TYSON FOODS INC
Form SC 13D/A
June 09, 2006
United States

Securities and Exchange Commission

Washington, D.C. 20549

SCHEDULE 13D/A

Under the Securities Exchange Act of 1934

(Amendment No. 7)1

TYSON FOODS, INC.

(Name of Issuer)

Class A Common Stock, par value $.10 per share

(Title of Class of Securities)

902494103

(CUSIP Number)

Donald J. Tyson

Tyson Limited Partnership

2210 Oaklawn Drive

Springdale, Arkansas 72762-6999

(479) 290-4000

(Name, Address and Telephone Number of Person

Authorized to Receive Notices and Communications)

June 2, 2006

(Date of Event which Requires Filing of This Statement)

If the filing person has previously filed a statement on Schedule 13G to report the acquisition which is the subject of this Schedule 13D, and is filing this schedule because of Rule 13d-1(e), 13d-1(f) or 13d-1(g), check the following box. o

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1The remainder of this cover page shall be filled out for a reporting person s initial filing on this form with respect to the subject class of securities, and for any subsequent amendment containing information which would alter disclosures provided in a prior cover page.

The information required on the remainder of this cover page shall not be deemed to be filed for the purpose of Section 18 of the Securities Exchange Act of 1934 (Act) or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act.

CUSIP NO. 902494103

(1) Name of Reporting Person	Tyson Limited Partnership
IRS Identification No. of Above Person (Entities Only)	I.D.# 71-0692500
(2) Check the Appropriate Box if a Member of a Group	(a) (b) X
(3) SEC Use Only	
(4) Source of Funds	Not applicable
5) Check if Disclosure of Legal Proceedings is Required Pursuant to Items 2(d) and 2(e)	
(5) Check if disclosure of legal proceedings is required pursuant to Items 2(d) or 2(e)	X
(6) Citizenship or Place of Organization	Delaware
Number of Shares Beneficially Owned by Each Reporting Person with:	
(7) Sole Voting Power	93,848,560 shares of Class B Common Stock. No Shares of Class A Common Stock
(8) Shared Voting Power	None
(9) Sole Dispositive Power	93,848,560 shares of Class B Common Stock. No Shares of Class A Common Stock
(10) Shared Dispositive Power	None
(11) Aggregate amount beneficially owned by each reporting person.	93,848,560 shares of Class B Common Stock. No Shares of Class A Common Stock
11) Aggregate Amount Beneficially Owned by Each Reporting Person	101,598,560 shares of Class B Common Stock, and 0 Shares of Class A Common Stock
(12) Check if the Aggregate Amount in Row (11) Excludes Certain Shares	Not applicable
(13) Percent of class represented by amount in Row (11)	99.97
(14) Type of Reporting Person	PN
13) Percent of Class Represented by Amount in Row (11)	99.9% of Class B Common Stock presently convertible into Class A Stock (See Item 1)

SCHEDULE 13D

This Amendment No. 7 amends, as set forth below, the statement on Schedule 13D, dated April 30, 1991, as amended by Amendment No. 1 thereto, dated July 10, 1991, Amendment No. 2 thereto, dated April 3, 1992, Amendment No. 3 thereto, dated October 31, 2001, Amendment No. 4 thereto, dated January 17, 2002, Amendment No. 5 thereto, dated June 30, 2003, and Amendment No. 6 thereto, dated February 25, 2004 for the Tyson Limited Partnership, a Delaware limited partnership (the Partnership), with respect to the Class A Common Stock, par value $.10 per share (the Class A Stock), of Tyson Foods, Inc., a Delaware corporation (the Company), and the Class B Common Stock, par value $.10 per share (the Class B Stock), of the Company and reflects the sale in the open market by the Partnership of 5,000,000 shares of Class A Stock of the

Company. All of the transactions in the Shares were effected on the following dates in open market purchases on the NYSE.

Date of Transaction	Shares Sold	Price Per Share ($)
05/23/2006	50,000	16.7095
05/24/2006	550,000	16.1594
05/25/2006	1,205,300	16.3331
05/26/2006	403,900	16.3749
05/30/2006	465,100	16.1306
05/31/2006	864,800	15.999
06/1/2006	723,400	15.9028
06/2/2006	737,500	15.8262

Item 1. Security and Issuer

The class of equity securities to which this statement on Schedule 13D (the Statement) relates is the Class A Stock of the Company whose principal executive offices are located at 2210 Oaklawn Drive, Springdale, Arkansas 72762-6999. The Partnership is causing this statement to be filed by virtue of its beneficial ownership of the Company s Class B Stock. The Class A and Class B Stock are hereinafter collectively referred to as the Shares. Pursuant to the Company s Certificate of Incorporation, and subject to certain terms and conditions contained therein, each share of Class B Stock is presently convertible, at the option of the respective holder thereof, into one fully paid and non assessable share of the Company s Class A Stock. As of June 2, 2006, the Partnership owned 93,848,560 shares of Class B Stock or 99.97% of the total shares of such class outstanding. The Partnership did not own any shares of Class A Stock on such date.

Item 2. Identity and Background

This statement is being filed by the Partnership which was formed on June 8, 1990. Substantially all of the Class B Stock held by the Partnership represents the Tyson family s controlling interest in the Company. The principal business address of the Partnership is 2210 Oaklawn Drive, Springdale, Arkansas 72762-6999.

The purpose and nature of business to be conducted by the Partnership includes the following: (i) to engage generally in the farming and ranching business, including the acquisition, development, construction, operation and disposition of farming and ranching properties; (ii) to engage generally in the real estate business, including the improvement, development, acquisition or disposition of real estate properties; (iii) to engage generally in the mineral business and to acquire, develop and operate mineral properties; (iv) to invest, acquire, dispose of or otherwise deal in stocks, bonds and securities of any person, including the Company; and (v) to conduct any other business necessary or incidental to the foregoing or that may be lawfully conducted by the Partnership under the Delaware Revised Uniform Limited Partnership Act.

The managing general partner of the Partnership is Donald J. Tyson, a member of the Board of Directors of the Company. The name, residence or business address, present principal occupation or employment and citizenship of each general partner of the Partnership is set forth in Schedule 1 hereto and incorporated herein by reference. Donald J. Tyson has a 54.3123% combined percentage interest as a general and limited partner in the Partnership and the Randal W. Tyson Testamentary Trust has a 45.062% percentage interest as a limited partner in the Partnership.

Except as set forth below, during the last five years, neither the Partnership, nor, to the best knowledge of the Partnership, any general partner of the Partnership (a) has been convicted in a criminal proceeding (excluding traffic violations or similar misdemeanors) or (b) was a party to a civil proceeding of a judicial or administrative body of competent jurisdiction and as a result of such proceeding was or is subject to a judgment, decree or final order enjoining future violations of or prohibiting or mandating activities subject to, federal or state securities laws, or finding any violation with respect to such laws.

In April 2005, the Company and Donald J. Tyson settled an SEC formal investigation concerning the Company s disclosure of executive perquisites by entering into an administrative cease and desist order without admitting or denying wrongdoing. The SEC investigation concerned allegations that the Company s proxy statements for fiscal years 1997 through 2003 had failed to comply with SEC regulations with respect to the disclosure and description of perquisites totaling approximately $1.7 million provided to Donald J. Tyson and that the Company had failed to maintain an adequate system of internal controls regarding the personal use of Company assets and the disclosure of perquisites and personal benefits. In fiscal year 2004, Mr. Tyson voluntarily paid the Company $1,516,471 as reimbursement for certain perquisites and personal benefits received during fiscal years 1997 through 2003. Under the order, the Company paid the SEC a civil penalty of $1.5 million and Don Tyson paid a civil penalty of $700,000. Both the Company and Mr. Tyson consented to the entry of the order and paid their respective penalties without

admitting or denying wrongdoing.

Item 3. Source and Amount of Funds or Other Consideration

Not applicable.

Item 4. Purpose of Transaction

The Shares were acquired by the Partnership for the purpose of aggregating the Tyson family s previously held controlling interest in the Company into a more flexible ownership vehicle. Additionally, the Shares are held by the Partnership as an investment asset. From time to time the Partnership reviews and monitors its investment in the Company and may change such investment by acquiring or selling additional Shares in the open market, in privately negotiated transactions or otherwise. In reaching any conclusions regarding any change in the level of investment in the Shares, the Partnership takes into consideration various factors, including but not limited to, the price and availability of the Shares, future events affecting the Company, general stock market and economic conditions and other investment and business opportunities available to the Partnership.

The Partnership presently anticipates making additional dispositions of Company Shares into the open market as part of a continuing effort to diversify the Partnership s holdings, the timing of which is presently uncertain. The Partnership currently has no plans or proposals which would result in or relate to any of the transactions described in subparagraphs (b) through (j) of Item 4 of Schedule 13D. However, the Partnership reserves the right to change its plans or intentions at any time and to take any and all actions it may deem appropriate with respect to its investment in the Company.

Item 5. Interest in Securities of the Issuer

(a) As of June 2, 2006, the Partnership beneficially owned a total of 93,848,560 shares of Class B Stock, constituting approximately 99.97% of the total shares of such class outstanding. Additionally, the Partnership did not own any shares of Class A Stock on such date. Neither the Partnership, nor, to the best knowledge of the Partnership, the general partners of the Partnership, presently own any Shares, except as set forth herein.

Certain of the Partnership s general partners beneficially own shares of the Company s Class A Stock in addition to such general partners interest in the Partnership. Such general partners beneficial ownership of Class A Stock, as of June 7, 2006, is as follows (including shares subject to presently exercisable options or options exercisable within 60 days after June 7, 2006): Don Tyson, 137,156; Leland Tollett, 3,375,664; Barbara Tyson, 168,539; and John Tyson, 3,545,086 shares.

(b) Don Tyson, as managing general partner of the Partnership, has the exclusive right, subject to certain restrictions, to vote or direct the vote of and to dispose of or direct the disposition of all the Shares beneficially owned by the Partnership.

(c) On May 2, 2006, Don Tyson, the managing general partner of the Partnership, disposed of 750,000 Shares of the Company Stock in the open market at a price of $14.64 per share.

(d) Not applicable.

(e) Not applicable.

Item 6. Contracts, Arrangements, Understandings or Relationships with Respect to Securities of the Issuer

The Partnership is governed by the terms of a Partnership Agreement dated June 8, 1990 (the Agreement). Pursuant to the Agreement, Don Tyson, as managing general partner, has the exclusive right, subject to certain restrictions, to do all things necessary to manage, conduct, control and operate the Partnership s business, including the right to vote all shares or other securities held by the Partnership, as well as the right to mortgage, pledge or grant security interests in any assets of the Partnership. The Partnership terminates on December 31, 2040. Additionally, the Partnership may be dissolved upon the occurrence of certain events, including (i) a written determination by the managing general partner that the projected future revenues of the Partnership will be insufficient to enable payment of costs and expenses, or that such future revenues will be such that continued operation of the Partnership will not be in the best interest of the partners, (ii) an election to dissolve the Partnership by the managing general partner that is approved by the affirmative vote of a majority in percentage interest of all general partners and (iii) the sale of all or substantially all of the Partnership s assets and properties. The withdrawal of the managing general partner or any other general partner (unless such partner is a sole remaining general partner) will not cause a dissolution of the Partnership. Upon dissolution of the Partnership, each partner, including all limited partners, will receive in cash or otherwise, after payment of creditors, loans from any partner, and return of

capital account balances, their respective percentage interests in the partnership assets. In addition, the Agreement provides that in the event it is determined that a sale of Partnership assets and distribution in cash would be impracticable or cause undue loss to the partners, each partner may, subject to certain conditions, receive in lieu of cash, the particular assets contributed by each such partner to the Partnership.

The Partnership, through two of its wholly-owned subsidiaries, has entered into six prepaid forward contracts with Merrill Lynch, Pierce, Fenner & Smith Incorporated (MLPFS), each relating to 1,000,000 shares of Class B stock - four of which expire on February 20, 2007 and two of which expire on August 22, 2006, and one prepaid forward contract with JPMorgan Chase Bank with respect to 1,000,000 shares of Class B Stock which expires on July 25, 2006 (collectively, the Contracts). Under the terms of each of the Contracts, the Partnership has agreed to deliver a number of shares of Class A Stock (or Class B Stock immediately convertible into Class A Stock) on the respective expiration dates of the contracts (or on an earlier date if the contract is terminated early) pursuant to the following formula: (i) if the price of Class A Stock on the date of expiration or termination (the Final Price) is less than a specified floor price (the Floor Price), then 1,000,000 shares; (ii) if the Final Price is less than or equal to a specified maximum price (the Cap Price), but great than or equal to the Floor Price, then a number of shares equal to 1,000,000 times the Floor Price divided by the Final Price; (iii) if the Final Price is greater than the Cap Price, then a number of shares equal to 1,000,000 multiplied by a fraction, the numerator of which is the sum of the Floor Price and the difference between the Final Price and the Cap Price, and the denominator of which is the Final Price. In connection with the Contracts, the Partnership has pledged the 7,000,000 shares of Class B Stock subject to the Contracts to secure its obligations under the Contracts.

Under the Contracts, in lieu of the delivery of Shares, the Partnership may, at its option, settle the contracts by delivery of cash. In certain events, the Counterparties are obligated to settle the contracts by delivery of cash.

Item 7. Material to be Filed as Exhibits

Included as exhibits to this Statement is the following:

Exhibits

A. Agreement of Limited Partnership of Tyson Limited Partnership, dated June 8, 1990 (incorporated by reference from the Reporting Person s Schedule 13D, dated April 30, 1991, filed with the SEC on May 1, 1991).

B. ISDA Master Agreement, dated October 8, 2001, between TLPCRT, L.P. and MLPFS (incorporated by reference from the Reporting Person s Amendment No. 3 to Schedule 13D, dated October 31, 2001, filed with the SEC on November 20, 2001).

C. ISDA Master Agreement, dated December 3, 2001, between TLP Investments L.P. and MLPFS (incorporated by reference from the Reporting Person s Amendment No. 4 to Schedule 13D, dated January 17, 2002, filed with the SEC on November 20, 2001).

D. Stock Purchase Agreement, dated November 19, 2004, between TLP Investments L.P. and JPMorgan Chase Bank (by J.P. Morgan Securities Inc., as its Agent)

E. Pledge Agreement, dated November 19, 2004, among TLP Investments L.P., JPMorgan Chase Bank, as Secured Party and JPMorgan Chase Bank, as Collateral Agent

F. Pricing Schedule - Tranche No. 1, dated November 19, 2004 between TLP Investments L.P. and JPMorgan Chase Bank (by JPMorgan Securities Inc., as its Agent).

G. Confirmation of Prepaid Variable Share Forward, dated November 22, 2004, between TLPCRT, L.P. and MLPFS (termination date of August 22, 2006).

H. Confirmation of Prepaid Variable Share Forward, dated November 22, 2004, between TLP Investments L.P. and MLPFS (termination date of August 22, 2006).

I. Confirmation of Prepaid Variable Share Forward, dated June 17, 2005, between TLPCRT, L.P. and MLPFS (termination date of February 20, 2007).

J. Confirmation of Prepaid Variable Share Forward, dated June 17, 2005, between TLP Investments L.P. and MLPFS (termination date of February 20, 2007).

SIGNATURE

After reasonable inquiry and to the best knowledge and belief of the undersigned, the undersigned certifies that the information set forth in this statement is true, complete and correct.

Dated: June 9, 2006

TYSON LIMITED PARTNERSHIP

By: /s/ Harry C. Erwin, III
Harry C. Erwin, III
General Partner

SCHEDULE 1

GENERAL PARTNERS OF TYSON LIMITED PARTNERSHIP

Name and Business Address	Citizenship	Present Principal Occupation
Don Tyson Managing General Partner 2210 W. Oaklawn Drive Springdale, AR 72762-6999	United States	Private Investor; Member of the Board of Directors of Tyson Foods, Inc.
Leland Tollett 2210 W. Oaklawn Drive Springdale, AR 72762-6999	United States	Private Investor; Member of the Board of Directors of Tyson Foods, Inc.
Barbara Tyson 2210 W. Oaklawn Drive Springdale, AR 72762-6999	United States	Member of the Board of Directors of Tyson Foods, Inc.
John Tyson 2210 W. Oaklawn Drive Springdale, AR 72762-6999	United States	Chairman of the Board of Directors of Tyson Foods, Inc.
Harry C. Erwin, III 2210 W. Oaklawn Drive Springdale, AR 72762-6999	United States	Private Consultant

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EXHIBIT D

STOCK PURCHASE AGREEMENT

dated as of

November 16, 2004

between

TLP INVESTMENT, L.P.

and

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION

by J.P. MORGAN SECURITIES INC., as its Agent

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STOCK PURCHASE AGREEMENT

THIS AGREEMENT is made as of this 16th day of November, 2004, between TLP INVESTMENT, L.P., a Delaware limited partnership (**Seller**), and JPMORGAN CHASE BANK, NATIONAL ASSOCIATION (**Buyer**), by J.P. MORGAN SECURITIES INC., a Delaware corporation, as its agent (**Agent**).

WHEREAS, Seller owns shares of Class B common stock, par value $0.10 per share, or security entitlements in respect thereof (**Class B Common Stock**), of Tyson Foods, Inc., a Delaware corporation (the **Issuer**);

WHEREAS, shares of Class B Common Stock are convertible into shares of Class A common stock, par value $0.10 per share, or security entitlements in respect thereof (**Class A Common Stock**), of the Issuer;

WHEREAS, Seller and Buyer are willing to sell and purchase shares of Class A Common Stock at the times and on the terms set forth herein; and

WHEREAS, Seller has agreed, pursuant to the Pledge Agreement (as defined herein), to grant Buyer a security interest in certain shares (the **Pledged Shares**) of Class A Common Stock or Class B Common Stock to secure the obligations of Seller hereunder;

NOW, THEREFORE, in consideration of their mutual covenants herein contained, the parties hereto, intending to be legally bound, hereby mutually covenant and agree as follows:

ARTICLE I

DEFINITIONS

Section 1.01. *Definitions*. (a) The following terms, as used herein, have the following meanings:

Business Day means any day on which commercial banks are open for business in New York City and the Exchange is not closed.

Calculation Agent means JPMorgan Chase Bank, National Association

Closing Price means, with respect to any security on any Valuation Date or any other Trading Day, the closing sale price (or, if no closing sale price is reported, the last reported sale price) of such security on the Exchange on such day or, if such price is not so reported, the last quoted bid price for such security in the over-the-counter market on such day as reported by Pink Sheets LLC 2 (formerly known as the National Quotation Bureau) or similar organization or, if such bid price is not available, the market value of such security on such day as determined by the Calculation Agent, in each case

determined as of the close of regular session trading on the Exchange); *provided* that if such close of regular session trading on the Exchange is extended to later than 4:00 p.m. (New York time), then the time as of which the relevant sale or bid price shall be determined shall be selected by the Calculation Agent in its sole discretion; *provided* further that the proviso contained in the definition of Valuation Date shall apply to the price determined on any other Trading Day mutatis mutandis.

Collateral Agent means JPMorgan Chase Bank, National Association, as collateral agent under the Pledge Agreement.

Dividend Period means, with respect to a Dividend Period End Date for any Tranche, the period commencing on the date immediately following the preceding Dividend Period End Date for such Tranche, and ending on such Dividend Period End Date for such Tranche; *provided* that with respect to the first Dividend Period End Date for such Tranche, such period shall commence on the day immediately following the last day of the Hedging Period for such Tranche.

Dividend Period End Date means, with respect to any Tranche, each of the dates that follow the last day of the Hedging Period for such Tranche by a multiple of three months.

Effective Date means the later of the date hereof and such subsequent date on which all the conditions set forth in Section 4.01 are either satisfied or waived.

Exchange means, with respect to any security at any time, the principal national securities exchange or automated quotation system, if any, on which such security is listed or quoted at such time.

Free Stock means Class A Common Stock that is not subject to any Transfer Restrictions (other than any Transfer Restrictions arising solely from the fact that Seller is an affiliate within the meaning of Rule 144 under the Securities Act of the Issuer) in the hands of Seller immediately prior to delivery to an affiliate of Buyer designated by Buyer hereunder and such Class A Common Stock would not be subject to any Transfer Restrictions in the hands of such affiliate of Buyer upon delivery to such affiliate of Buyer.

Hedging Termination Date means the date six months from the date hereof.

Insolvency Proceeding means any case or any judicial, administrative or other proceeding, or the filing of any petition or the taking of any similar action, (i) seeking a judgment of or arrangement for insolvency, bankruptcy, winding-up, liquidation, reorganization, composition, rehabilitation, administration or similar relief with respect to Seller or the Issuer, as the case may be, or its debts or assets, (ii) seeking the appointment or election of a conservator, trustee, receiver, liquidator, administrator, custodian or similar official for Seller or the Issuer, as the case may be, or any substantial part of its assets, or (iii) which has an effect similar or analogous to the foregoing.

Lien means any lien, mortgage, security interest, pledge, charge, adverse claim or encumbrance of any kind.

Market Disruption Event means, with respect to any Tranche, in relation to any Hedging Day or any Valuation Date for such Tranche, as determined by the Calculation Agent, the occurrence or existence during the onehalf hour period that ends at the close of the regular session of trading on the Exchange of any material suspension of or material limitation imposed on trading in (i) the Class A Common Stock or in stocks generally on the Exchange or (ii) options contracts or futures contracts related to the Class A Common Stock on the primary exchange on which such contracts are traded; *provided* that a limitation on the hours and number of days of trading resulting from a change in the regular business hours of the Exchange or such options exchange will not constitute a Market Disruption Event .

Ordinary Dividend Amount means with respect to any Dividend Period for any Tranche, $0.04 per share of Class A Common Stock, as adjusted on account of any Potential Adjustment Event, in accordance with the provisions of Article 6.

Person means an individual, a corporation, a limited liability company, a partnership, an association, a trust or any other entity or organization, including a government or political subdivision or an agency or instrumentality thereof.

Pledge Agreement means the Pledge Agreement dated as of the date hereof among Seller, Buyer and the Collateral Agent, as amended from time to time.

Publicly-Traded Entity means a corporation incorporated under the laws of the United States or any state thereof the common stock of which is (i) distributed in a Spinoff or issued in connection with a Merger Event and (ii) listed or traded on any national securities exchange in the United States or on the NASDAQ National Market System.

Securities Act means the Securities Act of 1933, as amended.

Settlement Date means, with respect to any Tranche, the third Business Day immediately following the last Valuation Date for such Tranche.

Settlement Price means, with respect to any Tranche, (i) for purposes of determining the Settlement Ratio for physical settlement pursuant to Section 2.03(a), the amount obtained by dividing the Hedged Value for such Tranche by a fraction, the numerator of which is equal to the sum of the fractions obtained by dividing the Hedged Value for such Tranche by the relevant Closing Price on each Valuation Date for such Tranche, as determined by the Calculation Agent, and the denominator of which is equal to the number of Valuation Dates for such Tranche and (ii) for purposes of determining the Settlement Ratio for cash settlement pursuant to Section 2.04, the arithmetic mean of the relevant Closing Prices per share of Class A Common Stock on each Valuation Date for such Tranche.

Settlement Ratio means, with respect to any Tranche, rounded upward or downward to the nearest 1/10,000th or, if there is not a nearest 1/10,000th, to the next lower 1/10,000th and determined in accordance with the following formula, and is subject to adjustment as a result of certain events as provided in Article 6: (i) if the Settlement Price for such Tranche is less than the Upside Limit for such Tranche but greater than the Hedged Value for such Tranche, the Settlement Ratio for such Tranche shall be a ratio equal to the Hedged Value for such Tranche divided by the Settlement Price for such Tranche; (ii) if the Settlement Price for such Tranche is equal to or greater than the Upside Limit for such Tranche, the Settlement Ratio for such Tranche shall be a ratio equal to the sum of the Hedged Value for such Tranche divided by the Settlement Price for such Tranche and a fraction the numerator of which is equal to the difference between the Settlement Price for such Tranche and the Upside Limit for such Tranche and the denominator of which is equal to the Settlement Price for such Tranche and (iii) if the Settlement Price for such Tranche is equal to or less than the Hedged Value for such Tranche, the Settlement Ratio for such Tranche shall be one (1).

Trading Day means, with respect to any security, a day on which the Exchange for such security is open for trading or quotation.

Transfer Restriction means, with respect to any security or other property, any condition to or restriction on the ability of the holder thereof to sell, assign or otherwise transfer such security or other property or to enforce the provisions thereof or of any document related thereto whether set forth in such security or other property itself or in any document related thereto, including, without limitation, (i) any requirement that any sale, assignment or other transfer or enforcement of such security or other property be consented to or approved by any Person, including, without limitation, the issuer thereof or any other obligor thereon, (ii) any limitations on the type or status, financial or otherwise, of any purchaser, pledgee, assignee or transferee of such security or other property, (iii) any requirement of the delivery of any certificate, consent, agreement, opinion of counsel, notice or any other document of any Person to the issuer of, any other obligor on or any registrar or transfer agent for, such security or other property, prior to the sale, pledge, assignment or other transfer or enforcement of such security or other property and (iv) any registration or qualification requirement or prospectus delivery requirement for such security or other property pursuant to any federal, state or foreign securities law (including, without limitation, any such requirement arising as a result of Rule 144 or Rule 145 under the Securities Act); *provided* that the required delivery of any assignment, instruction or entitlement order from the seller, pledgor, assignor or transferor of such security or other property (including the Issuer Acknowledgement), together with any evidence of the corporate or other authority of such Person, shall not constitute a Transfer Restriction .

Valuation Date means, with respect to any Tranche, each of the Averaging Number of Trading Days preceding and including the Maturity Date for such Tranche (for the avoidance of doubt, if the Averaging Number is one, the Maturity Date will be the only Valuation Date for such Tranche); *provided* that if there is a Market Disruption Event on any Valuation Date for such Tranche, then such Valuation Date for such Tranche shall be the first succeeding Trading Day on which there is no Market Disruption

Event and on which another Valuation Date does not or is not deemed to occur, unless such first succeeding Trading Day has not occurred as of the fifth Trading Day immediately following the Maturity Date for such Tranche, in which case (i) such Valuation Date for such Tranche shall be that fifth Trading Day, notwithstanding the Market Disruption Event or that another Valuation Date occurs or is deemed to occur on such fifth Trading Day and (ii) notwithstanding the definition of Closing Price , the Calculation Agent shall determine the Closing Price for such Tranche as of that fifth Trading Day in its discretion. (b) Each of the following terms is defined in the Section set forth opposite such term:

Term	**Section**
Acceleration Amount	7.01
Acceleration Amount Notice	7.01
Acceleration Date	7.01
Acceleration Value	7.01
Advance Rate	2.02(d)
Averaging Number	2.02(d)
Bankruptcy Code	5.07
Base Amount	2.02(d)
Cash Settlement Amount	2.04
CEA	3.01(n)
Contract Shares	2.03(a)
Damages	5.09
Downside Rate	2.02(d)
Event of Default	7.01
Extraordinary Dividend	6.01(b)
Hedged Value	2.02(d)
Hedging Commencement Date	2.02(d)
Hedging Day	2.02(d)
Hedging Fee	2.02(d)
Hedging Period	2.02(d)
Indemnified Person	5.09
Initial Share Price	2.02(d)
Initial Short Position	2.02(d)
Insolvency	6.03
Issuer Acknowledgment	4.01(e)
Maturity Date	2.02(d)
Maximum Base Amount	2.02(d)
Maximum Number	2.02(b)
Merger Date	6.02(c)
Merger Event	6.02(c)
Nationalization	6.03
New Shares	6.02(c)
Ordinary Dividend	6.01(b)
Original Stock	6.01(c)
Other Consideration	6.01(a)

Payment Date	2.02(d)
Potential Adjustment Event	6.01(b)
Prepayment Amount	2.04
Prepayment Determination Price	2.04
Prepayment Determination Ratio	2.04
Pre-pricing Acknowledgment	2.02(b)
Pricing Schedule	2.02(c)
Purchase Price	2.02(d)
Relevant Price	2.02(d)
Share- for-Share Merger Event	6.02(c)
Share- for-Combined Merger Event	6.02(c)
Spinoff	6.01(c)
Spinoff Issuer	6.01(c)
Spinoff Stock	6.01(c)
Termination Amount	6.04
Termination Amount Notice	6.04
Termination Date	6.04
Terms of Tranche	2.02(b)
Tranche	2.02(b)
Upside Limit	2.02(d)
Upside Rate	2.02(d)

ARTICLE II

SALE AND PURCHASE; PAYMENT; ESTABLISHMENT OF TRANCHES

Section 2.01. *Sale and Purchase*. Upon the terms and subject to the conditions of this Agreement, Seller agrees to sell to Buyer, and Buyer agrees to purchase and acquire from Seller, a number of shares of Class A Common Stock for each Tranche established hereunder.

Section 2.02. *Payment, Establishment of Tranches*.

(a) **Payment**. Upon the terms and subject to the conditions of this Agreement, Buyer shall deliver to Seller the Purchase Price for each Tranche on the Payment Date for such Tranche in immediately available funds by wire transfer to an account designated by Seller.

(b) **Establishment of Tranches**. This Agreement may be effected in one or more tranches (each, a **Tranche**) with respect to up to an aggregate of 1,000,000 shares of Class A Common Stock (the **Maximum Number**). From the date hereof until the Hedging Termination Date, Buyer and Seller may execute and deliver one or more pre-pricing acknowledgments to establish a Tranche substantially in the form attached hereto as Exhibit A (for such Tranche, the **Pre-pricing Acknowledgment**) and set forth the Advance Rate, the Averaging Number, the Downside Rate, the Hedging Fee, the Maximum Base Amount and the Upside Rate for such Tranche. From the date of the Pre-pricing Acknowledgment for any Tranche to the Hedging Termination Date, Buyer shall determine the Base Amount, the Hedged Value, the Initial Share Price, the Initial Short Position, the Maturity Date, the Payment Date, the Purchase Price, and the Upside Limit for such Tranche (collectively, the **Terms of Tranche**) in accordance with the respective formulas for Terms of Tranche set forth below; *provided* that:

(i) if at any time after the Pre-pricing Acknowledgment with respect to any Tranche is delivered and prior to the last day of the Hedging Period for such Tranche, Seller becomes aware of any material non-public information regarding the Issuer, Seller shall immediately notify Buyer that it cannot make the representation and warranty set forth in Section 3.01(k) without specification of the reason thereof and shall direct Buyer (or its affiliate) to immediately cease effecting any further short sales of the Class A Common Stock; and

(ii) it is understood and acknowledged that, with respect to each Tranche, in order to hedge Buyer s exposure with respect to the Base Amount for such Tranche and as part of the proprietary trading activities of Buyer or affiliates of Buyer unrelated to this Agreement, in addition to short sales in connection with establishing its Initial Short Position for such Tranche, Buyer and its affiliates may from time to time effect for their own accounts purchases, long sales or short sales of shares of Class A Common Stock or options or other derivatives in respect thereof (or combinations of such transactions) that may affect the trading price of the Class A Common Stock.

(c) **Pricing Schedule**. Within two Business Days after the last day of the Hedging Period for each Tranche, Buyer shall deliver to Seller the related pricing schedule (the **Pricing Schedule**), substantially in the form attached hereto as Exhibit B, setting forth the Terms of Tranche for such Tranche, and Seller shall execute and deliver a copy of such Pricing Schedule to Buyer.

(d) **Related Definitions** . As used herein, the following words and phrases have the following meanings:

(i) **Advance Rate** means, with respect to any Tranche, the percentage rate set forth as such in the Pre-pricing Acknowledgment for such Tranche.

(ii) **Averaging Number** means with respect to any Tranche, as set forth in the Pre-pricing Acknowledgment for such Tranche, a number of averaging days in connection with the settlement of such Tranche.

(iii) **Base Amount** means, with respect to any Tranche, as set forth in the Pricing Schedule for such Tranche, a number of shares of Class A Common Stock equal to the Maximum Base Amount for such Tranche, as adjusted in accordance with the provisions of Article 6.

(iv) **Downside Rate** means, with respect to any Tranche, the percentage rate set forth as such in the Pre-pricing Acknowledgment for such Tranche.

(v) **Hedged Value** means, with respect to any Tranche, as set forth in the Pricing Schedule for such Tranche, an amount equal to the Initial Share Price for such Tranche *multiplied* by the Downside Rate for such Tranche, as adjusted in accordance with the provisions of Article 6.

(vi) **Hedging Commencement Date** means, with respect to any Tranche, the date set forth as such in the Pre-Pricing Acknowledgment for such Tranche (or, if such a date is not a Trading Day, the next following Trading Day).

(vii) **Hedging Day** means, with respect to any Tranche, each of the three Trading Days including and following the Hedging Commencement Date for such Tranche; *provided* that if there is a Market Disruption Event on any Hedging Day for such Tranche, then such Hedging Day for such Tranche shall be the first succeeding Trading Day on which there is no Market Disruption Event and on which another Hedging Day does not or is not deemed to occur.

(viii) **Hedging Fee** means, with respect to any Tranche, as set forth in the Pre-pricing Acknowledgment, a dollar amount per share specified as such.

(ix) **Hedging Period** means, with respect to any Tranche, the period from and including the Hedging Commencement Date for such Tranche to and including the last Hedging Day for such Tranche.

(x) **Initial Share Price** means, with respect to any Tranche, as set forth in the Pricing Schedule for such Tranche, the arithmetic average of the Relevant Price for each Hedging Day in the Hedging Period for such Tranche.

(xi) **Initial Short Position** means, with respect to any Tranche, as set forth in the Pricing Schedule for such Tranche, the number of shares of Class A Common Stock that Buyer (or an affiliate of Buyer) sells short to establish its initial hedge of the price and market risk undertaken by Buyer with respect to such Tranche under this Agreement, but, for the avoidance of doubt, shall not include any additional shares of Class A Common Stock being introduced into the market with respect to such Tranche in excess of Buyer s initial hedge in order to ensure compliance with Buyer s representation in Section 3.02(d).

(xii) **Maturity Date** means, with respect to any Tranche, July 25, 2006 (or, if such a date is not a Trading Day, the next following Trading Day).

(xiii) **Maximum Base Amount** means, with respect to any Tranche, as set forth in the Pre-pricing Acknowledgment for such Tranche, a number of shares of Class A Common Stock which, if added to the Base Amounts for all the previously established Tranches, does not exceed the Maximum Number.

(xiv) **Payment Date** means, with respect to any Tranche, as set forth in the Pricing Schedule for such Tranche, the third Business Day immediately following the last day of the Hedging Period for such Tranche.

(xv) **Purchase Price** means, with respect to any Tranche, as set forth in the Pricing Schedule for such Tranche, an amount equal to (A) the product of (1) the Base Amount for such Tranche, (2) the Initial Share Price for such Tranche and (3) the Advance Rate for such Tranche, minus (B) the product of the Hedging Fee for such Tranche and (y) the Base Amount for such Tranche *minus* the Initial Short Position for such Tranche (as adjusted in accordance with the provisions of Article 6).

(xvi) **Relevant Price** means, with respect to any Tranche, for any Hedging Day during the Hedging Period for such Tranche, the volume-weighted average price at which shares of the Class A Common Stock trade on the Exchange on such Hedging Day, as determined by the Calculation Agent as the amount posted on Bloomberg screen TSN N

Equity AQR (unless such posted amount contains a manifest error, as determined by the Calculation Agent; if such posted amount contains a manifest error, as determined by the Calculation Agent, the Calculation Agent may determine the Relevant Price in accordance with Bloomberg s formula for and method of calculating such amount).

(xvii) **Upside Limit** means, with respect to any Tranche, as set forth in the Pricing Schedule for such Tranche, an amount equal to the Initial Share Price for such Tranche *multiplied* by the Upside Rate for such Tranche, as adjusted in accordance with the provisions of Article 6.

(xviii) **Upside Rate** means, with respect to any Tranche, the percentage rate set forth as such in the Pre-pricing Acknowledgment for such Tranche.

Section 2.03. *Settlement Date.* (a) On the Settlement Date for each Tranche, Seller shall deliver to an affiliate of Buyer designated by Buyer a number of shares of Free Stock (for each Tranche, the **Contract Shares** of such Tranche) equal to the product of (A) the Base Amount for such Tranche and (B) the Settlement Ratio for such Tranche, rounded down to the nearest whole number, and cash in an amount equal to the value (based on the Settlement Price for such Tranche) of any fractional share not delivered as a result of such rounding.

(b) If (x) by 10:00 A.M., New York City time, on the Settlement Date for any Tranche, Seller has not otherwise effected such delivery of the Contract Shares and cash in lieu of any fractional share pursuant to Section 2.03(a) or delivered cash in lieu thereof pursuant to Section 2.04 for such Tranche and (y) the Class A Common Stock then held by the Collateral Agent as collateral under the Pledge Agreement is Free Stock (which requirement may be waived by Buyer in its sole discretion), then (i) Seller shall be deemed not to have elected to deliver cash in lieu of shares of Free Stock for such Tranche, pursuant to Section 2.04 (notwithstanding any notice by Seller to the contrary) and (ii) the delivery provided by this Section 2.03(a) shall be effected by delivery by the Collateral Agent to an affiliate of Buyer designated by Buyer of a number of shares of Free Stock (which requirement may be waived by Buyer in its sole discretion) then held by the Collateral Agent as collateral under the Pledge Agreement equal to the number of Contract Shares required to be delivered by Seller for such Tranche pursuant to Section 2.03(a) and cash, if any, then held by the Collateral Agent as collateral under the Pledge Agreement in an amount equal to the cash in lieu of any fractional share required to be delivered by Seller pursuant to Section 2.03(a); *provided* that, notwithstanding the foregoing and without limiting the generality of Section 7.01, if Seller gives notice of Seller s election to deliver cash in lieu of shares of Free Stock on the Settlement Date for such Tranche pursuant to Section 2.04 and fails to deliver the Cash Settlement Amount for such Tranche on the Settlement Date for such Tranche as provided in Section 2.04, Seller shall be in breach of this Agreement and shall be liable to Buyer for any losses incurred by Buyer or such affiliate of Buyer as a result of such breach, including without limitation losses incurred in connection with any decrease in the Closing Price of the Class A Common Stock subsequent to the last Valuation Date for such Tranche.

Section 2.04. *Cash Settlement Option.* (a) Seller may, with respect to any Tranche, upon written notice delivered to Buyer, at least three calendar days prior to the first Valuation Date, for such Tranche, in lieu of delivering the Contract Shares and cash in lieu of any fractional share pursuant to Section 2.03(a), elect to settle such delivery obligation in cash in an amount (the **Cash Settlement Amount**) equal to the product of (x) the Settlement Price for such Tranche and (y) a number of shares equal to the product of the Base Amount for such Tranche and the Settlement Ratio for such Tranche; provided that, Seller shall only be deemed to have validly elected such payment in cash in lieu of its delivery obligations under Section 2.03(a) if Seller shall have delivered to Buyer, on or prior to the last Valuation Date for such Tranche, an amount of cash with respect to such Tranche (the **Prepayment Amount**) equal to the product of (i) the Closing Price per share of Class A Common Stock on the last Trading Day prior to the delivery date of such notice on which there was no Market Disruption Event (the **Prepayment Determination Price**), (ii) the Base Amount for such Tranche and (iii) the Prepayment Determination Ratio for such Tranche, by wire transfer of immediately available funds to an account designated by Buyer.

(b) If the cash settlement option has been validly elected by Seller with respect to any Tranche in accordance with the preceding sentence, then on the Settlement Date for such Tranche, (i) if the Cash Settlement Amount for such Tranche is greater than the Prepayment Amount for such Tranche, Seller shall deliver to Buyer the amount of cash by which the Cash Settlement Amount for such Tranche exceeds the Prepayment Amount for such Tranche, (ii) if the Prepayment Amount for such Tranche is greater than the Cash Settlement Amount for such Tranche, Buyer shall deliver to Seller the amount of cash by which the Prepayment Amount for such Tranche exceeds the Cash Settlement Amount for such Tranche and (iii) if the Prepayment Amount for such Tranche is equal to the Cash Settlement Amount for such Tranche, no deliveries shall be made in respect of such Tranche pursuant to Section 2.04(b).

(c) The **Prepayment Determination Ratio** shall be determined, with respect to any Tranche, in accordance with the following formula, and is subject to adjustment as a result of certain events as provided in Article 6: (i) if the Prepayment Determination Price for such Tranche is less than the Upside Limit for such Tranche but greater than the Hedged Value for such Tranche, the Prepayment Determination Ratio for such Tranche shall be a ratio equal to the Hedged Value for such Tranche divided by the Prepayment Determination Price for such Tranche; (ii) if the Prepayment Determination Price for such Tranche is equal to or greater than the Upside Limit for such Tranche, the Prepayment Determination Ratio for such Tranche shall be a ratio equal to the sum of the Hedged Value for such Tranche divided by the Prepayment Determination Price for such Tranche and a fraction the numerator of which is equal to the difference between the Prepayment Determination Price for such Tranche and the Upside Limit for such Tranche and the denominator of which is equal to the Prepayment Determination Price for such Tranche; and (iii) if the Prepayment Determination Price for such Tranche is equal to or less than the Hedged Value for such Tranche, the Prepayment Determination Ratio for such Tranche shall be one (1). The ratio expressed in clause (i) or (ii) above shall be rounded upward or downward to the nearest 1/10,000th or, if there is not a nearest 1/10,000th, to the next lower 1/10,000th.

ARTICLE III

REPRESENTATIONS AND WARRANTIES

Section 3.01. *Representations and Warranties of Seller.* Seller represents and warrants to Buyer that:

(a) Seller and Tyson Limited Partnership have been duly organized and are validly existing as limited partnerships in good standing under the laws of the State of Delaware. TLPCRT, LLC has been duly formed and is validly existing as a limited liability company in good standing under the laws of the State of Delaware. TLPCRT, LLC is the sole general partner of Seller and Tyson Limited Partnership is the sole limited partner of Seller. Tyson Limited Partnership is the sole member of TLPCRT, LLC. Each of the copies of (i) Certificate of Limited Partnership and the Limited Partnership Agreement, each dated December 4, 2001, of Seller, (ii) the Certificate of Formation and the Limited Liability Company Agreement, each dated October 9, 2001, of TLPCRT, LLC, and (iii) the Certificate of Limited Partnership, dated August 8, 1990, as amended, and the Agreement of Limited Partnership of Tyson Limited Partnership, dated June 8, 1990, provided by Seller is a true, complete and correct copy as in full force and effect as of the date hereof.

(b) Seller has all partnership power to enter into this Agreement and the Pledge Agreement and to consummate the transactions contemplated hereby and thereby. Each of this Agreement and the Pledge Agreement has been duly authorized, validly executed and delivered by Seller and constitutes a valid and legally binding obligation of Seller enforceable against Seller in accordance with its terms, subject to applicable bankruptcy, insolvency and similar laws affecting creditors rights generally and to general equitable principles.

(c) The execution and delivery by Seller of, and the compliance by Seller with all of the provisions of, this Agreement and the Pledge Agreement, and the consummation of the transactions herein and therein contemplated, will not (i) conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, any indenture, mortgage, deed of trust, loan agreement, stockholders agreement, lock-up agreement, registration rights agreement, co-sale agreement or any other agreement or instrument to which Seller is a party or by which Seller is bound or to which any of the property or assets of Seller is subject, nor will such action result in any violation of the provisions of the constitutive documents of Seller or any statute or any order, judgment, decree, rule or regulation of any court or governmental agency or body having jurisdiction over Seller or any of Seller s properties or (ii) require any consent, approval, authorization or order of, or filing or qualification with, any governmental body, agency, official, self-regulatory organization or court or other tribunal, whether foreign or domestic, or any other Person.

(d) There is not pending or, to Seller s knowledge, threatened against it or any of its affiliates any action, suit or proceeding at law or in equity or before any court, tribunal, government body, agency or official or any arbitrator that is likely to affect the

legality, validity or enforceability against it of this Agreement or the Pledge Agreement or its ability to perform its obligations hereunder or thereunder.

(e) Seller is entering into this Agreement and the Pledge Agreement as principal (and not as agent or in any other capacity). Neither Buyer nor any of Buyer s agents or affiliates are acting as a fiduciary for Seller. Seller is not relying, and has not relied, upon any communication (written or oral) of Buyer or any agent or affiliate of Buyer with respect to the legal, accounting, tax or other implications of this Agreement or the Pledge Agreement. Seller has conducted Seller s own analysis of the legal, accounting, tax and other implications of this Agreement and the Pledge Agreement. Seller has consulted with Seller s own legal, regulatory, tax, business, investment, financial, and accounting advisors to the extent Seller has deemed necessary. Seller has made Seller s own independent investment, hedging, and trading decisions to enter into this Agreement and the Pledge Agreement and as to whether this Agreement and the Pledge Agreement are appropriate or proper for Seller based upon Seller s own judgment and upon any advice from such advisors as Seller has deemed necessary and not upon any view expressed by Buyer or any of Buyer s agents or affiliates. Seller acknowledges and agrees that information and explanations related to the terms and conditions of this Agreement or the Pledge Agreement shall not be considered investment advice or a recommendation to enter into this Agreement or the Pledge Agreement. No communication (written or oral) received from Buyer or any affiliate of Buyer shall be deemed to be an assurance or guarantee as to the expected results of this Agreement or the Pledge Agreement.

(f) Seller is entering into this Agreement and the Pledge Agreement with a full understanding of all of the terms, conditions and risks hereof and thereof (economic and otherwise), is capable of evaluating and understanding (on Seller s own behalf or through independent professional advice) and of assuming, and understands and accepts, such terms, conditions and risks.

(g) Seller acknowledges that neither Buyer nor any affiliate of Buyer is acting as a fiduciary for or an advisor to Seller in respect of this Agreement or the Pledge Agreement, and all decisions of Seller have been the result of arm s length negotiations between Seller and Buyer.

(h) Since the date three months prior to the date hereof, neither Seller nor any Person who would be considered to be the same Person as Seller or acting in concert with Seller (as such terms are used in clauses (e)(3)(vi) or (a)(2) of Rule 144 under the Securities Act), individually or in the aggregate, has sold a number of shares of Class A Common Stock or hedged (through swaps, options, short sales, stock loans or otherwise) any long position in a number of shares of Class A Common Stock that would, if added to the Maximum Number of shares of Class A Common Stock, exceed the number of shares of Class A Common Stock that Seller could sell pursuant to Rule 144 under the Securities Act on the date hereof. For the purposes of this Section 3.01(h), Class A Common Stock shall be deemed to include securities convertible into, exchangeable or exercisable for Class A Common Stock.

(i) Seller does not know or have any reason to believe that the Issuer has not complied with the reporting requirements contained in Rule 144(c)(1) under the Securities Act.

(j) Delivery of shares of Class A Common Stock by Seller pursuant to this Agreement will pass to an affiliate of Buyer designated by Buyer title to such shares free and clear of any Liens, except for those created pursuant to the Pledge Agreement.

(k) Seller and each partner of Seller are not on the date hereof, and will not be during each Hedging Period, aware of any material non-public information regarding the Issuer for which Seller has not notified Buyer that Seller cannot make, pursuant to the provisions of Section 2.02(b)(i), the representation and warranty that Seller and each partner of Seller is not on such date aware of any material non-public information regarding the Issuer. None of the transactions contemplated herein or in the Pledge Agreement will violate any corporate policy of the Issuer or other rules or regulations of the Issuer applicable to Seller, including, but not limited to, the Issuer s window period policy.

(l) Seller is and will be in compliance with his reporting obligations under Section 16, Section 13(d) and Section 13(g) of the Securities Exchange Act of 1934, as amended, and Seller will provide Buyer with a copy of any report filed thereunder in respect of the transactions contemplated hereby promptly upon filing thereof.

(m) Seller is not and after giving effect to application of the Purchase Price for any Tranche will not be, required to register as an investment company as such term is defined in the Investment Company Act of 1940, as amended. (n) Seller is an eligible contract participant (as such term is defined in Section 1(a)(12) of the Commodity Exchange Act, as amended (the **CEA**)) because

it is a corporation, partnership, proprietorship, organization, trust or other entity and:

(i) it has total assets in excess of $10,000,000;
(ii) its obligations hereunder are guaranteed, or otherwise supported by a letter of credit or keep well, support or other agreement, by an entity of the type described in Section 1a(12)(A)(i) through (iv), 1a(12)(A)(v)(I), 1a(12)(A)(vii) or 1a(12)(C) of the CEA; or

(iii) it has a net worth in excess of $1,000,000 and has entered into this Agreement in connection with the conduct of its business or to manage the risk associated with an asset or liability owned or incurred or reasonably likely to be owned or incurred by it in the conduct of its business.

(o) Seller has not solicited or arranged for the solicitation of, and will not solicit or arrange for the solicitation of, orders to buy shares of Class A Common Stock in anticipation of or in connection with any short sales of shares of Class A Common Stock

which an affiliate of Buyer effects, for the account of Buyer, in establishing Buyer s Initial Short Position for any Tranche.

(p) Except as provided herein, Seller has not made, will not make, and has not arranged for, any payment to any Person in connection with the short sales of shares of Class A Common Stock that an affiliate of Buyer effects, for the account of Buyer, in establishing Buyer s Initial Short Position for any Tranche.

(q) Seller has a bona fide intention to sell, to cause to be sold or to cause to be subject to a prepaid forward agreement between Seller and Buyer the securities referred to in any notice on Form 144 relating to the transactions contemplated hereunder filed pursuant to Section 4.01(c) or Section 5.08 within a reasonable time after the filing of such notice on Form 144.

Section 3.02. *Representations and Warranties of Buyer.* Buyer represents and warrants to Seller that:

(a) Buyer is a banking corporation, duly formed, validly existing and in good standing under the laws of the State of New York, and has all powers and all material governmental licenses, authorizations, consents and approvals required to enter into, and perform its obligations under, this Agreement.

(b) Each of this Agreement and the Pledge Agreement has been duly authorized and validly executed and delivered by Buyer and constitutes a valid and legally binding obligation of Buyer enforceable against Buyer in accordance with its terms, subject to applicable bankruptcy, insolvency and similar laws affecting creditors rights generally and to general equitable principles.

(c) The execution and delivery by Buyer of, and the compliance by Buyer with all of the provisions of, this Agreement and the Pledge Agreement, and the consummation of the transactions herein and therein contemplated, will not require any consent, approval, authorization or order of, or filing or qualification with, any governmental body, agency, official, self-regulatory organization or court or other tribunal, whether foreign or domestic.

(d) Buyer (or its affiliate) will conduct its hedging activities as described herein in accordance with the interpretive letter from the Securities and Exchange Commission to Goldman, Sachs & Co. dated December 20, 1999, it being understood that Buyer will introduce into the public market a quantity of securities of the same class as the Class A Common Stock equal to the Base Amount in a manner consistent with the manner-of-sale conditions described in Rule 144(f) and (g) under the Securities Act.

ARTICLE IV

CONDITIONS

Section 4.01. *Conditions to Effectiveness of this Agreement.* This Agreement shall become effective on the Effective Date upon satisfaction or waiver of each of the following conditions:

(a) The Pledge Agreement shall have been executed by the parties thereto and Seller shall have delivered to the Collateral Agent in accordance therewith the collateral required to be delivered pursuant to Section 1(b) thereof.

(b) Buyer shall have received an opinion (in form and substance satisfactory to Buyer and its counsel), dated as of the date hereof, of Kutak Rock LLP, counsel for Seller, to the effect that:

(i) Seller and Tyson Limited Partnership have been duly formed and are validly existing as limited partnerships in good standing under the laws of the State of Delaware. TLPCRT, LLC has been duly formed and is validly existing as a limited liability company in good standing under the laws of the State of Delaware. TLPCRT, LLC is the sole general partner of Seller and Tyson Limited Partnership is the sole limited partner of Seller.

(ii) Seller has all partnership power to enter into this Agreement and the Pledge Agreement and to consummate the transactions contemplated hereby and thereby. Each of this Agreement and the Pledge Agreement has been duly authorized, validly executed and delivered by Seller and constitutes a valid and legally binding obligation of Seller enforceable against Seller in accordance with its terms, subject to applicable bankruptcy, insolvency and similar laws affecting creditors rights generally and to general equitable principles.

(iii) The execution and delivery by Seller of, and the compliance by Seller with all of the provisions of, this Agreement and the Pledge Agreement, and the consummation of the transactions herein and therein contemplated, will not (x) conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, any indenture, mortgage, deed of trust, loan agreement, stockholders agreement, lock-up agreement, registration rights agreement, co-sale agreement or any other agreement or instrument to which Seller is a party or by which Seller is bound or to which any of the property or assets of Seller is subject, nor will such action result in any violation of the provisions of the constitutive documents of Seller or any statute or any order, judgment, decree, rule or regulation of any court or governmental agency or body having jurisdiction over Seller or any of Seller s properties or (y) require any 18 consent, approval, authorization or order of, or filing or qualification with any governmental body, agency, official, self-regulatory organization or court or other tribunal, whether foreign or domestic, or any other Person.

(iv) To the best of our knowledge, there is not pending or threatened against Seller or any of its affiliates any action, suit or proceeding at law or in equity or before any court, tribunal, government body, agency or official or any arbitrator that is likely to affect the legality, validity or enforceability against Seller of this Agreement or the Pledge Agreement or its ability to perform its obligations hereunder or thereunder.

(v) Seller is not and after giving effect to application of the Purchase Price for any Tranche will not be, required to register as an investment company as such term is defined in the Investment Company Act of 1940, as amended.

(vi) Shares of Class B Common Stock are convertible, on a one- for-one basis, into the same number of fully paid and nonassessable shares of Class A Common Stock. The shares of Class A Common Stock issuable upon conversion of Class B Common Stock have been duly authorized and reserved for issuance upon such conversion, and the issuance of such shares of Class A Common Stock is not subject to any preemptive or other similar rights. Upon the delivery, if any, by Seller to Buyer or an affiliate thereof of shares of Class B Common Stock pursuant to the Pledge Agreement or this Agreement and the determination by the board of directors of the Issuer or a committee thereof that Buyer or such affiliate is not a Permitted Transferee (as defined in the Restated Certificate of Incorporation of the Issuer), each of such shares will be converted automatically into one fully paid and nonassessable share of Class A Common Stock. Buyer and its affiliates are not Permitted Transferees for purposes of the Restated Certificate of Incorporation of the Issuer.

(c) Seller shall have delivered to Buyer a signed, true and complete copy of a notice on Form 144 relating to the transactions contemplated hereunder, as of the Effective Date, naming Seller as seller and J.P. Morgan Securities Inc. as broker, and containing a footnote next to the amount in column 3(d) of Form 144 to the following effect: Some or all of the above-referenced shares are expected to be subject to a prepaid forward agreement between the seller named in 2(a) above and an affiliate of the broker or dealer named in 3(b) above, three copies of which shall have been mailed to the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549 and one copy of which shall have been mailed to the Exchange not later than on the Effective Date, all in the manner contemplated by Rule 144(h). Alternatively, Seller shall have delivered to Buyer sufficient signed copies of such Form 144 to be filed by Buyer (or its affiliate) as set forth above, prior to or on the Effective Date. In such case, Seller has furnished Buyer (or its affiliate) with all information necessary for Buyer (or its affiliate) to file a true and complete Form 144 relating to such sales of shares in connection with such prepaid forward agreement.

(d) Buyer shall have received all documents it may reasonably request relating to the existence of Seller and the authority of Seller with respect to this Agreement and the Pledge Agreement, all in form and substance reasonably satisfactory to Buyer. (

(e) Seller shall have delivered to Buyer an Issuer Acknowledgment, acceptable to Buyer in its discretion, duly executed by an executive officer of the Issuer, in which the Issuer acknowledges and agrees that (x) the pledge of the Pledged Shares pursuant to the Pledge Agreement complies with Section C(2) of Article I of the Issuer s Revised Certificate of Incorporation and (y) promptly upon Buyer s delivery to the Issuer or its transfer agent of: (i) any required transfer tax stamps, (ii) a stock power executed in blank, (iii) in the event that the Pledged Shares are shares of Class B Common Stock, a duly executed notice of conversion and (iv) a legal opinion dated as of the date hereof by Kutak Rock LLP, counsel for Seller, to the effect that the Pledged Shares may be treated as securities that are neither restricted nor control securities in transactions for the account of Buyer and therefore are eligible for resale without registration under the Securities Act, copies of such notice of conversion and legal opinion as attached to such Issuer Acknowledgment delivered to Buyer have theretofore been received and approved by the Issuer, the Issuer will, without any further action or delivery of any documents or instruments on the part of Buyer or Seller, and will instruct its transfer agent to, in the event that the Pledged Shares are shares of Class B Common Stock, convert any shares of Class B Common Stock held by Buyer as Pledged Shares, on a one-for-one basis, into the same number of shares of fully paid and nonassessable shares of Class A Common Stock and issue, in the case of any Pledged Shares, shares of Class A Common Stock without any legends thereon that relate to restrictions on the disposition thereof under the Securities Act or otherwise register in such name or names as Buyer shall request and deliver such shares directly to Buyer or its designee without the return thereof to Seller.

Section 4.02. *Conditions to Buyer s Obligations.* Without limiting the generality of Section 4.01, the obligation of Buyer to deliver the Purchase Price for each Tranche on the Payment Date for such Tranche is subject to the satisfaction of the following conditions:

(a) The representations and warranties of Seller contained in Article 3 and in the Pledge Agreement shall be true and correct as of such Payment Date.

(b) No Event of Default shall have occurred and be continuing.
(c) Seller shall have performed all of the covenants and obligations to be performed by it hereunder and under the Pledge Agreement.

ARTICLE V

COVENANTS

Section 5.01. *Taxes.* Seller shall pay any and all documentary, stamp, transfer or similar taxes and charges that may be payable in respect of the entry into this Agreement and the transfer and delivery of any Class A Common Stock pursuant hereto. Seller further agrees to make all payments in respect of this Agreement free and clear of, and without withholding or deduction for or on account of, any present or future taxes, duties, fines, penalties, assessments or other governmental charges of whatsoever nature (or interest on any taxes, duties, fines, penalties, assessments or other governmental charges

of whatsoever nature) imposed, levied, collected, withheld or assessed by, within or on behalf of (a) the United States or any political subdivision or governmental authority thereof or therein having power to tax or (b) any jurisdiction from or through which payment on the Agreement is made by the Seller, or any political subdivision or governmental authority thereof or therein having power to tax. In the event such withholding or deduction is imposed, Seller agrees to indemnify Buyer for the full amount of such withholding or deduction, as well as any liability (including penalties, interest and expenses) arising therefrom or with respect thereto.

Section 5.02. *Forward Contract.* Seller hereby agrees that: (i) Seller will not treat this Agreement or any Tranche hereunder, any portion of this Agreement or any Tranche hereunder, or any obligation hereunder as giving rise to any interest income or other inclusions of ordinary income; (ii) Seller will not treat the delivery of any portion of the shares of Class A Common Stock or cash to be delivered pursuant to this Agreement with respect to any Tranche as the payment of interest or ordinary income; (iii) Seller will treat each Tranche under this Agreement as a forward contract for the delivery of such shares of Class A Common Stock or cash; and (iv) Seller will not take any action (including filing any tax return or form or taking any position in any tax proceeding) that is inconsistent with the obligations contained in (i) through (iii). Notwithstanding the preceding sentence, Seller may take any action or position required by law, provided that Seller delivers to Buyer an unqualified opinion of counsel, nationally recognized as expert in Federal tax matters and acceptable to Buyer, to the effect that such action or position is required by a statutory change or a Treasury regulation or applicable court decision published after the date of this Agreement.

Section 5.03. *Notices.* Seller will cause to be delivered to Buyer:

(a) immediately upon the occurrence of any Event of Default hereunder or under the Pledge Agreement, or upon any general partner of Seller obtaining knowledge that any condition or event of the type described in Section 7.01(b) or 7.01(c) shall have occurred with respect to the Issuer, notice of such occurrence; and

(b) promptly, in case at any time prior to the Settlement Date for the last Tranche, Seller receives notice, or any general partner of Seller obtains knowledge, that any event requiring that an adjustment be calculated pursuant to Section 6.01 or 6.02 hereof or any Nationalization or Insolvency shall have occurred or be pending, a notice identifying such event and stating, if known to Seller or any general partner of Seller, the date on which such event occurred or is to occur and, if applicable, the record date relating to such event. Seller shall cause further notices to be delivered to Buyer if Seller shall subsequently receive notice, or any general partner of Seller shall obtain knowledge, of any further or revised information regarding the terms or timing of such event or any record date relating thereto.

Section 5.04. *Agreement to Deliver Documents.* Seller will deliver to Buyer from time to time such information or documents regarding the financial position or business of Seller as Buyer may reasonably request. Upon the delivery of any such information or documents, Seller shall be deemed to have represented to Buyer that such

information or such documents accurately presents the financial position or business of Seller and is not misleading in any material respect.

Section 5.05. *Further Assurances.* From time to time from and after the date hereof through the Settlement Date for the last Tranche, Seller shall use its reasonable best efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary, proper and advisable to consummate and make effective as promptly as practicable the transactions contemplated by this Agreement and the Pledge Agreement in accordance with the terms and conditions hereof and thereof, including (i) the removal of any legal impediment to the consummation of such transactions and (ii) the execution and delivery of all such deeds, agreements, assignments and further instruments of transfer and conveyance necessary, proper or advisable to consummate and make effective the transactions contemplated by this Agreement and the Pledge Agreement in accordance with the terms and conditions hereof and thereof.

Section 5.06. *No Sales of Class A Common Stock.* Neither Seller nor any Person who would be considered to be the same Person as Seller or acting in concert with Seller (as such terms are used in clauses (e)(3)(vi) or (a)(2) of Rule 144 under the Securities Act), individually or in the aggregate, shall, without the prior written consent of Buyer, sell a number of shares of Class A Common Stock or hedge (through swaps, options, short sales, stock loans or otherwise) any long position in a number of shares of Class A Common Stock that would, at the time of such sale or hedge, if added to the Maximum Number of shares of Class A Common Stock, exceed the number of shares of Class A Common Stock that Seller could have sold pursuant to Rule 144 under the Securities Act at such time until the last day of the Hedging Period. For purposes of this Section 5.06, Class A Common Stock shall be deemed to include securities convertible into, exchangeable or exercisable for Class A Common Stock.

Section 5.07. *Securities Contract.* The parties hereto agree and acknowledge that each of Buyer and the Collateral Agent is a financial institution within the meaning of Section 101(22) of Title 11 of the United States Code (the **Bankruptcy Code**), that the Collateral Agent is acting as agent and custodian for Buyer in connection with this Agreement and that Buyer is a customer of the Collateral Agent within the meaning of Section 741(2) of the Bankruptcy Code. The parties hereto further agree and acknowledge that this Agreement is a securities contract, as such term is defined in Section 741(7) of the Bankruptcy Code, and Buyer and the Collateral Agent are entitled to the protections afforded by, among other Sections, Sections 362(b)(6), 546(e) and 555 of the Bankruptcy Code.

Section 5.08. *Form 144 Filing.* On or prior to the Effective Date and, in the event that the Pricing Schedule relating to the final Tranche has not been executed prior to such date, subsequently on or prior to the dates at three-month intervals following the Effective Date (and at such other times at which Buyer (or its affiliate) shall request), Seller shall file, or shall cause to be filed, in the manner contemplated by Rule 144(h) under the Securities Act and Section 4.01(c), a notice on Form 144 (with a true and complete copy delivered to Buyer) relating to the transactions contemplated hereunder, as of the date of such filing, all in form and substance acceptable to Buyer. In addition,

Seller shall have delivered to Buyer sufficient signed copies of such Form 144 to be filed by Buyer (or its affiliate) as set forth above, prior to or on the Effective Date and subsequently on or prior to the dates at three-month intervals following the Effective Date (and at such other times at which Buyer (or its affiliate) shall request). In such case, Seller shall have furnished Buyer (or its affiliate) with all information necessary for Buyer (or its affiliate) to file a true and complete Form 144 relating to such sales of shares in connection with such prepaid forward agreement.

Section 5.09. *Indemnification.* In addition to any remedies afforded Buyer under this Agreement or the Pledge Agreement, Seller agrees to indemnify and hold harmless Buyer and its affiliates and their respective officers, directors, employees, affiliates, advisors, agents and controlling persons (each, an **Indemnified Person**) from and against any and all losses, claims, damages, judgments, liabilities and expenses (including reasonable attorney s fees), joint or several (collectively, **Damages**), to which an Indemnified Person may become subject arising out of or in connection with this Agreement or the Pledge Agreement including, without limitation, any losses, claims, damages, judgments, liabilities and expenses due, in whole or in part, to any breach of any covenant or representation made by Seller in this Agreement or in the Pledge Agreement or any claim, litigation, investigation or proceeding relating thereto, regardless of whether any of such Indemnified Persons is a party thereto, and to reimburse, within 30 days, upon written request, each of such Indemnified Persons for any reasonable legal or other expenses incurred in connection with investigating, preparing for, providing testimony or other evidence in connection with or defending any of the foregoing, *provided*, however, that Seller shall not have any liability to any Indemnified Person to the extent that such Damages are finally determined by a court of competent jurisdiction to have directly resulted from the gross negligence or willful misconduct of such Indemnified Person (and in such case, such Indemnified Person shall promptly return to Seller any amounts previously expended by Seller under this Section 5.09).

ARTICLE VI

ADJUSTMENTS

Section 6.01. *Dilution Adjustments.* (a) Following the declaration by the Issuer of the terms of any Potential Adjustment Event, (A) in the case of each Potential Adjustment Event other than an Extraordinary Dividend, the Calculation Agent will (i) determine whether such Potential Adjustment Event has a diluting or concentrative effect on the theoretical value of the Class A Common Stock, and, if there is such an effect, the Calculation Agent will make corresponding adjustment(s), if any, with respect to each Tranche, to any one or more of the Base Amount for such Tranche, the Settlement Ratio for such Tranche, the Upside Limit for such Tranche, the Hedged Value for such Tranche, any Closing Price and any other variable relevant to the exercise, settlement or payment terms of such Tranche, as the Calculation Agent determines appropriate to account for that diluting or concentrative effect and (ii) determine the effective date(s) of the adjustment(s) or (B) in the case of any Potential Adjustment Event that is an Extraordinary Dividend, Seller shall pay to Buyer or an affiliate of Buyer designated by

Buyer (or, in the event such Extraordinary Dividend consists of property other than cash, cause to be distributed or delivered to Buyer or an affiliate of Buyer designated by Buyer) such Extraordinary Dividend on the date such Extraordinary Dividend is paid by the Issuer to holders of Class A Common Stock. The Calculation Agent may (but need not) determine the appropriate adjustment(s) by reference to the adjustment(s) in respect of such Potential Adjustment Event made by an options exchange to options on the Class A Common Stock traded on that options exchange.

(b) For these purposes, **Potential Adjustment Event** means any of the following:

(i) a subdivision, consolidation or reclassification of shares of Class A Common Stock (unless a Merger Event), or, a free distribution or dividend of any shares of Class A Common Stock to existing holders of Class A Common Stock by way of bonus, capitalization or similar issue;

(ii) a distribution or dividend to existing holders of Class A Common Stock of (A) shares of Class A Common Stock, or (B) other share capital or securities granting the right to payment of dividends and/or the proceeds of liquidation of the Issuer equally or proportionately with such payments to holders of Class A Common Stock, or (C) any other type of securities, rights or warrants or other assets, in any case for payment (cash or other) at less than the prevailing market price as determined by the Calculation Agent;

(iii) a dividend or distribution (an **Extraordinary Dividend**) consisting of cash and/or any other property (other than distributions or dividends of a type described in Section 6.01(b)(ii)), other than any cash dividend on the Class A Common Stock to the extent that, with respect to each Tranche, the aggregate cash dividend per share of the Class A Common Stock for the relevant period does not exceed the greater of (x) the Ordinary Dividend for such Tranche for that period and (y) if any, the most recent cash dividend on the Class A Common Stock that was an Ordinary Dividend for such Tranche for an earlier corresponding period (**Ordinary Dividend** means, with respect to each Tranche, a cash dividend that does not exceed the Ordinary Dividend Amount for such Tranche, on an annualized basis; **relevant period** means the fiscal period (e.g., quarter or six- month period) for which the Issuer ordinarily declares a regular cash dividend; and **earlier corresponding period** means a prior relevant period (whether or not the next preceding relevant period));

(iv) a call by the Issuer in respect of shares of Class A Common Stock that are not fully paid;

(v) a repurchase by the Issuer of shares of Class A Common Stock, whether out of profits or capital and whether the consideration for such repurchase is cash, securities or otherwise but excluding any repurchase by the Issuer of shares of Class A Common Stock pursuant to an announced stock buy

back program under Rule 10b-18 of the Securities Exchange Act of 1934, as amended;

(vi) the happening of a contingency that causes rights attached to shares of Class A Common Stock to become exercisable in the hands of less than all existing holders of Class A Common Stock; or

(vii) any other similar event that may have a diluting or concentrative effect on the theoretical value of the Class A Common Stock.

(c) Notwithstanding the provisions of Section 6.01(a) and Section 6.01(b), the provisions of this Section 6.01(c) shall govern in the event of a distribution (a **Spinoff**) of shares of common stock (the **Spinoff Stock**) of a subsidiary of the Issuer (the **Spinoff Issuer**) to holders of shares of Class A Common Stock. If the Spinoff Issuer is, or as a result of the Spinoff becomes, a Publicly-Traded Entity, the Calculation Agent shall, with respect to each Tranche, modify the terms of such Tranche of this Agreement in order to make it relate to a basket of the original Class A Common Stock (the **Original Stock**) and the Spinoff Stock and shall make adjustments on account of such Spinoff to the Base Amount, the Settlement Ratio, the Upside Limit, the Hedged Value, any Closing Price and any other variable relevant to the exercise, settlement or payment terms of such Tranche of this Agreement to give effect to such modification, as well as, based on the characteristics (including, without limitation, the volatility, the dividend practice and policy and liquidity) of the Original Stock and the Spinoff Stock, viewed as a basket. If a Spinoff is effected with respect to more than one Spinoff Stock at one time, the Calculation Agent shall, with respect to each Tranche, follow the foregoing procedure with appropriate modifications and adjustments to accommodate additional Spinoff Stocks. If any Spinoff Issuer is not, or as a result of the Spinoff does not become, a Publicly- Traded Entity, Buyer shall have the right upon becoming aware that such a Spinoff has been announced (i) to notify Seller of such Spinoff and to terminate this Agreement as of a date specified by Buyer, following which Seller shall make a payment to Buyer as provided in Section 6.04, or (ii) to treat such Spinoff as a Potential Adjustment Event in accordance with Section 6.01(a).

Section 6.02. *Merger Events.* (a) Buyer shall have the right, at its option, upon becoming aware of the occurrence of any Share- for-Share Merger Event or Share- for-Combined Merger Event, to notify Seller that

(i) effective as of the Merger Date, with respect to each Tranche, the number of New Shares to which a holder of a number of shares of Class A Common Stock equal to the Base Amount for such Tranche would be entitled upon consummation of such Merger Event will be deemed the Base Amount for such Tranche, the New Shares and their issuer will be deemed the Class A Common Stock and the Issuer , respectively, and the Calculation Agent will make appropriate adjustments, if any, on account of such Merger Event to any one or more of the adjustments, if any, on account of such Share- for-Share Merger Event to any one or more of the Base Amount for each Tranche, the Settlement Ratio for each Tranche, the Upside Limit for each Tranche, the

Hedged Value for each Tranche, any Closing Price and any other variable relevant to the exercise, settlement or payment terms of each Tranche (and in the case of a Share- for-Combined Merger Event, including, without limitation, the volatility, the dividend practice and the policy and liquidity) of the Original Stock; and

(ii) if the consideration for the Class A Common Stock in such Merger Event consists in part of any cash, securities or other assets other than New Shares (**Other Consideration**), Seller shall pay to Buyer upon consummation of such Merger Event, with respect to each Tranche, an amount in cash, by wire transfer of immediately available funds to an account designated by Buyer, equal to the product of (A) the Termination Amount for such Tranche and (B) the percentage of the value of the consideration received by holders of Class A Common Stock represented by the Other Consideration, as determined by the Calculation Agent.

(b) Buyer shall have the right, upon becoming aware of the occurrence of any Merger Event (as defined below) to notify Seller of such event and terminate one or more of the remaining Tranches, following which Seller shall make a payment to Buyer as provided in Section 6.04.

(c) **Merger Event** means, in respect of shares of Class A Common Stock, any (A) reclassification or change of shares of Class A Common Stock that results in a transfer of or an irrevocable commitment to transfer more than 30% of the outstanding shares of Class A Common Stock, (B) consolidation, amalgamation or merger of the Issuer with or into another entity (other than a consolidation, amalgamation or merger in which the Issuer is the continuing entity and which does not result in any such reclassification or change of more than 30% of the outstanding shares of Class A Common Stock), or (C) other takeover offer for shares of Class A Common Stock that results in a transfer of or an irrevocable commitment to transfer more than 30% of the shares of Class A Common Stock (other than the shares of Class A Common Stock owned or controlled by the offeror), in each case if the Merger Date is on or before the Settlement Date for the last Tranche hereunder. **Merger Date** means, in respect of a Merger Event, the date upon which holders of the necessary number of shares of Class A Common Stock (other than, in the case of a takeover offer, shares of Class A Common Stock owned or controlled by the offeror) have agreed or have irrevocably become obligated to transfer their shares of Class A Common Stock. In respect of each Merger Event, the following terms have the meanings given below:

(i) **New Shares** means shares of common stock (whether of the offeror or a third party) issued by a Publicly-Traded Entity received in connection with a Merger Event;

(ii) **Share-for-Share Merger Event** means a Merger Event in which the consideration for the Original Stock consists (or, at the option of the holder of such Class A Common Stock, may consist) solely of New Shares; and

(iii) **Share-for-Combined Merger Event** means a Merger Event in which the consideration for the Original Stock consists of New Shares in combination with Other Consideration.

Section 6.03. *Nationalization and Insolvency.* If, prior to the Settlement Date for the last Tranche hereunder, all the shares of Class A Common Stock or all or substantially all the assets of the Issuer are nationalized, expropriated or are otherwise required to be transferred to any governmental agency, authority or entity (a **Nationalization**); or by reason of the voluntary or involuntary liquidation, bankruptcy or insolvency of or any analogous proceeding affecting the Issuer, (a) all the shares of the Class A Common Stock or Class B Common Stock are required to be transferred to a trustee, liquidator or other similar official or (b) holders of the shares of Class A Common Stock or Class B Common Stock become legally prohibited from transferring them (an **Insolvency**), then, in any such event, Buyer shall have the right, upon becoming aware of the occurrence of a Nationalization or Insolvency, as the case may be, to notify Seller of such event and terminate each remaining Tranche as of the date set forth in such notice, following which Seller shall make payment to Buyer as provided in Section 6.04.

Section 6.04. *Termination and Payment.* Following termination of any Tranche as a result of any Spinoff, Merger Event, Nationalization or Insolvency, Seller shall pay to Buyer an amount in cash (the **Termination Amount**) equal to the Acceleration Value for such Tranche (calculated, for purposes of this Section 6.04, as if the Termination Date for such Tranche were the Acceleration Date for such Tranche, and on the basis of, in addition to the factors indicated in Section 7.01, a value ascribed to the Class A Common Stock equal to the value of the consideration, if any, paid in respect of the Class A Common Stock at the time of the Merger Event, Nationalization or Insolvency, as the case may be) in settlement of such Tranche. As promptly as reasonably practicable after calculation of the Acceleration Value for such Tranche, Buyer shall deliver to Seller a notice (the **Termination Amount Notice** for such Tranche) specifying the Termination Amount for such Tranche. Not later than three Business Days following delivery of a Termination Amount Notice for such Tranche by Buyer, Seller shall make a cash payment, by wire transfer of immediately available funds to an account designated by Buyer, to Buyer in an amount equal to the Termination Amount for such Tranche. **Termination Date** means (i) in respect of a Spinoff, a date designated as such by Buyer, (ii) in respect of a Merger Event, the Merger Date, (iii) in respect of a Nationalization, the date of the first public announcement of a firm intention to nationalize and (iv) in respect of an Insolvency, the earlier of the date the shares of Class A Common Stock are required to be transferred to a trustee, liquidator or other similar official and the date the holders of shares of Class A Common Stock become legally prohibited from transferring the shares of Class A Common Stock that, in the case of a Nationalization or an Insolvency (whether or not amended or on the terms originally announced), leads to the Nationalization or the Insolvency, as the case may be, in each case as determined by Buyer.

ARTICLE VII

ACCELERATION

Section 7.01. *Acceleration.* If one or more of the following events (each an **Event of Default**) shall occur:

(a) any legal proceeding shall have been instituted or any other event shall have occurred or condition shall exist that in Buyer s judgment could have a material adverse effect on the financial condition of Seller (unless the only event that could have such an effect is a diminution in the market value of the Common Stock) or on Seller s ability to perform Seller s obligations hereunder, or that calls into question the validity or binding effect of any agreement of Seller hereunder or under the Pledge Agreement (which shall include, without limitation, any repudiation by Seller of this Agreement or the Pledge Agreement);

(b) Seller or the Issuer is adjudicated insolvent or bankrupt, Seller or the Issuer makes an assignment for the benefit of creditors or commences an Insolvency Proceeding with respect to itself or any of its debts or assets in any jurisdiction and under any applicable law, whether now or hereafter in effect, or Seller or the Issuer becomes insolvent or admits in writing its inability generally to pay its debts as they become due;

(c) the commencement of any Insolvency Proceeding with respect to Seller or the Issuer (i) by a governmental, regulatory or supervisory authority, self-regulatory organization, government-sponsored corporation or similar entity having primary jurisdiction over it or its assets, or over Insolvency Proceedings in respect of it or its assets, in the jurisdiction of its incorporation or organization or the jurisdiction of its head or home office; or (ii) by any other Person if such Insolvency Proceeding (A) is consented to or not timely contested by the party against whom it was commenced, (B) results in the entry of a judgment of insolvency or bankruptcy or the entry of an order for winding- up, liquidation, reorganization, composition, rehabilitation, administration or other similar relief or the appointment of a conservator, trustee, receiver, liquidator, administrator, custodian or similar official, or (C) is not dismissed within five Business Days;

(d) at any time, any representation made or repeated or deemed to have been made or repeated by Seller under this Agreement or the Pledge Agreement or any certificate delivered pursuant hereto or thereto would be incorrect or misleading in any material respect if made or repeated as of such time;