to receive Shares, the payment of which is contingent upon achieving certain Performance Goals or other performance-based targets established by the Committee.

2.34 “Plan” means this Pilgrim’s Pride Corporation Long Term Incentive Plan, as it may be amended from time to time.

2.35 “Qualified Performance-Based Compensation” means any compensation that is intended to qualify as “qualified performance-based compensation” as described in Section 162(m)(4)(C) of the Code.

2.36 “Restricted Stock” means Shares awarded to a Participant pursuant to Article 6 that are subject to certain restrictions and may be subject to risk of forfeiture.

2.37 “Restricted Stock Unit” means an Award granted pursuant to Section 8.4 hereof and shall be evidenced by a bookkeeping entry representing the equivalent of one Share.

2.38 “Section 409A Compliance” shall have the meaning assigned to it in Section 10.6 hereof.

2.39 “Securities Act” shall mean the U.S. Securities Act of 1933, as amended.

2.40 “Share” means a share of Common Stock.

2.41 “Stock Appreciation Right” or “SAR” means a right granted pursuant to Article 7 to receive a payment equal to the excess of the Fair Market Value of a specified number of Shares on the date the SAR is exercised over the Fair Market Value on the date the SAR was granted as set forth in the applicable Award Agreement.

2.42 “Subsidiary” means any “subsidiary corporation” as defined in Section 424(f) of the Code and any applicable regulations promulgated thereunder or any other entity of which a majority of the outstanding voting stock or voting power is beneficially owned directly or indirectly by the Company.

### **ARTICLE 3. SHARES SUBJECT TO THE PLAN**

#### **3.1 Number of Shares.**

(a) Subject to Article 11 and Section 3.1(b) hereof, the aggregate number of Shares which may be issued or transferred pursuant to Awards under the Plan is the lesser of (i) a number of Shares equal to the quotient arrived at by dividing \$50,000,000 by the the average of the per share closing prices on the Pink OTC Markets, or if the Shares are not then traded on the Pink OTC Markets, on the principal exchange, market or quotation system on which the Shares are then traded or listed, of the Shares during the 10 consecutive trading days ending on (and including) the trading day immediately preceding the effective date of the Company's emergence from bankruptcy under Chapter 11 of the United States Bankruptcy Code, and (ii) 10,000,000 Shares, all of which may be issued upon the exercise of Incentive Stock Options.

(b) To the extent that an Award terminates, expires, lapses for any reason, or is settled in cash, any Shares subject to the Award shall again be available for the grant of an Award pursuant to the Plan. Additionally, any Shares tendered or withheld to satisfy the grant or exercise price or tax withholding obligation pursuant to any Award shall again be available for the grant of an Award. To the extent permitted by applicable law or any exchange rule, Shares issued in assumption of, or in substitution for, any outstanding awards of any entity acquired in any form of combination by the Company or any Subsidiary shall not be counted against Shares available for grant pursuant to this Plan. The payment of Dividend Equivalent Rights in cash in conjunction with any outstanding Awards shall not be counted against the Shares available for issuance under the Plan. Notwithstanding the provisions of this Section 3.1(b), no Shares may again be optioned, granted or awarded if such action would cause an Incentive Stock Option to fail to qualify as an incentive stock option under Section 422 of the Code.

3.2 Shares Distributed. Any Shares distributed pursuant to an Award may consist, in whole or in part, of authorized and unissued Shares, treasury Shares or Shares purchased on the open market.

3.3 Limitation on Number of Shares Subject to Awards. Notwithstanding any provision in the Plan to the contrary, and subject to Article 11, where it is intended to comply with Section 162(m) of the Code, the maximum number of Shares with respect to one or more Awards that may be granted to any one Participant during any fiscal year shall be 5,000,000 Shares and the maximum amount that may be paid in cash during any fiscal year with respect to any Award (including, without limitation, any Performance Bonus Award) shall be \$10,000,000. To the extent required by Section 162(m) of the Code, in applying the foregoing limitation with respect to a Participant, if any Award is canceled, the canceled Award shall continue to count against the maximum number of Shares with respect to which an Award may be granted to a given Participant.

## **ARTICLE 4. ELIGIBILITY AND PARTICIPATION**

4.1 Eligibility. Each Eligible Individual shall be eligible to be granted one or more Awards pursuant to the Plan.

4.2 Participation. Subject to the provisions of the Plan, the Committee may, from time to time, select from among all Eligible Individuals, those to whom Awards shall be granted and shall determine the nature and amount of each Award. No Eligible Individual shall have any right to be granted an Award pursuant to this Plan.

4.3 Non-U.S. Participants. Notwithstanding any provision of the Plan to the contrary, in order to comply with the laws in countries outside the United States in which the Company and its Affiliates operate or have Eligible Individuals, the Committee, in its sole discretion, shall have the power and authority to: (i) determine which Affiliates shall be covered by the Plan; (ii) determine which Eligible Individuals outside the United States are eligible to participate in the Plan; (iii) modify the terms and conditions of any Award granted to Eligible Individuals outside the United States to comply with applicable laws of jurisdictions outside of the United States; (iv) establish subplans and modify exercise procedures and other terms and procedures and rules, to the extent such actions may be necessary or advisable (any such subplans and/or modifications shall be attached to this Plan as appendices), including adoption of rules, procedures or subplans applicable to particular Affiliates or Participants residing in particular locations; *provided, however,* that no such subplans and/or modifications shall increase the share limitations contained in Sections 3.1 and 3.3 hereof; and (v) take any action, before or after an Award is made, that it deems advisable to obtain approval or comply with any necessary local governmental regulatory exemptions or approvals. Without limiting the generality of the foregoing, the Committee is specifically authorized to adopt rules, procedures and subplans with provisions that limit or modify rights on death, disability or retirement or on termination of employment, available methods of exercise or settlement of an Award, payment of income, social insurance contributions and payroll taxes, the shifting of employer tax liability to the Participant, the withholding procedures and handling of any Share certificates or other indicia of ownership which may vary with local requirements. Notwithstanding the foregoing, the Committee may not take any actions hereunder, and no Awards shall be granted, that would violate the Exchange Act, the Code, any securities law or governing statute or any other applicable law.

## **ARTICLE 5. STOCK OPTIONS**

5.1 General. The Committee is authorized to grant Options to Eligible Individuals on the following terms and conditions:

(a) Exercise Price. The exercise price per Share subject to an Option shall be determined by the Committee and set forth in the Award Agreement; provided that, subject to Section 5.2(c) hereof, the per Share exercise price for any Option shall not be less than 100% of the Fair Market Value of a Share on the date of grant.

(b) Time and Conditions of Exercise. The Committee shall determine the time or times at which an Option may be exercised in whole or in part; *provided* that the term of

any Option granted under the Plan shall not exceed ten years. The Committee shall also determine the performance or other conditions, if any, that must be satisfied before all or part of an Option may be exercised.

(c) Payment. The Committee shall determine the methods by which the exercise price of an Option may be paid, the form of payment, including, without limitation: (i) cash or check, (ii) surrender of Shares or delivery of a properly executed form of attestation of ownership of Shares as the Committee may require (including withholding of Shares otherwise deliverable upon exercise of the Award) which have a Fair Market Value on the date of surrender or attestation equal to the aggregate exercise price of the Shares as to which the Award shall be exercised, (iii) promissory note bearing interest at no less than such rate as shall then preclude the imputation of interest under the Code), (iv) other property acceptable to the Committee (including through the delivery of a notice that the Participant has placed a market sell order with a broker with respect to Shares then issuable upon exercise of the Option, and that the broker has been directed to pay a sufficient portion of the net proceeds of the sale to the Company in satisfaction of the Option exercise price; *provided* that payment of such proceeds is then made to the Company upon settlement of such sale, or (v) any combination of the foregoing methods of payment. The Committee shall also determine the methods by which Shares shall be delivered or deemed to be delivered to Participants. Notwithstanding any other provision of the Plan to the contrary, no Participant who is a Director or an “executive officer” of the Company within the meaning of Section 13(k) of the Exchange Act shall be permitted to pay the exercise price of an Option, or continue any extension of credit with respect to the exercise price of an Option with a loan from the Company or a loan arranged by the Company in violation of Section 13(k) of the Exchange Act.

(d) Evidence of Grant. All Options shall be evidenced by an Award Agreement between the Company and the Participant. The Award Agreement shall include such additional provisions as may be specified by the Committee.

5.2 Incentive Stock Options. Incentive Stock Options shall be granted only to Employees of the Company or any Subsidiary, and the terms of any Incentive Stock Options granted pursuant to the Plan, in addition to the requirements of Section 5.1 hereof, must comply with the provisions of this Section 5.2.

(a) Expiration. Subject to Section 5.2(c) hereof, an Incentive Stock Option shall expire and may not be exercised to any extent by anyone after the first to occur of the following events:

(i) Ten years from the date it is granted, unless an earlier time is set in the Award Agreement;

(ii) Three months after the Participant’s termination of employment as an Employee; and

(iii) One year after the date of the Participant’s termination of employment or service on account of Disability or death. Upon the Participant’s Disability or death, any Incentive Stock Options exercisable at the Participant’s Disability or death may be



exercised by the Participant's legal representative or representatives, by the person or persons entitled to do so pursuant to the Participant's last will and testament, or, if the Participant fails to make testamentary disposition of such Incentive Stock Option or dies intestate, by the person or persons entitled to receive the Incentive Stock Option pursuant to the applicable laws of descent and distribution.

(b) Dollar Limitation. The aggregate Fair Market Value (determined as of the time the Option is granted) of all Shares with respect to which Incentive Stock Options are first exercisable by a Participant in any calendar year may not exceed \$100,000 or such other limitation as imposed by Section 422(d) of the Code, or any successor provision. To the extent that Incentive Stock Options are first exercisable by a Participant in excess of such limitation, the excess shall be considered Non-Qualified Stock Options.

(c) Ten Percent Owners. An Incentive Stock Option shall be granted to any individual who, at the date of grant, owns stock possessing more than ten percent of the total combined voting power of all classes of Shares of the Company only if such Option is granted at a price that is not less than 110% of Fair Market Value on the date of grant and the Option is exercisable for no more than five years from the date of grant.

(d) Notice of Disposition. The Participant shall give the Company prompt notice of any disposition of Shares acquired by exercise of an Incentive Stock Option within (i) two years from the date of grant of such Incentive Stock Option or (ii) one year after the transfer of such Shares to the Participant.

(e) Right to Exercise. During a Participant's lifetime, an Incentive Stock Option may be exercised only by the Participant.

(f) Failure to Meet Requirements. Any Option (or portion thereof) purported to be an Incentive Stock Option, which, for any reason, fails to meet the requirements of Section 422 of the Code shall be considered a Non-Qualified Stock Option.

5.3 Substitution of Stock Appreciation Rights. The Committee may provide in the Award Agreement evidencing the grant of an Option that the Committee, in its sole discretion, shall have to right to substitute a Stock Appreciation Right for such Option at any time prior to or upon exercise of such Option; *provided*, that such Stock Appreciation Right shall be exercisable with respect to the same number of Shares for which such substituted Option would have been exercisable.

## **ARTICLE 6. RESTRICTED STOCK AWARDS**

6.1 Grant of Restricted Stock. The Committee is authorized to make Awards of Restricted Stock to any Eligible Individual selected by the Committee in such amounts and subject to such terms and conditions as determined by the Committee. All Awards of Restricted Stock shall be evidenced by an Award Agreement.

6.2 Purchase Price. At the time of the grant of an Award of Restricted Stock, the Committee shall determine the price, if any, to be paid by the Participant for each Share subject to the Award of Restricted Stock. To the extent required by applicable law, the price to be paid

by the Participant for each Share subject to the Award of Restricted Stock shall not be less than the par value of a Share (or such higher amount required by applicable law). The purchase price of Shares acquired pursuant to the Award of Restricted Stock shall be paid either: (i) in cash at the time of purchase; (ii) at the sole discretion of the Committee, by services rendered or to be rendered to the Company or an Affiliate; or (iii) in any other form of legal consideration that may be acceptable to the Committee in its sole discretion and in compliance with applicable law.

6.3 Issuance and Restrictions. Restricted Stock shall be subject to such restrictions on transferability and other restrictions as the Committee may impose (including, without limitation, limitations on the right to vote Restricted Stock or the right to receive dividends on the Restricted Stock). These restrictions may lapse separately or in combination at such times, pursuant to such circumstances, in such installments, or otherwise, as the Committee determines at the time of the grant of the Award or thereafter.

6.4 Forfeiture. Except as otherwise determined by the Committee at the time of the grant of the Award or thereafter, upon termination of employment or service during the applicable restriction period, Restricted Stock that is at that time subject to restrictions shall be forfeited; *provided, however*, that the Committee may (a) provide in any Restricted Stock Award Agreement that restrictions or forfeiture conditions relating to Restricted Stock will be waived in whole or in part in the event of terminations resulting from specified causes, and (b) in other cases waive in whole or in part restrictions or forfeiture conditions relating to Restricted Stock.

6.5 Certificates for Restricted Stock. Restricted Stock granted pursuant to the Plan may be evidenced in such manner as the Committee shall determine. If certificates representing shares of Restricted Stock are registered in the name of the Participant, certificates must bear an appropriate legend referring to the terms, conditions, and restrictions applicable to such Restricted Stock, and the Company may, at its discretion, retain physical possession of the certificate until such time as all applicable restrictions lapse.

## **ARTICLE 7. STOCK APPRECIATION RIGHTS**

### **7.1 Grant of Stock Appreciation Rights.**

(a) A Stock Appreciation Right may be granted to any Eligible Individual selected by the Committee. A Stock Appreciation Right shall be subject to such terms and conditions not inconsistent with the Plan as the Committee shall impose and shall be evidenced by an Award Agreement, provided that the term of any Stock Appreciation Right shall not exceed ten years.

(b) A Stock Appreciation Right shall entitle the Participant (or other person entitled to exercise the Stock Appreciation Right pursuant to the Plan) to exercise all or a specified portion of the Stock Appreciation Right (to the extent then exercisable pursuant to its terms) and to receive from the Company an amount equal to the product of (i) the excess of (A) the Fair Market Value of the Shares on the date the Stock Appreciation Right is exercised over (B) the Fair Market Value of the Shares on the date the Stock Appreciation Right was granted and (ii) the number of Shares with respect to which the Stock Appreciation Right is exercised, subject to any limitations the Committee may impose.



## 7.2 Payment and Limitations on Exercise.

(a) Subject to Section 7.2(b) hereof, payment of the amounts determined under Section 7.1(b) hereof shall be in cash, in Shares (based on its Fair Market Value as of the date the Stock Appreciation Right is exercised) or a combination of both, as determined by the Committee.

(b) To the extent any payment under Section 7.1(b) hereof is effected in Shares, it shall be made subject to satisfaction of all provisions of Article 5 pertaining to Options.

## **ARTICLE 8. OTHER TYPES OF AWARDS**

8.1 Performance Share Awards. Any Eligible Individual selected by the Committee may be granted one or more Awards of Performance Shares which shall be denominated in a number of Shares and which may be linked to any one or more of the Performance Criteria or other specific performance criteria determined appropriate by the Committee, in each case on a specified date or dates or over any period or periods determined by the Committee. In making such determinations, the Committee shall consider (among such other factors as it deems relevant in light of the specific type of award) the contributions, responsibilities and other compensation of the particular Participant.

8.2 Performance Stock Units. Any Eligible Individual selected by the Committee may be granted one or more Performance Stock Unit awards which shall be denominated in unit equivalents of Shares and/or units of value including dollar value of Shares and which may be linked to any one or more of the Performance Criteria or other specific performance criteria determined appropriate by the Committee, in each case on a specified date or dates or over any period or periods determined by the Committee. In making such determinations, the Committee shall consider (among such other factors as it deems relevant in light of the specific type of award) the contributions, responsibilities and other compensation of the particular Participant.

## 8.3 Dividend Equivalent Rights.

(a) Any Eligible Individual selected by the Committee may be granted Dividend Equivalent Rights based on the dividends declared on the Shares that are subject to any Award, to be credited as of dividend payment dates, during the period between the date the Award is granted and the date the Award is exercised, vests or expires, as determined by the Committee. Such Dividend Equivalent Rights shall be converted to cash or additional Shares by such formula and at such time and subject to such limitations as may be determined by the Committee.

(b) Dividend Equivalent Rights granted with respect to Options or SARs that are intended to be Qualified Performance-Based Compensation shall be payable, with respect to pre-exercise periods, regardless of whether such Option or SAR is subsequently exercised.

8.4 Restricted Stock Units. The Committee is authorized to make Awards of Restricted Stock Units to any Eligible Individual selected by the Committee in such amounts and subject to such terms and conditions as determined by the Committee. At the time of grant, the Committee shall specify the date or dates on which the Restricted Stock Units shall become fully

vested and nonforfeitable, and may specify such conditions to vesting as it deems appropriate. At the time of grant, the Committee shall specify the maturity date applicable to each grant of Restricted Stock Units which shall be no earlier than the vesting date or dates of the Award and may be determined at the election of the grantee. On the maturity date, the Company shall, subject to Section 10.5(b), transfer to the Participant one unrestricted, fully transferable Share for each Restricted Stock Unit scheduled to be paid out on such date and not previously forfeited. Alternatively, settlement of a Restricted Stock Unit may be made in cash or any combination of cash and Shares, as determined by the Committee, in its sole discretion, at the time of grant of the Restricted Stock Units. Methods of converting Restricted Stock Units into cash may include, without limitation, a method based on the average Fair Market Value of Shares over a series of trading days. A holder of Restricted Stock Units shall have no rights other than those of a general creditor of the Company. Restricted Stock Units represent an unfunded and unsecured obligation of the Company, subject to the terms and conditions of the applicable Award Agreement evidencing the grant of the Restricted Stock Unit.

8.5 Performance Bonus Awards. Any Eligible Individual selected by the Committee may be granted one or more Performance-Based Awards in the form of a cash bonus (a “Performance Bonus Award”) payable upon the attainment of Performance Goals that are established by the Committee and relate to one or more of the Performance Criteria, in each case on a specified date or dates or over any period or periods determined by the Committee.

8.6 Other Awards. The Committee is authorized under the Plan to make any other Award to an Eligible Individual that is not inconsistent with the provisions of the Plan and that by its terms involves or might involve the issuance of (i) Shares, (ii) a right with an exercise or conversion privilege related to the passage of time, the occurrence of one or more events, or the satisfaction of performance criteria or other conditions, or (iii) any other security with the value derived from the value of the Shares. The Committee may establish one or more separate programs under the Plan for the purpose of issuing particular forms of Awards to one or more classes of Participants on such terms and conditions as determined by the Committee from time to time.

8.7 Term. Except as otherwise provided herein, the term of any Award of Performance Shares, Performance Stock Units, Dividend Equivalent Rights, Restricted Stock Units and any other Award granted pursuant to this Article 8 shall be set by the Committee in its discretion.

8.8 Exercise or Purchase Price. The Committee may establish the exercise or purchase price, if any, of any Award of Performance Shares, Performance Stock Units, Restricted Stock Units and any other Award granted pursuant to this Article 8; *provided, however*, that such price shall not be less than the par value of a Share on the date of grant, unless otherwise permitted by applicable state law.

8.9 Exercise upon Termination of Employment or Service. An Award of Performance Shares, Performance Stock Units, Dividend Equivalent Rights, Restricted Stock Units and any other Award granted pursuant to this Article 8 shall only be exercisable or payable while the Participant is an Employee, Consultant or Director, as applicable; *provided, however*, that the Committee in its sole and absolute discretion may provide that an Award of Performance

Shares, Performance Stock Units, Dividend Equivalent Rights, Restricted Stock Units or any other Award granted pursuant to this Article 8 may be exercised or paid subsequent to a termination of employment or service, as applicable, or following a Change in Control of the Company, or because of the Participant's retirement, death or disability, or otherwise; *provided, however*, that any such provision with respect to Performance Shares or Performance Stock Units shall be subject to the requirements of Section 162(m) of the Code that apply to Qualified Performance-Based Compensation.

8.10 Form of Payment. Payments with respect to any Awards granted under this Article 8 shall be made in cash, in Shares or a combination of both, as determined by the Committee.

8.11 Award Agreement. All Awards under this Article 8 shall be subject to such additional terms and conditions as determined by the Committee and shall be evidenced by an Award Agreement.

## **ARTICLE 9. PERFORMANCE-BASED AWARDS**

9.1 Purpose. The purpose of this Article 9 is to provide the Committee the ability to qualify Awards, other than Options and SARs, and that are granted pursuant to Articles 6 and 8 as Qualified Performance-Based Compensation. If the Committee, in its discretion, decides to grant a Performance-Based Award to a Covered Employee, the provisions of this Article 9 shall control over any contrary provision contained in Articles 6 or 8; *provided, however*, that the Committee may in its discretion grant Awards to Covered Employees that are based on Performance Criteria or Performance Goals but that do not satisfy the requirements of this Article 9.

9.2 Applicability. This Article 9 shall apply only to those Covered Employees selected by the Committee to receive Performance-Based Awards that are intended to qualify as Qualified Performance-Based Compensation. The designation of a Covered Employee as a Participant for a Performance Period shall not in any manner entitle the Participant to receive an Award for the period. Moreover, designation of a Covered Employee as a Participant for a particular Performance Period shall not require designation of such Covered Employee as a Participant in any subsequent Performance Period and designation of one Covered Employee as a Participant shall not require designation of any other Covered Employees as a Participant in such period or in any other period.

9.3 Procedures with Respect to Performance-Based Awards. To the extent necessary to comply with the Qualified Performance-Based Compensation requirements of Section 162(m)(4)(C) of the Code, with respect to any Award granted under Articles 6 or 8 which may be granted to one or more Covered Employees, no later than ninety (90) days following the commencement of any fiscal year in question or any other designated fiscal period or period of service (or such other time as may be required or permitted by Section 162(m) of the Code), the Committee shall, in writing, (a) designate one or more Covered Employees, (b) select the Performance Criteria applicable to the Performance Period, (c) establish the Performance Goals, and amounts of such Awards, as applicable, which may be earned for such Performance Period, and (d) specify the relationship between Performance Criteria and the Performance Goals and the

amounts of such Awards, as applicable, to be earned by each Covered Employee for such Performance Period. Following the completion of each Performance Period, the Committee shall certify in writing whether the applicable Performance Goals have been achieved for such Performance Period. In determining the amount earned by a Covered Employee, the Committee shall have the right to reduce or eliminate (but not to increase) the amount payable at a given level of performance to take into account additional factors that the Committee may deem relevant to the assessment of individual or corporate performance for the Performance Period.

9.4 Payment of Performance-Based Awards. Unless otherwise provided in the applicable Award Agreement, a Participant must be employed by the Company or an Affiliate on the day a Performance-Based Award for the appropriate Performance Period is paid to the Participant. Furthermore, a Participant shall be eligible to receive payment pursuant to a Performance-Based Award for a Performance Period only if the Performance Goals for such period are achieved. In determining the amount earned under a Performance-Based Award, the Committee may reduce or eliminate the amount of the Performance-Based Award earned for the Performance Period, if in its sole and absolute discretion, such reduction or elimination is appropriate.

9.5 Additional Limitations. Notwithstanding any other provision of the Plan, any Award which is granted to a Covered Employee and is intended to constitute Qualified Performance-Based Compensation shall be subject to any additional limitations set forth in Section 162(m) of the Code (including any amendment to Section 162(m) of the Code) or any regulations or rulings issued thereunder that are requirements for qualification as qualified performance-based compensation as described in Section 162(m)(4)(C) of the Code, and the Plan shall be deemed amended to the extent necessary to conform to such requirements.

## **ARTICLE 10. PROVISIONS APPLICABLE TO AWARDS**

10.1 Stand-Alone and Tandem Awards. Awards granted pursuant to the Plan may, in the discretion of the Committee, be granted either alone, in addition to, or in tandem with, any other Award granted pursuant to the Plan. Awards granted in addition to or in tandem with other Awards may be granted either at the same time as or at a different time from the grant of such other Awards.

10.2 Award Agreement. Awards under the Plan shall be evidenced by Award Agreements that set forth the terms, conditions and limitations for each Award which may include the term of an Award, the provisions applicable in the event the Participant's employment or service terminates, and the Company's authority to unilaterally or bilaterally amend, modify, suspend, cancel or rescind an Award.

10.3 Limits on Transfer. No right or interest of a Participant in any Award may be pledged, encumbered, or hypothecated to or in favor of any party other than the Company or an Affiliate, or shall be subject to any lien, obligation, or liability of such Participant to any other party other than the Company or an Affiliate. Except as otherwise provided by the Committee, no Award shall be assigned, transferred, or otherwise disposed of by a Participant other than by will or the laws of descent and distribution or pursuant to beneficiary designation procedures approved from time to time by the Committee (or the Board in the case of Awards granted to

Independent Directors). The Committee by express provision in the Award or an amendment thereto may permit an Award (other than an Incentive Stock Option) to be transferred to, exercised by and paid to certain persons or entities related to the Participant, including, but not limited to, members of the Participant's family, charitable institutions, or trusts or other entities whose beneficiaries or beneficial owners are members of the Participant's family and/or charitable institutions, or to such other persons or entities as may be expressly approved by the Committee, pursuant to such conditions and procedures as the Committee may establish. Any permitted transfer shall be subject to the condition that the Committee receive evidence satisfactory to it that the transfer is being made for estate and/or tax planning purposes (or to a "blind trust" in connection with the Participant's termination of employment or service with the Company or an Affiliate to assume a position with a governmental, charitable, educational or similar non-profit institution) and on a basis consistent with the Company's lawful issue of securities.

10.4 Beneficiaries. Notwithstanding Section 10.3 hereof, a Participant may, in the manner determined by the Committee, designate a beneficiary to exercise the rights of the Participant and to receive any distribution with respect to any Award upon the Participant's death. A beneficiary, legal guardian, legal representative, or other person claiming any rights pursuant to the Plan is subject to all terms and conditions of the Plan and any Award Agreement applicable to the Participant, except to the extent the Plan and Award Agreement otherwise provide, and to any additional restrictions deemed necessary or appropriate by the Committee. If the Participant is married and resides in a community property state, a designation of a person other than the Participant's spouse as his or her beneficiary with respect to more than 50% of the Participant's interest in the Award shall not be effective without the prior written consent of the Participant's spouse. If no beneficiary has been designated or survives the Participant, payment shall be made to the person entitled thereto pursuant to the Participant's will or the laws of descent and distribution. Subject to the foregoing, a beneficiary designation may be changed or revoked by a Participant at any time provided the change or revocation is filed with the Committee prior to the Participant's death.

#### 10.5 Stock Certificates; Book Entry Procedures.

(a) Notwithstanding anything herein to the contrary, the Company shall not be required to issue or deliver any certificates evidencing Shares pursuant to the exercise or vesting of any Award, unless and until the Board has determined, with advice of counsel, that the issuance and delivery of such certificates is in compliance with all applicable laws, regulations of governmental authorities and, if applicable, the requirements of any exchange on which the Shares are listed or traded. All certificates evidencing Shares delivered pursuant to the Plan are subject to any stop-transfer orders and other restrictions as the Committee deems necessary or advisable to comply with federal, state local, securities or other laws, including laws of jurisdictions outside of the United States, rules and regulations and the rules of any national securities exchange or automated quotation system on which the Shares are listed, quoted, or traded. The Committee may place legends on any certificate evidencing Shares to reference restrictions applicable to the Shares. In addition to the terms and conditions provided herein, the Board may require that a Participant make such reasonable covenants, agreements, and representations as the Board, in its discretion, deems advisable in order to comply with any such laws, regulations, or requirements. The Committee shall have the right to require any Participant



to comply with any timing or other restrictions with respect to the settlement or exercise of any Award, including a window-period limitation, as may be imposed in the discretion of the Committee.

(b) Notwithstanding any other provision of the Plan, unless otherwise determined by the Committee or required by any applicable law, rule or regulation, the Company shall not deliver to any Participant certificates evidencing Shares issued in connection with any Award and instead such Shares shall be recorded in the books of the Company (or, as applicable, its transfer agent or stock plan administrator).

10.6 Accelerated Vesting and Deferral Limitations. The Committee shall not have the discretionary authority to accelerate or delay issuance of Shares under an Award that constitutes a deferral of compensation within the meaning of Section 409A of the Code, except to the extent that such acceleration or delay may, in the discretion of the Committee, be effected in a manner that will not cause any person to incur taxes, interest or penalties under Section 409A of the Code (“Section 409A Compliance”).

10.7 Paperless Administration. In the event that the Company establishes, for itself or using the services of a third party, an automated system for the documentation, granting or exercise of Awards, such as a system using an internet website or interactive voice response, then the paperless documentation, granting or exercise of Awards by a Participant may be permitted through the use of such an automated system.

## **ARTICLE 11. CHANGES IN CAPITAL STRUCTURE**

### **11.1 Adjustments.**

(a) In the event of any stock dividend, stock split, combination or exchange of shares, merger, consolidation or other distribution (other than normal cash dividends) of Company assets to stockholders, or any other change affecting the Shares or the price of the Shares other than an Equity Restructuring, the Committee shall make such adjustments, if any, as the Committee in its discretion may deem appropriate to reflect such change with respect to (a) the aggregate number and kind of shares that may be issued under the Plan (including, but not limited to, adjustments of the limitations in Sections 3.1 and 3.3 hereof); (b) the terms and conditions of any outstanding Awards (including, without limitation, any applicable performance targets or criteria with respect thereto); and (c) the grant or exercise price per Share for any outstanding Awards under the Plan. Any adjustment affecting an Award intended as Qualified Performance-Based Compensation shall be made consistent with the requirements of Section 162(m) of the Code.

(b) In the event of any transaction or event described in Section 11.1(a) hereof or any unusual or nonrecurring transactions or events affecting the Company, any affiliate of the Company, or the financial statements of the Company or any affiliate, or of changes in applicable laws, regulations or accounting principles, the Committee, in its sole and absolute discretion, and on such terms and conditions as it deems appropriate, either by the terms of the Award or by action taken prior to the occurrence of such transaction or event and either automatically or upon the Participant’s request, is hereby authorized to take any one or more of

the following actions whenever the Committee determines that such action is appropriate in order to prevent dilution or enlargement of the benefits or potential benefits intended to be made available under the Plan or with respect to any Award under the Plan, to facilitate such transactions or events or to give effect to such changes in laws, regulations or principles:

(i) To provide for either (A) termination of any such Award in exchange for an amount of cash, if any, equal to the amount that would have been attained upon the exercise of such Award or realization of the Participant's rights (and, for the avoidance of doubt, if as of the date of the occurrence of the transaction or event described in this Section 11.1 the Committee determines in good faith that no amount would have been attained upon the exercise of such Award or realization of the Participant's rights, then such Award may be terminated by the Company without payment) or (B) the replacement of such Award with other rights or property selected by the Committee in its sole discretion;

(ii) To provide that such Award be assumed by the successor or survivor corporation, or a parent or subsidiary thereof, or shall be substituted for by similar options, rights or awards covering the stock of the successor or survivor corporation, or a parent or subsidiary thereof, with appropriate adjustments as to the number and kind of shares and prices;

(iii) To make adjustments in the number and type of Shares (or other securities or property) subject to outstanding Awards, and in the number and kind of outstanding Restricted Stock and/or in the terms and conditions of (including the grant or exercise price), and the criteria (including Performance Criteria consistent with the requirements of Section 162(m) of the Code, in the case of Awards that are intended to constitute Qualified Performance-Based Compensation) included in, outstanding options, rights and awards and options, rights and awards which may be granted in the future;

(iv) To provide that such Award shall be exercisable or payable or fully vested with respect to all Shares covered thereby, notwithstanding anything to the contrary in the Plan or the applicable Award Agreement; and

(v) To provide that the Award cannot vest, be exercised or become payable after such event.

(c) In connection with the occurrence of any Equity Restructuring, and notwithstanding anything to the contrary in Sections 11.1(a) and 11.1(b) hereof:

(i) The number and type of securities subject to each outstanding Award and the exercise price or grant price thereof, if applicable, shall be equitably adjusted. The adjustments provided under this Section 11.1(c)(i) shall be nondiscretionary and shall be final and binding on the affected Participant and the Company.

(ii) The Committee shall make such equitable adjustments, if any, as the Committee in its discretion may deem appropriate to reflect such Equity Restructuring with respect to the aggregate number and kind of shares that may be issued under the Plan (including, but not limited to, adjustments of the limitations in Sections 3.1 and 3.3 hereof).



11.2 Acceleration Upon a Change in Control. Notwithstanding Section 11.1 hereof, and except as may otherwise be provided in any applicable Award Agreement or other written agreement entered into between the Company and a Participant, if a Change in Control occurs and a Participant's Awards are not converted, assumed, or replaced by a successor entity, then immediately prior to the Change in Control such Awards shall become fully exercisable and all forfeiture restrictions on such Awards shall lapse. Upon, or in anticipation of, a Change in Control, the Committee may cause any and all Awards outstanding hereunder to terminate at a specific time in the future, including, but not limited to, the date of such Change in Control, and shall give each Participant the right to exercise such Awards during a period of time as the Committee, in its sole and absolute discretion, shall determine. In the event that the terms of any agreement between the Company or any Affiliate and a Participant contains provisions that conflict with and are more restrictive than the provisions of this Section 11.2, this Section 11.2 shall prevail and control and the more restrictive terms of such agreement (and only such terms) shall be of no force or effect.

11.3 No Other Rights. Except as expressly provided in the Plan, no Participant shall have any rights by reason of any subdivision or consolidation of Shares of any class, the payment of any dividend, any increase or decrease in the number of Shares of any class or any dissolution, liquidation, merger, or consolidation of the Company or any other corporation. Except as expressly provided in the Plan or pursuant to action of the Committee under the Plan, no issuance by the Company of Shares of any class, or securities convertible into Shares of any class, shall affect, and no adjustment by reason thereof shall be made with respect to, the number of Shares subject to an Award or the grant or exercise price of any Award.

## **ARTICLE 12. ADMINISTRATION**

12.1 Committee. Unless and until the Board delegates administration of the Plan to a Committee as set forth below, the Plan shall be administered by the full Board, and for such purposes the term "Committee" as used in this Plan shall be deemed to refer to the Board. The Board, at its discretion or as otherwise necessary to comply with the requirements of Section 162(m) of the Code, Rule 16b-3 promulgated under the Exchange Act or to the extent required by any other applicable rule or regulation, may delegate administration of the Plan to a Committee consisting of two or more members of the Board. Unless otherwise determined by the Board, the Committee shall consist solely of two or more members of the Board each of whom is an "outside director," within the meaning of Section 162(m) of the Code, a Non-Employee Director and an "independent director" under the rules of the New York Stock Exchange (or other principal securities market on which Shares are traded); provided that any action taken by the Committee shall be valid and effective, whether or not members of the Committee at the time of such action are later determined not to have satisfied the requirements for membership set forth in this Section 12.1 or otherwise provided in any charter of the Committee. Notwithstanding the foregoing: (a) the full Board, acting by a majority of its members in office, shall conduct the general administration of the Plan with respect to all Awards granted to Independent Directors and for purposes of such Awards the term "Committee" as used in this Plan shall be deemed to refer to the Board and (b) the Committee may delegate its authority hereunder to the extent permitted by Section 12.5 hereof. In its sole discretion, the Board may at any time and from time to time exercise any and all rights and duties of the Committee under the Plan except with respect to matters which under Rule 16b-3

under the Exchange Act or Section 162(m) of the Code, or any regulations or rules issued thereunder, are required to be determined in the sole discretion of the Committee. Except as may otherwise be provided in the certificate of incorporation or bylaws of the Company or in any charter of the Committee, appointment of Committee members shall be effective upon acceptance of appointment; Committee members may resign at any time by delivering written notice to the Board; and vacancies in the Committee may only be filled by the Board.

12.2 Action by the Committee. Unless otherwise established by the Board or in the certificate of incorporation or bylaws of the Company or in any charter of the Committee, a majority of the Committee shall constitute a quorum and the acts of a majority of the members present at any meeting at which a quorum is present, and acts approved in writing by a majority of the Committee in lieu of a meeting, shall be deemed the acts of the Committee. Each member of the Committee is entitled to, in good faith, rely or act upon any report or other information furnished to that member by any officer or other employee of the Company or any Affiliate, the Company's independent certified public accountants, or any executive compensation consultant or other professional retained by the Company to assist in the administration of the Plan.

12.3 Authority of Committee. Subject to any specific designation in the Plan, the Committee has the exclusive power, authority and discretion to:

- (a) Designate Participants to receive Awards;
- (b) Determine the type or types of Awards to be granted to each Participant;
- (c) Determine the number of Awards to be granted and the number of Shares to which an Award will relate;
- (d) Determine the terms and conditions of any Award granted pursuant to the Plan, including, but not limited to, the exercise price, grant price, or purchase price, any reload provision, any restrictions or limitations on the Award, any schedule for lapse of forfeiture restrictions or restrictions on the exercisability of an Award, and accelerations or waivers thereof, any provisions related to non-competition and recapture of gain on an Award, based in each case on such considerations as the Committee in its sole discretion determines; *provided, however,* that the Committee shall not have the authority to accelerate the vesting or waive the forfeiture of any Performance-Based Awards intended to qualify as Qualified Performance Based-Compensation;
- (e) Determine whether, to what extent, and pursuant to what circumstances an Award may be settled in, or the exercise price of an Award may be paid in, cash, Shares, other Awards, or other property, or an Award may be canceled, forfeited, or surrendered;
- (f) Prescribe the form of each Award Agreement, which need not be identical for each Participant;
- (g) Decide all other matters that must be determined in connection with an Award;

(h) Establish, adopt, or revise any rules and regulations as it may deem necessary or advisable to administer the Plan;

(i) Interpret the terms of, and any matter arising pursuant to, the Plan or any Award Agreement; and

(j) Make all other decisions and determinations that may be required pursuant to the Plan or as the Committee deems necessary or advisable to administer the Plan.

12.4 Decisions Binding. The Committee's interpretation of the Plan, any Awards granted pursuant to the Plan, any Award Agreement and all decisions and determinations by the Committee with respect to the Plan are final, binding, and conclusive on all parties.

12.5 Delegation of Authority. To the extent permitted by applicable law, the Board may from time to time delegate to a committee of one or more members of the Board or one or more officers of the Company the authority to grant or amend Awards to Participants other than (a) Employees who are subject to Section 16 of the Exchange Act, (b) Covered Employees, or (c) officers of the Company (or Directors) to whom authority to grant or amend Awards has been delegated hereunder. For the avoidance of doubt, provided it meets the limitation in the preceding sentence, this delegation shall include the right to modify Awards as necessary to accommodate changes in the laws or regulations, including in jurisdictions outside the United States. Any delegation hereunder shall be subject to the restrictions and limits that the Board specifies at the time of such delegation, and the Board may at any time rescind the authority so delegated or appoint a new delegatee. At all times, the delegatee appointed under this Section 12.5 shall serve in such capacity at the pleasure of the Board.

### **ARTICLE 13. EFFECTIVE AND EXPIRATION DATE**

13.1 Effective Date. The Plan is effective as of the date the Plan is approved by the Company's stockholders (the "Effective Date"). The Plan will be deemed to be approved by the stockholders if it is approved either:

(a) By a majority of the votes cast at a duly held stockholder's meeting at which a quorum representing a majority of outstanding voting stock is, either in person or by proxy, present and voting on the plan; or

(b) By a method and in a degree that would be treated as adequate under Delaware law in the case of an action requiring stockholder approval.

13.2 Expiration Date. The Plan will expire on, and no Award may be granted pursuant to the Plan after the tenth anniversary of the Effective Date, except that no Incentive Stock Options may be granted under the Plan after the earlier of the tenth anniversary of (a) the date the Plan is approved by the Board or (b) the Effective Date. Any Awards that are outstanding on the tenth anniversary of the Effective Date shall remain in force according to the terms of the Plan and the applicable Award Agreement.

## **ARTICLE 14. AMENDMENT, MODIFICATION, AND TERMINATION**

14.1 Amendment, Modification, and Termination. Subject to Section 15.14 hereof, with the approval of the Board, at any time and from time to time, the Committee may terminate, amend or modify the Plan; *provided, however*, that (a) to the extent necessary and desirable to comply with any applicable law, regulation, or stock exchange rule, the Company shall obtain stockholder approval of any Plan amendment in such a manner and to such a degree as required, and (b) stockholder approval shall be required for any amendment to the Plan that (i) increases the number of shares available under the Plan (other than any adjustment as provided by Article 11), or (ii) permits the Committee to extend the exercise period for an Option beyond ten years from the date of grant. Notwithstanding any provision in this Plan to the contrary, approval of the stockholders of the Company shall not be required for any amendment to an Option or SAR providing for a reduction to the per Share exercise price of the Shares subject to such Option or SAR below the per Share exercise price as of the date the Option or SAR, as applicable, is granted, including, by way of a grant of an Option or SAR in exchange for, or in connection with, the cancellation or surrender of an Option or SAR having a higher per Share exercise price.

14.2 Awards Previously Granted. Except with respect to amendments made pursuant to Section 15.14 hereof, no termination, amendment, or modification of the Plan shall adversely affect in any material way any Award previously granted pursuant to the Plan without the prior written consent of the Participant; *provided, however*, that an amendment or modification that may cause an Incentive Stock Option to become a Non-Qualified Stock Option shall not be treated as adversely affecting the rights of the Participant.

## **ARTICLE 15. GENERAL PROVISIONS**

15.1 No Rights to Awards. No Eligible Individual or other person shall have any claim to be granted any Award pursuant to the Plan, and neither the Company nor the Committee is obligated to treat Eligible Individuals, Participants or any other persons uniformly.

15.2 No Stockholders Rights. Except as otherwise provided herein, a Participant shall have none of the rights of a stockholder with respect to Shares covered by any Award, including the right to vote or receive dividends, until the Participant becomes the record owner of such Shares, notwithstanding the exercise of an Option or other Award.

15.3 Withholding. The Company or any Affiliate, as appropriate, shall have the authority and the right to deduct or withhold, or require a Participant to remit to the Company, an amount sufficient to satisfy U.S. federal, state, and local taxes and taxes imposed by jurisdictions outside of the United States (including the Participant's employment tax obligations) required by law to be withheld with respect to any taxable event concerning a Participant arising as a result of this Plan or to take such other action as may be necessary in the opinion of the Company or an Affiliate, as appropriate, to satisfy withholding obligations for the payment of taxes. The Committee may in its discretion and in satisfaction of the foregoing requirement allow a Participant to elect to have the Company withhold Shares otherwise issuable under an Award (or allow the return of Shares) having a Fair Market Value equal to the sums required to be withheld. Notwithstanding any other provision of the Plan, the number of Shares which may be withheld with respect to the issuance, vesting, exercise or payment of any Award (or which may be

repurchased from the Participant of such Award within six months (or such other period as may be determined by the Committee) after such Shares were acquired by the Participant from the Company) in order to satisfy the Participant's U.S. federal, state, local and non-U.S. income and payroll tax liabilities with respect to the issuance, vesting, exercise or payment of the Award shall be limited to the number of Shares which have a Fair Market Value on the date of withholding or repurchase equal to the aggregate amount of such liabilities based on the minimum statutory withholding rates for federal, state, local and foreign income tax and payroll tax purposes that are applicable to such supplemental taxable income. No Shares shall be delivered hereunder to any Participant or other person until the Participant or such other person has made arrangements acceptable to the Committee for the satisfaction of the tax obligations with respect to any taxable event concerning the Participant or such other person arising as a result of this Plan.

15.4 No Right to Employment or Services. Nothing in the Plan or any Award Agreement shall interfere with or limit in any way the right of the Company or any Affiliate to terminate any Participant's employment or services at any time, nor confer upon any Participant any right to continue in the employ or service of the Company or any Affiliate.

15.5 Unfunded Status of Awards. The Plan is intended to be an "unfunded" plan for incentive compensation. With respect to any payments not yet made to a Participant pursuant to an Award, nothing contained in the Plan or any Award Agreement shall give the Participant any rights that are greater than those of a general creditor of the Company or any Affiliate.

15.6 Indemnification. To the extent allowable pursuant to applicable law, each member of the Committee or of the Board shall be indemnified and held harmless by the Company from any loss, cost, liability, or expense that may be imposed upon or reasonably incurred by such member in connection with or resulting from any claim, action, suit, or proceeding to which he or she may be a party or in which he or she may be involved by reason of any action or failure to act pursuant to the Plan and against and from any and all amounts paid by him or her in satisfaction of judgment in such action, suit, or proceeding against him or her; *provided* he or she gives the Company an opportunity, at its own expense, to handle and defend the same before he or she undertakes to handle and defend it on his or her own behalf. The foregoing right of indemnification shall not be exclusive of any other rights of indemnification to which such persons may be entitled pursuant to the Company's Certificate of Incorporation or Bylaws, as a matter of law, or otherwise, or any power that the Company may have to indemnify them or hold them harmless.

15.7 Relationship to other Benefits. No payment pursuant to the Plan shall be taken into account in determining any benefits pursuant to any pension, retirement, savings, profit sharing, group insurance, welfare or other benefit plan of the Company or any Affiliate except to the extent otherwise expressly provided in writing in such other plan or an agreement thereunder.

15.8 Expenses. The expenses of administering the Plan shall be borne by the Company and its Affiliates.



15.9 Titles and Headings. The titles and headings of the Sections in the Plan are for convenience of reference only and, in the event of any conflict, the text of the Plan, rather than such titles or headings, shall control.

15.10 Fractional Shares. No fractional Shares shall be issued and the Committee shall determine, in its discretion, whether cash shall be given in lieu of fractional shares or whether such fractional shares shall be eliminated by rounding up or down as appropriate.

15.11 Limitations Applicable to Section 16 Persons. Notwithstanding any other provision of the Plan, the Plan, and any Award granted or awarded to any Participant who is then subject to Section 16 of the Exchange Act, shall be subject to any additional limitations set forth in any applicable exemptive rule under Section 16 of the Exchange Act (including any amendment to Rule 16b-3 under the Exchange Act) that are requirements for the application of such exemptive rule. To the extent permitted by applicable law, the Plan and Awards granted or awarded hereunder shall be deemed amended to the extent necessary to conform to such applicable exemptive rule.

15.12 Government and Other Regulations. The obligation of the Company to make payment of awards in Shares or otherwise shall be subject to all applicable laws, rules, and regulations of the United States and jurisdictions outside the United States, and to such approvals by government agencies, including government agencies in jurisdictions outside of the United States, in each case as may be required or as the Company deems necessary or advisable. Without limiting the foregoing, the Company shall have no obligation to issue or deliver evidence of title for Shares subject to Awards granted hereunder prior to: (i) obtaining any approvals from governmental agencies that the Company determines are necessary or advisable, and (ii) completion of any registration or other qualification with respect to the Shares under any applicable law in the United States or in a jurisdiction outside of the United States or ruling of any governmental body that the Company determines to be necessary or advisable or at a time when any such registration or qualification is not current, has been suspended or otherwise has ceased to be effective. The inability or impracticability of the Company to obtain or maintain authority from any regulatory body having jurisdiction, which authority is deemed by the Company's counsel to be necessary to the lawful issuance and sale of any Shares hereunder, shall relieve the Company of any liability in respect of the failure to issue or sell such Shares as to which such requisite authority shall not have been obtained. The Company shall be under no obligation to register pursuant to the Securities Act, as amended, any of the Shares paid pursuant to the Plan. If the Shares paid pursuant to the Plan may in certain circumstances be exempt from registration pursuant to the Securities Act, as amended, the Company may restrict the transfer of such Shares in such manner as it deems advisable to ensure the availability of any such exemption.

15.13 Governing Law. The Plan and all Award Agreements, and all controversies arising thereunder or related thereto, shall be construed in accordance with and governed by the laws of the State of Delaware without regard to principles of conflict of laws that would apply to any other law.

15.14 Section 409A. Except as provided in Section 15.15 hereof, to the extent that the Committee determines that any Award granted under the Plan is subject to Section 409A of the

Code, the Award Agreement evidencing such Award shall incorporate the terms and conditions required by Section 409A of the Code. To the extent applicable, the Plan and Award Agreements shall be interpreted in accordance with Section 409A of the Code and Department of Treasury regulations and other interpretive guidance issued thereunder, including, without limitation, any such regulations or other guidance that may be issued after the Effective Date. Notwithstanding any provision of the Plan to the contrary, in the event that following the Effective Date the Committee determines that any Award may be subject to Section 409A of the Code and related Department of Treasury guidance (including such Department of Treasury guidance as may be issued after the Effective Date), the Committee may adopt such amendments to the Plan and the applicable Award Agreement or adopt other policies and procedures (including amendments, policies and procedures with retroactive effect), or take any other actions, that the Committee determines are necessary or appropriate to (a) exempt the Award from Section 409A of the Code and/or preserve the intended tax treatment of the benefits provided with respect to the Award, or (b) comply with the requirements of Section 409A of the Code and related Department of Treasury guidance and thereby avoid the application of any penalty taxes under such Section.

15.15 No Representations or Covenants with respect to Tax Qualification. Although the Company may endeavor to (1) qualify an Award for favorable tax treatment under the laws of the United States or jurisdictions outside of the United States (*e.g.*, incentive stock options under Section 422 of the Code or French-qualified stock options) or (2) avoid adverse tax treatment (*e.g.*, under Section 409A of the Code), the Company makes no representation to that effect and expressly disavows any covenant to maintain favorable or avoid unfavorable tax treatment, anything to the contrary in this Plan, including Section 15.14 hereof, notwithstanding. The Company shall be unconstrained in its corporate activities without regard to the potential negative tax impact on holders of Awards under the Plan.

\* \* \* \*

I hereby certify that the foregoing Plan was duly adopted by the Board of Directors of Pilgrim's Pride Corporation on \_\_\_\_\_, 2009.

\* \* \* \* \*

I hereby certify that the foregoing Plan was approved by the stockholders of Pilgrim's Pride Corporation on \_\_\_\_\_, 2009 and by the United States Bankruptcy Court for the Northern District of Texas, Fort Worth Division, pursuant to a joint Chapter 11 plan of reorganization pursuant to Section 1121(a) of the United States Code, on \_\_\_\_\_, 2009.

Executed on this \_\_\_\_ day of \_\_\_\_\_, 2009.

---

Corporate Secretary



**EXHIBIT E**

**List of Initial Directors for the Reorganized Debtors**

**[To be filed with the Plan Supplement<sup>1</sup>]**

---

<sup>1</sup> The identity of the independent director of the Reorganized PPC to be designated by the Plan Sponsor shall be disclosed no later than 3 calendar days before the Confirmation Hearing

## SCHEDULE 1.34

### Compensation and Benefit Programs

The Debtors have the following compensation and employee benefit programs and agreements that either are in effect or are expected to be in effect prior to the Effective Date. The Plan contemplates assumption of each such program and agreement. The Debtors plan to continue to meet the minimum funding requirements under the Pilgrim's Pride Pension Plan for Legacy GoldKist Employees, the Pilgrim's Pride Retirement Plan for Union Employees and the Pilgrim's Pride Retirement Plan for El Dorado Union Employees.

1. *Gold Kist former directors paid medical agreements*

There are 12 participants in this plan. The benefits are funded from current operations and the participants are included in a medical benefits plan.

2. *Gold Kist former directors lifetime retainer benefit agreements*

There are 11 participants in this plan. The benefits are funded in part with the proceeds of a Rabbi trust maintained at SunTrust Bank, and in part from current operations.

3. *Gold Kist former employees deferred compensation plan agreements*

There are five participants in this plan. The benefits are funded in part with the proceeds of a Rabbi trust maintained at SunTrust Bank, and in part from current operations.

4. *Gold Kist SERP for former GoldKist employees*

There are 56 participants in this plan. The benefits are funded in part with the proceeds of a Rabbi trust maintained at SunTrust Bank, and in part from current operations.

5. *Gold Kist Executive Savings Plan*

As a result of the acquisition of Gold Kist in 2006, the Debtors assumed administration of a plan whereby employees could defer earnings to be paid later. The assets of this plan were merged into the Pilgrims Pride Deferred Compensation Plan but plan provisions remain separate. The funds are in a Rabbi trust with Wells Fargo.

6. *Gold Kist Directors Savings Plan*

As a result of the acquisition of Gold Kist in 2006, the Debtors assumed administration of a plan whereby Gold Kist directors could defer earnings to be paid later. The assets of this plan were merged into the Pilgrims Pride Deferred Compensation Plan but plan provisions remain separate. The funds are in a Rabbi trust with Wells Fargo.

7. *Gold Kist Enhanced Defined Contribution Plan*

As a result of the acquisition of Gold Kist in 2006, the Debtors assumed administration of this frozen defined contribution tax qualified retirement plan.

8. Pilgrim's Pride Pension Plan for Legacy Gold Kist Employees

As a result of the Debtors' acquisition of Gold Kist in 2006, PPC became the sponsor of an ERISA defined benefit pension plan that was offered to Gold Kist employees. The plan has been frozen effective February 8, 2007, but participants are eligible to receive pension benefits per the terms of the plan upon termination or retirement.

9. Pilgrim's Pride 2005 Deferred Compensation Plan

The Debtors have a plan that allows certain, highly-compensated employees (those who earn \$100,000 or more) to defer a portion of their annual salary and/or bonus payments. The Debtors match a certain amount of these deferrals.

10. Pilgrim's Pride Retirement Plan for Union Employees

The Debtors maintain an ERISA defined benefit plan for current union employees. As described in Section IV(G) of the Disclosure Statement, the Debtors have successfully negotiated agreements with the majority of groups covered under this benefit plan to freeze the plan, although discussions with two unions are still ongoing.

11. Pilgrim's Pride Retirement Plan for El Dorado Union Employees

The Debtor maintained a retirement plan for union employees for the El Dorado site, which was spun off into a separate plan in 2008. PPC has frozen the plan and filed an application to terminate, but no response has been received from the IRS to date.

12. UFCW Pension Fund

The Debtors make contributions to the UFCW multi-employer defined benefit plans for eligible participants at two UFCW plants, the Athens Supply Plant (as defined below) and the plant in Elberton, GA.

13. 401K Plans

The Debtors withhold from the wages of participating and eligible employees' contributions toward a 401(k) plan. The Debtors generally match 30% of the first 6% of the employees' contributions, but some of the bargaining unit and union agreements require different matching contribution rates. Prudential Financial, Inc. maintains most of the 401(k) plans, but the To-Ricos entities have their savings plan (similar to a U.S. 401(k) plan) administered by Pension Services, Inc. The employees' contributions are generally deducted and forwarded, along with the Debtors' matching contributions on a weekly basis.

14. Severance Plan

The Debtors provide severance benefits to certain eligible employees if their employment is terminated without cause. In addition to severance pay, the eligible employees receive COBRA coverage for which they are eligible.

15. 2009 Performance Bonus Plans

During the Chapter 11 Cases, PPC's board of directors approved an incentive plan for the fiscal year 2009 for approximately 80 employees and executives, including senior vice presidents and above (who currently are not included in any incentive plan), vice presidents, complex managers and select manager-level employees (the "Key Employees") tasked with assisting the Debtors in their Chapter 11 Cases to incentivize the Key Employees to see the Debtors through a successful exit from bankruptcy. The amounts to be paid to the Key Employees are linked to the Debtors' earnings before interest, taxes, depreciation, amortization and restructuring costs ("EBITDAR") in the third and fourth quarters of fiscal 2009 and the successful emergence of the Debtors from bankruptcy (participants are also required to still be employed on the date immediately preceding the Debtors' emergence from bankruptcy). Key Employees eligible to receive payments under this incentive plan who also participate in PPC's Performance Incentive Plan or who are parties to the Key Employee Incentive Compensation Agreements will receive only the highest amount payable under any of the three arrangements. PPC's board of directors also approved a similar incentive plan for Lonnie A. "Bo" Pilgrim. On September 4, 2009, the Debtors filed with the Bankruptcy Court a motion to approve the incentive plan for Key Employees. The motion is expected to be heard by the Bankruptcy Court on September 29, 2009.

16. Paid Time Off (PTO)

Eligible Employees receive their full wages for, among other things, vacation days, sick days, personal days, and holidays. Employees accrue paid time off and related obligations based upon the following calculations:

(a) Vacation, Sick Days and Personal Days: Salaried and hourly non-bargaining unit employees ("NBU Employees") earn paid vacation on each anniversary of their employment. On their personal employment anniversary, salaried and hourly NBU Employees earn vacation that can be used in the next 12 months. Vacation days do not carry over to the following year. If salaried and hourly NBU Employees leave within the year, they are paid cash for all unused vacation days. Vacation days may be used as sick days. Generally, only salaried nonexempt Employees are eligible to receive paid personal days. Employees may not receive cash for their unused paid personal days. PPC provides hourly BU Employees' with vacation, sick and personal days in accordance with each Employee's respective union contract.

(b) Holiday Pay: Salaried and hourly NBU Employees are allowed eight paid holidays per year. With the exception of Thanksgiving and Christmas, most of the holidays are determined at the discretion of the Debtors. The Debtors provide hourly BU Employees' paid holidays in accordance with each Employee's respective union contract.

17. Health and Welfare Plans

(a) Medical, Dental and Vision Plans: The Debtors offer medical coverage (including prescription drug coverage) to their salaried and hourly NBU Employees. All bargaining-unit employees ("BU Employees") are eligible to receive medical coverage pursuant to the terms of their collective bargaining agreements. Hourly BU Employees may be provided with medical coverage (including prescription drug coverage), depending on the individual's BU contract with the Debtors. Those individuals employed by To-Ricos, Ltd. or To-Ricos Distribution, Ltd. (collectively, the "To-Ricos Entities") are eligible to receive medical coverage the first of the month after 90 days of their hire date.

The Debtors' medical coverage, with the exception of medical coverage provided by the To-Ricos Entities, is primarily provided through a self-insured plan. BlueCross BlueShield of Texas (the "BCBS of TX") serves as claims administrator for all of the Debtors, with the exception of the To-Ricos Entities. The medical coverage (including dental coverage) offered by the To-Ricos Entities is not self-insured, but instead provided by MCS Life Insurance ("MCS") and Plan de Salud Hospital Menonita ("PHM"). Because the Debtors self-insure their medical plan, the Debtors (with the exception of the To-Ricos Entities) do not pay any premiums with respect thereto. Generally, the Debtors pay approximately 75% of the cost of the medical plan coverage for Employees and their enrolled family members, with the balance contributed by the Employees through payroll withholding. Approximately 26,408 Employees participate in the Debtors' medical insurance plan.

The Debtors offer dental coverage, through Ameritas dental plan, to those nonunion Employees working at the Debtors' Athens, Georgia site (the "Athens Supply Plant") and those union Employees working at one of three legacy Gold Kist sites. Approximately 1,553 Employees are covered by the Ameritas dental plan. The Debtors also offer Ameritas dental plans to their salaried, non-union hourly and certain union hourly Employees. These plans, however, are paid entirely by participating Employees.

In addition to the above noted Employees, approximately 1,780 Employees are provided dental coverage through the UFCW. The Debtors pay the premiums in connection with the dental coverage provided by UFCW.

The Debtors offer vision coverage to their non-union hourly Employees working at the Athens Supply Plant through the Ameritas vision care plan. Approximately 106 Employees are covered by the Ameritas vision plan. The Debtors also offer Ameritas vision plans to their salaried, nonunion hourly and certain union hourly Employees. These plans, however, are paid entirely by participating Employees.

In addition to the above noted Employees, approximately 1,766 Employees are provided vision coverage through the UFCW. The Debtors fund the payment of premiums to UFCW which, in turn, provides vision coverage to the participating Employees.

(b) Basic Life, AD&D, and Business Travel Accident Insurance: The Debtors, with the exception of the To-Ricos Entities (which entities' coverage is described separately below), maintain basic life and AD&D insurance coverage for their salaried and hourly NBU and BU Employees in the event of serious illness, injury, or death. Salaried Employees are eligible to receive basic life and AD&D insurance on the date of their employment and non-union hourly Employees are eligible following 60 days of employment. Union Employees' eligibility depends on the terms of their respective collective bargaining agreements. The Debtors' (other than the To-Ricos Entities) life insurance plan and AD&D are maintained under the same insurance policy provided by Unum Life Insurance Company of America ("Unum"). Under the basic life insurance plan, in the event of an Employee's death, the Employee's designee is entitled to one times the Employee's annual base pay, up to \$1 million. Additionally, under the Debtors' AD&D plan, an Employee or its designee may receive up to one times the Employee's annual base pay, up to \$1 million. Those Employees with need for a higher level of protection than afforded under the basic life insurance plan may purchase supplemental term life and AD&D insurance, and dependant life insurance.

The To-Ricos Entities offer basic life, AD&D supplemental life and AD&D, and dependent life insurance to all of their full time salaried Employees. These insurance policies are provided by Boston Mutual Life Insurance Company ("BML"). Under the basic life insurance policy, in the event of an executive Employee's death, the Employee's designee is entitled to one times the Employee's

annual base pay; a sales Employee is entitled to \$30,000; and all other Employees are entitled to \$25,000. Under the AD&D plan, an Employee or the Employee's designee may receive up to one times the Employee's annual base pay, up to \$1 million. The To-Ricos Entities offer supplemental life and AD&D insurance, in an amount equal to 1 to 5 times the Employee's annual base pay.

The Debtors, other than the To-Ricos Entities, also maintain business travel accident insurance for their salaried and hourly NBU Employees. Salaried Employees are eligible to participate in this coverage upon employment, and hourly NBU Employees are eligible following the completion of 60 days of employment. The Debtors' business travel accident insurance is provided by Cigna. Under the business travel accident insurance plan, in the event that something happens to an Employee while he or she is traveling on a business trip for Pilgrim's Pride, the Employee or the Employee's designee may receive up to ten times the Employee's annual base pay, up to \$500,000.

(c) Voluntary Accident, Whole Life, and Critical Illness Insurance: Salaried and hourly NBU and BU Employees may enter into individual insurance contracts with their insurance provider to obtain accident, whole life, and critical illness insurance. Voluntary accident insurance (the "Voluntary Accident Insurance Policy") provides benefits for covered injuries and accident-related expenses for an individual or family. Because health insurance only covers certain expenses, the Voluntary Accident Insurance Policy is designed to help cover the out-of-pocket expenses that result from a covered accident. Voluntary whole life insurance (the "Voluntary Whole Life Insurance Policy") provides a death benefit to an Employee's beneficiary if the Employee passes away, but it may also build cash value that the Employee may use while the Employee is alive. Voluntary critical illness insurance (the "Voluntary Critical Illness Insurance Policy") provides financial protection for an Employee and his or her family in the event of a serious medical condition, such as a heart attack or cancer. The policy provides a lump sum benefit that may be used any way the Employee chooses. The Debtors do not incur any expenses in connection with the Voluntary Accident Insurance Policy, Voluntary Whole Life Insurance Policy, or the Voluntary Critical Illness Insurance Policy.

(d) Disability Benefits: The Debtors offer short term disability pay to their NBU Employees, funded entirely by PPC. The pay policy provides an Employee who is unable to work due to an illness or injury sixty percent (60%) of his or her base pay for up to 26 weeks. Those Employees who are enrolled in any medical plan and have one year of service are automatically eligible to receive pay in the event of sustaining a disability pursuant to the Debtors' short term disability pay policy. Individuals working for the To-Ricos Entities, however, are immediately eligible to receive short term disability pay on the date of hire. With the exception of the To-Ricos Entities, Unum administers the Debtors' short term disability program. The To-Ricos Entities' short term disability program is administered by Cosvi. The plan administrators advise the Debtors as to whether an Employee should receive short term disability pay. If it is determined the Employee should receive the short term disability pay, the Debtors distribute the pay through the Employee's salary or wages.

The Debtors also offer short term disability coverage to certain union Employees. The short term disability coverage is insured by Unum. Unum distributes the short term disability pay to the Employees, after deducting premiums for medical, dental, and vision coverage, which premiums it submits to the Debtors via wire or check.

The Debtors offer a salary continuation program to their salaried Employees. Under the salary continuation program, an Employee who is injured or ill may receive one hundred percent (100%) of his or her base salary up to 6 weeks and sixty percent (60%) of his or her base salary up to an additional 19 weeks. Salary continuation begins the first day following an injury or on the eighth day of an illness, inpatient hospitalization, or outpatient service. Employees must report their disability to Unum, the managed disability provider, who advises the Debtors of the approved



disability period. Employees are not paid under the salary continuation program until they obtain approval by Unum. When disability is due to an illness, the Employee must complete a 7-day elimination period before the Employee may begin receiving salary continuation. When the Employee's disability is due to an injury, no elimination period applies. Salaried non-exempt Employees must use vacation or personal time to receive pay during the elimination period; however, salaried exempt Employees are paid regular salary during the elimination period. If Unum determines that an Employee is eligible to participate in the Debtors' salary continuation program, the Debtors distribute the pay the Employee is entitled to receive under the program through the Employees salary or wages. While on leave of absence, the Employee is ineligible for holiday, vacation, personal time, or shift differential pay.

If a salaried Employee is unable to return to work due to an illness or injury at the end of the salary continuation period, the Employee may apply for benefits under the Debtors' long term disability plan, which plan is administered by Unum and, with respect to the To-Ricos Entities, by Universal Life Insurance Company ("Universal"). Those individuals employed by either of the To-Ricos Entities are eligible to apply for long term disability benefits immediately following their 90th day of employment, even if they are hourly Employees. Under the Debtors' long term disability plan, an Employee (other than an individual employed by the To-Ricos Entities) may receive sixty percent (60%) of his or her average monthly base pay for the duration of his or her disability until he or she reaches the age of 65. However, if the disability occurs at age 60, benefits are paid according to a graded time schedule which ranges from five years at age 60 to twelve months at age 69 and older. Those individuals employed by either of the To-Ricos Entities who are paid hourly, are eligible to receive \$100 per month for the duration of the disability; those salary nonexempt Employees are eligible to receive 60% of their annual base pay up to \$5,000, and those salary exempt Employees are eligible to receive 60% of their annual base pay up to \$8,000. Amounts an Employee receives from other sources of income, such as workers' compensation, social security, or other federal, state, or local laws, as well as any retirement benefits, reduce long term disability benefits.

The Debtors' long term disability plan is fully insured. The insurance premiums associated with the long term disability coverage are deducted from an Employee's pay on an after tax basis. The Debtors reimburse the Employee half of the premium as compensation.

(e) Flexible Spending Programs: Salaried and hourly NBU Employees may enroll in Flexible Spending Programs ("FSPs"), which programs are administered by PayFlex Systems USA, Inc. ("PayFlex"). Pursuant to these programs, eligible Employees may contribute up to \$5,000 per year of pre-tax income through payroll deductions to be used for out-of-pocket medical, dental, or vision expenses, and up to \$5,000 per year for child-care or elder-care expenses. The Debtors deduct Employees' contributions toward this program from their wages on a weekly basis, hold such amounts in a separate account, and forward such amounts to Payflex. Payflex issues reimbursements to Employees for eligible expenses. Because the Debtors' open enrollment provider pays Payflex's administrative fees, the Debtors do not incur any costs in connection with the administration of the FSPs.

#### 18. Key Employee Incentive Compensation Agreements

The Debtors have entered into Key Employee Incentive Compensation Agreements (the "Incentive Agreements") with approximately 210 Employees. The Incentive Agreements were entered into in order to assure that the Debtors will have the continued dedication of certain of their Employees while the Debtors restructure their capital and financial structure. Participants must remain employed by the Debtors through December 31, 2009 to receive payment, which payment will not become due, with



certain exceptions, until January 2010. The maximum payout under the Incentive Agreements totals \$5.7 million in the aggregate.

19. Performance Improvement Plan

The Debtors offer certain salaried Employees an annual cash incentive award pursuant to the Pilgrim's Pride Corporation Performance Improvement Plan (the "PIP"). Approximately 375 Employees are eligible to participate in the PIP. The primary purposes of the PIP are, among other things, to motivate Employees toward achieving annual goals set by the Debtors' executive team, encourage teamwork, and reward loyalty. Payments under the PIP will not be made until after the end of the Debtors' fiscal year 2009. Those employees who are eligible to receive a payment pursuant to the PIP as well as any other incentive program are only eligible to receive a payment from one program (the program with the highest payout). The maximum payout under the PIP totals \$4.5 million.

20. Professional Drivers Incentive Program

The Debtors maintain a professional drivers incentive program (the "Safe Driving Award Program") to reward eligible Employees for the safe and professional operation of commercial vehicles throughout the program year. Approximately 1,650 of the Debtors' truck drivers are eligible to participate in the program. The program year begins on June 1 and ends on May 31 of each year. Employees are eligible to participate in the program if they, among other things, (i) are a full time driver for the entire program year, (ii) did not have an occurrence during the program year, (iii) drove at least 48 weeks in the program year, and (iv) were not placed on disciplinary suspension at any time during the program year. Eligible participants receive either cash or prizes depending on the number of award years that the Employee has participated in the program. The maximum amount an eligible Employee may receive is \$2,000 in cash. Cash prizes generally increase with the number of years an Employee has participated in the program. Payments under the program are made once a year in or around August.

21. Attendance Award Program

The Debtors reward hourly Employees who work at select sites and achieve perfect attendance in a 12 month period. The award amounts depend on the particular site at which an individual works. Awards are distributed along with an Employee's pay.

22. Incentive Education Program

The Debtors reward hourly Employees working at certain of the Debtors' facilities, who improve their reading or math skills by two grade levels or receive their General Equivalency Diploma and complete at least 40 hours of study time at an approved program. Those qualifying Employees receive a net amount of \$100. Awards are distributed along with an Employee's pay. The Debtors provide their eligible Employees with various service awards and benefits to recognize and reward employee dedication and performance. For example, the Debtors pay cash awards to those Employees who devote a certain number of years to service.

Hourly Employees who work at select sites may each also receive a \$250 quarterly reward to the extent that the Employee, among other requirements, engages in training for Hazmat Technician, Confined Space Entry & Rescue, CPR, First Aid and Bloodborne Pathogens. Certain key hourly Employees are also eligible on a discretionary basis to receive "stay-on" rewards as an incentive to continue to work at a site that is closing. These Employees are not eligible to receive severance.

23. Referral and Sign-On Rewards

The Debtors also offer referral and sign-on rewards. Those Employees who refer individuals to fulfill certain salaried exempt positions are eligible to receive a monetary reward. Those Employees who refer individuals later hired by the Debtors are entitled to receive \$10,000 for referring an individual to a salaried exempt senior level position and \$5,000 for referring an individual to other identified salaried exempt positions. Referral rewards are paid in two installments, the first following 6 months of the referee's employment and the second following 24 months of employment. Additionally, certain key hires are offered sign-on rewards which are paid within the first few weeks of the date of hire, but must be repaid if the Employee leaves before the end of the designated period (usually one year).

24. Tuition Reimbursement

Full time salaried and hourly NBU Employees are entitled to receive tuition reimbursement under the Debtors' tuition reimbursement program (the "Tuition Reimbursement Program"). Under the program, Employees who receive a grade of "C" or better on coursework provided by an accredited institution qualify for reimbursement. Employees may receive up to \$3,000 per year for tuition reimbursement, with a maximum of up to \$20,000 in a lifetime. Employees receive reimbursement along with their weekly pay.

25. Chaplain Program

The Debtors maintain a chaplain program (the "Chaplain Program") with Marketplace Chaplains USA ("Marketplace"), that provides crisis and emergency management support to salaried and hourly BU and NBU Employees. The Debtors pay 100% of the cost of the Chaplain Program for Employees and their immediate families.

26. Nurse Line Program

The Debtors provide, through BCBS of TX, a toll free telephone service (the "24/7 Nurseline Program") that connects participating Employees to experienced registered nurses who can answer questions and provide information on a variety of health care concerns.

27. Special Beginnings Maternity Program

The Debtors maintain, through BCBS of TX, a maternity program (the "Special Beginnings Maternity Program"), which offers prenatal education, obstetric check-up planning, and lifestyle awareness to salaried and hourly NBU and BU Employees and their spouses, regardless of whether the Employees and their spouses are enrolled in the Debtors' medical plan.

28. Car Allowance Program

The To-Ricos Entities provide a car allowance (the "Car Allowance Program") to those Employees who use automobiles in the course of their work with the Debtors. Approximately 35 Employees are eligible to participate in the Car Allowance Program.

29. Relocation Program

The Debtors offer a relocation reimbursement plan (the "Relocation Reimbursement Plan") to new hires and current employees who transfer to a different geographical location. The Relocation Reimbursement Plan applies to the following two categories of employees and the level of benefits varies

for each: (i) executive Employees and (ii) full time exempt salaried Employees with this program, based on whether full time exempt salaried Employees are homeowners or renters. The scope of benefits varies among the two categories of Employees covered by the Relocation Reimbursement Plan, but in general includes reimbursement for residence-finding trips, temporary residence expense, moving expenses, home marketing and home sale assistance and similar types of arrangements. The Debtors have entered into an agreement with a relocation services provider, SIRVA Relocation LLC ("SIRVA"), to administer the Relocation Reimbursement Plan. With respect to certain types of reimbursable expenses paid directly to those entities that facilitate the relocation, such as movers of household goods, SIRVA funds payment and bills the Debtors at the end of each week. Other types of reimbursable expenses are paid directly by the Employee, who then submits his or her reimbursement requests to SIRVA. SIRVA processes the reimbursement requests provided by the Employee and, with respect to those allowable expenses, forwards the request to the Debtors for payment. The Employee's taxable reimbursements are included in his or her weekly pay as compensation and those non-taxable reimbursements are included in his or her weekly pay as expense reimbursement.

30. Service Awards

The Debtors offer a service awards program, designed to provide recognition to employees who have reached designated milestones in their career. Beginning with an employee's fifth anniversary, an employee receives a certificate and may select a gift from a brochure listing company paid gifts, which are available through Michael C. Fina. Every five years the employee may select another gift, the value of which increases as the anniversary date progresses.

**SCHEDULE 8.1**

**Assumed Executory Contracts and Unexpired Leases**

**[To be filed with Plan Supplement]**

**SCHEDULE 8.7**

**Insurance Policies to be Rejected**

**[To be filed with Plan Supplement]**

**SCHEDULE 8.9**

**Other Contracts to be Rejected**

**[To be filed with Plan Supplement]**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION**

**In re**

**PILGRIM'S PRIDE CORPORATION, *et al.*,**

**Debtors.**

§  
§  
§  
§  
§  
§  
§  
§  
§  
§

**Chapter 11**

**Case No. 08-45664 (DML)**

**JOINTLY ADMINISTERED**

**DEBTORS' AMENDED JOINT PLAN OF REORGANIZATION  
UNDER CHAPTER 11 OF THE BANKRUPTCY CODE [\(AS MODIFIED\)](#)**

WEIL, GOTSHAL & MANGES LLP

200 Crescent Court, Suite 300  
Dallas, Texas 75201  
(214) 746-7700

767 Fifth Avenue  
New York, New York 10153  
(212) 310-8000

Attorneys for Debtors and  
Debtors in Possession

Dated: October 21, 2009  
[\(modified November 17, 2009\)](#)



## TABLE OF CONTENTS

|   | Page                  |
|---|-----------------------|
| ARTICLE I    DEFINITIONS AND INTERPRETATION .....             | 1                     |
| A.        Definitions .....                                   | 1                     |
| 1.1.    7 5/8% Indenture .....                                | 1                     |
| 1.2.    7 5/8% Indenture Trustee .....                        | 1                     |
| 1.3.    8 3/8% Indenture .....                                | 1                     |
| 1.4.    8 3/8% Indenture Trustee .....                        | <del>2</del> <u>1</u> |
| 1.5.    9 1/4% Indenture .....                                | 2                     |
| 1.6.    9 1/4% Indenture Trustee .....                        | 2                     |
| 1.7.    Administrative Expense Claims Bar Date.....           | 2                     |
| 1.8.    Administrative Expense Claims Objection Deadline..... | 2                     |
| 1.9.    Administrative Expense Claim.....                     | 2                     |
| 1.10.   ADR Procedures Order .....                            | 2                     |
| 1.11.   Affiliate .....                                       | 2                     |
| 1.12.   Allowed .....   | 2                     |
| 1.13.   Avoidance Actions .....                               | 3                     |
| 1.14.   BMO .....   | 3                     |
| 1.15.   BMO Guarantee Agreement.....                          | 3                     |
| 1.16.   BMO Secured Claim .....                               | 3                     |
| 1.17.   Bankruptcy Code .....                                 | 3                     |
| 1.18.   Bankruptcy Court .....                                | 3                     |
| 1.19.   Bankruptcy Rules .....                                | 3                     |
| 1.20.   Business Day .....                                    | 3                     |
| 1.21.   Cash .....  | 3                     |
| 1.22.   Chapter 11 Cases .....                                | 3                     |
| 1.23.   Charging Lien .....                                   | 3                     |
| 1.24.   Chief Restructuring Officer.....                      | 3                     |
| 1.25.   Claim.....  | 3                     |
| 1.26.   Claims Agent.....                                     | <del>4</del> <u>3</u> |
| 1.27.   Class .....   | <del>4</del> <u>3</u> |
| 1.28.   CoBank .....  | 4                     |
| 1.29.   CoBank Guarantee Agreement.....                       | 4                     |

**TABLE OF CONTENTS**  
**(continued)**

|  | <b>Page</b>           |
|--|-----------------------|
| 1.30. CoBank Secured Claim .....             | 4                     |
| 1.31. Collateral .....                       | 4                     |
| 1.32. Commencement Date .....                | 4                     |
| 1.33. Committees .....                       | 4                     |
| 1.34. Compensation and Benefit Programs..... | 4                     |
| 1.35. Compensation-Related Obligation.....   | 4                     |
| 1.36. Confirmation Date .....                | <del>5</del> <u>4</u> |
| 1.37. Confirmation Hearing .....             | 5                     |
| 1.38. Confirmation Order .....               | 5                     |
| 1.39. Contingent Claim .....                 | 5                     |
| 1.40. Covered Professionals.....             | 5                     |
| 1.41. Creditors' Committee .....             | 5                     |
| 1.42. Debtors .....                          | 5                     |
| 1.43. Debtors in Possession .....            | 5                     |
| 1.44. DIP Claims .....                       | 5                     |
| 1.45. DIP Credit Agreement .....             | 5                     |
| 1.46. DIP Financing Order .....              | 5                     |
| 1.47. DIP Lenders .....                      | 5                     |
| 1.48. Disallowed Claim .....                 | 5                     |
| 1.49. Disbursing Agent .....                 | 5                     |
| 1.50. Disclosure Statement .....             | <del>6</del> <u>5</u> |
| 1.51. Disputed .....                         | 6                     |
| 1.52. Distribution Record Date .....         | 6                     |
| 1.53. Effective Date .....                   | 6                     |
| 1.54. Entity .....                           | 6                     |
| 1.55. Equity Committee.....                  | 6                     |
| 1.56. Equity Interest .....                  | 6                     |
| 1.57. Exit Facility.....                     | 6                     |
| 1.58. Exit Facility Agent.....               | 6                     |
| 1.59. Exit Facility Documents.....           | 6                     |
| 1.60. Exit Financing .....                   | 7                     |

**TABLE OF CONTENTS**  
**(continued)**

|   | <b>Page</b>           |
|---|-----------------------|
| 1.61. Exit Lenders .....                        | 7                     |
| 1.62. Fee Review Committee.....                 | 7                     |
| 1.63. Final Order .....                         | 7                     |
| 1.64. Flow-Through Claim .....                  | 7                     |
| 1.65. General Unsecured Claim .....             | 7                     |
| 1.66. Governmental Unit .....                   | 7                     |
| 1.67. Guarantee Agreements.....                 | 7                     |
| 1.68. Indenture Trustees .....                  | 7                     |
| 1.69. Indenture Trustee Fee Claim .....         | 7                     |
| 1.70. Indentures .....                          | <del>8</del> <u>7</u> |
| 1.71. Intercompany Claim .....                  | <del>8</del> <u>7</u> |
| 1.72. Lien .....                                | 8                     |
| 1.73. LTIP.....                                 | 8                     |
| 1.74. Mandatory Exchange Transaction .....      | 8                     |
| 1.75. New Employee Incentive Plans.....         | 8                     |
| 1.76. New PPC Common Stock .....                | 8                     |
| 1.77. Note Claims.....                          | 8                     |
| 1.78. Notes .....                               | 8                     |
| 1.79. Ordinary Course Customer Obligation ..... | 8                     |
| 1.80. Other Secured Claim .....                 | 8                     |
| 1.81. Pilgrim’s Pride.....                      | 8                     |
| 1.82. Plan .....                                | 8                     |
| 1.83. Plan Sponsor.....                         | 8                     |
| 1.84. Plan Supplement .....                     | 8                     |
| 1.85. PPC .....                                 | 8                     |
| 1.86. PPC Common Stock .....                    | 8                     |
| 1.87. Prepetition BMO Credit Agreement .....    | <del>9</del> <u>8</u> |
| 1.88. Prepetition CoBank Credit Agreement ..... | 9                     |
| 1.89. Priority Non-Tax Claim .....              | 9                     |
| 1.90. Priority Tax Claim .....                  | 9                     |
| 1.91. Proof of Claim.....                       | 9                     |

**TABLE OF CONTENTS**  
(continued)

|   | <b>Page</b>             |
|---|-------------------------|
| 1.92. Reorganized Debtors .....   | 9                       |
| 1.93. Reorganized Debtor Constituent Documents .....  | 9                       |
| 1.94. Reorganized PPC .....   | 9                       |
| 1.95. Reorganized To-Ricos .....  | 9                       |
| 1.96. Reorganized To-Ricos Distribution .....   | 9                       |
| 1.97. Restated Bylaws .....   | 9                       |
| 1.98. Restated Certificate of Incorporation .....   | 9                       |
| 1.99. Schedules .....   | <del>10</del> <u>9</u>  |
| 1.100. Secured Claim .....  | 10                      |
| 1.101. Secured Tax Claim .....  | 10                      |
| 1.102. Senior Notes .....   | 10                      |
| 1.103. Senior Note Claims .....   | 10                      |
| 1.104. Senior Subordinated Notes .....  | 10                      |
| 1.105. Senior Subordinated Note Claims .....  | 10                      |
| 1.106. Settling Unions .....  | 10                      |
| 1.107. SPA .....  | 10                      |
| 1.108. STIP .....   | 10                      |
| 1.109. Stockholders Agreement .....   | 10                      |
| 1.110. Subordinated Notes .....   | 10                      |
| 1.111. Subordinated Note Claims .....   | <del>11</del> <u>10</u> |
| 1.112. To-Ricos .....   | <del>11</del> <u>10</u> |
| 1.113. To-Ricos Distribution .....  | <del>11</del> <u>10</u> |
| 1.114. Unliquidated Claim .....   | 11                      |
| 1.115. Voting Record Date .....   | 11                      |
| B. Interpretation; Application of Definitions and Rules of Construction .....                       | 11                      |
| ARTICLE II PROVISIONS FOR PAYMENT OF ADMINISTRATIVE EXPENSE CLAIMS<br>AND PRIORITY TAX CLAIMS ..... | 11                      |
| 2.1. Administrative Expense Claims .....  | 11                      |
| 2.2. Professional Compensation and Reimbursement Claims .....                                       | 12                      |
| 2.3. Indenture Trustee Fee Claims .....   | 12                      |
| 2.4. DIP Claims .....   | <del>13</del> <u>12</u> |
| 2.5. Priority Tax Claims .....  | 13                      |

**TABLE OF CONTENTS**  
**(continued)**

|   | Page                    |
|---|-------------------------|
| ARTICLE III CLASSIFICATION OF CLAIMS AND EQUITY INTERESTS.....  | 13                      |
| ARTICLE IV TREATMENT OF CLAIMS AND EQUITY INTERESTS.....  | 14                      |
| 4.1. Classes 1(a)–(g): Priority Non-Tax Claims against the Debtors .....  | 14                      |
| 4.2. Classes 2(a)–(c): Bank of Montreal Secured Claims against PPC, To-<br>Ricos, and To-Ricos Distribution ..... | 14                      |
| 4.3. Class 3: CoBank Secured Claims against PPC.....  | 15                      |
| 4.4. Classes 4(a)–(g): Secured Tax Claims against the Debtors.....  | 15                      |
| 4.5. Classes 5(a)–(g): Other Secured Claims against the Debtors.....  | 16                      |
| 4.6. Classes 6(a)–(c): Note Claims against PPC .....  | 16                      |
| 4.7. Classes 7(a)–(g): General Unsecured Claims against the Debtors .....   | <del>16</del> <u>17</u> |
| 4.8. Class 8: Intercompany Claims.....  | 17                      |
| 4.9. Classes 9(a)–(g): Flow-Through Claims against the Debtors .....  | 17                      |
| 4.10. Class 10(a): Equity Interests in PPC.....   | 17                      |
| 4.11. Classes 10(b)–(g): Equity Interests in the Debtors (Other than PPC).....                                    | 18                      |
| ARTICLE V MEANS FOR IMPLEMENTATION.....   | 18                      |
| 5.1. Operations Between the Confirmation Date and the Effective Date .....  | 18                      |
| 5.2. Corporate Action .....   | <del>18</del> <u>19</u> |
| 5.3. Continued Corporate Existence of the Debtors .....   | 19                      |
| 5.4. Cancellation and Surrender of Existing Securities and Agreements .....                                       | 19                      |
| 5.5. Restated Certificate of Incorporation and Restated Bylaws.....   | 20                      |
| 5.6. Stock Purchase Agreement.....  | 20                      |
| 5.7. Exit Financing .....   | 20                      |
| 5.8. Issuance of New PPC Common Stock.....  | <del>20</del> <u>21</u> |
| 5.9. Effectuating Documents and Further Transactions.....   | 21                      |
| 5.10. Exemption from Securities Laws .....  | 21                      |
| ARTICLE VI VOTING AND DISTRIBUTIONS.....  | 21                      |
| 6.1. Voting of Equity Interests .....   | 21                      |
| 6.2. Nonconsensual Confirmation .....   | 21                      |
| 6.3. Distribution Record Date .....   | <del>21</del> <u>22</u> |
| 6.4. Date of Distributions.....   | <del>21</del> <u>22</u> |
| 6.5. Disbursing Agent.....  | 22                      |
| 6.6. Rights and Powers of Disbursing Agent .....  | 22                      |

**TABLE OF CONTENTS**  
**(continued)**

|  | <b>Page</b>             |
|--|-------------------------|
| 6.7. Expenses of the Disbursing Agent.....   | 22                      |
| 6.8. Delivery of Distributions .....   | 22                      |
| 6.9. Unclaimed Distributions .....   | 23                      |
| 6.10. Manner of Payment.....   | 23                      |
| 6.11. Fractional Shares .....  | 23                      |
| 6.12. Minimum Cash Distributions .....   | <del>23</del> <u>24</u> |
| 6.13. Setoffs and Recoupment .....   | 24                      |
| ARTICLE VII PROCEDURES FOR DISPUTED CLAIMS .....   | 24                      |
| 7.1. Objections / Objection Deadline.....  | 24                      |
| 7.2. No Payment Pending Allowance .....  | 24                      |
| 7.3. Distributions After Allowance .....   | 24                      |
| 7.4. Resolution of Disputed Claims.....  | 25                      |
| 7.5. Estimation of Claims .....  | 25                      |
| ARTICLE VIII TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES .....   | 25                      |
| 8.1. Assumption or Rejection of Executory Contracts and Unexpired Leases .....   | 25                      |
| 8.2. Approval of Assumption, Assumption and Assignment, or Rejection of<br>Executory Contracts and Unexpired Leases.....             | 26                      |
| 8.3. Inclusiveness .....   | 26                      |
| 8.4. Cure of Defaults .....  | 26                      |
| 8.5. Bar Date for Filing Proofs of Claim Relating to Executory Contracts and<br>Unexpired Leases Rejected Pursuant to the Plan ..... | 27                      |
| 8.6. Indemnification Obligations.....  | 27                      |
| 8.7. Insurance Policies .....  | <del>27</del> <u>28</u> |
| 8.8. Compensation and Benefit Programs.....  | 28                      |
| 8.9. Other Contracts to be Assumed .....   | 28                      |
| 8.10. Retiree Benefits .....   | 29                      |
| ARTICLE IX CORPORATE GOVERNANCE AND MANAGEMENT OF THE<br>REORGANIZED DEBTORS.....  | 29                      |
| 9.1. General.....  | 29                      |
| 9.2. Initial Board of Directors .....  | 29                      |
| 9.3. Officers. ....  | 30                      |
| 9.4. New Employee Incentive Plans .....  | 30                      |

**TABLE OF CONTENTS**  
**(continued)**

|   | <b>Page</b>             |
|---|-------------------------|
| 9.5. Issuance of Non-Voting Securities .....                            | 30                      |
| ARTICLE X EFFECT OF CONFIRMATION.....                                   | 30                      |
| 10.1. Vesting of Assets .....   | 30                      |
| 10.2. Discharge of Claims and Termination of Equity Interests .....     | <del>30</del> <u>31</u> |
| 10.3. Discharge of Debtors .....  | 31                      |
| 10.4. Injunction or Stay .....  | 31                      |
| 10.5. Term of Injunctions or Stays .....                                | <del>31</del> <u>32</u> |
| 10.6. Injunction Against Interference With Plan.....                    | 32                      |
| 10.7. Exculpation .....   | 32                      |
| 10.8. Releases by Holders of Claims and Equity Interests .....          | 32                      |
| 10.9. Releases by Debtors and Reorganized Debtors .....                 | 33                      |
| 10.10. Retention of Avoidance Actions.....                              | 33                      |
| 10.11. Retention of Causes of Action/Reservation of Rights .....        | 33                      |
| 10.12. Limitations on Exculpation and Releases of Representatives ..... | 34                      |
| ARTICLE XI CONDITIONS PRECEDENT TO EFFECTIVE DATE.....                  | 34                      |
| 11.1. Conditions Precedent to Effectiveness.....                        | 34                      |
| 11.2. Waiver of Conditions .....  | 35                      |
| 11.3. Effect of Failure of Conditions to Effective Date.....            | 35                      |
| ARTICLE XII RETENTION OF JURISDICTION .....                             | 35                      |
| ARTICLE XIII MISCELLANEOUS PROVISIONS .....                             | 37                      |
| 13.1. Effectuating Documents and Further Transactions.....              | 37                      |
| 13.2. [Intentionally Omitted.] .....                                    | 37                      |
| 13.3. Corporate Action .....  | 37                      |
| 13.4. Exemption from Transfer Taxes.....                                | 38                      |
| 13.5. Expedited Tax Determination.....                                  | 38                      |
| 13.6. Payment of Statutory Fees .....                                   | 38                      |
| 13.7. Post-Confirmation Date Professional Fees and Expenses.....        | 38                      |
| 13.8. Dissolution of Committees.....                                    | <del>38</del> <u>39</u> |
| 13.9. Indenture Trustees as Claim Holders .....                         | 39                      |
| 13.10. Plan Supplement.....   | 39                      |
| 13.11. Substantial Consummation.....                                    | 39                      |



**TABLE OF CONTENTS**  
**(continued)**

|  | <b>Page</b>             |
|--|-------------------------|
| 13.12. Amendments or Modifications of the Plan ..... | 39                      |
| 13.13. Revocation or Withdrawal of the Plan .....    | 40                      |
| 13.14. Severability. ....                            | 40                      |
| 13.15. Governing Law.....                            | 40                      |
| 13.16. Binding Effect .....                          | 40                      |
| 13.17. Exhibits/Schedules.....                       | <del>40</del> <u>41</u> |
| 13.18. Notices .....                                 | 41                      |
| 13.19. Time .....                                    | 41                      |
| 13.20. Section Headings .....                        | 42                      |
| 13.21. No Admissions .....                           | 42                      |

## **EXHIBITS**

Exhibit A – Summary of Terms of Exit Facility

Exhibit B – Stock Purchase Agreement

Exhibit C – Restated Certificate of Incorporation and Restated Bylaws

Exhibit D – Summary of New Employee Incentive Plans

Exhibit D-1 – Short Term Management Incentive Plan

Exhibit D-2 – Long Term Incentive Plan

Exhibit E – List of Initial Directors for the Reorganized Debtors

## **SCHEDULES**

Schedule 1.34 – Compensation and Benefit Programs

Schedule 8.1 – Assumed Executory Contracts and Unexpired Leases

Schedule 8.7 – Insurance Policies to be Rejected

Schedule 8.9 – Certain Contracts to be Rejected

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION**

**In re**

**PILGRIM'S PRIDE CORPORATION, *et al.*,**

**Debtors.**

§  
§  
§  
§  
§  
§  
§  
§  
§  
§

**Chapter 11**

**Case No. 08-45664 (DML)**

**JOINTLY ADMINISTERED**

**DEBTORS' AMENDED JOINT PLAN OF REORGANIZATION  
UNDER CHAPTER 11 OF THE BANKRUPTCY CODE**

Pilgrim's Pride Corporation, PFS Distribution Company, PPC Transportation Company, To-Ricos, Ltd., To-Ricos Distribution, Ltd., Pilgrim's Pride Corporation of West Virginia, Inc., and PPC Marketing, Ltd. (collectively, the "Debtors") propose the following amended joint chapter 11 plan of reorganization, pursuant to section 1121(a) of title 11 of the United States Code:

**ARTICLE I**

**DEFINITIONS AND INTERPRETATION**

**A. Definitions.**

The following terms used herein shall have the respective meanings defined below (such meanings to be equally applicable to both the singular and plural):

1.1. **7 5/8% Indenture** means that certain indenture, dated as of January 24, 2007, between PPC and the 7 5/8% Indenture Trustee, pursuant to which the Senior Notes were issued, as such Indenture is or has been amended, modified or supplemented from time to time.

1.2. **7 5/8% Indenture Trustee** means HSBC Bank USA, National Association, in its capacity as the successor indenture trustee for the Senior Notes pursuant to the 7 5/8% Indenture, or any successor thereto.

1.3. **8 3/8% Indenture** means that certain indenture, dated as of January 24, 2007, between PPC and the 8 3/8% Indenture Trustee, pursuant to which the Subordinated Notes were issued, as such Indenture is or has been amended, modified or supplemented from time to time.

1.4. **8 3/8% Indenture Trustee** means The Bank of New York, in its capacity as the successor indenture trustee for the Subordinated Notes pursuant to the 8 3/8% Indenture, or any successor thereto.

1.5. **9 1/4% Indenture** means that certain indenture, dated as of November 21, 2003, between PPC and the 9 1/4% Indenture Trustee, pursuant to which the Senior Subordinated Notes were issued, as such Indenture is or has been amended, modified or supplemented from time to time.

1.6. **9 1/4% Indenture Trustee** means The Bank of New York, in its capacity as the indenture trustee for the Senior Subordinated Notes pursuant to the 9 1/4% Indenture, or any successor thereto.

1.7. **Administrative Expense Claims Bar Date** means the deadline for filing proofs of or requests for payment of Administrative Expense Claims, which shall be 60 days after the Effective Date, unless otherwise ordered by the Bankruptcy Court.

1.8. **Administrative Expense Claims Objection Deadline** means, as applicable, (a) the day that is the later of (i) the first Business Day that is at least 30 days after the Administrative Expense Claims Bar Date and (ii) as to Administrative Expense Claims filed after the Administrative Expense Claims Bar Date, the first Business Day that is at least 30 days after a Final Order is entered deeming the late filed claim to be treated as timely filed or (b) such later date as may be established by the Bankruptcy Court upon request of the Reorganized Debtors without further notice to parties-in-interest.

1.9. **Administrative Expense Claim** means any Claim constituting a cost or expense of administration of the Chapter 11 Cases allowed under sections 503(b) (including 503(b)(9)), 507(a)(2) and 507(b) of the Bankruptcy Code, including, without limitation, any actual and necessary costs and expenses of preserving the Debtors' estates, any actual and necessary costs and expenses of operating the Debtors' business, any actual and necessary costs and expenses of the administration and implementation of the Plan, any indebtedness or obligations incurred or assumed by the Debtors, as Debtors in Possession, during the Chapter 11 Cases, including, without limitation, for the acquisition or lease of property or an interest in property or the rendition of services, any allowances of compensation and reimbursement of expenses to the extent allowed by Final Order under section 330 or 503 of the Bankruptcy Code, and any fees or charges assessed against the Debtors' estates under section 1930 of chapter 123 of title 28 of the United States Code.

1.10. **ADR Procedures Order** means the Order Pursuant to Section 105(a) of the Bankruptcy Code, Bankruptcy Rule 9019 and Local Rule 9019.2(I) Establishing Alternative Dispute Resolution Procedures for Resolution of Personal Injury Claims and (II) Granting Related Relief, entered by the Bankruptcy Court on April 9, 2009 [Docket No. 1435].

1.11. **Affiliate** shall have the meaning ascribed in section 101 of the Bankruptcy Code.

1.12. **Allowed** means, (i) with respect to a Claim, that (a) such Claim has been listed by the Debtors in the Schedules, as such Schedules may be amended by the Debtors from time to time in accordance with Bankruptcy Rule 1009, as liquidated in amount and not disputed or contingent and no contrary Proof of Claim has been filed or objection interposed by the Debtors prior to the Effective Date, (b) a Proof of Claim with respect to such Claim has been timely filed and no objection thereto has been interposed within the time period set forth in Sections 2.1 or 7.1 of the Plan, as applicable, or such other applicable period of limitation fixed by the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court, or an objection thereto has been interposed and such Claim has been allowed in whole or in part by a Final Order, (c) such Claim has been expressly allowed by a Final Order or under the Plan, or (d) such Claim has been compromised, settled, or otherwise resolved pursuant to the authority granted to the Debtors and Reorganized Debtors pursuant to a Final Order or under Sections 7.1, 7.4, or 7.5 of the Plan; and (ii) with respect to an Equity Interest, that such an Equity Interest is reflected in the stock transfer ledger or similar register of the applicable Debtor on either the Voting Record Date or the Distribution Record Date, as applicable.

1.13. **Avoidance Actions** means any actions commenced, or that may be commenced before or after the Effective Date, pursuant to section 544, 545, 547, 548, 550, or 551 of the Bankruptcy Code.

1.14. **BMO** means Bank of Montreal, as agent for the lenders that are party, from time to time, to the Prepetition BMO Credit Agreement, and as agent for the DIP Lenders.

1.15. **BMO Guarantee Agreement** means the Pilgrim's Pride Corporation Second Amended and Restated Guaranty Agreement, dated as of February 8, 2007.

1.16. **BMO Secured Claim** means all Claims arising under the Prepetition BMO Credit Agreement and all Claims of BMO, as agent, and lenders thereunder arising under the DIP Financing Order, less all payments made subsequent to the Commencement Date in respect of such Claims under the DIP Financing Order.

1.17. **Bankruptcy Code** means title 11 of the United States Code, as amended from time to time, as applicable to the Chapter 11 Cases.

1.18. **Bankruptcy Court** means the United States Bankruptcy Court for the Northern District of Texas, Fort Worth Division, or such other court that exercises jurisdiction over the Chapter 11 Cases.

1.19. **Bankruptcy Rules** means the Federal Rules of Bankruptcy Procedure as promulgated by the United States Supreme Court under section 2075 of title 28 of the United States Code, as amended from time to time, and any Local Rules of the Bankruptcy Court, as applicable to the Chapter 11 Cases.

1.20. **Business Day** means any day other than a Saturday, a Sunday, or any other day on which banking institutions in New York, New York are required or authorized to close by law or executive order.

1.21. **Cash** means legal tender of the United States of America.

1.22. **Chapter 11 Cases** means the cases under chapter 11 of the Bankruptcy Code commenced by the Debtors on December 1, 2008 in the Bankruptcy Court and styled *In re Pilgrim's Pride Corporation, et al.*, Chapter 11 Case No. 08-45664 (DML) (Jointly Administered).

1.23. **Charging Lien** means any right of any Indenture Trustee to a Lien upon or other priority in payment with respect to distributions to be made to holders of Note Claims for payment of any Indenture Trustee Fees arising prior to the Effective Date.

1.24. **Chief Restructuring Officer** means William Snyder of CRG Partners Group LLC, in his capacity as chief restructuring officer for PPC in these Chapter 11 Cases, and CRG Partners Group LLC.

1.25. **Claim** shall have the meaning ascribed to such term in section 101 of the Bankruptcy Code.

1.26. **Claims Agent** means Kurtzman Carson Consultants LLC, in its capacity as the claims and noticing agent appointed in these Chapter 11 Cases.

1.27. **Class** means any group of Claims or Equity Interests classified by the Plan as set forth in Article III of the Plan.

1.28. **CoBank** means CoBank, ACB, as administrative, documentation and collateral agent for the benefit of present and future syndication parties, lead arranger and book manager under the Prepetition CoBank Credit Agreement.

1.29. **CoBank Guarantee Agreement** means the Amended and Restated Guaranty of Pilgrim Interests, Ltd. to the Lender Group and CoBank, ACB, as Agent, dated as of September 21, 2006.

1.30. **CoBank Secured Claim** means all Claims arising under the Prepetition CoBank Credit Agreement and all Claims of CoBank, as agent, and lenders thereunder arising under the DIP Financing Order, less all payments made subsequent to the Commencement Date in respect of such Claims under the DIP Financing Order.

1.31. **Collateral** means any property or interest in property of the Debtors' estates subject to a Lien, charge, or other encumbrance to secure the payment or performance of a Claim, which Lien, charge, or other encumbrance is not subject to avoidance under the Bankruptcy Code.

1.32. **Commencement Date** means December 1, 2008, the date on which the Debtors commenced the Chapter 11 Cases.

1.33. **Committees** means, collectively, the Creditors' Committee, the Equity Committee, and the Fee Review Committee.

1.34. **Compensation and Benefit Programs** means the following compensation and benefit programs: the Debtors' workers' compensation programs, the Debtors' 2005 Deferred Compensation Plan, Retirement Plan for Union Employees, Retirement Plan for El Dorado Union Employees, UFCW Pension Plan, the Debtors' 401k Plan, Severance Plan, programs related to paid time off, vacation, sick and personal days, holiday pay, 2009 Performance Bonus Plan, the Debtors' Medical, Dental and Vision Plans, the Debtors' Basic Life, AD&D, and Business Travel Accident Insurance, the Debtors' Voluntary Accident Insurance Policy, Voluntary Whole Life Insurance Policy, Voluntary Critical Illness Insurance Policy, the Debtors' Disability Benefits, Flexible Spending Programs, Key Employee Incentive Compensation Agreements, Performance Improvement Plan, Professional Drivers Incentive Program, Attendance Award Program, Incentive Education Program, Referral and Sign-On Awards, Service Awards, Tuition Reimbursement, Chaplain Program, Nurse Line Program, Special Beginnings Maternity Program, Car Allowance Program, and Relocation Program, the Gold Kist Director Emeritus Agreement for Medical Benefits, the Gold Kist Director Emeritus Life Benefits Agreement, the Gold Kist Deferred Compensation Agreements, the Gold Kist Supplemental Executive Retirement Plan, the Gold Kist Executive Savings Plan, the Gold Kist Directors Savings Plan, the Gold Kist Enhanced Defined Contribution Plan, and the Pilgrim's Pride Pension Plan for Legacy Gold Kist Employees, all as more fully described on Schedule 1.34 hereof.

1.35. **Compensation-Related Obligation** means a Claim of a present or former employee, officer or director of any of the Debtors in his or her capacity as such, (i) for current or future wages, salary, commissions, or benefits, or (ii) with respect to any Compensation and Benefit Program or any other employment or severance program that has not been rejected or otherwise terminated under this Plan or pursuant to another order of the Bankruptcy Court.

1.36. **Confirmation Date** means the date on which the Clerk of the Bankruptcy Court enters the Confirmation Order on the docket of the Bankruptcy Court with respect to the Chapter 11 Cases.

1.37. **Confirmation Hearing** means the hearing to be held by the Bankruptcy Court regarding confirmation of the Plan in accordance with section 1129 of the Bankruptcy Code, as such hearing may be adjourned or continued from time to time.

1.38. **Confirmation Order** means the order of the Bankruptcy Court confirming the Plan pursuant to section 1129 of the Bankruptcy Code.

1.39. **Contingent Claim** means any Claim, the liability for which attaches or is dependent upon the occurrence of, or is triggered by, an event, which event has not yet occurred as of the date on which such Claim is sought to be estimated or an objection to such Claim is filed, whether or not such event is within the actual or presumed contemplation of the holder of such Claim and whether or not a relationship between the holder of such Claim and the applicable Debtor now or hereafter exists or previously existed.

1.40. **Covered Professionals** has the meaning ascribed to such term in the Order Granting Motion for (I) Appointment of a Fee Review Committee and (II) Amendment of the Interim Compensation Order entered by the Bankruptcy Court on April 29, 2009 [Docket No. 1624].

1.41. **Creditors' Committee** means the statutory committee of unsecured creditors appointed pursuant to section 1102 of the Bankruptcy Code in the Chapter 11 Cases, as may be reconstituted from time to time.

1.42. **Debtors** means PPC, PFS Distribution Company, PPC Transportation Company, To-Ricos, To-Ricos Distribution, Pilgrim's Pride Corporation of West Virginia, Inc., and PPC Marketing, Ltd.

1.43. **Debtors in Possession** means the Debtors in their capacity as debtors in possession in the Chapter 11 Cases pursuant to sections 1101, 1107(a), and 1108 of the Bankruptcy Code.

1.44. **DIP Claims** means all Claims arising under the DIP Credit Agreement and the DIP Financing Order.

1.45. **DIP Credit Agreement** means that certain amended and restated postpetition credit agreement entered into as of December 1, 2008, by and among PPC, To-Ricos and To-Ricos Distribution, as guarantors, the DIP Lenders, and BMO, as agent for the DIP Lenders, as amended from time to time.

1.46. **DIP Financing Order** means the Final Order of the Bankruptcy Court entered on December 30, 2008 authorizing the Debtors to make borrowings under the DIP Credit Agreement [Docket No. 396].

1.47. **DIP Lenders** means the several lenders party from time to time to the DIP Credit Agreement.

1.48. **Disallowed Claim** means a Claim or a portion of a Claim that is disallowed by an order of the Bankruptcy Court or any other court of competent jurisdiction.

1.49. **Disbursing Agent** means such Entity as is designated pursuant to Section 6.5 of the Plan to be a disbursing agent.

1.50. **Disclosure Statement** means the disclosure statement with respect to the Plan filed with and approved by the Bankruptcy Court in accordance with section 1125 of the Bankruptcy Code, as such disclosure statement may be amended, modified or supplemented.



1.51. **Disputed** means, with respect to a Claim or Equity Interest, any such Claim (including any Administrative Expense Claim) or Equity Interest (a) to the extent neither Allowed nor disallowed under the Plan or a Final Order nor deemed Allowed under section 502, 503 or 1111 of the Bankruptcy Code, (b) which has been or hereafter is listed by a Debtor on its Schedules as unliquidated, disputed or contingent and which has not been resolved by written agreement of the parties or a Final Order, or (c) for which a Proof of Claim has been timely filed with the Bankruptcy Court or a written request for payment has been made and the Debtors or the Reorganized Debtors, as applicable, have interposed a timely objection and/or request for estimation in accordance with the Plan, which objection or request for estimation has not been withdrawn or determined by a Final Order. Prior to the earlier of the time an objection has been timely filed and the expiration of the time within which to object to such Claim set forth herein or otherwise established by order of the Bankruptcy Court, a Claim shall be considered a Disputed Claim to the extent that (i) the amount of the Claim specified in a Proof of Claim exceeds the amount of the Claim scheduled by the Debtor as not disputed, contingent or unliquidated, and/or (ii) to the extent that any such Claim is classified differently in the Proof of Claim than as set forth on the Debtors' schedules.

1.52. **Distribution Record Date** means, (a) with respect to holders of ~~all~~ Claims (other than Note Claims), the date that is three (3) days after the Confirmation Date, and (b) with respect to Equity Interests, the Effective Date.

1.53. **Effective Date** means the Closing Date (as specified in section 2.03 of the SPA); provided, however, that the conditions to the effectiveness of the Plan specified in Article 11 of the Plan have been satisfied or waived.

1.54. **Entity** means a person, corporation, general partnership, limited partnership, limited liability company, limited liability partnership, association, joint stock company, joint venture, estate, trust, unincorporated organization, Governmental Unit or any subdivision thereof, including, without limitation, the Office of the United States Trustee.

1.55. **Equity Committee** means the statutory committee of equity security holders appointed pursuant to section 1102 of the Bankruptcy Code in the Chapter 11 Cases, as may be reconstituted from time to time.

1.56. **Equity Interest** means the interest of any holder of an equity security of any of the Debtors represented by any issued and outstanding shares of common stock or any other instrument evidencing an ownership interest in any of the Debtors, whether or not transferable, or any option, warrant, or right, contractual or otherwise, to acquire any such interest.

1.57. **Exit Facility** means the credit facility pursuant to the Exit Facility Documents, the material terms of which shall be substantially the same as those set forth on Exhibit A.

1.58. **Exit Facility Agent** means CoBank, as administrative agent for the Exit Lenders under the Exit Facility.

1.59. **Exit Facility Documents** means the agreements, documents and instruments to be dated on or about the Effective Date and to be entered into among Reorganized PPC, Reorganized To-Ricos and Reorganized To-Ricos Distribution, as borrowers, the Exit Facility Agent and the Exit Lenders, in respect of a credit facility for an amount not less than \$1,650,000,000, and all related documents, instruments and agreements entered into or executed in connection therewith, the proceeds of which shall be available for use by the Reorganized Debtors to, among other things, make distributions under the Plan to the holders of Allowed Claims against the Debtors and to satisfy general working capital requirements of the Reorganized Debtors on and after the Effective Date.

1.60. **Exit Financing** means any financing arrangement that the Reorganized Debtors enter into on or about the Effective Date in connection with the consummation of the Plan, including the Exit Facility, and any amendments, modifications or supplements thereto.

1.61. **Exit Lenders** means the lenders under the Exit Facility.

1.62. **Fee Review Committee** means the committee appointed pursuant to sections 105(a) and 331 of the Bankruptcy Code, Rule 2016(a) of the Federal Rules of Bankruptcy Procedure, and the Guidelines for Compensation and Expense Reimbursement of Professionals as incorporated in General Order 2006-02 to review the fees of Covered Professionals retained by the Debtors in connection with the Chapter 11 Cases.

1.63. **Final Order** means an order or judgment of the Bankruptcy Court or any other court of competent jurisdiction that has not been reversed, vacated, or stayed, and as to which (i) the time to appeal, petition for *certiorari*, or move for a new trial, reargument, or rehearing has expired, and as to which no appeal, petition for *certiorari*, or other proceedings for a new trial, reargument, or rehearing shall then be pending, or (ii) if an appeal, writ of *certiorari*, new trial, reargument, or rehearing thereof has been sought, such order or judgment shall have been affirmed by the highest court to which such order was appealed, or *certiorari* shall have been denied, or a new trial, reargument, or rehearing shall have been denied or resulted in no modification of such order, and the time to take any further appeal, petition for *certiorari* or move for a new trial, reargument, or rehearing shall have expired; provided, however, that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be filed relating to such order shall not cause such order to not be a Final Order.

1.64. **Flow-Through Claim** means an Allowed Claim arising from (a) an Ordinary Course Customer Obligation, or (b) a Compensation-Related Obligation; provided, however, that all defenses to any Flow-Through Claim shall be fully preserved and that nothing herein is an admission that any person has a Flow-Through Claim.

1.65. **General Unsecured Claim** means any Claim against any of the Debtors other than a Priority Non-Tax Claim, a BMO Secured Claim, a CoBank Secured Claim, a Secured Tax Claim, an Other Secured Claim, a Note Claim, an Intercompany Claim, or an Equity Interest.

1.66. **Governmental Unit** has the meaning ascribed to such term in section 101(27) of the Bankruptcy Code.

1.67. **Guarantee Agreements** means collectively, the BMO Guarantee Agreement and the CoBank Guarantee Agreement.

1.68. **Indenture Trustees** means the 7 5/8% Indenture Trustee, the 8 3/8% Indenture Trustee, and the 9 1/4% Indenture Trustee, collectively.

1.69. **Indenture Trustee Fee Claim** means any Claim of any Indenture Trustee for the reimbursement of its reasonable accrued and unpaid fees and expenses under the applicable Indenture.

1.70. **Indentures** means the 7 5/8% Indenture, the 8 3/8% Indenture, and the 9 1/4% Indenture, collectively.

1.71. **Intercompany Claim** means any Claim against any Debtor held by another Debtor.

1.72. **Lien** means any charge against or interest in property to secure payment of a debt or performance of an obligation.

1.73. **LTIP** means the Long Term Incentive Plan, substantially in the form attached hereto as Exhibit D-2 and having the material terms set forth on Exhibit D.

1.74. **Mandatory Exchange Transaction** means that right of the Plan Sponsor to convert New PPC Common Stock into equity interests in the Plan Sponsor, as set forth in the Restated Certificate of Incorporation.

1.75. **New Employee Incentive Plans** means the STIP and the LTIP.

1.76. **New PPC Common Stock** means the shares of common stock to be issued by Reorganized PPC, having the material terms set forth in the Restated Certificate of Incorporation.

1.77. **Note Claims** means all Senior Note Claims, Subordinated Note Claims and Senior Subordinated Note Claims, collectively.

1.78. **Notes** means the Senior Notes, Subordinated Notes, and the Senior Subordinated Notes.

1.79. **Ordinary Course Customer Obligation** means any obligation of any Debtor or Debtors to any customer of such Debtor or Debtors incurred in the ordinary course of business conducted between such Debtor or Debtors and such customer.

1.80. **Other Secured Claim** means any Secured Claim other than a Secured Tax Claim, a BMO Secured Claim, or a CoBank Secured Claim.

1.81. **Pilgrim's Pride** means, collectively, PPC and its debtor and non-debtor affiliates.

1.82. **Plan** means this Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code, including the Plan Documents, the Plan Supplement, and the exhibits and schedules hereto and thereto, as the same may be amended or modified from time to time in accordance with the provisions of the Bankruptcy Code and the terms of the Plan.

1.83. **Plan Sponsor** means JBS USA Holdings, Inc.

1.84. **Plan Supplement** means the document (as may be amended, modified or supplemented) containing the forms of documents specified in Section 13.10 of the Plan.

1.85. **PPC** means Pilgrim's Pride Corporation, a Delaware corporation.

1.86. **PPC Common Stock** means the shares of common stock of PPC issued and outstanding immediately prior to the Effective Date, excluding any shares of restricted stock of PPC as to which any conditions to vesting shall not have lapsed or shall not have been satisfied as of the Effective Date.

1.87. **Prepetition BMO Credit Agreement** means that certain Fourth Amended and Restated Credit Agreement, dated as of February 8, 2007, among PPC, BMO, as agent, the lenders from time to time party thereto, SunTrust Bank, as syndication agent and U.S. Bank National Association and Wells Fargo Bank, National Association, as co-documentation agents, as may have been amended from time to time.

1.88. ***Prepetition CoBank Credit Agreement*** means that 2006 Amended and Restated Credit Agreement (Convertible Revolving Loan and Term Loan), dated as of September 21, 2006, by and among PPC, CoBank, as administrative, documentation and collateral agent for the benefit of present and future syndication parties, lead arranger and book manager, Agriland, FCS, as co-syndication agent and a syndication party, the other agents and syndication parties signatory thereto, as may have been amended from time to time.

1.89. ***Priority Non-Tax Claim*** means a Claim entitled to priority in payment as specified in section 507(a) of the Bankruptcy Code (other than a Priority Tax Claim or an Administrative Expense Claim).

1.90. ***Priority Tax Claim*** means any Claim of a Governmental Unit of the kind entitled to priority in payment as specified in sections 502(i) and 507(a)(8) of the Bankruptcy Code.

1.91. ***Proof of Claim*** means any proof of Claim or request for payment of an Administrative Expense Claim filed by any holder of a Claim in these Bankruptcy Cases.

1.92. ***Reorganized Debtors*** means each of the Debtors, as reorganized as of the Effective Date in accordance with the Plan, and their successors.

1.93. ***Reorganized Debtor Constituent Documents*** means the bylaws, certificates and/or articles of incorporation, partnership agreements, limited liability company membership agreements, and other organizational documents as applicable, for each of the Reorganized Debtors, as amended and restated as of the Effective Date, among other things, to (a) prohibit the issuance of non-voting equity securities by such Debtor as required by section 1123(a)(6) of the Bankruptcy Code, and (b) otherwise give effect to the provisions of the Plan including, without limitation, the Restated Certificate of Incorporation and Restated Bylaws.

1.94. ***Reorganized PPC*** means PPC, as reorganized as of the Effective Date in accordance with the Plan.

1.95. ***Reorganized To-Ricos*** means To-Ricos, Ltd., as reorganized as of the Effective Date in accordance with the Plan.

1.96. ***Reorganized To-Ricos Distribution*** means To-Ricos Distribution, Ltd., as reorganized as of the Effective Date in accordance with the Plan.

1.97. ***Restated Bylaws*** means the amended and restated bylaws to be adopted by PPC, which will be effective upon the Effective Date, substantially in the form of Exhibit C, as may be amended prior to the Confirmation Date with the consent of the Plan Sponsor.

1.98. ***Restated Certificate of Incorporation*** means the amended and restated certificate of incorporation to be adopted by PPC and filed with the Secretary of State of Delaware on the Effective Date or as soon as practicable thereafter, substantially in the form of Exhibit C, as may be amended prior to the Confirmation Date with the consent of the Plan Sponsor.

1.99. ***Schedules*** means the schedules of assets and liabilities and the statements of financial affairs filed by the Debtors pursuant to section 521 of the Bankruptcy Code, Bankruptcy Rule 1007, and the Official Bankruptcy Forms of the Bankruptcy Rules, as such schedules and statements may be supplemented or amended on or prior to the Effective Date.

1.100. **Secured Claim** means any Claim (other than a DIP Claim) that is secured by a Lien on Collateral, to the extent such lien is valid, perfected, and enforceable under applicable law and is not subject to avoidance under the Bankruptcy Code or applicable non-bankruptcy law, and only to the extent of the value of such Collateral, as determined in accordance with section 506(a) of the Bankruptcy Code, or, in the event that such Claim is subject to a permissible setoff under section 553 of the Bankruptcy Code, to the extent of such permissible setoff; provided that to the extent that the value of such interest is less than the amount of the Claim which has the benefit of such security, the unsecured portion of such Claim shall be treated as an Unsecured Claim unless, in any such case, the class of which such Claim is a part makes a valid and timely election in accordance with section 1111(b) of the Bankruptcy Code to have such Claim treated as a Secured Claim to the extent allowed.

1.101. **Secured Tax Claim** means any Secured Claim that, absent its secured status, would be entitled to priority in right of payment under section 507(a)(8) of the Bankruptcy Code (determined irrespective of any time limitations therein).

1.102. **Senior Notes** means those certain 7 5/8% senior notes due May 1, 2015, issued on January 24, 2007 by PPC in the aggregate amount of \$400 million.

1.103. **Senior Note Claims** means all Claims arising under any of the Senior Notes.

1.104. **Senior Subordinated Notes** means those certain 9 1/4% senior subordinated notes due November 15, 2013, issued on November 21, 2003 by PPC in the aggregate amount of \$6.996 million.

1.105. **Senior Subordinated Note Claims** means all Claims arising under any of the Senior Subordinated Notes.

1.106. **Settling Unions** means collectively, the United Food and Commercial Workers International Union and its various local affiliates, including the Retail, Wholesale, and Department Store Union, the Bakery, Confectionery, Tobacco Workers and Grain Millers International Union, and the United Steel Workers of America.

1.107. **SPA** means the Stock Purchase Agreement between the Plan Sponsor and PPC, as the same may be amended, modified, or supplemented from time to time, attached hereto as Exhibit B, and all documents executed in connection therewith pursuant to which the Plan Sponsor shall purchase New PPC Common Stock in the amount set forth in the SPA.

1.108. **STIP** means the Short Term Management Incentive Plan, substantially in the form attached hereto as Exhibit D-1 having the material terms set forth on Exhibit D.

1.109. **Stockholders Agreement** means the Stockholders Agreement between Reorganized PPC and the Plan Sponsor to be entered into on the Effective Date or as soon as practicable thereafter, in the form of Exhibit A that is attached to the SPA.

1.110. **Subordinated Notes** means those certain 8 3/8% senior subordinated notes due May 1, 2017, issued on January 24, 2007 by PPC in the aggregate amount of \$250 million.

1.111. **Subordinated Note Claims** means all Claims arising under any of the Subordinated Notes.

1.112. **To-Ricos** means To-Ricos, Ltd., a Bermuda company.

1.113. **To-Ricos Distribution** means To-Ricos Distribution, Ltd., a Bermuda company.



1.114. ***Unliquidated Claim*** means any Claim, the amount of liability for which has not been fixed, whether pursuant to agreement, applicable law, or otherwise, as of the date on which such Claim is sought to be estimated or an objection is filed.

1.115. ***Voting Record Date*** means the record date or dates(s) for voting on the Plan that is designated in the order of the Bankruptcy Court approving the Disclosure Statement.

**B. Interpretation; Application of Definitions and Rules of Construction.**

Unless otherwise specified, all section or exhibit references in the Plan are to the respective section in, or exhibit to, the Plan, as the same may be amended, waived, or modified from time to time. The words “herein,” “hereof,” “hereto,” “hereunder,” and other words of similar import refer to the Plan as a whole and not to any particular section, subsection, or clause contained therein. Whenever the words “include,” “includes” or “including” are used in the Plan, they are deemed to be followed by the words “without limitation.” A term used herein that is not defined herein shall have the meaning ascribed to that term in the Bankruptcy Code. The rules of construction contained in section 102 of the Bankruptcy Code shall apply to the Plan. Words denoting the singular number shall include the plural number and vice versa, as appropriate, and words denoting one gender shall include the other gender and the neuter and words denoting the neuter shall include any applicable gender. In the event that a particular term of the Plan (including any exhibits or schedules hereto) conflicts with a particular term of the definitive documentation required to be implemented pursuant to the terms of the Plan or any settlement or other agreement contemplated hereunder, the definitive documentation shall control and shall be binding on the parties thereto. The headings in the Plan are for convenience of reference only and shall not limit or otherwise affect the provisions of the Plan.

**ARTICLE II**

**PROVISIONS FOR PAYMENT OF ADMINISTRATIVE  
EXPENSE CLAIMS AND PRIORITY TAX CLAIMS**

Administrative Expense Claims and Priority Tax Claims are not designated as classes of Claims for purposes of the Plan or for purposes of sections 1123, 1124, 1125, 1126 or 1129 of the Bankruptcy Code, and are not entitled to vote on the Plan.

**2.1. *Administrative Expense Claims.***

(a) **Time for Filing Administrative Expense Claims.** The holder of an Administrative Expense Claim, other than (i) a claim covered by sections 2.2, 2.3, or 2.4 hereof, (ii) a liability incurred and payable in the ordinary course of business by a Debtor (and not past due), (iii) an Administrative Expense Claim that has been Allowed on or before the Effective Date, or (iv) a claim subject to section 503(b)(9) of the Bankruptcy Code, must file with the Bankruptcy Court and serve on the Debtors, the Reorganized Debtors, and the Office of the United States Trustee, notice of such Administrative Expense Claim on or prior to the Administrative Expense Claim Bar Date. Such notice must include at a minimum (A) the name of the Debtor(s) which are purported to be liable for the Claim, (B) the name of the holder of the Claim, (C) the amount of the Claim, and (D) the basis of the Claim. **Failure to file and serve such notice timely and properly shall result in the Administrative Expense Claim being forever barred and discharged.**

(b) **Allowance of Administrative Expense Claims.** An Administrative Expense Claim with respect to which notice has been properly filed and served pursuant to Section 2.1(a) shall become an Allowed Administrative Expense Claim if no objection is filed on or prior to the Administrative Expense Claims Objection Deadline. If an objection is timely filed, the Administrative

Expense Claim shall become an Allowed Administrative Expense Claim only to the extent allowed by Final Order or settled, compromised, otherwise resolved by the Debtors or Reorganized Debtors pursuant to section 7.4 of the Plan.

(c) Payment of Allowed Administrative Expense Claims. Except to the extent that a holder of an Allowed Administrative Expense Claim (other than a claim covered by sections 2.2, 2.3, or 2.4 hereof) agrees to a less favorable treatment, each Allowed Administrative Expense Claim (including any Allowed Claim asserted under section 503(b)(9) of the Bankruptcy Code) shall be paid by the Reorganized Debtors in full, in Cash, in an amount equal to the unpaid portion of such Allowed Administrative Expense Claim on or as soon as reasonably practicable following the later to occur of (a) the Effective Date and (b) the date on which such Administrative Expense Claim shall become an Allowed Claim; *provided, however*, that Allowed Administrative Expense Claims (other than a claim covered by sections 2.2, 2.3, or 2.4 hereof) against any of the Debtors representing liabilities incurred in the ordinary course of business by any of the Debtors, as Debtors in Possession, shall be paid by the Debtors in the ordinary course of business, consistent with past practice and in accordance with the terms and subject to the conditions of any agreements governing, instruments evidencing, or other documents relating to such transactions; *provided further, however*, that upon payment of the Allowed BMO Secured Claims and the Allowed CoBank Secured Claims (both as defined below), as applicable, any Allowed Administrative Expense Claims of BMO and CoBank, as agents for the lenders that are party from time to time to the Prepetition BMO Credit Agreement and the Prepetition CoBank Credit Agreement, respectively, shall be deemed satisfied in full.

## **2.2. *Professional Compensation and Reimbursement Claims.***

The Bankruptcy Court shall fix in the Confirmation Order a date for the filing of, and a date to hear and determine, all applications for final allowance of compensation for services rendered or reimbursement of expenses incurred through and including the Confirmation Date under sections 328 and 330 of the Bankruptcy Code or applications for allowance of Administrative Expense Claims arising under section 503(b)(2), 503(b)(3), 503(b)(4), or 503(b)(5) of the Bankruptcy Code. Unless otherwise agreed to by the claimant and the Debtors or the Reorganized Debtors, as applicable, the Allowed Administrative Expense Claims arising under section 330, 331, 503(b)(2), 503(b)(3), 503(b)(4), and 503(b)(5) of the Bankruptcy Code shall be paid in full, in Cash, as soon as practicable following the later to occur of (a) the Effective Date and (b) the date upon which any such Administrative Expense Claim becomes an Allowed Administrative Expense Claim. The Debtors and the Reorganized Debtors, as applicable, are authorized to pay compensation for services rendered or reimbursement of expenses incurred after the Confirmation Date and until the Effective Date in the ordinary course of business and without the need for Bankruptcy Court or Fee Review Committee approval.

## **2.3. *Indenture Trustee Fee Claims.***

Notwithstanding any provision contained in this Plan to the contrary, unless otherwise agreed to by an Indenture Trustee and Reorganized PPC, all Indenture Trustee Fee Claims and fees for services related to distributions pursuant to the Plan shall be paid in Cash on the Effective Date by Reorganized PPC as Administrative Expense Claims, without the need for application to, or approval of, any court. The Indenture Trustee's Charging Lien will be discharged solely upon payment in full of the Indenture Trustee Fee Claims. Nothing herein shall be deemed to impair, waive or discharge the Charging Lien for any fees and expenses not paid by Reorganized PPC.

## **2.4. *DIP Claims.***

Except to the extent that a DIP Lender agrees to a different treatment, the DIP Claims shall be paid in full, in Cash, on the Effective Date and all fees and expenses of attorneys and financial



advisors for BMO, as agent for the DIP Lenders, shall be paid in accordance with the DIP Financing Order and DIP Credit Agreement on the later of (i) the Effective Date and (ii) presentment of the relevant invoices to the Debtors or the Reorganized Debtors, as applicable.

## 2.5. *Priority Tax Claims.*

Except to the extent that a holder of an Allowed Priority Tax Claim has been paid by the Debtors prior to the Effective Date or agrees to a less favorable treatment, each holder of an Allowed Priority Tax Claim shall receive, (A) at the sole option of the Reorganized Debtors, (a) Cash in an amount equal to such Allowed Priority Tax Claim, including any interest on such Allowed Priority Tax Claim required to be paid pursuant to the Bankruptcy Code, on or as soon as reasonably practicable following the later to occur of (i) the Effective Date and (ii) the date on which such Priority Tax Claim shall become an Allowed Priority Tax Claim, (b) equal semi-annual Cash payments with interest at the applicable non-bankruptcy rate in an aggregate amount equal to such Allowed Priority Tax Claim, including any interest on such Allowed Priority Tax Claim required to be paid pursuant to the Bankruptcy Code, with payments commencing upon the later of the Effective Date and the date such Priority Tax Claim becomes an Allowed Priority Tax Claim, or as soon thereafter as is practicable and continuing over a period ending no later than five (5) years after the Commencement Date, or (c) such other treatment as shall be determined by the Bankruptcy Court to provide the holder of such Allowed Priority Tax Claim deferred Cash payments having a value, as of the Effective Date, equal to such Allowed Priority Tax Claim, or (B) such other distribution as necessary to satisfy the requirements of section 1129(a)(9)(C) of the Bankruptcy Code.

## ARTICLE III

### CLASSIFICATION OF CLAIMS AND EQUITY INTERESTS

The following table designates the Classes of Claims against and Equity Interests in the Debtors and specifies which of those Classes are (i) impaired or unimpaired by the Plan and (ii) entitled to vote to accept or reject the Plan in accordance with section 1126 of the Bankruptcy Code or either deemed to accept or deemed to reject the Plan.

| Class                    | Designation  | Status     | Entitled to Vote?     |
|--------------------------|--|------------|-----------------------|
| <b>Classes 1 (a)-(g)</b> | Priority Non-Tax Claims against PPC, PFS Distribution Company, PPC Transportation Company, To-Ricos, To-Ricos Distribution, Pilgrim's Pride Corporation of West Virginia, Inc., and PPC Marketing, Ltd., as applicable | Unimpaired | No (deemed to accept) |
| <b>Classes 2 (a)-(c)</b> | BMO Secured Claims against PPC, To-Ricos and To-Ricos Distribution, as applicable  | Unimpaired | No (deemed to accept) |
| <b>Class 3</b>           | CoBank Secured Claims against PPC  | Unimpaired | No (deemed to accept) |
| <b>Classes 4(a)-(g)</b>  | Secured Tax Claims against PPC, PFS Distribution Company, PPC Transportation Company, To-Ricos, To-Ricos Distribution, Pilgrim's Pride Corporation of West Virginia, Inc., and PPC Marketing, Ltd., as applicable      | Unimpaired | No (deemed to accept) |
| <b>Classes 5(a)-(g)</b>  | Other Secured Claims against PPC, PFS Distribution Company, PPC Transportation Company, To-Ricos, To-Ricos Distribution, Pilgrim's Pride Corporation of West Virginia, Inc., and PPC Marketing, Ltd., as applicable    | Unimpaired | No (deemed to accept) |

|                         |   |            |                       |
|-------------------------|---|------------|-----------------------|
| <b>Classes 6(a)-(c)</b> | Note Claims against PPC   | Unimpaired | No (deemed to accept) |
| <b>Classes 7(a)-(g)</b> | General Unsecured Claims against PPC, PFS Distribution Company, PPC Transportation Company, To-Ricos, To-Ricos Distribution, Pilgrim's Pride Corporation of West Virginia, Inc., and PPC Marketing, Ltd., as applicable | Unimpaired | No (deemed to accept) |
| <b>Class 8</b>          | Intercompany Claims   | Unimpaired | No (deemed to accept) |
| <b>Classes 9(a)-(g)</b> | Flow-Through Claims   | Unimpaired | No (deemed to accept) |
| <b>Classes 10(a)</b>    | Equity Interests in PPC   | Impaired   | Yes                   |
| <b>Class 10(b)-(g)</b>  | Equity Interests in PFS Distribution Company, PPC Transportation Company, To-Ricos, To-Ricos Distribution, Pilgrim's Pride Corporation of West Virginia, Inc., and PPC Marketing, Ltd., as applicable                   | Unimpaired | No (deemed to accept) |

## ARTICLE IV

### TREATMENT OF CLAIMS AND EQUITY INTERESTS

#### 4.1. *Classes 1(a)–(g): Priority Non-Tax Claims against the Debtors.*

(a) Impairment and Voting. Classes 1(a) through (g) are unimpaired by the Plan. Each holder of an Allowed Priority Non-Tax Claim is conclusively presumed to have accepted the Plan and is not entitled to vote to accept or reject the Plan.

(b) Distributions. Except to the extent that a holder of an Allowed Priority Non-Tax Claim agrees to a less favorable treatment, each such holder shall receive, in full satisfaction of such Claim, Cash in an amount equal to such Claim, on or as soon as reasonably practicable after the later of (i) the Effective Date, and (ii) the date such Claim becomes Allowed.

#### 4.2. *Classes 2(a)–(c): Bank of Montreal Secured Claims against PPC, To-Ricos, and To-Ricos Distribution.*

(a) Allowed Claim. On the Effective Date, BMO, in its capacity as agent for the lenders that are party, from time to time, to the Prepetition BMO Credit Agreement, shall be deemed to have an allowed BMO Secured Claim in an amount to be agreed upon by the Debtors and BMO prior to the Confirmation Hearing, which will be fully secured and not subject to any avoidance, recharacterization, disallowance, subordination, recoupment, setoff, defense or counterclaim (the "Allowed BMO Secured Claim").

(b) Impairment and Voting. Classes 2(a) through 2(c) are unimpaired by the Plan. Each holder of an Allowed BMO Secured Claim is conclusively presumed to have accepted the Plan and is not entitled to vote to accept or reject the Plan.

(c) Distributions. Except to the extent that a holder of an Allowed BMO Secured Claim agrees to a less favorable treatment, each such holder shall receive, in full satisfaction of such Claim, Cash in an amount equal to such Claim on the Effective Date. Letters of credit issued by BMO and outstanding as of the Effective Date shall be cancelled and returned to the issuing bank with notice to BMO, or cash in an amount of 105% of the face amount of the letter of credit shall be placed with the letter of credit bank, or replacement letters of credit shall be issued under the Exit Facility. Upon satisfaction of the Allowed BMO Secured Claims as set forth herein, the obligations set forth in the BMO Guarantee Agreement shall be cancelled.

4.3. ***Class 3: CoBank Secured Claims against PPC.***

(a) Allowed Claim. On the Effective Date, CoBank, in its capacity as agent for the lenders that are party, from time to time, to the Prepetition CoBank Credit Agreement, shall be deemed to have an allowed CoBank Secured Claim in an amount to be agreed upon by the Debtors and CoBank prior to the Confirmation Hearing, which will be fully secured and not subject to any avoidance, recharacterization, disallowance, subordination, recoupment, setoff, defense or counterclaim (the “Allowed CoBank Secured Claim”).

(b) Impairment and Voting. Class 3 is unimpaired by the Plan. Each holder of an Allowed CoBank Secured Claim is conclusively presumed to have accepted the Plan and is not entitled to vote to accept or reject the Plan.

(c) Distributions. Except to the extent that a holder of an Allowed CoBank Secured Claim agrees to a less favorable treatment, each Allowed CoBank Secured Claim shall be, at the sole option of the Reorganized PPC, (i) satisfied in full in Cash in an amount equal to such Allowed CoBank Secured Claim, on or as soon as reasonably practicable after the later of (a) the Effective Date, and (b) the date such Claim becomes Allowed, (ii) reinstated pursuant to amended terms and conditions to be negotiated, or (iii) reinstated and rendered unimpaired in accordance with section 1124 of the Bankruptcy Code, notwithstanding any contractual provision or applicable nonbankruptcy law that entitles the holder of an Allowed CoBank Secured Claim to demand or receive payment of such Claim prior to its stated maturity from and after the occurrence of default. To the extent that any holder of an Allowed CoBank Secured Claim is entitled to accrued and unpaid postpetition interest on account of such Claim, such holder will receive, at the sole option of the Reorganized PPC, either (i) Cash in an amount equal to such accrued and unpaid postpetition default interest, or (ii) satisfaction of such accrued and unpaid postpetition interest on such other terms as may be negotiated between PPC or Reorganized PPC and CoBank.

4.4. ***Classes 4(a)–(g): Secured Tax Claims against the Debtors.***

(a) Impairment and Voting. Classes 4(a) through (g) are unimpaired by the Plan. Each holder of an Allowed Secured Tax Claim is conclusively presumed to have accepted the Plan and is not entitled to vote to accept or reject the Plan.

(b) Distributions. Except to the extent that a holder of an Allowed Secured Tax Claim agrees to a less favorable treatment, each such holder shall receive, in full satisfaction of such Claim, (A) at the sole option of the Reorganized Debtors, either (a) Cash in an amount equal to such Allowed Secured Tax Claim, including any interest on such Allowed Secured Tax Claim required to be paid pursuant to the Bankruptcy Code, on or as soon as reasonably practicable after the later of (i) the Effective Date, and (ii) the date such Secured Tax Claim becomes an Allowed Secured Tax Claim, (b) equal semi-annual Cash payments with interests at the applicable non-bankruptcy rate in an aggregate amount equal to such Allowed Secured Tax Claim, including any interest on such Allowed Secured Tax Claim required to be paid pursuant to the Bankruptcy Code, with payments commencing upon the later of the Effective Date and the date such Secured Tax Claim becomes an Allowed Secured Tax Claim, or as soon thereafter as is practicable and continuing over a period ending no later than five (5) years after the Commencement Date, or (c) such other treatment as shall be determined by the Bankruptcy Court to provide the holder of such Allowed Secured Tax Claim deferred Cash payments having a value, as of the Effective Date, equal to such Allowed Secured Tax Claim, or (B) such other distribution as necessary to satisfy the requirements of section 1124 of the Bankruptcy Code.

4.5. *Classes 5(a)–(g): Other Secured Claims against the Debtors.*

(a) Impairment and Voting. Classes 5(a) through (g) are unimpaired by the Plan. Each holder of an Allowed Other Secured Claim is conclusively presumed to have accepted the Plan and is not entitled to vote to accept or reject the Plan.

(b) Distributions. Except to the extent that a holder of an Allowed Other Secured Claim agrees to a less favorable treatment, at the sole option of the relevant Reorganized Debtor, (i) each Allowed Other Secured Claim shall be reinstated and rendered unimpaired in accordance with section 1124 of the Bankruptcy Code, notwithstanding any contractual provision or applicable nonbankruptcy law that entitles the holder of an Allowed Other Secured Claim to demand or receive payment of such Claim prior to the stated maturity of such Claim from and after the occurrence of a default, or (ii) each holder of an Allowed Other Secured Claim shall receive, in full satisfaction of such Allowed Other Secured Claim, either (a) Cash in an amount equal to such Allowed Other Secured Claim, including any interest on such Allowed Other Secured Claim required to be paid pursuant to the Bankruptcy Code, (b) the proceeds of the sale or disposition of the Collateral securing such Allowed Other Secured Claim to the extent of the value of the holder's interest in such Collateral, (c) the Collateral securing such Allowed Other Secured Claim and any interest on such Allowed Other Secured Claim required to be paid pursuant to the Bankruptcy Code, or (d) such other distribution as necessary to satisfy the requirements of section 1124 of the Bankruptcy Code. In the event the Debtors (in consultation with the Plan Sponsor) or Reorganized Debtors elect to treat a Claim under clause (a) or (b) of this Section, the Liens securing such Other Secured Claim shall be deemed released without the need for any further action by the Debtors or the Reorganized Debtors.

4.6. *Classes 6(a)–(c): Note Claims against PPC.*

(a) Impairment and Voting. Classes 6(a) through (c) are unimpaired by the Plan. Each holder of an Allowed Note Claim is conclusively presumed to have accepted the Plan and is not entitled to vote to accept or reject the Plan.

(b) Distributions. ~~Except to the extent that a holder of an Allowed Note Claim agrees to a less favorable treatment, such holder of an Allowed Note Claim shall receive as soon as reasonably practicable after the later of the Effective Date and the date the Note Claim becomes Allowed-~~  
~~(i) Cash in an amount equal to (a~~

(i) Unless the Cash-Out Election is made with respect to a Note pursuant to section 4.6(b)(ii) hereof, each Note shall be reinstated and each Allowed Note Claim with respect thereto shall be rendered unimpaired in accordance with section 1124 of the Bankruptcy Code, notwithstanding any contractual provision or applicable nonbankruptcy law that entitles the holder of such Allowed Note Claim to demand or receive payment of such Claim prior to the stated maturity of the Notes from and after the occurrence of a default (the "Note Reinstatement").

(ii) Instead of having its Note(s) reinstated pursuant to section 4.6(b)(i) hereof, a holder of an Allowed Note Claim may elect to receive Cash on account of its Allowed Note Claim in an amount equal to the sum of (1) the principal amount of ~~such Allowed Note Claim plus~~ (b) ~~accrued and~~ its Notes, (2) the unpaid prepetition interest with interest accruing thereon at the default, contract rate as provided under the applicable Note through the Effective Date and (3) the accrued unpaid postpetition interest calculated at the non-default, contract rate, ~~or (ii) such other distribution as necessary to satisfy the requirements of section 1124 of the Bankruptcy Code. Nothing in the Plan is intended to disturb the provisions of section 510(a) of the Bankruptcy Code or the subordination provisions in applicable agreements as provided under the applicable Note through the Effective Date (the "Cash-Out Election").~~

(iii) Any holder of an Allowed Note Claim that makes the Cash-Out Election shall be deemed to have waived any and all subordination rights under the applicable Indenture or applicable law.

**4.7. *Classes 7(a)–(g): General Unsecured Claims against the Debtors.***

(a) Impairment and Voting. Classes 8(a) through (g) are unimpaired by the Plan. Each holder of an Allowed General Unsecured Claim is conclusively presumed to have accepted the Plan and is not entitled to vote to accept or reject the Plan.

(b) Distributions. Except to the extent that a holder of an Allowed General Unsecured Claim agrees to a less favorable treatment, each holder of an Allowed General Unsecured Claim shall receive, in full satisfaction of such Claim, Cash equal to (i) the full amount of such Allowed General Unsecured Claim plus (ii) postpetition interest on such Allowed General Unsecured Claim from the Commencement Date through the later of the Effective Date and the date such General Unsecured Claim becomes Allowed at either the federal judgment rate, the contract rate, or the post-judgment rate, as applicable, or such other rate as determined by the Bankruptcy Court to be necessary to satisfy the requirements of section 1124 of the Bankruptcy Code, on or as soon as reasonably practicable after the later of (a) the Effective Date, and (b) the date the General Unsecured Claim becomes Allowed; *provided, however*, that if a holder of a General Unsecured Claim believes that it is entitled to contract rate interest, it must have either (x) attached the relevant contract to its Proof of Claim or (y) filed a supplemental or a new Proof of Claim solely for the purpose of attaching such relevant contract..

**4.8. *Class 8: Intercompany Claims.***

(a) Impairment and Voting. Class 8 is unimpaired by the Plan. Each holder of an Intercompany Claim is conclusively presumed to have accepted the Plan and is not entitled to vote to accept or reject the Plan.

(b) Distributions. Except to the extent that a holder of an Intercompany Claim accepts less favorable treatment, each Intercompany Claim shall be reinstated and carried forward for financial reporting and tax purposes, as may be further determined by the Debtors in consultation with the Debtors' auditors and tax accountants.

**4.9. *Classes 9(a)–(g): Flow-Through Claims against the Debtors.***

(a) Impairment and Voting. Classes 9(a) through (g) are unimpaired by the Plan. Each holder of a Flow-Through Claim is conclusively presumed to have accepted the Plan and is not entitled to vote to accept or reject the Plan.

(b) Distributions. The legal, equitable, and contractual rights of each holder of a Flow-Through Claim, if any, shall be unaltered by the Plan and shall be satisfied in the ordinary course of business at such time and in such manner as the applicable Reorganized Debtor is obligated to satisfy each Flow-Through Claim (subject to the preservation and flow-through of all Avoidance Actions and defenses with respect thereto, which shall be fully preserved). The Debtors' failure to object to a Flow-Through Claim in their Chapter 11 Cases shall be without prejudice to the Reorganized Debtors' right to contest or otherwise object to the merits or classification of such Claim in Bankruptcy Court or outside the Bankruptcy Court.



4.10. ***Class 10(a): Equity Interests in PPC.***

(a) Impairment and Voting. Class 10(a) is impaired by the Plan. Each holder of an Allowed Equity Interest in Class 11(a) is entitled to vote to accept or reject the Plan.

(b) Distributions.

(i) On and as of the Effective Date, each share of PPC Common Stock issued and outstanding immediately prior to the Effective Date (other than any shares to be cancelled pursuant to Section 4.10(b)(iii)) (the “Existing Shares”) shall be cancelled and converted automatically into the right to receive a number of fully paid and nonassessable shares of New PPC Common Stock equal to the Share Conversion Factor.

(ii) For purposes of this Plan, “Share Conversion Factor” means the number determined by application of the following formula:

|     |   |   |
|-----|---|---|
| SCF | = | $(0.36 \times \text{NNS}) / \text{NES}$ |
|-----|---|---|

where:

|     |   |   |
|-----|---|---|
| NNS | = | The number of shares necessary to cause SCF to be 1, or such other number of shares agreed in writing by the parties. |
| NES | = | The total number of Existing Shares   |
| SCF | = | Share Conversion Factor   |

(iii) Each share of PPC Common Stock held in the treasury of PPC or any subsidiary thereof immediately prior to the Effective Date and each share of restricted stock of PPC as to which any conditions to vesting shall not have lapsed or shall not have been satisfied at or immediately prior to the Effective Date shall be canceled without any conversion thereof and no distribution shall be made with respect thereto.

4.11. ***Classes 10(b)–(g): Equity Interests in the Debtors (Other than PPC).***

(a) Impairment and Voting. Classes 10(b) through (g) are unimpaired by the Plan. Each holder of an Allowed Equity Interest in Classes 10(b) through (g) is conclusively presumed to have accepted the Plan and is not entitled to vote to accept or reject the Plan.

(b) Distributions. The Equity Interests in Classes 12(b) through (g) shall be reinstated in their entirety pursuant to the Plan.

**ARTICLE V**

**MEANS FOR IMPLEMENTATION**

5.1. ***Operations Between the Confirmation Date and the Effective Date.***

During the period from the Confirmation Date through and until the Effective Date, the Debtors shall continue to operate their businesses as Debtors in Possession, subject to

the oversight of the Bankruptcy Court as provided in the Bankruptcy Code, the Bankruptcy Rules and all orders of the Bankruptcy Court that are then in full force and effect, and in accordance with the terms of the SPA.

## **5.2. Corporate Action.**

The entry of the Confirmation Order shall constitute authorization for the Reorganized Debtors to take or cause to be taken all corporate actions necessary or appropriate to implement all provisions of, and to consummate, the Plan and the Plan Documents prior to, on and after the Effective Date and all such actions taken or caused to be taken shall be deemed to have been authorized and approved by the Bankruptcy Court without further approval, act or action under any applicable law, order, rule or regulation, including, without limitation, any action required by the stockholders or directors of the Reorganized Debtors, including, among other things, (a) the adoption of the Reorganized Debtor Constituent Documents, including the Restated Certificate of Incorporation and Restated Bylaws, (b) the termination and cancellation of any outstanding instrument, document or agreement evidencing the Note Claims or Equity Interests in PPC, if applicable, (c) issuance of any New PPC Common Stock, (d) the execution and delivery of all documents arising in connection with the Exit Financing and the SPA and performance of the Reorganized Debtors' obligations thereunder, (e) approval of the New Employee Incentive Plans, (f) all transfers of assets that are to occur pursuant to the Plan, (g) the incurrence of all obligations contemplated by the Plan and the making of all distributions under the Plan, (h) the implementation of all settlements and compromises as set forth in or contemplated by the Plan, (i) taking of all actions to preserve and provide for the prosecution of the Avoidance Actions as contemplated by sections 10.10 and 10.11 hereof and of all other causes of action, and (j) entering into any and all transactions, contracts, or arrangements permitted by applicable law, order, rule or regulation. The officers of the Debtors are authorized and directed to do all things and to execute and deliver all agreements, documents, instruments, notices and certificates as are contemplated by the Plan and the Plan Documents and to take all necessary action required in connection therewith, in the name of and on behalf of the Debtors.

## **5.3. Continued Corporate Existence of the Debtors.**

Each of the Debtors shall continue to exist after the Effective Date as a separate entity, with all the powers available to such legal entity, in accordance with applicable law and pursuant to the Reorganized Debtor Constituent Documents, which shall become effective upon the occurrence of the Effective Date. On or after the Effective Date, the Reorganized Debtors may, in their sole discretion, take such action as permitted by applicable law, their respective constituent documents and the Stockholders Agreement, as they determine is reasonable and appropriate, including (a) causing any or all of the Reorganized Debtors to be merged into one or more of the other Reorganized Debtors or other legal entities, and (b) changing the legal name of any one or more of the Reorganized Debtors.

## **5.4. Cancellation and Surrender of Existing Securities and Agreements.**

(a) Except (i) as otherwise expressly provided in the Plan, (ii) with respect to executory contracts or unexpired leases that have been assumed by the Debtors, (iii) for purposes of evidencing a right to distributions under the Plan, or (iv) with respect to any Claim that is reinstated and rendered unimpaired under the Plan, on the Effective Date, any document, agreement, or debt instrument evidencing any Claim, including without limitation, the Prepetition BMO Credit Agreement, the Prepetition CoBank Credit Agreement, the DIP Credit Agreement, the Indentures and all Notes issued thereunder (if all holders of Note Claims elect the Cash-Out Option), and the PPC Common Stock, shall be deemed automatically cancelled without further act or action under any applicable agreement, law, regulation, order or rule and the obligations of the Debtors thereunder shall be discharged.



(b) Unless waived by PPC or Reorganized PPC, and except for holders of Notes that will be reinstated pursuant to the Note Reinstatement, each holder of the Notes shall surrender such Note(s) to the applicable Indenture Trustees, or in the event such Note(s) are held in the name of, or by a nominee of, the Depository Trust Company, the Debtors shall follow the applicable procedures of the Depository Trust Company for book-entry transfer of the Note(s) to the applicable Indenture Trustees. ~~No~~Except in the event of a Note Reinstatement, no distributions hereunder shall be made for or on behalf of any such holder with respect to any Note unless and until such Note is received by the applicable Indenture Trustee or appropriate instructions from Depository Trust Company shall be received by the applicable Indenture Trustee, or the loss, theft or destruction of such Note is established to the reasonable satisfaction of the applicable Indenture Trustee, which satisfaction may require such holder to (i) submit a lost instrument affidavit and an indemnity bond and (ii) hold the Debtors and the applicable Indenture Trustee harmless in respect of such Note and any distributions made in respect thereof. Upon compliance with this section by a holder of any Note, such holder shall, for all purposes under this Plan, be deemed to have surrendered such Note. ~~Any~~Except in the event of a Note Reinstatement, any holder of Notes that fails to surrender such Note or satisfactorily explain its non-availability to the applicable Indenture Trustee within one (1) year of the Effective Date shall be deemed to have no further Claim against the Debtors, or their property or against the applicable Indenture Trustee in respect of such Claim and shall not participate in any distribution hereunder, and the distribution that would have otherwise been made to such holder shall be returned to Reorganized PPC by the applicable Indenture Trustee.

#### 5.5. ***Restated Certificate of Incorporation and Restated Bylaws.***

On the Effective Date or as soon as practicable thereafter, PPC will file the Restated Certificate of Incorporation with the Secretary of State of the State of Delaware and will adopt the Restated Bylaws, each substantially in the form attached hereto as Exhibit C, as each may be amended prior to the Confirmation Date with the consent of the Plan Sponsor. The Restated Certificate of Incorporation will, among other things, authorize issuance of New PPC Common Stock (which will be subject to the Mandatory Exchange Transaction). PPC is hereby authorized to file the Restated Certificate of Incorporation and adopt the Restated Bylaws without the need for any further corporate action or further order of the Bankruptcy Court and without any further action by holders of Claims or Equity Interests.

#### 5.6. ***Stock Purchase Agreement.***

Pursuant and subject to the terms and conditions of the SPA, the Plan Sponsor will purchase 64% of the New PPC Common Stock in exchange for a cash contribution of \$800 million. Cash proceeds from the Plan Sponsor's participation in the Plan will be utilized by the Debtors and Reorganized Debtors to make Cash distributions to the holders of Allowed Claims against the Debtors and to satisfy general working capital requirements of the Reorganized Debtors on and after the Effective Date. The Debtors' entry into the SPA, and the terms thereof (to the extent not already approved by the Bankruptcy Court), are hereby authorized and approved without the need for any further corporate action or further order of the Bankruptcy Court and without any further action by holders of Claims and Equity Interests. A copy of the SPA is attached as Exhibit B to the Plan.

#### 5.7. ***Exit Financing.***

On or about the Effective Date, Reorganized PPC, Reorganized To-Ricos and Reorganized To-Ricos Distribution, as borrowers, shall enter into the Exit Facility pursuant to the Exit Facility Documents and shall incur indebtedness thereunder in an amount not less than \$1,650,000,000, the proceeds of which shall be available, among other things, for use by the Reorganized Debtors to make distributions under the Plan to the holders of Allowed Claims against the Debtors and to satisfy general working capital requirements of the Reorganized Debtors on and after the Effective Date.

The Reorganized Debtors' entry into the Exit Facility pursuant to the Exit Facility Documents and the incurrence of the indebtedness thereunder on or as soon as reasonably practicable following the Effective Date are hereby authorized without the need for any further corporate action or further order of the Bankruptcy Court and without any further action by holders of Claims or Equity Interests. The material terms of the Exit Facility are set forth in more detail on Exhibit A to be included in the Plan Supplement. The Debtors shall consult with the Plan Sponsor on any amendments or modifications to the material terms of the Exit Facility set forth on Exhibit A.

**5.8. *Issuance of New PPC Common Stock.***

The issuance by Reorganized PPC of New PPC Common Stock on or as soon as reasonably practicable following the Effective Date is hereby authorized without the need for any further corporate action or further order of the Bankruptcy Court and without any further action by holders of Claims or Equity Interests. Newly-issued shares of New PPC Common Stock, which shall be subject to the Mandatory Exchange Transaction, will be distributed to holders of Allowed Equity Interests in PPC pursuant to Section 4.10 of the Plan and purchased by the Plan Sponsor pursuant to the SPA.

**5.9. *Effectuating Documents and Further Transactions.***

On and after the Effective Date, the Reorganized Debtors and the board and the officers of Reorganized PPC are authorized to and may issue, execute, deliver, file, or record such contracts, securities, instruments, releases, and other agreements or documents and take such other actions as may be necessary or appropriate to effectuate, implement, and further evidence the terms and conditions of the Plan and the securities issued pursuant to the Plan in the name of and on behalf of the Reorganized Debtors, without the need for any approvals, authorizations or consents except for those expressly required pursuant to the Plan.

**5.10. *Exemption from Securities Laws.***

To the maximum extent provided by section 1145 of the Bankruptcy Code and applicable non-bankruptcy law, the offer and sale under the Plan of New PPC Common Stock, and the offer and sale under the Plan of equity interests in the Plan Sponsor pursuant to the Mandatory Exchange Transaction, will be exempt from registration under the Securities Act of 1933, as amended, and all rules and regulations promulgated thereunder, and under applicable state securities laws. The issuance of New PPC Common Stock shall be exempt from the requirements of section 16(b) of the Securities Exchange Act of 1934 (pursuant to Rule 16b-3 promulgated thereunder) with respect to any acquisition of such securities or pecuniary interest therein by an officer or director as of the Effective Date.

**ARTICLE VI**

**VOTING AND DISTRIBUTIONS**

**6.1. *Voting of Equity Interests.***

Each holder of an Allowed Equity Interest in PPC, which is the only impaired Class that is entitled to vote on the Plan pursuant to Article III of the Plan, shall be entitled to vote to accept or reject the Plan, as provided in such order as is entered by the Bankruptcy Court establishing procedures with respect to the solicitation and tabulation of votes to accept or reject the Plan, or any other order or orders of the Bankruptcy Court.

**6.2. *Nonconsensual Confirmation.***

If Class 10(a) (Equity Interests in PPC) shall not accept the Plan by the requisite statutory majority provided in section 1126(d) of the Bankruptcy Code, the Debtors reserve the right to undertake to have the Bankruptcy Court confirm the Plan under section 1129(b) of the Bankruptcy Code.

**6.3. *Distribution Record Date.***

On the Distribution Record Date (i) the claims register shall be closed and any transfer of any Claim therein shall be prohibited and (ii) the stock transfer ledger or similar register of the Debtors shall be closed. The Disbursing Agent shall instead be authorized and entitled to recognize and deal for all purposes under the Plan with only those record holders stated on the claims register and the stock transfer ledger as of the close of business on the Distribution Record Date. The record date for distributions shall be the Distribution Record Date.

6.4. ***Date of Distributions.***

Distributions shall be made on the date specified in Article IV with respect to each Allowed Claim or Allowed Equity Interest. In the event that any payment or act under the Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date.

6.5. ***Disbursing Agent.***

All distributions under the Plan (other than with respect to the Allowed Note Claims, Allowed BMO Secured Claims and the DIP Claims) shall be made by Reorganized PPC as the Disbursing Agent or such other Entity designated by the Debtors or Reorganized Debtors as a Disbursing Agent for certain or all such distributions. The applicable Indenture Trustee, or such other entity designated by PPC or the Reorganized PPC, shall be the Disbursing Agent for the Notes. BMO shall be the Disbursing Agent for the Allowed BMO Secured Claims and the DIP Claims. The Disbursing Agent shall not be required to give any bond or surety or other security for the performance of its duties unless otherwise ordered by the Bankruptcy Court and, in the event that a Disbursing Agent is so otherwise ordered, all costs and expenses of procuring any such bond or surety shall be borne by the Reorganized Debtors.

6.6. ***Rights and Powers of Disbursing Agent.***

The Disbursing Agent shall be empowered to (a) effect all actions and execute all agreements, instruments and other documents necessary to perform its duties under the Plan, (b) make all distributions contemplated hereby, and (c) exercise such other powers as may be vested in the Disbursing Agent by order of the Bankruptcy Court, pursuant to the Plan or as deemed by the Disbursing Agent to be necessary and proper to implement the provisions hereof.

6.7. ***Expenses of the Disbursing Agent.***

Except as otherwise ordered by the Bankruptcy Court, any reasonable fees and expenses incurred by the Disbursing Agent on or after the Effective Date shall be paid in Cash by the Reorganized Debtors in the ordinary course of business.

6.8. ***Delivery of Distributions.***

(a) General. Subject to Bankruptcy Rule 9010, all distributions to a holder of an Allowed Claim or Allowed Equity Interest shall be made to the address of the holder thereof as set forth (i) on such holder's Proof of Claim, or if no Proof of Claim has been filed, (ii) on the Schedules filed with the Bankruptcy Court, (iii) on the books and records of the Debtors or their agents, or (iv) in a letter of transmittal by such holder, unless the Debtors have been notified in writing of a change of address.

(b) Distributions to holders of Allowed Note Claims. Reorganized PPC shall deliver all distributions in respect of Allowed Note Claims under the Cash-Out Option to the applicable Indenture Trustee or such other entity or entities designated by the applicable Indenture Trustee. Upon delivery of the foregoing distributions to the applicable Indenture Trustee or such designee(s), Reorganized PPC shall be released of all liability with respect to the delivery of such distributions. The applicable Indenture Trustee or such designee(s) shall transmit the distributions to the holders of the Allowed Note Claims. Reorganized PPC shall provide whatever reasonable assistance may be required by the applicable Indenture Trustee or such designee(s) with respect to such distributions.

(c) Distributions to holders of Allowed BMO Secured Claims and DIP Claims.

BMO will deliver all distributions in respect of Allowed BMO Secured Claims and DIP Claims pursuant to the terms of the relevant credit agreement to those lenders who are lenders under the terms of the relevant credit agreements as of the date of distributions to BMO on account of the Allowed BMO Secured Claims and DIP Claims.

(d) Withholding and Reporting Requirements.

In connection with the Plan and all instruments issued in connection therewith and distributed thereon, any party issuing any instrument or making any distribution under the Plan, including any party described in Section 6.5 above, shall comply with all applicable withholding and reporting requirements imposed by any federal, state or local taxing authority, and all distributions under the Plan shall be subject to any such withholding or reporting requirements. Notwithstanding the above, each holder of an Allowed Claim that is to receive a distribution under the Plan shall have the sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed by any Governmental Unit, including income, withholding and other tax obligations, on account of such distribution. Any party issuing any instrument or making any distribution under the Plan has the right, but not the obligation, to not make a distribution until such holder has made arrangements satisfactory to such issuing or disbursing party for payment of any such tax obligations.

6.9. *Unclaimed Distributions.*

In the event that any distribution to any holder is returned as undeliverable, the Reorganized Debtors shall use reasonable efforts to determine the current address of such holder, but no distribution to such holder shall be made unless and until the Reorganized Debtors have determined the then-current address of such holder, at which time such distribution shall be made to such holder without interest from the original distribution date through the new distribution date; provided that such distributions shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code at the expiration of one year from the Effective Date. After such date, all unclaimed property or interest in property (including any stock) shall revert to the applicable Reorganized Debtor, and the Claim of any other Entity to such property or interest in property shall be discharged and forever barred.

6.10. *Manner of Payment.*

At the option of the Disbursing Agent, any Cash payment to be made hereunder may be made by a check or wire transfer or as otherwise required or provided in applicable agreements.

6.11. *Fractional Shares.*

No fractional shares of New PPC Common Stock shall be distributed under the Plan. When any distribution pursuant to the Plan on account of an Allowed Equity Interest would otherwise result in the issuance of a number of shares of New PPC Common Stock that is not a whole number, the actual distribution of shares of New PPC Common Stock shall be rounded as follows: (i) fractions of one-half ( $\frac{1}{2}$ ) or greater shall be rounded to the next higher whole number and (ii) fractions of less than one-half ( $\frac{1}{2}$ ) shall be rounded to the next lower whole number with no further payment or other distribution therefor. The total number of authorized shares of New PPC Common Stock to be distributed to holders of Allowed Equity Interests shall be adjusted as necessary to account for the rounding provided in this Section 6.11.

6.12. ***Minimum Cash Distributions.***

Notwithstanding anything set forth herein to the contrary, no payment of Cash less than \$25 shall be made to any holder of an Allowed Claim unless a request therefor is made in writing to the Disbursing Agent. If no request is made as provided in the preceding sentence within sixty (60) days of the Effective Date, such Cash shall revert to the applicable Reorganized Debtor.

6.13. ***Setoffs and Recoupment.***

Other than with respect to Allowed BMO Secured Claims, the Debtors may, but shall not be required to, set off or recoup against any Claim (for purposes of determining the Allowed amount of such Claim on which distribution shall be made) any Claims of any nature whatsoever that the Debtors may have against the holder of such Claim, but neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtors of any such Claim the Debtors may have against the holder of such Claim.

**ARTICLE VII**

**PROCEDURES FOR DISPUTED CLAIMS**

7.1. ***Objections / Objection Deadline.***

(a) Objections to all Claims against the Debtors may be interposed and prosecuted only by the Debtors and the Reorganized Debtors (except for Claims asserted under sections 330, 331, 503(b)(2), 503(b)(3), 503(b)(4) and 503(b)(5), in which case the Committees may also interpose and prosecute objections). Prior to the Effective Date, except for objections that in the reasonable determination of the Debtors need to be filed on an emergency basis, the Debtors shall provide three (3) calendar days prior notice to the Plan Sponsor of their intent to file an objection to Claims and if timely requested by the Plan Sponsor, shall work with the Plan Sponsor in interposing such an objection.

(b) The Reorganized Debtors shall be entitled to object to any Claim through and after the Effective Date. Any objections to Claims shall be served and filed with the Bankruptcy Court on or before the later of (i) one hundred and fifty (150) days after the Effective Date, as such time may be extended by order of the Bankruptcy Court and (ii) such later date as may be fixed by the Bankruptcy Court, whether fixed before or after the date specified in clause (i) above.

7.2. ***No Payment Pending Allowance.***

Notwithstanding any other provision in the Plan, if any portion of a Claim is disputed, then no payment or distribution provided hereunder shall be made on account of any portion of such Claim unless and until such Disputed Claim becomes an Allowed Claim; ~~provided, however, that in the event the dispute regarding payment of postpetition interest at the default rate with respect to the Note Claims is not resolved prior to the Effective Date, the Debtors will pay the undisputed portion of the Note Claims to the applicable Indenture Trustee as soon as reasonably practical after the later of the Effective Date or the date when the applicable Indenture Trustee and the Debtors or Reorganized Debtors, as applicable, reach an agreement as to the undisputed amount of the Note Claims, and the remaining amounts, if any, shall be paid when they are allowed by order of the Bankruptcy Court or when agreement is reached settling any dispute relating to such amounts.~~



### 7.3. *Distributions After Allowance.*

To the extent that a Disputed Claim becomes an Allowed Claim, the Disbursing Agent shall distribute to the holder of such Claim the property distributable with respect to such Claim in accordance with Article IV of the Plan. Such distributions shall be made as soon as practicable after the later of (i) the date that the order or judgment of the Bankruptcy Court allowing such Disputed Claim (or portion thereof) becomes a Final Order, (ii) the date on which any objection to such Disputed Claim has been withdrawn, or (iii) the date on which such Disputed Claim has been settled, compromised or otherwise resolved. To the extent that all or a portion of a Disputed Claim is disallowed, the holder of such Claim shall not receive any distribution on account of the portion of such Claim that is disallowed and any property withheld, if any, pending the resolution of such Claim shall revert in the applicable Reorganized Debtor.

### 7.4. *Resolution of Disputed Claims.*

Notwithstanding any prior order of the Bankruptcy Court, on and after the Effective Date, the Reorganized Debtors shall have the authority to compromise, settle, otherwise resolve, or withdraw any objections to Disputed Claims and to compromise, settle, or otherwise resolve any Disputed Claims without approval of the Bankruptcy Court, other than with respect to Administrative Expense Claims relating to compensation of professionals.

### 7.5. *Estimation of Claims.*

Requests for estimation of any Claim against the Debtors may be interposed and prosecuted only by the Debtors or the Reorganized Debtors. Prior to the Effective Date, except for estimation requests that in the reasonable determination of the Debtors need to be made on an emergency basis, the Debtors shall provide three (3) calendar days prior notice to the Plan Sponsor of their intent to request estimation of any Claim and if timely requested by the Plan Sponsor, shall work with the Plan Sponsor in interposing such a request. The Debtors or the Reorganized Debtors may at any time request that the Bankruptcy Court estimate any Contingent Claim, Unliquidated Claim, or Disputed Claim pursuant to section 502(c) of the Bankruptcy Code regardless of whether any of the Debtors or the Reorganized Debtors previously objected to such Claim or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court will retain jurisdiction to estimate any Claim at any time during litigation concerning any objection to any Claim, including, without limitation, during the pendency of any appeal relating to any such objection; provided, however, that the Bankruptcy Court shall not have jurisdiction to estimate a Claim with respect to which a reference has been withdrawn. In the event that the Bankruptcy Court estimates any Contingent Claim, Unliquidated Claim, or Disputed Claim, the amount so estimated shall constitute either the Allowed amount of such Claim or a maximum limitation on such Claim, as determined by the Bankruptcy Court. If the estimated amount constitutes a maximum limitation on the amount of such Claim, the Debtors or the Reorganized Debtors may pursue supplementary proceedings to object to the allowance of such Claim. The objection, estimation and resolution procedures set forth in Article VII of the Plan are intended to be cumulative and not exclusive of one another. Claims may be estimated and subsequently compromised, settled, withdrawn, or resolved by any mechanism approved by the Bankruptcy Court.



## ARTICLE VIII

### TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

#### 8.1. *Assumption or Rejection of Executory Contracts and Unexpired Leases.*

Pursuant to sections 365(a) and 1123(b)(2) of the Bankruptcy Code, all executory contracts and unexpired leases that exist between the Debtors and any person or entity shall be deemed rejected by the Debtors as of the Effective Date, except for any executory contract or unexpired lease (i) that has been assumed, assumed and assigned, or rejected pursuant to an order of the Bankruptcy Court entered on or before the Effective Date, (ii) as to which a motion for approval of the assumption, assumption and assignment, or rejection has been filed and served prior to the Confirmation Date, (iii) that is specifically designated as a contract or lease to be assumed or assumed and assigned on Schedule 8.1, which Schedule shall be contained in the Plan Supplement and shall be prepared in accordance with Section 5.02(b) of the SPA, or (iv) that is designated as assumed pursuant to sections 8.6 through 8.9 of this Plan; provided, however, that the Debtors reserve the right, in consultation with the Plan Sponsor, as provided in Section 5.02(c) of the SPA, on or prior to the Confirmation Date, to amend Schedule 8.1 to delete therefrom or add thereto any executory contract or unexpired lease, in which event such executory contract(s) or unexpired lease(s) shall be deemed to be, respectively, either rejected or assumed (or assumed and assigned) as of the Effective Date. The Debtors shall provide notice of any amendments to Schedule 8.1 to the parties to the executory contracts and unexpired leases affected thereby. The listing of a document on Schedule 8.1 shall not constitute an admission by the Debtors that such document is an executory contract or an unexpired lease or that the Debtors have any liability thereunder.

#### 8.2. *Approval of Assumption, Assumption and Assignment, or Rejection of Executory Contracts and Unexpired Leases.*

Entry of the Confirmation Order shall, subject to and upon the occurrence of the Effective Date, constitute (i) the approval, pursuant to sections 365(a) and 1123(b)(2) of the Bankruptcy Code, of the assumption, or the assumption and assignment, as applicable, of the executory contracts and unexpired leases listed on Schedule 8.1 or assumed pursuant to sections 8.6 through 8.9 of this Plan, and (ii) the approval, pursuant to sections 365(a) and 1123(b)(2) of the Bankruptcy Code, of the rejection of the executory contracts and unexpired leases rejected pursuant to Section 8.1 of the Plan.

#### 8.3. *Inclusiveness.*

Unless otherwise specified on Schedule 8.1, each executory contract and unexpired lease listed or to be listed on Schedule 8.1 shall include any and all modifications, amendments, supplements, restatements, or other agreements made directly or indirectly by any agreement, instrument, or other document that in any manner affects such executory contract or unexpired lease, without regard to whether such agreement, instrument or other document is listed on Schedule 8.1.

#### 8.4. *Cure of Defaults.*

(a) Except to the extent that different treatment has been agreed to by the non-debtor party or parties to any executory contract or unexpired lease that is being assumed under the Plan, the Debtors shall, pursuant to the provisions of sections 1123(a)(5)(G) and 1123(b)(2) of the Bankruptcy Code and consistent with the requirements of section 365 of the Bankruptcy Code, at least 20 days prior to the Confirmation Hearing, file with the Bankruptcy Court and serve by first class mail on each non-debtor party to such executory contracts or unexpired leases, a notice (the “Assumption Notice”), which shall list the cure amount as to each executory contract or unexpired lease to be assumed or assumed and assigned; provided, however, that if the Debtors, in consultation with the Plan Sponsor, subsequently

amend Schedule 8.1 or any other list of assumed executory contracts and unexpired leases prior to the Confirmation Hearing to add new executory contracts or unexpired leases or to unilaterally amend any cure amounts listed on the original Assumption Notice, the Debtors shall as soon as practicable after such amendment mail each non-debtor party to each such executory contract or unexpired lease a supplemental notice (each, a “Supplemental Assumption Notice”), which shall list the cure amount as to each executory contract or unexpired lease to be assumed or assumed and assigned. The parties to such executory contracts or unexpired leases to be assumed or assumed and assigned by the Debtors shall have ten (10) days from the date of service of the Assumption Notice or Supplemental Assumption Notice, as applicable, to file and serve any objection to either the cure amounts listed by the Debtors or the assumption or assumption and assignment of such contract or lease. If there are any objections filed, the Bankruptcy Court may either schedule such objection to be heard at the Confirmation Hearing or at a later hearing on a date to be set by the Bankruptcy Court. Notwithstanding anything to the contrary in the Plan, the Debtors, in consultation with the Plan Sponsor, shall retain their rights to reject any of their executory contracts or unexpired leases that are subject to a dispute concerning amounts necessary to cure any defaults through the Effective Date.

(b) To the extent any non-Debtor party to an executory contract or an unexpired lease files an objection to the Debtors’ proposed cure amounts and the alleged cure amount exceeds \$300,000, the Debtors shall provide notice thereof to the Plan Sponsor as provided in Section 5.02(d) of the SPA.

(c) Except as may otherwise be agreed to by the counterparty to the executory contract or unexpired lease, as soon as practicable after the Effective Date, the Reorganized Debtors shall pay all undisputed cure amounts. All disputed defaults that are required to be cured shall be cured either within thirty (30) days of the entry of a Final Order determining the amount, if any, of the Debtors’ liability with respect to such cure amount, or as may otherwise be agreed to with the counterparty to such executory contract or unexpired lease.

#### **8.5. *Bar Date for Filing Proofs of Claim Relating to Executory Contracts and Unexpired Leases Rejected Pursuant to the Plan.***

In the event that the rejection of an executory contract or unexpired lease by the Debtors pursuant to the Plan results in damages to the other party or parties to such contract or lease, a Claim for such damages, if not heretofore evidenced by a timely filed Proof of Claim, shall be forever barred and shall not be enforceable against the Debtors or the Reorganized Debtors, or their properties or interests in property as agents, successors, or assigns, unless a Proof of Claim is filed with the Claims Agent and served upon the attorneys for the Debtors on or before the thirtieth (30th) day after the later of (i) the date of service of notice of the Effective Date, or (ii) the date of service of notice of such later rejection date that occurs as a result of a dispute concerning amounts necessary to cure any defaults (solely with respect to the party directly affected by such modification).

#### **8.6. *Indemnification Obligations.***

Subject to the occurrence of the Effective Date, the obligations of the Debtors as of the Commencement Date to indemnify, defend, reimburse or limit the liability of directors, officers or employees who are directors, officers or employees of the Debtors on or before the Effective Date against any claims or causes of action, as provided in the Debtors’ certificates of incorporation, bylaws, other organizational documents or applicable law, shall be assumed by the Debtors on the Effective Date with the same effect as though such obligations constituted executory contracts that are assumed under section 365 of the Bankruptcy Code, and all such obligations shall survive confirmation of the Plan, remain unaffected thereby and not be discharged, irrespective of whether such indemnification, defense, reimbursement or limitation is owed in connection with an event occurring before or after the

Commencement Date. The prosecution of any indemnified cause of action against the Debtors or any non-debtor shall upon the Effective Date be enjoined and prohibited, except solely for the purpose of obtaining a recovery from any available insurance policy proceeds. This Plan is intended to effect the assumption of the indemnification obligations of the Debtors as provided in the Debtors' certificates of incorporation, bylaws, other organizational documents and applicable law, and this Plan shall not, in and of itself, be deemed to create any new indemnification obligations on the part of the Debtors to directors, officers or employees of the Debtors who were directors, officers or employees of the Debtors on or before the Effective Date.

#### **8.7. *Insurance Policies.***

Notwithstanding anything contained in the Plan to the contrary, unless specifically listed on Schedule 8.7 as being rejected or specifically rejected by order of the Bankruptcy Court, or unless subject to a motion for approval of rejection that has been filed and served prior to the Confirmation Date, all of the Debtors' insurance policies and any agreements, documents or instruments relating thereto (collectively, the "Insurance Policy Documents"), are treated as executory contracts under the Plan and will be assumed pursuant to the Plan, effective as of the Effective Date. Nothing contained in this section 8.7 shall constitute or be deemed a waiver of any cause of action that the Debtors may hold against any entity, including, without limitation, the insurer, under any of the Debtors' insurance policies. Nothing in the Disclosure Statement, the Plan, the Confirmation Order, any exhibit to the Plan or any other Plan document (including any provision that purports to be preemptory or supervening), shall in any way operate to, or have the effect of, impairing in any respect the legal, equitable or contractual rights and defenses, if any, of the Debtors, the Reorganized Debtors or any insurer with respect to any Insurance Policy Documents (except with respect to those set forth on Schedule 8.7). The rights and obligations of the Debtors, the Reorganized Debtors, and insurers shall be determined under the Insurance Policy Documents and under applicable non-bankruptcy law. The transfer herein of the Insurance Policy Documents by the Debtors to the Reorganized Debtors will not enlarge the pre-petition rights of the Reorganized Debtors thereunder, and such transfer is subject to all pre-petition rights and defenses available to the insurers thereunder. Regardless of whether the Insurance Policy Documents are executory, the Reorganized Debtors will perform the Debtors' obligations thereunder, including any that remain unperformed as of the Effective Date of the Plan.

#### **8.8. *Compensation and Benefit Programs.***

Notwithstanding anything contained in the Plan to the contrary, unless specifically rejected by order of the Bankruptcy Court, or unless subject to a motion for approval of rejection that has been filed and served prior to the Confirmation Date, the Compensation and Benefit Programs shall be deemed to be, and shall be treated as though they are, executory contracts that are deemed assumed under the Plan on the same terms, and the Debtors' obligations under the Compensation and Benefit Programs shall be deemed assumed pursuant to section 365(a) of the Bankruptcy Code, shall survive confirmation of the Plan, shall remain unaffected thereby, and shall not be discharged in accordance with section 1141 of the Bankruptcy Code. Any default existing under the Compensation and Benefit Programs shall be cured promptly after it becomes known by the Reorganized Debtors.

8.9. ***Other Contracts to be Assumed.***

Notwithstanding anything in the Plan to the contrary, unless specifically listed on Schedule 8.9 as being rejected or specifically rejected by order of the Bankruptcy Court, or unless subject to a motion for approval of rejection that has been filed and served prior to the Confirmation Date, the following Debtor contracts shall be assumed under the Plan, provided that they are unexpired as of the Effective Date and have not been terminated pursuant to their terms prior to the Effective Date:

- (a) The change in control agreements and severance agreements, including those that have been executed or amended during the Chapter 11 Cases;
- (b) The employee agreements, as may have been executed or amended during the Chapter 11 Cases;
- (c) Contracts with growers;
- (d) Contracts with vendors for live operations using the Debtors' contract forms entitled "Independent Contractor Agreement," "Catching and Loading Agreement," and "Live Haul Agreement";
- (e) Contracts with customers of one or more of the Debtors;
- (f) Contracts with vendors using the Debtors' contract forms entitled "Pilgrim's Pride Corporation Construction Agreement and General Conditions";
- (g) Contracts with vendors using the Debtors' contract forms entitled "Master Vendor Agreement" and/or "Supplemental Vendor Terms and Conditions";
- (h) Contracts with vendors for transportation services using the Debtors' contract forms entitled "Transportation Agreement," "Feed Haul Agreement," "Trailer Interchange Agreement" and "Transportation Broker Agreement";
- (i) Contracts with vendors using the Debtors' contract form entitled "Broker Sales Agreements";
- (j) Collective bargaining agreements where modifications to those agreements have been approved by the Bankruptcy Court, including agreements with the Settling Unions; and
- (k) Confidentiality agreements.

8.10. ***Retiree Benefits.***

On and after the Effective Date, pursuant to section 1129(a)(13) of the Bankruptcy Code, the Reorganized Debtors shall continue to pay all retiree benefits (as that term is defined in section 1114 of the Bankruptcy Code) of the Debtors, except with respect to any retiree benefits of the Debtors (i) that were terminated or rejected prior to the Confirmation Date (to the extent such termination or rejection did not violate section 1114 of the Bankruptcy Code) or (ii) are subject to a motion to reject as of the Confirmation Date or have been specifically waived by the beneficiaries of such retiree benefits, for the duration of the period for which the Debtors had obligated themselves to provide such benefits and subject to the right of the Reorganized Debtors to modify or terminate such retiree benefits in accordance with the terms thereof.

**ARTICLE IX**  
**CORPORATE GOVERNANCE AND**  
**MANAGEMENT OF THE REORGANIZED DEBTORS**

**9.1. General.**

On the Effective Date, the management, control, and operation of the Reorganized Debtors shall become the general responsibility of the Board of Directors of the respective Reorganized Debtor.

**9.2. Initial Board of Directors.**

(a) The identity of the initial board of directors for each Debtor is attached as Exhibit E, to be included with the Plan Supplement; provided; however, that the identity of the independent director of the Reorganized PPC to be designated by the Plan Sponsor shall be disclosed no later than 3 calendar days before the Confirmation Hearing.

(b) Pursuant to the Stockholders Agreement and the Restated Certificate of Incorporation, on the Effective Date, the board of directors of Reorganized PPC shall consist of 9 members comprised as follows:

(i) 6 members, including the Chairman of the Board, shall be designated by the Plan Sponsor (the “Plan Sponsor Designees”). The Chief Executive Officer of Reorganized PPC shall be appointed to the initial board of directors of the Reorganized PPC and shall be included in the Plan Sponsor Designees.

(ii) 2 members (the “Equity Directors”) shall be designated by the Equity Committee. The Equity Directors shall qualify as “independent directors” pursuant to the definition set forth in Section 303A.02 of the New York Stock Exchange Listed Company Manual.

(iii) 1 member shall be Lonnie “Bo” Pilgrim.

(c) From and after the Effective Date, the members of the board of directors of Reorganized PPC and its Affiliates shall be selected and determined in accordance with the provisions of the respective Reorganized Debtor Constituent Documents, the Stockholders Agreement, and applicable law.

**9.3. Officers.**

As of the Effective Date, the officers of the Debtors shall be the officers of the Reorganized Debtors.

**9.4. New Employee Incentive Plans.**

On the Effective Date, Reorganized PPC shall adopt the New Employee Incentive Plans, substantially in the forms attached hereto as Exhibit D-1 and Exhibit D-2. Reorganized PPC shall, on the Effective Date, implement these programs for certain of its employees and board members, pursuant to which such employees and board members may receive New PPC Common Stock and annual cash bonuses. The material terms of the New Employee Incentive Plans are attached as Exhibit D. Holders of Equity Interests in PPC shall vote separately on the New Employee Incentive Plans in conjunction with the solicitation of votes on the Plan, which shall constitute approval of the New Employee Incentive Plans for purposes of all shareholder approval requirements under the Internal Revenue Code, as well as section 16 of the Securities Exchange Act of 1934 and any applicable stock exchange listing requirements.



### 9.5. *Issuance of Non-Voting Securities.*

On the Effective Date or as soon as reasonably practicable thereafter, the Reorganized Debtors, as applicable, shall file amended certificates of incorporation (or similar organization documents), which shall, among other things, prohibit the issuance of non-voting equity securities to the extent prohibited by section 1123(a)(6) of the Bankruptcy Code, subject to further amendment as permitted by applicable law.

## ARTICLE X

### EFFECT OF CONFIRMATION

#### 10.1. *Vesting of Assets.*

Upon the Effective Date, pursuant to section 1141(b) and (c) of the Bankruptcy Code, all property of the Debtors shall vest in each of the Reorganized Debtors free and clear of all Claims, Liens, encumbrances, charges, and other interests, except as provided in the Plan. From and after the Effective Date, the Reorganized Debtors may operate their businesses and may use, acquire, and dispose of property free of any restrictions of the Bankruptcy Code or the Bankruptcy Rules and in all respects as if there were no pending case under any chapter or provision of the Bankruptcy Code.

#### 10.2. *Discharge of Claims and Termination of Equity Interests.*

Except as provided in the Plan, the rights afforded in and the payments and distributions to be made under the Plan shall be in exchange for and in complete satisfaction, discharge, release, termination, and cancellation of all existing debts, Claims and Equity Interests of any kind, nature, or description whatsoever, including any interest accrued on any Claims from and after the Commencement Date, against the Debtors or any of their assets or properties to the fullest extent permitted by section 1141 of the Bankruptcy Code. Except as provided in the Plan, upon the Effective Date, all existing Claims against and Equity Interests in the Debtors shall be, and shall be deemed to be, discharged, terminated, and cancelled, as applicable, and all holders of Claims and Equity Interests shall be precluded and enjoined from asserting against the Reorganized Debtors, their successors or assignees, or any of their assets or properties, any other or further Claim based upon any act or omission, transaction, or other activity of any kind or nature that occurred prior to the Effective Date, whether or not such holder has filed a proof of Claim, and whether or not the facts or legal bases therefor were known or existed prior to the Effective Date.

#### 10.3. *Discharge of Debtors.*

**Upon the Effective Date and in consideration of the distributions to be made under the Plan, except as otherwise expressly provided in the Plan, each holder (as well as any trustee or agent on behalf of any holder) of a Claim and any affiliate of such holder shall be deemed to have forever waived, released and discharged the Debtors, to the fullest extent permitted by section 1141 of the Bankruptcy Code, of and from any and all Claims, rights, and liabilities that arose prior to the Effective Date. As provided in section 524 of the Bankruptcy Code, such discharge shall void any judgment against the Debtors, their estates, or any successor thereto at any time obtained to the extent it relates to a Claim discharged. Upon the Effective Date, all persons shall be forever precluded and enjoined, pursuant to section 524 of the Bankruptcy Code, from prosecuting or asserting any discharged Claim against the Debtors, the estates, or any successor thereto.**

10.4. *Injunction or Stay.*

Except as otherwise expressly provided in the Plan, all persons or entities who have held, hold or may hold Claims against or Equity Interests in the Debtors and all other parties in interest, along with their respective present and former employees, agents, officers, directors, principals and affiliates, are permanently enjoined, from and after the Effective Date, from taking any of the following actions against the Debtors, the Reorganized Debtors, their respective estates, any debtor who is indemnifiable by the Debtors or Reorganized Debtors, and their respective property, (i) commencing or continuing in any manner any action or other proceeding of any kind with respect to any such Claim or Equity Interest, (ii) enforcing, attaching, collecting or recovering by any manner or means, whether directly or indirectly, of any judgment, award, decree or order, (iii) creating, perfecting, or enforcing, in any manner, directly or indirectly, any encumbrance of any kind, (iv) asserting any right of setoff, subrogation or recoupment of any kind with respect to any such Claim or Equity Interest, or (v) pursuing any Claim released pursuant to Article XII of the Plan. Such injunction shall extend to any successors of the Debtors and the Reorganized Debtors and their respective properties and interests in properties.

10.5. *Term of Injunctions or Stays.*

Unless otherwise provided, all injunctions or stays arising under or entered during the Chapter 11 Cases under section 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the later of the Effective Date and the date indicated in the order providing for such injunction or stay.

10.6. *Injunction Against Interference With Plan.*

Upon the entry of the Confirmation Order, all holders of Claims and Equity Interests, and other parties in interest, along with their respective present and former employees, agents, officers, directors, principals and affiliates shall be enjoined from taking any actions to interfere with the implementation or consummation of the Plan.

10.7. *Exculpation.*

Notwithstanding anything herein to the contrary, as of the Effective Date, none of the Debtors, the Reorganized Debtors, the Committees, the Chief Restructuring Officer, the agents and lenders under the Prepetition BMO Credit Agreement and the Prepetition CoBank Credit Agreement, the agents and lenders party to the DIP Credit Agreement, the Settling Unions, the Plan Sponsor, and their respective directors, officers, employees, partners, members, agents, representatives, accountants, financial advisors, investment bankers, or attorneys (but solely in their capacities as such) shall have or incur any liability for any claim, cause of action or other assertion of liability for any act taken or omitted to be taken since the Commencement Date in connection with, or arising out of, the Chapter 11 Cases, the formulation, dissemination, confirmation, consummation, or administration of the Plan, property to be distributed under the Plan, or any other act or omission in connection with the Chapter 11 Cases, the Plan, the Disclosure Statement or any contract, instrument, document or other agreement related thereto; provided, however, that the foregoing shall not affect the liability of any person that would otherwise result from any such act or omission to the extent such act or omission is determined by a Final Order to have constituted willful misconduct, gross negligence, fraud, criminal conduct, intentional unauthorized misuse of confidential information that causes damages, or *ultra vires* act.



10.8. *Releases by Holders of Claims and Equity Interests.*

Except as otherwise expressly provided in the Plan, on the Effective Date, and in consideration for the obligations of the Debtors and the Reorganized Debtors under the Plan, each holder of a Claim or an Equity Interest that votes to accept the Plan (or is deemed to accept the Plan), and to the fullest extent permissible under applicable law, as such law may be extended or integrated after the Effective Date, each holder of a Claim or Equity Interest that does not vote to accept the Plan, shall release and discharge unconditionally and forever each of (a) the Debtors and the Reorganized Debtors, (b) the Chief Restructuring Officer, (c) the Committees, (d) the agents and lenders under the Prepetition BMO Credit Agreement, (e) the agents and lenders under the Prepetition CoBank Credit Agreement, and (f) the agents and lenders under the DIP Credit Agreement, (g) Pilgrim Interests, Ltd. (solely in its capacity as guarantor under the Guarantee Agreements), (h) the Plan Sponsor, and (i) the present and former directors, officers, employees, affiliates, agents, financial advisors, investment bankers, attorneys, and representatives of each of the foregoing, as applicable, from any and all claims or causes of action that exist as of the Effective Date and arise from or relate to, in any manner, in whole or in part, the operation of the business of the Debtors, the subject matter of, or the transaction or event giving rise to, the Claim or Equity Interest of such holder, the business or contractual arrangements between any Debtor and such holder, any restructuring of such Claim or Equity Interest prior to the Chapter 11 Cases, or any act, omission, occurrence, or event in any manner related to such subject matter, transaction or obligation, or arising out of the Chapter 11 Cases, including, but not limited to, the pursuit of confirmation of the Plan, the consummation thereof, the administration thereof, or the property to be distributed thereunder; *provided*, that the foregoing shall not operate as a waiver of or release from any causes of action arising out of the willful misconduct, gross negligence, fraud, criminal conduct, intentional unauthorized misuse of confidential information that causes damages, or *ultra vires* acts of any such person or entity; *provided further* that the foregoing shall not operate as a waiver of or a release of any causes of action held by a Governmental Unit against any non-Debtor existing as of the Effective Date based on any securities laws of the United States or any domestic state.

10.9. *Releases by Debtors and Reorganized Debtors.*

Upon the Effective Date, and in consideration of the services provided to the Debtors by such persons, each Debtor and Reorganized Debtor shall release and discharge unconditionally and forever each of (a) the present and former directors, officers, employees, affiliates, agents, financial advisors, investment bankers, attorneys, and representatives of the Debtors (including the Chief Restructuring Officer), (b) the Committees, (c) the agents and lenders under the Prepetition BMO Credit Agreement, (d) the agents and lenders under the Prepetition CoBank Credit Agreement, (e) the agents and lenders under the DIP Credit Agreement, (f) Pilgrim Interests, Ltd. (solely in its capacity as guarantor under the Guarantee Agreements), (g) the Plan Sponsor (except with respect to the Plan Sponsor's obligations under the Stock Purchase Agreement), and (h) the present and former directors, officers, employees, affiliates, agents, financial advisors, investment bankers, attorneys, and representatives of each of the foregoing in clauses (b) through (g) of this Section 10.9, as applicable, from any and all claims or causes of action that exist as of the Effective Date and arise from or relate to, in any manner, in whole or in part, the operation of the business of the Debtors, the business or contractual arrangements between any Debtor and any such person or entity, or any act, omission, occurrence, or event in any manner related to such subject matter, transaction or obligation, or arising out of the Chapter 11 Cases, including, but not limited to, the pursuit of confirmation of the Plan, the consummation thereof, the administration thereof, or the property to be distributed thereunder; *provided*, that the foregoing shall not operate as a waiver of or release from any causes of action arising out of the willful

**misconduct, gross negligence, fraud, criminal conduct, intentional unauthorized misuse of confidential information that causes damages, or *ultra vires* acts of any such person or entity.**

**10.10. *Retention of Avoidance Actions.***

From and after the Confirmation Date, the Debtors shall retain the exclusive right to pursue, prosecute and enforce any and all Avoidance Actions, equitable subordination actions or recovery actions under sections 105, 502(d), 510, 542 through 551, and 553 of the Bankruptcy Code that belonged to the Debtors or Debtors in Possession prior to the Confirmation Date, other than with respect to any cause of action or Avoidance Action released herein, in the Confirmation Order, or in any other Final Order of the Bankruptcy Court. On the Effective Date, the Debtors' right to pursue, prosecute and enforce the actions listed in the immediately preceding sentence shall transfer to the Reorganized Debtors, which on and after the Effective Date shall have the exclusive right to pursue, prosecute and enforce such actions.

**10.11. *Retention of Causes of Action/Reservation of Rights.***

(a) Except as provided in sections 10.7 and 10.9 hereof, from and after the Confirmation Date, the Debtors shall retain the right to pursue, prosecute and enforce any rights or causes of action that the Debtors have under any provision of the Bankruptcy Code or any applicable nonbankruptcy law, including, without limitation, (i) any and all Claims against any Entity, to the extent such Entity asserts a crossclaim, a counterclaim, and/or a Claim for setoff that seeks affirmative relief against the Debtors, the Reorganized Debtors, their officers, directors, or representatives, (ii) any and all Claims and causes of action for turnover of any property of the Debtors' estates, (iii) any and all Claims and causes of actions that are listed on the Debtors' Schedules, and (iv) any and all Claims and causes of action that are subject to pending litigation in either the Bankruptcy Court or a non-bankruptcy forum. On the Effective Date, the Debtors' right to pursue, prosecute and enforce the actions listed in the immediately preceding sentence shall transfer to the Reorganized Debtors, which on and after the Effective Date shall have the exclusive right to pursue, prosecute and enforce such actions. Nothing contained in the Plan or the Confirmation Order shall be deemed to be a waiver or relinquishment of any rights or causes of action that the Debtors or the Reorganized Debtors may have.

(b) Nothing contained in the Plan or the Confirmation Order shall be deemed to be a waiver or relinquishment of any claim, cause of action, right of setoff, or other legal or equitable defense that the Debtors had immediately prior to the Commencement Date, against or with respect to any Claim. After the Confirmation Date, the Debtors and the Reorganized Debtors, as applicable, shall have, retain, reserve, and be entitled to assert all such claims, causes of action, rights of setoff, and other legal or equitable defenses that the Debtors had immediately prior to the Commencement Date as fully as if the Chapter 11 Cases had not been commenced, and all of the Debtors' and the Reorganized Debtors' legal and equitable rights respecting any Claim may be asserted after the Confirmation Date to the same extent as if the Chapter 11 Cases had not been commenced.

**10.12. *Limitations on Exculpation and Releases of Representatives.***

Nothing in Sections 10.7, 10.8 or 10.9 of the Plan shall (i) be construed to release or exculpate any entity from fraud, malpractice, criminal conduct, intentional unauthorized misuse of confidential information that causes damages, or *ultra vires* acts, or (ii) limit the liability of the professionals of the Debtors, the Reorganized Debtors, and the Committees to their respective clients pursuant to the relevant provisions of the Code of Professional Responsibility.

## ARTICLE XI

### CONDITIONS PRECEDENT TO EFFECTIVE DATE

#### 11.1. *Conditions Precedent to Effectiveness.*

The Effective Date shall not occur and the Plan shall not become effective unless and until the following conditions are satisfied in full or waived in accordance with Section 11.2 of the Plan:

(a) The Confirmation Order, in form and substance reasonably satisfactory to the Debtors, and, in so far as the Confirmation Order relates to the SPA or any matter set forth therein, reasonably satisfactory to the Plan Sponsor, shall have been entered and shall not be subject to any stay or injunction;

(b) All actions, documents, and agreements necessary to implement the Plan shall have been effected or executed;

(c) Other than those conditions that by their nature can only be satisfied at the closing of the transactions contemplated by the SPA, the conditions precedent to the SPA shall have been satisfied or waived by the parties thereto and the Reorganized Debtors shall have access to the Cash contributed by the Plan Sponsor; and

(d) The Allowed BMO Secured Claims, the Allowed CoBank Secured Claims, and the DIP Claims shall have been paid in full pursuant to Sections 4.2, 4.3 and 2.4 hereof, respectively; *provided, however*, that payment in full of such Claims and effectiveness of the Plan may occur simultaneously.

#### 11.2. *Waiver of Conditions.*

Each of the conditions precedent in Section 11.1 hereof (other than entry of the Confirmation Order) may be waived in whole or in part, as applicable, by the Debtors or the Plan Sponsor; *provided, however*, that the condition precedent in Section 11.1(d) of the Plan may only be waived by the Debtors with the consent of, as applicable, BMO or CoBank, as agents for the lenders from time to time party to the Prepetition BMO Credit Agreement, the DIP Credit Agreement, and the Prepetition CoBank Credit Agreement, respectively. Any such waiver may be effected at any time, without notice or leave or order of the Bankruptcy Court and without any formal action.

#### 11.3. *Effect of Failure of Conditions to Effective Date.*

In the event the conditions precedent specified in Section 11.1 hereof have not been satisfied or waived pursuant to Section 11.2 hereof on or prior to the date to be specified in the Confirmation Order, then (i) the Confirmation Order shall be vacated, (ii) no distributions under the Plan shall be made, (iii) the Debtors and all holders of Claims and Equity Interests shall be restored to the *status quo ante* as of the day immediately preceding the Confirmation Date as though the Confirmation Date had never occurred, (iv) all of the Debtors' obligations with respect to the Claims and Equity Interests shall remain unchanged and nothing contained herein shall be deemed to constitute a waiver or release of any claims by or against the Debtors or any other Entity or to prejudice in any manner the rights of the Debtors or any other Entity in any further proceedings involving the Debtors, and (v) nothing contained herein shall prejudice in any manner the rights of the Debtors, including, without limitation, the right to seek a further extension of the exclusive periods under section 1121(d) of the Bankruptcy Code.

## ARTICLE XII

### RETENTION OF JURISDICTION

On and after the Effective Date, the Bankruptcy Court shall have exclusive jurisdiction over all matters arising out of, arising under, and related to the Chapter 11 Cases and the Plan pursuant to, and for the purpose of, sections 105(a) and 1142 of the Bankruptcy Code, including, without limitation:

(a) To hear and determine pending applications for the assumption or rejection of executory contracts or unexpired leases, the allowance of Claims resulting therefrom and any disputes with respect to executory contracts or unexpired leases relating to the facts and circumstances arising out of or relating to the Chapter 11 Cases;

(b) To determine any motion, adversary proceeding, application, contested matter, and other litigated matter pending on or commenced after the Confirmation Date;

(c) To ensure that distributions to holders of Allowed Claims and Allowed Equity Interests are accomplished as provided herein;

(d) To consider Claims and Equity Interests or the allowance, classification, priority, compromise, estimation, or payment of any Claim or Equity Interest;

(e) To enforce the terms of the ADR Procedures Order and hear any matter arising from the alternative dispute resolution procedures established therein;

(f) To enter, implement, or enforce such orders as may be appropriate in the event the Confirmation Order is stayed, reversed, revoked, modified, or vacated for any reason;

(g) To issue injunctions, enter and implement other orders, and take such other actions as may be necessary or appropriate to prevent interference by any person with the consummation, implementation, or enforcement of the Plan, the Confirmation Order, or any other order of the Bankruptcy Court;

(h) To hear and determine any application to modify the Plan in accordance with section 1127 of the Bankruptcy Code, to remedy any defect or omission or reconcile any inconsistency in the Plan, the Disclosure Statement, or any order of the Bankruptcy Court, including the Confirmation Order, in such a manner as may be necessary to carry out the purposes and effects thereof;

(i) To hear and determine all applications under sections 330, 331, and 503(b) of the Bankruptcy Code for awards of compensation for services rendered and reimbursement of expenses incurred prior to the Confirmation Date;

(j) To consider any amendments to or modifications of the Plan or to cure any defect or omission, or reconcile any inconsistency, in any order of the Bankruptcy Court, including, without limitation, the Confirmation Order;

(k) To hear and determine disputes arising in connection with the interpretation, implementation, or enforcement of the Plan and the Confirmation Order; provided, however, that notwithstanding anything to the contrary in this Article XII, disputes arising in connection with the interpretation, implementation or enforcement of the SPA or the Exit Financing or any other transactions or payments contemplated thereby shall be heard and determined as set forth therein.

(l) Subject to paragraph (k) of this Article XII, to take any action and issue such orders as may be necessary to construe, enforce, implement, execute, and consummate the Plan or to maintain the integrity of the Plan following the Effective Date;

(m) To issue injunctions, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any Person with consummation, implementation or enforcement of the Plan or the Confirmation Order;

(n) To determine such other matters and for such other purposes as may be provided in the Confirmation Order;

(o) To hear and determine matters concerning state, local, and federal taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code (including the expedited determination of tax under section 505(b) of the Bankruptcy Code);

(p) To determine the scope of any discharge of any Debtor under the Plan or the Bankruptcy Code;

(q) To recover all assets of the Debtors and all property of the Debtors' estates, wherever located;

(r) Subject to paragraph (k) of this Article XII, to hear and determine any matters arising out of or related to confidentiality agreements entered into by the Debtors during the Chapter 11 Cases;

(s) To hear and determine any rights, claims or causes of action held by or accruing to the Debtors pursuant to the Bankruptcy Code, any other federal or state statute, or any legal theory;

(t) To enter a final decree closing the Chapter 11 Cases;

(u) Subject to paragraph (k) of this Article XII, to determine any other matters that may arise in connection with or are related to the Plan, the Disclosure Statement, the Confirmation Order any of the Plan Documents, or any other contract, instrument, release or other agreement or document related to the Plan, the Disclosure Statement or the Plan Supplement; and

(v) To hear and determine any other matter not inconsistent with the Bankruptcy Code.

## **ARTICLE XIII**

### **MISCELLANEOUS PROVISIONS**

#### **13.1. *Effectuating Documents and Further Transactions.***

The Reorganized Debtors are authorized to execute, deliver, file, or record such contracts, instruments, releases, and other agreements or documents (including, without limitation, the Restated Certificate of Incorporation, the Restated Bylaws and any other Reorganized Debtor Constituent Documents) and take such actions as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan and any securities issued pursuant to the Plan.



13.2. *[Intentionally Omitted.]*

13.3. *Corporate Action.*

Upon the Effective Date, the following transactions shall be deemed to occur:

(a) General. All actions contemplated by the Plan shall be deemed authorized and approved in all respects, including, without limitation, (i) the execution and entry into the Exit Facility, (ii) adoption and approval of those terms of the SPA that have not already been approved pursuant to a Final Order of the Bankruptcy Court, (iii) the distribution of the New PPC Common Stock, (iv) adoption of the New Employee Incentive Plans, (v) selection of the board and the officers of the Reorganized Debtors, and (vi) all other actions contemplated by the Plan (whether to occur before, on or after the Effective Date). All matters provided for in the Plan involving the corporate structure of the Debtors or the Reorganized Debtors or any corporate action required by the Debtors or the Reorganized Debtors in connection with the Plan shall be deemed to have occurred and shall be in effect without any requirement of further action by the security holders, directors, or officers of the Debtors or the Reorganized Debtors. On or (as applicable) prior to the Effective Date, the appropriate officers of the Debtors or the Reorganized Debtors, as applicable, shall be authorized and directed to issue, execute and deliver the agreements, documents, securities and instruments contemplated by the Plan, necessary for or desirable to effect the transactions contemplated by the Plan, in the name of and on behalf of the Reorganized Debtors, including, without limitation, (x) the Exit Facility Documents, (y) the SPA, and (z) any and all other agreements, documents, securities and instruments relating to the foregoing.

(b) Restated Certificate of Incorporation and Restated Bylaws. On the Effective Date or as soon as practicable thereafter, each of the applicable Reorganized Debtors shall adopt amended certificates of incorporation and, as deemed necessary, amended bylaws (or similar organization documents) and shall file the amended certificates of incorporation with the Secretary of State of the State of Delaware or, if such Debtor is organized under the laws of another jurisdiction, file similar organization documents with the appropriate authority in the applicable jurisdiction. In addition, on or before the Effective Date, pursuant to and only to the extent required by section 1123(a)(6) of the Bankruptcy Code, the amended certificates of incorporation shall satisfy the provisions of the Bankruptcy Code and shall include, among other things, pursuant to section 1123(a)(6) of the Bankruptcy Code, (i) a provision prohibiting the issuance of non-voting equity securities and (ii) a provision setting forth an appropriate distribution of voting power among classes of equity securities possessing voting power. On the Effective Date, the boards of directors of each of the Reorganized Debtors shall be deemed to have adopted amended bylaws for each Reorganized Debtor.

13.4. *Exemption from Transfer Taxes.*

Pursuant to section 1146(a) of the Bankruptcy Code, the issuance, transfer, or exchange of equity securities under the Plan, the creation of any mortgage, deed of trust, or other security interest, the making or assignment of any lease or sublease, or the making or delivery of any deed or other instrument of transfer under, in furtherance of, or in connection with the Plan, including, without limitation, the New PPC Common Stock, the Exit Facility, the SPA, any merger agreements or agreements of consolidation, deeds, bills of sale, or assignments executed in connection with any of the transactions contemplated under the Plan, shall not be subject to any stamp, real estate transfer, mortgage recording, or other similar tax. All sale transactions consummated by the Debtors and approved by the Bankruptcy Court on and after the Commencement Date through and including the Effective Date, including, without limitation, the transfers effectuated under the Plan, the sale by the Debtors of owned property pursuant to section 363(b) of the Bankruptcy Code, and the assumption, assignment, and sale by the Debtors of unexpired leases of non-residential real property pursuant to section 365(a) of the Bankruptcy Code, shall be deemed to have been made under, in furtherance of, or in connection with the

Plan and, thus, shall not be subject to any stamp, real estate transfer, mortgage recording, or other similar tax.

**13.5. *Expedited Tax Determination.***

The Debtors and the Reorganized Debtors are authorized to request an expedited determination of taxes under section 505(b) of the Bankruptcy Code for any and all returns filed for, or on behalf of, the Debtors for any and all taxable periods (or portions thereof) through the Effective Date.

**13.6. *Payment of Statutory Fees.***

On the Effective Date, and thereafter as may be required, the Debtors shall pay all fees payable pursuant to section 1930 of chapter 123 of title 28 of the United States Code.

**13.7. *Post-Confirmation Date Professional Fees and Expenses.***

From and after the Confirmation Date, the Reorganized Debtors shall, in the ordinary course of business and without the necessity for any approval by the Bankruptcy Court, pay the reasonable fees and expenses of professional persons thereafter incurred by Reorganized Debtors.

**13.8. *Dissolution of Committees.***

On the ~~later of the Effective Date and entry of a Final Order resolving the remaining disputes among the parties regarding payment of default interest on the Note Claims and any resulting dispute over subordination provisions of the applicable Indentures~~ Effective Date, the Committees shall be dissolved and the members thereof shall be released and discharged of and from all further authority, duties, responsibilities and obligations relating to and arising from and in connection with the Chapter 11 Cases; *provided, however*, that in the event the Confirmation Order is appealed, any Committee may elect to delay its dissolution until the conclusion of the appeal so as to participate in such appeal. On the Effective Date, the retention or employment of all attorneys, financial advisors, accountants and other agents of the Creditors' Committee and Equity Committee shall terminate other than for purposes of (i) filing, prosecuting and objecting to applications for final allowances of compensation for professional services rendered and reimbursement of expenses incurred in connection therewith, and (ii) participating in any appeal of the Confirmation Order. To the extent not discharged and released on or prior to the Confirmation Date, on the eleventh (11<sup>th</sup>) day following the entry of an order in respect of the last of any outstanding fee applications, the Fee Review Committee shall be released and discharged from its obligations pursuant to the Order Granting Motion for (I) Appointment of a Fee Review Committee and (II) Amendment of the Interim Compensation Order [Docket No. 1624].

**13.9. *Indenture Trustees as Claim Holders.***

Consistent with Bankruptcy Rule 3003(c), the Reorganized Debtors shall recognize proofs of claim timely filed by any Indenture Trustee in respect of any Claims under the Indentures. Accordingly, any Claim, proof of which is filed by the registered or beneficial holder of a Claim, may be disallowed as duplicative of the Claim of the applicable Indenture Trustees, without any further action of the Bankruptcy Court.

**13.10. *Plan Supplement.***

A draft form of the following documents and any other appropriate documents, to the extent not already attached to the Plan, shall be contained in the Plan Supplement and filed with the Clerk of the Bankruptcy Court no later than ten (10) days prior to the last date by which holders of impaired



Equity Interests may vote to accept or reject the Plan: (i) Summary of Terms of Exit Facility, (ii) Restated Certificate of Incorporation, (iii) Restated Bylaws, (iv) Summary of New Employee Incentive Plans, (v) list of certain assumed executory contracts and unexpired leases, (vi) list of certain rejected executory contracts and unexpired leases, (vii) list of initial directors for the Reorganized Debtors, (viii) list of initial officers of Reorganized PPC, and (vix) the Plan Sponsor's more recent financial statements. Upon its filing with the Bankruptcy Court, the Plan Supplement may be inspected in the office of the Clerk of the Bankruptcy Court during normal court hours. Documents to be included in the Plan Supplement will be posted at a website identified in the Disclosure Statement as they become available, but no later than five (5) days prior to the last date by which votes to accept or reject the Plan must be received. Notwithstanding the foregoing, the Debtors may amend Schedule 8.1, 8.7 and 8.9 prior to the Confirmation Date and each of the other documents contained in the Plan Supplement (in a manner consistent with the Plan and Disclosure Statement) through and including the Effective Date.

#### **13.11. *Substantial Consummation.***

On the Effective Date, the Plan shall be deemed to be substantially consummated under sections 1101 and 1127(b) of the Bankruptcy Code.

#### **13.12. *Amendments or Modifications of the Plan.***

Alterations, amendments, or modifications of or to the Plan may be proposed in writing by the Debtors at any time prior to the Confirmation Date, provided that the Plan, as altered, amended, or modified, satisfies the conditions of sections 1122 and 1123 of the Bankruptcy Code, and the Debtors shall have complied with section 1125 of the Bankruptcy Code; provided further that without the prior written consent of the Plan Sponsor, the Debtors may not propose amendments or modifications to any provision in the Plan that would reasonably be expected to have a material adverse effect on the Plan Sponsor or on the ability of the Company and the Plan Sponsor to consummate the transactions contemplated by the SPA except that no consent shall be required for any amendments or modifications to the Plan proposed by the Debtors that are consistent with the rights of PPC under the SPA. After the Confirmation Date, so long as such action does not materially and adversely affect the treatment of holders of Claims or Equity Interests under the Plan, the Debtors or the Reorganized Debtors may institute proceedings in the Bankruptcy Court to remedy any defect or omission or reconcile any inconsistencies in the Plan or the Confirmation Order, with respect to such matters as may be necessary to carry out the purposes and effects of the Plan. A holder of a Claim or Equity Interest that has accepted the Plan shall be deemed to have accepted the Plan, as altered, amended, or modified, if the proposed alteration, amendment, or modification does not materially and adversely change the treatment of the Claim or Equity Interest of such holder.

#### **13.13. *Revocation or Withdrawal of the Plan.***

The Debtors reserve the right to revoke or withdraw the Plan prior to the Effective Date. If the Debtors take such action, the Plan shall be deemed null and void. In such event, nothing contained in the Plan shall constitute or be deemed a waiver or release of any Claims against the Debtors, any claims or rights of the Debtors against any other person or to prejudice in any manner the rights of the Debtors or any other person in any further proceedings involving the Debtors.

#### **13.14. *Severability.***

If, prior to the entry of the Confirmation Order, any term or provision of the Plan is held by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court, at the request of the Debtors, shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to

be invalid, void, or unenforceable, and such term or provision as altered or interpreted shall then be applicable. Notwithstanding any such holding, alteration, or interpretation, the remainder of the terms and provisions of the Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

**13.15. *Governing Law.***

Except to the extent that the Bankruptcy Code or other federal law is applicable, or to the extent an exhibit hereto or a schedule or document in the Plan Supplement provides otherwise, the rights, duties, and obligations arising under the Plan shall be governed by, and construed and enforced in accordance with, the laws of the State of Texas, without giving effect to the principles of conflict of laws thereof; provided, however, that the SPA shall be governed by the laws as set forth therein.

**13.16. *Binding Effect.***

The Plan shall be binding upon the Debtors, the holders of Claims and Equity Interests and other parties in interest, and their respective successors and assigns, including, without limitation, the Reorganized Debtors.

**13.17. *Exhibits/Schedules.***

All exhibits and schedules to the Plan, including the Plan Supplement, are incorporated into and are a part of the Plan as if set forth in full herein.

**13.18. *Notices.***

In order to be effective, all notices, requests, and demands to or upon the Debtors must be in writing (including by facsimile transmission) and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered or, in the case of notice by facsimile transmission, when received and telephonically confirmed, addressed as follows:

Pilgrim's Pride Corporation  
4585 US Highway 271 North  
Pittsburg, TX 75868-0093  
Attn: Richard A. Cogdill  
Title: Chief Financial Officer  
Telephone: (903) 434-1000  
Facsimile: (972) 290-8950

With a copy to:

Weil, Gotshal & Manges LLP  
200 Crescent Court, Suite 300  
Dallas, Texas 75201  
Attn: Stephen A. Youngman  
Telephone: (214) 746-7700

Facsimile: (214) 746-7777

- and -

Weil, Gotshal & Manges LLP  
767 Fifth Avenue  
New York, New York 10153  
Attn: Victoria Vron  
Telephone: (212) 310-8000  
Facsimile: (212) 310-8007

13.19. ***Time.***

In computing any period of time prescribed or allowed by the Plan, unless otherwise set forth herein or determined by the Bankruptcy Court, the provisions of Bankruptcy Rule 9006 shall apply.

13.20. *Section Headings.*

The section headings contained in the Plan are for reference purposes only and shall not affect in any way the meaning or interpretation of the Plan.

13.21. *No Admissions.*

**AS TO CONTESTED MATTERS, ADVERSARY PROCEEDINGS AND OTHER CAUSES OF ACTION OR THREATENED CAUSES OF ACTIONS, THE PLAN SHALL NOT CONSTITUTE OR BE CONSTRUED AS AN ADMISSION OF ANY FACT OR LIABILITY, STIPULATION, OR WAIVER, BUT RATHER AS A STATEMENT MADE IN SETTLEMENT NEGOTIATIONS. THE PLAN SHALL NOT BE ADMISSIBLE IN ANY NON-BANKRUPTCY PROCEEDING NOR SHALL IT BE CONSTRUED TO BE CONCLUSIVE ADVICE ON THE TAX, SECURITIES, AND OTHER LEGAL EFFECTS OF THE PLAN AS TO HOLDERS OF CLAIMS AGAINST, AND EQUITY INTERESTS IN, PPC OR ANY OF ITS SUBSIDIARIES AND AFFILIATES, AS DEBTORS AND DEBTORS IN POSSESSION IN THE CHAPTER 11 CASES.**

Dated: ~~October 21,~~November 17, 2009  
Fort Worth, Texas

Respectfully submitted,

PILGRIM'S PRIDE CORPORATION

By: /s/ Richard A. Cogdill  
Name: Richard A. Cogdill  
Title: Chief Financial Officer

PFS DISTRIBUTION COMPANY

By: /s/ Richard A. Cogdill  
Name: Richard A. Cogdill  
Title: Chief Financial Officer

PPC TRANSPORTATION COMPANY

By: /s/ Richard A. Cogdill  
Name: Richard A. Cogdill  
Title: Chief Financial Officer

TO-RICOS, LTD.

By: /s/ Richard A. Cogdill  
Name: Richard A. Cogdill  
Title: Chief Financial Officer

TO-RICOS DISTRIBUTION, LTD.

By: /s/ Richard A. Cogdill  
Name: Richard A. Cogdill  
Title: Chief Financial Officer

PILGRIM'S PRIDE CORPORATION OF WEST VIRGINIA,  
INC.

By: /s/ Richard A. Cogdill  
Name: Richard A. Cogdill  
Title: Chief Financial Officer

PPC MARKETING, LTD.

By: Pilgrim's Pride Corporation  
Its General Partner  
  
/s/ Richard A. Cogdill  
Name: Richard A. Cogdill  
Title: Chief Financial Officer