

SECURITIES AND EXCHANGE COMMISSION

FORM 8-K

Current report filing

Filing Date: **2020-08-14** | Period of Report: **2020-08-14**  
SEC Accession No. [0000823277-20-000026](#)

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FILER

**CHS INC**

CIK:[823277](#) | IRS No.: **410251095** | State of Incorporation: **MN** | Fiscal Year End: **0831**  
Type: **8-K** | Act: **34** | File No.: [001-36079](#) | Film No.: **201102285**  
SIC: **5150** Farm product raw materials

Mailing Address

*5500 CENEX DRIVE  
INVER GROVE HEIGHTS MN  
55077*

Business Address

*5500 CENEX DRIVE  
INVER GROVE HEIGHTS MN  
55077  
651-355-6000*

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, DC 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): **August 14, 2020**

**CHS Inc.**

(Exact Name of Registrant as Specified in Charter)

Commission File Number: **001-36079**

**Minnesota**

(State or Other Jurisdiction of Incorporation)

**41-0251095**

(IRS Employer Identification No.)

**5500 Cenex Drive**

**Inver Grove Heights, Minnesota 55077**

(Address of Principal Executive Offices) (Zip Code)

**(651) 355-6000**

(Registrant's telephone number, including area code)

**Not Applicable**

(Former Name or Former Address, if Changed Since Last Report)

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

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

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
8% Cumulative Redeemable Preferred Stock	CHSCP	The Nasdaq Stock Market LLC
Class B Cumulative Redeemable Preferred Stock, Series 1	CHSCO	The Nasdaq Stock Market LLC
Class B Reset Rate Cumulative Redeemable Preferred Stock, Series 2	CHSCN	The Nasdaq Stock Market LLC
Class B Reset Rate Cumulative Redeemable Preferred Stock, Series 3	CHSCM	The Nasdaq Stock Market LLC
Class B Cumulative Redeemable Preferred Stock, Series 4	CHSCL	The Nasdaq Stock Market 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.

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## Item 1.01. Entry into a Material Definitive Agreement.

On August 14, 2020, CHS Inc. (the “Company”) entered into a Note Purchase Agreement (the “Note Purchase Agreement”) with the accredited investors signatory thereto (collectively, the “Purchasers”), pursuant to which the Company will issue and sell, in a private placement, senior notes in the aggregate principal amount of \$375,000,000. The Company will issue these notes in four series, in the following designations and aggregate principal amounts: (i) \$95,000,000 aggregate principal amount of its Series Y Senior Notes due November 2, 2027 (the “Series Y Notes”); (ii) \$100,000,000 aggregate principal amount of its Series Z Senior Notes due November 2, 2030 (the “Series Z Notes”); (iii) \$65,000,000 aggregate principal amount of its Series AA Senior Notes due November 2, 2032 (the “Series AA Notes”); and (iv) \$115,000,000 aggregate principal amount of its Series BB Senior Notes due November 2, 2035 (the “Series BB Notes” and, together with the Series Y Notes, the Series Z Notes and the Series AA Notes, the “Notes”).

The Note Purchase Agreement provides that the Company will issue the Notes to the Purchasers, and that the Purchasers will pay the aggregate purchase price for the Notes to the Company, on November 2, 2020 (the “Closing Date”), subject to the satisfaction of certain customary closing conditions set forth in the Note Purchase Agreement, including, among other things, closing conditions relating to the accuracy of the representations and warranties of the Company contained in the Note Purchase Agreement, the absence of any default or event of default under the Note Purchase Agreement, the performance and compliance by the Company with all agreements and conditions contained in the Note Purchase Agreement required to be performed or complied with by it prior to or as of the Closing Date and the delivery of certain legal opinions and closing certificates.

The Note Purchase Agreement requires the Company to offer to prepay all of the outstanding Notes in full, together with unpaid accrued interest to the date of prepayment, in the event of a “change in control” of the Company. For purposes of the Note Purchase Agreement, a “change in control” of the Company means any person or entity, or any group thereof acting in concert, together with their respective affiliates, directly or indirectly controlling or owning (beneficially or otherwise) in the aggregate more than 50% of the aggregate voting power of the issued and outstanding voting interests of the Company. The Note Purchase Agreement also provides that the Company may, at its option and at any time, prepay all or part of the Notes, in integral multiples of \$1,000,000 and in a minimum amount of \$5,000,000, at 100% of the principal amount prepaid, plus interest thereon to the date of prepayment and a “make-whole amount” equal to the excess, if any, of the discounted value of the remaining scheduled payments with respect to the Notes being prepaid over the aggregate principal amount of those Notes (as more particularly described in the Note Purchase Agreement).

The Note Purchase Agreement contains customary representations, warranties and covenants, including financial covenants (1) not to permit the ratio of consolidated funded debt, determined as of the end of each fiscal quarter, to consolidated cash flow, as measured on the previous consecutive four fiscal quarters (the “Leverage Ratio”), to exceed 3.50 to 1.00 and (2) not to permit the ratio of adjusted consolidated funded debt, determined as of the end of each fiscal quarter, to consolidated net worth, determined as of that date, to exceed 0.80 to 1.00. The Note Purchase Agreement also restricts the Company and its subsidiaries from creating, issuing, incurring, assuming or permitting to exist any Priority Debt (as defined in the Note Purchase Agreement), if after giving effect thereto, the aggregate outstanding principal amount of all Priority Debt would exceed 20.0% of the Company’s consolidated net worth.

The Note Purchase Agreement includes a “most favored lender” provision generally requiring that, in the event any agreement or series of agreements of the Company or any of its subsidiaries creating or evidencing indebtedness for borrowed money, or any renewal, extension, amendment, supplement, restatement, replacement or refinancing thereof, in each case, in a principal amount outstanding or available for borrowing equal to or greater than \$100,000,000, at any time includes any financial covenant, event of default or prepayment right not included in the Note Purchase Agreement, or that would be more beneficial to the holders of the Notes than any analogous provision contained in the Note Purchase Agreement (an “Additional Provision”), then unless waived by the holders of a majority in aggregate principal amount of the Notes then outstanding, the Additional Provision will be deemed to be incorporated by reference into the Note Purchase Agreement. The Note Purchase Agreement also provides for the amendment, modification or deletion of an Additional Provision if such Additional Provision is amended or modified under, or deleted from, the underlying agreement, provided that no default or event of default has occurred and is continuing under the Note Purchase Agreement.

The Note Purchase Agreement contains customary events of default, including cross-defaults relating to other indebtedness. If certain events of default occur and are continuing, holders of a majority in aggregate principal amount of the Notes then outstanding may, upon notice to the Company, declare all the Notes then outstanding to be immediately due and payable. The occurrence of certain other events of default involving insolvency or bankruptcy of the Company or any of its subsidiaries will result in all the Notes then outstanding becoming immediately due and payable without any action by or on behalf of any holder of Notes. In addition, in the case of certain non-payment defaults that have occurred and are continuing, any holder of Notes affected by the default may, upon notice to the Company, declare all such holder’s Notes to be immediately due and payable.



The Notes are unsecured and rank at least *pari passu* with all of the Company's other unsecured senior debt.

Interest on the Series Y Notes will accrue at a rate of 3.24% per annum, interest on the Series Z Notes will accrue at a rate of 3.48% per annum, interest on the Series AA Notes will accrue at a rate of 3.58% per annum and interest on the Series BB Notes will accrue at a rate of 3.73% per annum, in each case, computed on the basis of a 360-day year of 12 30-day months; provided, that: (1) if during any fiscal quarter the Leverage Ratio (rounded to the second decimal place, with .005 being rounded upward) for the immediately preceding period is greater than 3.00 to 1.00, but the Notes had an investment grade rating from any nationally recognized statistical rating organization during that fiscal period, then the interest rate on each of the Notes will be 0.25% greater than it otherwise would have been; (2) if during any fiscal quarter the Leverage Ratio (rounded to the second decimal place, with .005 being rounded upward) for the immediately preceding period is greater than 3.00 to 1.00 but less than or equal to 3.25 to 1.00, and the Notes did not have an investment grade rating from any nationally recognized statistical rating organization during that fiscal period, then the interest rate on each of the Notes will be 0.50% greater than it otherwise would have been; and (3) if during any fiscal quarter the Leverage Ratio (rounded to the second decimal place, with .005 being rounded upward) for the immediately preceding period is greater than 3.25 to 1.00, and the Notes did not have an investment grade rating from any nationally recognized statistical rating organization during that fiscal period, then the interest rate on each of the Notes will be 1.00% greater than it otherwise would have been; provided, further, that, to the extent permitted by law, interest on any overdue payment of interest and, during the continuance of an event of default, on any unpaid balance and on any overdue payment of any "make-whole amount" will accrue at a rate equal to the greater of (x) 2.00% per annum greater than it otherwise would have been or (y) 2.00% over the rate of interest publicly announced by The Bank of New York in New York, New York as its "base" or "prime" rate. Interest on the Notes will be paid semiannually. Principal on each series of the Notes will be payable in full on the dates set forth in the first paragraph above.

Net proceeds from the issuance of the Notes will be used for general corporate purposes, including funding capital expenditures and investments.

Certain Purchasers are also holders of notes previously issued by the Company in private placement offerings.

The foregoing description of the Note Purchase Agreement does not purport to be complete and is qualified in its entirety by reference to the full text of the Note Purchase Agreement, a copy of which is attached hereto as [Exhibit 10.1](#) and is 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.**

Reference is made to the information set forth in Item 1.01 of this Current Report on Form 8-K, which is incorporated herein by reference.

**Item 9.01. Financial Statements and Exhibits.**

Exhibit No.	Description
<a href="#">10.1</a>	Note Purchase Agreement, dated as of August 14, 2020, among CHS Inc. and each of the Purchasers signatory thereto

## 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.

CHS Inc.

Date: August 14, 2020

By: /s/ Olivia Nelligan

Olivia Nelligan

Executive Vice President and Chief Financial Officer

**Exhibit 10.1**  
**Execution Version**

**CHS INC.**

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**NOTE PURCHASE AGREEMENT**

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**Dated as of August 14, 2020**

**\$95,000,000 Series Y Senior Notes due November 2, 2027**  
**\$100,000,000 Series Z Senior Notes due November 2, 2030**  
**\$65,000,000 Series AA Senior Notes due November 2, 2032**  
**\$115,000,000 Series BB Senior Notes due November 2, 2035**

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Exhibit 1(a)	--	Form of Series Y Senior Notes due November 2, 2027
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Exhibit 4.4(a)	--	Form of Opinion of Special Counsel for the Company
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**CHS INC.**  
**5500 Cenex Drive**  
**Inver Grove Heights, MN 55077**

**\$95,000,000 Series Y Senior Notes due November 2, 2027**  
**\$100,000,000 Series Z Senior Notes due November 2, 2030**  
**\$65,000,000 Series AA Senior Notes due November 2, 2032**  
**\$115,000,000 Series BB Senior Notes due November 2, 2035**

Dated as of August 14, 2020

To Each of The Purchasers Listed in  
Schedule A Hereto:

Ladies and Gentlemen:

CHS Inc., a nonstock agricultural cooperative corporation organized under the laws of the State of Minnesota (the “**Company**”), agrees with each of the purchasers whose names appear at the end hereof (each, a “**Purchaser**” and, collectively, the “**Purchasers**”) as follows:

**1. AUTHORIZATION OF NOTES.**

The Company will authorize the issue and sale of (a) \$95,000,000 aggregate principal amount of its Series Y Senior Notes due November 2, 2027 (the “**Series Y Notes**”), (b) \$100,000,000 aggregate principal amount of its Series Z Senior Notes due November 2, 2030 (the “**Series Z Notes**”), (c) \$65,000,000 aggregate principal amount of its Series AA Senior Notes due November 2, 2032 (the “**Series AA Notes**”) and (d) \$115,000,000 aggregate principal amount of its Series BB Senior Notes due November 2, 2035 (the “**Series BB Notes**” and together with the Series Y Notes, the Series Z Notes and the Series AA Notes, collectively, the “**Notes**”, each as may be amended, restated or otherwise modified from time to time pursuant to Section 17 and including any such notes issued in substitution therefor pursuant to Section 13 of this Agreement). The Series Y Notes, the Series Z Notes, the Series AA Notes and the Series BB Notes shall be substantially in the form set out in Exhibit 1(a), Exhibit 1(b), Exhibit 1(c) and Exhibit 1(d) respectively. Certain capitalized terms used in this Agreement are defined in Schedule B hereto; for the purposes of this Agreement, the rules of construction set forth in Section 22.5 shall govern.

**2. SALE AND PURCHASE OF NOTES.**

Subject to the terms and conditions of this Agreement, the Company will issue and sell to each Purchaser and each Purchaser will purchase from the Company, at the Closing provided for in Section 3, Notes in the principal amount and in the Series specified opposite such Purchaser’s name in Schedule A at the purchase price of 100% of the principal amount thereof. The Purchasers’ obligations hereunder are several and not joint obligations and no Purchaser shall have any liability to any Person for the performance or non-performance of any obligation by any other Purchaser hereunder.

**3. CLOSING.**

The sale and purchase of the Notes to be purchased by each Purchaser shall occur at the offices of Morgan, Lewis & Bockius LLP, 101 Park Avenue, New York, New York 10178 at 10:00 a.m., local time, at a closing (the “**Closing**”) on November 2, 2020. At the Closing, the Company will deliver to each Purchaser the Notes to be purchased by such Purchaser in the form of a single Note of each Series to be purchased by such Purchaser (or such greater number of Notes of each such Series in denominations of at least \$100,000 as such Purchaser may request), dated the date of the Closing and registered in such Purchaser’s name (or in the name of its nominee), as indicated in Schedule A, against delivery by such Purchaser to the Company or its order of immediately available funds in the amount of the purchase price therefor by wire transfer of immediately available funds for the account of the Company to Wells Fargo Bank, San Francisco, California, routing number 121000248, account number #####, Beneficiary: CHS Inc. If at the Closing the Company shall fail to tender such Notes to any Purchaser as provided above in this Section 3, or any of the conditions specified in Section 4 shall not have been fulfilled to such Purchaser’s satisfaction, such Purchaser shall, at its election, be relieved of all further obligations under this Agreement, without thereby waiving any rights such Purchaser may have by reason of such failure or such nonfulfillment.

**4. CONDITIONS TO CLOSING.**

Each Purchaser’s obligation to purchase and pay for the Notes to be sold to such Purchaser at the Closing is subject to the fulfillment to such Purchaser’s satisfaction, prior to or at the Closing, of the following conditions:





#### **4.1 Representations and Warranties.**

The representations and warranties of the Company in this Agreement shall be correct when made as of the date hereof and at the time of the Closing.

#### **4.2 Performance; No Default.**

The Company shall have performed and complied with all agreements and conditions contained in this Agreement required to be performed or complied with by it prior to or at the Closing and from the date of this Agreement to the Closing assuming that Sections 9 and 10 are applicable from the date of this Agreement. From the date of this Agreement until the Closing, before and after giving effect to the issue and sale of the Notes (and the application of the proceeds thereof as contemplated by Section 5.15), no Default or Event of Default shall have occurred and be continuing. Neither the Company nor any Subsidiary shall have entered into any transaction since the date of the Memorandum that would have been prohibited by Sections 10.1, 10.3, 10.4, 10.5, 10.7 or 10.10 hereof had such Sections applied since such date.

#### **4.3 Compliance Certificates.**

(a) Officer's Certificate. The Company shall have delivered to such Purchaser an Officer's Certificate, dated the date of the Closing, (i) certifying that the conditions specified in Sections 4.1, 4.2 and 4.9 have been fulfilled and (ii) setting forth a description of any Additional Provision in effect on the date of this Agreement (including any defined terms used therein) and related explanatory calculations, as applicable.

(b) Secretary's Certificate. The Company shall have delivered to such Purchaser a certificate, signed on its behalf by its Secretary or its Assistant Secretary, and one other officer of the Company, dated the date of the Closing, certifying as to (i) the resolutions attached thereto and other corporate proceedings relating to the authorization, execution and delivery of the Notes and this Agreement and (ii) the Company's organizational documents.

#### **4.4 Opinions of Counsel.**

Such Purchaser shall have received opinions in form and substance satisfactory to such Purchaser, dated the date of the Closing (a) from Dorsey & Whitney LLP, counsel for the Company, covering the matters set forth in Exhibit 4.4(a) and covering such other matters incident to the transactions contemplated hereby as such Purchaser or its counsel may reasonably request (and the Company hereby instructs its counsel to deliver such opinion to the Purchasers), (b) from the General Counsel for the Company, covering the matters set forth in Exhibit 4.4(b) and covering such other matters incident to the transactions contemplated hereby as such Purchaser or its counsel may reasonably request (and the Company hereby instructs its counsel to deliver such opinion to the Purchasers) and (c) from Morgan, Lewis & Bockius LLP, the Purchasers' special counsel in connection with such transactions, substantially in the form set forth in Exhibit 4.4(c) and covering such other matters incident to such transactions as such Purchaser may reasonably request.

#### **4.5 Purchase Permitted By Applicable Law, Etc.**

On the date of the Closing, such Purchaser's purchase of Notes shall (a) be permitted by the laws and regulations of each jurisdiction to which such Purchaser is subject, without recourse to provisions (such as section 1405(a)(8) of the New York Insurance Law) permitting limited investments by insurance companies without restriction as to the character of the particular investment, (b) not violate any applicable law or regulation (including Regulation T, U or X of the Board of Governors of the Federal Reserve System) and (c) not subject such Purchaser to any tax, penalty or liability under or pursuant to any applicable law or regulation, which law or regulation was not in effect on the date hereof. If requested by such Purchaser, such Purchaser shall have received an Officer's Certificate certifying as to such matters of fact as such Purchaser may reasonably specify to enable such Purchaser to determine whether such purchase is so permitted.

#### **4.6 Sale of Other Notes.**

Contemporaneously with the Closing, the Company shall sell to each other Purchaser and each other Purchaser shall purchase the Notes to be purchased by it at the Closing as specified in Schedule A.

#### **4.7 Payment of Special Counsel Fees.**

Without limiting the provisions of Section 15.1, the Company shall have paid on or before the date of this Agreement and the date of the Closing the fees, charges and disbursements of the Purchasers' special counsel referred to in Section 4.4 to the extent reflected in a statement of such counsel rendered to the Company at least one (1) Business Day prior to the date of this Agreement or the Closing, as applicable.

#### **4.8 Private Placement Number.**

A Private Placement Number issued by Standard & Poor's CUSIP Service Bureau (in cooperation with the SVO) shall have been obtained for each Series of the Notes.



#### **4.9 Changes in Corporate Structure.**

The Company shall not have changed its jurisdiction of incorporation or been a party to any merger or consolidation and shall not have succeeded to all or any substantial part of the liabilities of any other entity, at any time following the date of the most recent financial statements referred to in Schedule 5.5.

#### **4.10 Funding Instructions.**

At least five (5) Business Days prior to the date of the Closing, each Purchaser shall have received written instructions (via e-mail) signed by a Responsible Officer on letterhead of the Company confirming the information specified in Section 3 including (a) the name and address of the transferee bank, (b) such transferee bank's ABA number and (c) the account name and number into which the purchase price for the Notes is to be deposited. Each Purchaser has the right, but not the obligation, upon written notice (which may be by email) to the Company, to elect to deliver a micro deposit (less than \$51.00) to the account identified in the written instructions no later than two (2) Business Days prior to Closing. If a Purchaser delivers a micro deposit, a Responsible Officer must verbally verify the receipt and amount of the micro deposit to such Purchaser on a telephone call initiated by such Purchaser prior to Closing. The Company shall not be obligated to return the amount of the micro deposit, nor will the amount of the micro deposit be netted against the Purchaser's purchase price of the Notes.

#### **4.11 Offeree Letter.**

BofA Securities, Inc. and MUFG Securities Americas Inc. shall have delivered to the Company, their counsel, such Purchaser, and its special counsel an offeree letter, in form and substance satisfactory to such Purchaser, confirming the manner of the offering of the Notes by BofA Securities, Inc. and MUFG Securities Americas Inc.

#### **4.12 Proceedings and Documents.**

All corporate and other proceedings in connection with the transactions contemplated by this Agreement and all documents and instruments incident to such transactions shall be satisfactory to such Purchaser and its special counsel, and such Purchaser and its special counsel shall have received all such counterpart originals or certified or other copies of such documents as such Purchaser or such special counsel may reasonably request.

### **5. REPRESENTATIONS AND WARRANTIES OF THE COMPANY.**

The Company represents and warrants to each Purchaser that:

#### **5.1 Organization; Power and Authority.**

The Company is a nonstock agricultural cooperative corporation duly organized, validly existing and in good standing under the laws of the State of Minnesota, and is duly qualified as a foreign corporation and is in good standing in each jurisdiction in which such qualification is required by law, other than those jurisdictions as to which the failure to be so qualified or in good standing could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. The Company has the corporate power and authority to own or hold under lease the properties it purports to own or hold under lease, to transact the business it transacts and proposes to transact, to execute and deliver this Agreement and the Notes and to perform the provisions hereof and thereof.

#### **5.2 Authorization, Etc.**

The Company has all requisite corporate power to own and operate its respective properties and to conduct its business as currently conducted and as currently proposed to be conducted. The Company has all requisite corporate power to execute, deliver and perform its obligations under this Agreement and the Notes. The Company has taken all necessary corporate action to authorize the execution and delivery of, and the performance of its obligations under, this Agreement and the Notes, and this Agreement constitutes, and upon execution and delivery thereof each 2020 Note will constitute, a legal, valid and binding obligation of the Company enforceable against the Company in accordance with its terms, except, in each case, as such enforceability may be limited by (a) applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and (b) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

#### **5.3 Disclosure.**

The Company, through its agents, BofA Securities, Inc. and MUFG Securities Americas Inc., has delivered to each Purchaser a copy of a Private Placement Memorandum, dated July, 2020 (the "**Memorandum**"), relating to the transactions contemplated hereby. The Memorandum fairly describes, in all material respects, the general nature of the business and principal properties of the Company and its Subsidiaries. Except as disclosed in Schedule 5.3, this Agreement, the Memorandum and the documents, certificates or other writings delivered to the Purchasers by or on behalf of the Company in connection with the transactions contemplated hereby and identified in Schedule 5.3, and the financial statements listed in Schedule 5.5 (this Agreement, the Memorandum and such documents, certificates or

other writings and such financial statements being referred to, collectively, as the “**Disclosure Documents**”), taken as a whole, do not contain any untrue statement of a material fact or omit to state any

material fact necessary to make the statements herein or therein not misleading in light of the circumstances under which they were made. Except as disclosed in the Disclosure Documents, since May 31, 2020, there has been no change in the financial condition, operations, business or properties of the Company or any Subsidiary except changes that individually or in the aggregate could not reasonably be expected to have a Material Adverse Effect. There is no fact known to the Company that could reasonably be expected to have a Material Adverse Effect that has not been set forth herein or in the Disclosure Documents.

#### **5.4 Organization and Ownership of Shares of Subsidiaries; Affiliates.**

(a) Schedule 5.4 contains (except as noted therein) complete and correct lists of (i) the Company's Subsidiaries, showing, as to each Subsidiary, the correct name thereof, the jurisdiction of its organization, and the percentage of shares of each class of its capital stock or similar equity interests outstanding owned by the Company and each other Subsidiary, (ii) the Company's Affiliates, other than Subsidiaries, and (iii) the Company's directors and senior officers.

(b) All of the outstanding shares of capital stock or similar equity interests of each Subsidiary shown in Schedule 5.4 as being owned by the Company or its Subsidiaries have been validly issued, are fully paid and nonassessable and are owned by the Company or another Subsidiary free and clear of any Lien (except as otherwise disclosed in Schedule 5.4).

(c) Each Subsidiary identified in Schedule 5.4 is a corporation or other legal entity duly organized, validly existing and, where applicable, in good standing under the laws of its jurisdiction of organization, and is duly qualified as a foreign corporation or other legal entity and, where applicable, is in good standing in each jurisdiction in which such qualification is required by law, other than those jurisdictions as to which the failure to be so qualified or in good standing could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Each such Subsidiary has the corporate or other power and authority to own or hold under lease the properties it purports to own or hold under lease and to transact the business it transacts and proposes to transact.

(d) No Subsidiary is a party to, or otherwise subject to any legal, regulatory, contractual or other restriction (other than this Agreement, the agreements listed on Schedule 5.4 and customary limitations imposed by corporate law or similar statutes) restricting the ability of such Subsidiary to pay dividends out of profits or make any other similar distributions of profits to the Company or any of its Subsidiaries that owns outstanding shares of capital stock or similar equity interests of such Subsidiary.

#### **5.5 Financial Statements; Material Liabilities.**

The Company has delivered to each Purchaser copies of the financial statements of the Company and its Subsidiaries listed on Schedule 5.5. All of said financial statements (including in each case the related schedules and notes) fairly present in all material respects the consolidated financial position of the Company and its Subsidiaries as of the respective dates specified in such Schedule and the consolidated results of their operations and cash flows for the respective periods so specified and have been prepared in accordance with GAAP consistently applied throughout the periods involved except as set forth in the notes thereto (subject, in the case of any interim financial statements, to normal year-end adjustments). The Company and its Subsidiaries do not have any Material liabilities that are not disclosed on such financial statements or otherwise disclosed in the Disclosure Documents.

#### **5.6 Compliance with Laws, Other Instruments, Etc.**

The execution, delivery and performance by the Company of this Agreement and the Notes will not (a) contravene, result in any breach of, or constitute a default under, or result in the creation of any Lien in respect of any property of the Company or any Subsidiary under, any indenture, mortgage, deed of trust, loan, purchase or credit agreement, lease, corporate charter or by-laws, or any other agreement or instrument to which the Company or any Subsidiary is bound or by which the Company or any Subsidiary or any of their respective properties may be bound or affected, (b) conflict with or result in a breach of any of the terms, conditions or provisions of any order, judgment, decree, or ruling of any court, arbitrator or Governmental Authority applicable to the Company or any Subsidiary or (c) violate any provision of any statute or other rule or regulation of any Governmental Authority applicable to the Company or any Subsidiary. The Company is not a party to any contract or agreement or subject to any charter or other corporate restrictions which materially and adversely affects its business, property, assets, financial condition or results of operations, and the Company is not a party to, or otherwise subject to any provision contained in, any instrument evidencing Debt of the Company, any agreement relating thereto or any other contract or agreement (including its charter) which limits the amount of, or otherwise imposes restrictions on the incurring of, Debt of the Company of the type to be evidenced by the Notes except as set forth in the agreements listed in Schedule 5.6 attached hereto. The provisions of this Agreement and the Notes do not contravene any agreement listed in Schedule 5.6.

#### **5.7 Governmental Authorizations, Etc.**

No consent, approval or authorization of, or registration, filing or declaration with, any Governmental Authority is required in connection with the execution, delivery or performance by the Company of this Agreement or the Notes.

### **5.8 Litigation; Observance of Agreements, Statutes and Orders.**

(e) There are no actions, suits, investigations or proceedings pending or, to the knowledge of the Company or any of its Subsidiaries, threatened against or affecting the Company or any Subsidiary or any properties or rights of the Company or any Subsidiary in any court or before any arbitrator of any kind or before or by any Governmental Authority that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

(f) Neither the Company nor any Subsidiary is (i) in default under any term of any agreement or instrument to which it is a party or by which it is bound, (ii) in violation of any order, judgment, decree or ruling of any court, arbitrator or Governmental Authority or (iii) in violation of any applicable law, ordinance, rule or regulation of any Governmental Authority (including Environmental Laws, the USA PATRIOT Act or any of the other laws and regulations that are referred to in Section 5.17), which default or violation, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

### **5.9 Taxes.**

The Company and its Subsidiaries have filed all U.S. federal, state and, to the knowledge of the officers of the Company, other tax returns that are required to have been filed in any jurisdiction, and have paid all taxes shown to be due and payable on such returns and all other taxes and assessments levied upon them or their properties, assets, income or franchises, to the extent such taxes and assessments have become due and payable and before they have become delinquent, except for any taxes and assessments (a) the amount of which is not individually or in the aggregate Material or (b) the amount, applicability or validity of which is currently being contested in good faith by appropriate proceedings and with respect to which the Company or a Subsidiary, as the case may be, has established adequate reserves in accordance with GAAP. The Company knows of no basis for any other tax or assessment that could reasonably be expected to have a Material Adverse Effect. The charges, accruals and reserves on the books of the Company and its Subsidiaries in respect of U.S. federal, state or other taxes for all fiscal periods are adequate. The U.S. federal income tax liabilities of the Company and its Subsidiaries have been determined by the Internal Revenue Service and paid for all fiscal years up to and including the fiscal year ended August 31, 2015. The Company is a cooperative association taxed under the provisions of “subchapter T” of the Code and the Company does not presently intend to alter its status as a subchapter T cooperative association for U.S. federal income tax purposes.

### **5.10 Title to Property; Leases.**

Except for minor defects in title which, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect, the Company has and each of its Subsidiaries has good and indefeasible title to its respective real properties (other than properties which it leases) and good title to all of its other respective properties and assets that individually or in the aggregate are Material, including all such properties reflected in the most recent audited balance sheet referred to in Section 5.5 or purported to have been acquired by the Company or any Subsidiary after said date (except as sold or otherwise disposed of in the ordinary course of business), in each case free and clear of Liens prohibited by this Agreement. All leases that individually or in the aggregate are Material are valid and subsisting and are in full force and effect in all material respects.

### **5.11 Permits and Other Operating Rights.**

The Company and each Subsidiary of the Company has all such valid and sufficient certificates of convenience and necessity, franchises, licenses, permits, operating rights and other authorizations from all Governmental Authorities having jurisdiction over the Company or any Subsidiary or any of its properties, as are necessary for the ownership, operation and maintenance of its businesses and properties, as presently conducted and as proposed to be conducted while the Notes are outstanding, subject to exceptions and deficiencies which, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect, and such certificates of convenience and necessity, franchises, licenses, permits, operating rights and other authorizations from all Governmental Authorities or any of its properties are free from restrictions or conditions which, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect.

### **5.12 Intellectual Property.**

Except as disclosed in Schedule 5.12,

(g) the Company and its Subsidiaries own or possess all patents, copyrights, service marks, trademarks and trade names, or rights thereto, that individually or in the aggregate are Material, without known conflict with the rights of others;

(h) to the best knowledge of the Company, no product or practice of the Company or any Subsidiary infringes in any Material respect any license, permit, franchise, authorization, patent, copyright, proprietary software, service mark, trademark, trade name or other right owned by any other Person; and

(i) to the best knowledge of the Company, there is no Material violation by any Person of any right of the Company or any of its Subsidiaries with respect to any patent, copyright, proprietary software, service mark, trademark, trade name or other right owned or used by the Company or any of its Subsidiaries.

### **5.13 Compliance with ERISA.**

(j) The Company and each ERISA Affiliate have operated and administered each Plan in compliance with



all applicable laws except for such instances of noncompliance as have not resulted in and could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect. Neither the Company nor any ERISA Affiliate has incurred any liability pursuant to Title I or IV of ERISA (aside from ordinary claims for benefits under the Plans) or the penalty or excise tax provisions of the Code relating to employee benefit plans (as defined in section 3 of ERISA), and no event, transaction or condition has occurred or exists that could, individually or in the aggregate, reasonably be expected to result in the incurrence of any such liability by the Company or any ERISA Affiliate, or in the imposition of any Lien on any of the rights, properties or assets of the Company or any ERISA Affiliate, in either case pursuant to Title I or IV of ERISA or to section 430(k) of the Code or to any such penalty or excise tax provisions under the Code or federal law or section 4068 of ERISA or by the granting of a security interest in connection with the amendment of a Plan, other than such liabilities or Liens as would not be individually or in the aggregate Material.

(k) The present value of the aggregate benefit liabilities under each of the Plans (other than Multiemployer Plans), determined as of the end of such Plan's most recently ended plan year on the basis of the actuarial assumptions specified for funding purposes in such Plan's most recent actuarial valuation report, did not exceed the aggregate current value of the assets of such Plan allocable to such benefit liabilities by more than \$25,000,000 for any single Plan or by more than \$40,000,000, in the aggregate, for all such Plans. The term "**benefit liabilities**" has the meaning specified in section 4001 of ERISA and the terms "**current value**" and "**present value**" have the meaning specified in section 3 of ERISA.

(l) The Company and its ERISA Affiliates have not incurred withdrawal liabilities (and are not subject to contingent withdrawal liabilities) under section 4201 or 4204 of ERISA in respect of Multiemployer Plans that individually or in the aggregate are Material.

(m) The expected postretirement benefit obligation (determined as of the last day of the Company's most recently ended fiscal year in accordance with Financial Accounting Standards Board Accounting Standards Codification Topic 715-60, without regard to liabilities attributable to continuation coverage mandated by section 4980B of the Code) of the Company and its Subsidiaries is not Material.

(n) The execution and delivery of this Agreement and the issuance and sale of the Notes hereunder will not involve any transaction that is subject to the prohibitions of section 406 of ERISA or in connection with which a tax could be imposed pursuant to section 4975(c)(1)(A)-(D) of the Code. The representation by the Company to each Purchaser in the first sentence of this Section 5.13(e) is made in reliance upon and subject to the accuracy of such Purchaser's representation in Section 6.2 as to the sources of the funds to be used to pay the purchase price of the Notes to be purchased by such Purchaser.

#### **5.14 Private Offering by the Company.**

Neither the Company nor anyone acting on its behalf has, directly or indirectly, offered the Notes or any similar Securities for sale to, or solicited any offer to buy any of the same from, or otherwise approached or negotiated in respect thereof with, any Person other than the Purchasers and not more than 50 other Institutional Investors (as defined in clause (c) of the definition of such term), each of which has been offered the Notes at a private sale for investment. Neither the Company nor anyone acting on its behalf has taken, or will take, any action that would subject the issuance or sale of the Notes to the registration requirements of section 5 of the Securities Act or to the registration requirements of any securities or "blue sky" laws of any applicable jurisdiction.

#### **5.15 Use of Proceeds; Margin Regulations.**

The Company will apply the proceeds of the sale of the Notes for general corporate purposes, including funding capital expenditures and investments. No part of the proceeds from the sale of the Notes hereunder will be used, directly or indirectly, for the purpose of buying or carrying any margin stock within the meaning of Regulation U of the Board of Governors of the Federal Reserve System (12 CFR 221), or for the purpose of buying or carrying or trading in any Securities under such circumstances as to involve the Company in a violation of Regulation X of said Board (12 CFR 224) or to involve any broker or dealer in a violation of Regulation T of said Board (12 CFR 220). Margin stock does not constitute more than 5% of the value of the consolidated assets of the Company and its Subsidiaries and the Company does not have any present intention that margin stock will constitute more than 5% of the value of such assets. As used in this Section, the terms "margin stock" and "purpose of buying or carrying" shall have the meanings assigned to them in said Regulation U.

#### **5.16 Existing Debt; Future Liens.**

(o) Except as described therein, Schedule 5.16 sets forth a complete and correct list of all outstanding Debt of the Company and its Subsidiaries in excess of \$10,000,000 or having commitments in excess thereof as of May 31, 2020 (including descriptions of the obligors and obligees, principal amounts outstanding, any collateral therefor and any Guaranties thereof), since which date there has been no Material change in the amounts, interest rates, sinking funds, installment payments or maturities of the Debt of the Company or its Subsidiaries. Neither the Company nor any Subsidiary is in default and no waiver of default is currently in effect, in the payment of any principal or interest on any Debt of the Company or such Subsidiary and no event or condition exists with respect to any Debt of the Company or any Subsidiary that would permit (or that with notice or the lapse of time, or both, would permit) one or more Persons to cause such Debt to become due and payable before its stated maturity or before its regularly scheduled dates of payment.





(p) The aggregate amount of all outstanding Debt of the Company and its Subsidiaries not set forth on Schedule 5.16 does not exceed \$50,000,000.

(q) Except as disclosed in Schedule 5.16, neither the Company nor any Subsidiary has agreed or consented to cause or permit in the future (upon the happening of a contingency or otherwise) any of its property, whether now owned or hereafter acquired, to be subject to a Lien not permitted by Section 10.6.

(r) Neither the Company nor any Subsidiary is a party to, or otherwise subject to any provision contained in, any instrument evidencing Debt of the Company or such Subsidiary, any agreement relating thereto or any other agreement (including its charter or other organizational document) which limits the amount of, or otherwise imposes restrictions on the incurring of, Debt of the Company, except as specifically indicated in Schedule 5.16.

#### **5.17 Foreign Assets Control Regulations, Etc.**

(a) Neither the Company nor any Controlled Entity (i) is a Blocked Person, (ii) has been notified that its name appears or may in the future appear on a State Sanctions List or (iii) is a target of sanctions that have been imposed by the United Nations or the European Union.

(b) Except as disclosed in Schedule 5.17, neither the Company nor any Controlled Entity (i) has violated, been found in violation of, or been charged or convicted under, any applicable U.S. Economic Sanctions Laws, Anti-Money Laundering Laws or Anti-Corruption Laws or (ii) to the Company's knowledge, is under investigation by any Governmental Authority for possible violation of any U.S. Economic Sanctions Laws, Anti-Money Laundering Laws or Anti-Corruption Laws.

(c) No part of the proceeds from the sale of the Notes hereunder:

(i) constitutes or will constitute funds obtained on behalf of any Blocked Person or will otherwise be used by the Company or any Controlled Entity, directly or indirectly, (A) in connection with any investment in, or any transactions or dealings with, any Blocked Person unless authorized under U.S. Economic Sanctions Laws, (B) for any purpose that would cause any Purchaser to be in violation of any U.S. Economic Sanctions Laws or (C) otherwise in violation of any U.S. Economic Sanctions Laws;

(ii) will be used, directly or indirectly, in violation of, or cause any Purchaser to be in violation of, any applicable Anti-Money Laundering Laws; or

(iii) will be used, directly or indirectly, for the purpose of making any improper payments, including bribes, to any Governmental Official or commercial counterparty in order to obtain, retain or direct business or obtain any improper advantage, in each case which would be in violation of, or cause any Purchaser to be in violation of, any applicable Anti-Corruption Laws.

(d) The Company has established procedures and controls which it reasonably believes are adequate (and otherwise comply with applicable law) to ensure that the Company and each Controlled Entity is and will continue to be in compliance with all applicable U.S. Economic Sanctions Laws, Anti-Money Laundering Laws and Anti-Corruption Laws.

#### **5.18 Status under Certain Statutes.**

Neither the Company nor any Subsidiary is subject to regulation under the Investment Company Act of 1940, as amended, the Public Utility Holding Company Act of 2005, as amended, the ICC Termination Act of 1995, as amended, or the Federal Power Act, as amended.

#### **5.19 Environmental Matters.**

(s) Neither the Company nor any Subsidiary has knowledge of any claim or has received any notice of any claim, and no proceeding has been instituted raising any claim, against the Company or any of its Subsidiaries or any of their respective real properties now or formerly owned, leased or operated by any of them or other assets, alleging any damage to the environment or violation of any Environmental Laws, except, in each case, such as could not reasonably be expected to result in a Material Adverse Effect.

(t) Neither the Company nor any Subsidiary has knowledge of any facts which would give rise to any claim, public or private, of violation of Environmental Laws or damage to the environment emanating from, occurring on or in any way related to real properties now or formerly owned, leased or operated by any of them or to other assets or their use, except, in each case, such as could not reasonably be expected to result in a Material Adverse Effect.

(u) Neither the Company nor any of its Subsidiaries has stored any Hazardous Materials on real properties



now or formerly owned, leased or operated by any of them and has not disposed of any Hazardous Materials in a manner contrary to any Environmental Laws in each case in any manner that could reasonably be expected to result in a Material Adverse Effect.

(v) All buildings on all real properties now owned, leased or operated by the Company or any of its Subsidiaries are in compliance with applicable Environmental Laws, except where failure to comply could not reasonably be expected to result in a Material Adverse Effect.

#### **5.20 Solvency.**

The Company, after giving effect to the transactions contemplated by this Agreement and the Notes, will not be engaged in any business or transaction, or about to engage in any business or transaction, for which the Company has unreasonably small assets or capital (within the meaning of the Uniform Fraudulent Transfer Act, the Uniform Fraudulent Conveyance Act and Section 548 of Title 11 of the United States Code), and the Company does not have any intent to hinder, delay or defraud any Person to which it is, or will become, on or after the date of this Agreement, indebted to or to incur debts that would be beyond its ability to pay as they mature.

#### **5.21 Hostile Tender Offers.**

None of the proceeds of the sale of any 2020 Note will be used to finance a Hostile Tender Offer.

#### **5.22 Ranking of Notes.**

The Company's obligations under the Notes and this Agreement will, upon issuance of the Notes, rank at least *pari passu*, without preference or priority, with all of its other outstanding unsecured and unsubordinated obligations, except for those obligations that are, or are liable to be, mandatorily preferred by law.

### **6. REPRESENTATIONS OF THE PURCHASERS.**

#### **6.1 Purchase for Investment.**

Each Purchaser severally represents that (a) it is an "accredited investor" under Rule 501(a) of Regulation D under the Securities Act and (b) it is purchasing the Notes for its own account or for one or more separate accounts maintained by such Purchaser or for the account of one or more pension or trust funds and not with a view to the distribution thereof, *provided* that the disposition of such Purchaser's or their property shall at all times be within such Purchaser's or their control. Each Purchaser understands that the Notes have not been registered under the Securities Act and may be resold only if registered pursuant to the provisions of the Securities Act or if an exemption from registration is available, except under circumstances where neither such registration nor such an exemption is required by law, and that the Company is not required to register the Notes.

#### **6.2 Source of Funds.**

Each Purchaser severally represents that at least one of the following statements is an accurate representation as to each source of funds (a "Source") to be used by such Purchaser to pay the purchase price of the Notes to be purchased by such Purchaser hereunder:

(a) the Source is an "insurance company general account" (as the term is defined in the United States Department of Labor's Prohibited Transaction Exemption ("PTE") 95-60) in respect of which the reserves and liabilities (as defined by the annual statement for life insurance companies approved by the NAIC (the "NAIC Annual Statement")) for the general account contract(s) held by or on behalf of any employee benefit plan together with the amount of the reserves and liabilities for the general account contract(s) held by or on behalf of any other employee benefit plans maintained by the same employer (or affiliate thereof as defined in PTE 95-60) or by the same employee organization in the general account do not exceed 10% of the total reserves and liabilities of the general account (exclusive of separate account liabilities) plus surplus as set forth in the NAIC Annual Statement filed with such Purchaser's state of domicile; or

(b) the Source is a separate account that is maintained solely in connection with such Purchaser's fixed contractual obligations under which the amounts payable, or credited, to any employee benefit plan (or its related trust) that has any interest in such separate account (or to any participant or beneficiary of such plan (including any annuitant)) are not affected in any manner by the investment performance of the separate account; or

(c) the Source is either (i) an insurance company pooled separate account, within the meaning of PTE 90-1 or (ii) a bank collective investment fund, within the meaning of the PTE 91-38 and, except as disclosed by such Purchaser to the Company in writing pursuant to this clause (c), no employee benefit plan or group of plans maintained by the same employer or employee organization beneficially owns more than 10% of all assets allocated to such pooled separate account or collective investment fund; or

(d) the Source constitutes assets of an "investment fund" (within the meaning of Part VI of PTE 84-14 (the "QPAM Exemption")) managed by a "qualified professional asset manager" or "QPAM" (within the meaning of Part VI of the QPAM Exemption), no employee benefit plan's assets that are managed by the QPAM in such investment fund, when combined with the assets of all other employee benefit plans established or maintained by the same employer or

by an affiliate (within the meaning of Part VI(c)(1) of the QPAM Exemption) of such employer or by the same employee organization and managed by such QPAM, represent more than 20% of the total client assets managed by such QPAM, the conditions of Part I(c) and (g) of the QPAM Exemption are satisfied, neither the QPAM nor a person controlling or controlled by the QPAM maintains an ownership interest in the Company that would cause the QPAM and the Company to be “related” within the meaning of Part VI(h) of the QPAM Exemption and (i) the identity of such QPAM and (ii) the names of any employee benefit plans whose assets in the investment fund, when combined with the assets of all other employee benefit plans established or maintained by the same employer or by an affiliate (within the meaning of Part VI(c)(1) of the QPAM Exemption) of such employer or by the same employee organization, represent 10% or more of the assets of such investment fund, have been disclosed to the Company in writing pursuant to this clause (d); or

(e) the Source constitutes assets of a “plan(s)” (within the meaning of Part IV(h) of PTE 96-23 (the “**INHAM Exemption**”)) managed by an “in-house asset manager” or “INHAM” (within the meaning of Part IV(a) of the INHAM Exemption), the conditions of Part I(a), (g) and (h) of the INHAM Exemption are satisfied, neither the INHAM nor a person controlling or controlled by the INHAM (applying the definition of “control” in Part IV(d) of the INHAM Exemption) owns a 10% or more interest in the Company and (i) the identity of such INHAM and (ii) the name(s) of the employee benefit plan(s) whose assets constitute the Source have been disclosed to the Company in writing pursuant to this clause (e); or

(f) the Source is a governmental plan; or

(g) the Source is one or more employee benefit plans, or a separate account or trust fund comprised of one or more employee benefit plans, each of which has been identified to the Company in writing pursuant to this clause (g); or

(h) the Source does not include assets of any employee benefit plan, other than a plan exempt from the coverage of ERISA.

As used in this Section 6.2, the terms “**employee benefit plan**”, “**governmental plan**” and “**separate account**” shall have the respective meanings assigned to such terms in section 3 of ERISA.

## 7. INFORMATION AS TO COMPANY.

### 7.1 Financial and Business Information.

The Company shall deliver to each Purchaser and each holder of a Note that is an Institutional Investor:

(a) Quarterly Statements -- within 60 days (or such shorter period as is the earlier of (x) 15 days greater than the period applicable to the filing of the Company’s Quarterly Report on Form 10-Q (the “**Form 10-Q**”) with the SEC regardless of whether the Company is subject to the filing requirements thereof and (y) the date by which such financial statements are required to be delivered under any Material Credit Facility or the date on which such corresponding financial statements are delivered under any Material Credit Facility if such delivery occurs earlier than such required delivery date) after the end of each quarterly fiscal period in each fiscal year of the Company (other than the last quarterly fiscal period of each such fiscal year), duplicate copies of,

(i) a consolidated balance sheet of the Company and its Subsidiaries as at the end of such quarter, and

(ii) consolidated statements of income and cash flows of the Company and its Subsidiaries, for such

quarter and (in the case of the second and third quarters) for the portion of the fiscal year ending with such quarter, setting forth in each case in comparative form the figures for the corresponding periods in the previous fiscal year, all in reasonable detail, prepared in accordance with GAAP applicable to quarterly financial statements generally, and certified by a Senior Financial Officer as fairly presenting, in all material respects, the financial position of the companies being reported on and their results of operations and cash flows, subject to changes resulting from year-end adjustments, provided that delivery within the time period specified above of copies of the Company’s Form 10-Q prepared in compliance with the requirements therefor and filed with the SEC shall be deemed to satisfy the requirements of this Section 7.1(a);

(b) Annual Statements -- within 120 days (or such shorter period as is the earlier of (x) 15 days greater than the period applicable to the filing of the Company’s Annual Report on Form 10-K (the “**Form 10-K**”) with the SEC regardless of whether the Company is subject to the filing requirements thereof and (y) the date by which such financial statements are required to be delivered under any Material Credit Facility or the date on which such corresponding financial statements are delivered under any Material Credit Facility if such delivery occurs earlier than such required delivery date) after the end of each fiscal year of the Company, duplicate copies of,

(i) consolidated and consolidating balance sheets of the Company and its Subsidiaries, as at the end of such year, and

(ii) consolidated and consolidating statements of income and cash flows and a consolidated statement of members’ equity of the Company and its Subsidiaries, for such year,

setting forth in each case, in comparative form, the figures for the previous fiscal year, all in reasonable detail, prepared



in accordance with GAAP, and accompanied by an opinion thereon (without a “going concern” or similar qualification or exception and without any qualification or exception as to the scope of the audit on which such opinion is based) of independent certified public accountants of recognized national standing, which opinion shall state that such financial statements present fairly, in all material respects, the financial position of the companies being reported upon and their results of operations and cash flows and have been prepared in conformity with GAAP, and that the examination of such accountants in connection with such financial statements has been made in accordance with generally accepted auditing standards, and that such audit provides a reasonable basis for such opinion in the circumstances; provided that the delivery within the time period specified above of the Company’s Form 10-K for such fiscal year (together with the Company’s annual report to members, if any, prepared pursuant to Rule 14a-3 under the Exchange Act) prepared in accordance with the requirements therefor and filed with the SEC shall be deemed to satisfy the requirements of this Section 7.1(b);

(c) SEC and Other Reports -- promptly upon their becoming available, one copy of (i) each financial statement, report, notice or proxy statement sent by the Company or any Subsidiary to its principal lending banks as a whole (excluding information sent to such banks in the ordinary course of administration of a bank facility, such as information relating to pricing and borrowing availability) or to its public Securities holders generally, and (ii) each regular or periodic report, each registration statement (without exhibits except as expressly requested by such Purchaser or holder), and each prospectus and all amendments thereto filed by the Company or any Subsidiary with the SEC and of all press releases and other statements made available generally by the Company or any Subsidiary to the public concerning developments that are Material;

(d) Notice of Default or Event of Default -- promptly, and in any event within five days after a Responsible Officer becoming aware of the existence of any Default or Event of Default or that any Person has given any notice or taken any action with respect to a claimed default hereunder or that any Person has given any notice or taken any action with respect to a claimed default of the type referred to in Section 11(f), a written notice specifying the nature and period of existence thereof and what action the Company is taking or proposes to take with respect thereto;

(e) ERISA Matters -- promptly, and in any event within five days after a Responsible Officer becoming aware of any of the following, a written notice setting forth the nature thereof and the action, if any, that the Company or an ERISA Affiliate proposes to take with respect thereto:

(i) with respect to any Plan, any reportable event, as defined in section 4043(b) of ERISA and the regulations thereunder, for which notice thereof has not been waived pursuant to such regulations as in effect on the date hereof;

(ii) the taking by the PBGC of steps to institute, or the threatening by the PBGC of the institution of, proceedings under section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Plan, or the receipt by the Company or any ERISA Affiliate of a notice from a Multiemployer Plan that such action has been taken by the PBGC with respect to such Multiemployer Plan; or

(iii) any event, transaction or condition that could result in the incurrence of any liability by the Company or any ERISA Affiliate pursuant to Title I or IV of ERISA or the penalty or excise tax provisions of the Code relating to employee benefit plans, or in the imposition of any Lien on any of the rights, properties or assets of the Company or any ERISA Affiliate pursuant to Title I or IV of ERISA or such penalty or excise tax provisions, if such liability or Lien, taken together with any other such liabilities or Liens then existing, could reasonably be expected to have a Material Adverse Effect;

(f) Notices from Governmental Authority -- promptly, and in any event within 30 days of receipt thereof, copies of any notice to the Company or any Subsidiary from any Governmental Authority relating to any order, ruling, statute or other law or regulation that could reasonably be expected to have a Material Adverse Effect;

(g) Requested Information -- with reasonable promptness, such other data and information relating to the business, operations, affairs, financial condition, assets or properties of the Company or any of its Subsidiaries or relating to the ability of the Company to perform its obligations hereunder and under the Notes as from time to time may be reasonably requested by any Purchaser or a holder of a Note; and

(h) Information Required by Rule 144A - with reasonable promptness, upon the request of any Purchaser or a holder of a Note, such financial and other information as such holder may reasonably determine to be necessary in order to permit compliance with the information requirements of Rule 144A under the Securities Act in connection with the resale of Notes, except at such times as the Company is subject to and in compliance with the reporting requirements of section 13 or 15(d) of the Exchange Act.

## **7.2 Officer’s Certificate.**

Each set of financial statements delivered to a Purchaser or a holder of a Note pursuant to Section 7.1(a) or Section 7.1(b) shall be accompanied by a certificate of a Senior Financial Officer setting forth:

(i) Covenant Compliance -- the information (including detailed calculations) required in order to establish whether the Company was in compliance with the requirements of Sections 10.3 through and including 10.5 and Section 10.7 hereof, inclusive, during the quarterly or annual period covered by the statements then being furnished (including



with respect to each such Section, where applicable, the calculations of the maximum or minimum amount, ratio or percentage, as the case may be, permissible under the terms of such Sections, and the calculation of the amount, ratio or percentage then in existence). In the event that the Company or any Subsidiary has made an election to measure any financial liability using fair value (which election is being disregarded for purposes of determining compliance with this Agreement pursuant to Section 22.3) as to the period covered by any such financial statement, such Senior Financial Officer's certificate as to such period shall include a reconciliation from GAAP with respect to such election; and

(j) Event of Default -- a statement that such officer has reviewed the relevant terms hereof and has made, or caused to be made, under his or her supervision, a review of the transactions and conditions of the Company and its Subsidiaries from the beginning of the quarterly or annual period covered by the statements then being furnished to the date of the certificate and that such review shall not have disclosed the existence during such period of any condition or event that constitutes a Default or an Event of Default or, if any such condition or event existed or exists (including any such event or condition resulting from the failure of the Company or any Subsidiary to comply with any Environmental Law), specifying the nature and period of existence thereof and what action the Company shall have taken or proposes to take with respect thereto.

### **7.3 Inspection.**

The Company shall permit the representatives of each Purchaser and each holder of a Note that is an Institutional Investor:

(k) No Default -- if no Default or Event of Default then exists, at the expense of such Purchaser or such holder and upon reasonable prior notice to the Company, to visit the principal executive office of the Company or any Subsidiary, to discuss the affairs, finances and accounts of the Company and its Subsidiaries with the Company's officers, and (with the consent of the Company, which consent will not be unreasonably withheld) its independent public accountants, and (with the consent of the Company, which consent will not be unreasonably withheld) to visit the other offices and properties of the Company and each Subsidiary, all at such reasonable times and as often as may be reasonably requested in writing; and

(l) Default -- if a Default or Event of Default then exists, at the expense of the Company to visit and inspect any of the offices or properties of the Company or any Subsidiary, to examine all their respective books of account, records, reports and other papers, to make copies and extracts therefrom, and to discuss their respective affairs, finances and accounts with their respective officers and independent public accountants (and by this provision the Company authorizes said accountants to discuss the affairs, finances and accounts of the Company and its Subsidiaries), all at such times and as often as may be requested.

### **7.4 Electronic Delivery.**

Financial statements, opinions of independent certified public accountants, other information and Officer's Certificates that are required to be delivered by the Company pursuant to Sections 7.1(a), (b) or (c) and Section 7.2 shall be deemed to have been delivered if the Company satisfies any of the following requirements with respect thereto:

(m) (i) such financial statements satisfying the requirements of Section 7.1(a) or (b) and related Officer's Certificate satisfying the requirements of Section 7.2 or (ii) such information required to be delivered pursuant Section 7.1(c), in either case, are delivered to each Purchaser or holder of a Note by e-mail;

(n) the Company shall have timely filed such Form 10-Q, Form 10-K or other information satisfying the requirements of Section 7.1(a), Section 7.1(b) or Section 7.1(c), as the case may be, with the SEC on EDGAR and shall have made such form, such other information and the related Officer's Certificate satisfying the requirements of Section 7.2 available on its home page on the internet, which is located at <http://www.chsinc.com> as of the date of this Agreement; or

(o) (i) such financial statements satisfying the requirements of Section 7.1(a) or Section 7.1(b) and related Officer's Certificate(s) satisfying the requirements of Section 7.2 or (ii) such information required to be delivered pursuant to Section 7.1(c), in either case, are timely posted by or on behalf of the Company on IntraLinks or on any other similar website to which each Purchaser and each holder of Notes has free access;

provided however, that in the case of any of clauses (b) or (c), the Company shall have given each Purchaser and each holder of a Note prior written notice, which may be by e-mail or in accordance with Section 18, of such posting or filing in connection with each delivery.

## **8. INTEREST; PAYMENT OF THE NOTES.**

### **8.1 Interest Payments.**

Interest on the Notes shall accrue on the unpaid principal balance of the Notes at the rates and shall be computed on the basis as described in the applicable 2020 Note. Interest shall be due and payable as provided in the Notes.

### **8.2 Offer to Pay Notes Upon Change in Control.**

(a) Notice and Offer. The Company will not take any action that consummates or finalizes a Change in Control unless at least thirty (30) days prior to such action it shall have given to each holder of the Notes written notice



of such impending Change in Control. The Company will, within five (5) Business Days after any Responsible Officer has knowledge of the occurrence of any Change in Control, give written notice of such Change in Control to each holder of Notes in the manner set forth in Section 18. If a Change in Control has occurred, such written notice shall contain, and shall constitute an irrevocable offer to prepay all or (at such holder's option) any portion of the Notes held by such holder on a date specified in such notice (the "**Proposed Prepayment Date**") that is not less than thirty (30) days and not more than sixty (60) days after the date of such notice. If the Proposed Prepayment Date shall not be specified in such notice, the Proposed Prepayment Date shall be the 30th day after the date such notice shall have been sent by the Company. In no event will the Company take any action to consummate or finalize a Change in Control unless the Company has given the notice required by this Section 8.2(a) and, contemporaneously with such action, the Company prepays all Notes required to be prepaid in accordance with Section 8.2(b) hereof.

(b) **Acceptance and Payment.** A holder of Notes may accept the offer to prepay made pursuant to Section 8.2(a) by causing a notice of acceptance of such offered prepayment (specifying in such notice the amount of Notes with respect to which such acceptance applies) to be delivered to the Company prior to the Proposed Prepayment Date (it being understood that the failure by a holder to respond to such written offer of prepayment prior to the Proposed Prepayment Date shall be deemed to constitute a rejection of such offer with respect to all Notes held by such holder). If so accepted, such offered prepayment shall be due and payable on the Proposed Prepayment Date. Such offered prepayment shall be made at 100% of the principal amount of such Notes so prepaid, *plus* interest on all such Notes accrued to the Proposed Prepayment Date. If the Company shall at any time receive an acceptance of an offer to prepay Notes pursuant to this Section 8.2(b) from some, but not all of, the holders of the Notes, then the Company will, within two (2) Business Days after the receipt of such acceptance, give written notice of such acceptance to each other holder of the Notes.

(c) **Officer's Certificate.** Each offer to prepay the Notes pursuant to this Section 8.2 shall be accompanied by a certificate, executed by a Responsible Officer of the Company and dated the date of such offer, specifying:

- (i) the Proposed Prepayment Date;
- (ii) that such payment is to be made pursuant to the provisions of this Section 8.2;
- (iii) the outstanding principal amount as of the Proposed Prepayment Date of each Note offered to be prepaid;
- (iv) the unpaid interest that would be due on each such Note offered to be prepaid, accrued to the date fixed for payment;
- (v) that the conditions of this Section 8.2 have been fulfilled; and
- (vi) in reasonable detail, the nature and date or proposed date of the Change in Control.

### **8.3 Optional Prepayments with Make-Whole Amount.**

The Company may, at its option, upon notice as provided below, prepay at any time all, or from time to time any part of, the Notes, in integral multiples of \$1,000,000 and in a minimum amount of \$5,000,000, at 100% of the principal amount so prepaid, plus interest thereon to the prepayment date and the Make-Whole Amount determined for the prepayment date with respect to such principal amount. The Company will give each holder of Notes written notice of each optional prepayment under this Section 8.3 not less than ten (10) Business Days and not more than sixty (60) days prior to the date fixed for such prepayment. Each such notice shall specify such prepayment date (which shall be a Business Day), the aggregate principal amount of the Notes to be prepaid on such date, the principal amount of each Note held by such holder to be prepaid (determined in accordance with Section 8.4), and the interest to be paid on the prepayment date with respect to such principal amount being prepaid, and shall be accompanied by a certificate of a Senior Financial Officer as to the estimated Make-Whole Amount due in connection with such prepayment (calculated as if the date of such notice were the date of the prepayment), setting forth the details of such computation. Two (2) Business Days prior to such prepayment, the Company shall deliver to each holder of Notes a certificate of a Senior Financial Officer specifying the calculation of such Make-Whole Amount as of the specified prepayment date.

### **8.4 Allocation of Partial Prepayments.**

In the case of each partial prepayment of the Notes pursuant to Section 8.3, the principal amount of the Notes to be prepaid shall be allocated among all of the Notes at the time outstanding in proportion, as nearly as practicable, to the respective unpaid principal amounts thereof not theretofore called for prepayment, without regard to the Series of Notes.

### **8.5 Maturity; Surrender, Etc.**

In the case of each prepayment of Notes pursuant to this Section 8, the principal amount of each Note to be prepaid shall mature and become due and payable on the date fixed for such prepayment, together with interest on such principal amount accrued to such date and, in the case of any such prepayment pursuant to Section 8.3, the applicable Make-Whole Amount, if any. From and after such date, unless the Company shall fail to pay such principal amount when so due and payable, together with the interest and Make-Whole Amount, if any, as aforesaid, interest on such principal amount shall cease to accrue. Any Note paid or prepaid in full shall be surrendered to the Company and cancelled and shall not be reissued, and no Note shall be issued in lieu of any prepaid principal amount of any Note.



## 8.6 Purchase of Notes.

The Company will not and will not permit any Affiliate to purchase, redeem, prepay or otherwise acquire, directly or indirectly, any of the outstanding Notes except (a) upon the payment or prepayment of the Notes in accordance with the terms of this Agreement and the Notes or (b) pursuant to a written offer to purchase made by the Company or an Affiliate pro rata to the holders of the Notes outstanding upon the same terms and conditions. Any such offer shall provide each holder with sufficient information to enable it to make an informed decision with respect to such offer, and shall remain open for at least 15 Business Days. If the holders of more than 33⅓% of the principal amount of the Notes then outstanding accept such offer, the Company shall promptly notify the remaining holders of such fact and the expiration date for the acceptance by holders of Notes of such offer shall be extended by the number of days necessary to give each such remaining holder at least 10 Business Days from its receipt of such notice to accept such offer. The Company will promptly cancel all Notes acquired by it or any Affiliate pursuant to any payment, prepayment or purchase of Notes pursuant to any provision of this Agreement and no Notes may be issued in substitution or exchange for any such Notes.

## 8.7 Make-Whole Amount.

The term **“Make-Whole Amount”** means, with respect to any Note of any Series, an amount equal to the excess, if any, of the Discounted Value of the Remaining Scheduled Payments with respect to the Called Principal of such Note of such Series over the amount of such Called Principal, *provided* that the Make-Whole Amount may in no event be less than zero. For the purposes of determining the Make-Whole Amount, the following terms have the following meanings:

**“Called Principal”** means, with respect to any Note of any Series, the principal of such Note that is to be prepaid pursuant to Section 8.3, or has become or is declared to be immediately due and payable pursuant to Section 12.1, as the context requires.

**“Discounted Value”** means, with respect to the Called Principal of any Note of any Series, the amount obtained by discounting all Remaining Scheduled Payments with respect to such Called Principal from their respective scheduled due dates to the Settlement Date with respect to such Called Principal, in accordance with accepted financial practice and at a discount factor (applied on the same periodic basis as that on which interest on such Series of Notes is payable) equal to the Reinvestment Yield with respect to such Called Principal.

**“Reinvestment Yield”** means, with respect to the Called Principal of any Note of any Series, the sum of (a) 0.50% plus (b) the yield to maturity implied by the “Ask Yield(s)” reported as of 10:00 a.m. (New York City time) on the second Business Day preceding the Settlement Date with respect to such Called Principal, on the display designated as “Page PX1” (or such other display as may replace Page PX1) on Bloomberg Financial Markets for the most recently issued actively traded on-the-run U.S. Treasury securities (**“Reported”**) having a maturity equal to the Remaining Average Life of such Called Principal as of such Settlement Date. If there are no such U.S. Treasury securities Reported having a maturity equal to such Remaining Average Life, then such implied yield to maturity will be determined by (i) converting U.S. Treasury bill quotations to bond equivalent yields in accordance with accepted financial practice and (ii) interpolating linearly between the “Ask Yields” Reported for the applicable most recently issued actively traded on-the-run U.S. Treasury securities with the maturities (1) closest to and greater than such Remaining Average Life and (2) closest to and less than such Remaining Average Life. The Reinvestment Yield shall be rounded to the number of decimal places as appears in the interest rate of the applicable Series of Note.

If such yields are not Reported or the yields Reported as of such time are not ascertainable (including by way of interpolation), then **“Reinvestment Yield”** means, with respect to the Called Principal of any Note of any Series, the sum of (x) 0.50% plus (y) the yield to maturity implied by the U.S. Treasury constant maturity yields reported, for the latest day for which such yields have been so reported as of the second Business Day preceding the Settlement Date with respect to such Called Principal, in Federal Reserve Statistical Release H.15 (or any comparable successor publication) for the U.S. Treasury constant maturity having a term equal to the Remaining Average Life of such Called Principal as of such Settlement Date. If there is no such U.S. Treasury constant maturity having a term equal to such Remaining Average Life, such implied yield to maturity will be determined by interpolating linearly between (1) the U.S. Treasury constant maturity so reported with the term closest to and greater than such Remaining Average Life and (2) the U.S. Treasury constant maturity so reported with the term closest to and less than such Remaining Average Life. The Reinvestment Yield shall be rounded to the number of decimal places as appears in the interest rate of the applicable Series of Note.

**“Remaining Average Life”** means, with respect to any Called Principal of any Series of Notes, the number of years obtained by dividing (a) such Called Principal into (b) the sum of the products obtained by multiplying (i) the principal component of each Remaining Scheduled Payment with respect to such Called Principal by (ii) the number of years, computed on the basis of a 360-day year composed of twelve 30-day months and calculated to two decimal places,



that will elapse between the Settlement Date with respect to such Called Principal and the scheduled due date of such Remaining Scheduled Payment.

“**Remaining Scheduled Payments**” means, with respect to the Called Principal of any Note of any Series, all payments of such Called Principal and interest thereon that would be due after the Settlement Date with respect to such Called Principal if no payment of such Called Principal were made prior to its scheduled due date, *provided* that if such Settlement Date is not a date on which interest payments are due to be made under the terms of the Notes of such Series, then the amount of the next succeeding scheduled interest payment will be reduced by the amount of interest accrued to such Settlement Date and required to be paid on such Settlement Date pursuant to Section 8.3 or 12.1.

“**Settlement Date**” means, with respect to the Called Principal of any Note of any Series, the date on which such Called Principal is to be prepaid pursuant to Section 8.3, or has become or is declared to be immediately due and payable pursuant to Section 12.1, as the context requires.

## 9. AFFIRMATIVE COVENANTS.

From the date of this Agreement until the Closing and thereafter, so long as any of the Notes are outstanding, the Company covenants that:

### 9.1 Compliance with Laws.

The Company will and will cause each of its Subsidiaries to comply with all laws, ordinances or governmental rules or regulations to which each of them is subject, including ERISA, Environmental Laws, the USA PATRIOT Act and the other laws and regulations that are referred to in Section 5.17, and will obtain and maintain in effect all licenses, certificates, permits, franchises and other governmental authorizations necessary to the ownership of their respective properties or to the conduct of their respective businesses, in each case to the extent necessary to ensure that non-compliance with such laws, ordinances or governmental rules or regulations or failures to obtain or maintain in effect such licenses, certificates, permits, franchises and other governmental authorizations could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

### 9.2 Insurance.

The Company will and will cause each of its Subsidiaries to maintain, with financially sound and reputable insurers, insurance with respect to their respective properties and businesses against such casualties and contingencies, of such types, on such terms and in such amounts (including deductibles, co-insurance and self-insurance, if adequate reserves are maintained with respect thereto) as is customary in the case of entities of established reputations engaged in the same or a similar business and similarly situated; provided, however, the Company may, to the extent permitted by law, provide for appropriate self-insurance with respect to workers' compensation.

### 9.3 Maintenance of Properties.

The Company will and will cause each of its Subsidiaries to maintain and keep, or cause to be maintained and kept, their respective properties in good repair, working order and condition (other than ordinary wear and tear), so that the business carried on in connection therewith may be properly conducted at all times, *provided* that this Section shall not prevent the Company or any Subsidiary from discontinuing the operation and the maintenance of any of its properties if such discontinuance is desirable in the conduct of its business and the Company has concluded that such discontinuance could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

### 9.4 Payment of Taxes and Claims.

The Company will and will cause each of its Subsidiaries to file all tax returns required to be filed in any jurisdiction and to pay and discharge all taxes shown to be due and payable on such returns and all other taxes, assessments, governmental charges, or levies imposed on them or any of their properties, assets, income or franchises, and to pay and discharge all amounts payable for work, labor and materials, in each case to the extent such taxes, assessments, charges, levies and amounts have become due and payable and before they have become delinquent and all claims for which sums have become due and payable that have or might become a Lien on properties or assets of the Company or any Subsidiary, *provided* that neither the Company nor any Subsidiary need pay any such tax, assessment, charge, levy or amount payable if (a) the amount, applicability or validity thereof is being actively contested by the Company or such Subsidiary on a timely basis in good faith and in appropriate proceedings, and the Company or a Subsidiary has established adequate reserves therefor in accordance with GAAP on the books of the Company or such Subsidiary or (b) the nonpayment of all such taxes, assessments, charges, levies and amounts payable in the aggregate could not reasonably be expected to have a Material Adverse Effect.

### 9.5 Corporate Existence, Etc.

Subject to Section 10.2, the Company will at all times preserve and keep in full force and effect its corporate existence and will at all times preserve and keep in full force and effect the corporate existence of each of its Subsidiaries, except to the



extent that, with respect to Subsidiaries, in the good faith judgment of the Company, the failure to do so could not reasonably be expected to, individually or in the aggregate, have a Material Adverse Effect. The Company will at all times preserve and keep in full force and effect all certificates of convenience and necessity, rights and franchises, licenses, permits, operating rights and other authorization from any Governmental Authorities as are necessary for the ownership, operation and maintenance of its and its Subsidiaries' respective businesses and properties, unless the termination of or failure to preserve and keep in full force and effect such right, certificate or franchise, license, permit, operating right or other authorization would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

#### 9.6 **Pari Passu.**

The Company covenants that all Debt owing under the Notes and under this Agreement will rank at least *pari passu* with all its other present and future unsecured Senior Debt.

#### 9.7 **Most Favored Lender.**

(a) If at any time (including as in effect on the date of this Agreement) any Material Credit Facility shall include any Financial Covenant, any event of default (whether set forth as a undertaking, event of default, prepayment event or other such provision) or prepayment right not set forth herein or that would be more beneficial to the holders of the Notes than any analogous provision contained in this Agreement (any such Financial Covenant, event of default or prepayment right, an “**Additional Provision**”), then the Company shall provide (i) with respect to any Additional Provision in effect on the date of Closing, the information required to be provided with respect to such Additional Provisions in the Officer's Certificate required to be delivered to the Purchasers pursuant to Section 4.3(a) and (ii) with respect to any Additional Provision in effect after the date of Closing, a Most Favored Lender Notice to the holders of the Notes. Thereupon, unless waived in writing by the Required Holders within thirty (30) days of receipt of such Most Favored Lender Notice by the holders of the Notes, such Additional Provision (and any related definitions) shall be deemed automatically incorporated by reference into this Agreement, *mutatis mutandis* (including any grace period, if applicable, with respect thereto), as if set forth fully herein, without any further action required on the part of any Person, effective as of the date when such Additional Provision became effective under such Material Credit Facility. Thereafter upon the request of any holder of a Note, the Company shall enter into any additional agreement or amendment to this Agreement reasonably requested by such holder evidencing any of the foregoing. As used herein, “**Most Favored Lender Notice**” means, in respect of any Additional Provision, a written notice, which may be by e-mail, to each of the holders of the Notes delivered promptly, and in any event within ten (10) Business Days after the inclusion of such Additional Provision in any Material Credit Facility (including by way of amendment or other modification of any existing provision thereof), by a Senior Financial Officer of the Company referring to the provisions of this Section 9.7 and setting forth a description of such Additional Provision (including any defined terms used therein) and related explanatory calculations, as applicable.

(b) So long as no Default or Event of Default has occurred and is continuing on the date on which any Additional Provision is amended or modified in the relevant Material Credit Facility such that such Additional Provision is less restrictive on the Company, any Additional Provision is removed from such Material Credit Facility or such Material Credit Facility shall be terminated, any Additional Provision incorporated into this Agreement pursuant to this Section 9.7: (x) shall be deemed amended, modified or removed as a result of any amendment, modification or removal of such Additional Provision under such Material Credit Facility and (y) shall be deemed deleted from this Agreement at such time as such Material Credit Facility shall be terminated and no amounts shall be outstanding thereunder; provided, that,

(i) other than as provided in Section 17, this Agreement shall not be amended to delete any covenant, undertaking, event of default, restriction or other provision included in this Agreement (other than by operation of Section 9.7(a)) or to make any such provision less restrictive on the Company and its Subsidiaries; and

(ii) if any lender or agent under such Material Credit Facility is paid any remuneration as consideration for any amendment, modification or removal of such Additional Provision under such Material Credit Facility, then such remuneration shall be concurrently paid, on the same equivalent terms, ratably to each holder of the Notes then outstanding.

(c) The breach of any Additional Provision incorporated into this Agreement pursuant to this Section 9.7 shall constitute an Event of Default and the period of grace (if any) applicable to the breach of such Additional Provision in such Material Credit Facility shall apply hereunder. Certificates delivered to the holders of Notes pursuant to Section 7.2 shall include the information (including detailed calculations) required in order to establish whether the Company was in compliance during the time that any such Additional Provision was added and thereafter and during the interim or annual period covered by the applicable financial statements described in Sections 7.1(a) and 7.1(b) with each such Additional Provision incorporated into this Agreement pursuant to this Section 9.7.

Although it will not be a Default or an Event of Default if the Company fails to comply with any provision of Section 9 on or after the date of this Agreement and prior to the Closing, if such a failure occurs, then any of the Purchasers may elect not to purchase the Notes on the date of Closing that is specified in Section 3.

## 10. NEGATIVE COVENANTS.

From the date of this Agreement until the Closing and thereafter, so long as any of the Notes are outstanding, the Company covenants that:

### 10.1 Transactions with Affiliates.

The Company will not, and will not permit any Subsidiary to, enter into directly or indirectly any transaction or Material group of related transactions (including the purchase, lease, sale or exchange of properties of any kind or the rendering of any service) with any Affiliate, except in the ordinary course and pursuant to the reasonable requirements of the Company's or such Subsidiary's business and upon fair and reasonable terms no less favorable to the Company or such Subsidiary than would be obtainable in a comparable arm's-length transaction with a Person not an Affiliate.

### 10.2 Merger, Consolidation, Etc.

The Company will not, and will not permit any Subsidiary to, directly or indirectly, consolidate with, or merge into, any other Person or permit any other Person to consolidate with, or merge into, it, or convey, transfer or lease all or substantially all of its assets in a single transaction or series of transactions to any Person, except that:

- (a) any Subsidiary may consolidate with, or merge into, the Company or any Wholly-Owned Subsidiary if the Company or such Wholly-Owned Subsidiary is the surviving corporation;
- (b) any Subsidiary (other than a Subsidiary which guarantees the obligations of the Company hereunder) may consolidate with, or merge into, any joint venture entity, of which the Company or any Subsidiary of the Company holds an ownership interest and shares in the earnings; provided that the terms of any such consolidation or merger and the division of the joint venture's earnings, when viewed as a whole, can be reasonably expected to generate the same or greater book earnings and cash flow for the Company or Subsidiary of the Company as would be generated absent such consolidation or merger;
- (c) the Company may consolidate with, or merge into, any other Person, or permit any other Person to consolidate with, or merge into, it, if
  - (i) the successor formed by such consolidation or the survivor of such merger (the "**Surviving Corporation**"), is a solvent corporation organized under the laws of the United States of America or any State thereof (including the District of Columbia),
  - (ii) if the Company is not the Surviving Corporation, (A) the Surviving Corporation shall have executed and delivered to each holder of the Notes its written assumption of the due and punctual performance and payment of each covenant and condition of the Company in this Agreement and the Notes, which assumption shall be in form and substance approved in writing by the Required Holders, and (B) the Company shall have caused to be delivered to each holder of the Notes an opinion of nationally recognized independent counsel, or other independent counsel reasonably satisfactory to the Required Holders, to the effect that all agreements or instruments effecting such assumption are enforceable in accordance with their terms and comply with the terms hereof, and
  - (iii) immediately after giving effect to such transaction,
    - (A) no Default or Event of Default shall exist, and
    - (B) the Surviving Corporation and its Subsidiaries are permitted to incur at least \$1.00 of additional Priority Debt under the provisions of Section 10.5, and
- (d) CHS Capital may transfer CHS Capital Loan Assets to a Wholly-Owned Subsidiary in the ordinary course of business.

No such conveyance, transfer or lease of all or substantially all of the assets of the Company or any Subsidiary which guarantees the obligations of the Company hereunder shall have the effect of releasing the Company, any such Subsidiary or any successor corporation or limited liability company that shall theretofore have become such in the manner prescribed in this Section 10.2 from its liability under this Agreement or the Notes or any Subsidiary guarantee provided by such Subsidiary under Section 10.5.

### 10.3 Consolidated Funded Debt to Consolidated Cash Flow.

The Company will not permit the ratio (the "**Leverage Ratio**") for any fiscal period of (a) Consolidated Funded Debt determined as of the end of each fiscal quarter to (b) Consolidated Cash Flow for the period of four fiscal quarters ending on such date to exceed 3.50 to 1.00.

### 10.4 Adjusted Consolidated Funded Debt to Consolidated Net Worth.

The Company shall not permit the ratio of (a) Adjusted Consolidated Funded Debt determined as of the end of each fiscal quarter to (b) Consolidated Net Worth determined as of such date to exceed .80 to 1.00.

### 10.5 Priority Debt.

- (e) The Company covenants that it will not, and will not permit any of its Subsidiaries to, directly or



indirectly, create, issue, incur, assume or permit to exist any Priority Debt if the aggregate outstanding principal amount of all Priority Debt would exceed 20% of Consolidated Net Worth.

(f) The Company will not at any time permit any Subsidiary to guaranty, become a co-borrower or otherwise become obligated in respect of any Debt owing under any Material Credit Facility unless contemporaneously such Subsidiary guaranties, or becomes similarly obligated in respect of, the Notes, in each case pursuant to documentation in form and substance reasonably satisfactory to the Required Holders.

#### **10.6 Liens.**

The Company will not, and will not permit any of its Subsidiaries to, directly or indirectly create, incur, assume or suffer to be created, incurred or assumed or to exist (upon the happening of a contingency or otherwise), any Lien on or with respect to any property of the Company or any such Subsidiary, whether now owned or held or hereafter acquired (unless provision is made whereby the Notes will be equally and ratably secured with any and all other obligations thereby secured as provided in the last paragraph of this Section 10.6), except:

(g) Liens for taxes, assessments or other governmental charges or levies securing obligations not overdue, or if overdue, being actively contested in good faith by appropriate proceedings that will prevent the forfeiture or sale of any property, provided that adequate reserves are established in accordance on the books of the Company or a Subsidiary of the Company in accordance with GAAP;

(h) attachment, judgment and other similar Liens arising in connection with court proceedings, provided the execution or other enforcement of such Lien(s) is effectively stayed and the claims secured thereby are being actively contested in good faith in such manner that the property subject to such Lien(s) is not subject to forfeiture or sale, and further provided that adequate reserves are established on the books of the Company or a Subsidiary of the Company in accordance with GAAP;

(i) Liens incidental to the normal conduct of the business of the Company or a Subsidiary of the Company or to the ownership by the Company or a Subsidiary of its property which were not incurred in connection with the borrowing of money or the obtaining of credit or advances and which do not in the aggregate materially detract from the value of the property of the Company or any Subsidiary of the Company for the purpose of such business or materially impair the use thereof in the operation of the business of the Company or any Subsidiary of the Company, including Liens

(i) in connection with workers' compensation, unemployment insurance, social security and other like laws,

(ii) to secure (or to obtain letters of credit that secure) the performance of tenders, statutory obligations, surety and performance bonds (of a type other than set forth in Section 10.6(b)), bids, leases (other than Capital Leases), purchase, construction or sales contracts and other similar obligations, in each case not incurred or made in connection with the borrowing of money, the obtaining of advances or credit or the payment of the deferred purchase price of property,

(iii) to secure the claims or demands of materialmen, mechanics, carriers, warehousemen, vendors, repairmen, landlords, lessors and other like Persons, arising in the ordinary course of business, and

(iv) in the nature of reservations, exceptions, encroachments, easements, rights-of-way, covenants, conditions, restrictions, leases and other similar title exceptions or encumbrances affecting real property;

*provided* that any amounts secured by such Liens are not yet due and payable.

(j) Liens existing as of the date of this Agreement securing Debt and set forth on Schedule 5.16 hereto;

(k) any Lien renewing, extending or refunding any Lien permitted by clause (d) of this Section 10.6, provided that (i) the principal amount of the Debt secured by such Lien immediately prior to such extension, renewal or refunding is not increased or the maturity thereof reduced, (ii) such Lien is not extended to any other property, and (iii) immediately after such extension, renewal or refunding no Default or Event of Default would exist;

(l) Liens on property of the Company or any of its Subsidiaries securing Debt owing to the Company or to any of its Wholly-Owned Subsidiaries;

(m) any Lien created to secure all or any part of the purchase price or cost of construction, or to secure Debt incurred or assumed to pay all or a part of the purchase price or cost of construction, of any property (or any improvement thereon) acquired or constructed by the Company or a Subsidiary of the Company after the date of this Agreement, provided that

(i) no such Lien shall extend to or cover any property other than the property (or improvement thereon) being acquired or constructed or rights relating solely to such item or items of property (or improvement thereon),

(ii) the principal amount of Debt secured by any such Lien shall at no time exceed an amount equal to the lesser of (A) the cost to the Company or such Subsidiary of the property (or improvement thereon) being acquired or constructed or (B) the Fair Market Value (as determined in good faith by the Company) of such property, determined at the time of such acquisition or at the time of substantial completion of such construction, and



- (iii) such Lien shall be created contemporaneously with, or within 180 days after, the acquisition or completion of construction of such property (or improvement thereon);
- (n) any Lien existing on property acquired by the Company or any Subsidiary of the Company at the time such property is so acquired (whether or not the Debt secured thereby is assumed by the Company or such Subsidiary) or any Lien existing on property of a Person immediately prior to the time such Person is merged into or consolidated with the Company or any Subsidiary of the Company, provided that
  - (i) no such Lien shall have been created or assumed in contemplation of such acquisition of property or such consolidation or merger,
  - (ii) such Lien shall extend only to the property acquired or the property of such Person merged into or consolidated with the Company or Subsidiary which was subject to such Lien as of the time of such consolidation or merger, and
  - (iii) the principal amount of the Debt secured by any such Lien shall at no time exceed an amount equal to 100% of the Fair Market Value (as determined in good faith by the board of directors of the Company or such Subsidiary) of the property subject thereto at the time of the acquisition thereof or at the time of such merger or consolidation;
- (o) Liens to CoBank and other cooperatives with respect to equity held by the Company in such banks or other cooperatives securing Debt, provided that the aggregate Fair Market Value of such equity securing Debt shall not exceed \$50,000,000 at any one time;
- (p) Liens consisting of the cash collateralization of reimbursement obligations in an aggregate amount not to exceed \$200,000,000 in respect of letters of credit required to be pledged because the expiry date of such letters of credit occurs later than the maturity date of the lending facility under which such letters of credit were issued, but only to the extent and for so long as no Default or Event of Default has occurred and is continuing and no “potential default” or “event of default” has occurred and is continuing under and as defined in such lending facility; and
- (q) other Liens not otherwise permitted under clause (a) through (j) of this Section 10.6 securing Debt, provided that the existence, creation, issuance, incurrence or assumption of such Debt is permitted under Sections 10.3, 10.4 and 10.5 hereof.

If, notwithstanding the prohibition contained herein, the Company shall, or shall permit any of its Subsidiaries to, directly or indirectly create, incur, assume or permit to exist any Lien, other than those Liens permitted by the provisions of paragraphs (a) through (k) of this Section 10.6 (but including any Liens in respect of the Material Credit Facility whether or not permitted by paragraphs (a) - (k) of this Section 10.6 (but excluding clause (j))), it will make or cause to be made effective provision whereby the Notes will be secured equally and ratably with any and all other obligations thereby secured, such security to be pursuant to agreements reasonably satisfactory to the Required Holders (including intercreditor arrangements providing for the *pari passu* treatment of the Notes and all such secured Debt) and, in any such case, the Notes shall have the benefit, to the fullest extent that, and with such priority as, the holders of the Notes may be entitled under applicable law, of an equitable Lien on such property. For the avoidance of doubt, the Company acknowledges that it will not, and will not permit any Subsidiary to, secure or grant any Liens in respect of the Material Credit Facility (other than Liens permitted by paragraph (j) of this Section 10.6) unless an equal and ratable Lien is granted in respect of the Notes.

#### **10.7 Sale of Assets.**

- (r) Sale of Assets. The Company will not, and will not permit any of its Subsidiaries to, make any Transfer, *provided* that the foregoing restriction does not apply to a Transfer if:
  - (i) the property that is the subject of such Transfer constitutes either (A) inventory held for sale, or (B) equipment, fixtures, supplies or materials no longer required, in the opinion of the Company or such Subsidiary, in the operation of the business of the Company or such Subsidiary or that is obsolete, and, in the case of any Transfer described in clause (A) or clause (B), such Transfer is in the ordinary course of business (an “**Ordinary Course Transfer**”);
  - (ii) such Transfer is from a Subsidiary to the Company or a Wholly-Owned Subsidiary, so long as immediately before and immediately after the consummation of such transaction, and after giving effect thereto, no Default or Event of Default exists or would exist (each such Transfer, collectively with any Ordinary Course Transfers, “**Excluded Transfers**”); or
  - (iii) such Transfer is a lease or sale of the assets of the Company or any Subsidiary of the Company to any joint venture entity, of which the Company or any Subsidiary of the Company holds an ownership interest and shares in the earnings; provided that the terms of any such lease or sale and the division of the joint venture’s earnings, when viewed as a whole, can be reasonably expected to generate the same or greater book earnings and cash flow for the Company or Subsidiary of the Company as would be generated absent such lease or sale.
- (s) Debt Prepayment Applications and Reinvested Transfers.
  - (i) Notwithstanding the provisions of Section 10.7(a), the Company or any Subsidiary may Transfer any of its properties at the Fair Market Value thereof; *provided* that

(A) either (1) such Transfer is not an Excluded Transfer and does not involve a Substantial



Portion of the property of the Company and its Subsidiaries, or (2) the Net Proceeds Amount with respect to such Transfer (the “**Designated Portion**”) is either (x) applied to the acquisition by the Company or the Subsidiary making such Transfer of assets of a nature similar to, and of at least an equivalent value of, the assets which were the subject of such Transfer (a “**Reinvested Transfer**”), or (y) applied to a Debt Prepayment Application, in either case, within one year of the consummation of such Transfer, as specified in an Officer’s Certificate delivered to each holder of Notes prior to, or contemporaneously with, the consummation of such Transfer; and

(B) immediately after giving effect to such Transfer (1) no Default or Event of Default shall exist and (2) the Company is able to incur at least \$1.00 of additional Priority Debt under the provisions of Section 10.5 hereof.

(ii) If, notwithstanding the certificate referred to in the foregoing clause 10.7(b)(i)(A), the Company shall fail to apply the entire amount of the Designated Portion as specified in such certificate within the period stated in Section 10.7(b)(i), an Event of Default shall be deemed to have existed as of the expiration of such period and shall be deemed to be continuing.

(t) Certain Definitions. The following terms have the following meanings:

(i) “**Debt Prepayment Application**” means, with respect to any Transfer by the Company or any Subsidiary, the application by the Company or such Subsidiary of cash in an amount equal to the Net Proceeds Amount with respect to such Transfer to pay the outstanding principal of all Funded Debt of the Company or such Subsidiary (other than Funded Debt owing to any of the Subsidiaries or any Affiliate and Funded Debt in respect of any revolving credit or similar facility providing the Company or such Subsidiary with the right to obtain loans or other extensions of credit from time to time, except to the extent that in connection with such payment of Funded Debt, the availability of loans or other extensions of credit under such credit facility is permanently reduced by an amount not less than the amount of such proceeds applied to the payment of such Funded Debt), provided that in the course of making such application the Company shall offer to prepay each outstanding Note in a principal amount that equals the Ratable Portion for such Note plus interest on all such Notes accrued to the date of such payment. The Company will give each holder of Notes written notice of such offered prepayment not less than ten (10) Business Days and not more than sixty (60) days prior to the date fixed for such prepayment, specifying such prepayment date, the aggregate principal amount of the Notes to be prepaid on such date and the Ratable Portion payable with respect to each such Note. A holder of Notes may accept or reject such offer to prepay by causing a notice of such acceptance or rejection to be delivered to the Company at least two (2) Business Days prior to the prepayment date specified by the Company in such offer. If a holder of Notes has not responded to such offer by a date which is at least two (2) Business Days prior to such specified prepayment date, such holder shall be deemed to have rejected such offer of prepayment. If any holder of a Note rejects or is deemed to have rejected such offer of prepayment, then, for purposes of determining the extent to which any Net Proceeds Amount has been applied to a Debt Prepayment Application, the Company nevertheless will be deemed to have paid Funded Debt in an amount equal to the Ratable Portion for such Note.

As used in this definition,

(ii) “**Ratable Portion**” means, for any Note, an amount equal to the product of

(a) the Net Proceeds Amount (or any portion thereof) being so offered to be applied to the payment of Funded Debt, *multiplied by*

(b) a fraction the numerator of which is the outstanding principal amount of such Note and the denominator of which is the aggregate outstanding principal amount of Funded Debt of the Company and its Subsidiaries, after eliminating all offsetting debits and credits between the Company and its Subsidiaries and all other items required to be eliminated in the course of the preparation of consolidated financial statements of the Company and its Subsidiaries in accordance with GAAP.

(iii) “**Disposition Value**” means, at any time, with respect to any Transfer,

(a) in the case of property that does not constitute capital stock of or other ownership interests in any Subsidiary of the Company, the book value thereof, valued at the time of such Transfer in good faith by the board of directors of the Company, and

(b) in the case of property that constitutes capital stock of or other ownership interests in any Subsidiary of the Company, an amount equal to that percentage of the book value of the assets of the Subsidiary that issued such capital stock or other ownership interests as is equal to the percentage that the book value that such capital stock or other ownership interests represents of the book value of all of the outstanding capital stock of or other ownership interests in such Subsidiary (assuming, in making such calculations, that all securities convertible into such capital stock or other ownership interests are so converted and giving full effect to all transactions that would occur or be



required in connection with such conversion), determined as of time of such Transfer in good faith by the board of directors of the Company.

(iv) “**Net Proceeds Amount**” means, with respect to any Transfer of any property by any Person, an amount equal to the difference of

(a) the aggregate amount of the consideration (valued at the Fair Market Value of such consideration at the time of the consummation of such Transfer) received by such Person in respect of such Transfer, *minus*

(b) all ordinary and reasonable out-of-pocket costs and expenses actually incurred by such Person in connection with such Transfer and any income taxes fairly attributable to such Transfer.

(v) “**Substantial Portion**” means, at any time, any property subject to a Transfer if the Disposition Value of such property, when added to the Disposition Value of all other property of the Company and its Subsidiaries that shall have been the subject of a Transfer (other than an Excluded Transfer and Transfers of such other property to the extent the Net Proceeds Amount arising therefrom has been applied to a Reinvested Transfer or a Debt Prepayment Application) during the then current fiscal year of the Company, exceeds an amount equal to 25% of Consolidated Total Assets as of the end of the fiscal year of the Company then most recently ended.

(vi) “**Transfer**” means, with respect to any Person, any transaction in which such Person sells, conveys, transfers or leases (as lessor) any of its property, including capital stock of or other ownership interests in, any other Person.

#### **10.8 Line of Business.**

The Company will not, and will not permit any Subsidiary to, engage to any Material extent in any business activity or operations other than operations or activities (a) in or reasonably related to the agriculture industry, (b) in the food industry or (c) in which the Company and its Subsidiaries are otherwise engaged on the date hereof as described in the Memorandum or businesses reasonably related thereto or in furtherance thereof.

#### **10.9 Subsidiary Distribution Restrictions.**

The Company covenants that it will not, and will not permit any Subsidiary of the Company to, enter into, or be otherwise subject to, any contract or agreement (including its certificate of incorporation) which limits the amount of, or otherwise imposes restrictions on the payment of, Distributions by any Subsidiary of the Company.

#### **10.10 Terrorism Sanctions Regulations.**

The Company will not and will not permit any Controlled Entity to (a) become (including by virtue of being owned or controlled by a Blocked Person), own or control a Blocked Person or (b) directly or indirectly have any investment in or engage in any dealing or transaction (including any investment, dealing or transaction involving the proceeds of the Notes) with any Person if such investment, dealing or transaction (i) would cause any Purchaser or holder or any affiliate of such Purchaser or holder to be in violation of, or subject to sanctions under, any law or regulation applicable to such Purchaser or holder, or (ii) is prohibited by any U.S. Economic Sanctions Laws.

Although it will not be a Default or an Event of Default if the Company fails to comply with any provision of Section 10 before or after giving effect to the issuance of the Notes on a *pro forma* basis, if such a failure occurs, then any of the Purchasers may elect not to purchase the Notes on the date of Closing that is specified in Section 3.

### **11. EVENTS OF DEFAULT.**

An “**Event of Default**” shall exist if any of the following conditions or events shall occur and be continuing:

(a) the Company defaults in the payment of any principal or Make-Whole Amount, if any, on any Note when the same becomes due and payable, whether at maturity or at a date fixed for prepayment or by declaration or otherwise; or

(b) the Company defaults in the payment of any interest on any Note for more than five (5) Business Days after the same becomes due and payable; or

(c) the Company defaults in the performance of or compliance with any term contained in any of Section 7.1(d), Section 8.2 (other than any payment default occurring under Sections 11(a) and/or 11(b)) or Section 10 (other than Section 10.8) hereof; or

(d) the Company defaults in the performance of or compliance with any term contained herein (other than those referred to in clauses (a), (b) and (c) of this Section 11) and such default is not remedied within 30 days after the earlier of (i) a Responsible Officer obtaining actual knowledge of such default and (ii) the Company receiving written notice of such default from any holder of a Note (any such written notice to be identified as a “notice of default” and to refer specifically to this clause (d) of Section 11); or



(e) any representation or warranty made in writing by or on behalf of the Company or by any officer of the Company in this Agreement or in any writing furnished in connection with the transactions contemplated hereby proves to have been false or incorrect in any material respect on the date as of which made; or

(f) (i) the Company or any Subsidiary is in default (as principal or as guarantor or other surety) in the payment of any principal of or premium or make-whole amount or interest on any Debt that is outstanding in an aggregate principal amount of at least \$100,000,000 beyond any period of grace provided with respect thereto, or (ii) the Company or any Subsidiary is in default in the performance of or compliance with any agreement, term or condition contained in any instrument or agreement evidencing any Debt in an aggregate outstanding principal amount of at least \$100,000,000 or of any mortgage, indenture or other agreement relating thereto or any other condition exists, and as a consequence of such default or condition such Debt has become, or has been declared (or one or more Persons are entitled to declare such Debt to be), due and payable before its stated maturity or before its regularly scheduled dates of payment, or (iii) as a consequence of the occurrence or continuation of any event or condition (other than the passage of time or the right of the holder of Debt to convert such Debt into equity interests), (x) the Company or any Subsidiary has become obligated to purchase or repay Debt before its regular maturity or before its regularly scheduled dates of payment in an aggregate outstanding principal amount of at least \$100,000,000, or (y) one or more Persons have the right to require the Company or any Subsidiary so to purchase or repay such Debt; or

(g) the Company or any Subsidiary (i) is generally not paying, or admits in writing its inability to pay, its debts as they become due, (ii) files, or consents by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy, for liquidation or to take advantage of any bankruptcy, insolvency, reorganization, moratorium or other similar law of any jurisdiction, (iii) makes an assignment for the benefit of its creditors, (iv) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers with respect to it or with respect to any substantial part of its property, (v) is adjudicated as insolvent or to be liquidated, or (vi) takes corporate action for the purpose of any of the foregoing; or

(h) a court or Governmental Authority of competent jurisdiction enters an order appointing, without consent by the Company or any of its Subsidiaries, a custodian, receiver, trustee or other officer with similar powers with respect to it or with respect to any substantial part of its property, or constituting an order for relief or approving a petition for relief or reorganization or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy or insolvency law of any jurisdiction, or ordering the dissolution, winding-up or liquidation of the Company or any of its Subsidiaries, or any such petition shall be filed against the Company or any of its Subsidiaries and such petition shall not be dismissed within 60 days; or

(i) a final judgment or judgments for the payment of money aggregating in excess of \$25,000,000 are rendered against one or more of the Company and its Subsidiaries and which judgments are not, within 30 days after entry thereof, bonded, discharged or stayed pending appeal, or are not discharged within 30 days after the expiration of such stay; or

(j) if (i) any Plan shall fail to satisfy the minimum funding standards of ERISA or the Code for any plan year or part thereof or a waiver of such standards or extension of any amortization period is sought or granted under section 412 of the Code, (ii) a notice of intent to terminate any Plan shall have been or is reasonably expected to be filed with the PBGC or the PBGC shall have instituted proceedings under ERISA section 4042 to terminate or appoint a trustee to administer any Plan or the PBGC shall have notified the Company or any ERISA Affiliate that a Plan may become a subject of any such proceedings, (iii) the aggregate “amount of unfunded benefit liabilities” (within the meaning of section 4001(a)(18) of ERISA) under all Plans, determined in accordance with Title IV of ERISA, shall exceed five percent (5%) of Consolidated Net Worth for any period of ten (10) consecutive calendar days or more, (iv) the Company or any ERISA Affiliate shall have incurred or is reasonably expected to incur any liability pursuant to Title I or IV of ERISA or the penalty or excise tax provisions of the Code relating to employee benefit plans, (v) the Company or any ERISA Affiliate withdraws from any Multiemployer Plan, or (vi) the Company or any Subsidiary establishes or amends any employee welfare benefit plan that provides post-employment welfare benefits in a manner that would increase the liability of the Company or any Subsidiary thereunder; and any such event or events described in clauses (i) through (vi) above, either individually or together with any other such event or events, could reasonably be expected to have a Material Adverse Effect. As used in this Section 11(j), the terms “**employee benefit plan**” and “**employee welfare benefit plan**” shall have the respective meanings assigned to such terms in section 3 of ERISA.

## 12. REMEDIES ON DEFAULT, ETC.

### 12.1 Acceleration.

(a) If an Event of Default with respect to the Company described in clause (g) or (h) of Section 11 (other than an Event of Default described in subclause (i) of clause (g) or described in subclause (vi) of clause (g) by virtue of the fact that such clause encompasses subclause (i) of clause (g)) has occurred, all the Notes then outstanding shall automatically become immediately due and payable.

(b) If any other Event of Default has occurred and is continuing, the Required Holders may at any time at its or their option, by notice or notices to the Company, declare all the Notes then outstanding to be immediately due and payable.

(c) If any Event of Default described in clause (a) or (b) of Section 11 has occurred and is continuing, any holder or holders of Notes at the time outstanding affected by such Event of Default may at any time, at its or their option, by notice or notices to the Company, declare all the Notes held by it or them to be immediately due and payable.

Upon any Notes becoming due and payable under this Section 12.1, whether automatically or by declaration, such Notes will forthwith mature and the entire unpaid principal amount of such Notes, plus (i) all accrued and unpaid interest thereon (including interest accrued thereon at the Default Rate) and (ii) the Make-Whole Amount determined in respect of such principal amount (to the full extent permitted by applicable law), shall all be immediately due and payable, in each and every case without presentment, demand, protest or further notice, all of which are hereby waived. The Company acknowledges, and the parties hereto agree, that each holder of a Note has the right to maintain its investment in the Notes free from repayment by the Company (except as herein specifically provided for) and that the provision for payment of a Make-Whole Amount by the Company in the event that the Notes are prepaid or are accelerated as a result of an Event of Default, is intended to provide compensation for the deprivation of such right under such circumstances.

### **12.2 Other Remedies.**

If any Default or Event of Default has occurred and is continuing, and irrespective of whether any Notes have become or have been declared immediately due and payable under Section 12.1, the holder of any Note at the time outstanding may proceed to protect and enforce the rights of such holder by an action at law, suit in equity or other appropriate proceeding, whether for the specific performance of any agreement contained herein or in any Note, or for an injunction against a violation of any of the terms hereof or thereof, or in aid of the exercise of any power granted hereby or thereby or by law or otherwise.

### **12.3 Rescission.**

At any time after any Notes have been declared due and payable pursuant to clause (b) or (c) of Section 12.1, the Required Holders may, by written notice to the Company, rescind and annul any such declaration and its consequences if (a) the Company has paid all overdue interest on the Notes, all principal of and Make-Whole Amount, if any, on any Notes that are due and payable and are unpaid other than by reason of such declaration, and all interest on such overdue principal and Make-Whole Amount, if any, and (to the extent permitted by applicable law) any overdue interest in respect of the Notes of any Series, at the Default Rate for such Series, (b) all Events of Default and Defaults, other than non-payment of amounts that have become due solely by reason of such declaration, have been cured or have been waived pursuant to Section 17, and (c) no judgment or decree has been entered for the payment of any monies due pursuant hereto or to the Notes. No rescission and annulment under this Section 12.3 will extend to or affect any subsequent Event of Default or Default or impair any right consequent thereon.

### **12.4 No Waivers or Election of Remedies, Expenses, Etc.**

No course of dealing and no delay on the part of any holder of any Note in exercising any right, power or remedy shall operate as a waiver thereof or otherwise prejudice such holder's rights, powers or remedies. No right, power or remedy conferred by this Agreement or any Note upon any holder of any Note shall be exclusive of any other right, power or remedy referred to herein or therein or now or hereafter available at law, in equity, by statute or otherwise. Without limiting the obligations of the Company under Section 15, the Company will pay to the holder of each Note on demand such further amount as shall be sufficient to cover all costs and expenses of such holder incurred in any enforcement or collection under this Section 12, including reasonable attorneys' fees, expenses and disbursements.

## **13. REGISTRATION; EXCHANGE; SUBSTITUTION OF NOTES.**

### **13.1 Registration of Notes.**

The Company shall keep at its principal executive office a register for the registration and registration of transfers of Notes. The name and address of each holder of one or more Notes, each transfer thereof and the name and address of each transferee of one or more Notes shall be registered in such register. If any holder of one or more Notes is a nominee, then (a) the name and address of the beneficial owner of such Note or Notes shall also be registered in such register as an owner and holder thereof and (b) at any such beneficial owner's option, either such beneficial owner or its nominee may execute any amendment, waiver or consent pursuant to this Agreement. Prior to due presentment for registration of transfer, the Person in whose name any Note shall be registered shall be deemed and treated as the owner and holder thereof for all purposes hereof, and the Company shall not be affected by any notice or knowledge to the contrary. The Company shall give to any holder of a Note that is an Institutional Investor promptly upon request therefor, a complete and correct copy of the names and addresses of all registered holders of Notes.

### **13.2 Transfer and Exchange of Notes.**

Upon surrender of any Note at the principal executive office of the Company for registration of transfer or exchange (and in the case of a surrender for registration of transfer, duly endorsed or accompanied by a written instrument of transfer duly executed by the registered holder of such Note or its attorney duly authorized in writing and accompanied by the address for notices of each transferee of such Note or part thereof), the Company shall execute and deliver, at the Company's expense (except as provided below), one or more

new Notes of such Series (as requested by the holder thereof) in exchange therefor, in an aggregate principal amount equal to the unpaid principal amount of the surrendered Note. Each such new Note shall be payable to such Person as

such holder may request and shall be substantially in the form of such Note for such Series as set forth in Exhibit 1(a), 1(b), 1(c) or 1(d), as applicable. Each such new Note shall be dated and bear interest from the date to which interest shall have been paid on the surrendered Note or dated the date of the surrendered Note if no interest shall have been paid thereon. The Company may require payment of a sum sufficient to cover any stamp tax or governmental charge imposed in respect of any such transfer of Notes. Notes shall not be transferred in denominations of less than \$100,000, *provided* that if necessary to enable the registration of transfer by a holder of its entire holding of Notes, one Note may be in a denomination of less than \$100,000. Any transferee, by its acceptance of a Note registered in its name (or the name of its nominee), shall be deemed to have made the representation set forth in Section 6.2.

### **13.3 Replacement of Notes.**

Upon receipt by the Company of evidence reasonably satisfactory to it of the ownership of and the loss, theft, destruction or mutilation of any Note (which evidence shall be, in the case of an Institutional Investor, notice from such Institutional Investor of such ownership and such loss, theft, destruction or mutilation), and

(a) in the case of loss, theft or destruction, of indemnity reasonably satisfactory to it (provided that if the holder of such Note is, or is a nominee for, an original Purchaser or a Qualified Institutional Buyer, such Person's own unsecured agreement of indemnity shall be deemed to be satisfactory), or

(b) in the case of mutilation, upon surrender and cancellation thereof,

the Company at its own expense shall execute and deliver, in lieu thereof, a new Note of the same Series, dated and bearing interest from the date to which interest shall have been paid on such lost, stolen, destroyed or mutilated Note or dated the date of such lost, stolen, destroyed or mutilated Note if no interest shall have been paid thereon.

## **14. PAYMENTS ON NOTES.**

### **14.1 Place of Payment.**

Subject to Section 14.2, payments of principal, Make-Whole Amount, if any, and interest becoming due and payable on the Notes shall be made in New York, New York at the principal office of Wells Fargo Bank, National Association in such jurisdiction. The Company may at any time, by notice to each holder of a Note, change the place of payment of the Notes so long as such place of payment shall be either the principal office of the Company in such jurisdiction or the principal office of a bank or trust company in such jurisdiction.

### **14.2 Home Office Payment.**

So long as any Purchaser or its nominee shall be the holder of any Note, and notwithstanding anything contained in Section 14.1 or in such Note to the contrary, the Company will pay all sums becoming due on such Note for principal, Make-Whole Amount, if any, and interest by the method and at the address specified for such purpose below such Purchaser's name in Schedule A, or by such other method or at such other address as such Purchaser shall have from time to time specified to the Company in writing for such purpose, without the presentation or surrender of such Note or the making of any notation thereon, except that upon written request of the Company made concurrently with or reasonably promptly after payment or prepayment in full of any Note, such Purchaser shall surrender such Note for cancellation, reasonably promptly after any such request, to the Company at its principal executive office or at the place of payment most recently designated by the Company pursuant to Section 14.1. Prior to any sale or other disposition of any Note held by a Purchaser or its nominee such Purchaser will, at its election, either endorse thereon the amount of principal paid thereon and the last date to which interest has been paid thereon or surrender such Note to the Company in exchange for a new Note or Notes pursuant to Section 13.2. The Company will afford the benefits of this Section 14.2 to any Qualified Institutional Buyer or Institutional Investor that is the direct or indirect transferee of any Note purchased by a Purchaser under this Agreement and that has made the same agreement relating to such Note as the Purchasers have made in this Section 14.2.

## **15. EXPENSES, ETC.**

### **15.1 Transaction Expenses.**

Whether or not the transactions contemplated hereby are consummated, the Company will pay all costs and expenses (including reasonable attorneys' fees of a special counsel and, if reasonably required, local or other counsel) incurred by the Purchasers and each other holder of a Note in connection with such transactions and in connection with any amendments, waivers or consents under or in respect of this Agreement or the Notes (whether or not such amendment, waiver or consent becomes effective), including: (a) the costs and expenses incurred in enforcing or defending (or determining whether or how to enforce or defend) any rights under this Agreement or the Notes or in responding to any subpoena or other legal process or informal investigative demand issued in connection with this Agreement or the Notes, or by reason of being a holder of any Note, and (b) the costs and expenses, including financial advisors' fees, incurred in connection with the insolvency or bankruptcy of the Company or any Subsidiary or in connection with any work-out or restructuring of the transactions contemplated hereby and by the Notes. The Company will pay, and will save each Purchaser and each other holder of a Note harmless from, all claims in respect of any fees,





costs or expenses, if any, of brokers and finders (other than those, if any, retained by a Purchaser or other holder in connection with its purchase of the Notes).

### **15.2 Survival.**

The obligations of the Company under this Section 15 will survive the payment or transfer of any Note, the enforcement, amendment or waiver of any provision of this Agreement or the Notes, and the termination of this Agreement.

## **16. SURVIVAL OF REPRESENTATIONS AND WARRANTIES; ENTIRE AGREEMENT.**

All representations and warranties contained herein shall survive the execution and delivery of this Agreement and the Notes, the purchase or transfer by any Purchaser of any Note or portion thereof or interest therein and the payment of any Note, and may be relied upon by any subsequent holder of a Note, regardless of any investigation made at any time by or on behalf of such Purchaser or any other holder of a Note. All statements contained in any certificate or other instrument delivered by or on behalf of the Company pursuant to this Agreement shall be deemed representations and warranties of the Company under this Agreement. Subject to the preceding sentence, this Agreement and the Notes embody the entire agreement and understanding between each Purchaser and the Company and supersede all prior agreements and understandings relating to the subject matter hereof.

## **17. AMENDMENT AND WAIVER.**

### **17.1 Requirements.**

This Agreement and the Notes may be amended, and the observance of any term hereof or of the Notes may be waived (either retroactively or prospectively), with (and only with) the written consent of the Company and the Required Holders, except that (a) no amendment or waiver of any of the provisions of Section 1, 2, 3, 4, 5, 6 or 21 hereof, or any defined term (as it is used therein), will be effective as to any Purchaser unless consented to by such Purchaser in writing, and (b) no such amendment or waiver may, without the written consent of the holder of each Note at the time outstanding affected thereby, (i) subject to the provisions of Section 12 relating to acceleration or rescission, change the amount or time of any prepayment or payment of principal of, or reduce the rate or change the time of payment or method of computation of interest or of the Make-Whole Amount on, the Notes, (ii) change the percentage of the principal amount of the Notes the holders of which are required to consent to any such amendment or waiver or the principal amount of the Notes that the Purchasers are to purchase pursuant to Section 2 upon the satisfaction of the conditions to Closing that appear in Section 4, or (iii) amend any of Sections 8, 11(a), 11(b), 12, 17 or 20.

### **17.2 Solicitation of Holders of Notes.**

(a) Solicitation. The Company will provide each Purchaser and each holder of the Notes (irrespective of the amount of Notes then owned by it) with sufficient information, sufficiently far in advance of the date a decision is required, to enable such Purchaser and such holder to make an informed and considered decision with respect to any proposed amendment, waiver or consent in respect of any of the provisions hereof or of the Notes. The Company will deliver executed or true and correct copies of each amendment, waiver or consent effected pursuant to the provisions of this Section 17 to each Purchaser and each holder of outstanding Notes promptly following the date on which it is executed and delivered by, or receives the consent or approval of, the requisite Purchasers or holders of Notes.

(b) Payment. The Company will not directly or indirectly pay or cause to be paid any remuneration, whether by way of supplemental or additional interest, fee or otherwise, or grant any security or provide other credit support, to any Purchaser or holder of Notes as consideration for or as an inducement to the entering into by such Purchaser or holder of Notes of any waiver or amendment of any of the terms and provisions hereof or of any Note unless such remuneration is concurrently paid, or security is concurrently granted or other credit support is concurrently provided, on the same terms, ratably to each Purchaser and each holder of Notes then outstanding even if such Purchaser or holder did not consent to such waiver or amendment.

(c) Consent in Contemplation of Transfer. Any consent made pursuant to this Section 17.2 by the holder of any Note that has transferred or has agreed to transfer such Note to the Company, any Subsidiary or any Affiliate of the Company and has provided or has agreed to provide such written consent as a condition to such transfer shall be void and of no force or effect except solely as to such holder, and any amendments effected or waivers granted or to be effected or granted that would not have been or would not be so effected or granted but for such consent (and the consents of all other holders of Notes that were acquired under the same or similar conditions) shall be void and of no force or effect except solely as to such transferring holder.

### **17.3 Binding Effect, Etc.**

Any amendment or waiver consented to as provided in this Section 17 applies equally to all Purchasers and holders of Notes and is binding upon them and upon each future holder of any Note and upon the Company without regard to whether such Note has been marked to indicate such amendment or waiver. No such amendment or waiver will extend to or affect any obligation, covenant, agreement, Default or Event of Default not expressly amended or waived or impair any right consequent thereon. No course of dealing

between the Company and any Purchaser or holder of any Note nor any delay in exercising any rights hereunder or under any Note shall operate as a waiver of any rights of any Purchaser or holder of such Note. As used herein, the term “**this**

**Agreement**” and references thereto shall mean this Note Purchase Agreement as it may from time to time be amended or supplemented.

#### 17.4 Notes held by Company, Etc.

Solely for the purpose of determining whether the holders of the requisite percentage of the aggregate principal amount of Notes then outstanding approved or consented to any amendment, waiver or consent to be given under this Agreement or the Notes, or have directed the taking of any action provided herein or in the Notes to be taken upon the direction of the holders of a specified percentage of the aggregate principal amount of Notes then outstanding, Notes directly or indirectly owned by the Company or any of its Affiliates shall be deemed not to be outstanding.

#### 18. NOTICES.

Except to the extent otherwise provided in Section 4.10, Section 7.4 or Section 9.7, all notices and communications provided for hereunder shall be in writing and sent (a) by telecopy if the sender on the same day sends a confirming copy of such notice by a recognized overnight delivery service (charges prepaid), or (b) by registered or certified mail with return receipt requested (postage prepaid), or (c) by a recognized overnight delivery service (with charges prepaid). Any such notice must be sent:

- (i) if to any Purchaser or its nominee, to such Purchaser or nominee at the address specified for such communications in Schedule A, or at such other address as such Purchaser or nominee shall have specified to the Company in writing,
- (ii) if to any other holder of any Note, to such holder at such address as such other holder shall have specified to the Company in writing, or
- (iii) if to the Company, to the Company at its address set forth at the beginning hereof to the attention of Olivia Nelligan, Executive Vice President and Chief Financial Officer, or at such other address as the Company shall have specified to the holder of each Note in writing.

Notices under this Section 18 will be deemed given only when actually received.

#### 19. REPRODUCTION OF DOCUMENTS.

This Agreement and all documents relating thereto, including (a) consents, waivers and modifications that may hereafter be executed, (b) documents received by any Purchaser at the Closing (except the Notes themselves), and (c) financial statements, certificates and other information previously or hereafter furnished to any Purchaser, may be reproduced by such Purchaser by any photographic, photostatic, microfilm, microcard, miniature photographic, electronic or digital, or other similar process and such Purchaser may destroy any original document so reproduced. The Company agrees and stipulates that, to the extent permitted by applicable law, any such reproduction shall be admissible in evidence as the original itself in any judicial or administrative proceeding (whether or not the original is in existence and whether or not such reproduction was made by such Purchaser in the regular course of business) and any enlargement, facsimile or further reproduction of such reproduction shall likewise be admissible in evidence. This Section 19 shall not prohibit the Company or any other holder of Notes from contesting any such reproduction to the same extent that it could contest the original, or from introducing evidence to demonstrate the inaccuracy of any such reproduction.

#### 20. CONFIDENTIAL INFORMATION.

For the purposes of this Section 20, “**Confidential Information**” means information delivered to any Purchaser by or on behalf of the Company or any Subsidiary in connection with the transactions contemplated by or otherwise pursuant to this Agreement that is proprietary in nature and that was clearly marked or labeled or otherwise adequately identified when received by such Purchaser as being confidential information of the Company or such Subsidiary, *provided* that such term does not include information that (a) was publicly known or otherwise known to such Purchaser prior to the time of such disclosure, (b) subsequently becomes publicly known through no act or omission by such Purchaser or any Person acting on such Purchaser’s behalf, (c) otherwise becomes known to such Purchaser other than through disclosure by the Company or any Subsidiary or (d) constitutes financial statements delivered to such Purchaser under Section 7.1 that are otherwise publicly available. Each Purchaser will maintain the confidentiality of such Confidential Information in accordance with procedures adopted by such Purchaser in good faith to protect confidential information of third parties delivered to such Purchaser, *provided* that such Purchaser may deliver or disclose Confidential Information to (i) its directors, officers, employees, agents, attorneys, trustees and affiliates (to the extent such disclosure reasonably relates to the administration of the investment represented by its Notes), (ii) its financial advisors and other professional advisors who agree to hold confidential the Confidential Information substantially in accordance with the terms of this Section 20, (iii) any other holder of any Note, (iv) any Institutional Investor to which it sells or offers to sell such Note or any part thereof or any participation therein (if such Person has agreed in writing prior to its receipt of such Confidential Information to be bound by the provisions of this Section 20), (v) any Person from which it offers to purchase any security of the Company (if such Person has agreed in writing prior to its receipt of such Confidential Information to be bound by the provisions of this Section 20), (vi) any Federal or state regulatory authority having jurisdiction over such Purchaser, (vii) the NAIC or the SVO or,



in each case, any similar organization, or any nationally recognized rating agency that requires access to information about such Purchaser's investment portfolio or (viii) any other Person to which such delivery or disclosure may be necessary or appropriate (w) to effect compliance with any law, rule, regulation or order applicable to such Purchaser, (x) in response to any subpoena or other legal process, (y) in connection with any litigation to which such Purchaser is a party or (z) if an Event of Default has occurred and is continuing, to the extent such Purchaser may reasonably determine such delivery and disclosure to be necessary or appropriate in the enforcement or for the protection of the rights and remedies under such Purchaser's Notes and this Agreement. Each holder of a Note, by its acceptance of a Note, will be deemed to have agreed to be bound by and to be entitled to the benefits of this Section 20 as though it were a party to this Agreement. On reasonable request by the Company in connection with the delivery to any holder of a Note of information required to be delivered to such holder under this Agreement or requested by such holder (other than a holder that is a party to this Agreement or its nominee), such holder will enter into an agreement with the Company embodying the provisions of this Section 20.

In the event that as a condition to receiving access to information relating to the Company or its Subsidiaries in connection with the transactions contemplated by or otherwise pursuant to this Agreement, any Purchaser or holder of a Note is required to agree to a confidentiality undertaking (whether through IntraLinks, another secure website, a secure virtual workspace or otherwise) which is different from this Section 20, this Section 20 shall not be amended thereby and, as between such Purchaser or such holder and the Company, this Section 20 shall supersede any such other confidentiality undertaking.

## **21. SUBSTITUTION OF PURCHASER.**

Each Purchaser shall have the right to substitute any one of its Affiliates as the purchaser of the Notes that it has agreed to purchase hereunder, by written notice to the Company, which notice shall be signed by both such Purchaser and such Affiliate, shall contain such Affiliate's agreement to be bound by this Agreement and shall contain a confirmation by such Affiliate of the accuracy with respect to it of the representations set forth in Section 6. Upon receipt of such notice, any reference to such Purchaser in this Agreement (other than in this Section 21), shall be deemed to refer to such Affiliate in lieu of such original Purchaser. In the event that such Affiliate is so substituted as a Purchaser hereunder and such Affiliate thereafter transfers to such original Purchaser all of the Notes then held by such Affiliate, upon receipt by the Company of notice of such transfer, any reference to such Affiliate as a "Purchaser" in this Agreement (other than in this Section 21), shall no longer be deemed to refer to such Affiliate, but shall refer to such original Purchaser, and such original Purchaser shall again have all the rights of an original holder of the Notes under this Agreement.

## **22. MISCELLANEOUS.**

### **22.1 Successors and Assigns.**

All covenants and other agreements contained in this Agreement by or on behalf of any of the parties hereto bind and inure to the benefit of their respective successors and assigns (including any subsequent holder of a Note) whether so expressed or not.

### **22.2 Payments Due on Non-Business Days.**

Anything in this Agreement or the Notes to the contrary notwithstanding (but without limiting the requirement in Sections 8.2 or 8.3 that the notice of any optional prepayment specify a Business Day as the date fixed for such prepayment), any payment of principal of or Make-Whole Amount or interest on any Note that is due on a date other than a Business Day shall be made on the next succeeding Business Day without including the additional days elapsed in the computation of the interest payable on such next succeeding Business Day; provided that if the maturity date of any Notes is a date other than a Business Day, the payment otherwise due on such maturity date shall be made on the next succeeding Business Day and shall include the additional days elapsed in the computation of interest payable on such next succeeding Business Day.

### **22.3 Accounting Terms.**

All accounting terms used herein which are not expressly defined in this Agreement have the meanings respectively given to them in accordance with GAAP. Except as otherwise specifically provided herein, (a) all computations made pursuant to this Agreement shall be made in accordance with GAAP, and (b) all financial statements shall be prepared in accordance with GAAP. For purposes of determining compliance with this Agreement (including Section 9, Section 10 and the definition of "Debt"), any election by the Company to measure any financial liability using fair value (as permitted by Financial Accounting Standards Board Accounting Standards Codification Topic No. 825-10-25 - Fair Value Option, International Accounting Standard 39 - Financial Instruments: Recognition and Measurement or any similar accounting standard) shall be disregarded and such determination shall be made as if such election had not been made.

Notwithstanding the foregoing, if the Company notifies the holders of Notes that, in Company's reasonable opinion, or if the Required Holders notify the Company that, in the Required Holders' reasonable opinion, as a result of a change in GAAP after the date

hereof, any covenant contained in Sections 10.2, 10.3, 10.4, 10.5, 10.6 or 10.7, or any of the defined terms used therein, no longer apply as intended such that such covenants are materially more or less restrictive to the Company than as at the

date of this Agreement, the Company shall negotiate in good faith with the holders of Notes to make any necessary adjustments to such covenant or defined term to provide the holders of the Notes with substantially the same protection as such covenant provided prior to the relevant change in GAAP. Until the Company and the Required Holders so agree to reset, amend or establish alternative covenants or defined terms, (a) the covenants contained in Sections 10.2, 10.3, 10.4, 10.5, 10.6 and 10.7, together with the relevant defined terms, shall continue to apply and compliance therewith shall be determined on the basis of GAAP in effect at the date of this Agreement and (b) each set of financial statements delivered to holders of Notes pursuant to Section 7.1(a) or (b) during such time shall include detailed reconciliations reasonably satisfactory to the Required Holders as to the effect of such change in GAAP.

#### **22.4 Severability.**

Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall (to the full extent permitted by law) not invalidate or render unenforceable such provision in any other jurisdiction.

#### **22.5 Construction, Etc.**

Each covenant contained herein shall be construed (absent express provision to the contrary) as being independent of each other covenant contained herein, so that compliance with any one covenant shall not (absent such an express contrary provision) be deemed to excuse compliance with any other covenant. Where any provision herein refers to action to be taken by any Person, or which such Person is prohibited from taking, such provision shall be applicable whether such action is taken directly or indirectly by such Person.

Defined terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” The word “will” shall be construed to have the same meaning and effect as the word “shall.” Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein) and, for purposes of the Notes, shall also include any such notes issued in substitution therefor pursuant to Section 13, (b) subject to Section 22.1, any reference herein to any Person shall be construed to include such Person’s successors and assigns, (c) the words “herein,” “hereof” and “hereunder,” and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) all references herein to Sections and Schedules shall be construed to refer to Sections of, and Schedules to, this Agreement, and (e) any reference to any law or regulation herein shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time.

#### **22.6 Counterparts; Electronic Contracting.**

(a) This Agreement may be executed in any number of counterparts, each of which shall be an original but all of which together shall constitute one instrument. Each counterpart may consist of a number of copies hereof, each signed by less than all, but together signed by all, of the parties hereto. The parties agree to electronic contracting and signatures with respect to this Agreement (but not, for the avoidance of doubt, the Notes). Delivery of an electronic signature to, or a signed copy of, this Agreement by facsimile, email or other electronic transmission shall be fully binding on the parties to the same extent as the delivery of the signed originals and shall be admissible into evidence for all purposes. The words “execution,” “execute,” “signed,” “signature,” and words of like import in or related to any document to be signed in connection with this Agreement (other than the Notes) shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by the Company, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act. Notwithstanding the foregoing, if any Purchaser shall request manually signed counterpart signatures to this Agreement, the Company hereby agrees to use its reasonable endeavors to provide such manually signed signature pages as soon as reasonably practicable.

(b) The parties agree to electronic contracting and signatures with respect to each Note delivered hereunder in registered form. Delivery of an electronic signature to, or a signed copy of, any Note in the name of a particular Purchaser by facsimile, email or other electronic transmission shall be fully binding on the Company to the same extent as the delivery of the signed original of any such Note and shall be admissible into evidence for all purposes, and the Company hereby expressly waives any defense related to a Purchaser’s failure to present an original Note. The Company





further agrees that it shall produce a manually signed Note for delivery to each Purchaser in accordance with the instructions provided by such Purchaser as soon as reasonably practicable.

### **22.7 Governing Law.**

This Agreement shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the law of the State of New York excluding choice of law principles of the law of such State that would permit the application of the laws of a jurisdiction other than such State.

### **22.8 Jurisdiction and Process; Waiver of Jury Trial.**

(a) The Company irrevocably submits to the non-exclusive jurisdiction of any New York State or federal court sitting in the Borough of Manhattan, The City of New York, over any suit, action or proceeding arising out of or relating to this Agreement or the Notes. To the fullest extent permitted by applicable law, the Company irrevocably waives and agrees not to assert, by way of motion, as a defense or otherwise, any claim that it is not subject to the jurisdiction of any such court, any objection that it may now or hereafter have to the laying of the venue of any such suit, action or proceeding brought in any such court and any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.

(b) The Company consents to process being served by or on behalf of any holder of Notes in any suit, action or proceeding of the nature referred to in Section 22.8(a) by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, return receipt requested, to it at its address specified in Section 18 or at such other address of which such holder shall then have been notified pursuant to said Section. The Company agrees that such service upon receipt (i) shall be deemed in every respect effective service of process upon it in any such suit, action or proceeding and (ii) shall, to the fullest extent permitted by applicable law, be taken and held to be valid personal service upon and personal delivery to it. Notices hereunder shall be conclusively presumed received as evidenced by a delivery receipt furnished by the United States Postal Service or any reputable commercial delivery service.

(c) Nothing in this Section 22.8 shall affect the right of any holder of a Note to serve process in any manner permitted by law, or limit any right that the holders of any of the Notes may have to bring proceedings against the Company in the courts of any appropriate jurisdiction or to enforce in any lawful manner a judgment obtained in one jurisdiction in any other jurisdiction.

(d) The parties hereto hereby waive trial by jury in any action brought on or with respect to this Agreement, the Notes or any other document executed in connection herewith or therewith.

If you are in agreement with the foregoing, please sign the form of agreement on a counterpart of this Agreement and return it to the Company, whereupon this Agreement shall become a binding agreement between you and the Company.

Very truly yours,

**CHS, INC.**

By: /s/ Olivia Nelligan

Name: Olivia Nelligan

Title: Executive Vice President and  
Chief Financial Officer



This Agreement is hereby  
accepted and agreed to as  
of the date hereof.

**THE PRUDENTIAL INSURANCE COMPANY OF AMERICA**

By: /s/ J. Alex Stuart  
Second Vice President

**BCBSM, INC. DBA BLUE CROSS AND BLUE SHIELD OF MINNESOTA**

By: PGIM Private Placement Investors, L.P. (as Investment Advisor)

By: PGIM Private Placement Investors, Inc. (as its General Partner)

By: /s/ J. Alex Stuart  
Vice President

**PRUDENTIAL ANNUITIES LIFE ASSURANCE CORPORATION**

By: PGIM, Inc., as investment manager

By: /s/ J. Alex Stuart  
Vice President

**PRUDENTIAL RETIREMENT INSURANCE AND ANNUITY COMPANY**

By: PGIM, Inc., as investment manager

By: /s/ J. Alex Stuart  
Vice President

**PICA HARTFORD LIFE INSURANCE COMFORT TRUST**

By: The Prudential Insurance Company of America, as Grantor

By: /s/ J. Alex Stuart  
Second Vice President

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[Signature Page to Note Purchase Agreement - CHS]

**PRIVATE PLACEMENT TRUST INVESTORS, LLC**

By: PGIM Private Placement Investors,  
L.P., as Managing Member

By: PGIM Private Placement Investors, Inc.,  
as its General Partner

By: /s/ J. Alex Stuart \_\_\_\_\_  
Vice President

**PHYSICIANS MUTUAL INSURANCE COMPANY**

By: PGIM Private Placement Investors, L.P. (as Investment Advisor)

By: PGIM Private Placement Investors, Inc. (as its General Partner)

By: /s/ J. Alex Stuart \_\_\_\_\_  
Vice President

**PRUCO LIFE INSURANCE COMPANY**

By: /s/ J. Alex Stuart \_\_\_\_\_  
Assistant Vice President

**PRUDENTIAL LEGACY INSURANCE COMPANY OF NEW JERSEY**

By: PGIM, Inc., as investment manager

By: /s/ J. Alex Stuart \_\_\_\_\_  
Vice President

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**PRUDENTIAL TERM REINSURANCE COMPANY**

By: PGIM, Inc., as investment manager

By: /s/ J. Alex Stuart  
Vice President

**PRUDENTIAL UNIVERSAL REINSURANCE COMPANY**

By: PGIM, Inc., as investment manager

By: /s/ J. Alex Stuart  
Vice President

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**ATHENE ANNUITY AND LIFE COMPANY**

By: Apollo Insurance Solutions Group LP, its investment adviser  
By: Apollo Capital Management, L.P., its sub adviser  
By: Apollo Capital Management GP, LLC, its General Partner

By: /s/ Joseph D. Glatt \_\_\_\_\_  
Name: Joseph D. Glatt  
Title: Vice President

**AMERICAN EQUITY INVESTMENT LIFE INSURANCE COMPANY**

By: Apollo Insurance Solutions Group LP, its investment adviser  
By: Apollo Capital Management, L.P., its sub adviser  
By: Apollo Capital Management GP, LLC, its General Partner

By: /s/ Joseph D. Glatt \_\_\_\_\_  
Name: Joseph D. Glatt  
Title: Vice President

**VENERABLE INSURANCE AND ANNUITY COMPANY**

By: Apollo Insurance Solutions Group LP, its investment adviser  
By: Apollo Capital Management, L.P., its sub adviser  
By: Apollo Capital Management GP, LLC, its General Partner

By: /s/ Joseph D. Glatt \_\_\_\_\_  
Name: Joseph D. Glatt  
Title: Vice President

**JACKSON NATIONAL LIFE INSURANCE COMPANY**

By: Apollo Insurance Solutions Group LP, its investment adviser  
By: Apollo Capital Management, L.P., its sub adviser  
By: Apollo Capital Management GP, LLC, its General Partner

By: /s/ Joseph D. Glatt \_\_\_\_\_  
Name: Joseph D. Glatt  
Title: Vice President

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**MASSACHUSETTS MUTUAL LIFE INSURANCE COMPANY**

By: Apollo Insurance Solutions Group LP, its investment adviser

By: Apollo Capital Management, L.P., its sub adviser

By: Apollo Capital Management GP, LLC, its General Partner

By: /s/ Joseph D. Glatt \_\_\_\_\_

Name: Joseph D. Glatt

Title: Vice President

**MIDLAND NATIONAL LIFE INSURANCE COMPANY**

By: Apollo Insurance Solutions Group LP, its investment adviser

By: Apollo Capital Management, L.P., its sub adviser

By: Apollo Capital Management GP, LLC, its General Partner

By: /s/ Joseph D. Glatt \_\_\_\_\_

Name: Joseph D. Glatt

Title: Vice President

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**NEW YORK LIFE INSURANCE COMPANY**

By: /s/ Clara Fagan \_\_\_\_\_  
Name: Clara Fagan  
Title: Corporate Vice President

**NEW YORK LIFE INSURANCE AND ANNUITY CORPORATION**

By: NYL Investors LLC, its Investment Manager

By: /s/ Clara Fagan \_\_\_\_\_  
Name: Clara Fagan  
Title: Senior Director

**NEW YORK LIFE INSURANCE AND ANNUITY CORPORATION INSTITUTIONALLY OWNED LIFE INSURANCE  
SEPARATE**

**ACCOUNT (BOLI 3)**

By: NYL Investors LLC, its Investment Manager

By: /s/ Clara Fagan \_\_\_\_\_  
Name: Clara Fagan  
Title: Senior Director

**NEW YORK LIFE INSURANCE AND ANNUITY CORPORATION INSTITUTIONALLY OWNED LIFE INSURANCE  
SEPARATE**

**ACCOUNT (BOLI 3-2)**

By: NYL Investors LLC, its Investment Manager

By: /s/ Clara Fagan \_\_\_\_\_  
Name: Clara Fagan  
Title: Senior Director

**NEW YORK LIFE INSURANCE AND ANNUITY CORPORATION INSTITUTIONALLY OWNED LIFE INSURANCE  
SEPARATE**

**ACCOUNT (BOLI 30C)**

By: NYL Investors LLC, its Investment Manager

By: /s/ Clara Fagan \_\_\_\_\_  
Name: Clara Fagan  
Title: Senior Director

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**NEW YORK LIFE INSURANCE AND ANNUITY CORPORATION INSTITUTIONALLY OWNED LIFE INSURANCE  
SEPARATE  
ACCOUNT (BOLI 30D)**

By: NYL Investors LLC, its Investment Manager

By: /s/ Clara Fagan

Name: Clara Fagan

Title: Senior Director

**The Bank of New York Mellon, a banking corporation organized under the laws of New York, not in its individual capacity but solely as Trustee under that certain Trust Agreement dated as of July 1st, 2015 between New York Life Insurance Company, as Grantor, John Hancock Life Insurance Company (U.S.A.), as Beneficiary, John Hancock Life Insurance Company of New York, as Beneficiary, and The Bank of New York Mellon, as Trustee**

By: New York Life Insurance Company, its attorney-in-fact

By: /s/ Clara Fagan

Name: Clara Fagan

Title: Senior Director

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**MODERN WOODMEN OF AMERICA**

By: /s/ Aaron R. Birkland \_\_\_\_\_

Name: Aaron R. Birkland

Title: Portfolio Manager, Private Placements

**MODERN WOODMEN OF AMERICA**

By: /s/ Brett M. Van \_\_\_\_\_

Name: Brett M. Van

Title: Chief Investment Officer & Treasurer

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**THRIVENT FINANCIAL FOR LUTHERANS**

By: /s/ Allen Stoltman  
Name: Allen Stoltman  
Title: Managing Director

[Signature Page to Note Purchase Agreement - CHS]

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**STATE OF WISCONSIN INVESTMENT BOARD**

By: /s/ Christopher P. Prestigiacomo  
Name: Christopher P. Prestigiacomo  
Title: Portfolio Manager

[Signature Page to Note Purchase Agreement - CHS]

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**THE GUARDIAN LIFE INSURANCE COMPANY OF AMERICA**

By: /s/ Barry Scheinholtz

Name: Barry Scheinholtz

Title: Managing Director

**THE GUARDIAN INSURANCE & ANNUITY COMPANY, INC.**

By: /s/ Barry Scheinholtz

Name: Barry Scheinholtz

Title: Managing Director

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**AMERITAS LIFE INSURANCE CORP.**  
**AMERITAS LIFE INSURANCE CORP. OF NEW YORK**  
By: Ameritas Investment Partners Inc., as Agent

By: /s/ Tina Udell \_\_\_\_\_

Name: Tina Udell

Title: Vice President & Managing Director

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**CMFG LIFE INSURANCE COMPANY**

By: MEMBERS Capital Advisors, Inc.  
acting as Investment Advisor

By: /s/ Jason Micks \_\_\_\_\_

Name: Jason Micks

Title: Managing Director, Investments

[Signature Page to Note Purchase Agreement - CHS]

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**PRIMERICA LIFE INSURANCE COMPANY**

By: Conning, Inc., as Investment Manager

By: /s/ Samuel Otchere

Name: Samuel Otchere

Title: Director

**NATIONAL BENEFIT LIFE INSURANCE COMPANY**

By: Conning, Inc., as Investment Manager

By: /s/ Samuel Otchere

Name: Samuel Otchere

Title: Director

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[Signature Page to Note Purchase Agreement - CHS]

**AMERICAN FAMILY LIFE INSURANCE COMPANY**

By: /s/ David L. Voge  
Name: David L. Voge  
Title: Director Private Markets

[Signature Page to Note Purchase Agreement - CHS]

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**SOUTHERN FARM BUREAU LIFE INSURANCE COMPANY**

By: /s/ David Divine

Name: David Divine

Title: Director - Securities Management

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**MUFG Fund Services (Cayman) Limited, acting solely in its capacity as trustee of Bright - III Fund, a sub-fund of Global Private Credit Umbrella Unit Trust\***

By: Barings LLC as Investment Adviser

By: /s/ James Moore

Name: James Moore

Title: Managing Director

Trustee's obligations in such capacity will be solely the obligations of the Trustee acting on behalf of Bright - III Fund, and that no creditor will have any recourse against any of the Trustee, (or any of its directors, officers or employees) for any claims, losses, damages, liabilities, indemnities or other obligations whatsoever in connection with actions taken by the Trustee, with any recourse to the Trustee limited to the assets of Bright - III Fund.

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**ASSURITY LIFE INSURANCE COMPANY**

By: /s/ Victor Weber

Name: Victor Weber

Title: Senior Director - Investments

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## SCHEDULE B

### DEFINED TERMS

As used herein, the following terms have the respective meanings set forth below or set forth in the Section hereof following such term:

“**Additional Provision**” is defined in Section 9.7(a).

“**Adjusted Consolidated Funded Debt**” means Consolidated Funded Debt, plus the net present value of all rentals payable under operating leases of the Company and its Subsidiaries as discounted by a rate of 10% per annum.

“**Affiliate**” means, at any time, and with respect to any Person, (a) any other Person that at such time directly or indirectly through one or more intermediaries Controls, or is Controlled by, or is under common Control with, such first Person, and (b) any Person beneficially owning or holding, directly or indirectly, 10% or more of any class of voting or equity interests of the Company or any Subsidiary or any corporation of which the Company and its Subsidiaries beneficially own or hold, in the aggregate, directly or indirectly, 10% or more of any class of voting or equity interests. As used in this definition, “**Control**” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of Voting Interests, by contract or otherwise. Unless the context otherwise clearly requires, any reference to an “Affiliate” is a reference to an Affiliate of the Company.

“**Agreement, this**” is defined in Section 17.3.

“**Anti-Corruption Laws**” means any law or regulation in a U.S. or any non-U.S. jurisdiction regarding bribery or any other corrupt activity, including the U.S. Foreign Corrupt Practices Act and the U.K. Bribery Act 2010.

“**Anti-Money Laundering Laws**” means any law or regulation in a U.S. or any non-U.S. jurisdiction regarding money laundering, drug trafficking, terrorist-related activities or other money laundering predicate crimes, including the Currency and Foreign Transactions Reporting Act of 1970 (otherwise known as the Bank Secrecy Act) and the USA PATRIOT Act.

“**Applicable Rate**” means, with respect to (a) any Series Y Note, during any fiscal quarter following a fiscal period during which the Company delivered financial statements under Section 7.1 reflecting a Leverage Ratio (rounded to the second decimal place, with .005 being rounded upward) for the immediately preceding fiscal period of (i) less than or equal to 3.00 to 1.00, 3.24% per annum, (ii) greater than 3.00 to 1.00 but less than or equal to 3.25 to 1.00, 3.74% per annum, or (iii) greater than 3.25 to 1.00, 4.24% per annum, (b) any Series Z Note, during any fiscal quarter following a fiscal period during which the Company delivered financial statements under Section 7.1 reflecting a Leverage Ratio (rounded to the second decimal place, with .005 being rounded upward) for the immediately preceding fiscal period of (i) less than or equal to 3.00 to 1.00, 3.48% per annum, (ii) greater than 3.00 to 1.00 but less than or equal to 3.25 to 1.00, 3.98% per annum, or (iii) greater than 3.25 to 1.00, 4.48% per annum, (c) any Series AA Note, during any fiscal quarter following a fiscal period during which the Company delivered financial statements under Section 7.1 reflecting a Leverage Ratio (rounded to the second decimal place, with .005 being rounded upward) for the immediately preceding fiscal period of (i) less than or equal to 3.00 to 1.00, 3.58% per annum, (ii) greater than 3.00 to 1.00 but less than or equal to 3.25 to 1.00, 4.08% per annum, or (iii) greater than 3.25 to 1.00, 4.58% per annum and (d) any Series BB Note, during any fiscal quarter following a fiscal period during which the Company delivered financial statements under Section 7.1 reflecting a Leverage Ratio (rounded to the second decimal place, with .005 being rounded upward) for the immediately preceding fiscal period of (i) less than or equal to 3.00 to 1.00, 3.73% per annum, (ii) greater than 3.00 to 1.00 but less than or equal to 3.25 to 1.00, 4.23% per annum, or (iii) greater than 3.25 to 1.00, 4.73% per annum; provided, however, that if the Leverage Ratio (rounded to the second decimal place, with .005 being rounded upward) for the immediately preceding fiscal period was greater than 3.00 to 1.00 but the Notes had an Investment Grade Rating by any Nationally Recognized Statistical Rating Organization during such fiscal period, the “Applicable Rate” (w) for any Series Y Note shall be 3.49% per annum, (x) for any Series Z Note shall be 3.73% per annum, (y) for any Series AA Note shall be 3.83% per annum and (z) for any Series BB Note shall be 3.98% per annum, in each case until the date on which the Notes are no longer rated Investment Grade by such Nationally Recognized Statistical Rating Organization, in which case clauses (a), (b), (c) or (d), as applicable, shall apply.

**“Blocked Person”** means (a) a Person whose name appears on the list of Specially Designated Nationals and Blocked Persons published by OFAC, (b) a Person, entity, organization, country or regime that is blocked or a target of sanctions that have been imposed under U.S. Economic Sanctions Laws or (c) a Person that is an agent, department or instrumentality of, or is otherwise



beneficially owned by, controlled by or acting on behalf of, directly or indirectly, any Person, entity, organization, country or regime described in clause (a) or (b).

“**Business Day**” means any day other than a Saturday, a Sunday or a day on which commercial banks in New York, New York are required or authorized to be closed.

“**Capital Lease**” means, at any time, a lease with respect to which the lessee is required concurrently to recognize the acquisition of an asset and the incurrence of a liability in accordance with GAAP.

“**Capitalized Lease Obligation**” means with respect to any Person and a Capital Lease, the amount of the obligation of such Person as the lessee under such Capital Lease (net of interest expenses) which would, in accordance with GAAP, appear as a liability on a balance sheet of such Person.

“**CFC**” means a Person that is a controlled foreign corporation under Section 957 of the Code.

“**Change in Control**” means any Person or Persons acting in concert, together with the Affiliates thereof, directly or indirectly controlling or owning (beneficially or otherwise) in the aggregate more than 50% of the aggregate voting power of the issued and outstanding Voting Interests of the Company.

“**CHS Capital**” means collectively, CHS Capital, LLC, and each of its Subsidiaries.

“**CHS Capital Debt**” means, on any date of determination, Debt owing by CHS Capital in connection with the sale or financing of CHS Capital Loan Assets, and in respect of which neither the Company nor any of its other Subsidiaries has any obligation (including any indemnification obligation) or liability.

“**CHS Capital Loan Assets**” means loan assets owned and loan commitments made by CHS Capital or a Wholly-Owned Subsidiary in the ordinary course of business, and the proceeds thereof and receivables of the Company and the proceeds thereof, in each case sold by the Company to the extent necessary to make up the shortfall on collections of the CHS Capital Loan Assets pursuant to the terms of the relevant documentation for the CHS Capital Debt.

“**Closing**” is defined in Section 3.

“**CoBank**” means Co-Bank, ACB, a United States Agricultural Credit Bank.

“**Code**” means the Internal Revenue Code of 1986, as amended from time to time, and the rules and regulations promulgated thereunder from time to time.

“**Company**” is defined in the introductory paragraph hereof.

“**Confidential Information**” is defined in Section 20.

“**Consolidated Cash Flow**” means for any period the sum of (a) earnings before income taxes of the Company and its Subsidiaries for such period determined on a consolidated basis in accordance with GAAP, *plus* (b) the amounts that have been deducted in the determination of such earnings before income taxes for such period for (i) interest expense for such period, (ii) depreciation for such period, (iii) amortization for such period and (iv) extraordinary non-cash losses for such period, *minus* (c) the amounts that have been included in the determination of such earnings before income taxes for such period for (i) one-time gains, (ii) extraordinary income, (iii) non-cash patronage income, and (iv) non-cash equity earnings in joint ventures.

“**Consolidated Current Ratio**” means, as of any date of determination, the ratio of (a) consolidated current assets of the Company and its Subsidiaries as of such date to (b) consolidated current liabilities of the Company and its Subsidiaries as of such date, in each case, as determined in accordance with GAAP.

“**Consolidated Funded Debt**” means as of any date of determination, the total of all Funded Debt of the Company and its Subsidiaries outstanding on such date, after eliminating all offsetting debits and credits between the Company and its Subsidiaries and all other items required to be eliminated in the course of preparation of consolidated financial statements of the Company and its Subsidiaries in accordance with GAAP; provided, that, if the Consolidated Current Ratio as of any such date of determination is less than 1.00 to 1.00,

any calculation of Consolidated Funded Debt shall include (notwithstanding anything to the contrary in this definition) the lesser, as of such date of determination, of (a) all Debt which would, in accordance with GAAP, be required to be classified as a short term liability on the books of the Company and its Subsidiaries, including without limitation borrowings

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under a revolving credit or similar agreement where such borrowings are outstanding for less than one year (whether or not used for working capital purposes) and (b) the amount (which, if a negative number, shall be deemed zero) by which (i) consolidated current liabilities of the Company and its Subsidiaries as of such date exceeds (ii) consolidated current assets of the Company and its Subsidiaries as of such date.

**“Consolidated Net Worth”** means as of any date, total equity of the Company and its Subsidiaries as of such date, determined on a consolidated basis in accordance with GAAP.

**“Consolidated Total Assets”** means at any time, the total assets of the Company and its Subsidiaries that would be shown on a consolidated balance sheet of the Company and its Subsidiaries at such time prepared in accordance with GAAP.

**“Controlled Entity”** means (a) any of the Subsidiaries of the Company and any of their or the Company’s respective Controlled Affiliates and (b) if the Company has a parent company, such parent company and its Controlled Affiliates. As used in this definition, “Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

**“Debt”** means with respect to any Person

(a) all obligations of such Person for borrowed money (including all obligations for borrowed money secured by any Lien with respect to any property owned by such Person whether or not such Person has assumed or otherwise become liable for such obligations),

(b) all obligations of such Person for the deferred purchase price of property acquired by such Person (excluding accounts payable arising in the ordinary course of business but including all liabilities created or arising under any conditional sale or other title retention agreement with respect to such property),

(c) all Capitalized Lease Obligations of such Person,

(d) the CHS Capital Debt, and

(e) all Guaranties of such Person with respect to liabilities of the type described in clause (a), (b), (c) or (d) of any other Person,

*provided* that (i) Debt of a Subsidiary of the Company shall exclude such obligations and Guaranties of such Subsidiary if owed or guaranteed by such Subsidiary to the Company or a Wholly-Owned Subsidiary of the Company, (ii) Debt of the Company shall exclude such obligations and Guaranties if owed or guaranteed by the Company to a Wholly-Owned Subsidiary of the Company and (iii) Debt of the Company shall exclude any unfunded obligations which may exist now and in the future in the Company’s pension plans.

**“Debt Prepayment Application”** is defined in Section 10.7(c).

**“Default”** means an event or condition the occurrence or existence of which would, with the lapse of time or the giving of notice or both, become an Event of Default.

**“Default Rate”** means that rate of interest that is the greater of (a) 2% per annum above the Applicable Rate with respect to such Note or (b) 2% over the rate of interest publicly announced by The Bank of New York in New York, New York as its “base” or “prime” rate.

**“Designated Portion”** is defined in Section 10.7(b).

**“Disclosure Documents”** is defined in Section 5.3.

**“Disposition Value”** is defined in Section 10.7(c).

**“Distribution”** means, in respect of any corporation, association or other business entity:

(a) dividends or other distributions or payments on capital stock or other equity interests of such corporation, association or other business entity (except distributions in such stock or other equity interest); and

(b) the redemption or acquisition of such stock or other equity interests or of warrants, rights or other options to purchase such stock or other equity interests (except when solely in exchange for such stock or other equity interests) unless made, contemporaneously, from the net proceeds of a sale of such stock or other equity interests.

“**EDGAR**” means the SEC’s Electronic Data Gathering, Analysis and Retrieval System or any successor SEC electronic filing system for such purposes.

“**Environmental Laws**” means any and all Federal, state, local, and foreign statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or governmental restrictions relating to pollution and the protection of the environment or the release of any materials into the environment, including those related to hazardous substances or wastes, air emissions and discharges to waste or public systems.

“**ERISA**” means the Employee Retirement Income Security Act of 1974, as amended from time to time, and the rules and regulations promulgated thereunder from time to time in effect.

“**ERISA Affiliate**” means any trade or business (whether or not incorporated) that is treated as a single employer together with the Company under section 414 of the Code.

“**Event of Default**” is defined in Section 11.

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

“**Excluded Transfers**” is defined in Section 10.7(a).

“**Fair Market Value**” means, at any time and with respect to any property, the sale value of such property that would be realized in an arm’s-length sale at such time between an informed and willing buyer and an informed and willing seller (neither being under a compulsion to buy or sell, respectively).

“**Financial Covenant**” means any covenant as well as any defined term used within any such covenant that requires the Company or any of its Subsidiaries to achieve, maintain, or not exceed, a stated level of financial condition or performance and includes any requirement that the Company or any of its Subsidiaries:

- (a) maintain a specified level of net worth, shareholders’ equity, total assets, cash flow or net income;
- (b) maintain any relationship of any component of its capital structure to any other component thereof (including the relationship of indebtedness, senior indebtedness or subordinated indebtedness to total capitalization or to net worth); or
- (c) maintain any measure of its ability to service its indebtedness (including exceeding any specified ratio of revenues, cash flow or net income to indebtedness, interest expense, rental expense, capital expenditures and/or scheduled payments of indebtedness).

For the avoidance of doubt, the covenants set forth in Sections 10.3 and 10.4 of this Agreement and any “Minimum Consolidated Net Worth” covenant set forth in a Material Credit Facility constitute Financial Covenants.

“**Form 10-K**” is defined in Section 7.1(b).

“**Form 10-Q**” is defined in Section 7.1(a).

“**Funded Debt**” means with respect to any Person, all Debt which would, in accordance with GAAP, be required to be classified as a long term liability on the books of such Person, and shall include (a) any Debt which by its terms or by the terms of any instrument or agreement relating thereto matures, or which is otherwise payable or unpaid, more than one year from the date of creation thereof, (b) any Debt outstanding under a revolving credit or similar agreement providing for borrowings (and renewals and extensions thereof) which would, in accordance with GAAP, be required to be classified as a long term liability of such Person, (c) any Capitalized Lease Obligation of such Person and all obligations to reimburse letter of credit banks or any other Person in respect thereof or any letter of credit issuer or other credit provider (or related risk-participating lender) with respect to all letters of credit which support long-term debt with expiration dates in excess of one-year from the date of issuance thereof, and (d) any Guaranty of such Person with respect to Funded Debt of another Person.

For the avoidance of doubt, (w) any borrowings under a revolving credit or similar agreement where such borrowings are not used for working capital purposes would be classified as Funded Debt, (x) borrowings under a revolving credit or similar agreement where such borrowings are outstanding for less than one year and which are used for working capital purposes would

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not be classified as Funded Debt, (y) borrowings used for working capital purposes outstanding for one year or longer would be classified as Funded Debt and (z) current maturities of long-term debt would be classified as Funded Debt.

**“GAAP”** means generally accepted accounting principles as in effect from time to time in the United States of America.

**“Governmental Authority”** means

- (a) the government of
  - (i) the United States of America or any state or other political subdivision thereof, or
  - (ii) any other jurisdiction in which the Company or any Subsidiary conducts all or any part of its business, or which asserts jurisdiction over any properties of the Company or any Subsidiary, or
- (b) any entity exercising executive, legislative, judicial, regulatory or administrative functions of, or pertaining to, any such government.

**“Governmental Official”** means any governmental official or employee, employee of any government-owned or government-controlled entity, political party, any official of a political party, candidate for political office, official of any public international organization or anyone else acting in an official capacity.

**“Guaranty”** means, with respect to any Person, any obligation (except the endorsement in the ordinary course of business of negotiable instruments for deposit or collection) of such Person guaranteeing or in effect guaranteeing any Debt, dividend or other obligation of any other Person in any manner, whether directly or indirectly, including obligations incurred through an agreement, contingent or otherwise, by such Person:

- (a) to purchase such Debt or obligation or any property constituting security therefor;
- (b) to advance or supply funds (i) for the purchase or payment of such Debt or obligation, or (ii) to maintain any working capital or other balance sheet condition or any income statement condition of any other Person or otherwise to advance or make available funds for the purchase or payment of such Debt or obligation;
- (c) to lease properties or to purchase properties or services primarily for the purpose of assuring the owner of such Debt or obligation of the ability of any other Person to make payment of the Debt or obligation; or
- (d) otherwise to assure the owner of such Debt or obligation against loss in respect thereof.

In any computation of the Debt or other liabilities of the obligor under any Guaranty, the Debt or other obligations that are the subject of such Guaranty shall be assumed to be direct obligations of such obligor.

**“Hazardous Material”** means any and all pollutants, toxic or hazardous wastes or any other substances that might pose a hazard to health or safety, the removal of which may be required or the generation, manufacture, refining, production, processing, treatment, storage, handling, transportation, transfer, use, disposal, release, discharge, spillage, seepage, or filtration of which is or shall be restricted, prohibited or penalized by any applicable law (including asbestos, urea formaldehyde foam insulation and polychlorinated biphenyls).

**“holder”** means, with respect to any Note, the Person in whose name such Note is registered in the register maintained by the Company pursuant to Section 13.1, provided, however, that if such Person is a nominee, the “holder” shall also include the beneficial owner of such Note.

**“Hostile Tender Offer”** means, with respect to the use of proceeds of any Note, any offer to purchase, or any purchase of, shares of capital stock of any corporation or equity interests in any other entity, or securities convertible into or representing the beneficial ownership of, or rights to acquire, any such shares or equity interests, if such shares, equity interests, securities or rights are of a class which is publicly traded on any securities exchange or in any over-the-counter market, other than purchases of such shares, equity interests, securities or rights representing less than 5% of the equity interests or beneficial ownership of such corporation or other entity for portfolio investment purposes, and such offer or purchase has not been duly approved by the board of directors of such corporation or the equivalent governing body of such other entity prior to the date of the Closing.

**“INHAM Exemption”** is defined in Section 6.2(e).

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**“Institutional Investor”** means (a) any original purchaser of a Note, (b) any holder of a Note holding more than 5% of the aggregate principal amount of the Notes then outstanding, and (c) any bank, trust company, savings and loan association or other financial institution, any pension plan, any investment company, any insurance company, any broker or dealer, or any other similar financial institution or entity, regardless of legal form.

**“Investment Grade Rating”** means a rating assigned to the Notes from at least one Nationally Recognized Statistical Rating Organization equal to or higher than (a) BBB- (or the equivalent) by Fitch, Inc., S&P, Kroll or DBRS, Inc. or (b) Baa3 by Moody’s.

**“Kroll”** means Kroll Bond Rating Agency, Inc.

**“Leverage Ratio”** is defined in Section 10.3.

**“Lien”** means, with respect to any Person, any mortgage, lien, pledge, charge, security interest or other encumbrance, or any interest or title of any vendor, lessor, lender or other secured party to or of such Person under any conditional sale or other title retention agreement or Capital Lease, upon or with respect to any property or asset of such Person (including in the case of stock, stockholder agreements, voting trust agreements and all similar arrangements).

**“Make-Whole Amount”** is defined in Section 8.7.

**“Material”** means material in relation to the business, operations, affairs, financial condition, assets, properties, or prospects of the Company and its Subsidiaries taken as a whole.

**“Material Adverse Effect”** means a material adverse effect on (a) the business, operations, affairs, financial condition, assets or properties of the Company and its Subsidiaries taken as a whole, or (b) the ability of the Company to perform its obligations under this Agreement and the Notes, or (c) the validity or enforceability of this Agreement or the Notes.

**“Material Credit Facility”** means, as to the Company and its Subsidiaries,

(a) (i) that certain Note Purchase and Private Shelf Agreement, dated as of April 13, 2004, by and among the Company, the holders of the notes issued thereunder and certain other parties, (ii) that certain Note Purchase Agreement, dated as of June 9, 2011, by and among the Company and the holders of the notes issued thereunder, (iii) that certain Master Note Purchase Agreement, dated as of January 14, 2016, by and among the Company and the holders of the notes issued thereunder, (iv) that certain 2019 Second Amended and Restated Credit Agreement (5-Year Revolving Loan), dated as of July 16, 2019, by and among the Company, CoBank, ACB, the syndication parties thereto and certain other parties thereto, (v) that certain 2015 Credit Agreement (10-Year Term Loan), dated as of September 4, 2015, by and among the Company, CoBank, ACB and the syndication parties thereto, (vi) that certain Credit Agreement, dated as of September 30, 2019, by and among the Company, CHS Capital, LLC, the other guarantors from time to time parties thereto, the lenders from time to time parties thereto, and BMO Harris Bank, N.A., as administrative agent, (vii) that certain (A) Credit Agreement, dated as of May 18, 2020, by and among Temco, LLC, MUFG Bank, Ltd., as administrative agent and the lenders party thereto and (B) Guaranty, dated as of May 18, 2020, by the Company in favor of MUFG Bank, Ltd., (viii) that certain Amended and Restated Receivables Purchase Agreement, dated as of July 18, 2017, by and among the Company, Cofina Funding, LLC, as Seller, the various conduit purchasers, committed purchasers, and purchaser agents from time to time party thereto, and MUFG Bank, Ltd., as administrative agent, the obligations under which are guaranteed by the Company pursuant to that certain Performance Guaranty dated as of July 22, 2016, (ix) that certain Guaranty, dated as of September 4, 2018, by the Company in favor of MUFG Bank, Ltd. in connection with that certain Master Framework Agreement, dated as of September 4, 2018, among the Company, CHS Capital, LLC, MUFG Bank, Ltd., and certain other parties thereto, (x) that certain (A) Finance Agreement, dated September 10, 2018, between CHS Broadbent Pty Ltd. and National Australia Bank Limited and (B) Guaranty, dated September 10, 2018, by the Company to National Australia Bank Limited, (xi) that certain (A) Export Prepayment Facility Agreement, dated June 7, 2018, by CHS Agronegocio - Industria e Comercio Ltda and Bank of America, N.A. and (B) Continuing and Unconditional Guaranty, dated July 20, 2016, by the Company in favor of Bank of America, N.A. and certain of its affiliates, (xii) that certain Master Agreement for Uncommitted Trade Financing Facilities, dated October 7, 2019, by and between the Company and Citibank, N.A., London Branch, (xiii) that certain Guaranty, dated as of September 19, 2019, by the Company in favor of Citibank, N.A., (xiv) that certain (A) third amended and restated uncommitted facility letter, dated March 27, 2018, by and among ABN AMRO Bank N.V., CHS Europe Sarl, CHS Agritrade Romania SRL and the Company, and (B) Guarantee, dated December 13, 2018, by the Company in favor of ABN AMRO Bank N.V., (xv) that certain uncommitted line of credit letter dated April 26, 2018, between

ABN AMRO Capital USA LLC and the Company and (xvi) that certain Uncommitted and Revolving Credit Line Agreement, dated as of December 3, 2015, between Sumitomo

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Mitsui Banking Corporation and the Company, including, in each case under clauses (i) through (xv) above, any renewals, extensions, amendments, supplements, restatements, replacements or refinancing thereof in each case to the extent such financings create or evidence indebtedness for borrowed money in a principal amount outstanding or available for borrowing (whether or not committed and whether or not in a series of agreements) equal to or greater than \$100,000,000 (or the equivalent of such amount in the relevant currency of payment); and

(b) any other agreement or series of agreements creating or evidencing indebtedness for borrowed money entered into on or after the date of Closing by the Company or any Subsidiary, or in respect of which the Company or any Subsidiary is an obligor or otherwise provides a guarantee or other credit support, in a principal amount outstanding or available for borrowing (whether or not committed) equal to or greater than \$100,000,000 (or the equivalent of such amount in the relevant currency of payment, determined as of the date of the closing of such facility based on the exchange rate of such other currency);

provided, however that to the extent all Debt incurred by a Subsidiary which is a CFC under a related credit agreement does not constitute Funded Debt and is used by such CFC solely to finance inventory and receivables (or both) relating to agricultural commodities or crude products, then for so long as such Subsidiary is a CFC, for the purposes of Section 10.5(b) and the last paragraph of Section 10.6 only (and not, for the avoidance of doubt, in respect of Section 9.7), such credit agreement shall not constitute a Material Credit Facility.

“**Memorandum**” is defined in Section 5.3.

“**Moody’s**” means Moody’s Investors Service, Inc.

“**Most Favored Lender Notice**” is defined in Section 9.7(a).

“**Multiemployer Plan**” means any Plan that is a “multiemployer plan” (as such term is defined in section 4001(a)(3) of ERISA).

“**NAIC**” means the National Association of Insurance Commissioners or any successor thereto.

“**NAIC Annual Statement**” is defined in Section 6.2(a).

“**Nationally Recognized Statistical Rating Organization**” means DBRS, Inc., Fitch, Inc., Moody’s, S&P, Kroll, or any other nationally recognized statistical rating organization approved by the Required Holders.

“**Net Proceeds Amount**” is defined in Section 10.7(c).

“**Notes**” is defined in Section 1.

“**OFAC**” means the Office of Foreign Assets Control of the United States Department of the Treasury.

“**OFAC Sanctions Program**” means any economic or trade sanction that OFAC is responsible for administering and enforcing. A list of OFAC Sanctions Programs may be found at: <http://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx>.

“**Officer’s Certificate**” means a certificate of a Senior Financial Officer or of any other officer of the Company whose responsibilities extend to the subject matter of such certificate.

“**Ordinary Course Transfer**” is defined in Section 10.7(a).

“**PBGC**” means the Pension Benefit Guaranty Corporation referred to and defined in ERISA or any successor thereto.

“**Person**” means an individual, partnership, corporation, limited liability company, association, trust, unincorporated organization, or a government or agency or political subdivision thereof.

“**Plan**” means an “employee benefit plan” (as defined in section 3(3) of ERISA) subject to Title I of ERISA that is or, within the preceding five years, has been established or maintained, or to which contributions are or, within the preceding five years, have been made or required to be made, by the Company or any ERISA Affiliate or with respect to which the Company or any ERISA Affiliate may have any liability.



**“Priority Debt”** means, at any time, without duplication, the sum of

(d) all then outstanding Debt of the Company or any Subsidiary secured by any Lien on any property of the Company or any Subsidiary (other than Debt secured only by Liens permitted under paragraphs (a) through (j) of Section 10.6), *plus*

(e) all Funded Debt of Subsidiaries of the Company, *plus*

(f) all Debt (other than Funded Debt) of Subsidiaries of the Company in the aggregate in excess of eight percent (8%) of Consolidated Net Worth, determined as of the last day of the Company’s most recently ended fiscal year for which financial statements have been provided to the holders of Notes pursuant to Section 7.1(b);

provided that any CHS Capital Debt (x) in an aggregate amount not to exceed the greater of (i) \$1,000,000,000 and (ii) fifteen percent (15%) of Consolidated Net Worth (determined as of the last day of the Company’s most recently ended fiscal year for which financial statements have been provided to the holders of Notes pursuant to Section 7.1(b)) and (y) secured only by a Lien on a CHS Capital Loan Asset, will not be deemed to constitute Priority Debt.

**“property”** or **“properties”** means, unless otherwise specifically limited, real or personal property of any kind, tangible or intangible, choate or inchoate.

**“Proposed Prepayment Date”** is defined in Section 8.2(a).

**“PTE”** is defined in Section 6.2(a).

**“Purchaser”** is defined in the introductory paragraph hereof.

**“QPAM Exemption”** is defined in Section 6.2(d).

**“Qualified Institutional Buyer”** means any Person who is a “qualified institutional buyer” within the meaning of such term as set forth in Rule 144A(a)(1) under the Securities Act.

**“Ratable Portion”** is defined in Section 10.7(c).

**“Reinvested Transfer”** is defined in Section 10.7(b).

**“Required Holders”** means, at any time (a) prior to the Closing, the Purchasers and (b) on or after the Closing, the holders of a majority in aggregate principal amount of the Notes at the time outstanding (exclusive of Notes then owned by the Company or any of its Affiliates).

**“Responsible Officer”** means any Senior Financial Officer and any other officer of the Company with responsibility for the administration of the relevant portion of this Agreement.

**“S&P”** means Standard & Poor’s Financial Services LLC.

**“SEC”** means the Securities and Exchange Commission of the United States, or any successor thereto.

**“Securities”** or **“Security”** shall have the meaning specified in Section 2(1) of the Securities Act.

**“Securities Act”** means the Securities Act of 1933, as amended from time to time.

**“Senior Debt”** means the Notes and any Debt of the Company or its Subsidiaries that by its terms is not in any manner subordinated in right of payment to any other unsecured Debt of the Company or any Subsidiary.

**“Senior Financial Officer”** means the chief financial officer, principal accounting officer, treasurer or comptroller of the Company.

**“Series”** means any one or more Series of Notes issued hereunder.

**“Series AA Notes”** is defined in Section 1(c).

“Series **BB Notes**” is defined in Section 1(d).

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Schedule B-8

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“**Series Y Notes**” is defined in Section 1(a).

“**Series Z Notes**” is defined in Section 1(b).

“**Source**” is defined in Section 6.2.

“**State Sanctions List**” means a list that is adopted by any state Governmental Authority within the United States of America pertaining to Persons that engage in investment or other commercial activities in Iran or any other country that is a target of economic sanctions imposed under U.S. Economic Sanctions Laws.

“**Subsidiary**” means, with respect to any Person, any other Person greater than 50% of the total combined voting power of all classes of Voting Interests of which shall, at the time as of which any determination is being made, be owned by such first Person either directly or through other Subsidiaries of such first Person.

“**Substantial Portion**” is defined in Section 10.7(c).

“**Surviving Corporation**” is defined in Section 10.2(c)(i).

“**SVO**” means the Securities Valuation Office of the NAIC or any successor to such Office.

“**Transfer**” is defined in Section 10.7(c)(v).

“**USA PATRIOT Act**” means United States Public Law 107-56, Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001, as amended from time to time, and the rules and regulations promulgated thereunder from time to time in effect.

“**U.S. Economic Sanctions Laws**” means those laws, executive orders, enabling legislation or regulations administered and enforced by the United States pursuant to which economic sanctions have been imposed on any Person, entity, organization, country or regime, including the Trading with the Enemy Act, the International Emergency Economic Powers Act, the Iran Sanctions Act, the Sudan Accountability and Divestment Act and any other OFAC Sanctions Program.

“**Voting Interests**” means (a) with respect to any stock corporation, any shares of stock of such corporation whose holders are entitled under ordinary circumstances to vote for the election of directors of such corporation or persons performing similar functions (irrespective of whether at the time stock of any other class or classes shall have or might have voting power by reason of the happening of any contingency), and (b) with respect to the Company or any other entity, membership or other ownership interests in the Company or such other entity whose holders are entitled under ordinary circumstances to vote for the election of the directors of the Company or such other entity or persons performing similar functions (irrespective of whether at the time membership or other ownership interests of any other class or classes shall have or might have voting power by reasoning of the happening of any contingency).

“**Wholly-Owned Subsidiary**” means, at any time, any Subsidiary one hundred percent (100%) of all of the equity interests (except directors’ qualifying shares) and voting interests of which are owned by any one or more of the Company and the Company’s other Wholly-Owned Subsidiaries at such time.

**EXHIBIT 1(a)**

**[Form of Series Y Senior Note Due November 2, 2027]**

**CHS Inc.**

**Series Y Senior Note Due November 2, 2027**

No. RY-[ ]  
\$[ ]

[Date]  
PPN: 12542R L\*9

For Value Received, the undersigned, CHS Inc. (herein called the “**Company**”), a corporation organized and existing under the laws of the State of Minnesota, hereby promises to pay to [ ], or registered assigns, the principal sum of [ ] Dollars (\$[ ]) (or so much thereof as shall not have been prepaid) on November 2, 2027 (the “**Maturity Date**”), with interest (computed on the basis of a 360-day year of twelve 30-day months) (a) on the unpaid balance hereof at the Applicable Rate (as defined in the Note Purchase Agreement referred to below) with respect to this Note from the date hereof, payable semiannually, on the 2<sup>nd</sup> day of May and November in each year, commencing with the May next succeeding the date hereof, and on the Maturity Date, until the principal hereof shall have become due and payable, and (b) to the extent permitted by law, on any overdue payment of interest and, during the continuance of an Event of Default, on such unpaid balance and on any overdue payment of any Make-Whole Amount, at a rate per annum from time to time equal to the Default Rate, payable semiannually as aforesaid (or, at the option of the registered holder hereof, on demand).

Payments of principal of, interest on and any Make-Whole Amount with respect to this Note are to be made in lawful money of the United States of America at Wells Fargo Bank, National Association in New York, New York or at such other place as the Company shall have designated by written notice to the holder of this Note as provided in the Note Purchase Agreement referred to below.

This Note is one of a series of Series Y Senior Notes (herein called the “**Notes**”) issued pursuant to the Note Purchase Agreement, dated as of August 14, 2020 (as from time to time amended, the “**Note Purchase Agreement**”), between the Company and the respective Purchasers named therein and is entitled to the benefits thereof. Each holder of this Note will be deemed, by its acceptance hereof, to have (a) agreed to the confidentiality provisions set forth in Section 20 of the Note Purchase Agreement and (b) made the representation set forth in Section 6.2 of the Note Purchase Agreement. Unless otherwise indicated, capitalized terms used in this Note shall have the respective meanings ascribed to such terms in the Note Purchase Agreement.

This Note is a registered Note and, as provided in the Note Purchase Agreement, upon surrender of this Note for registration of transfer accompanied by a written instrument of transfer duly executed, by the registered holder hereof or such holder’s attorney duly authorized in writing, a new Note for a like principal amount will be issued to, and registered in the name of, the transferee. Prior to due presentment for registration of transfer, the Company may treat the person in whose name this Note is registered as the owner hereof for the purpose of receiving payment and for all other purposes, and the Company will not be affected by any notice to the contrary.

This Note is subject to prepayment, in whole or from time to time in part, at the times and on the terms specified in the Note Purchase Agreement, but not otherwise.

If an Event of Default occurs and is continuing, the principal of this Note may be declared or otherwise become due and payable in the manner, at the price (including any applicable Make-Whole Amount) and with the effect provided in the Note Purchase Agreement.

This Note shall be construed and enforced in accordance with, and the rights of the Company and the holder of this Note shall be governed by, the law of the State of New York excluding choice-of-law principles of the law of such State that would permit the application of the laws of a jurisdiction other than such State.

**CHS INC.**

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



Title:

4822-9447-3921\7

Exhibit 1(a)

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**EXHIBIT 1(b)**

**[Form of Series Z Senior Note Due November 2, 2030]**

**CHS Inc.**

**Series Z Senior Note Due November 2, 2030**

No. RZ-[\_\_\_\_\_]   
 \$[\_\_\_\_\_]

[Date]   
 PPN: 12542R L@7

For Value Received, the undersigned, CHS Inc. (herein called the “**Company**”), a corporation organized and existing under the laws of the State of Minnesota, hereby promises to pay to [\_\_\_\_\_] , or registered assigns, the principal sum of [\_\_\_\_\_] Dollars (\$[\_\_\_\_\_]) (or so much thereof as shall not have been prepaid) on November 2, 2030 (the “**Maturity Date**”), with interest (computed on the basis of a 360-day year of twelve 30-day months) (a) on the unpaid balance hereof at the Applicable Rate (as defined in the Note Purchase Agreement referred to below) with respect to this Note from the date hereof, payable semiannually, on the 2<sup>nd</sup> day of May and November in each year, commencing with the May next succeeding the date hereof, and on the Maturity Date, until the principal hereof shall have become due and payable, and (b) to the extent permitted by law, on any overdue payment of interest and, during the continuance of an Event of Default, on such unpaid balance and on any overdue payment of any Make-Whole Amount, at a rate per annum from time to time equal to the Default Rate, payable semiannually as aforesaid (or, at the option of the registered holder hereof, on demand).

Payments of principal of, interest on and any Make-Whole Amount with respect to this Note are to be made in lawful money of the United States of America at Wells Fargo Bank, National Association in New York, New York or at such other place as the Company shall have designated by written notice to the holder of this Note as provided in the Note Purchase Agreement referred to below.

This Note is one of a series of Series Z Senior Notes (herein called the “**Notes**”) issued pursuant to the Note Purchase Agreement, dated as of August 14, 2020 (as from time to time amended, the “**Note Purchase Agreement**”), between the Company and the respective Purchasers named therein and is entitled to the benefits thereof. Each holder of this Note will be deemed, by its acceptance hereof, to have (a) agreed to the confidentiality provisions set forth in Section 20 of the Note Purchase Agreement and (b) made the representation set forth in Section 6.2 of the Note Purchase Agreement. Unless otherwise indicated, capitalized terms used in this Note shall have the respective meanings ascribed to such terms in the Note Purchase Agreement.

This Note is a registered Note and, as provided in the Note Purchase Agreement, upon surrender of this Note for registration of transfer accompanied by a written instrument of transfer duly executed, by the registered holder hereof or such holder’s attorney duly authorized in writing, a new Note for a like principal amount will be issued to, and registered in the name of, the transferee. Prior to due presentment for registration of transfer, the Company may treat the person in whose name this Note is registered as the owner hereof for the purpose of receiving payment and for all other purposes, and the Company will not be affected by any notice to the contrary.

This Note is subject to prepayment, in whole or from time to time in part, at the times and on the terms specified in the Note Purchase Agreement, but not otherwise.

If an Event of Default occurs and is continuing, the principal of this Note may be declared or otherwise become due and payable in the manner, at the price (including any applicable Make-Whole Amount) and with the effect provided in the Note Purchase Agreement.

This Note shall be construed and enforced in accordance with, and the rights of the Company and the holder of this Note shall be governed by, the law of the State of New York excluding choice-of-law principles of the law of such State that would permit the application of the laws of a jurisdiction other than such State.

**CHS INC.**

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

Title:

4822-9447-3921\7

Exhibit 1(b)

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EXHIBIT 1(c)

[Form of Series AA Senior Note Due November 2, 2032]

CHS Inc.

Series AA Senior Note Due November 2, 2032

No. RAA-[\_\_\_\_\_]
\$[\_\_\_\_\_]

[Date]
PPN: 12542R L#5

For Value Received, the undersigned, CHS Inc. (herein called the "Company"), a corporation organized and existing under the laws of the State of Minnesota, hereby promises to pay to [\_\_\_\_\_] , or registered assigns, the principal sum of [\_\_\_\_\_] Dollars (\$[\_\_\_\_\_] ) (or so much thereof as shall not have been prepaid) on November 2, 2032 (the "Maturity Date"), with interest (computed on the basis of a 360-day year of twelve 30-day months) (a) on the unpaid balance hereof at the Applicable Rate (as defined in the Note Purchase Agreement referred to below) with respect to this Note from the date hereof, payable semiannually, on the 2nd day of May and November in each year, commencing with the May next succeeding the date hereof, and on the Maturity Date, until the principal hereof shall have become due and payable, and (b) to the extent permitted by law, on any overdue payment of interest and, during the continuance of an Event of Default, on such unpaid balance and on any overdue payment of any Make-Whole Amount, at a rate per annum from time to time equal to the Default Rate, payable semiannually as aforesaid (or, at the option of the registered holder hereof, on demand).

Payments of principal of, interest on and any Make-Whole Amount with respect to this Note are to be made in lawful money of the United States of America at Wells Fargo Bank, National Association in New York, New York or at such other place as the Company shall have designated by written notice to the holder of this Note as provided in the Note Purchase Agreement referred to below.

This Note is one of a series of Series AA Senior Notes (herein called the "Notes") issued pursuant to the Note Purchase Agreement, dated as of August 14, 2020 (as from time to time amended, the "Note Purchase Agreement"), between the Company and the respective Purchasers named therein and is entitled to the benefits thereof. Each holder of this Note will be deemed, by its acceptance hereof, to have (a) agreed to the confidentiality provisions set forth in Section 20 of the Note Purchase Agreement and (b) made the representation set forth in Section 6.2 of the Note Purchase Agreement. Unless otherwise indicated, capitalized terms used in this Note shall have the respective meanings ascribed to such terms in the Note Purchase Agreement.

This Note is a registered Note and, as provided in the Note Purchase Agreement, upon surrender of this Note for registration of transfer accompanied by a written instrument of transfer duly executed, by the registered holder hereof or such holder's attorney duly authorized in writing, a new Note for a like principal amount will be issued to, and registered in the name of, the transferee. Prior to due presentment for registration of transfer, the Company may treat the person in whose name this Note is registered as the owner hereof for the purpose of receiving payment and for all other purposes, and the Company will not be affected by any notice to the contrary.

This Note is subject to prepayment, in whole or from time to time in part, at the times and on the terms specified in the Note Purchase Agreement, but not otherwise.

If an Event of Default occurs and is continuing, the principal of this Note may be declared or otherwise become due and payable in the manner, at the price (including any applicable Make-Whole Amount) and with the effect provided in the Note Purchase Agreement.

This Note shall be construed and enforced in accordance with, and the rights of the Company and the holder of this Note shall be governed by, the law of the State of New York excluding choice-of-law principles of the law of such State that would permit the application of the laws of a jurisdiction other than such State.

CHS INC.

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

Title:

4822-9447-3921\7

Exhibit 1(c)

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**EXHIBIT 1(d)**

**[Form of Series BB Senior Note Due November 2, 2035]**

**CHS Inc.**

**Series BB Senior Note Due November 2, 2035**

No. RBB-[\_\_\_\_\_]
\$[\_\_\_\_\_]

[Date]
PPN: 12542R M\*8

For Value Received, the undersigned, CHS Inc. (herein called the "Company"), a corporation organized and existing under the laws of the State of Minnesota, hereby promises to pay to [\_\_\_\_\_] , or registered assigns, the principal sum of [\_\_\_\_\_] Dollars (\$[\_\_\_\_\_] ) (or so much thereof as shall not have been prepaid) on November 2, 2035 (the "Maturity Date"), with interest (computed on the basis of a 360-day year of twelve 30-day months) (a) on the unpaid balance hereof at the Applicable Rate (as defined in the Note Purchase Agreement referred to below) with respect to this Note from the date hereof, payable semiannually, on the 2nd day of May and November in each year, commencing with the May next succeeding the date hereof, and on the Maturity Date, until the principal hereof shall have become due and payable, and (b) to the extent permitted by law, on any overdue payment of interest and, during the continuance of an Event of Default, on such unpaid balance and on any overdue payment of any Make-Whole Amount, at a rate per annum from time to time equal to the Default Rate, payable semiannually as aforesaid (or, at the option of the registered holder hereof, on demand).

Payments of principal of, interest on and any Make-Whole Amount with respect to this Note are to be made in lawful money of the United States of America at Wells Fargo Bank, National Association in New York, New York or at such other place as the Company shall have designated by written notice to the holder of this Note as provided in the Note Purchase Agreement referred to below.

This Note is one of a series of Series BB Senior Notes (herein called the "Notes") issued pursuant to the Note Purchase Agreement, dated as of August 14, 2020 (as from time to time amended, the "Note Purchase Agreement"), between the Company and the respective Purchasers named therein and is entitled to the benefits thereof. Each holder of this Note will be deemed, by its acceptance hereof, to have (a) agreed to the confidentiality provisions set forth in Section 20 of the Note Purchase Agreement and (b) made the representation set forth in Section 6.2 of the Note Purchase Agreement. Unless otherwise indicated, capitalized terms used in this Note shall have the respective meanings ascribed to such terms in the Note Purchase Agreement.

This Note is a registered Note and, as provided in the Note Purchase Agreement, upon surrender of this Note for registration of transfer accompanied by a written instrument of transfer duly executed, by the registered holder hereof or such holder's attorney duly authorized in writing, a new Note for a like principal amount will be issued to, and registered in the name of, the transferee. Prior to due presentment for registration of transfer, the Company may treat the person in whose name this Note is registered as the owner hereof for the purpose of receiving payment and for all other purposes, and the Company will not be affected by any notice to the contrary.

This Note is subject to prepayment, in whole or from time to time in part, at the times and on the terms specified in the Note Purchase Agreement, but not otherwise.

If an Event of Default occurs and is continuing, the principal of this Note may be declared or otherwise become due and payable in the manner, at the price (including any applicable Make-Whole Amount) and with the effect provided in the Note Purchase Agreement.

This Note shall be construed and enforced in accordance with, and the rights of the Company and the holder of this Note shall be governed by, the law of the State of New York excluding choice-of-law principles of the law of such State that would permit the application of the laws of a jurisdiction other than such State.

**CHS INC.**

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

Title:

4822-9447-3921\7

Exhibit 1(d)