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

FORM 8-K

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

Date of Report (Date of earliest event reported): February 11, 2026

TreeHouse Foods, Inc.
(Exact name of registrant as specified in charter)

Commission File Number: 001-32504

Delaware (State or Other Jurisdiction of Incorporation)	20-2311383 (IRS Employer Identification No.)
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2021 Spring Road Suite 600 Oak Brook IL (Address of Principal Executive Offices)	60523 (Zip Code)
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Registrant's telephone number, including area code: (708) 483-1300

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

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

Securities registered pursuant to section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, \$0.01 par value	THS	New York Stock Exchange LLC

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

INTRODUCTION

On February 11, 2026 (the “Closing Date”), pursuant to the Agreement and Plan of Merger, dated as of November 10, 2025 (as it may be amended from time to time, the “Merger Agreement”), by and among Industrial F&B Investments II, Inc., a Delaware corporation (“Parent”), Industrial F&B Investments III, Inc., a Delaware corporation and a wholly owned subsidiary of Parent (“Merger Sub”) and TreeHouse Foods, Inc., a Delaware corporation (“Treehouse” or the “Company”), Merger Sub merged with and into the Company, with the Company surviving as a wholly owned subsidiary of Parent (the “Merger”).

Item 1.01. Entry into a Material Definitive Agreement.

The information set forth in the Introduction to this Current Report on Form 8-K (the “Introduction”) is incorporated by reference into this Item 1.01.

Term Loan Credit Agreement

In addition, concurrently with the Effective Time, Parent entered into that certain Credit Agreement among Parent, as holdings, Merger Sub, as borrower and, upon consummation of the Merger, the Company as the borrower, certain of the Company’s subsidiaries (the “Subsidiary Guarantors”), Royal Bank of Canada, as administrative agent and collateral agent, and the lenders and financial institutions party thereto from time to time (the “New Term Loan Credit Agreement”), which provides for a new senior secured term loan facility in an aggregate principal amount of \$1,000 million (the “First Lien Credit Facility”). The Company and certain of its subsidiaries are guarantors under the New Term Loan Credit Agreement. The obligations under the New Term Loan Credit Agreement are secured on a first priority basis by substantially all assets of Parent and the Subsidiary Guarantors other than the ABL Priority Collateral (as defined below) (the “Term Loan Priority Collateral”) and on a second-priority basis by substantially all of Parent’s and the Subsidiary Guarantor’s inventory and accounts receivable and certain related assets (the “ABL Priority Collateral”) (subject, in each case, to certain exceptions and exclusions). The New Term Loan Credit Agreement includes representations and warranties, covenants, events of default and other provisions that are customary for facilities of these types.

ABL Credit Agreement

In addition, concurrently with the Effective Time, Parent entered into that certain ABL Credit Agreement among Parent, as holdings, Merger Sub, as borrower and, upon consummation of the Merger, the Company as the borrower, the Subsidiary Guarantors, Royal Bank of Canada, as administrative agent and collateral agent, and the lenders and financial institutions party thereto from time to time (the “ABL Credit Agreement”), which provides for a senior secured asset-backed revolving credit facility in an aggregate committed amount of up to \$400.0 million, subject to borrowing base availability (the “ABL Facility” and together with the First Lien Credit Facility, the “Senior Credit Facilities”). The Company and certain of its subsidiaries are guarantors under the ABL Credit Agreement. The obligations under the ABL Credit Agreement are secured on a first-priority basis on assets of Parent and the Subsidiary Guarantors constituting ABL Priority Collateral and a second-priority basis on assets of Parent and the Subsidiary Guarantors constituting Term Loan Priority Collateral (subject to certain exclusions and exceptions). The ABL Credit Agreement includes representations and warranties, covenants, events of default and other provisions that are customary for facilities of these types.

2033 Notes

In connection with the consummation of the Merger, at the Effective Time, Merger Sub, as issuer, Deutsche Bank Trust Company Americas, as trustee and notes collateral agent (the “Trustee”), TreeHouse and certain of TreeHouse’s subsidiaries (the “Subsidiary Guarantors”) entered into the First Supplemental Indenture to the Indenture, dated as of February 11, 2026, among Merger Sub, as issuer, the Parent, as guarantor, and the Trustee (the “Notes Indenture”), governing Merger Sub’s issuance of 7.750% Senior Secured Notes due 2033 with an initial aggregate principal amount of \$800 million (the “Notes”), pursuant to which TreeHouse agreed to assume Merger Sub’s obligations as issuer under the Notes Indenture and the Notes, and the Subsidiary Guarantors agreed to guarantee TreeHouse’s obligations as issuer under the Notes Indenture and the Notes. The Notes and the related guarantees are secured by (i) a second-priority security interest the ABL Priority Collateral and (ii) a first-priority security interest in the Term Priority Collateral, subject, in each case, to certain exclusions and exceptions. The Notes Indenture and the Notes include restrictive covenants, events of default and other provisions that are customary for obligations of this type.

Item 1.02. Termination of a Material Definitive Agreement.

Concurrently with the closing of the Merger, the Company repaid all loans and terminated all credit commitments outstanding under the Third Amended and Restated Credit Agreement, dated as of January 17, 2025 (as amended by that certain First Amendment to Third Amended and Restated Credit Agreement, dated as of March 14, 2025, the “Existing Credit Agreement”),

by and among the Company, Bank of America, N.A., as agent, letter of credit issuer and swing line lender, and each lender party thereto.

The foregoing description of the Existing Credit Agreement and the transactions contemplated thereby are subject to and qualified in their entirety by reference to the full text of the Existing Credit Agreement. A copy of the Existing Credit Agreement was filed as Exhibit 10.1 to the Current Report on Form 8-K filed by the Company with the SEC on January 21, 2025. The Existing Credit Agreement is incorporated by reference into this Item 1.02.

In addition, on the date of the Effective Time, TreeHouse discharged that certain base indenture dated March 2, 2010 (the “2028 Notes Base Indenture”), by and among TreeHouse, the subsidiary guarantors party thereto and Wells Fargo Bank, National Association (succeeded by Computershare Trust Company, N.A.), as trustee (the “2028 Notes Trustee”), as supplemented by a twelfth supplemental indenture, dated September 9, 2020 (the “2028 Notes Twelfth Supplemental Indenture” and, together with the 2028 Notes Base Indenture, as amended and supplemented from time to time, the “2028 Notes Indenture”), by and among TreeHouse, the subsidiary guarantors party thereto and the 2028 Notes Trustee, pursuant to which TreeHouse’s \$500 million 4.000% senior notes due 2028 (the “2028 Notes”) were issued.

As a result of the discharge of the 2028 Notes Indenture, TreeHouse has been released from its obligations under the 2028 Notes Indenture, except those provisions of the 2028 Notes Indenture that, by their terms, survive the discharge of the 2028 Notes Indenture.

The foregoing descriptions of the 2028 Notes Indenture and the 2028 Notes are subject to and qualified in their entirety by reference to the full text of the 2028 Notes Indenture. A copy of the 2028 Notes Base Indenture was filed as Exhibit 4.1 and a copy of the 2028 Notes Supplemental Indenture was filed as Exhibit 4.2, in each case to the Current Report on Form 8-K filed by the Company with the SEC on September 9, 2020. The 2028 Notes Base Indenture and the 2028 Notes Twelfth Supplemental Indenture are incorporated by reference into this item 1.02. This Current Report on Form 8-K does not constitute an offer to tender for, or purchase, or a solicitation of an offer to tender for, or purchase, any of the 2028 Notes or any other security.

Item 2.01. Completion of Acquisition or Disposition of Assets.

The information set forth in the Introduction to this Current Report on Form 8-K (the “Introduction”) is incorporated by reference into this Item 2.01.

The definitive proxy statement of the Company, filed with the Securities and Exchange Commission (the “SEC”) on December 29, 2025 and as supplemented by the supplemental disclosure to the definitive proxy statement of the Company filed with the SEC on January 20, 2026 contains additional information about the Merger and the other transactions contemplated by the Merger Agreement, including information concerning the interests of directors, executive officers and affiliates of the Company in connection with the Merger.

As of the effective time of the Merger (the “Effective Time”), each share of common stock, par value \$0.01 per share, of TreeHouse (“TreeHouse Common Stock”) issued and outstanding immediately prior to the Effective Time (other than shares held in treasury by the Company, shares owned by any subsidiary of the Company, shares held by Parent or Merger Sub or any of their subsidiaries and shares owned by stockholders who were entitled to exercise and have properly perfected their rights of appraisal under the Delaware General Corporation Law) was canceled and automatically converted into the right to receive (i) \$22.50 in cash, without interest and subject to any applicable withholding taxes (the “Per Share Amount”), and (ii) one contractual contingent value right (the “CVR”, and together with the Per Share Amount, the “Merger Consideration”), which represents the right to receive a portion of the net proceeds, if any, resulting from certain litigation relating to part of TreeHouse’s coffee business.

In addition, pursuant to the Merger Agreement, each TreeHouse stock option, restricted stock unit and performance share unit that was outstanding immediately prior to the Effective Time, to the extent unvested, vested effective immediately prior to the Effective Time (with the performance share units assuming that 130% of target level of performance has been achieved). As of the Effective Time, each TreeHouse stock option that was vested with an exercise price per share of TreeHouse Common Stock that was less than the Per Share Amount was canceled and converted into the right to receive (i) a cash payment equal to the excess of the Per Share Amount over the per share exercise price for each share of TreeHouse Common Stock subject to such stock option and (ii) one CVR for each share of TreeHouse Common Stock subject to such stock option, and each TreeHouse stock option with an exercise price per share of TreeHouse Common Stock that was equal to or greater than the Per Share Amount was canceled for no consideration. Each TreeHouse restricted stock unit and performance share unit that was outstanding immediately prior to the Effective Time was canceled and converted into the right to receive (i) a cash payment equal to the Per Share Amount and (ii) one CVR, in each case, for each share of TreeHouse Common Stock underlying the vested portion of such restricted stock unit or performance share unit.

The foregoing description of the Merger Agreement and related transactions (including, without limitation, the Merger) does not purport to be complete and is subject, and qualified in its entirety by reference, to the full text of the Merger Agreement, which is attached as Exhibit 2.1 to the Company's Current Report on Form 8-K filed with the SEC on November 12, 2025 and incorporated herein by reference.

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

The information set forth under Item 1.01 and Item 2.01 is incorporated by reference into this Item 2.03.

Item 3.01. Notice of Delisting or Failure to Satisfy a Continued Listing Rule or Standard; Transfer of Listing.

The information set forth in the Introduction and Item 2.01 is incorporated by reference into this Item 3.01.

On the Closing Date, the Company notified the New York Stock Exchange ("NYSE") of the consummation of the Merger and of its intent to remove the TreeHouse Common Stock from listing on NYSE and requested that NYSE (i) suspend trading of the TreeHouse Common Stock on the NYSE and (ii) file a Notification of Removal from Listing and/or Registration on Form 25 with the SEC to delist and deregister the TreeHouse Common Stock under Section 12(b) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"). Accordingly, the TreeHouse Common Stock will no longer be listed on NYSE.

Upon effectiveness of the Form 25, the Company intends to file with the SEC a Form 15 under the Exchange Act requesting the deregistration of the TreeHouse Common Stock and the suspension of the Company's reporting obligations under Sections 13 and 15(d) of the Exchange Act.

Item 3.03. Material Modification to Rights of Security Holders.

The information set forth in the Introduction and Items 2.01, 3.01 and 5.03 of this Current Report on Form 8-K is incorporated by reference into this Item 3.03.

As a result of the Merger, each share of TreeHouse Common Stock that was issued and outstanding immediately prior to the Effective Time (except as described in Item 2.01 of this Current Report on Form 8-K) was converted, at the Effective Time, into the right to receive the Merger Consideration in accordance with the terms of the Merger Agreement. Accordingly, at the Effective Time, the holders of such shares of TreeHouse Common Stock ceased to have any rights as stockholders of the Company, other than the right to receive the Merger Consideration.

Item 5.01. Changes in Control of Registrant.

The information set forth in the Introduction and Items 2.01, 3.01, 3.03, 5.02 and 5.03 of this Current Report on Form 8-K is incorporated into this Item 5.01 by reference.

As a result of the Merger, a change in control of the Company occurred, and the Company became a wholly owned subsidiary of Parent.

On the Closing Date, each share of TreeHouse Common Stock issued and outstanding immediately prior to the Effective Time (other than shares held in treasury by the Company, shares owned by any subsidiary of the Company, shares held by Parent or Merger Sub or any of their subsidiaries and shares owned by stockholders who were entitled to exercise and have properly perfected their rights of appraisal under the Delaware General Corporation Law) was canceled and automatically converted into the right to receive (i) \$22.50 in cash, without interest and subject to any applicable withholding taxes (the "Per Share Amount"), and (ii) one CVR. Parent obtained the funds necessary to complete the transactions contemplated by the Merger Agreement through a combination of debt financing and equity financing.

Item 5.02. Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

The information set forth in the Introduction and under Item 2.01 of this Current Report on Form 8-K is incorporated by reference in this Item 5.02.

In connection with the consummation of the Merger and pursuant to the terms of the Merger Agreement, the directors of Merger Sub immediately prior to the Effective Time, which consisted of Amelie Flammia, Gregory Read and Jeffrey Everhart, became the directors of the surviving corporation. As of the Effective Time, all directors of the Company serving as of immediately prior to the Effective Time, consisting of Steven Oakland, Adam J. DeWitt, Linda K. Massman, Scott D. Ostfeld,

Jill A. Rahman, Joseph E. Scalzo, Jean E. Spence, and Jason J. Tyler, were removed from the board of directors of the Company including any committees thereof on which they served.

Item 5.03. Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.

The information set forth in the Introduction and under Item 2.01 of this Current Report on Form 8-K is incorporated by reference into this Item 5.03.

At the Effective Time, (i) the articles of incorporation of the Company, as the surviving corporation, were amended and restated in their entirety and (ii) the bylaws of Merger Sub, as in effect immediately prior to the Effective Time, became the bylaws of the Company, as the surviving corporation, in accordance with the terms of the Merger Agreement (except that references to the name of Merger Sub were replaced by the name of the Company).

Copies of such amended and restated articles of incorporation and amended and restated bylaws, as in effect immediately following the Effective Time, are filed as Exhibits 3.1 and 3.2, respectively, to this Current Report on Form 8-K, and are incorporated herein by reference.

Item 8.01. Other Events.

On February 11, 2026, the Company issued a press release announcing the completion of the Merger. A copy of the press release is attached hereto as Exhibit 99.1 and is incorporated herein by reference.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits:

<u>Exhibit No.</u>	<u>Description</u>
2.1	<u>Agreement and Plan of Merger, dated as of November 10, 2025, among TreeHouse Foods, Inc., Industrial F&B Investments II, Inc., and Industrial F&B Investments III, Inc. (incorporated by reference to Exhibit 2.1 to the Company's Current Report on Form 8-K filed with the SEC on November 12, 2025).</u> *
3.1	<u>Amended and Restated Articles of Incorporation of TreeHouse Foods, Inc.</u>
3.2	<u>Amended and Restated Bylaws of TreeHouse Foods, Inc.</u>
10.1	<u>Contingent Value Rights Agreement, dated as of February 11, 2026, among TreeHouse Foods, Inc., Industrial F&B Investments II, Inc., members of the CVR committee and Computershare Inc. and Computershare Trust Company, N.A., acting jointly as rights agent.</u>
99.1	<u>Press release, dated February 11, 2026</u>
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

* Certain schedules and exhibits have been omitted pursuant to Item 601(a)(5) of Regulation S-K. The Company agrees to furnish supplementally to the SEC a copy of any omitted schedule or exhibit upon request.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Date: February 11, 2026

TreeHouse Foods, Inc.
By: /s/ Kristy N. Waterman
Kristy N. Waterman
Executive Vice President, Chief Human Resources Officer,
General Counsel, and Corporate Secretary

AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION

OF

TREEHOUSE FOODS, INC.

FIRST: The name of the Corporation is TreeHouse Foods, Inc.

SECOND: The address of the registered office of the Corporation in the State of Delaware is Corporation Trust Center, 1209 Orange Street, in the City of Wilmington, County of New Castle, Delaware 19801. The name of its registered agent at such address is The Corporation Trust Company.

THIRD: The purpose of the Corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of the State of Delaware as set forth in Title 8 of the Delaware Code (as amended from time to time, the "DGCL").

FOURTH: The total number of shares of stock which the Corporation shall have authority to issue is 1,000 shares of Common Stock, each having a par value of \$0.001.

FIFTH: The following provisions are inserted for the management of the business and the conduct of the affairs of the Corporation, and for further definition, limitation and regulation of the powers of the Corporation and of its directors and stockholders:

- (1) The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors.
 - (2) The directors shall have concurrent power with the stockholders to adopt, amend or repeal the bylaws of the Corporation (the "Bylaws").
 - (3) The number of directors constituting the Corporation's Board of Directors shall be as from time to time fixed by, or in the manner provided in, the Bylaws. Election of directors need not be by written ballot unless the Bylaws so provide.
 - (4) Except to the extent that the DGCL prohibits the elimination or limitation of liability of directors for breaches of fiduciary duty, no director of the Corporation shall be personally liable to the Corporation or its stockholders for monetary damages for any breach of fiduciary duty as a director, notwithstanding any provision of law imposing such
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liability except for liability (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of the law, (iii) pursuant to Section 174 (or any successor provision) of the DGCL or (iv) for any transaction from which the director derived an improper personal benefit. No amendment to or repeal of this provision shall apply to or have any effect on the liability or alleged liability of any director of the Corporation for or with respect to any acts or omissions of such director occurring prior to such amendment or repeal.

(5) In addition to the powers and authority hereinbefore or by statute expressly conferred upon them, the directors are hereby empowered to exercise all such powers and do all such acts and things as may be exercised or done by the Corporation, subject, nevertheless, to the provisions of the DGCL, this Certificate of Incorporation, and the Bylaws; provided, however, that no Bylaws hereafter adopted, amended or repealed by the stockholders shall invalidate any prior act of the directors that would have been valid if such Bylaws had not been so adopted, amended or repealed.

SIXTH: Meetings of stockholders may be held within or without the State of Delaware, as the Bylaws may provide. The books and records of the Corporation may be kept (subject to any provision contained in the DGCL) outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the Bylaws.

SEVENTH: The Corporation shall provide indemnification as follows:

(1) Actions, Suits and Proceedings Other than by or in the Right of the Corporation. The Corporation shall indemnify each person who was or is a party or threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation) by reason of the fact that he or she is or was, or has agreed to become, a director or officer of the Corporation, or is or was serving, or has agreed to serve, at the request of the Corporation, as a director, officer, partner, employee or trustee of, or in a similar capacity with, another corporation, partnership, joint venture, trust or other enterprise (including any employee benefit plan) (all such persons being referred to hereafter as an "Indemnitee"), or by reason of any action alleged to have been taken or omitted in such capacity, against all expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by or on behalf of Indemnitee in connection with such action, suit or proceeding and any appeal therefrom, if Indemnitee acted in good faith and in a manner which Indemnitee reasonably believed to be in, or not opposed to, the best interests of the Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by

judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that Indemnatee did not act in good faith and in a manner which Indemnatee reasonably believed to be in, or not opposed to, the best interests of the Corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

(2) Actions or Suits by or in the Right of the Corporation. The Corporation shall indemnify any Indemnatee who was or is a party to or threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that Indemnatee is or was, or has agreed to become, a director or officer of the Corporation, or is or was serving, or has agreed to serve, at the request of the Corporation, as a director, officer, partner, employee or trustee of, or in a similar capacity with, another corporation, partnership, joint venture, trust or other enterprise (including any employee benefit plan), or by reason of any action alleged to have been taken or omitted in such capacity, against all expenses (including attorneys' fees) and, to the extent permitted by law, amounts paid in settlement actually and reasonably incurred by or on behalf of Indemnatee in connection with such action, suit or proceeding and any appeal therefrom, if Indemnatee acted in good faith and in a manner which Indemnatee reasonably believed to be in, or not opposed to, the best interests of the Corporation, except that no indemnification shall be made under this Section 2 in respect of any claim, issue or matter as to which Indemnatee shall have been adjudged to be liable to the Corporation, unless, and only to the extent, that the Court of Chancery of Delaware shall determine upon application that, despite the adjudication of such liability but in view of all the circumstances of the case, Indemnatee is fairly and reasonably entitled to indemnity for such expenses (including attorneys' fees) which the Court of Chancery of Delaware shall deem proper.

(3) Indemnification for Expenses of Successful Party. Notwithstanding any other provisions of this Article, to the extent that an Indemnatee has been successful, on the merits or otherwise, in defense of any action, suit or proceeding referred to in Sections 1 and 2 of this Article SEVENTH, or in defense of any claim, issue or matter therein, or on appeal from any such action, suit or proceeding, Indemnatee shall be indemnified against all expenses (including attorneys' fees) actually and reasonably incurred by or on behalf of Indemnatee in connection therewith. Without limiting the foregoing, if any action, suit or proceeding is disposed of, on the merits or otherwise (including a disposition without prejudice), without (i) the disposition being adverse to Indemnatee, (ii) an adjudication that Indemnatee was liable to the Corporation, (iii) a plea of guilty or nolo contendere by Indemnatee, (iv) an adjudication that Indemnatee did not act in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Corporation, and (v) with

respect to any criminal proceeding, an adjudication that Indemnitee had reasonable cause to believe his conduct was unlawful, Indemnitee shall be considered for the purposes hereof to have been wholly successful with respect thereto.

(4) Notification and Defense of Claim. As a condition precedent to an Indemnitee's right to be indemnified, such Indemnitee must notify the Corporation in writing as soon as practicable of any action, suit, proceeding or investigation involving such Indemnitee for which indemnity will or could be sought. With respect to any action, suit, proceeding or investigation of which the Corporation is so notified, the Corporation will be entitled to participate therein at its own expense and/or to assume the defense thereof at its own expense, with legal counsel reasonably acceptable to Indemnitee. After notice from the Corporation to Indemnitee of its election so to assume such defense, the Corporation shall not be liable to Indemnitee for any legal or other expenses subsequently incurred by Indemnitee in connection with such action, suit, proceeding or investigation, other than as provided below in this Section 4. Indemnitee shall have the right to employ his or her own counsel in connection with such action, suit, proceeding or investigation, but the fees and expenses of such counsel incurred after notice from the Corporation of its assumption of the defense thereof shall be at the expense of Indemnitee unless (i) the employment of counsel by Indemnitee has been authorized by the Corporation, (ii) counsel to Indemnitee shall have reasonably concluded that there may be a conflict of interest or position on any significant issue between the Corporation and Indemnitee in the conduct of the defense of such action, suit, proceeding or investigation or (iii) the Corporation shall not in fact have employed counsel to assume the defense of such action, suit, proceeding or investigation, in each of which cases the fees and expenses of counsel for Indemnitee shall be at the expense of the Corporation, except as otherwise expressly provided by this Article. The Corporation shall not be entitled, without the consent of Indemnitee, to assume the defense of any claim brought by or in the right of the Corporation or as to which counsel for Indemnitee shall have reasonably made the conclusion provided for in clause (ii) above. The Corporation shall not be required to indemnify Indemnitee under this Article SEVENTH for any amounts paid in settlement of any action, suit, proceeding or investigation effected without its written consent. The Corporation shall not settle any action, suit, proceeding or investigation in any manner which would impose any penalty or limitation on Indemnitee without Indemnitee's written consent. Neither the Corporation nor Indemnitee will unreasonably withhold or delay its consent to any proposed settlement.

(5) Advance of Expenses. Subject to the provisions of Section 6 of this Article SEVENTH, in the event of any action, suit, proceeding or investigation of which the Corporation receives notice under this Article, any expenses (including attorneys' fees) incurred by or on behalf of Indemnitee in defending an action, suit, proceeding or investigation or any appeal therefrom shall be paid by the Corporation in advance

of the final disposition of such matter; provided, however, that the payment of such expenses incurred by or on behalf of Indemnitee in advance of the final disposition of such matter shall be made only upon receipt of an undertaking by or on behalf of Indemnitee to repay all amounts so advanced in the event that it shall ultimately be determined that Indemnitee is not entitled to be indemnified by the Corporation as authorized in this Article; and further provided that no such advancement of expenses shall be made under this Article SEVENTH if it is determined (in the manner described in Section 6) that (i) Indemnitee did not act in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the Corporation, or (ii) with respect to any criminal action or proceeding, Indemnitee had reasonable cause to believe his conduct was unlawful. Such undertaking shall be accepted without reference to the financial ability of Indemnitee to make such repayment.

(6) Procedure for Indemnification. In order to obtain indemnification or advancement of expenses pursuant to Section 1, 2, 3 or 5 of this Article SEVENTH, an Indemnitee shall submit to the Corporation a written request. Any such advancement of expenses shall be made promptly, and in any event within 60 days after receipt by the Corporation of the written request of Indemnitee, unless (i) the Corporation has assumed the defense pursuant to Section 4 of this Article SEVENTH (and none of the circumstances described in Section 4 of this Article SEVENTH that would nonetheless entitle the Indemnitee to indemnification for the fees and expenses of separate counsel have occurred) or (ii) the Corporation determines within such 60-day period that Indemnitee did not meet the applicable standard of conduct set forth in Section 1, 2 or 5 of this Article SEVENTH, as the case may be. Any such indemnification, unless ordered by a court, shall be made with respect to requests under Section 1 or 2 only as authorized in the specific case upon a determination by the Corporation that the indemnification of Indemnitee is proper because Indemnitee has met the applicable standard of conduct set forth in Section 1 or 2, as the case may be. Such determination shall be made in each instance (a) by a majority vote of the directors of the Corporation consisting of persons who are not at that time parties to the action, suit or proceeding in question (“disinterested directors”), whether or not a quorum, (b) by a committee of disinterested directors designated by majority vote of disinterested directors, whether or not a quorum, (c) if there are no disinterested directors, or if the disinterested directors so direct, by independent legal counsel (who may, to the extent permitted by law, be regular legal counsel to the Corporation) in a written opinion, or (d) by the stockholders of the Corporation.

(7) Remedies. The right to indemnification or advancement of expenses as granted by this Article shall be enforceable by Indemnitee in any court of competent jurisdiction. Neither the failure of the Corporation to have made a determination prior to the commencement of such action that indemnification is proper in the

circumstances because Indemnitee has met the applicable standard of conduct, nor an actual determination by the Corporation pursuant to Section 6 of this Article SEVENTH that Indemnitee has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that Indemnitee has not met the applicable standard of conduct. Indemnitee's expenses (including attorneys' fees) reasonably incurred in connection with successfully establishing Indemnitee's right to indemnification, in whole or in part, in any such proceeding shall also be indemnified by the Corporation.

(8) Limitations. Notwithstanding anything to the contrary in this Article, except as set forth in Section 7 of this Article SEVENTH, the Corporation shall not indemnify an Indemnitee pursuant to this Article SEVENTH in connection with a proceeding (or part thereof) initiated by such Indemnitee unless the initiation thereof was approved by the Board of Directors of the Corporation. Notwithstanding anything to the contrary in this Article, the Corporation shall not indemnify an Indemnitee to the extent such Indemnitee is reimbursed from the proceeds of insurance, and in the event the Corporation makes any indemnification payments to an Indemnitee and such Indemnitee is subsequently reimbursed from the proceeds of insurance, such Indemnitee shall promptly refund indemnification payments to the Corporation to the extent of such insurance reimbursement.

(9) Subsequent Amendment. No amendment, termination or repeal of this Article or of the relevant provisions of the DGCL or any other applicable laws shall affect or diminish in any way the rights of any Indemnitee to indemnification under the provisions hereof with respect to any action, suit, proceeding or investigation arising out of or relating to any actions, transactions or facts occurring prior to the final adoption of such amendment, termination or repeal.

(10) Other Rights. The indemnification and advancement of expenses provided by this Article shall not be deemed exclusive of any other rights to which an Indemnitee seeking indemnification or advancement of expenses may be entitled under any law (common or statutory), agreement or vote of stockholders or disinterested directors or otherwise, both as to action in Indemnitee's official capacity and as to action in any other capacity while holding office for the Corporation, and shall continue as to an Indemnitee who has ceased to be a director or officer, and shall inure to the benefit of the estate, heirs, executors and administrators of Indemnitee. Nothing contained in this Article shall be deemed to prohibit, and the Corporation is specifically authorized to enter into, agreements with officers and directors providing indemnification rights and procedures different from those set forth in this Article. In addition, the Corporation may, to the extent authorized from time to time by its Board of Directors, grant indemnification rights to other employees or agents of the Corporation or other persons serving the Corporation and such rights may be equivalent to, or greater or less than, those set forth in this Article.

(11) Partial Indemnification. If an Indemnitee is entitled under any provision of this Article to indemnification by the Corporation for some or a portion of the expenses (including attorneys' fees), judgments, fines or amounts paid in settlement actually and reasonably incurred by or on behalf of Indemnitee in connection with any action, suit, proceeding or investigation and any appeal therefrom but not, however, for the total amount thereof, the Corporation shall nevertheless indemnify Indemnitee for the portion of such expenses (including attorneys' fees), judgments, fines or amounts paid in settlement to which Indemnitee is entitled.

(12) Insurance. The Corporation may purchase and maintain insurance, at its expense, to protect itself and any director, officer, employee or agent of the Corporation or another corporation, partnership, joint venture, trust or other enterprise (including any employee benefit plan) against any expense, liability or loss incurred by him in any such capacity, or arising out of his status as such, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the DGCL.

(13) Savings Clause. If this Article or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the Corporation shall nevertheless indemnify each Indemnitee as to any expenses (including attorneys' fees), judgments, fines and amounts paid in settlement in connection with any action, suit, proceeding or investigation, whether civil, criminal or administrative, including an action by or in the right of the Corporation, to the fullest extent permitted by any applicable portion of this Article that shall not have been invalidated and to the fullest extent permitted by applicable law.

(14) Definitions. Terms used herein and defined in Section 145(h) and Section 145(i) of the DGCL shall have the respective meanings assigned to such terms in such Section 145(h) and Section 145(i).

EIGHTH: The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation.

BYLAWS
OF
TREEHOUSE FOODS, INC.
A Delaware Corporation
Effective February 11, 2026

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BYLAWS
OF
TREEHOUSE FOODS, INC.
(hereinafter called the “Corporation”)

ARTICLE I
OFFICES

Section 1. Registered Office. The address of the registered office of the Corporation in the State of Delaware is 251 Little Falls Drive, Wilmington, County of New Castle, 19808. The name of the Corporation’s registered agent at that address is Corporation Service Company.

Section 2. Other Offices. The Corporation may also have offices at such other places, both within and without the State of Delaware, as the Board of Directors may from time to time determine.

ARTICLE II
MEETINGS OF STOCKHOLDERS

Section 1. Place of Meetings. Meetings of the stockholders for the election of directors or for any other purpose shall be held at such time and place, either within or without the State of Delaware, as shall be designated from time to time by the Board of Directors. The Board of Directors may, in its sole discretion, determine that a meeting of the stockholders shall not be held at any place, but may instead be held solely by means of remote communication in the manner authorized by Section 211 of the General Corporation Law of the State of Delaware (the “DGCL”).

Section 2. Annual Meetings. The Annual Meeting of Stockholders for the election of directors shall be held on such date and at such time as shall be designated from time to time by the Board of Directors. Any other proper business may be transacted at the Annual Meeting of Stockholders.

Section 3. Special Meetings. Unless otherwise required by law or by the certificate of incorporation of the Corporation, as amended and restated from time to time (the “Certificate of Incorporation”), Special Meetings of Stockholders, for any purpose or purposes, may be called by either (i) the Chair of the Board of Directors, if there be one, or (ii) the President, (iii) any Vice President, if there be one, (iv) the Secretary or (v) any Assistant Secretary, if there be one, and shall be called by any such officer at the request in writing of (i) the Board of Directors, (ii) a committee of the Board of Directors that has been duly designated by the Board of Directors and whose powers and authority include the power to call such meetings or (iii) stockholders owning a majority of the capital stock of the Corporation issued and outstanding and entitled to vote on the matter for which such Special Meeting of Stockholders is called. Such request shall state the purpose or purposes of the proposed meeting. At a Special Meeting of Stockholders, only such business shall be conducted as shall be specified in the notice of meeting (or any supplement thereto).

Section 4. Notice. Whenever stockholders are required or permitted to take any action at a meeting, a notice of the meeting shall be given in accordance with Section 232 of the DGCL, and such notice shall state the place, if any, date and hour of the meeting, the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, the record date for determining the stockholders entitled to vote at such meeting, if such date is different from the record date for determining stockholders entitled to notice of such meeting and, in the case of a Special Meeting of Stockholders, the purpose or purposes for which the meeting is called. Unless otherwise required by law, notice of any meeting shall be given not less than ten (10) nor more than sixty (60) days before the date of the meeting to each stockholder entitled to vote at such meeting as of the record date for determining stockholders entitled to notice of such meeting.

Section 5. Adjournments and Postponements. Any meeting of the stockholders may be adjourned or postponed from time to time by the chair of such meeting or by the Board of Directors, without the need for approval thereof by stockholders to reconvene or convene, respectively at the same

or some other place. Notice need not be given of any such adjourned or postponed meeting (including an adjournment taken to address a technical failure to convene or continue a meeting using remote communication) if the time and place, if any, thereof, and the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such adjourned or postponed meeting are (i) with respect to an adjourned meeting, (a) announced at the meeting at which the adjournment is taken, (b) displayed during the time scheduled for the meeting, on the same electronic network used to enable stockholders and proxy holders to participate in the meeting by means of remote communication, or (c) set forth in the notice of meeting given in accordance with Section 4 of this Article II, or (ii) with respect to a postponed meeting, are publicly announced. At the adjourned or postponed meeting, the Corporation may transact any business which might have been transacted at the original meeting. If the adjournment or postponement is for more than thirty (30) days, notice of the adjourned or postponed meeting in accordance with the requirements of Section 4 hereof shall be given to each stockholder of record entitled to vote at the meeting. If, after the adjournment or postponement, a new record date for stockholders entitled to vote is fixed for the adjourned or postponed meeting, the Board of Directors shall fix a new record date for notice of such adjourned or postponed meeting in accordance with Section 11 of this Article II, and shall give notice of the adjourned or postponed meeting to each stockholder of record entitled to vote at such adjourned or postponed meeting as of the record date fixed for notice of such adjourned or postponed meeting.

Section 6. Quorum. Unless otherwise required by the DGCL or other applicable law or the Certificate of Incorporation, the holders of a majority of the Corporation's capital stock issued and outstanding and entitled to vote thereat, present in person or represented by proxy, shall constitute a quorum at all meetings of the stockholders for the transaction of business. A quorum, once established, shall not be broken by the withdrawal of enough votes to leave less than a quorum. If, however, such quorum shall not be present or represented at any meeting of the stockholders, the stockholders entitled to vote thereat, present in person or represented by proxy, shall have power to adjourn the meeting from

time to time, in the manner provided in Section 5 of this Article II, until a quorum shall be present or represented.

Section 7. Voting. Unless otherwise required by law, the Certificate of Incorporation or these Bylaws, or permitted by the rules and regulations of any securities exchange or quotation system on which the securities of the Corporation are listed or quoted for trading, any question brought before any meeting of the stockholders, other than the election of directors, shall be decided by the vote of the holders of a majority of the total number of votes of the Corporation's capital stock present at the meeting in person or represented by proxy and entitled to vote on such question, voting as a single class. Unless otherwise provided in the Certificate of Incorporation, and subject to Section 11(a) of this Article II, each stockholder represented at a meeting of the stockholders shall be entitled to cast one (1) vote for each share of the capital stock entitled to vote thereat held by such stockholder. Such votes may be cast in person or by proxy as provided in Section 8 of this Article II. The Board of Directors, in its discretion, or the chair of a meeting of the stockholders, in their discretion, may require that any votes cast at such meeting shall be cast by written ballot.

Section 8. Proxies. Each stockholder entitled to vote at a meeting of the stockholders or to express consent or dissent to corporate action in writing without a meeting may authorize another person or persons to act for such stockholder as proxy, but no such proxy shall be voted upon after three (3) years from its date, unless such proxy provides for a longer period. Without limiting the manner in which a stockholder may authorize another person or persons to act for such stockholder as proxy, the following shall constitute a valid means by which a stockholder may grant such authority:

(i) A stockholder, or such stockholder's authorized officer, director, employee or agent, may execute a document (as that term is defined in Section 116(a) of the DGCL) authorizing another person or persons to act for such stockholder as proxy.

(ii) A stockholder may authorize another person or persons to act for such stockholder as proxy by transmitting or authorizing the transmission of an electronic transmission to the person who will be the holder of the proxy or to a proxy solicitation firm, proxy support service organization or like agent duly authorized by the person who will be the holder of the proxy to receive such transmission; provided that any such transmission must either set forth or be submitted with information from which it can be determined that the transmission was authorized by the stockholder. If it is determined that such transmissions are valid, the inspectors or, if there are no inspectors, such other persons making that determination shall specify the information on which they relied.

(iii) The authorization of a person to act as proxy may be documented, signed and delivered in accordance with Section 116 of the DGCL; provided that such authorization shall set forth, or be delivered with information enabling the Corporation to determine, the identity of the stockholder granting such authorization.

Any copy, facsimile telecommunication or other reliable reproduction of the document (including any electronic transmission) authorizing another person or persons to act as proxy for a stockholder may be substituted or used in lieu of the original document for any and all purposes for which the original document could be used; provided, however, that such copy, facsimile telecommunication or other reproduction shall be a complete reproduction of the entire original document.

Section 9. Consent of Stockholders in Lieu of Meeting. Unless otherwise provided in the Certificate of Incorporation, any action required or permitted to be taken at any Annual or Special Meeting of Stockholders of the Corporation may be taken without a meeting, without prior notice and without a vote, if a consent or consents, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and shall be delivered to the Corporation in accordance with Section 228(d) of the DGCL. A consent must be set forth in writing or in an electronic transmission. No consent shall be effective to take the corporate

action referred to therein unless consents signed by a sufficient number of holders to take action are delivered to the Corporation in the manner required by this Section 9 within sixty (60) days of the first date on which a consent is so delivered to the Corporation. Any person executing a consent may provide, whether through instruction to an agent or otherwise, that such a consent will be effective at a future time (including a time determined upon the happening of an event), no later than sixty (60) days after such instruction is given or such provision is made, if evidence of such instruction or provision is provided to the Corporation. If the person is not a stockholder of record when the consent is executed, the consent shall not be valid unless the person is a stockholder of record as of the record date for determining stockholders entitled to consent to the action. Unless otherwise provided, any such consent shall be revocable prior to its becoming effective. Any copy, facsimile or other reliable reproduction of a consent in writing may be substituted or used in lieu of the original writing for any and all purposes for which the original writing could be used; provided that such copy, facsimile or other reproduction shall be a complete reproduction of the entire original writing. Prompt notice of the taking of the corporate action without a meeting by less than unanimous consent shall be given to those stockholders who have not consented and who, if the action had been taken at a meeting, would have been entitled to notice of the meeting if the record date for notice of such meeting had been the date that consents signed by a sufficient number of holders to take the action were delivered to the Corporation as provided above in this Section 9.

Section 10. List of Stockholders Entitled to Vote. The Corporation shall prepare, not later than the tenth (10th) day before each meeting of the stockholders, a complete list of the stockholders entitled to vote at the meeting; provided, however, if the record date for determining the stockholders entitled to vote is less than ten (10) days before the meeting date, the list shall reflect the stockholders entitled to vote as of the tenth (10th) day before the meeting date. Such list shall be arranged in alphabetical order, and show the address of each stockholder and the number of shares registered in the name of each stockholder; provided that the Corporation shall not be required to include electronic mail

addresses or other electronic contact information on such list. Such list shall be open to the examination of any stockholder for any purpose germane to the meeting for a period of ten (10) days ending on the day before the meeting date (i) on a reasonably accessible electronic network; provided that the information required to gain access to such list is provided with the notice of the meeting, or (ii) during ordinary business hours, at the principal place of business of the Corporation. In the event that the Corporation determines to make the list available on an electronic network, the Corporation may take reasonable steps to ensure that such information is available only to stockholders of the Corporation.

Section 11. Record Date.

(a) In order that the Corporation may determine the stockholders entitled to notice of any meeting of the stockholders or any adjournment thereof, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall not be more than sixty (60) nor less than ten (10) days before the date of such meeting. If the Board of Directors so fixes a date, such date shall also be the record date for determining the stockholders entitled to vote at such meeting unless the Board of Directors determines, at the time it fixes such record date, that a later date on or before the date of the meeting shall be the date for making such determination. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of and to vote at a meeting of the stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of the stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for determination of stockholders entitled to vote at the adjourned meeting, and in such case shall also fix, as the record date for stockholders entitled to notice of such adjourned meeting, the same or an earlier date as that fixed for determination of stockholders entitled to vote at the adjourned meeting in accordance with the foregoing provisions of this Section 11.

(b) In order that the Corporation may determine the stockholders entitled to consent to corporate action without a meeting, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall not be more than ten (10) days after the date upon which the resolution fixing the record date is adopted by the Board of Directors. If no record date has been fixed by the Board of Directors, the record date for determining stockholders entitled to consent to corporate action without a meeting, when no prior action by the Board of Directors is required by applicable law, shall be the first date on which a signed consent setting forth the action taken or proposed to be taken is delivered to the Corporation in accordance with Section 228(d) of the DGCL. If no record date has been fixed by the Board of Directors and prior action by the Board of Directors is required by applicable law, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting shall be at the close of business on the day on which the Board of Directors adopts the resolution taking such prior action.

Section 12. Stock Ledger. The stock ledger of the Corporation shall be the only evidence as to who are the stockholders entitled to examine the list of stockholders required by Section 10 of this Article II or the books and records of the Corporation, or to vote in person or by proxy at any meeting of stockholders. As used herein, the stock ledger of the Corporation shall refer to one (1) or more records administered by or on behalf of the Corporation in which the names of all of the Corporation's stockholders of record, the address and number of shares registered in the name of each such stockholder, and all issuances and transfer of stock of the Corporation are recorded in accordance with Section 224 of the DGCL.

Section 13. Conduct of Meetings. The Board of Directors of the Corporation may adopt by resolution such rules and regulations for the conduct of any meeting of the stockholders as it shall deem appropriate. Meetings of stockholders shall be presided over by the Chair of the Board of Directors, if there shall be one, or in their absence, or there shall not be a Chair of the Board of Directors

or in their absence, the President. The Board of Directors shall have the authority to appoint a temporary chair to serve at any meeting of the stockholders if the Chair of the Board of Directors or the President is unable to do so for any reason. Except to the extent inconsistent with any rules and regulations adopted by the Board of Directors, the chair of any meeting of the stockholders shall have the right and authority to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chair, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board of Directors or prescribed by the chair of the meeting, may include, without limitation, the following: (i) the establishment of an agenda or order of business for the meeting; (ii) the determination of when the polls shall open and close for any given matter to be voted on at the meeting; (iii) rules and procedures for maintaining order at the meeting and the safety of those present; (iv) limitations on attendance at or participation in the meeting to stockholders of record of the Corporation, their duly authorized and constituted proxies or such other persons as the chair of the meeting shall determine; (v) restrictions on entry to the meeting after the time fixed for the commencement thereof; and (vi) limitations on the time allotted to questions or comments by stockholders.

ARTICLE III

DIRECTORS

Section 1. Number and Election of Directors. The Board of Directors shall consist of not less than one (1) nor more than fifteen (15) members, each of whom shall be a natural person, the exact number of which shall initially be fixed by the Incorporator and thereafter from time to time by the Board of Directors. Except as provided in Section 2 of this Article III, directors shall be elected by a plurality of the votes cast at each Annual Meeting of Stockholders and each director so elected shall hold office until the next Annual Meeting of Stockholders or until such director's successor is duly elected and qualified, or until such director's earlier death, resignation or removal. Directors need not be stockholders.

Section 2. Vacancies. Unless otherwise required by law or the Certificate of Incorporation, vacancies on the Board of Directors or any committee thereof resulting from the death,

resignation or removal of a director, or from an increase in the number of directors constituting the Board of Directors or such committee or otherwise, may be filled only by a majority of the directors then in office, though less than a quorum, or by a sole remaining director. The directors so chosen shall, in the case of the Board of Directors, hold office until the next annual election and until their successors are duly elected and qualified, or until their earlier death, resignation or removal and, in the case of any committee of the Board of Directors, shall hold office until their successors are duly appointed by the Board of Directors or until their earlier death, resignation or removal.

Section 3. Duties and Powers. The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors which may exercise all such powers of the Corporation except as may be otherwise provided in the DGCL, the Certificate of Incorporation, or these Bylaws.

Section 4. Meetings. The Board of Directors and any committee thereof may hold meetings, both regular and special, either within or without the State of Delaware. Regular meetings of the Board of Directors or any committee thereof may be held without notice at such time and at such place as may from time to time be determined by the Board of Directors or such committee, respectively. Special meetings of the Board of Directors may be called by the Chair of the Board of Directors, if there be one, the President, or by any director. Special meetings of any committee of the Board of Directors may be called by the chair of such committee, if there be one, the President, or any director serving on such committee. Notice of any special meeting stating the place, date and hour of the meeting shall be given to each director (or, in the case of a committee, to each member of such committee) not less than twenty-four hours before the date of the meeting, by telephone, or in the form of a writing or electronic transmission, or on such shorter notice as the person or persons calling such meeting may deem necessary or appropriate in the circumstances.

Section 5. Organization. At each meeting of the Board of Directors or any committee thereof, the Chair of the Board of Directors or the chair of such committee, as the case may be, or, in their absence or if there be none, a director chosen by a majority of the directors present, shall act as chair of such meeting. Except as provided below, the Secretary of the Corporation shall act as secretary at each meeting of the Board of Directors and of each committee thereof. In case the Secretary shall be absent from any meeting of the Board of Directors or of any committee thereof, an Assistant Secretary shall perform the duties of secretary at such meeting; and in the absence from any such meeting of the Secretary and all the Assistant Secretaries, the chair of the meeting may appoint any person to act as secretary of the meeting. Notwithstanding the foregoing, the members of each committee of the Board of Directors may appoint any person to act as secretary of any meeting of such committee and the Secretary or any Assistant Secretary of the Corporation may, but need not if such committee so elects, serve in such capacity.

Section 6. Resignations and Removals of Directors. Any director of the Corporation may resign from the Board of Directors or any committee thereof at any time, by giving notice in writing or by electronic transmission to the Chair of the Board of Directors, if there be one, the President or the Secretary of the Corporation and, in the case of a committee, to the chair of such committee, if there be one. Such resignation shall take effect when delivered or, if such resignation specifies a later effective time or an effective time, determined upon the happening of an event or events, in which case, such resignation takes effect upon such effective time. Unless otherwise specified in such resignation, the acceptance of such resignation shall not be necessary to make it effective. A resignation which is conditioned upon the director failing to receive a specified vote for reelection as a director may provide that it is irrevocable. Except as otherwise required by applicable law and subject to the rights, if any, of the holders of shares of preferred stock then outstanding, any director or the entire Board of Directors may be removed from office at any time, with or without cause, by the affirmative vote of the holders of at least a majority in voting power of the issued and outstanding capital stock of the Corporation entitled

to vote in the election of directors. Any director serving on a committee of the Board of Directors may be removed from such committee at any time by the Board of Directors.

Section 7. Quorum. Except as otherwise required by law, or the Certificate of Incorporation or the rules and regulations of any securities exchange or quotation system on which the securities of the Corporation are listed or quoted for trading, at all meetings of the Board of Directors or any committee thereof, a majority of the entire Board of Directors or a majority of the directors constituting such committee, as the case may be, shall constitute a quorum for the transaction of business and the vote of a majority of the directors or committee members, as applicable, present at any meeting at which there is a quorum shall be the act of the Board of Directors or such committee, as applicable. If a quorum shall not be present at any meeting of the Board of Directors or any committee thereof, the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting of the time and place of the adjourned meeting, until a quorum shall be present.

Section 8. Actions of the Board by Written Consent. Unless otherwise provided in the Certificate of Incorporation or these Bylaws, (a) any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting, if all the members of the Board of Directors or such committee, as the case may be, consent thereto in writing or by electronic transmission and (b) a consent may be documented, signed and delivered in any manner permitted by Section 116 of the DGCL. Any person, whether or not then a director, may provide, through instruction to an agent or otherwise, that a consent to action will be effective at a future time (including a time determined upon the happening of an event) no later than sixty (60) days after such instruction is given or such provision is made and such consent shall be deemed to have been given at such effective time so long as such person is then a director and did not revoke the consent prior to such time. Any such consent shall be revocable prior to its becoming effective. After an action is taken, the consent or consents

relating thereto shall be filed with the minutes of the proceedings of the Board of Directors, or the committee thereof, in the same paper or electronic form as the minutes are maintained.

Section 9. Meetings by Means of Conference Telephone. Unless otherwise provided in the Certificate of Incorporation or these Bylaws, members of the Board of Directors of the Corporation, or any committee thereof, may participate in a meeting of the Board of Directors or such committee by means of a conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this Section 9 shall constitute presence in person at such meeting.

Section 10. Committees. The Board of Directors may designate one or more committees, each committee to consist of one or more of the directors of the Corporation. Each member of a committee must meet the requirements for membership, if any, imposed by applicable law and the rules and regulations of any securities exchange or quotation system on which the securities of the Corporation are listed or quoted for trading. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of any such committee. Subject to the rules and regulations of any securities exchange or quotation system on which the securities of the Corporation are listed or quoted for trading, in the absence or disqualification of a member of a committee, and in the absence of a designation by the Board of Directors of an alternate member to replace the absent or disqualified member, the member or members thereof present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another qualified member of the Board of Directors to act at the meeting in the place of any absent or disqualified member. Any such committee, to the extent permitted by law and provided in the resolution establishing such committee, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it; provided, however, that no such committee shall have the power or authority to (i) approve,

adopt, or recommend to the stockholders any action or matter (other than the election or removal of directors) expressly required by the DGCL to be submitted to stockholders for approval, or (ii) adopt, amend, or repeal any of these Bylaws. Each committee shall keep regular minutes and report to the Board of Directors when required. Notwithstanding anything to the contrary contained in this Article III, the resolution of the Board of Directors establishing any committee of the Board of Directors and/or the charter of any such committee may establish requirements or procedures relating to the governance and/or operation of such committee that are different from, or in addition to, those set forth in these Bylaws and, to the extent that there is any inconsistency between these Bylaws and any such resolution or charter, the terms of such resolution or charter shall be controlling.

Section 11. Subcommittees. Unless otherwise provided in the Certificate of Incorporation, these Bylaws, or the resolution of the Board of Directors designating a committee, such committee may create one or more subcommittees, each subcommittee to consist of one or more members of the committee, and delegate to a subcommittee any or all of the powers and authority of the committee. Except for references to committees and members of committees in Section 10 of this Article III, every reference in these Bylaws to a committee of the Board of Directors or a member of a committee shall be deemed to include a reference to a subcommittee or member of a subcommittee.

Section 12. Compensation. The directors may be paid their expenses, if any, of attendance at each meeting of the Board of Directors and may be paid a fixed sum for attendance at each meeting of the Board of Directors or a stated salary for service as director, payable in cash or securities. No such payment shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefor. Members of special or standing committees may be allowed like compensation for service as committee members.

Section 13. Interested Directors. No contract or transaction between the Corporation and one or more of its directors or officers, or between the Corporation and any other corporation,

partnership, association or other organization in which one or more of its directors or officers are directors or officers or have a financial interest, shall be void or voidable solely for this reason, or solely because the director or officer is present at or participates in the meeting of the Board of Directors or committee thereof which authorizes the contract or transaction, or solely because any such director's or officer's vote is counted for such purpose if: (i) the material facts as to the director's or officer's relationship or interest and as to the contract or transaction are disclosed or are known to the Board of Directors or the committee, and the Board of Directors or committee in good faith authorizes the contract or transaction by the affirmative votes of a majority of the disinterested directors, even though the disinterested directors be less than a quorum; or (ii) the material facts as to the director's or officer's relationship or interest and as to the contract or transaction are disclosed or are known to the stockholders entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the stockholders; or (iii) the contract or transaction is fair as to the Corporation as of the time it is authorized, approved or ratified by the Board of Directors, a committee thereof or the stockholders. Common or interested directors may be counted in determining the presence of a quorum at a meeting of the Board of Directors or of a committee which authorizes such contract or transaction.

ARTICLE IV

OFFICERS

Section 1. General. The officers of the Corporation shall be chosen by the Board of Directors and shall be a President, a Secretary and a Treasurer. The Board of Directors, in its discretion, also may choose a Chair of the Board of Directors (who must be a director) and one or more Vice Presidents, Assistant Secretaries, Assistant Treasurers and other officers. Any number of offices may be held by the same person, unless otherwise prohibited by law, the Certificate of Incorporation or these Bylaws. The officers of the Corporation need not be stockholders of the Corporation nor, except in the case of the Chair of the Board of Directors, need such officers be directors of the Corporation.

Section 2. Election. The Board of Directors, at its first meeting held after each Annual Meeting of Stockholders (or action by written consent of stockholders in lieu of the Annual Meeting of Stockholders), shall elect the officers of the Corporation who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Board of Directors; and each officer of the Corporation shall hold office until such officer's successor is elected and qualified, or until such officer's earlier death, resignation or removal. Any officer elected by the Board of Directors may be removed at any time by the Board of Directors. Any vacancy occurring in any office of the Corporation shall be filled by the Board of Directors. The salaries of all officers of the Corporation shall be fixed by the Board of Directors.

Section 3. Voting Securities Owned by the Corporation. Powers of attorney, proxies, waivers of notice of meeting, consents and other instruments relating to securities owned by the Corporation may be executed in the name of and on behalf of the Corporation by the President or any Vice President or any other officer authorized to do so by the Board of Directors and any such officer may, in the name of and on behalf of the Corporation, take all such action as any such officer may deem advisable to vote in person or by proxy at any meeting of security holders of any corporation or other entity in which the Corporation may own securities and at any such meeting shall possess and may exercise any and all rights and powers incident to the ownership of such securities and which, as the owner thereof, the Corporation might have exercised and possessed if present. The Board of Directors may, by resolution, from time to time confer like powers upon any other person or persons.

Section 4. Chair of the Board of Directors. The Chair of the Board of Directors, if there be one, shall preside at all meetings of the stockholders and of the Board of Directors. The Chair of the Board of Directors shall be the Chief Executive Officer of the Corporation, unless the Board of Directors designates the President as the Chief Executive Officer, and, except where by law the signature of the President is required, the Chair of the Board of Directors shall possess the same power as the President to sign all contracts, certificates and other instruments of the Corporation which may be

authorized by the Board of Directors. During the absence or disability of the President, the Chair of the Board of Directors shall exercise all the powers and discharge all the duties of the President. The Chair of the Board of Directors shall also perform such other duties and may exercise such other powers as may from time to time be assigned by these Bylaws or by the Board of Directors.

Section 5. President. The President shall, subject to the oversight and control of the Board of Directors and, if there be one, the Chair of the Board of Directors, have general supervision of the business of the Corporation and shall see that all orders and resolutions of the Board of Directors are carried into effect. The President shall execute all bonds, mortgages, contracts and other instruments of the Corporation requiring a seal, under the seal of the Corporation, except where required or permitted by law to be otherwise signed and executed and except that the other officers of the Corporation may sign and execute documents when so authorized by these Bylaws, the Board of Directors or the President. In the absence or disability of the Chair of the Board of Directors, or if there be none, the President shall preside at all meetings of the stockholders and, if the President is also a director, the Board of Directors. If there be no Chair of the Board of Directors, or if the Board of Directors shall otherwise designate, the President shall be the Chief Executive Officer of the Corporation. The President shall also perform such other duties and may exercise such other powers as may from time to time be assigned to such officer by these Bylaws or by the Board of Directors.

Section 6. Vice Presidents. At the request of the President or in the President's absence or in the event of the President's inability or refusal to act (and if there be no Chair of the Board of Directors), the Vice President, or the Vice Presidents if there are more than one (in the order designated by the Board of Directors), shall perform the duties of the President, and when so acting, shall have all the powers of and be subject to all the restrictions upon the President. Each Vice President shall perform such other duties and have such other powers as the Board of Directors from time to time may prescribe. If there be no Chair of the Board of Directors and no Vice President, the Board of Directors shall designate the officer of the Corporation who, in the absence of the President or in the event of the inability or

refusal of the President to act, shall perform the duties of the President, and when so acting, shall have all the powers of and be subject to all the restrictions upon the President.

Section 7. Secretary. The Secretary shall attend all meetings of the Board of Directors and all meetings of the stockholders and record all the proceedings thereat in a book or books to be kept for that purpose; the Secretary shall also perform like duties for committees of the Board of Directors when required. The Secretary shall give, or cause to be given, notice of all meetings of the stockholders and special meetings of the Board of Directors, and shall perform such other duties as may be prescribed by the Board of Directors, the Chair of the Board of Directors or the President, under whose supervision the Secretary shall be. If the Secretary shall be unable or shall refuse to cause to be given notice of all meetings of the stockholders and special meetings of the Board of Directors, and if there be no Assistant Secretary, then either the Board of Directors or the President may choose another officer to cause such notice to be given. The Secretary shall have custody of the seal of the Corporation and the Secretary or any Assistant Secretary, if there be one, shall have authority to affix the same to any instrument requiring it and when so affixed, it may be attested by the signature of the Secretary or by the signature of any such Assistant Secretary. The Board of Directors may give general authority to any other officer to affix the seal of the Corporation and to attest to the affixing by such officer's signature. The Secretary shall see that all books, reports, statements, certificates and other documents and records required by law to be kept or filed are properly kept or filed, as the case may be.

Section 8. Treasurer. The Treasurer shall have the custody of the Corporation's funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Corporation and shall deposit all moneys and other valuable effects in the name and to the credit of the Corporation in such depositories as may be designated by the Board of Directors. The Treasurer shall disburse the funds of the Corporation as may be ordered by the Board of Directors or the President, taking proper vouchers for such disbursements, and shall render to the President and the Board of Directors, at its regular meetings, or when the Board of Directors so requires, an account of all

transactions as Treasurer and of the financial condition of the Corporation. If required by the Board of Directors, the Treasurer shall give the Corporation a bond in such sum and with such surety or sureties as shall be satisfactory to the Board of Directors for the faithful performance of the duties of the office of the Treasurer and for the restoration to the Corporation, in case of the Treasurer's death, resignation, retirement or removal from office, of all books, papers, vouchers, money and other property of whatever kind in the Treasurer's possession or under the Treasurer's control belonging to the Corporation.

Section 9. Assistant Secretaries. Assistant Secretaries, if there be any, shall perform such duties and have such powers as from time to time may be assigned to them by the Board of Directors, the President, any Vice President, if there be one, or the Secretary, and in the absence of the Secretary or in the event of the Secretary's inability or refusal to act, shall perform the duties of the Secretary, and when so acting, shall have all the powers of and be subject to all the restrictions upon the Secretary.

Section 10. Assistant Treasurers. Assistant Treasurers, if there be any, shall perform such duties and have such powers as from time to time may be assigned to them by the Board of Directors, the President, any Vice President, if there be one, or the Treasurer, and in the absence of the Treasurer or in the event of the Treasurer's inability or refusal to act, shall perform the duties of the Treasurer, and when so acting, shall have all the powers of and be subject to all the restrictions upon the Treasurer. If required by the Board of Directors, an Assistant Treasurer shall give the Corporation a bond in such sum and with such surety or sureties as shall be satisfactory to the Board of Directors for the faithful performance of the duties of the office of Assistant Treasurer and for the restoration to the Corporation, in case of the Assistant Treasurer's death, resignation, retirement or removal from office, of all books, papers, vouchers, money and other property of whatever kind in the Assistant Treasurer's possession or under the Assistant Treasurer's control belonging to the Corporation.

Section 11. Other Officers. Such other officers as the Board of Directors may choose shall perform such duties and have such powers as from time to time may be assigned to them by the Board of Directors, or such duties and powers which are customary with regard to the respective offices they hold. The Board of Directors may delegate to any other officer of the Corporation the power to choose such other officers and to prescribe their respective duties and powers.

ARTICLE V

STOCK

Section 1. Shares of Stock. The shares of capital stock of the Corporation shall be represented by a certificate, unless and until the Board of Directors of the Corporation adopts a resolution permitting shares to be uncertificated. Every holder of capital stock of the Corporation theretofore represented by certificates shall be entitled to have a certificate for shares of capital stock of the Corporation signed by, or in the name of, the Corporation by any two (2) authorized officers of the Corporation, certifying the number of shares owned by such stockholder in the Corporation. The Corporation shall not have power to issue a certificate in bearer form.

Section 2. Signatures. Any or all of the signatures on a certificate may be a facsimile or any other electronic means. In case any officer, transfer agent or registrar who has signed or whose facsimile or electronic signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if such person were such officer, transfer agent or registrar at the date of issue.

Section 3. Lost Certificates. The Board of Directors may direct a new certificate or uncertificated shares be issued in place of any certificate theretofore issued by the Corporation alleged to have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen or destroyed. When authorizing such issuance of a new certificate or uncertificated shares, the Board of Directors may, in its discretion and as a condition precedent to the

issuance thereof, require the owner of such lost, stolen or destroyed certificate, or such owner's legal representative, to advertise the same in such manner as the Board of Directors shall require or to give the Corporation a bond in such sum as it may direct as indemnity against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate or the issuance of such new certificate or uncertificated shares.

Section 4. Transfers. Stock of the Corporation shall be transferable in the manner prescribed by applicable law and in these Bylaws. Transfers of stock shall be made on the books of the Corporation, and in the case of certificated shares of stock, only by the person named in the certificate or by such person's attorney lawfully constituted in writing and upon the surrender of the certificate therefor, properly endorsed for transfer and payment of all necessary transfer taxes; or, in the case of uncertificated shares of stock, upon receipt of proper transfer instructions from the registered holder of the shares or by such person's attorney lawfully constituted in writing, and upon payment of all necessary transfer taxes and compliance with appropriate procedures for transferring shares in uncertificated form; provided, however, that such surrender and endorsement, compliance or payment of taxes shall not be required in any case in which the officers of the Corporation shall determine to waive such requirement. With respect to certificated shares of stock, every certificate exchanged, returned or surrendered to the Corporation shall be marked "Cancelled," with the date of cancellation, by the Secretary or Assistant Secretary of the Corporation or the transfer agent thereof. No transfer of stock shall be valid as against the Corporation for any purpose until it shall have been entered in the stock records of the Corporation by an entry showing from and to whom transferred.

Section 5. Dividend Record Date. In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which

record date shall be not more than sixty (60) days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

Section 6. Record Owners. The Corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, and to hold liable for calls and assessments a person registered on its books as the owner of shares, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise required by law.

Section 7. Transfer and Registry Agents. The Corporation may from time to time maintain one or more transfer offices or agencies and registry offices or agencies at such place or places as may be determined from time to time by the Board of Directors.

ARTICLE VI

NOTICES

Section 1. Notices. Whenever written notice is required by law, the Certificate of Incorporation or these Bylaws, to be given to any director, member of a committee or stockholder, such notice may be given in writing directed to such director's, committee member's or stockholder's mailing address (or by electronic transmission directed to such director's, committee member's or stockholder's electronic mail address, as applicable) as it appears on the records of the Corporation and shall be given: (a) if mailed, when the notice is deposited in the United States mail, postage prepaid, (b) if delivered by courier service, the earlier of when the notice is received or left at such director's, committee member's or stockholder's address or (c) if given by electronic mail, when directed to such director's, committee member's or stockholder's electronic mail address unless such director, committee member or stockholder has notified the corporation in writing or by electronic transmission of an objection to

receiving notice by electronic mail or such notice is prohibited by the under applicable law, the Certificate of Incorporation or these Bylaws. Without limiting the manner by which notice otherwise may be given effectively to stockholders, but subject to Section 232(e) of the DGCL, any notice to stockholders given by the Corporation under applicable law, the Certificate of Incorporation or these Bylaws shall be effective if given by a form of electronic transmission consented to by the stockholder to whom the notice is given. Any such consent shall be revocable by the stockholder by written notice or electronic transmission to the Corporation. The Corporation may give notice by electronic mail in accordance with the first sentence of this Section 1 without obtaining the consent required by the second sentence of this Section 1. Notice given by electronic transmission, as described above, shall be deemed given: (i) if by facsimile telecommunication, when directed to a number at which the stockholder has consented to receive notice; (ii) if by a posting on an electronic network, together with separate notice to the stockholder of such specific posting, upon the later of (A) such posting and (B) the giving of such separate notice; and (iii) if by any other form of electronic transmission, when directed to the stockholder. Notwithstanding the foregoing, a notice may not be given by an electronic transmission from and after the time that (i) the Corporation is unable to deliver by such electronic transmission two consecutive notices given by the Corporation and (ii) such inability becomes known to the Secretary or an Assistant Secretary of the Corporation or to the transfer agent, or other person responsible for the giving of notice; provided, however, that the inadvertent failure to discover such inability shall not invalidate any meeting or other action.

Section 2. Waivers of Notice. Whenever any notice is required, by applicable law, the Certificate of Incorporation or these Bylaws, to be given to any director, member of a committee or stockholder, a waiver thereof in writing, signed by the person or persons entitled to notice, or a waiver by electronic transmission by the person or persons entitled to notice, whether before or after the time stated therein, shall be deemed equivalent thereto. Attendance of a person at a meeting, present in person or represented by proxy, shall constitute a waiver of notice of such meeting, except where the person attends

the meeting for the express purpose of objecting at the beginning of the meeting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any Annual or Special Meeting of Stockholders or any regular or special meeting of the directors or members of a committee of directors need be specified in any written waiver of notice or any waiver by electronic transmission unless so required by law, the Certificate of Incorporation or these Bylaws.

ARTICLE VII
GENERAL PROVISIONS

Section 1. Dividends. Dividends upon the capital stock of the Corporation, subject to the requirements of the DGCL and the provisions of the Certificate of Incorporation, if any, may be declared by the Board of Directors at any regular or special meeting of the Board of Directors (or any action by written consent in lieu thereof in accordance with Section 8 of Article III hereof), and may be paid in cash, in property, or in shares of the Corporation's capital stock. Before payment of any dividend, there may be set aside out of any funds of the Corporation available for dividends such sum or sums as the Board of Directors from time to time, in its absolute discretion, deems proper as a reserve or reserves to meet contingencies, or for purchasing any of the shares of capital stock, warrants, rights, options, bonds, debentures, notes, scrip or other securities or evidences of indebtedness of the Corporation, or for equalizing dividends, or for repairing or maintaining any property of the Corporation, or for any proper purpose, and the Board of Directors may modify or abolish any such reserve.

Section 2. Disbursements. All checks or demands for money and notes of the Corporation shall be signed by such officer or officers or such other person or persons as the Board of Directors may from time to time designate.

Section 3. Fiscal Year. The fiscal year of the Corporation shall be fixed by resolution of the Board of Directors.

Section 4. Corporate Seal. The corporate seal shall have inscribed thereon the name of the Corporation, the year of its organization and the words “Corporate Seal, Delaware”. The seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

ARTICLE VIII

INDEMNIFICATION

Section 1. Actions, Suits and Proceedings Other than by or in the Right of the Corporation. The Corporation shall indemnify each person who was or is a party or threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation) by reason of the fact that he or she is or was, or has agreed to become, a director or officer of the Corporation, or is or was serving, or has agreed to serve, at the request of the Corporation, as a director, officer, partner, employee or trustee of, or in a similar capacity with, another corporation, partnership, joint venture, trust or other enterprise (including any employee benefit plan) (all such persons being referred to hereafter as an “Indemnitee”), or by reason of any action alleged to have been taken or omitted in such capacity, against all expenses (including attorneys’ fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by or on behalf of Indemnitee in connection with such action, suit or proceeding and any appeal therefrom, if Indemnitee acted in good faith and in a manner which Indemnitee reasonably believed to be in, or not opposed to, the best interests of the Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that Indemnitee did not act in good faith and in a manner which Indemnitee reasonably believed to be in, or not opposed to, the best

interests of the Corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

Section 2. Actions or Suits by or in the Right of the Corporation. The Corporation shall indemnify any Indemnitee who was or is a party to or threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that Indemnitee is or was, or has agreed to become, a director or officer of the Corporation, or is or was serving, or has agreed to serve, at the request of the Corporation, as a director, officer, partner, employee or trustee of, or in a similar capacity with, another corporation, partnership, joint venture, trust or other enterprise (including any employee benefit plan), or by reason of any action alleged to have been taken or omitted in such capacity, against all expenses (including attorneys' fees) and, to the extent permitted by law, amounts paid in settlement actually and reasonably incurred by or on behalf of Indemnitee in connection with such action, suit or proceeding and any appeal therefrom, if Indemnitee acted in good faith and in a manner which Indemnitee reasonably believed to be in, or not opposed to, the best interests of the Corporation, except that no indemnification shall be made under this Section 2 in respect of any claim, issue or matter as to which Indemnitee shall have been adjudged to be liable to the Corporation, unless, and only to the extent, that the Court of Chancery of Delaware shall determine upon application that, despite the adjudication of such liability but in view of all the circumstances of the case, Indemnitee is fairly and reasonably entitled to indemnity for such expenses (including attorneys' fees) which the Court of Chancery of Delaware shall deem proper.

Section 3. Indemnification for Expenses of Successful Party. Notwithstanding any other provisions of this Article VIII, to the extent that an Indemnitee has been successful, on the merits or otherwise, in defense of any action, suit or proceeding referred to in Sections 1 and 2 of this Article VIII, or in defense of any claim, issue or matter therein, or on appeal from any such action, suit or proceeding, Indemnitee shall be indemnified against all expenses (including attorneys' fees) actually and reasonably incurred by or on behalf of Indemnitee in connection therewith. Without limiting the foregoing, if any

action, suit or proceeding is disposed of, on the merits or otherwise (including a disposition without prejudice), without (i) the disposition being adverse to Indemnitee, (ii) an adjudication that Indemnitee was liable to the Corporation, (iii) a plea of guilty or nolo contendere by Indemnitee, (iv) an adjudication that Indemnitee did not act in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Corporation, and (v) with respect to any criminal proceeding, an adjudication that Indemnitee had reasonable cause to believe his conduct was unlawful, Indemnitee shall be considered for the purposes hereof to have been wholly successful with respect thereto.

Section 4. Notification and Defense of Claim. As a condition precedent to an Indemnitee's right to be indemnified, such Indemnitee must notify the Corporation in writing as soon as practicable of any action, suit, proceeding or investigation involving such Indemnitee for which indemnity will or could be sought. With respect to any action, suit, proceeding or investigation of which the Corporation is so notified, the Corporation will be entitled to participate therein at its own expense and/or to assume the defense thereof at its own expense, with legal counsel reasonably acceptable to Indemnitee. After notice from the Corporation to Indemnitee of its election so to assume such defense, the Corporation shall not be liable to Indemnitee for any legal or other expenses subsequently incurred by Indemnitee in connection with such action, suit, proceeding or investigation, other than as provided below in this Section 4. Indemnitee shall have the right to employ his or her own counsel in connection with such action, suit, proceeding or investigation, but the fees and expenses of such counsel incurred after notice from the Corporation of its assumption of the defense thereof shall be at the expense of Indemnitee unless (i) the employment of counsel by Indemnitee has been authorized by the Corporation, (ii) counsel to Indemnitee shall have reasonably concluded that there may be a conflict of interest or position on any significant issue between the Corporation and Indemnitee in the conduct of the defense of such action, suit, proceeding or investigation or (iii) the Corporation shall not in fact have employed counsel to assume the defense of such action, suit, proceeding or investigation, in each of which cases the fees and expenses of counsel for Indemnitee shall be at the expense of the Corporation, except as otherwise

expressly provided by this Article. The Corporation shall not be entitled, without the consent of Indemnitee, to assume the defense of any claim brought by or in the right of the Corporation or as to which counsel for Indemnitee shall have reasonably made the conclusion provided for in clause (ii) above. The Corporation shall not be required to indemnify Indemnitee under this Article VIII for any amounts paid in settlement of any action, suit, proceeding or investigation effected without its written consent. The Corporation shall not settle any action, suit, proceeding or investigation in any manner which would impose any penalty or limitation on Indemnitee without Indemnitee's written consent. Neither the Corporation nor Indemnitee will unreasonably withhold or delay its consent to any proposed settlement.

Section 5. Advance of Expenses. Subject to the provisions of Section 6 of this Article VIII, in the event of any action, suit, proceeding or investigation of which the Corporation receives notice under this Article, any expenses (including attorneys' fees) incurred by or on behalf of Indemnitee in defending an action, suit, proceeding or investigation or any appeal therefrom shall be paid by the Corporation in advance of the final disposition of such matter; provided, however, that the payment of such expenses incurred by or on behalf of Indemnitee in advance of the final disposition of such matter shall be made only upon receipt of an undertaking by or on behalf of Indemnitee to repay all amounts so advanced in the event that it shall ultimately be determined that Indemnitee is not entitled to be indemnified by the Corporation as authorized in this Article; and further provided that no such advancement of expenses shall be made under this Article VIII if it is determined (in the manner described in Section 6) that (i) Indemnitee did not act in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the Corporation, or (ii) with respect to any criminal action or proceeding, Indemnitee had reasonable cause to believe his conduct was unlawful. Such undertaking shall be accepted without reference to the financial ability of Indemnitee to make such repayment.

Section 6. Procedure for Indemnification. In order to obtain indemnification or advancement of expenses pursuant to Section 1, 2, 3 or 5 of this Article VIII, an Indemnitee shall submit to the Corporation a written request. Any such advancement of expenses shall be made promptly, and in any event within 60 days after receipt by the Corporation of the written request of Indemnitee, unless (i) the Corporation has assumed the defense pursuant to Section 4 of this Article VIII (and none of the circumstances described in Section 4 of this Article VIII that would nonetheless entitle the Indemnitee to indemnification for the fees and expenses of separate counsel have occurred) or (ii) the Corporation determines within such 60-day period that Indemnitee did not meet the applicable standard of conduct set forth in Section 1, 2 or 5 of this Article VIII, as the case may be. Any such indemnification, unless ordered by a court, shall be made with respect to requests under Section 1 or 2 only as authorized in the specific case upon a determination by the Corporation that the indemnification of Indemnitee is proper because Indemnitee has met the applicable standard of conduct set forth in Section 1 or 2, as the case may be. Such determination shall be made in each instance (a) by a majority vote of the directors of the Corporation consisting of persons who are not at that time parties to the action, suit or proceeding in question (“disinterested directors”), whether or not a quorum, (b) by a committee of disinterested directors designated by majority vote of disinterested directors, whether or not a quorum, (c) if there are no disinterested directors, or if the disinterested directors so direct, by independent legal counsel (who may, to the extent permitted by law, be regular legal counsel to the Corporation) in a written opinion, or (d) by the stockholders of the Corporation.

Section 7. Remedies. The right to indemnification or advancement of expenses as granted by this Article shall be enforceable by Indemnitee in any court of competent jurisdiction. Neither the failure of the Corporation to have made a determination prior to the commencement of such action that indemnification is proper in the circumstances because Indemnitee has met the applicable standard of conduct, nor an actual determination by the Corporation pursuant to Section 6 of this Article VIII that Indemnitee has not met such applicable standard of conduct, shall be a defense to the action or create a

presumption that Indemnitee has not met the applicable standard of conduct. Indemnitee's expenses (including attorneys' fees) reasonably incurred in connection with successfully establishing Indemnitee's right to indemnification, in whole or in part, in any such proceeding shall also be indemnified by the Corporation.

Section 8. Limitations. Notwithstanding anything to the contrary in this Article, except as set forth in Section 7 of this Article VIII, the Corporation shall not indemnify an Indemnitee pursuant to this Article VIII in connection with a proceeding (or part thereof) initiated by such Indemnitee unless the initiation thereof was approved by the Board of Directors of the Corporation. Notwithstanding anything to the contrary in this Article, the Corporation shall not indemnify an Indemnitee to the extent such Indemnitee is reimbursed from the proceeds of insurance, and in the event the Corporation makes any indemnification payments to an Indemnitee and such Indemnitee is subsequently reimbursed from the proceeds of insurance, such Indemnitee shall promptly refund indemnification payments to the Corporation to the extent of such insurance reimbursement.

Section 9. Subsequent Amendment. No amendment, termination or repeal of this Article or of the relevant provisions of the DGCL or any other applicable laws shall affect or diminish in any way the rights of any Indemnitee to indemnification under the provisions hereof with respect to any action, suit, proceeding or investigation arising out of or relating to any actions, transactions or facts occurring prior to the final adoption of such amendment, termination or repeal.

Section 10. Other Rights. The indemnification and advancement of expenses provided by this Article shall not be deemed exclusive of any other rights to which an Indemnitee seeking indemnification or advancement of expenses may be entitled under any law (common or statutory), agreement or vote of stockholders or disinterested directors or otherwise, both as to action in Indemnitee's official capacity and as to action in any other capacity while holding office for the Corporation, and shall continue as to an Indemnitee who has ceased to be a director or officer, and shall inure to the benefit of

the estate, heirs, executors and administrators of Indemnitee. Nothing contained in this Article shall be deemed to prohibit, and the Corporation is specifically authorized to enter into, agreements with officers and directors providing indemnification rights and procedures different from those set forth in this Article. In addition, the Corporation may, to the extent authorized from time to time by its Board of Directors, grant indemnification rights to other employees or agents of the Corporation or other persons serving the Corporation and such rights may be equivalent to, or greater or less than, those set forth in this Article.

Section 11. Partial Indemnification. If an Indemnitee is entitled under any provision of this Article to indemnification by the Corporation for some or a portion of the expenses (including attorneys' fees), judgments, fines or amounts paid in settlement actually and reasonably incurred by or on behalf of Indemnitee in connection with any action, suit, proceeding or investigation and any appeal therefrom but not, however, for the total amount thereof, the Corporation shall nevertheless indemnify Indemnitee for the portion of such expenses (including attorneys' fees), judgments, fines or amounts paid in settlement to which Indemnitee is entitled.

Section 12. Insurance. The Corporation may purchase and maintain insurance, at its expense, to protect itself and any director, officer, employee or agent of the Corporation or another corporation, partnership, joint venture, trust or other enterprise (including any employee benefit plan) against any expense, liability or loss incurred by him in any such capacity, or arising out of his status as such, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the DGCL.

Section 13. Savings Clause. If this Article or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the Corporation shall nevertheless indemnify each Indemnitee as to any expenses (including attorneys' fees), judgments, fines and amounts paid in

settlement in connection with any action, suit, proceeding or investigation, whether civil, criminal or administrative, including an action by or in the right of the Corporation, to the fullest extent permitted by any applicable portion of this Article that shall not have been invalidated and to the fullest extent permitted by applicable law.

Section 14. Definitions. Terms used herein and defined in Section 145(h) and Section 145(i) of the DGCL shall have the respective meanings assigned to such terms in such Section 145(h) and Section 145(i).

ARTICLE IX

FORUM FOR ADJUDICATION OF CERTAIN DISPUTES

Section 1. Forum for Adjudication of Certain Disputes. Unless the Corporation consents in writing to the selection of an alternative forum (an “Alternative Forum Consent”), the Court of Chancery of the State of Delaware shall be the sole and exclusive forum for (i) any derivative action or proceeding brought on behalf of the Corporation, (ii) any action asserting a claim of breach of a duty (including any fiduciary duty) owed by any current or former director, officer, stockholder, employee or agent of the Corporation to the Corporation or the Corporation’s stockholders, (iii) any action asserting a claim against the Corporation or any current or former director, officer, stockholder, employee or agent of the Corporation arising out of or relating to any provision of the DGCL, the Certificate of Incorporation or these Bylaws (each, as in effect from time to time), or (iv) any action asserting a claim against the Corporation or any current or former director, officer, stockholder, employee or agent of the Corporation governed by the internal affairs doctrine of the State of Delaware; provided, however, that, in the event that the Court of Chancery of the State of Delaware lacks subject matter jurisdiction over any such action or proceeding, the sole and exclusive forum for such action or proceeding shall be another state or federal court located within the State of Delaware, in each such case, unless the Court of Chancery (or such other state or federal court located within the State of Delaware, as applicable) has dismissed a prior action by the same plaintiff asserting the same claims because such court lacked personal jurisdiction over an

indispensable party named as a defendant therein. Unless the Corporation gives an Alternative Forum Consent, the federal district courts of the United States of America shall, to the fullest extent permitted by law, be the sole and exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act of 1933, as amended. Failure to enforce the foregoing provisions would cause the Corporation irreparable harm and the Corporation shall be entitled to equitable relief, including injunctive relief and specific performance, to enforce the foregoing provisions. Any person or entity purchasing, otherwise acquiring or holding any interest in shares of capital stock of the Corporation shall be deemed to have notice of and consented to the provisions of this Section 1. The existence of any prior Alternative Forum Consent shall not act as a waiver of the Corporation's ongoing consent right as set forth above in this Section 1 with respect to any current or future actions or claims.

ARTICLE X

AMENDMENTS

Section 1. Amendments. These Bylaws may be altered, amended or repealed, in whole or in part, or new Bylaws may be adopted by the stockholders or by the Board of Directors; provided, however, that notice of such alteration, amendment, repeal or adoption of new Bylaws be contained in the notice of a meeting of the stockholders or Board of Directors, as the case may be, called for the purpose of acting upon any proposed alteration, amendment, repeal or adoption of new Bylaws. All such alterations, amendments, repeals or adoptions of new Bylaws must be approved by either the holders of a majority of the outstanding capital stock entitled to vote thereon or by a majority of the entire Board of Directors then in office. Any amendment to these Bylaws adopted by stockholders which specifies the votes that shall be necessary for the election of directors shall not be further amended or repealed by the Board of Directors.

Section 2. Entire Board of Directors. As used in this Article X and in these Bylaws generally, the term "entire Board of Directors" means the total number of directors which the Corporation would have if there were no vacancies.

* * *

Adopted as of: February 11, 2026

CONTINGENT VALUE RIGHTS AGREEMENT,

dated as of February 11, 2026, by and among

TreeHouse Foods, Inc., as the Company,

**solely with respect to Sections 2.01, 2.02(g), 2.05(b), 2.05(c), 5.02, 7.03 and 7.05 through 7.14, Industrial F&B Investments II,
Inc.,
as Parent,**

Kristy N. Waterman and Craig Donaldson,

as

the initial Committee Members, and

COMPUTERSHARE INC. and COMPUTERSHARE TRUST COMPANY, N.A.

acting jointly as Rights Agent

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CONTINGENT VALUE RIGHTS

AGREEMENT (this “Agreement”), dated as of February 11, 2026, by and among TreeHouse Foods, Inc., a Delaware corporation (the “Company”), Kristy N. Waterman and Craig Donaldson, as the initial Committee Members, and, Computershare Inc., a Delaware corporation (“Computershare”) and its affiliate, Computershare Trust Company, N.A., a federally chartered trust company (“Computershare Trust Company”), acting jointly with Computershare, as rights agent (the “Rights Agent”), and solely with respect to Sections 2.01, 2.02(g), 2.05(b), 2.05(c), 5.02, 7.03 and 7.05 through 7.14, Industrial F&B Investments II, Inc., a Delaware corporation (“Parent”).

WITNESSETH:

WHEREAS, Parent, Industrial F&B Investments III, Inc., a Delaware corporation and a wholly owned Subsidiary of Parent (“Merger Sub”), and the Company, have entered into an Agreement and Plan of Merger, dated as of November 10, 2025 (as may be amended and restated from time to time, the “Merger Agreement”), pursuant to which Merger Sub will merge with and into the Company (the “Merger”), with the Company surviving the Merger as a Subsidiary of Parent;

WHEREAS, pursuant to the Merger Agreement, in the Merger, Parent has agreed to provide to the Company’s stockholders and holders of Company Equity Awards the right to receive contingent cash payments, subject to the terms and conditions set forth herein (each right, a “CVR” and, collectively, the “CVRs”);

WHEREAS, on the date hereof the board of directors of the Company has appointed a CVR committee (the “Committee”) to implement the provisions, and perform the services, of this Agreement, to be composed of three members (“Committee Members”): (i) the initial Holder Committee Member, (ii) the initial Parent Committee Member and (iii) the initial Independent Committee Member;

WHEREAS, on the date hereof the board of directors of the Company has appointed Kristy N. Waterman as the initial Holder Committee Member and Craig Donaldson as the initial Parent Committee Member;

WHEREAS, discussions are currently still ongoing regarding the identification and selection of the initial Independent Committee Member;

WHEREAS, pending the appointment of the initial Independent Committee Member, the Committee may act only with the concurrence of both the Holder Committee Member and the Parent Committee Member;

WHEREAS, as soon as reasonably practicable, but in no event later than 30 days after the Effective Time, in accordance with the terms and conditions set forth in this Agreement, the Holder Committee Member and the Parent Committee Member will jointly select the initial Independent Committee Member;

WHEREAS, the Company and the Committee desire the Pursuit of the Claims to be managed, administered and controlled by the Committee and the Company in accordance with this Agreement; and

WHEREAS, the Company and the Committee desire that the Rights Agent act as Company’s agent for the purpose of effecting the distributions of the CVRs to the Holders and performing the other services described in this Agreement.

NOW, THEREFORE, in consideration of the premises and mutual agreements herein, the Company, Parent, the initial Committee Members and the Rights Agent hereby agree as follows:

ARTICLE I Contingent Value Rights

Section 1.01 *CVRs*. The CVRs represent the contractual rights of Holders to receive contingent cash payments pursuant to the Merger Agreement and this Agreement. It is acknowledged and agreed that a CVR will not constitute a security of the Parent, any constituent company to the Merger or any of their respective Affiliates.

Section 1.02 *No Certificates*. The CVRs will be issued in book-entry form and shall not be evidenced by a certificate or other instrument.

Section 1.03 *Registration by the Rights Agent.*

(a) Subject to the receipt by the Rights Agent of the information and instructions described in Section 3.07, the Rights Agent will keep a register (the “CVR Register”) for the purpose of (i) identifying the Holders of the CVRs, and (ii) registering CVRs and Permitted Transfers thereof. The CVR Register will initially show (i) with respect to holders of the Company’s shares of common stock, par value \$0.01 per share (“Company Common Stock”), who hold such shares in book-entry form through DTC immediately prior to the Effective Time, one (1) position for Cede & Co. (as nominee of DTC) representing all such shares, and (ii) with respect to (A) holders of shares of Company Common Stock who hold such shares in certificated form immediately prior to the Effective Time, upon delivery to the Rights Agent by each such holder of the applicable stock certificates, together with a validly executed letter of transmittal, in accordance with the Merger Agreement, and holders of shares of Company Common Stock who hold such shares in book-entry form through the Company immediately prior to Effective Time, and (B) holders of Company Equity Awards, in each case of clauses (A) and (B), the applicable number of CVRs to which each such holder is entitled pursuant to the Merger Agreement (other than, in the case of the foregoing clauses (i) and (ii) (A), those who have perfected their appraisal rights in accordance with Section 262 of the General Corporation Law of the State of Delaware). The Rights Agent will have no responsibility whatsoever directly to the street name holders with respect to transfers of CVRs. With respect to any payments to be made under Article IV below, the Rights Agent will accomplish the payment to any former street name holders of shares of Company Common Stock by sending one (1) lump sum payment to DTC. The Rights Agent will have no responsibilities whatsoever with regard to the distribution of payments by DTC to such street name holders.

(b) Subject to the restrictions on transferability set forth in Section 1.05, every request made to the Rights Agent to transfer a CVR must be in writing and accompanied by a written instrument of transfer in form reasonably satisfactory to the Rights Agent pursuant to its guidelines, which may include a guaranty of signature by an “eligible guarantor institution” that is a member or participant in the Securities Transfer Agents Medallion Program, duly executed by the Holder thereof, the Holder’s attorney duly authorized in writing, the Holder’s personal representative or the Holder’s survivor (with written documentation evidencing such Person’s status as the Holder’s survivor), as applicable, and setting forth in reasonable detail the circumstances relating to the transfer. Upon receipt of such written notice and proper validation of the identity of such Holder, the Rights Agent will, subject to its reasonable determination that the transfer instrument is in proper form and the transfer otherwise complies with the other terms and conditions of this Agreement, register the transfer of the CVRs in the CVR Register. As a condition of such transfer, the Company and the Rights Agent may require a transferring Holder or its transferee to pay to the applicable Governmental Entity any transfer, stamp, documentary, registration or other similar Tax or governmental charge that is imposed in connection with any such registration of transfer. The Rights Agent shall have no duty or obligation to take any action under any section of this Agreement that requires the payment by a Holder of a CVR of applicable Taxes or charges unless and until the Rights Agent is satisfied that all such Taxes or charges have been paid or that such Taxes or charges are not applicable. All duly transferred CVRs registered in the CVR Register will be the valid obligations of the Company and will entitle the transferee to the same benefits and rights under this Agreement as those held immediately prior to the transfer by the transferor. No transfer of a CVR will be valid until registered in the CVR Register in accordance with this Agreement.

(c) A Holder may make a written request to the Rights Agent to change such Holder’s address of record on the CVR Register. The written request must be duly executed by the Holder. Upon receipt of such written request by the Rights Agent, the Rights Agent shall, subject to its reasonable determination that the request is in proper form, promptly record the change of address on the CVR Register. The Rights Agent shall promptly provide a copy of the CVR Register to the Company upon request.

Section 1.04 *Rights of CVR Holder.*

(a) Nothing contained in this Agreement shall be construed as conferring upon any Holder, by virtue of being a Holder of a CVR, the right to dividends or the right to vote or to consent or to receive notice as stockholders in respect of the meetings of stockholders or the election of directors of the Company or any other matter, or any rights of any kind or nature whatsoever as a stockholder of the Company, either at law or in equity. The CVRs will not represent any equity or ownership interest in Parent, any constituent company to the Merger or any of their respective Affiliates. The rights of a Holder are limited to those expressed in this Agreement. Notwithstanding anything herein or in the Merger Agreement to the contrary, none of Parent, the Company or any of

their respective Subsidiaries or representatives shall have any liability, responsibility or obligation of any kind to any Holder in their capacity as such on any basis (including in contract, tort, under federal or state securities law or otherwise) with respect to, arising out of, or relating to, this Agreement, the CVRs or the Claims and the Pursuit thereof, except to the extent this Agreement expressly requires the payment of any CVR Payment Amount to the Holders and except to the extent otherwise expressly provided for in this Agreement.

(b) Each Holder, by virtue of the approval of the Merger Agreement and/or receipt of the Merger Consideration (as defined therein) and/or acceptance of a CVR, and without any further action of the Holder or the Company, agrees that such Holder will not challenge or contest any action, inaction, determination or decision of the Committee, and its members, or the authority or power of the Committee, and its members, and will not threaten, bring, commence, institute, maintain, prosecute or voluntarily aid any action, which challenges the validity of or seeks to enjoin the operation of any provision of this Agreement.

(c) None of the Rights Agent or the Parent, its board of directors and its officers, employees and Affiliates, including the Company, any of its or their directors, officers or employees after the Merger, nor any Committee Member, will be deemed to have any fiduciary or similar duties to any Holder by virtue of this Agreement.

(d) It is hereby acknowledged and agreed that the CVRs and the possibility to receive any payment hereunder with respect thereto are highly speculative and subject to numerous factors outside of Parent's or the Company's control, and there is no assurance that Holders will receive any payments under this Agreement or in connection with the CVRs. The parties acknowledge that it is possible that there will not be any CVR Proceeds. It is acknowledged and agreed that Section 1.04(b), Section 1.04(c), and this Section 1.04(d) are essential and material terms of this Agreement.

Section 1.05 Non-transferability. The CVRs may not be sold, assigned, transferred, pledged, encumbered or in any other manner transferred or disposed of, in whole or in part, directly or indirectly, other than through a Permitted Transfer. Any attempted sale, assignment, transfer, pledge, encumbrance or disposition of CVRs, in whole or in part, in violation of this Section 1.05 shall be void *ab initio* and of no effect. In addition, each Holder, by virtue of its acceptance of a CVR, shall be deemed to have agreed to not facilitate or recognize any attempt by any beneficial owner of such CVR, including any former street holder of Company Common Stock or any broker, dealer, custodian bank or other nominee of such a street holder to sell, assign, transfer, pledge, encumber or in any other manner transfer or dispose of, in whole or in part, directly or indirectly, an interest in such CVR other than through a Permitted Transfer. A "Permitted Transfer" shall mean (a) a transfer of a CVR upon death of a Holder by will or intestacy, (b) a transfer by instrument to a testamentary trust in which the CVR (or any interest therein) is to be passed to beneficiaries upon the death of the trustee, (c) a transfer of a CVR pursuant to a court order of a court of competent jurisdiction (such as in connection with divorce, bankruptcy or liquidation), (d) a transfer made by operation of law (such as a merger) or without consideration in connection with the dissolution, liquidation or termination of any corporation, limited liability company, partnership or other entity, (e) if a Holder is a corporation, limited liability company, partnership or other entity, a distribution by the transferring corporation, limited liability company, partnership or other entity to its stockholders, members or partners, as applicable (provided that (i) such distribution does not subject the CVRs to a requirement of registration under the Securities Act of 1933, as amended (the "Securities Act"), or the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and (ii) any distribution pursuant to this clause (e) of Section 1.05 shall be void *ab initio* and of no effect if such distribution subjects the CVRs to a requirement of registration under the Securities Act or the Exchange Act), (f) in the case of CVRs held in book-entry or other similar nominee form, from a nominee to a beneficial owner thereof and, if applicable, through an intermediary, to the extent allowable by DTC, or (g) as provided in Section 1.06; provided that, with respect to a Holder of an Equity Award CVR, a Permitted Transfer shall be limited to a transfer described in clause (a) above; provided, further, that any such transferred CVR shall remain subject to the terms and conditions of this Agreement, including this Section 1.05.

Section 1.06 Ability to Renounce and Abandon CVR. A Holder may at any time, at such Holder's option, renounce its rights under this Agreement and abandon all of such Holder's remaining rights in a CVR (the "Abandoned CVRs") by transferring such Abandoned CVRs to the Company without consideration therefor. Such Holder shall notify the Company of such irrevocable renouncement and abandonment by providing written notice with respect thereto, which notice shall include the name of such Holder and the number of Abandoned CVRs such Holder is entitled to and abandoning at such time. The Company shall notify the Rights Agent of such

renouncement and abandonment and provide instructions regarding the Abandoned CVRs. Any Abandoned CVRs shall be automatically deemed extinguished and no longer outstanding for the purpose of this Agreement. Nothing in this Agreement shall prohibit the Company or any of its Affiliates from offering to acquire or acquiring any CVRs for consideration from the Holders (the “Acquired CVRs”), in its sole discretion; provided that any such acquisition of Equity Award CVRs shall be done in a manner that is compliant with the requirements of Section 409A of the Code. Any Acquired CVRs shall be registered in the name of the Company or any of its Affiliates in accordance with Section 1.03(a). Any Holder who renounced and abandoned such Abandoned CVRs and any Holder from whom the Company or any of its Affiliates acquired such Acquired CVRs, as applicable, shall have no rights hereunder with respect to such CVRs.

Section 1.07 Tax Treatment. For U.S. federal and applicable state and local income Tax purposes, except to the extent that any portion of any CVR Payment Amount is required to be treated as imputed interest under the applicable Tax Law, the parties hereto intend to treat (a) the CVRs for all U.S. federal and applicable state and local income Tax purposes as additional consideration for or in respect of the Company Common Stock pursuant to the Merger Agreement, with a value reasonably determined by the Company, and (b) CVR Payment Amounts received in respect of such CVRs as an amount realized on the disposition of the applicable CVRs, and in each case, none of the parties hereto will take any position to the contrary on any Tax Return, any other filing with a Governmental Authority related to Taxes or for other Tax purposes except as otherwise required by a “determination” within the meaning of Section 1313(a) of the Code (or similar determination under applicable state or local Law) or a change in Law after the date hereof.

ARTICLE II CVR COMMITTEE

Section 2.01 Establishment.

(a) Each Holder, by virtue of its acceptance of a CVR, shall be deemed to have consented and agreed to (i) the establishment of the Committee, consisting of three Committee Members and having the powers, authority and rights set forth in this Agreement, (ii) the appointment of Kristy N. Waterman as the initial Committee Member selected by the Company prior to the Effective Time on behalf of the Holders (the initial “Holder Committee Member”), (iii) the appointment of Craig Donaldson as the initial Committee Member selected by the Parent prior to the Effective Time (the initial “Parent Committee Member”), (iv) the appointment of an individual as the initial independent Committee Member to be jointly selected by the initial Holder Committee Member and the initial Parent Committee Member after the Effective Time pursuant to Section 2.01(b) below (the initial “Independent Committee Member”) and (v) the appointment of any successor Committee Member pursuant to Section 2.05.

(b) As soon as reasonably practicable, but in no event later than 30 days after the Effective Time, the Holder Committee Member and the Parent Committee Member shall jointly select the initial Independent Committee Member. If, within 30 days of the Effective Time, the initial Independent Committee Member shall not have been selected in the manner described in this Section 2.01(b), either the Holder Committee Member or the Parent Committee Member may petition any court of competent jurisdiction for the selection of an initial Independent Committee Member. The board of directors of the Company shall then appoint the individual so selected to serve as the initial Independent Committee Member. The initial Independent Committee Member appointed under this Section 2.01(b) shall execute, acknowledge and deliver to the Company and the Rights Agent a joinder agreement in the form and substance attached hereto as Exhibit A (a “Joinder Agreement”), and thereupon such initial Independent Committee Member shall be vested with the same powers, rights, duties and responsibilities as if he or she had been named as the initial Independent Committee Member at the Effective Time without further act or deed.

Section 2.02 Authority.

(a) The Committee shall have full power and authority, and shall use commercially reasonable efforts, to prosecute, appeal, negotiate, resolve, settle, compromise or otherwise pursue or defend any Claims, in whole or in part, on behalf and in the name of the Company and its Subsidiaries, and in accordance with the provisions of this Agreement, including by litigation in trial or appellate courts, arbitration, alternative dispute resolution, mediation, negotiation, settlement or compromise (collectively, the “Pursuit” of Claims) and, without limiting the generality of

the foregoing, the Committee shall have full power and authority to, subject to Section 2.02(e), initiate any Claims or defend any counterclaims (including determining the timing thereof and the strategy therefor) arising out of, or in connection with, the KGM Litigation, including, but not limited to, claims relating to (i) any potentially available insurance proceeds recoverable because of such litigation, including, but not limited to, insurance proceeds recoverable because of legal counsel's malpractice with respect to such litigation, or (ii) any funds recovered or obtained by a Governmental Authority that may be available as restitution, disgorgement or compensation with respect to the KGM Litigation (any of the foregoing, the "Claims"). Without limiting the generality of the foregoing, the Committee shall have the power and authority to (i) direct and supervise all matters involving litigation of any Claims (including trial strategy and planning, appellate strategy and settlement strategy in accordance with this Agreement), (ii) appear before and conduct affairs with arbitrators, mediators and other such professionals on behalf and in the name of the Company necessary or appropriate to enable the Committee to Pursue any Claims, (iii) appear in court and file pleadings and execute any documents on behalf and in the name of the Company necessary or appropriate to enable the Committee to Pursue any Claims, (iv) agree to the settlement or compromise of any Claim, subject to the consent right set forth in Section 3.04, (v) in the event that the Company is awarded any judgment on account of the Claims by a court of competent jurisdiction, attach and perfect a lien in the name of the Company to secure the amount of such judgment, and (vi) incur any Claims Expenses that the Committee deems necessary or appropriate in Pursuit of the Claims, and the Company agrees to pay all such Claims Expenses that the Committee may incur, subject, as applicable, to the Aggregate Cap. The Committee shall (i) maintain, and deliver to the Company upon request at any time, all financial or other documentation reasonably necessary or appropriate to sufficiently support any Claims Expenses so incurred and (ii) in the event that the Company is awarded any judgment on account of the Claims by a court of competent jurisdiction, promptly take any and actions necessary to attach and perfect a lien in the name of the Company to secure the amount of such judgment.

(b) In exercising its powers and authority, and in carrying out the services under this Agreement, including the use of commercially reasonable efforts for the Pursuit of the Claims, the Committee shall (i) duly consider and take into account the advice of the outside legal counsel, and (ii) at all times take into reasonable account the interests of the Company with a view to avoiding prejudice to its business, reputation and commercial relationships.

(c) Recognizing that the Committee will need to provide information relating to the KGM Litigation to and receive legal advice from outside legal counsel, and recognizing that the Committee shares common interests in the KGM Litigation with the Company (including common interests with the Holders), at the terms and conditions of this Agreement, it is the parties' intent that the Committee shall represent the Company in the KGM Litigation and that no exchange of information with or by the Committee shall constitute a waiver of any applicable privilege. With respect to the KGM Litigation, the Committee shall have authority, concurrent with the Company, over the Company's attorney-client privilege.

(d) Subject to Section 2.02, the Committee shall have full power and authority, in the Committee's sole discretion, to withdraw all or part of any Claims during the Term and to terminate the Pursuit thereof at any time if the Committee reasonably determines in good faith, taking into account the advice of the outside legal counsel, that (i) the aggregate amount of Claims Expenses incurred from the Effective Time, together with the Claims Expenses reasonably expected to be incurred, are reasonably likely to exceed the Litigation Proceeds reasonably likely to still be collected, or (ii) the reasonably likely aggregate monetary loss resulting or connected with any counterclaim brought against the Company in connection with the KGM Litigation is reasonably likely to exceed the Litigation Proceeds reasonably likely to still be collected.

(e) The Committee shall have full power and authority, in the Committee's sole discretion, to commence, during the Term, any new Claims at any time if the Committee reasonably determines in good faith, taking into account the advice of the outside legal counsel, that the aggregate amount of Claims Expenses incurred from the Effective Time, together with the Claims Expenses reasonably expected to be incurred (including those related to such a new Claim), are reasonably likely not to exceed the Litigation Proceeds reasonably likely to still be collected. For the avoidance of doubt, the Committee shall not have any power or authority to commence any new claims, not otherwise related to existing proceedings in connection with the KGM Litigation.

(f) The Committee shall have full power and authority to retain advisors, including counsel, accountants, financial advisors, experts, consultants, investigators and other agents (collectively, "Advisors"), in connection with the Pursuit of Claims or the withdrawal or termination thereof, including such power and authority

to (i) direct and supervise all such Advisors and (ii) determine the amount and method of compensation to be paid to such Advisors (including the settlement of any disputes regarding such compensation).

(g) The Committee shall have full power and authority to take such action as reasonably necessary or appropriate to enforce the obligations of Parent (under Section 7.14) and of the Company under this Agreement, including the right to an injunction or injunctions to prevent breaches or threatened breaches of this Agreement and to enforce specifically the performance of the terms and provisions of this Agreement. If a court of competent jurisdiction renders a non appealable judgment against Parent or the Company in respect of any suit brought by the Committee to enforce the obligations of Parent or the Company under this Agreement, then Parent or the Company, as applicable, agrees to pay all reasonable and documented legal fees and expenses that the Committee actually incurred (which may include any reasonable contingency fees) as a result of any litigation commenced by the Committee regarding the validity or enforceability of, or liability under, any provision of this Agreement binding upon Parent or the Company. Notwithstanding any other provision in this Agreement, legal fees and expenses paid by Parent or the Company pursuant to this Section 2.02(g) shall not be considered Claims Expenses for purposes of this Agreement.

(h) The Committee shall use reasonable best efforts, including consulting with its Tax advisors, to (i) structure the settlement or other disposition of any Claim in a tax-efficient manner that minimizes the Tax Costs associated with the receipt of Litigation Proceeds and (ii) treat the payment of any CVR Payment Amount as not subject to any deduction or withholding (including by taking such position in any relevant tax proceeding), unless withholding is otherwise required pursuant to a Final Determination or a change in applicable Tax Law after the date hereof.

(i) Notwithstanding anything to the contrary herein (and without prejudice to a determination that any other Committee conduct may satisfy its obligations), the Committee's obligation to Pursue the Claims hereunder shall be deemed to be satisfied in all respects (i) with respect to the selection of outside legal counsel if it chooses to continue with its existing outside counsel or reasonably selects replacement counsel, (ii) with respect to any decision to the extent it is approving a course of action recommended by its outside counsel, (iii) with respect to the expenditure of legal fees to the extent it complies with the fee arrangements contemplated hereunder, (iv) with respect to the decision of whether to make or accept a settlement offer as opposed to continue to litigate through to verdict (or vice versa) to the extent it does so after consultation with outside counsel, and (v) with respect to actions, omissions or decisions consistent in all material respects with past practice prior to the date of this Agreement. For the avoidance of doubt, the obligation to Pursue the Claims (a) shall in all respects be subject to the limitations and provisions of this Agreement, including Section 2.03 and Section 2.06 and (b) shall not require the Parent Committee Member to approve or withhold approval with respect to any matter hereunder as to which his or her prior approval is expressly required.

Section 2.03 Actions. Except as otherwise provided herein, the Committee may act only with the concurrence of a majority of the Committee Members; provided, however, that the Committee may, by resolution adopted by a majority of the Committee Members, designate a chairman or other Committee Member to act as the administrative Committee Member and delegate to the chairman or such other Committee Member such authority as the Committee may determine; provided, further, that, notwithstanding anything to the contrary herein, the Committee may not take any of the following actions without the prior approval of the Parent Committee Member: (a) incurring a total aggregate amount of Claims Expenses in excess of the Aggregate Cap, (b) amend any terms and conditions of the Winston & Strawn Engagement Letter and/or the O'Neill Advisory Agreement, (c) withdrawing all or part of any Claims and (d) in the event of an assignment of Claims to an SPE as potentially contemplated in Section 7.13, initiating or pursuing any such Claims in the name of the Company; provided, further, that, notwithstanding anything to the contrary herein, if the Holder Committee Member shall resign, be removed, or become incapable of acting, and until a successor Holder Committee Member is appointed pursuant to Section 2.05(c), the Parent Committee Member and the Independent Committee Member may not take any action that would reasonably be expected to materially adversely impact the Holders. For the avoidance of doubt, nothing in this Section 2.03 prevents the Committee from determining to terminate this Agreement pursuant to Section 7.01 or taking any other action that it is expressly permitted to take pursuant to this Agreement.

Section 2.04 *Compensation*. The Company shall (i) pay each of the Holder Committee Member and the Independent Committee Member \$50,000 per calendar year for his or her service on the Committee, which amount shall be paid on a pro rated basis for so long as such Holder Committee Member and Independent Committee Member is a member of the Committee, and (ii) reimburse each of the Committee Members all reasonable and documented travel and out-of-pocket expenses incurred in the performance of his or her duties as a Committee Member. For the avoidance of doubt, it is acknowledged and agreed that the Committee Members are not authorized to pay Claims Expenses on behalf of the Company as out of pocket expenses or request a reimbursement of such Claims Expenses.

Section 2.05 *Replacement of Committee Members*.

(a) Each Committee Member may resign at any time by giving written notice thereof to the Company specifying a date when such resignation will take effect, which notice will be sent at least 60 days prior to the date so specified.

(b) The Parent has the right to remove the Parent Committee Member at any time by a board resolution specifying a date when such removal will take effect. Acting Holders have the right to remove the Holder Committee Member at any time for Due Cause by written consent, as applicable, specifying a date when such removal will take effect, which such notice will be delivered to the Company. Notice of such removal will then be given by the Company to the Parent Committee Member or the Holder Committee Member. The Holder Committee Member and the Parent Committee Member, acting together, shall have the right to remove the Independent Committee Member at any time by providing written notice to the Independent Committee Member and specifying a date when such removal will take effect.

(c) If the Parent Committee Member shall resign, be removed or become incapable of acting (including in case of death of such Parent Committee Member), the Parent shall, within 30 days of such resignation, removal or incapacitation, select a qualified successor Parent Committee Member, which may be an officer of the Company or Parent. If the Holder Committee Member shall resign, be removed, or become incapable of acting (including in case of death of such Holder Committee Member), a successor Holder Committee Member shall, within 30 days of such resignation, removal or incapacitation, be selected by the Independent Committee Member; provided, however, that such successor Holder Committee Member must have been a director or senior officer of the Company prior to the Effective Time. If the Independent Committee Member shall resign, be removed, or become incapable of acting (including in case of death of such Independent Committee Member), his or her successor shall be selected by the current Committee Members within 30 days of such resignation, removal or incapacitation. If, within 30 days after the resignation, removal or incapacitation, (i) a successor Holder Committee Member shall not have been selected in the manner described in this Section 2.05(c), any Holder may, on behalf of himself, herself or itself and all others similarly situated, petition any court of competent jurisdiction for the selection of a successor Holder Committee Member, or (ii) a successor Independent Committee Member shall not have been selected in the manner described in this Section 2.05(c), either the Holder Committee Member or the Parent Committee Member may petition any court of competent jurisdiction for the selection of a successor Independent Committee Member; provided, however, that such successor Holder Committee Member selected by a court of competent jurisdiction must have been a director or senior officer of the Company prior to the Effective Time. The board of directors of the Company shall then appoint the individual so selected to serve as Parent Committee Member, Holder Committee Member or Independent Committee Member (as the case may be). Any successor Committee Member so appointed shall under the provisions of this Section 2.05(c), forthwith upon his or her acceptance of such appointment in accordance with this Section 2.05(c), become a successor Committee Member.

(d) Every successor appointed under this Section 2.05 shall execute, acknowledge and deliver to the Company and the Rights Agent a Joinder Agreement, and thereupon such successor shall be vested with the same powers, rights, duties and responsibilities as if he or she had been originally named as the Committee Member such successor is succeeding without further act or deed.

(e) Any Committee Member may also be a Holder or an officer, director, employee or Affiliate of a Holder and in such case will continue to have all the rights of a Holder to the same extent as if he or she were not a Committee Member.

(f) The Committee will give notice of each resignation and each removal of a Committee Member and each appointment of a successor Committee Member under this Section 2.05 by mailing written notice of such event by first-class mail to the Holders as their names and addresses appear in the CVR Register. Each notice will include the name and corporate mailing address of the successor Committee Member.

Section 2.06 Liability; Indemnification.

(a) Each Committee Member undertakes to perform only such duties as are specifically set forth in this Agreement and no implied covenants or obligations shall be read into this Agreement against any Committee Member. No Committee Member shall be liable, responsible or accountable in damages or otherwise for any Loss (including Losses that are costs and expenses of defense of claims, as incurred) incurred by reason of having been a Committee Member or resulting from the administration of any Claims or any decision, action or failure to act, except to the extent that any such Loss shall have been caused by the bad faith, gross negligence or willful misconduct of such Committee Member. Each Holder, by virtue of its acceptance of a CVR, shall be deemed to have consented and agreed to release and forever discharge each Committee Member from and against any and all liabilities, responsibilities and claims for damages or otherwise for any Loss incurred by reason of having been a Committee Member or resulting from administration of any Claims or any decision, action or failure to act, except to the extent that any such Loss shall have been caused by the bad faith, gross negligence or willful misconduct of such Committee Member.

(b) The Company shall indemnify and hold harmless, and provide customary insurance to, each Committee Member against any Loss incurred by reason of having been a Committee Member or resulting from the administration of any Claims or any decision, action or failure to act, except to the extent of such Committee Member's bad faith, gross negligence or willful misconduct. The Company shall advance payments in connection with its indemnification obligations under this Section 2.06(b) upon request of any Committee Member; provided that such Committee Member shall have delivered to the Company a written undertaking to repay any amount advanced to the extent that such Loss was the result of the bad faith, gross negligence or willful misconduct of such Committee Member. The rights of each Committee Member under this Section 2.06(b) are in addition to, and not in substitution for, any other rights to which such Committee Member may be entitled, whether pursuant to law, contract or otherwise. These rights are intended to benefit, and shall be enforceable by, each Committee Member. The obligations of the Company under this Section 2.06(b) shall not be terminated or modified in such a manner as to adversely affect the rights of any Committee Member without the consent of such Committee Member and shall survive the termination of this Agreement and the removal or resignation of any Committee Member.

ARTICLE III Certain Covenants

Section 3.01 Cooperation.

(a) The Company shall use commercially reasonable efforts to (i) provide the Committee and its Advisors with access reasonably necessary to Pursue the Claims, including in connection with testimony in litigation and factual investigation, at normal business hours and upon reasonable notice, to the Company's books and records (including electronic and archived documents and Litigation Materials) and the Company's facilities and to current employees and Advisors of the Company and its Subsidiaries and (ii) generally provide support to the Committee and its Advisors, and make its and its Subsidiaries' employees and Advisors reasonably available to provide assistance and expertise at such times and in such places as reasonably necessary, to Pursue the Claims; provided that, in the case of each of clauses (i) and (ii) above, (A) the Company only shall be required to provide such access and make its and its Subsidiaries' employees and Advisors available to the extent and in such manner as does not unreasonably interfere with the ongoing operations of the Company and its Subsidiaries (however, the Company shall provide access to its and its Subsidiaries' employees and Advisors in the event the Claims go to trial), and (B) the Company may withhold access from the Committee to the extent that the Company is aware that (1) the Company or any of its Subsidiaries is subject to the terms of a confidentiality agreement with a third party or another contract that restricts such access (provided that the Company shall use its commercially reasonable efforts to obtain the required consent of such third party to provide such access), (2) providing such access would result in a loss of attorney-client or other legal privilege (provided that the Company shall use its commercially reasonable efforts to allow such access (or access to a portion thereof) in a manner that does not result in a loss of such privilege), or (3) providing such access would violate any applicable Law (provided that the Company shall use its commercially reasonable efforts to provide such access in a manner that does not violate such applicable Law). The Company shall

use commercially reasonable efforts to cooperate in obtaining such access as reasonably necessary to Pursue the Claims to former employees and Advisors of the Company and its Subsidiaries, including in connection with testimony in litigation and factual investigation; provided that (i) the Company only shall be required to provide such cooperation and assistance to the extent and in such manner as does not unreasonably interfere with the ongoing operations of the Company and its Subsidiaries, and (ii) the Company shall have no obligation to cooperate or render such assistance to the extent that the Company reasonably believes (A) the Company or any of its Subsidiaries is subject to the terms of a confidentiality agreement with a third party or another contract that restricts such cooperation or assistance (*provided* that the Company shall use its commercially reasonable efforts to obtain the required consent of such third party to provide such cooperation or assistance), (B) providing such cooperation or assistance would result in a loss of attorney-client or other legal privilege (*provided* that the Company shall use its commercially reasonable efforts to provide such cooperation or assistance (or as much of it as possible) in a manner that does not result in a loss of such privilege), or (C) providing such cooperation or assistance would violate any applicable Law (*provided* that the Company shall use its commercially reasonable efforts to provide such cooperation or assistance in a manner that does not violate such applicable Law). Reasonable and documented out-of-pocket expenses incurred by current or former employees or Advisors of the Company or its Subsidiaries (but in no event any compensation expenses of current employees of the Company or its Subsidiaries) in connection with the Committee's access to them shall be reimbursed as Claims Expenses. Notwithstanding the foregoing, the Company shall use commercially reasonable efforts to make any employee or other person under its control available to testify at a trial or evidentiary hearing at the request of the Committee.

(b) During the Term of this Agreement, the Company shall (i) maintain in place any litigation document retention policies that exist as of the Effective Time and (ii) implement and maintain new litigation document retention policies as are reasonably necessary to Pursue the Claims; provided that in the case of implementing and maintaining any such new policies, they shall not unreasonably interfere with the ongoing operations of the Company and its Subsidiaries.

Section 3.02 *Powers-of-Attorney*. The Company shall execute and deliver to the Committee Members a power-of-attorney in form reasonably satisfactory to the Committee to enable the Committee Members to file pleadings and execute any documents on behalf of the Company necessary or appropriate to enable the Committee to Pursue any Claim and to settle or compromise any Claim in accordance with this Agreement, in each case, in the name of the Company; provided that any exercise of rights, powers, or authority pursuant to such power-of-attorney shall require the joint signatures of a majority of the Committee Members. Any Committee Member's exercise of authority pursuant to the power-of-attorney shall comply with Section 2.03.

Section 3.03 *Non Disclosure Undertaking*. Unless otherwise agreed by the Committee, the Company and its Affiliates shall not disclose any non-public information with respect to any Claims to any third parties except (i) to the Committee and its Advisors, (ii) to Advisors, financing providers, counterparties in potential merger and acquisition transactions, auditors of the Company and its Affiliates who are advised of the confidential nature of such information and the restrictions set forth in this Section 3.03 in respect of such non-public information, (iii) to the extent such disclosure is required by, or pursuant to an agreement with, any Governmental Authority or applicable Law, (iv) to the extent such information becomes part of the public domain without breach of this Section 3.03 by the Company or any of its Affiliates.

Section 3.04 *Settlements*. No settlement or compromise of any Claim shall require any consent or action by the Company, Parent or their respective Affiliates; provided that the consent of the Company shall be required if (i) the Committee reasonably determines in good faith that the aggregate amount of Claims Expenses from the Effective Time, together with the Claims Expenses reasonably expected to be incurred, are reasonably likely to exceed the Litigation Proceeds reasonably likely to be collected as part of such settlement or compromise, (ii) such settlement or compromise would create a material ongoing obligation of the Company, Parent or their respective Affiliates (other than execution of a customary release) or (iii) such settlement or compromise would include a materially adverse admission of fact regarding the Company and its Affiliates (outside of any admissions included as of the date hereof in the court proceedings or pleadings relating to the KGM Litigation). Notwithstanding anything to the contrary herein, the Committee shall promptly provide to the Company copies of any settlement and shall keep the Company timely updated on the status of the settlement negotiations. Before settling or compromising any Claim, the Committee shall take into account any reasonable comments on the settlement documents made by the Company and any reasonable objections made by the Company based on the written advice of the Company's outside legal counsel, in each case, acting in good faith.

Section 3.05 *Information.*

(a) During the Term of this Agreement and until all of the Claims have been completed, canceled, settled or are final and not subject to further judicial review (by appeal or otherwise), the Committee shall send to the Company, by the last Business Day of each fiscal quarter of the Company (unless significant activity, in the reasonable judgment of the Committee, occurs during such quarter, in which case monthly reports shall be *provided* during such time), a written report describing the status of the Claims, including the total Claims Expenses incurred from the Effective Time through the date of such report and the Claims Expenses reasonably expected to be incurred in the following fiscal quarter, the status of all pending court proceedings related to the Claims (both claims and counterclaims) and the status of any settlement negotiations among the Committee and the defendants with respect to the Claims, to the extent then known.

(b) The Company shall promptly notify the Committee of any information, documentation, or updates (unless immaterial) that it and/or any of its Affiliates receives or is made aware of in respect of the Claims; provided that the Committee has not also received, or been made aware of, such information, documentation or updates.

(c) The Committee shall promptly provide the Company with information to the extent reasonably requested in connection with reports, forms, notifications, applications, Tax Returns and other documents to be filed with the Internal Revenue Service or other applicable foreign, federal and state governmental agencies in order to comply with the Internal Revenue Code of 1986, as amended (the "Code"), or any state, local or foreign Tax Law.

(d) The Committee shall (i) promptly notify the Company of any material change in connection with the Claims, to the extent then known, and (ii) as promptly as practicable, but no later than 30 days following the Final Resolution of all Claims, provide the Company with all information and documentation reasonably required or appropriate for the preparation of the Litigation Proceeds Certificate, including details of any Litigation Proceeds received by the Company or its Affiliates and an itemized list, in reasonable detail, of the related Claims Expenses.

Section 3.06 *Discretion and Decision-Making Authority.* Notwithstanding anything herein to the contrary, but subject to the power and authority of the Committee and the obligations of the Company and the Parent as set forth herein, the Company, the Parent and their Affiliates shall have the power and right to control all aspects of their businesses and operations (and all of their assets and products), and subject to its compliance with the terms of this Agreement, the Company, the Parent and their Affiliates may exercise or refrain from exercising such power and right as it may deem appropriate and in the best overall interests of the Company, the Parent and their Affiliates and its and their stockholders.

Section 3.07 *List of Holders.* The Company shall furnish or cause to be furnished to the Rights Agent, promptly after the Effective Time and in no event later than 30 Business Days following the Effective Time, the names and addresses of the Holders (a) with respect to any Holder other than Holders of an Equity Award CVR, in such form as the Company receives from the Company's transfer agent (or other agent performing similar services for Parent or the Company), and (b) with respect to Holders of Equity Awards, in such form as set forth in the records of the Company (or other agent performing similar services for the Company) as of immediately prior to the Effective Time. The Rights Agent will reflect all such names and addresses on the CVR Register.

ARTICLE IV Payment Procedures

Section 4.01 *Payment of CVR Payment Amount.*

(a) On the CVR Payment Date, the CVR Payment Amount owed to the Holders of CVRs shall be deposited by the Company to a bank account designated by the Rights Agent. The Rights Agent shall promptly, and in any event within 10 Business Days of receipt of the CVR Payment Amount, and provided that it has received the Determination Certificate in accordance with Section 4.01(g), pay to each Holder (including the Company, Parent or their Affiliates, in case of Acquired CVRs) the applicable pro rata share of the CVR Payment Amount (i) by check mailed to the address of such Holder as reflected on the CVR Register as of the time the payment is issued or (ii) if such Holder is due a CVR Payment Amount in excess of \$1,000,000 and has provided the Rights Agent with wire transfer instructions in writing and payment by such Holder of the Rights Agent's fees associated therewith, by wire transfer of immediately available funds to the account specified in such instructions; provided that, notwithstanding

anything herein to the contrary, in no event shall any Holder have any right to any assets of the Company or any of its Affiliates other than the CVR Payment Amount. For the avoidance of doubt the Parent and the Company shall have no further liability in respect of the relevant CVR Payment Amount upon delivery of such CVR Payment Amount to the Rights Agent in accordance with this Section 4.01(a). Any CVR Payment Amount that remains undistributed to the Holders one year after the CVR Payment Date shall, upon the written demand of the Company, be delivered to the Company, and upon demand, any Holders who have not theretofore received cash in exchange for such CVRs shall thereafter look only to the Company for payment of their claim therefor. Notwithstanding any other provisions of this Agreement, any CVR Payment Amount that remain unclaimed immediately prior to such time as such amounts would otherwise escheat to, or become property of, any Governmental Authority shall, to the extent permitted by applicable Law, become the property of the Company free and clear of any claims or interest of any Person previously entitled thereto. Thereafter, the Company shall be responsible for compliance with unclaimed property obligations. The Company agrees to indemnify and hold harmless the Rights Agent with respect to any liability, penalty, cost or expense the Rights Agent may incur or be subject to in connection with transferring such property to the Company, except to the extent of Rights Agent's gross negligence, bad faith or willful misconduct (each as determined by a final non-appealable order, judgment, decree or ruling of a court of competent jurisdiction).

(b) For the avoidance of doubt, in accordance with the definition of CVR Payment Amount, 85% of the resulting amount of (A) the Litigation Proceeds less (B) the Claims Expenses less (C) the Non-Monetary Recovery Fee, less (D) the Tax Costs shall be for the benefit of the Holders, and 15% of such resulting amount shall be for the benefit of the Company.

Section 4.02 Procedure for determining CVR Payment Amount.

(a) As promptly as practicable, but no later than 90 days following the earlier of (i) a Termination Event and (ii) a Final Resolution of all Claims and, in each case, subject to the Company receiving all the information and documentation in accordance with Section 3.05(c)(ii), the Company shall deliver to the Committee a certificate (the "Litigation Proceeds Certificate") setting forth in reasonable detail (A) the amount of any Litigation Proceeds received by the Company or its Affiliates, if any, (B) an itemized list in reasonable detail of the Claims Expenses, (C) the amount of the Non-Monetary Recovery Fee, if any, (D) a calculation of the Tax Costs, (E) a calculation of the CVR Payment Amount, and (F) any material assumptions underlying the determination of any item used in making such calculations. The Company shall deliver to the Committee any financial or other documentation reasonably necessary to sufficiently support such calculations. Notwithstanding the foregoing, in the event of the recovery or receipt by the Company or any of its Affiliates of additional Litigation Proceeds, the Committee shall determine the CVR Payment Amount with respect to such additional Litigation Proceeds, taking into account the principles of this Section 4.02.

(b) Within 30 days of delivery of the Litigation Proceeds Certificate, the Holder Committee Member and the Independent Committee Member each shall give written notice to the Company and each other Committee Member specifying whether the Holder Committee Member or the Independent Committee Member, as applicable, agrees with or objects to (a "Notice of Agreement") and a "Notice of Objection," respectively) the Litigation Proceeds Certificate and the CVR Payment Amount calculation.

(c) If the Holder Committee Member or the Independent Committee Member does not deliver a Notice of Agreement or a Notice of Objection with respect to the Litigation Proceeds Certificate within the 30-day period described above, such Holder Committee Member or Independent Committee Member, as applicable, shall be deemed to have delivered a Notice of Agreement with respect to the Litigation Proceeds Certificate, and the CVR Payment Amount set forth in the Litigation Proceeds Certificate shall be deemed final.

(d) If the Holder Committee Member or the Independent Committee Member delivers a Notice of Objection, such Notice of Objection shall set forth in reasonable detail each of the objections to the calculations, valuations, methodologies, lists, computations, assumptions and other information (collectively, the "Determinations"), that such Holder Committee Member or Independent Committee Member, as applicable, has to the applicable Litigation Proceeds Certificate. The Committee Members shall try to resolve any objections among themselves within 30 days following receipt of a Notice of Objection. If they are unable to resolve such objection, the Committee Members shall submit the portions of the Determinations set forth in the Litigation Proceeds Certificate that are in dispute to an independent public accounting firm of international standing that shall have

expertise in the valuation of assets and properties and U.S. federal income taxation (if the dispute relates to the calculation of the Tax Costs) (the “Firm”). The Firm shall be instructed to determine whether the Determinations set forth in the Litigation Proceeds Certificate that are in dispute are correct in all material respects (the “Resolution”). If the Firm determines that such Determinations are correct, the CVR Payment Amount shall be as set forth in the Litigation Proceeds Certificate, and such Holder Committee Member or Independent Committee Member, as applicable, shall be deemed to have delivered a Notice of Agreement with respect to such Litigation Proceeds Certificate. If the Firm determines that any of the Determinations set forth in the Litigation Proceeds Certificate are incorrect in any respect (whether or not material), the Firm’s resulting calculation of the CVR Payment Amount shall be binding on all parties hereto. The fees and expenses of the Firm shall be allocated to be paid by Company (and not included in the calculation of the Claims Expenses), on the one hand, and included in the calculation of the Claims Expenses, on the other hand, in the same proportion that the aggregate amount of remaining disputed Determinations submitted to the Firm that is unsuccessfully disputed by the Parent Committee Member or the Holder Committee Member, as applicable, bears to the total amount of such remaining disputed Determination so submitted.

(e) The date on which the amount of the CVR Payment Amount is finally determined pursuant to this Section 4.02 is referred to as the “Determination Date.” Except in the specific cases specified in this Agreement, no interest shall accrue on any amounts payable on the CVRs to any Holder.

(f) On the Determination Date, if the final Litigation Proceeds Certificate prepared in accordance with this Section 4.02 shows no positive CVR Payment Amount due to the Holders then the relevant Holders will have no further rights thereto and all CVRs will be automatically forfeited.

(g) On the Determination Date, the Committee shall deliver to the Rights Agent (i) copies of the Litigation Proceeds Certificate, any Notice of Agreement or Notice of Objection, as applicable, and the Determinations, if applicable, and (ii) a certificate signed by the majority of the Committee Members (the “Determination Certificate”) certifying (A) that the Determination Date has occurred and providing a reasonably detailed description of the CVR Payment Amount (whether positive or not), (B) the calculation of the final amount of the aggregate CVR Payment Amount, and (C) that (1) the Holders are entitled to receive the CVR Payment Amount (if the CVR Payment Amount is positive) or, (2) no Holder is entitled to receive any CVR Payment Amount (if the CVR Payment Amount is not positive). To the extent the Holders are entitled to receive the CVR Payment Amount (if the CVR Payment Amount is positive), the Committee shall provide to the Rights Agent written instructions for the Rights Agent to calculate the pro rata portion of the CVR Payment Amount payable to each Holder. The Rights Agent shall be entitled to rely upon, without independent investigation, the Determinations, the Determination Certificate and each other notice, agreement, other document, instruction or communication from the Committee and any document executed by the Committee and shall be fully protected in connection with any action taken, suffered or omitted to be taken by the Rights Agent in reliance thereon.

(h) Upon receipt of the Determination Certificate and the other materials and information required under Section 4.02(g), the Rights Agent shall determine and calculate, in accordance with this Agreement and the information in the Determination Certificate, the pro rata portion of the CVR Payment Amount payable to each Holder, based on the number of CVRs held by each such Holder. The Rights Agent’s calculation of the pro rata portion of the CVR Payment Amount payable to each Holder will be subject to written confirmation by the Committee.

(i) The determination by the Company and the Committee of the CVR Payment Amount pursuant to the procedures set forth in this Section 4.02, absent a mathematical error, shall be final and binding on the Company and each Holder.

Section 4.03 *Tax matters.*

(a) To the extent any portion of the CVR Payment Amount that is paid on the CVR Payment Date related to the Equity Award CVRs constitutes a deferral of compensation subject to Section 409A of the Code, those amounts will, to the extent necessary to comply with Section 409A of the Code, be paid by the Company at the time when the related Company Equity Awards would otherwise have been settled in accordance with their terms or in compliance with Treasury Regulation Section 1.409A-3(i)(5)(iv), or at such other time that is necessary to comply with Section 409A of the Code. None of the parties to this Agreement nor any of their respective affiliates,

employees, directors or representatives shall have any liability to Holders of Equity Award CVRs or any other Person in respect of Section 409A of the Code. Holders of Company Equity Awards shall be solely responsible for the payment of any Taxes and penalties incurred under Section 409A of the Code.

(b) Each of the Company and Parent (and each of their respective Affiliates) or the Rights Agent shall be entitled to deduct and withhold, or cause to be deducted or withheld, from any amount payable pursuant to this Agreement, such amounts as it is required to deduct and withhold with respect to the making of such payment under the Code, the Treasury Regulations thereunder, or any provision of state, local or foreign Tax Law. Prior to making any deduction, the Rights Agent will, to the extent practicable, provide any Holder with notice and the opportunity for the Holder to provide IRS Forms W-9 or W-8, as applicable, or any other reasonably appropriate forms or information from Holders in order to avoid or reduce such withholding, provided, that the time period for payment of a CVR Payment Amount by the Rights Agent to such Holder set forth in Section 4.02 shall be extended by a period equal to any delay caused by such Holder in providing such forms. Any amounts so deducted and withheld and remitted to the relevant Governmental Authority shall be treated for all purposes of this Agreement as having been paid to the Holder in respect of which such deduction and withholding was made.

(c) The Rights Agent shall be responsible for information reporting required under applicable legal requirements with respect to the CVRs, including reporting the Holder's receipt of the CVR Payment Amount hereunder on IRS Form 1099-B (or other applicable form), as directed by the Company in the tax reporting instructions provided to the Rights Agent (which such tax reporting instructions shall be prepared in consultation with the Committee).

ARTICLE V Amendments; Consolidation

Section 5.01 *Amendments.*

(a) Without the consent of any Holders and any Committee Member, the Company may, at any time and from time to time, enter into one or more amendments hereto with the Rights Agent, for any of the following purposes:

(i) to evidence the succession of another Person to the Company and the assumption by any such successor of the covenants and obligations of the Company herein; provided that such succession and assumption is in accordance with the terms of this Agreement;

(ii) to evidence the succession of another Person as a successor Rights Agent and the assumption by any such successor of the covenants and obligations of such Rights Agent, as applicable; provided that such succession and assumption is in accordance with the terms of this Agreement;

(iii) to add to the covenants of the Company such further covenants, restrictions, conditions or provisions as the Company and the Committee shall consider to be for the protection of Holders; provided that, in each case, such addition shall not adversely affect the rights of any Committee Member or any Holder;

(iv) to cure any ambiguity, to correct or supplement any provision herein that may be defective or inconsistent with any other provision herein or to make any other provisions with respect to matters or questions arising under this Agreement; provided that, in each case, such cured, corrected, supplemented or other provision shall not adversely affect the rights of any Committee Member or any Holder;

(v) as may be necessary or appropriate, to ensure that the CVRs are not subject to registration under the Securities Act or the Securities Exchange Act and the rules and regulations promulgated thereunder; provided that, in each case, such amendments do not adversely affect the rights of the Holders; or

(vi) for the purpose of otherwise adding, eliminating or changing any provisions of this Agreement, unless such addition, elimination or change is adverse to the rights of the Holders.

(b) Acting Holders, the Company, the Rights Agent and the Committee Members may enter into one or more amendments hereto for the purpose of adding, eliminating or changing any provision of this Agreement, if such addition, elimination or change is in any way adverse to the rights of the Holders. It shall not be necessary for any written consent of any Holders under this Section 5.01(b) to approve the particular form of any proposed amendment, but it shall be sufficient if such written consent shall approve the substance thereof.

(c) Promptly after the execution of any amendment pursuant to the provisions of this Section 5.01, the Company and the Committee shall deliver to the Rights Agent a notice thereof setting forth in general terms the substance of such amendment, and the Rights Agent shall transmit such notice thereof through the facilities of DTC in accordance with DTC's procedures and/or mail by first-class mail, postage prepaid, such notice to the Holders at their addresses as they shall appear on the CVR Register.

(d) Upon the execution of any amendment in accordance with this Section 5.01, this Agreement shall be modified in accordance therewith, such amendment shall form a part of this Agreement for all purposes and every Holder shall be bound thereby.

(e) In executing any amendment permitted by this Section 5.01, the Rights Agent shall be entitled to receive and shall be fully protected in relying upon an officers' certificate and opinion of counsel as conclusive evidence that any such amendment or supplement is authorized or permitted hereunder, that it is not inconsistent herewith and that it will be valid and binding upon the Company and the Committee in accordance with its terms. Each amendment to this Agreement shall be evidenced by a writing signed by the Rights Agent. Notwithstanding anything in this Agreement to the contrary, the Rights Agent shall not be required to enter into any such amendment that it has reasonably determined adversely affects its own rights, privileges, covenants or duties under this Agreement or otherwise, and the Rights Agent shall not be bound by any amendments not executed by it.

Section 5.02 Change of Control

(a) After the Effective Time, neither the Company nor the Parent shall consummate a Change of Control, unless:

(i) the Person that is the relevant transferee, assignee, acquiror, delegate or other successor in such Change of Control (the "Surviving Person") expressly assumes the performance of every covenant and obligation under this Agreement, subject to the conditions herein, on the part of the Company or the Parent, as applicable, to be performed or observed in the manner prescribed herein (a) by entering into a supplemental contingent value rights agreement or other acknowledgment or (b) pursuant to a provision in an agreement between the Company or the Parent, as applicable, and the Surviving Person to which the Committee is a third-party beneficiary;

(ii) the Company or the Parent, as applicable, has delivered to the Committee (with a copy to the Rights Agent) an officers' certificate, stating that such consolidation, merger, conveyance, transfer or lease complies with this Article V and that all conditions precedent herein provided for relating to such transaction have been complied with; and

(iii) the Company or the Parent, as applicable, provides the Holder Committee Member with sufficient information to reasonably demonstrate that the Surviving Person has the assets and creditworthiness to fulfill the obligations hereunder.

(b) Upon any Change of Control, the Surviving Person shall succeed to, be substituted for and assume all covenants and obligations of, and may exercise every right and power of, the Company or the Parent, as applicable, under this Agreement with the same effect as if the Surviving Person had been named as the Company or the Parent, as applicable, herein, and thereafter the predecessor Person shall be relieved of all covenants and obligations under this Agreement and the CVRs.

(c) The Parties acknowledge and agree that the provisions of this Section 5.02 shall apply to successive transactions and agree that in the event of a Change of Control through a partial demerger, a demerger into different entities, or transfer of all or substantially all assets to different entities, the entity that will acquire or consolidate the business representing the majority of the assets shall be deemed the Surviving Person for the purposes of this Section 5.02.

ARTICLE VI RIGHTS AGENT

Section 6.01 *Appointment of Rights Agent*. The Company and the Committee hereby appoint Computershare and Computershare Trust Company, acting jointly, as the Rights Agent to act in accordance with the express terms and conditions set forth in this Agreement, and the Rights Agent hereby accepts such appointment.

Section 6.02 *Certain Rights of the Rights Agent*.

(a) The Rights Agent undertakes to perform such duties and only such duties as are specifically set forth in this Agreement, and no implied covenants or obligations will be read into this Agreement against the Rights Agent.

(b) The Rights Agent shall not have any liability for any actions taken, suffered or omitted to be taken in connection with this Agreement, except to the extent of its own gross negligence, bad faith or willful misconduct (each as determined by a final non-appealable order, judgment, decree or ruling of a court of competent jurisdiction).

(c) The Rights Agent may engage and consult with counsel of its selection and the advice or opinion of such counsel shall be full and complete authorization and protection to the Rights Agent, and the Rights Agent shall be held harmless by the Company in respect of any action taken, suffered or omitted by it hereunder in the absence of fraud, gross negligence, bad faith or willful misconduct (each as determined by a final non-appealable order, judgment, decree or ruling of a court of competent jurisdiction) and in reliance thereon.

(d) Whenever in the performance of its duties under this Agreement the Rights Agent shall reasonably deem it necessary or desirable that any fact or matter be proved or established by the Company or the Committee prior to taking or suffering any action hereunder, such fact or matter (unless such evidence in respect thereof be herein specifically prescribed) may be deemed to be conclusively proved and established by a certificate signed by

(i) the Chairman of the Board of Directors, the Chief Executive Officer, the President, the Chief Financial Officer, the Treasurer or the Secretary of the Company, in the case of the Company, or (ii) a majority of the Committee Members, in the case of the Committee, and delivered to the Rights Agent; and such certificate shall be full authorization to the Rights Agent for any action taken or suffered or omitted to be taken by it under the provisions of this Agreement in the absence of fraud, gross negligence, bad faith or willful misconduct (each as determined by a final non-appealable order, judgment, decree or ruling of a court of competent jurisdiction) and in reliance upon such certificate.

(e) The Company agrees to (i) pay the Rights Agent compensation for all services rendered by the Rights Agent as agreed upon in writing by the Company and the Rights Agent on or prior to the date hereof and (ii) reimburse the Rights Agent for all reasonable and documented expenses, Taxes (other than income, receipt, franchise, or similar Taxes) and governmental charges and other reasonable and documented charges of any kind and nature incurred by the Rights Agent (including reasonable and documented out-of-pocket fees and expenses of one (1) counsel for the Rights Agent) in the performance of its duties under this Agreement.

(f) The Rights Agent will not incur any liability or responsibility to the Committee or the Company or any other Person for any action taken in reliance on any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order or other paper or document reasonably and in the absence of fraud, gross negligence, bad faith or willful misconduct (each as determined by a final non-appealable order, judgment, decree or ruling of a court of competent jurisdiction) believed by it to be genuine and to have been signed or presented by the proper party or parties.

- (g) The permissive rights of the Rights Agent to do things enumerated in this Agreement shall not be construed as a duty.
- (h) The Rights Agent shall not be required to give any note or surety in respect of the execution of such powers.
- (i) The Rights Agent shall not be liable for or by reason of, and shall be held harmless by the Company with respect to any of the statements of fact or recitals contained in this Agreement or be required to verify the same, but all such statements and recitals are and shall be deemed to have been made by the Company only.
- (j) The Rights Agent shall have no liability and shall be held harmless by the Company in respect of the validity of this Agreement or the execution and delivery hereof (except the due execution and delivery hereof by the Rights Agent and the enforceability of this Agreement against the Rights Agent, assuming the due execution and delivery hereof by the Company), nor shall it be responsible for any breach by the Company or Parent or the Committee of any covenant or condition contained in this Agreement.
- (k) The Company agrees to indemnify the Rights Agent for, and hold the Rights Agent harmless against, any loss, liability, damage, judgment, fine, penalty, claim, demand, suit, settlement, cost or expense for any action taken, suffered or omitted to be taken by the Rights Agent arising out of or in connection with the execution, acceptance, administration, exercise and performance by the Rights Agent of its duties under this Agreement, including the reasonable and documented out-of-pocket costs and expenses (including reasonable and documented expenses of counsel) of defending the Rights Agent against any loss, liability, damage, judgment, fine, penalty, claim, demands, suits or expense arising therefrom, directly or indirectly, or enforcement of its rights hereunder incurred without fraud, gross negligence, bad faith, or willful misconduct (each as determined by a final non-appealable order, judgment, decree or ruling of a court of competent jurisdiction) on the part of the Rights Agent. The reasonable and documented costs and expenses incurred in enforcing this right of indemnification shall be paid by the Company to the extent that the Rights Agent is successful in so enforcing its right of indemnification.
- (l) Notwithstanding anything to the contrary herein, (i) in no event shall the Rights Agent be liable for any special, punitive, indirect, consequential or incidental loss or damage of any kind whatsoever (including but not limited to lost profits) arising out of any act or failure to act hereunder, even if the Rights Agent has been advised of the likelihood of such loss or damage or has foreseen the possibility or likelihood of such damages, and
(ii) the aggregate liability of the Rights Agent arising in connection with this Agreement, whether in contract, or in tort, or otherwise, is limited to, and shall not exceed the amounts paid or payable hereunder by the Company to the Rights Agent as fees and charges during the 12 months immediately preceding the event for which recovery from the Rights Agent is being sought, provided, however, that such liability cap shall not apply in the case of the Rights Agent's own willful misconduct, fraud, gross negligence or bad faith (each as determined by a final non-appealable order, judgment, decree or ruling of a court of competent jurisdiction).
- (m) No provision of this Agreement shall require the Rights Agent to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder or in the exercise of its rights if there shall be reasonable grounds for believing that repayment of such funds or adequate indemnification against such risk or liability is not reasonably assured to the Rights Agent.
- (n) The Rights Agent shall not be deemed to have knowledge of any event of which it was supposed to receive notice thereof hereunder, and the Rights Agent shall be fully protected and shall incur no liability for failing to take action in connection therewith, in each case, unless and until such notice has been given in accordance with Section 7.03.
- (o) Unless otherwise specifically prohibited by the terms of this Agreement, the Rights Agent and any stockholder, affiliate, member, director, officer, agent, representative or employee of the Rights Agent may buy, sell or deal in any of the securities of Parent or become pecuniarily interested in any transaction in which Parent or Company may be interested, or contract with or lend money to Parent or the Company or otherwise act as fully and

freely as though it were not the Rights Agent under this Agreement. Nothing herein shall preclude the Rights Agent or any such stockholder, affiliate, director, member, officer, agent, representative or employee from acting in any other capacity for the Company or for any other Person.

(p) The Rights Agent may perform any and all of its duties (i) itself (through its directors, officers, or employees) or (ii) through its agents, representatives, attorneys, custodians and/or nominees and the Rights Agent shall not be answerable or accountable for any act, default, neglect or misconduct of any such agents, representatives, attorneys, custodians and/or nominees absent the Rights Agent's own willful misconduct, fraud, gross negligence or bad faith (each as determined by a final non-appealable order, judgment, decree or ruling of a court of competent jurisdiction) in the selection and continued employment thereof.

(q) The Rights Agent shall act hereunder solely as agent for Company and it shall not assume any obligations or relationship of agency or trust with any of the Holders.

(r) The Rights Agent shall not have any duty or responsibility with respect to any action or default by the Company or Parent or the Committee, including, without limiting the generality of the foregoing, any duty or responsibility to initiate or attempt to initiate any proceedings at law or otherwise or to make any demand upon any of them.

(s) All funds received by Computershare under this Agreement that are to be distributed or applied by Computershare in the performance of services hereunder (the "Funds") shall be held by Computershare as agent for the Company and deposited in one or more bank accounts to be maintained by Computershare in its name as agent for the Company. Until paid pursuant to the terms of this Agreement, Computershare will hold the Funds through such accounts in: deposit accounts of commercial banks with Tier 1 capital exceeding \$1 billion or with an average rating above investment grade by S&P (LT Local Issuer Credit Rating), Moody's (Long Term Rating) and Fitch Ratings, Inc. (LT Issuer Default Rating) (each as reported by Bloomberg Finance L.P.). Computershare will only draw upon the Funds in such account(s) as required from time to time to pay the CVR Payment Amount to Holders and to make any applicable tax withholding payments. The Rights Agent shall have no responsibility or liability for any diminution of the Funds that may result from any deposit made by Computershare in accordance with this paragraph, including any losses resulting from a default by any bank, financial institution or other third party. Notwithstanding anything contained herein, Computershare may from time to time receive interest, dividends or other earnings in connection with such deposits and Computershare shall not be obligated to pay such interest, dividends or earnings to Company, any Holder or any other Person.

(t) The provisions of this Section 6.02 and Section 6.03 below shall survive the termination of this Agreement and the resignation, replacement or removal of the Rights Agent.

Section 6.03 Designation; Removal; Successor Rights Agent.

(a) The Rights Agent may resign at any time and be discharged from its duties under this Agreement by giving written notice thereof to the Company and the Committee specifying a date when such resignation will take effect, which notice will be sent at least 45 days prior to the date so specified but in no event will such resignation become effective until the earlier of (i) the date so specified and (ii) the appointment of a successor Rights Agent. The Company and the Committee acting jointly have the right to remove the Rights Agent at any time by specifying a date when such removal will take effect. Notice of such removal will be given by the Company and the Committee to the Rights Agent, which notice will be sent at least 30 days prior to the date so specified.

(b) If the Rights Agent shall resign, is removed pursuant to Section 6.03(a) or shall otherwise become incapable of acting, the Company and the Committee shall jointly appoint a successor to the Rights Agent. If the Company and the Committee shall fail to make such appointment within a period of 30 days after such removal or after the Company and the Committee have been notified in writing of such resignation or incapacity by the resigning or incapacitated Rights Agent or by any Holder (whose name shall appear on the CVR Register), then either the Acting Holders or the Company may apply to any court of competent jurisdiction for the appointment of a successor to the Rights Agent. Any successor Rights Agent, whether appointed by the Company and the Committee or by such a court, shall be a stock transfer agent of national reputation or the corporate trust department of a commercial bank.

(c) After appointment, the successor Rights Agent shall be vested with the same powers, rights, duties and responsibilities as if it had been originally named as Rights Agent without further act or deed, but the former Rights Agent shall deliver and transfer to the successor Rights Agent any property at the time held by it hereunder (including, but not limited to, the CVR Register and all computer files and other information related to the foregoing), and execute and deliver any further assurance, conveyance, act or deed necessary for such purpose. In addition, the former Rights Agent shall provide reasonable assistance to the successor Rights Agent with regard to transferring the CVR Register and related files to such successor Rights Agent, but such predecessor Rights Agent shall not be required to make any additional expenditure (without compensation or reimbursement by the Company or Parent) or assume any additional liability in connection with the foregoing.

(d) In the event of such resignation or removal, the successor Rights Agent shall mail by first-class mail, postage prepaid, to each Holder, written notice of such removal or resignation and the name and address of such successor Rights Agent.

ARTICLE VII MISCELLANEOUS

Section 7.01 Termination. This Agreement shall be terminated without further action of any parties hereto and of no force or effect, and the parties hereto shall have no liability hereunder, upon the earliest to occur of (i) the determination made in good faith by the Committee that no CVR Payment Amounts are required to be paid under the terms of this Agreement, (ii) the Committee reasonably determines in good faith that the aggregate amount of Claims Expenses incurred from the Effective Time, together with the Claims Expenses reasonably expected to be incurred, are reasonably likely to exceed the Litigation Proceeds reasonably likely to still be collected, (iii) the date on which the CVR Payment Amount has been paid to the Holders pursuant to this Agreement, (iv) the 90th day following the date on which the Aggregate Cap is reached if, on such date, (A) no Litigation Proceeds have been received by the Company and (B) the Committee, based on the advice of outside counsel, has determined that no Litigation Proceeds are reasonably likely to be collected thereafter, (v) the Determination Date, if no CVR Payment Amount is due to the Holders as determined pursuant to Section 4.02(f) and (vi) the seventh anniversary of the Effective Time (each, a “Termination Event”); provided that if the Committee determines, based on the advice of outside legal counsel, that it is reasonably likely to obtain a Final Resolution of all Claims after the Termination Date, then the Committee may determine in good faith to extend such date with respect to CVRs (and the CVR Payment Date) by up to six months (such date that is the earliest to occur of the foregoing (including any extension pursuant to clause (vi) of this Section 7.01) is referred to as the “Termination Date”); provided that this extension right may only be exercised once. The Committee shall promptly notify the Company and the Rights Agent of the occurrence of the Termination Date, and the Committee’s determination of the occurrence of the Termination Date shall be binding on all parties hereto and the Holders. Thereafter, the Company shall be responsible for compliance with unclaimed property obligations. The termination of this Agreement will not affect or limit the protections and immunities of the Rights Agent pursuant to Sections 4.01(a), 6.02, 6.03, and Article VII hereof.

Section 7.02 Certain Definitions. Terms used but not defined herein shall have the respective meanings set forth in the Merger Agreement. In addition, for purposes of this Agreement:

(a) “Acting Holders” means, at the time of determination, Holders of not less than a majority of the outstanding CVRs as set forth in the CVR Register.

(b) “Affiliate” of any Person means another Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such first Person. For purposes of this definition, “control” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through ownership of voting securities, by contract or otherwise.

(c) “Aggregate Cap” means the maximum aggregate amount of \$30,000,000, or such higher amount as the Committee may decide (which decision by the Committee shall require the approval of the Parent Committee Member), which cap shall apply to the total aggregate amount of Claims Expenses actually paid after the Effective Time by the Company and its Affiliates in Pursuing and settling the Claims.

(d) “Annual Litigation Fees” means, in the aggregate, the Annual Winston Fees and the Annual O’Neill Fees and any fees of any successor counsel.

(e) “Annual O’Neill Fees” means, in the aggregate, the annual amounts, costs and out-of-pocket expenses payable or accrued by the Company pursuant to the O’Neill Advisory Agreement.

(f) “Annual Winston Fees” means, in the aggregate, the annual amounts, costs and out-of-pocket expenses payable or accrued by the Company pursuant to the Winston & Strawn Engagement Letter.

(g) “Business Day” means any day except for (i) a Saturday or a Sunday or (ii) a day on which banking and savings and loan institutions are authorized or required by Law to be closed in New York, New York.

(h) “Change of Control” means (i) a sale, lease or other disposition of all or substantially all of the assets of the Parent or the Company, (ii) a merger or consolidation involving the Parent or the Company in which neither the Parent nor the Company is the surviving entity, (iii) any other transaction involving the Parent or the Company in which the Parent or the Company is the surviving or continuing entity but in which the stockholders of the Parent or the Company immediately prior to such transaction own less than 50% of their voting power immediately after the transaction.

(i) “Claims Expenses” means, without duplication, the sum of (i) all documented out-of-pocket fees, costs and expenses (including the Annual Litigation Fees, the Monetary Recovery Fee and other attorneys’ fees and expenses) incurred or accrued after the Effective Time by the Company and its Affiliates in commencing, defending, prosecuting, settling and, if applicable, withdrawing the Claims (including defending against any counterclaims), and (ii) any amounts paid or payable in settlement or in judgment of any Claims against the Company. “Claims Expenses” shall also include all fees, costs, expenses, obligations and liabilities of every nature or description incurred, directly or indirectly, by the Committee or any Committee Member in connection with carrying out the Committee’s powers and duties under this Agreement or applicable law, including (i) all costs and expenses of Pursuing any Claims, including the fees and expenses of Advisors, agents, vendors (including vendors for the collection, processing, hosting and review of Litigation Materials) and witnesses (including expert witnesses), court costs and reasonable out-of-pocket expenses incurred by current or former employees or Advisors of the Company (but in no event any compensation expenses of current employees of the Company) in connection with the Committee’s access to them pursuant to Section 3.01, (ii) all compensation, expenses and reimbursements (including for Taxes and governmental charges) of the Rights Agent, (iii) all compensation paid to the Holder Committee Member and the Independent Committee Member pursuant to Section 2.04 and all reimbursements paid to each Committee Member, (iv) all costs and expenses of indemnifying the Rights Agent or the Committee Members pursuant to this Agreement or otherwise prosecuting or defending any other litigation or involving the Committee or this Agreement, and (v) all fees and expenses payable to the Firm (other than fees and expenses allocated to be paid by the Company in connection with a disputed Determination) in accordance with Section 4.02(d); provided, however, that “Claims Expenses” shall not include the Non-Monetary Recovery Fee. “Claims Expenses” shall also include all Losses indemnified pursuant to Section 2.06(b) (including amounts advanced pursuant to the second sentence thereof) and payments made or advanced pursuant to Section 6.02.

(j) “Company Equity Award” means a Company Option, Company RSU or Company PSU.

(k) “CVR Payment Amount” means, on the CVR Payment Date, an amount of cash (if positive) equal to 85% of the aggregate of (i) the amount of the Litigation Proceeds actually received by the Company or its Affiliates, (ii) minus the Tax Costs, (iii) minus the Claims Expenses (in each case for the items in clauses (ii) and (iii), without double counting any particular cost, fee, expense or claim) and (iv) minus the Non-Monetary Recovery Fee; provided that the CVR Payment Amount shall exclude any additional recoveries Winston & Strawn LLP is entitled to seek and retain against the defendant in the KGM Litigation for attorneys’ fees as set forth in the Winston & Strawn Engagement Letter. The pro rata share of each CVR Payment Amount due to each Holder shall be determined by dividing the CVR Payment Amount by the sum of (A) the total number of CVRs outstanding on the CVR Payment Date and (B) the total number of Acquired CVRs acquired by the Company or its Affiliates pursuant to Section 1.06. For the avoidance of doubt, no Abandoned CVRs, if any, shall be taken into account for purposes of this definition.

(l) “CVR Payment Date” means the fifth Business Day following the later of (i) Determination Date if Litigation Proceeds are actually received, and (ii) the date on which the Non-Monetary Recovery Fee has been

paid and the Company has received an acknowledgment from Winston & Strawn LLP and Thomas O'Neill that the Company is fully released including with respect to the Non-Monetary Recovery Fee.

- (m) “DTC” means The Depository Trust Company or any successor thereto.

- (n) “Due Cause” means the occurrence of any of the following events:
 - (i) material breach of a Committee Member’s obligations under his or her services agreement relating to this Agreement;

 - (ii) a Committee Member’s neglect of, intentional misconduct in connection with the performance of, or refusal to perform such Committee Member’s duties in accordance with Article II of this Agreement, which, in the case of neglect or refusal to perform, has not been cured to the Company’s good faith satisfaction within 30 days after such Committee Member has been provided written notice of the same;

 - (iii) a Committee Member’s engagement in any conduct that injures the integrity, character or reputation of the Company or that impugns such Committee Member’s own integrity, character or reputation so as to cause that Committee Member to be unfit to act in the capacity of a Committee Member;

 - (iv) a good faith determination by the Board of Directors of the Company or Parent, as applicable, that a Committee Member has committed an act or acts constituting a felony, or other act involving dishonesty, disloyalty or fraud against the Company; or

 - (v) a good faith determination by the Board of Directors of the Company or Parent, as applicable, that the Committee Member has a material conflict of interest with the Company or Parent that could reasonably be expected to adversely impact his or her services as a Committee Member.

- (o) “Effective Time” has the meaning ascribed to such term in the Merger Agreement.

- (p) “Equity Award CVR” means a CVR received by a Holder in respect of a Company Option, Company RSU or Company PSU.

- (q) “Final Determination” means, with respect to the CVR Payment Amount, the final resolution of a liability for any Tax with respect to such amount:
 - (i) by an acceptance on an IRS Form 870 or 870-AD (or any successor forms thereto), except that acceptance on an IRS Form 870 or 870-AD or comparable form or agreement shall not constitute a Final Determination to the extent that such form or agreement reserves (whether by its terms or by operation of Law) the right of the taxpayer to file a claim for refund or the right of the applicable Governmental Authority to assert a further deficiency in respect of such issue or adjustment or for such taxable period (as the case may be);

 - (ii) by a decision, judgment, decree, or other order of a court of competent jurisdiction that is or has become final and unappealable;

 - (iii) by a closing agreement or accepted offer in compromise pursuant to Sections 7121 or 7122 of the Code, or a comparable agreement pursuant to the laws of a state, local, or non-United States jurisdiction; or

 - (iv) by a final settlement resulting from a treaty-based competent authority determination.

- (r) “Final Resolution” means, with respect to all Claims, the occurrence of all of the following: (a) a final, non-appealable, and non-challengeable judgment, order, or decision has been entered by a court or other tribunal of competent jurisdiction, or a binding settlement agreement has been fully executed and delivered by all relevant parties; (b) no further appeal, review, or other challenge is available or pending with respect to such judgment, order, decision, or settlement relating to any Claims; (c) the Company is not subject to any ongoing or

further obligations, liabilities, or restrictions arising from such proceeding, including any decision, order, or settlement that could be appealed or otherwise challenged; (d) all claims, counterclaims, and causes of action asserted in such proceeding have been fully and finally resolved, withdrawn, dismissed with prejudice, or otherwise disposed of; and (e) the Company and all other relevant parties have executed and delivered complete and unconditional releases with respect to all matters arising out of or relating to such proceeding, to the extent required by the applicable judgment, order, decision, or settlement relating to any Claims. For the avoidance of doubt, Final Resolution shall be deemed to have occurred only when the litigation is fully and finally concluded, with no further recourse, liability, or exposure for the Company.

(s) “Governmental Authority” means any U.S. or foreign federal, state, provincial or local governmental authority, court, government or self-regulatory organization, commission, tribunal or organization or any regulatory, administrative or other agency, or any political or other subdivision, department or branch of any of the foregoing.

(t) “Holder” means a Person in whose name a CVR is registered in the CVR Register at the applicable time.

(u) “KGM Litigation” means the lawsuit filed in the U.S. District Court for the Southern District of New York captioned *TreeHouse Foods, Inc. et al. v. Green Mountain Coffee Roasters, Inc. et al.* (Case No. 1:14-cv-00905) and *In re Keurig Green Mountain Single-Serve Coffee Antitrust Litigation* (Case No. 1:14-MD-02542 (S.D.N.Y.)).

(v) “Litigation Materials” means all documents, data, and records (including electronic and archived documents and files) within the Company’s possession, custody or control, or within the possession, custody or control of any of its Advisors, to the extent relating to the Pursuit of the Claims. “Litigation Materials” include, but are not limited to: (i) all documents that have been collected and preserved during factual investigation and preparation for litigation, (ii) all documents prepared in connection with the Pursuit of the Claims, (iii) all documents produced to or received from defendants and third parties during civil discovery, (iv) all documents produced to any Government Authority during an investigation and (v) any other discovery materials such as documents, deposition testimony, deposition exhibits, deposition transcripts, written discovery requests, interrogatory responses, responses to requests for admission and responses to requests for documents, and any other information or material produced, given, or exchanged including any information contained therein or derived therefrom. Any materials prepared by the Company’s Advisors on its behalf in connection with the Pursuit of the Claims are also “Litigation Materials.”

(w) “Litigation Proceeds” means the aggregate amount of any and all cash compensation, payments, penalties, interest and other damages, if any, actually recovered or received, during the Term, by the Company or any of its Affiliates as a result of the Claims, whether such compensation, penalties, interest or other damages are recovered at trial, upon appeal or in settlement or other proceeds or other monies.

(x) “Losses” means, with respect to any Person, any and all demands, claims, suits, actions, causes of action, proceedings, assessments, losses (including losses of profit), damages, liabilities, costs and expenses incurred by such Person, including interest, penalties, fines, judgments, awards, court costs and reasonable fees of Advisors.

(y) “Monetary Recovery Fee” shall mean the O’Neill Advisory Monetary Contingency Fee and the Winston Monetary Recovery Fee.

(z) “Non-Monetary Recovery Fee” shall mean the O’Neill Advisory Non-Monetary Contingency Fee and the Winston Non-Monetary Recovery Fee.

(aa) “O’Neill Advisory Agreement” means the advisory agreement, dated as of June 28, 2021, between the Company and Thomas E. O’Neill, relating to the KGM Litigation.

(bb) “O’Neill Advisory Monetary Contingency Fee” means the lump sum monetary contingency fee payable by the Company pursuant to the O’Neill Advisory Agreement.

(cc) “O’Neill Advisory Non-Monetary Contingency Fee” means the lump sum non-monetary contingency fee payable by the Company pursuant to the O’Neill Advisory Agreement.

(dd) “Person” means any individual, corporation, partnership, joint venture, limited liability company, business trust, association, joint-stock company, trust, estate, unincorporated organization or government, or any Governmental Authority.

(ee) “Pursue” shall be construed to have the same meaning as the term “Pursuit.”

(ff) “Subsidiary,” when used with respect to any Person, means any corporation or other organization, whether incorporated or unincorporated, of which such Person directly or indirectly owns or controls at least a majority of the securities or other interests having by their terms ordinary voting power to elect a majority of the Board of Directors or others performing similar functions with respect to such corporation or other organization, or any organization of which such Person is a general partner.

(gg) “Tax” means all taxes, customs, tariffs, imposts, levies, duties, fees or other like assessments or charges of a similar nature, however denominated, imposed by a Governmental Authority, together with all interest, penalties and additions imposed with respect to such amounts.

(hh) “Tax Costs” means, with respect to the receipt of Litigation Proceeds, the product of (i) 20% and (ii) the excess of (A) the Litigation Proceeds, to the extent currently includible in the gross income of the Company or any of its Affiliates for U.S. federal income tax purposes, over (B) the sum of (1) for the tax year in which the Litigation Proceeds are received, any deductions or losses reasonably expected to be available under Section 186 of the Code or otherwise attributable to the receipt of the Litigation Proceeds or the payment of the CVR Payment Amount and (2) for any tax year or portion thereof beginning after the Closing Date (and without duplication of clause (1)), any deductions or losses attributable to Claims Expenses to the extent taken into account as a reduction of the CVR Payment Amount under clause (iii) of the definition thereof.

(ii) “Term” means the duration of this Agreement, from the Effective Time and until the Termination Date.

(jj) “Winston & Strawn Engagement Letter” means the engagement letter, dated as of June 13, 2018, between the Company and Winston & Strawn LLP, relating to the KGM Litigation.

(kk) “Winston Monetary Recovery Fee” shall have the meaning set forth in the Winston & Strawn Engagement Letter.

(ll) “Winston Non-Monetary Recovery Fee” shall have the meaning set forth in the Winston & Strawn Engagement Letter.

Section 7.03 *Notices*. All notices and other communications under this Agreement shall be in writing and shall be deemed given (a) when delivered personally by hand (with written confirmation of receipt by other than automatic means, whether electronic or otherwise), (b) on the date sent if sent by electronic mail (*provided, however*, that notice given by email shall not be effective unless either a duplicate copy of such email notice is promptly given by one of the other methods described in this Section 7.03) or (c) one Business Day after the day sent by an internationally recognized overnight courier (with written confirmation of receipt), in each case, at the following addresses, facsimile numbers and email addresses (or to such other address or email address as a party may have specified by notice given to the other party pursuant to this provision):

If to the Company prior to the Effective Time:

TreeHouse Foods, Inc.
2021 Spring Road, Suite 600 Oak Brook, IL 60523
Attention: Kristy Waterman
Email: Kristy.Waterman@treehousefoods.com with a copy (which shall

not constitute notice) to:

Jones Day

250 Vesey Street New York, NY 10281
Attention: Randi C. Lesnick
Benjamin L. Stulberg Julia V.S. Feldman
Email: rclesnick@jonesday.com
blstulberg@jonesday.com
jfeldman@jonesday.com

If to the Company after the Effective Time:

Industrial F&B Investments II, Inc. c/o Investindustrial
375 Park Avenue, Suite 2607, 26th Floor New York, NY 10152
Attention: Board of Directors Email:
legal@investindustrial.com

with a copy (which shall not constitute notice) to:

Skadden, Arps, Slate, Meagher & Flom LLP One Manhattan West
New York, NY 10001
Attention: Sandro de Bernardini; Peter D. Serating; Maxim Mayer-Cesiano Email:
sandro.debernardini@skadden.com; peter.serating@skadden.com; maxim.mayercesiano@skadden.com

If to the Committee or any Committee Member, to it, him or her, initially at: Kristy N. Waterman

2021 Spring Road, Suite 600 Oak Brook, IL 60523
Attention: Kristy N. Waterman
Email: At the email address shown in the books and records of the Company

Craig Donaldson
2021 Spring Road, Suite 600 Oak Brook, IL 60523
Attention: Craig Donaldson

Email: At the email address shown in the books and records of the Company If to the Rights Agent:

Computershare Inc. and Computershare Trust Company, N.A. 150 Royall St.
Canton, MA 02021
Attention: Relationship Manager

Section 7.04 *Notice to Holders*. Where this Agreement provides for notice to Holders, such notice will be sufficiently given (unless otherwise herein expressly provided) if in writing and transmitted through the facilities of DTC in accordance with DTC's procedures and/or mailed, first-class postage prepaid, to each Holder affected by such event, at the Holder's address as it appears in the CVR Register, not later than the latest date, and not earlier than the earliest date, if any, prescribed for the giving of such notice. In any case where notice to Holders is given

by mail, neither the failure to mail such notice, nor any defect in any notice so mailed, to any particular Holder will affect the sufficiency of such notice with respect to other Holders.

Section 7.05 Assignment. The Company may assign any or all of its rights, interests and obligations hereunder to (a) in its sole discretion and without the consent of any other party hereto, any controlled Affiliate of Parent, but only for so long as it remains a controlled Affiliate of Parent, or (b) with the prior written consent of the Acting Holders, any other Person (any permitted assignee under clause (a) or (b), an “Assignee”), in each case; provided that the Assignee agrees to assume and be bound by all of the terms of this Agreement. Any Assignee may thereafter assign any or all of its rights, interests and obligations hereunder in the same manner as Parent pursuant to the prior sentence. In connection with any assignment to an Assignee described in clause (a) above in this Section 7.05, the Company (and the other assignor) shall agree to remain liable for the performance by each Assignee (and such other assignor, if applicable) of all obligations of the Company hereunder, with such Assignee substituted for Parent under this Agreement. This Agreement will be binding upon, inure to the benefit of, and be enforceable by each of the successors of the Company and each Assignee. Each of the successors of the Company and Assignees shall expressly assume by an instrument supplemental hereto, executed and delivered to the Rights Agent, the due and punctual payment of the CVRs and the due and punctual performance and observance of all of the covenants and obligations of this Agreement to be performed or observed by the Company. Subject to Section 7.15, the Rights Agent may not assign this Agreement without the Company’s written consent. Any attempted assignment of this Agreement or any such rights in violation of this Section 7.05 shall be void and of no effect.

Section 7.06 Interpretation; Construction.

(a) The table of contents and headings herein are for convenience of reference only, do not constitute part of this Agreement and will not be deemed to limit or otherwise affect any of the provisions hereof. Where a reference in this Agreement is made to a Section or Schedule, such reference will be to a Section of or Schedule to this Agreement unless otherwise indicated. Whenever the words “include,” “includes” or “including” are used in this Agreement, they will be deemed to be followed by the words “without limitation.” Any reference in this Agreement to gender includes all genders, and words imparting the singular number only will include the plural and vice versa. Where a reference in this Agreement is made to any agreement (including this Agreement), contract, statute or regulation, such references are to, except as context may otherwise require, the agreement, contract, statute or regulation as amended, modified, supplemented, restated or replaced from time to time, and to any section of any statute or regulation including any successor to the section and, in the case of any statute, any rules or regulations promulgated thereunder. All references to “dollars” or “\$” in this Agreement are to United States dollars. All references to “days” will be to calendar days unless otherwise indicated as a “Business Day.” When calculating periods of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period will be excluded, and if the last day of such period is a non-Business Day, the period in question will end on the next succeeding Business Day.

(b) The parties have participated jointly in negotiating and drafting this Agreement. In the event that an ambiguity or a question of intent or interpretation arises, this Agreement will be construed as if drafted jointly by the parties, and no presumption or burden of proof will arise favoring or disfavoring any party by virtue of the authorship of any provision of this Agreement.

Section 7.07 Severability. The provisions of this Agreement will be deemed severable and the invalidity or unenforceability of any provision will not affect the validity or enforceability of the other provisions hereof. If any provision of this Agreement, or the application thereof to any Person or any circumstance, is invalid or unenforceable, (a) a suitable and equitable provision will be substituted therefor in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid or unenforceable provision and (b) the remainder of this Agreement and the application of such provision to other Persons or circumstances will not be affected by such invalidity or unenforceability, nor will such invalidity or unenforceability affect the validity or enforceability of such provision, or the application thereof, in any other jurisdiction, provided, however, that if an excluded provision shall affect the rights, immunities, liabilities, duties or obligations of the Rights Agent, the Rights Agent shall be entitled to resign in accordance with Section 6.03, except that, notwithstanding anything to the contrary in Section 6.03, the notice period for such resignation shall be reduced from 45 days to 10 days.

Section 7.08 Counterparts; Effectiveness. This Agreement may be executed in any number of counterparts (including by electronic signature or .pdf format), each such counterpart being deemed to be an original instrument,

with the same effect as if the signatures thereto and all such counterparts will together constitute one and the same agreement.

Section 7.09 *Third-Party Beneficiaries*. Nothing in this Agreement, express or implied, will give to any Person (other than the Rights Agent, Parent, Parent's successors, the Company, the Company's successors, the Committee Members, Assignees) any benefit or any legal or equitable right, remedy or claim under this Agreement or under any covenant or provision herein contained, all such covenants and provisions being for the sole benefit of the foregoing. The rights of Holders and their successors and assigns pursuant to Permitted Transfers will solely be entitled to (i) require the Rights Agent to change address of record on the CVR Register pursuant to Section 1.03(c), (ii) renounce and abandon the CVRs pursuant to Section 1.06, and (iii) the payment of the CVR Payment Amount from the Rights Agent pursuant to Section 4.01(a).

Section 7.10 *Governing Law; Consent to Jurisdiction; Venue*.

(a) This Agreement, and all disputes, claims or causes of action based on, arising out of, or related to this Agreement or the performance of this Agreement will be governed by, and construed in accordance with, the Laws of the State of Delaware, without giving effect to principles or rules of conflict of laws to the extent such principles or rules would require or permit the application of the laws of another jurisdiction; provided, however, that all provisions regarding the rights, duties and obligations of the Rights Agent shall be governed by and construed in accordance with the laws of the State of New York applicable to contracts made and to be performed entirely within the State of New York, without regard to the principles or rules concerning conflicts of laws which might otherwise require application of the substantive laws of another jurisdiction.

(b) Any dispute, claim or cause of action based on, arising out of or related to this Agreement will be brought in the Delaware Court of Chancery (or, only if subject matter jurisdiction over a particular matter is not available in such court, then in the United States District Court for the District of Delaware or, if jurisdiction is not available in the United States District Court for the District of Delaware (but only in such event), then in any court sitting of the State of Delaware in New Castle County) and any appellate court from any of such courts (the "Chosen Courts"), and each of the parties irrevocably submits to the exclusive jurisdiction of the Chosen Courts in any such dispute, claim or cause of action, waives any objection it may now or hereafter have to personal jurisdiction, venue or convenience of forum, agrees that all disputes, claims or causes of action will be heard and determined only in the Chosen Courts, and agrees not to bring any dispute, claim or cause of action arising out of or relating to this Agreement in any other court. Nothing herein contained will be deemed to affect the right of any party to serve process in any manner permitted by law or to commence legal proceedings or otherwise proceed against any other party in any other jurisdiction, in each case, to enforce judgments obtained from any dispute, claim or cause of action brought pursuant to this Section 7.10(b).

Section 7.11 *Waiver of Jury Trial*. **EACH OF THE PARTIES IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY ACTION BETWEEN OR AMONG THE PARTIES ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE PERFORMANCE OF THIS AGREEMENT.**

Section 7.12 *Entire Agreement*. As among the Company, the Parent, the Holders and the Committee, this Agreement and the Merger Agreement (including the schedules, annexes and exhibits thereto and the documents and instruments referred to therein) contain the entire understanding of such parties hereto and thereto with reference to the transactions and matters contemplated hereby and thereby and supersedes all prior agreements, written or oral, among such parties with respect hereto and thereto. As among the Company, the Committee, the Parent, and the Rights Agent, this Agreement and any schedule or exhibit attached hereto contains the entire understanding of such parties with reference to the transactions and matters contemplated hereby and supersedes all prior agreements, written or oral, among the parties with respect hereto and thereto. If and to the extent that any provision of this Agreement is inconsistent or conflicts with the Merger Agreement with respect to the rights, duties, protections and liabilities of the Rights Agent, this Agreement will govern and be controlling.

Section 7.13 *Special Purpose Entity*. Within reasonable time after the execution of this Agreement (not to exceed six months), the Company and Parent shall evaluate in good faith whether it is feasible, in a manner that will not adversely affect Holders, and legally permissible to (i) form an entity (an "SPE"), (ii) assign to such SPE (A) all Claims, (B) all rights of the Company arising out of or in connection with the Claims (including the right to receive Claims Proceeds) and (C) all contracts with Advisors in connection with the Claims, and (iii) if such actions are

deemed feasible and legally permissible, to make appropriate changes (reasonably agreed upon by Parent and the Company) to this Agreement.

Section 7.14 *Parent Obligations*. Parent shall cause the Company to comply with its obligations under this Agreement, including, but not limited to, the penultimate sentence of Section 1.03(b), Section 2.02(g), Section 2.02(h), Section 2.05(b), Section 2.06(b), Section 3.01, Section 3.02, Section 3.03, Section 3.04, Section 3.05(b), Section 4.01, Section 4.02, Section 4.03(a), Section 5.01(c), Section 5.02, Section 6.02(e), the first sentence of Section 6.03(b) and Section 7.13.

Section 7.15 *Merger or Consolidation of Rights Agent*. Any Person into which the Rights Agent or any successor Rights Agent may be merged or with which it may be consolidated, or Person resulting from any merger or consolidation to which the Rights Agent or any successor Rights Agent shall be a party, or any Person succeeding to the stock transfer or other shareholder services business of the Rights Agent or any successor Rights Agent, shall be the successor to the Rights Agent under this Agreement without any further act on the part of any of the parties hereto. The purchase of all or substantially all of the Rights Agent's assets employed in the performance of transfer agent activities shall be deemed a merger or consolidation for purposes of this Section 7.15.

Section 7.16 *Force Majeure*. Notwithstanding anything to the contrary contained herein, no party hereto will have any liability for not performing, or a delay in the performance of, any act, duty, obligation or responsibility under this Agreement but only to the extent such failure or delay is directly and solely caused by one or more of the following events: (i) provision of future law or regulation or governmental authority, (ii) act of God, (iii) epidemics and pandemics, (iv) war, civil or military disobedience or disorder, riot, rebellion, terrorism or insurrection, and (v) fire, earthquake, storm or flood.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed, as of the day and year first above written.

TREEHOUSE FOODS, INC.,

By: /s/ Kristy N. Waterman Name: Kristy N. Waterman
Title: Executive Vice President, Chief Human Resources Officer, General
Counsel, and Corporate Secretary

Kristy N. Waterman, as an initial Committee Member

/s/ Kristy N. Waterman

[Signature Page to the Contingent Value Rights Agreement]

Craig Donaldson, as an initial Committee Member

/s/ Craig Donaldson

[Signature Page to the Contingent Value Rights Agreement]

COMPUTERSHARE INC. and COMPUTERSHARE
TRUST COMPANY, N.A., jointly as Rights Agent

By: /s/ Collin Ekeogu
Name: Collin Ekeogu
Title: Senior Manager, Corporate Actions

Solely with respect to Sections 2.01, 2.02(g), 2.05(b), 2.05(c), 5.02, 7.03 and 7.05 through 7.14:

INDUSTRIAL F&B INVESTMENTS II, INC.

By: /s/ Gregory Read

Name: Gregory Read

Title: Assistant Secretary

[Signature Page to the Contingent Value Rights Agreement]

JOINDER AGREEMENT

Reference is hereby made to that certain Contingent Value Rights Agreement, dated as of February 11, 2026, by and among TreeHouse Foods, Inc., a Delaware corporation (the "Company"), Kristy N. Waterman and Craig Donaldson, as the initial Committee Members, and Computershare Inc., a Delaware corporation ("Computershare") and its affiliate, Computershare Trust Company, N.A., a federally chartered trust company, acting jointly with Computershare, as rights agent, and solely with respect to Sections 2.01, 2.02(g), 2.05(b), 2.05(c), 5.02, 7.03 and 7.05 through 7.14, Industrial F&B Investments II, Inc., a Delaware (as the same may be amended, restated, supplemented, or otherwise modified from time to time, the "Agreement"). Pursuant to and in accordance with Section 2.05 of the Agreement, the undersigned hereby agrees that upon execution and delivery of this Joinder Agreement, the undersigned shall become a party to the Agreement as [Holder / Parent / Independent] Committee Member for all purposes thereunder (and shall exercise any rights of the [Holder / Parent / Independent] Committee Member) and shall be fully bound by, and subject to, all of the terms, conditions, and provisions of the Agreement applicable to [Holder / Parent / Independent] Committee Member thereunder as though an original party thereto.

Capitalized terms used but not defined herein shall have the meanings ascribed thereto in the Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK; SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the undersigned has executed this Agreement as of [DATE].

[NAME]

Mailing Address: Email Address:

Investindustrial Completes Acquisition of TreeHouse Foods

TreeHouse Foods Shareholders are Entitled to Receive \$22.50 Per Share in Cash and One Contingent Value Right Per Share

OAK BROOK, Ill., February 11, 2026 – TreeHouse Foods, Inc. (“TreeHouse Foods” or “the Company”) and Industrial F&B Investments III, Inc., an independently managed investment subsidiary of Investindustrial VIII SCSp (“Investindustrial”), part of a leading European group of independently managed investment, holding, and advisory companies, today announced that Investindustrial has completed its previously announced acquisition of TreeHouse Foods in an all-cash transaction for a total Enterprise Value of \$2.9 billion, plus the value of the CVRs as set forth below.

In connection with the closing of the transaction, Industrial F&B Investments III, Inc. was merged with and into TreeHouse Foods, with TreeHouse Foods continuing as the surviving corporation. As a result, Investindustrial has acquired TreeHouse Foods. TreeHouse Foods shareholders of record as of the closing date are entitled to receive \$22.50 per share in cash for each share of common stock owned, and one non-transferable contingent value right (“CVR”) per common share. The CVR provides a holder with an opportunity to receive certain net proceeds, if any are recovered, from the ongoing *TreeHouse Foods, Inc. et al. v. Green Mountain Coffee Roasters, Inc. et al.* litigation relating to part of TreeHouse Foods’ coffee business. The specific terms and conditions of the CVR are set forth in the *CVR Agreement filed with the SEC*.

The upfront cash portion of the consideration of \$22.50 per common share represents an equity value of \$1.2 billion, a 38% premium to TreeHouse Foods’ closing share price on September 26, 2025, the last full trading day prior to market speculation around a transaction, and a 29% premium to the Company’s 30-day volume-weighted average share price on September 26, 2025. TreeHouse Foods’ common stock will no longer be listed on the New York Stock Exchange and TreeHouse Foods will become a private company.

Advisors

Goldman Sachs & Co. LLC served as financial advisor to TreeHouse Foods. Jones Day served as legal counsel.

Lazard, RBC Capital Markets and Deutsche Bank served as financial advisors to Investindustrial. RBC Capital Markets, Deutsche Bank and KKR Capital Markets provided Investindustrial with financing support for the transaction. Skadden, Arps, Slate, Meagher & Flom LLP served as legal counsel to Investindustrial on the acquisition, and Paul, Weiss, Rifkind, Wharton & Garrison LLP served as financing legal counsel.

ABOUT TREEHOUSE FOODS

TreeHouse Foods, Inc. is a leading private brands snacking and beverage manufacturer in North America. Our purpose is to engage and delight - one customer at a time. Through our customer focus and category experience, we strive to deliver excellent service and build capabilities and insights to drive mutually profitable growth for TreeHouse and for our customers. Our purpose is supported by investment in depth, capabilities and operational efficiencies which are aimed to capitalize on the long-term growth prospects in the categories in which we operate.

ABOUT INVESTINDUSTRIAL

Investindustrial is a leading European group of independently managed investment, holding, and advisory companies with €17 billion of raised fund capital. With sustainability principles deeply embedded into the firm's core approach, Investindustrial has a 35-year history of providing mid-market companies with capital, industrial expertise, operational focus and global platforms to accelerate sustainable value creation and international expansion.

Certain companies of the Investindustrial group are authorized by, and subject to regulatory supervision of the FCA in the United Kingdom, the CSSF in Luxembourg and the FSRA in Abu Dhabi Global Market. References to 'Investindustrial' are of generic nature, for ease of reading, and may refer, depending on the context, to a fund or any of its independently managed subsidiaries. Investindustrial's investment companies act independently from each other and each Investindustrial fund. More information is available at www.investindustrial.com.

INVESTINDUSTRIAL'S USE OF TERMS

The terms "group", "Investindustrial", "we", "us" (and similar) in this document have been used only for practical ease of reading and do not intend to imply any specific reference to a legal definition or any activity of control by any individual or company with respect to other companies. Investindustrial companies are each independently managed by their respective boards of directors. The term "Investindustrial" may refer where the context requires to companies other than the investment subsidiary of the fund Investindustrial Group's investment companies act independently from each other and each Investindustrial fund.

Please also note that any hyperlink or website mentioned herein, and information and links contained therein are not part of this communication and should not be considered as incorporated by reference herein.

Contacts

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