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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, DC 20549**

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**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) **April 14, 2015**

**SMART & FINAL STORES, INC.**

(Exact Name of Registrant as Specified in Charter)

**Delaware**  
(State or Other Jurisdiction  
of Incorporation)

**001-36626**  
(Commission  
File Number)

**80-0862253**  
(IRS Employer  
Identification No.)

**600 Citadel Drive, Commerce, CA**  
(Address of Principal Executive Offices)

**90040**  
(Zip Code)

Registrant's telephone number, including area code **(323) 869-7500**

(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))
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**Item 1.01 Entry into a Material Definitive Agreement.**

On April 14, 2015, Smart & Final Stores, Inc. (the "Company") entered into the Underwriting Agreement (the "Underwriting Agreement") among the Company, Credit Suisse Securities (USA) LLC and Morgan Stanley & Co. LLC, as representatives of the several underwriters party thereto (collectively, the "Underwriters"), and the Selling Stockholders (as defined therein), pursuant to which the Selling Stockholders agreed to sell 10,000,000 shares of the Company's common stock, par value \$0.001 per share, to the Underwriters at a price of \$17.6675 per share. A description of the material provisions of the Underwriting Agreement has previously been reported by the Company in its prospectus filed pursuant to Rule 424(b) of the Securities Act of 1933 on April 15, 2015. The description of the Underwriting Agreement is qualified in its entirety by reference to the Underwriting Agreement that is filed herewith as Exhibit 1.1 and incorporated herein by reference.

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

(d) Exhibits:

**Exhibit Number**

**Description**

1.1 Underwriting Agreement, dated April 14, 2015, by and among Smart & Final Stores, Inc., Credit Suisse Securities (USA) LLC and Morgan Stanley & Co. LLC, as representatives of the several underwriters party thereto, and the

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**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.

SMART & FINAL STORES, INC

Date: April 15, 2015

By: /s/ Donald G. Alvarado  
Name: Donald G. Alvarado  
Title: Senior Vice President and Secretary

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Exhibit Index

<u>Exhibit Number</u>	<u>Description</u>
1.1	Underwriting Agreement, dated April 14, 2015, by and among Smart & Final Stores, Inc., Credit Suisse Securities (USA) LLC and Morgan Stanley & Co. LLC, as representatives of the several underwriters party thereto, and the Selling Stockholders party thereto.

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**Exhibit 1.1**

**10,000,000 Shares**

**SMART & FINAL STORES, INC.**

**Common Stock**

**UNDERWRITING AGREEMENT**

April 14, 2015

CREDIT SUISSE SECURITIES (USA) LLC  
MORGAN STANLEY & CO. LLC  
As Representatives of the Several Underwriters,  
c/o Credit Suisse Securities (USA) LLC,  
Eleven Madison Avenue,  
New York, N.Y. 10010-3629

Dear Sirs:

1. *Introductory.* The selling stockholders listed on Schedule A hereto (the “**Selling Stockholders**”) agree with Credit Suisse Securities (USA) LLC (“**Credit Suisse**”), Morgan Stanley & Co. LLC (“**Morgan Stanley**”), and the other several Underwriters named in Schedule B hereto (collectively, the “**Underwriters**”), for whom Credit Suisse and Morgan Stanley are acting as representatives (in such capacity, the “**Representatives**”) to issue and sell to the several Underwriters (i) 10,000,000 shares (“**Firm Securities**”) of common stock of Smart & Final Stores, Inc., a Delaware corporation (the “**Company**”), par value \$0.001 per share (the “**Securities**”), and (ii) at the option of the Underwriters, an aggregate of not more than 1,500,000 additional shares (“**Optional Securities**”) of the Securities, as set forth below. The Firm Securities and the Optional Securities are herein collectively called the “**Offered Securities**.”

2. *Representations and Warranties.*

(i) *Representations and Warranties of the Company.* The Company represents and warrants to, and agrees with, the several Underwriters that:

(a) *Filing and Effectiveness of Registration Statement; Certain Defined Terms.* The Company has filed with the Commission a registration statement on Form S-1 (No. 333-203088) covering the registration of the Offered Securities under the Act, including a related preliminary prospectus or prospectuses. At any particular time, this initial registration statement, in the form then on file with the Commission, including all information contained in the registration statement (if any) pursuant to Rule 462(b) and then deemed to be a part of the initial registration statement, and all 430A Information and all 430C Information, that in any case has not then been superseded or modified, shall be referred to as the “**Initial Registration Statement**.” The Company may also have filed, or may file with the Commission, a Rule 462(b) registration statement covering the registration of the Offered Securities. At any particular time, this Rule 462(b) registration statement, in the form then on file with the Commission, including the contents of the Initial Registration Statement incorporated by reference therein and including all 430A Information and all 430C Information, that in any case has not then been superseded or modified, shall be referred to as the “**Additional Registration Statement**.”

As of the time of execution and delivery of this Agreement, the Initial Registration Statement has been declared effective under the Act and is not proposed to be amended. Any Additional

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Registration Statement has or will become effective upon filing with the Commission pursuant to Rule 462(b) and is not proposed to be amended. The Offered Securities all have been or will be duly registered under the Act pursuant to the Initial Registration Statement and, if applicable, the Additional Registration Statement.

For purposes of this Agreement:

“**430A Information**,” with respect to any registration statement, means information included in a prospectus and retroactively deemed to be a part of such registration statement pursuant to Rule 430A(b).

“**430C Information**,” with respect to any registration statement, means information included in a prospectus then deemed to be a part of such registration statement pursuant to Rule 430C.

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

“**Applicable Time**” means 5:15 P.M. (New York time) on the date of this Agreement.

“**Closing Date**” has the meaning defined in Section 3 hereof.

“**Commission**” means the Securities and Exchange Commission.

“**Effective Time**” with respect to the Initial Registration Statement or, if filed prior to the execution and delivery of this Agreement, the Additional Registration Statement means the date and time as of which such Registration Statement was declared effective by the Commission or has become effective upon filing pursuant to Rule 462(c). If an Additional Registration Statement has not been filed prior to the execution and delivery of this Agreement but the Company has advised the Representatives that it proposes to file one, “**Effective Time**” with respect to such Additional Registration Statement means the date and time as of which such Additional Registration Statement is filed and becomes effective pursuant to Rule 462(b).

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

“**Final Prospectus**” means the Statutory Prospectus that discloses the public offering price, other 430A Information and other final terms of the Offered Securities and otherwise satisfies Section 10(a) of the Act.

“**General Use Issuer Free Writing Prospectus**” means any Issuer Free Writing Prospectus that is intended for general distribution to prospective investors, as evidenced by its being so specified in Schedule C hereto.

“**Issuer Free Writing Prospectus**” means any “issuer free writing prospectus,” as defined in Rule 433, relating to the Offered Securities in the form filed or required to be filed with the Commission or, if not required to be filed, in the form retained in the Company’s records pursuant to Rule 433(g).

“**Limited Use Issuer Free Writing Prospectus**” means any Issuer Free Writing Prospectus that is not a General Use Issuer Free Writing Prospectus.

The Initial Registration Statement and the Additional Registration Statement are referred to collectively as the “**Registration Statements**” and individually as a “**Registration Statement**”. A “**Registration Statement**” with reference to a particular time means the Initial Registration Statement and any Additional Registration Statement as of such time. A “**Registration Statement**” without reference to a time means such Registration Statement as of its Effective Time. For purposes of the foregoing definitions, 430A Information with respect to a Registration Statement shall be considered to be included in such Registration Statement as of the time specified in Rule 430A.

“**Rules and Regulations**” means the rules and regulations of the Commission.

“**Securities Laws**” means, collectively, the Sarbanes-Oxley Act of 2002, as amended (“**Sarbanes-Oxley**”), the Act, the Exchange Act, the Rules and Regulations, the auditing

principles, rules, standards and practices applicable to auditors of “issuers” (as defined in Sarbanes-Oxley) promulgated or approved by the Public Company Accounting Oversight Board and, as applicable, the rules of the New York Stock Exchange and the NASDAQ Stock Market (“**Exchange Rules**”).

“**Statutory Prospectus**” with reference to a particular time means the prospectus included in a Registration Statement immediately prior to that time, including any 430A Information or 430C Information with respect to such Registration Statement. For purposes of the foregoing definition, 430A Information shall be considered to be included in the Statutory Prospectus as of the actual time that form of prospectus is filed with the Commission pursuant to Rule 424(b) or Rule 462(c) and not retroactively.

“**subsidiary**” means all direct and indirect wholly-owned subsidiaries of the Company.

Unless otherwise specified, a reference to a “rule” is to the indicated rule under the Act.

(b) *Compliance with Securities Act Requirements.* (i) (A) At their respective Effective Times, (B) on the date of this Agreement and (C) on each Closing Date, each of the Initial Registration Statement and the Additional Registration Statement (if any) conformed and will conform in all material respects to the requirements of the Act and the Rules and Regulations and did not and will not include any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading and (ii) on its date, at the time of filing of the Final Prospectus pursuant to Rule 424(b) or (if no such filing is required) at the Effective Time of the Additional Registration Statement in which the Final Prospectus is included, and on each Closing Date, the Final Prospectus will conform in all material respects to the requirements of the Act and the Rules and Regulations and will not include any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. The preceding sentence does not apply to statements in or omissions from any such document based upon (i) written information furnished to the Company by any Underwriter through the Representatives specifically for use therein, it being understood and agreed that the only such information is that described as such in Section 8(c) hereof, or (ii) written information furnished to the Company by a Selling Stockholder specifically for use therein, it being understood and agreed that the only such information is that (x) with respect to such Selling Stockholder that appears in the table (excluding percentages but including corresponding footnotes) under the heading “Principal and Selling Stockholders” and (y) with respect to such Selling Stockholder, other than Norman H. Axelrod, that appears in the first and second paragraphs under the heading “Ares Management” (collectively, the “**Selling Stockholder Information**”).

(c) *Ineligible Issuer Status.* (i) At the time of the initial filing of the Initial Registration Statement and (ii) at the date of this Agreement, the Company was not and is not an “ineligible issuer,” as defined in Rule 405, including (A) the Company or any of its subsidiaries in the preceding three years not having been convicted of a felony or misdemeanor or having been made the subject of a judicial or administrative decree or order as described in Rule 405 and (B) the Company in the preceding three years not having been the subject of a bankruptcy petition or insolvency or similar proceeding, not having had a registration statement be the subject of a proceeding under Section 8 of the Act and not being the subject of a proceeding under Section 8A of the Act in connection with the offering of the Offered Securities, all as described in Rule 405.

(d) *General Disclosure Package.* As of the Applicable Time, neither (i) the General Use Issuer Free Writing Prospectus(es) issued at or prior to the Applicable Time, the preliminary prospectus, dated April 13, 2015 (which is the most recent Statutory Prospectus distributed to investors generally) and the other information, if any, stated in Schedule C hereto to be included in the General Disclosure Package, all considered together (collectively, the “**General Disclosure Package**”), nor (ii) any individual Limited Use Issuer Free Writing Prospectus, when considered together with the General Disclosure Package, included any untrue statement of a material fact or omitted to state any material fact necessary in order to make the statements therein, in the light of

the circumstances under which they were made, not misleading. The preceding sentence does not apply to statements in or omissions from any Statutory Prospectus or any Issuer Free Writing Prospectus made in reliance upon and in conformity with (i) written information furnished to the Company by any Underwriter through the Representatives specifically for use therein, it being understood and agreed that the only such information furnished by any Underwriter consists of the information described as such in Section 8(c) hereof, or (ii) the Selling Stockholder Information.

(e) *Issuer Free Writing Prospectuses.* Each Issuer Free Writing Prospectus, as of its issue date and at all subsequent times through the completion of the public offer and sale of the Offered Securities or until any earlier date that the Company notified or notifies the Representatives as described in the next sentence, did not, does not and will not include any information

that conflicted, conflicts or will conflict with the information then contained in the Registration Statement. If at any time following issuance of an Issuer Free Writing Prospectus there occurred or occurs an event or development as a result of which such Issuer Free Writing Prospectus conflicted or would conflict with the information then contained in the Registration Statement or as a result of which such Issuer Free Writing Prospectus, if republished immediately following such event or development, would include an untrue statement of a material fact or omitted or would omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading, (i) the Company has promptly notified or will promptly notify the Representatives and (ii) the Company has promptly amended or will promptly amend or supplement such Issuer Free Writing Prospectus to eliminate or correct such conflict, untrue statement or omission. The first sentence of this paragraph does not apply to statements in or omissions from any Issuer Free Writing Prospectus in reliance upon and in conformity with (i) written information furnished to the Company by any Underwriter through the Representatives specifically for use therein, it being understood and agreed that the only such information furnished by any Underwriter is that described as such in Section 8(c) hereof, or (ii) the Selling Stockholder Information.

(f) *Good Standing of the Company.* The Company has been duly incorporated and is existing and in good standing under the laws of the State of Delaware, with power and authority (corporate and other) to own its properties and conduct its business as described in the General Disclosure Package; and the Company is duly qualified to do business as a foreign corporation in good standing in all other jurisdictions in which its ownership or lease of property or the conduct of its business requires such qualification, except where the failure to be so qualified would not, individually or in the aggregate, have or reasonably be expected to have a material adverse effect on the condition (financial or otherwise), results of operations, business, properties or prospects of the Company and its subsidiaries, taken as a whole (“**Material Adverse Effect**”).

(g) *Subsidiaries.* (i) Each subsidiary of the Company has been duly organized or incorporated and is existing and in good standing under the laws of the jurisdiction of its organization or incorporation, with power and authority (corporate and other) to own its properties and conduct its business as described in the General Disclosure Package; (ii) each subsidiary of the Company is duly qualified to do business as a foreign corporation in good standing in all other jurisdictions in which its ownership or lease of property or the conduct of its business requires such qualification, except where failure to be so qualified would not, individually or in the aggregate, have or reasonably be expected to have a Material Adverse Effect; (iii) all of the issued and outstanding capital stock of each subsidiary of the Company has been duly authorized and validly issued and is fully paid and nonassessable; and (iv) the capital stock of each subsidiary owned by the Company, directly or through subsidiaries, is owned free from liens, encumbrances and defects (other than as described in the General Disclosure Package and Final Prospectus).

(h) *Offered Securities.* (i) The Offered Securities and all other outstanding shares of capital stock of the Company have been duly authorized, (ii) the authorized equity capitalization of the Company is as set forth in the General Disclosure Package, (iii) all outstanding shares of capital stock of the Company are validly issued, fully paid and nonassessable and conform in all material respects to the information in the General Disclosure Package and to the description of such

Offered Securities contained in the Final Prospectus, (iv) the stockholders of the Company have no preemptive rights with respect to the Securities and (v) none of the outstanding shares of capital stock of the Company have been issued in violation of any preemptive or similar rights of any security holder. Except for options to purchase Securities as described in the Registration Statement, the General Disclosure Package and the Final Prospectus, there are no outstanding (i) securities or obligations of the Company convertible into or exchangeable for any capital stock of the Company, (ii) warrants, rights or options to subscribe for or purchase from the Company any such capital stock or any such convertible or exchangeable securities or obligations or (iii) obligations of the Company to issue or sell any shares of capital stock, any such convertible or exchangeable securities or obligations or any such warrants, rights or options. The Company has not, directly or indirectly, offered or sold any of the Offered Securities by means of any “prospectus” (within the meaning of the Act and the Rules and Regulations) or used any “prospectus” or made any offer (within the meaning of the Act and the Rules and Regulations) in connection with the offer or sale of the Offered Securities, in each case other than the General Disclosure Package and the Final Prospectus.

(i) *Other Offerings.* Except as disclosed in the General Disclosure Package, the Company has not sold, issued or distributed any shares of its common stock during the six-month period preceding the date hereof, including any sales pursuant to Rule 144A under, or Regulation D or S of, the Act, other than shares of its common stock issued pursuant to employee benefit plans, qualified stock option plans or other employee compensation plans or pursuant to outstanding options, rights or warrants as described in the General Disclosure Package.

(j) *No Finder’s Fee.* Except pursuant to this Agreement and as disclosed in the General Disclosure Package, there are no contracts, agreements or understandings between the Company and any person that would give rise to a valid claim against the Company or any Underwriter for a brokerage commission, finder’s fee or other like payment in connection with this offering.

(k) *Registration Rights.* Except as disclosed in the General Disclosure Package, there are no contracts, agreements or understandings between the Company and any person granting such person the right to require the Company to file a registration statement under the Act with respect to any securities of the Company owned or to be owned by such person or to require the Company to include such securities in the securities registered pursuant to a Registration Statement or in any securities being registered pursuant to any other registration statement filed by the Company under the Act (collectively,

“**registration rights**”), and any person to whom the Company has granted registration rights has agreed not to exercise such rights until after the expiration of the Lock-Up Period referred to in Section 5(j) hereof.

(l) *Listing*. The Offered Securities are listed on the New York Stock Exchange, subject to notice of issuance.

(m) *Absence of Further Requirements*. No consent, approval, authorization, or order of, or filing or registration with, any federal, state, local or foreign governmental or regulatory commission, board, body, authority or agency, or of or with any self-regulatory organization or other non-governmental regulatory authority (including, without limitation, the New York Stock Exchange), or approval of the stockholders of the Company, is required to be obtained or made by the Company for the consummation of the transactions contemplated by this Agreement in connection with the offering, issuance and sale of the Offered Securities by the Company, except (i) such as have been already obtained or made prior to the Closing Date, (ii) such as may be required under state securities laws or the rules of the Financial Industry Regulatory Authority, Inc. (“**FINRA**”) and (iii) filings with the Commission pursuant to Rule 424(b) under the Act.

(n) *Title to Property*. Except as disclosed in the General Disclosure Package, the Company and its subsidiaries have good and marketable title to all real properties and all other properties and assets owned by them, in each case free from liens, charges, encumbrances and defects that would, individually or in the aggregate, have or reasonably be expected to have a Material

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Adverse Effect and, except as disclosed in the General Disclosure Package, the Company and its subsidiaries hold any leased real or personal property under valid and enforceable leases with no terms or provisions that would, individually or in the aggregate, have or reasonably be expected to have a Material Adverse Effect. The preceding sentence does not apply to any intellectual property rights, which are covered by the representations and warranties contained in Section 2(t) hereof.

(o) *Absence of Defaults and Conflicts Resulting from Transactions*. The execution, delivery and performance of this Agreement, and the issuance and sale of the Offered Securities as disclosed in the General Disclosure Package will not result in a breach or violation of any of the terms and provisions of, or constitute a default or a Debt Repayment Triggering Event (as defined below) under, or result in the imposition of any lien, charge or encumbrance upon any property or assets of the Company or any of its subsidiaries pursuant to (i) the charter or by-laws, limited liability company agreement or certificate of formation, as applicable, of the Company or any of its subsidiaries, (ii) any statute, rule, regulation or order of any governmental agency or body or any court, domestic or foreign, having jurisdiction over the Company or any of its subsidiaries or any of their properties or (iii) any agreement or instrument to which the Company or any of its subsidiaries is a party or by which the Company or any of its subsidiaries is bound or to which any of the properties of the Company or any of its subsidiaries is subject, except, with respect to clauses (ii) and (iii) above, for such breaches, violations or defaults or such liens, charges and encumbrances which would not, individually or in the aggregate, have or reasonably be expected to have a Material Adverse Effect. A “**Debt Repayment Triggering Event**” means any event or condition that gives, or with the giving of notice or lapse of time would give, the holder of any note, debenture, or other evidence of indebtedness (or any person acting on such holder’s behalf) the right to require the repurchase, redemption or repayment of all or a portion of such indebtedness by the Company or any of its subsidiaries.

(p) *Absence of Existing Defaults and Conflicts*. Neither the Company nor any of its subsidiaries is in (i) violation of its respective charter or by-laws, limited liability company agreement or certificate of formation, as applicable, or (ii) breach of or default (or with the giving of notice or lapse of time would be in default) under any statute, rule, regulation or order of any governmental agency or body or any court, domestic or foreign, having jurisdiction over the Company or any of its subsidiaries or any of their properties, or any existing obligation, agreement, covenant or condition contained in any indenture, loan agreement, mortgage, lease or other agreement or instrument to which any of them is a party or by which any of them is bound or to which any of the properties of any of them is subject, except such breaches or defaults that would not, individually or in the aggregate, have or reasonably be expected to have a Material Adverse Effect.

(q) *Authorization of Agreement*. This Agreement has been duly authorized, executed and delivered by the Company.

(r) *Possession of Licenses and Permits*. The Company and its subsidiaries (i) possess, and are in compliance with the terms of, all adequate certificates, authorizations, franchises, licenses and permits (“**Licenses**”) necessary to the conduct of the business now conducted or proposed in the General Disclosure Package to be conducted by them, except where the failure to possess or be in compliance with any such Licenses would not, individually or in the aggregate, have or reasonably be expected to have a Material Adverse Effect, and (ii) have not received any notice of proceedings relating to the revocation or modification of any Licenses that, in each case, if determined adversely to the Company or any of its subsidiaries, would, individually or in the aggregate, have or reasonably be expected to have a Material Adverse Effect.

(s) *Absence of Labor Dispute*. No labor dispute with the employees of the Company or any of its subsidiaries exists or, to the Company’s knowledge, is imminent that would, individually or in the aggregate, have or reasonably be expected to have a Material Adverse Effect.

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(t) *Possession of Intellectual Property.* The Company and its subsidiaries own, possess or can acquire on reasonable terms, or have obtained valid and enforceable licenses to use, adequate trademarks, trade names and other rights to inventions, know-how, patents, copyrights, confidential information and other intellectual property (collectively, “**intellectual property rights**”) necessary to conduct the business as presently conducted, and have not received any notice of infringement or conflict with asserted rights of others with respect to any intellectual property rights that, if determined adversely to the Company or any of its subsidiaries, would, individually or in the aggregate, have or reasonably be expected to have a Material Adverse Effect.

(u) *Environmental Laws.* Except as disclosed in the General Disclosure Package, neither the Company nor any of its subsidiaries (i) is in violation of any statute, rule, regulation, decision or order of any governmental agency or body or any court, domestic or foreign, relating to the use, disposal or release of hazardous or toxic substances or relating to the protection or restoration of the environment or human exposure to hazardous or toxic substances (collectively, “**environmental laws**”), (ii) owns or operates any real property contaminated with any substance that is subject to any environmental laws, (iii) is liable for any off-site disposal or contamination pursuant to any environmental laws or (iv) is subject to any claim relating to any environmental laws, except, in the case of each of clauses (i) through (iv) above, for such violations, contaminations, liabilities or claims that would not, individually or in the aggregate, have or reasonably be expected to have a Material Adverse Effect, and the Company is not aware of any pending investigation which might lead to such a claim.

(v) *Accurate Disclosure.* The statements in the General Disclosure Package and the Final Prospectus under the headings “Material U.S. Federal Income Tax Considerations for Non-U.S. Holders of Common Stock,” “Description of Capital Stock,” “Certain Relationships and Related Party Transactions,” and “Description of Certain Indebtedness,” insofar as such statements summarize legal matters, agreements, documents or proceedings discussed therein, are accurate in all material respects and fair summaries of such legal matters, agreements, documents or proceedings and present the information required to be shown.

(w) *Absence of Manipulation.* The Company has not taken, directly or indirectly, any action that is designed to or that has constituted or that would reasonably be expected to cause or result in the stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the Offered Securities.

(x) *Statistical and Market-Related Data.* Any third-party statistical and market-related data included in a Registration Statement, a Statutory Prospectus or the General Disclosure Package are based on or derived from sources that the Company reasonably believes to be reliable and accurate.

(y) *Internal Controls and Compliance with the Sarbanes-Oxley Act.* The Company and its subsidiaries are in compliance in all material respects with Sarbanes-Oxley, to the extent currently applicable to the Company, and all applicable Exchange Rules. The Company maintains (i) “disclosure controls and procedures” (as such term is defined in Rule 13a-15(e) and Rule 15d-15(e) under the Exchange Act) that comply with the requirements of the Exchange Act and have been designed to ensure that information required to be disclosed by the Company in reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the Commission’s rules and forms, including controls and procedures designed to ensure that such information is accumulated and communicated to the Company’s management as appropriate to allow timely decisions regarding required disclosure and (ii) internal control over financial reporting (as defined under Rule 13a-15(f) and Rule 15d-15(f) under the Exchange Act) and a system of internal accounting controls (collectively, “**Internal Controls**”) that comply with the Exchange Act and are sufficient to provide reasonable assurances that (A) transactions are executed in accordance with management’s general or specific authorizations, (B) transactions are recorded as necessary to permit preparation of financial statements in conformity with U.S. Generally Accepted Accounting Principles (“**GAAP**”) and to

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maintain accountability for assets, (C) access to assets is permitted only in accordance with management’s general or specific authorization, (D) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences and (E) the interactive data in eXtensible Business Reporting Language included or incorporated by reference in the Registration Statement fairly presents the information called for in all material respects. The Internal Controls are, or upon consummation of the offering of the Offered Securities will be, overseen by the Audit Committee (the “**Audit Committee**”) of the Company’s Board of Directors (the “**Board**”) in accordance with Exchange Rules. The Company has not publicly disclosed or reported to the Audit Committee or the Board a material weakness, change in Internal Controls or fraud involving management or other employees who have a significant role in Internal Controls, any violation of, or failure to comply with, the Securities Laws, or any matter relating to Internal Controls which, if determined adversely, would, individually or in the aggregate, have or reasonably be expected to have a Material Adverse Effect.

(z) *Litigation.* Except as disclosed in the General Disclosure Package, there are no pending actions, suits or proceedings (including any inquiries or investigations by any court or governmental agency or body, domestic or foreign) against or affecting the Company, any of its subsidiaries or any of their respective properties that, if determined adversely to the Company or any of its subsidiaries, would individually or in the aggregate have a Material Adverse Effect, or would materially and adversely affect the ability of the Company to perform its obligations under this Agreement; and no such actions, suits or proceedings

(including any inquiries or investigations by any court or governmental agency or body, domestic or foreign) are, to the Company's knowledge, threatened or contemplated.

(aa) *Financial Statements.* The financial statements included in each Registration Statement, the General Disclosure Package and the Final Prospectus present fairly in all material respects the financial position of the Company and its consolidated subsidiaries as of the dates shown and their results of operations, cash flows and changes in stockholders' equity for the periods shown, and such financial statements have been prepared in conformity with GAAP applied on a consistent basis. The summary and selected financial data, and the statistical data derived therefrom, included in the Registration Statement, the General Disclosure Package and the Final Prospectus presents fairly in all material respects the information shown therein and such data has been compiled on a basis consistent with the financial statements presented therein and the books and records of the Company. There are no financial statements that are required to be included in the Registration Statement, the General Disclosure Package or the Final Prospectus that are not included as required.

(bb) *Independent Auditors.* Ernst & Young LLP, which has certified the financial statements of the Company included in the General Disclosure Package and the Final Prospectus, is an independent registered public accounting firm with respect to the Company within the Rules and Regulations and as required by the Act and the applicable rules and guidance from the Public Company Accounting Oversight Board (USA).

(cc) *No Material Adverse Change in Business.* Except as disclosed in the General Disclosure Package, since the end of the period covered by the latest audited financial statements included in the General Disclosure Package (i) there has been no change, nor any development or event involving a prospective change, in the condition (financial or otherwise), results of operations, business, properties or prospects of the Company and its subsidiaries, taken as a whole, that is material and adverse, (ii) there has been no dividend or distribution of any kind declared, paid or made by the Company on any class of its capital stock, (iii) there has been no change in the capital stock, short-term indebtedness, long-term indebtedness, net current assets or net assets of the Company and its subsidiaries, taken as a whole, that is material and adverse to the Company and its subsidiaries, taken as a whole, (iv) there has been no material transaction entered into by the Company or any of its subsidiaries taken as a whole and there is no material transaction that is probable of being entered into by the Company or any of its subsidiaries taken as a whole, other than transactions in the ordinary course of business, (v) there has been no obligation, direct or

contingent, incurred by the Company or any of its subsidiaries that is material to the Company and its subsidiaries taken as a whole, except obligations incurred in the ordinary course of business and (vi) neither the Company nor any of its subsidiaries has sustained any material loss or material interference with any of their respective businesses from fire, explosion, flood or other calamity, whether or not covered by insurance, or from any labor disturbance or dispute or any action, order or decree of any court or arbitrator or governmental or regulatory authority.

(dd) *Investment Company Act.* The Company is not and, after giving effect to the offering and sale of the Offered Securities and the application of the proceeds thereof as described in the General Disclosure Package, will not be an "investment company" as defined in the Investment Company Act of 1940, as amended (the "**Investment Company Act**").

(ee) *Ratings.* No "nationally recognized statistical rating organization," as such term is defined for purposes of Section 3(a)(62) of the Exchange Act, (i) has imposed (or has informed the Company that it is considering imposing) any condition (financial or otherwise) on the Company's retaining any rating assigned to the Company or any securities of the Company or (ii) has indicated to the Company that it is considering any of the actions described in Section 7(c)(ii) hereof.

(ff) *No Unlawful Payments.* None of the Company or any of its subsidiaries, any director or executive officer of the Company or any of its subsidiaries or any affiliate under the control of the Company or any of its subsidiaries or, to the Company's knowledge, any agent, employee, any affiliate not under control of the Company or any of its subsidiaries or other person associated with or acting on behalf of the Company or any of its subsidiaries has (i) used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity; (ii) made any direct or indirect unlawful payment to any foreign or domestic government official, "foreign official" (as defined in the U.S. Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder (collectively, the "**FCPA**") or employee from corporate funds; (iii) violated or is in violation of any provision of the FCPA or any applicable non-U.S. anti-bribery statute or regulation; or (iv) made any bribe, rebate, influence payment, payoff, kickback or other unlawful payment to any domestic government official, such foreign official or employee; and the Company and its subsidiaries, any affiliate under the control of the Company or any of its subsidiaries and, to the Company's knowledge, any affiliate not under control of the Company or any of its subsidiaries have conducted their respective businesses in compliance with the FCPA and have instituted and maintain policies and procedures designed to ensure, and which are reasonably expected to continue to ensure, continued compliance therewith.

(gg) *Anti-Money Laundering.* The operations of the Company and its subsidiaries are and have been conducted at all times in material compliance with all applicable financial recordkeeping and reporting requirements, including those of the Bank Secrecy Act, as amended by Title III of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), and the applicable anti-money laundering statutes of jurisdictions in which the Company and its subsidiaries conduct business, the rules and regulations thereunder and any related



or similar rules, regulations or guidelines, issued, administered or enforced by any governmental agency (collectively, the “**Anti-Money Laundering Laws**”), and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company or any of its subsidiaries with respect to the Anti-Money Laundering Laws is pending or, to the Company’s knowledge, threatened.

(hh) *Compliance with OFAC.*

(i) None of the Company or any of its subsidiaries, any director or executive officer of the Company or any of its subsidiaries or any affiliate under the control of the Company or any of its subsidiaries or, to the Company’s knowledge, any agent, employee, any affiliate not under control of the Company or any of its subsidiaries or other person associated with or acting on

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behalf of the Company or any of its subsidiaries is an individual or entity that is, or is owned or controlled by an individual or entity that is:

(A) the subject of any sanctions administered or enforced by the U.S. Department of Treasury’s Office of Foreign Assets Control (“**OFAC**”) (collectively, “**Sanctions**”), nor

(B) located, organized or resident in a country or territory that is the subject of Sanctions (including, without limitation, Cuba, Iran, North Korea, Sudan and Syria).

(ii) The Company will not, directly or indirectly, use the proceeds of the offering of the Offered Securities hereunder, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other individual or entity:

(A) to fund or facilitate any activities or business of or with any individual or entity or in any country or territory that, at the time of such funding or facilitation, is the subject of Sanctions; or

(B) in any other manner that will result in a violation of Sanctions by any individual or entity (including any individual or entity participating in the offering, whether as underwriter, advisor, investor or otherwise).

(iii) For the past five (5) years, the Company and its subsidiaries have not knowingly engaged in, are not now knowingly engaged in, and will not engage in, any dealings or transactions with any individual or entity, or in any country or territory, that at the time of the dealing or transaction is or was the subject of Sanctions.

(ii) *Tax Matters.* The Company and its subsidiaries have filed all federal, state, local and non-U.S. tax returns that are required to have been filed by them or have requested extensions thereof (except in any case in which the failure so to file would not have or reasonably be expected to have a Material Adverse Effect). Except as set forth in the General Disclosure Package, the Company and its subsidiaries have paid all taxes (including any assessments, fines or penalties) required to be paid by them, except for any such taxes, assessments, fines or penalties currently being contested in good faith or as would not, individually or in the aggregate, have or reasonably be expected to have a Material Adverse Effect. There are no deficiencies for taxes, including any interest and penalties thereon, with respect to the Company or any of its subsidiaries that have been claimed, proposed or assessed by any tax authority, except as would not, individually or in the aggregate, have or reasonably be expected to have a Material Adverse Effect.

(jj) *Insurance.* (i) The Company and its subsidiaries are insured by insurers with appropriately rated claims paying abilities against such losses and risks and in such amounts as are prudent and customary for the businesses in which they are engaged; (ii) all material policies of insurance insuring the Company or any of its subsidiaries or their respective businesses, assets, employees, officers and directors are in full force and effect; (iii) the Company and its subsidiaries are in compliance with the terms of such policies and instruments in all material respects; and (iv) except in respect of certain legal proceedings disclosed in the General Disclosure Package, there are no material claims by the Company or any of its subsidiaries under any such policy or instrument as to which any insurance company is denying liability or defending under a reservation of rights clause. Neither the Company nor any of its subsidiaries has (i) been refused any insurance coverage sought or applied or (ii) any reason to believe that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business at a cost that would not, individually or in the aggregate, have or reasonably be expected to have a Material Adverse Effect, except as set forth in or contemplated in the General Disclosure Package.

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(kk) *No Restrictions on Payments by Subsidiaries.* Except as described in the General Disclosure Package, no subsidiary of the Company is currently prohibited, directly or indirectly, under any agreement or other instrument to which it is a party or is subject, (i) from paying any dividends to the Company, (ii) from making any other distribution on such subsidiary’s capital

stock, (iii) from repaying to the Company any loans or advances to such subsidiary from the Company or (iv) from transferring any of such subsidiary's material properties or assets to the Company or any other subsidiary of the Company.

(ll) *ERISA Compliance.* Neither the Company nor any of its ERISA Affiliates has incurred or reasonably expects to incur any material liability under Title IV of the Employee Retirement Income Security Act of 1974, as amended, and the regulations and published interpretations thereunder (collectively, "ERISA") with respect to termination of, or withdrawal from, any "employee benefit plan" (as defined under ERISA). As used herein, "ERISA Affiliate" means, with respect to the Company, any member of any group of organizations described in Sections 414(b),(c),(m) or (o) of the Internal Revenue Code of 1986, as amended (the "Code") of which the Company is a member.

(mm) *eXtensible Business Reporting Language.* The interactive data in eXtensible Business Reporting Language included or incorporated by reference in the Registration Statement fairly presents the information called for in all material respects and has been prepared in accordance with the Commission's rules and guidelines applicable thereto.

(ii) *Representations and Warranties of the Selling Stockholders.* Each of the Selling Stockholders, severally and not jointly, represents and warrants to, and agrees with, the several Underwriters that:

(a) *Title to Securities.* Such Selling Stockholder has, and on each Closing Date will have, (i) valid and unencumbered title to the Offered Securities to be delivered by such Selling Stockholder on such Closing Date and (ii) full right, power and authority to (x) enter into this Agreement and (y) sell, assign, transfer and deliver the Offered Securities to be delivered by such Selling Stockholder on such Closing Date hereunder. Upon the delivery of and payment for the Offered Securities on each Closing Date in accordance with the terms hereof, the several Underwriters will acquire valid and unencumbered title to the Offered Securities to be delivered by such Selling Stockholder on such Closing Date.

(b) *Absence of Further Requirements.* No consent, approval, authorization, or order of, or filing or registration with, any federal, state, local or foreign governmental or regulatory commission, board, body, authority or agency, or of or with any self-regulatory organization or other non-governmental regulatory authority (including, without limitation, the New York Stock Exchange), is required to be obtained or made by such Selling Stockholder for the consummation of the transactions contemplated by this Agreement in connection with the sale of the Offered Securities by such Selling Stockholder, except (i) such as have been already obtained or made prior to the Closing Date, (ii) such as may be required under state securities laws or the rules of FINRA and (iii) filings with the Commission pursuant to Rule 424(b) under the Act.

(c) *Absence of Defaults and Conflicts Resulting from Transaction.* The execution, delivery and performance of this Agreement and the sale of the Offered Securities as disclosed in the General Disclosure Package will not result in a breach or violation of any of the terms and provisions of, or constitute a default under, or result in the imposition of any lien, charge or encumbrance upon any property or assets of such Selling Stockholder pursuant to (i) the organizational documents of such Selling Stockholder, (ii) any statute, rule, regulation or order of any governmental agency or body or any court, domestic or foreign, having jurisdiction over such Selling Stockholder or any of its properties or (iii) any agreement or instrument to which such Selling Stockholder is a party or by which such Selling Stockholder is bound or to which any of the properties of such Selling Stockholder is subject, except, with respect to clauses (ii) and (iii) above, for such breaches, violations or defaults or such liens, charges and encumbrances which would not, individually or in the aggregate, have or reasonably be expected to have a material adverse effect on such Selling

Stockholder's ability to perform its obligations under this Agreement.

(d) *No Undisclosed Material Information.* The sale of the Offered Securities by such Selling Stockholder pursuant to this Agreement is not prompted by any material information concerning the Company or any of its subsidiaries that is not otherwise set forth in the General Disclosure Package.

(e) *Authorization of Agreement.* This Agreement has been duly authorized, executed and delivered by such Selling Stockholder.

(f) *No Finder's Fee.* Except pursuant to this Agreement and as disclosed in the General Disclosure Package, there are no contracts, agreements or understandings between such Selling Stockholder and any person that would give rise to a valid claim against such Selling Stockholder or any Underwriter for a brokerage commission, finder's fee or other like payment in connection with this offering.

(g) *Absence of Manipulation.* Such Selling Stockholder has not taken, directly or indirectly, any action that is designed to or that has constituted or that would reasonably be expected to cause or result in the stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the Offered Securities.

(h) *Security Entitlement.* Such Selling Stockholder has, and on the Closing Date will have, valid title to, or a valid "security entitlement" within the meaning of Section 8-501 of the New York Uniform Commercial Code (the "UCC") in respect of, the Offered Securities to be sold by such Selling Stockholder free and clear of all security interests, claims, liens, equities or other encumbrances and the legal right and power, and all authorization and approval required by law, to enter into

this Agreement and (i) to sell, transfer and deliver the Offered Securities to be sold by such Selling Stockholder or (ii) to originate an entitlement order with respect to a security entitlement in respect of such Offered Securities.

(i) *Protected Purchaser; No Adverse Claim.* Upon payment for the Offered Securities to be sold by such Selling Stockholder pursuant to this Agreement, delivery of such Offered Securities, as directed by the Underwriters, to Cede & Co. (“Cede”) or such other nominee as may be designated by the Depository Trust Company (“DTC”), registration of such Offered Securities in the name of Cede or such other nominee and the crediting of such Offered Securities on the books of DTC to securities accounts of the Underwriters (assuming that neither DTC nor any such Underwriter has notice of any adverse claim within the meaning of Section 8-105 of the UCC to such Offered Securities) to the Offered Securities, (i) under Section 8-501 of the UCC, the Underwriters will acquire a valid security entitlement in respect of such Offered Securities and (ii) no action based on any “adverse claim”, within the meaning of Section 8-102 of the UCC, to such Offered Securities may be successfully asserted against the Underwriters with respect to such security entitlement; for purposes of this representation, such Selling Stockholder assumes that when such payment, delivery and crediting occur, (A) the Underwriters are acquiring such security entitlement without notice of any adverse claim (within the meaning of Section 8-105 of the UCC), (B) such Offered Securities will have been registered in the name of Cede or another nominee designated by DTC, in each case on the Company’s share registry in accordance with its certificate of incorporation, bylaws and applicable law, (C) DTC will be registered as a “clearing agency” within the meaning of Section 8-102 of the UCC, (D) appropriate entries to the accounts of the several Underwriters on the records of DTC with respect to the Offered Securities will have been made pursuant to the UCC and (E) the “securities intermediary’s jurisdiction” (within the meaning of Section 8-110 of the UCC) of DTC is the State of New York.

(j) *General Disclosure Package.* As of the Applicable Time, neither (i) the General Disclosure Package nor (ii) any individual Limited Use Issuer Free Writing Prospectus, when considered together with the General Disclosure Package, included any untrue statement of a material fact or omitted to state any material fact necessary in order to make the statements

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therein, in the light of the circumstances under which they were made, not misleading; provided that the representations and warranties set forth in this paragraph for such Selling Stockholder are limited to statements or omissions made in reliance upon such Selling Stockholder Information provided by such Selling Stockholder.

(k) *Good Standing of Selling Stockholder.* Such Selling Stockholder is validly existing and, to the extent such concept exists in the relevant jurisdiction, in good standing under the laws of the jurisdiction of its organization.

(l) *No Distribution of Offering Material.* Such Selling Stockholder has not distributed and will not distribute any prospectus or other offering material in connection with the offering and sale of the Offered Securities.

(m) *Compliance with Securities Act Requirements.* (i) (A) At their respective Effective Times, (B) on the date of this Agreement and (C) on each Closing Date, each of the Initial Registration Statement and the Additional Registration Statement (if any), as it relates to any of the Selling Stockholder Information, do not and will not include any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading and (ii) on its date, at the time of filing of the Final Prospectus pursuant to Rule 424(b) or (if no such filing is required) at the Effective Time of the Additional Registration Statement in which the Final Prospectus is included, and on each Closing Date, the Final Prospectus, as it relates to the Selling Stockholder Information, will not include any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. This representation and warranty applies only to the extent that any statements in or omissions from a Registration Statement or the Final Prospectus, any Statutory Prospectus or any amendments or supplements thereto are based on the Selling Stockholder Information.

3. *Purchase, Sale and Delivery of Offered Securities.* On the basis of the representations, warranties and agreements and subject to the terms and conditions set forth herein, the Selling Stockholders agree, severally and not jointly, to sell to the several Underwriters, and each of the Underwriters agrees, severally and not jointly, to purchase from the Selling Stockholders, at a purchase price of \$17.6675 per share, the respective number of shares of Firm Securities set forth opposite the names of the Underwriters in Schedule B hereto.

Each of the Selling Stockholders will deliver its or his Firm Securities to or as instructed by the Representatives for the accounts of the several Underwriters in a form reasonably acceptable to the Representatives against payment of the purchase price by the Underwriters in Federal (same day) funds by wire transfer to an account at a bank acceptable to the Representatives drawn to the order of such Selling Stockholder at the office of Latham & Watkins LLP, 885 Third Avenue, New York, New York 10022, at 8:30 A.M., New York time, on April 20, 2015, or at such other time not later than seven full business days thereafter as the Representatives and the Selling Stockholders determine, such time being herein referred to as the “**First Closing Date.**” For purposes of Rule 15c6-1 under the Exchange Act, the First Closing Date (if later than the otherwise applicable settlement date) shall be the settlement date for payment of funds and delivery of the Offered Securities sold on such date pursuant to the offering. The Offered Securities so to be delivered or evidence of their issuance will be made available for checking at the above office of Latham & Watkins LLP at least 24 hours prior to the First Closing Date.

In addition, upon written notice from the Representatives given to the Company and the Selling Stockholders from time to time not more than 30 days subsequent to the date of the Final Prospectus, the Underwriters may purchase all or less than all of the Optional

Securities at the purchase price per Security to be paid for the Firm Securities. The Selling Stockholders agree, severally and not jointly, to sell to the Underwriters, at the same purchase price per share to be paid by the Underwriters with respect to the Firm Securities pursuant hereto (less an amount per share equal to any dividends or distributions declared by the Company and payable on the Firm Securities but not payable on the Optional Securities), and each of the

Underwriters, severally and not jointly, agrees to purchase from the Selling Stockholders, at such purchase price per share, such number of Optional Securities that bears the same proportion to the number of Optional Securities that may be sold by the Selling Stockholders as the number of Firm Securities set forth opposite the name of such Underwriter in Schedule B hereto bears to the total number of Firm Securities (in each case, subject to such adjustment as the Representatives may determine to avoid fractional shares). No Optional Securities shall be sold or delivered unless the Firm Securities previously have been, or simultaneously are, sold and delivered. The right to purchase the Optional Securities or any portion thereof may be exercised from time to time and to the extent not previously exercised may be surrendered and terminated at any time upon notice by the Representatives to the Company and the Selling Stockholders.

Each time for the delivery of and payment for the Optional Securities, being herein referred to as an “**Optional Closing Date**,” which may be the First Closing Date (the First Closing Date and each Optional Closing Date, if any, being sometimes referred to as a “**Closing Date**”), shall be determined by the Representatives but shall be not later than five full business days after written notice of election to purchase Optional Securities is given. Each of the Selling Stockholders will deliver the Optional Securities being purchased on each Optional Closing Date to or as instructed by the Representatives for the accounts of the several Underwriters in a form reasonably acceptable to the Representatives against payment of the purchase price therefor in Federal (same day) funds by wire transfer to an account at a bank acceptable to the Representatives drawn to the order of such Selling Stockholder, at the above office of Latham & Watkins LLP. The Optional Securities being purchased on each Optional Closing Date or evidence of their issuance will be made available for checking at the above office of Latham & Watkins LLP at a reasonable time in advance of such Optional Closing Date.

4. *Offering by Underwriters.* It is understood that the several Underwriters propose to offer the Offered Securities for sale to the public as set forth in the Final Prospectus.

5. *Certain Agreements of the Company and the Selling Stockholders.* The Company agrees with the several Underwriters and, with respect to Section 5(i) below, the Selling Stockholders, severally and not jointly, agree with the several Underwriters that:

(a) *Additional Filings.* Unless filed pursuant to Rule 462(c) as part of the Additional Registration Statement in accordance with the second sentence following this sentence, the Company will file the Final Prospectus, in a form approved by the Representatives, with the Commission pursuant to and in accordance with subparagraph (1) (or, if applicable and if consented to by the Representatives, subparagraph (4)) of Rule 424(b) not later than the earlier of (A) the second business day following the execution and delivery of this Agreement or (B) the fifteenth business day after the Effective Time of the Initial Registration Statement. The Company will advise the Representatives promptly of any such filing pursuant to Rule 424(b) and provide satisfactory evidence to the Representatives of such timely filing. If an Additional Registration Statement is necessary to register a portion of the Offered Securities under the Act but the Effective Time thereof has not occurred as of the execution and delivery of this Agreement, the Company will file the Additional Registration Statement or, if filed, will file a post-effective amendment thereto with the Commission pursuant to and in accordance with Rule 462(b) on or prior to 10:00 P.M., New York time, on the date of this Agreement or, if earlier, on or prior to the time the Final Prospectus is finalized and distributed to any Underwriter, or will make such filing at such later date as shall have been consented to by the Representatives.

(b) *Filing of Amendments; Response to Commission Requests.* The Company will promptly advise the Representatives of any proposal to amend or supplement at any time the Initial Registration Statement, any Additional Registration Statement or any Statutory Prospectus and will not effect such amendment or supplementation without the Representatives’ consent. The Company will also advise the Representatives promptly of (i) the effectiveness of any Additional Registration Statement (if its Effective Time is subsequent to the execution and delivery of this Agreement), (ii) any amendment or supplementation of a Registration Statement or any Statutory Prospectus, (iii) any request by the Commission or its staff for any amendment to any Registration Statement, for any supplement to any Statutory Prospectus or for any additional information,

(iv) the institution by the Commission of any stop order proceedings in respect of a Registration Statement or the threatening of any proceeding for that purpose, and (v) the receipt by the Company of any notification with respect to the suspension of the qualification of the Offered Securities in any jurisdiction or the institution or threatening of any proceedings for such purpose. The Company will use its best efforts to prevent the issuance of any such stop order or the suspension of any such qualification and, if issued, to obtain as soon as possible the withdrawal thereof.

(c) *Continued Compliance with Securities Laws.* If, at any time when a prospectus relating to the Offered Securities is (or but for the exemption in Rule 172 would be) required to be delivered under the Act by any Underwriter or dealer, any event occurs as a result of which the Final Prospectus as then amended or supplemented would include an untrue statement of

a material fact or omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading with respect to the Company or a Selling Stockholder, as applicable, or if it is necessary at any time to amend the Registration Statement or supplement the Final Prospectus to comply with the Act, the Company will promptly (i) notify the Representatives of such event (or, if applicable, the applicable Selling Stockholder will notify the Company and the Representatives) and (ii) prepare and file with the Commission and furnish, at its own expense, to the Underwriters and the dealers and any other dealers upon request of the Representatives, an amendment or supplement which will correct such statement or omission or an amendment which will effect such compliance. Neither the Representatives' consent to, nor the Underwriters' delivery of, any such amendment or supplement shall constitute a waiver of any of the conditions set forth in Section 7 hereof.

(d) *Rule 158.* As soon as practicable, but not later than the Availability Date (as defined below), the Company will make generally available to its security holders an earnings statement covering a period of at least 12 months beginning after the Effective Time of the Initial Registration Statement (or, if later, the Effective Time of the Additional Registration Statement) which will satisfy the provisions of Section 11(a) of the Act and Rule 158 under the Act. For the purpose of the preceding sentence, "**Availability Date**" means the day after the end of the fourth fiscal quarter following the fiscal quarter that includes such Effective Time on which the Company is required to file its Form 10-Q for such fiscal quarter except that, if such fourth fiscal quarter is the last quarter of the Company's fiscal year, "**Availability Date**" means the day after the end of such fourth fiscal quarter on which the Company is required to file its Form 10-K.

(e) *Furnishing of Prospectuses.* The Company will furnish to the Representatives copies of each Registration Statement (of which three will be signed and will include all exhibits), each related Statutory Prospectus, and, so long as a prospectus relating to the Offered Securities is (or but for the exemption in Rule 172 would be) required to be delivered under the Act, the Final Prospectus and all amendments and supplements to such documents, in each case in such quantities as the Representatives request. The Final Prospectus shall be so furnished on or prior to 3:00 P.M., New York time, on the business day following the execution and delivery of this Agreement or as otherwise agreed by the Company and the Underwriters. All other such documents shall be so furnished as soon as available. The Company will pay the expenses of printing and distributing to the Underwriters all such documents.

(f) *Blue Sky Qualifications.* The Company will arrange for the qualification of the Offered Securities for sale under the laws of such jurisdictions as the Representatives reasonably designate (collectively, "**Blue Sky Laws**") and will continue such qualifications in effect so long as required for the distribution of the Offered Securities as contemplated hereby; provided, however that the Company shall not be obligated to file any general consent to service of process or to qualify as a foreign corporation or as a dealer in securities in any jurisdiction in which it is not already subject or so qualified or subject itself to taxation in respect of doing business in any jurisdiction in which it is not otherwise so subject.

(g) *Reporting Requirements.* During the period of five years hereafter, the Company will furnish to the Representatives and, upon request, to each of the other Underwriters, as soon as practicable after the end of each fiscal year, a copy of its annual report to stockholders for such year, and the Company will furnish to the Representatives (i) as soon as available, a copy of each report and any definitive proxy statement of the Company filed with the Commission under the Exchange Act or mailed to stockholders, and (ii) from time to time, such other information concerning the Company as the Representatives may reasonably request. However, so long as the Company is subject to the reporting requirements of either Section 13 or Section 15(d) of the Exchange Act and is timely filing reports with the Commission on its Electronic Data Gathering, Analysis and Retrieval system ("**EDGAR**"), or any successor system, it is not required to furnish such reports or statements to the Underwriters.

(h) *Payment of Expenses.* The Company will pay all expenses incident to the performance of the obligations of the Company and the Selling Stockholders, as the case may be, under this Agreement, including but not limited to (i) any filing fees and other expenses (including reasonable fees and disbursements of counsel to the Underwriters) incurred in connection with qualification of the Offered Securities for sale under Blue Sky Laws and the preparation and printing of memoranda relating thereto, (ii) costs and expenses related to the review by FINRA of the Offered Securities (including filing fees and the reasonable fees and expenses of one counsel for the Underwriters relating to such review in an amount equal to \$20,000), (iii) costs and expenses of the Company relating to investor presentations or any "road show" in connection with the offering and sale of the Offered Securities including, without limitation, any travel expenses of the Company's officers and employees and any other expenses of the Company; provided that the Company, on the one hand, and the several Underwriters, on the other hand, will each pay 50% of the costs and expenses relating to the chartering of airplanes used by the Company and the Underwriters in connection with any such investor presentation or "road show," (iv) fees and expenses in connection with the registration of the Offered Securities under the Exchange Act, (v) expenses incurred in distributing preliminary prospectuses and the Final Prospectus (including any amendments and supplements thereto) to the Underwriters and (vi) expenses incurred for preparing, printing and distributing any Issuer Free Writing Prospectuses to investors or prospective investors. Notwithstanding the foregoing, each Selling Stockholder will pay any transfer taxes on the sale by such Selling Stockholder of the Offered Securities to the Underwriters.

(i) *Absence of Manipulation.* The Company will not take, directly or indirectly, any action designed to or that would constitute or that might reasonably be expected to cause or result in, stabilization or manipulation of the price of any securities of the Company to facilitate the sale or resale of the Offered Securities. No Selling Stockholder will take, directly or

indirectly, any action designed to or that would constitute or that might reasonably be expected to cause or result in, stabilization or manipulation of the price of any securities of the Company to facilitate the sale or resale of the Offered Securities.

(j) *Restriction on Sale of Securities by Company.* For the period commencing on the date hereof and continuing for 90 days after the date hereof or such earlier date that the Representatives consent to in writing (the “**Lock-Up Period**”), the Company will not, directly or indirectly, take any of the following actions with respect to any class of its common stock or any securities convertible into or exchangeable or exercisable for any class of its common stock (“**Lock-Up Securities**”): (i) offer, sell, issue, contract to sell, pledge or otherwise dispose of Lock-Up Securities, (ii) offer, sell, issue, contract to sell, contract to purchase or grant any option, right or warrant to purchase Lock-Up Securities, (iii) enter into any swap, hedge or any other agreement that transfers, in whole or in part, the economic consequences of ownership of Lock-Up Securities, (iv) establish or increase a put equivalent position or liquidate or decrease a call equivalent position in Lock-Up Securities within the meaning of Section 16 of the Exchange Act or (v) file with the Commission a registration statement under the Act relating to Lock-Up Securities, or publicly disclose the intention to take any such action, without the prior written consent of the Representatives, except, in each case, with respect to (A) the sale of the Offered Securities, (B)

issuances of Lock-Up Securities pursuant to the (1) conversion or exchange of convertible or exchangeable securities or (2) exercise of warrants or options, in each case outstanding on the date hereof and disclosed in the Registration Statement, the General Disclosure Package and the Final Prospectus, (C) grants of employee stock options pursuant to the terms of a plan in effect on the First Closing Date and disclosed in the Registration Statement, the General Disclosure Package and the Final Prospectus, or the issuance of Lock-Up Securities pursuant to the exercise of such options, *provided* that such Lock-Up Securities received upon such exercise or vesting are non-transferable for the remainder of the Lock-Up Period, (D) the filing of a registration statement with the Commission on Form S-8 to register the offer and sale of securities to be issued pursuant to any equity compensation plan in effect on the First Closing Date and disclosed in the Registration Statement, the General Disclosure Package and the Final Prospectus and (E) the issuance by the Company of shares of its common stock or any securities convertible into or exchangeable or exercisable for shares of its common stock in connection with an acquisition, business combination or joint venture (including the filing of a registration statement on Form S-4 or other appropriate form with respect thereto), *provided* that the aggregate number of shares of the Company’s common stock issued pursuant to this clause (E) during the Lock-Up Period shall not exceed 10% of the total number of shares of its common stock issued and outstanding on the First Closing Date and *provided further*, in the case of any issuance pursuant to this clause (E), any recipient of shares of the Company’s common stock shall have executed and delivered to the Representatives a lockup letter substantially in the form attached hereto as Exhibit A prior to the issuance and receipt of such shares. The initial Lock-Up Period will commence on the date hereof and continue for 90 days after the date hereof or such earlier date that the Representatives consent to in writing; provided, however, that if (1) during the last 17 days of the initial Lock-Up Period, the Company releases earnings results or material news or a material event relating to the Company occurs or (2) prior to the expiration of the initial Lock-Up Period, the Company announces that it will release earnings results during the 16-day period beginning on the last day of the initial Lock-Up Period, then in each case the Lock-Up Period will be extended until the expiration of the 18-day period beginning on the date of release of the earnings results or the occurrence of the material news or material event, as applicable, unless the Representatives waive, in writing, such extension. The Company will provide the Representatives with notice of any announcement described in clause (2) of the immediately preceding sentence that gives rise to an extension of the Lock-Up Period.

6. *Free Writing Prospectuses.* The Company represents and agrees that, unless it obtains the prior consent of the Representatives, each Selling Stockholder, severally and not jointly, represents and agrees that, unless they obtain the prior consent of the Company and the Representatives, and each Underwriter represents and agrees that, unless they obtain the prior consent of the Company and the Representatives, it has not made and will not make any offer relating to the Offered Securities that would constitute an Issuer Free Writing Prospectus, or that would otherwise constitute a “free writing prospectus,” as defined in Rule 405, required to be filed with the Commission. Any such free writing prospectus consented to by the Company and the Representatives is hereinafter referred to as a “**Permitted Free Writing Prospectus**.” The Company represents that it has treated and agrees that it will treat each Permitted Free Writing Prospectus as an “issuer free writing prospectus,” as defined in Rule 433, and has complied and will comply with the requirements of Rules 164 and 433 applicable to any Permitted Free Writing Prospectus, including timely Commission filing where required, legending and record keeping. The Company represents that it has satisfied and agrees that it will satisfy the conditions in Rule 433 to avoid a requirement to file with the Commission any electronic road show.

7. *Conditions of the Obligations of the Underwriters.* The obligations of the several Underwriters to purchase and pay for the Firm Securities on the First Closing Date and the Optional Securities to be purchased on each Optional Closing Date will be subject to the accuracy of the representations and warranties of the Company and the Selling Stockholders herein (as though made on such Closing Date), to the accuracy of the statements of Company officers made pursuant to the provisions hereof, to the performance by the Company and the Selling Stockholders of their obligations hereunder and to the following additional conditions precedent:

(a) *Accountants’ Comfort Letter.* The Representatives shall have received letters, dated, respectively, the date hereof

and each Closing Date, of Ernst & Young LLP confirming that they are a registered public accounting firm and independent public accountants within the meaning of the Securities Laws and in form and substance satisfactory to the Representatives (except that, in any letter dated a Closing Date, the specified date referred to in such letter shall be a date no more than three business days prior to such Closing Date).

(b) *Effectiveness of Registration Statement.* If the Effective Time of the Additional Registration Statement (if any) is not prior to the execution and delivery of this Agreement, such Effective Time shall have occurred not later than 10:00 P.M., New York time, on the date of this Agreement or, if earlier, the time the Final Prospectus is finalized and distributed to any Underwriter, or shall have occurred at such later time as shall have been consented to by the Representatives. The Final Prospectus shall have been filed with the Commission in accordance with the Rules and Regulations and Section 5(a) hereof. Prior to such Closing Date, no stop order suspending the effectiveness of a Registration Statement shall have been issued and no proceedings for that purpose shall have been instituted or, to the knowledge of any Selling Stockholder, the Company or the Representatives, shall be contemplated by the Commission.

(c) *No Material Adverse Change.* Subsequent to the execution and delivery of this Agreement, there shall not have occurred (i) any change, or any development or event involving a prospective change, in the condition (financial or otherwise), results of operations, business, properties or prospects of the Company and its subsidiaries taken as a whole which, in the judgment of the Representatives, is material and adverse and makes it impractical or inadvisable to market the Offered Securities; (ii) any downgrading in the rating of any debt securities or preferred stock of the Company by any “nationally recognized statistical rating organization” (as defined for purposes of Section 3(a)(62) of the Exchange Act), or any public announcement that any such organization has under surveillance or review its rating of any debt securities or preferred stock of the Company (other than an announcement with positive implications of a possible upgrading, and no implication of a possible downgrading, of such rating) or any announcement that the Company has been placed on negative outlook; (iii) any change in either U.S. or international financial, political or economic conditions or currency exchange rates or exchange controls the effect of which is such as to make it, in the judgment of the Representatives, impractical to market or to enforce contracts for the sale of the Offered Securities, whether in the primary market or in respect of dealings in the secondary market; (iv) any suspension or material limitation of trading in securities generally on the New York Stock Exchange or the NASDAQ Stock Market, or any setting of minimum or maximum prices for trading on such exchanges; (v) or any suspension of trading of any securities of the Company on any exchange or in the over-the-counter market; (vi) any banking moratorium declared by any U.S. federal or New York authorities; (vii) any major disruption of settlements of securities, payment, or clearance services in the United States or any other country where such securities are listed or (viii) any attack on, outbreak or escalation of hostilities or act of terrorism involving the United States, any declaration of war by Congress or any other national or international calamity or emergency if, in the judgment of the Representatives, the effect of any such attack, outbreak, escalation, act, declaration, calamity or emergency is such as to make it impractical or inadvisable to market the Offered Securities or to enforce contracts for the sale of the Offered Securities.

(d) *Opinion of Counsel for the Company.* The Representatives shall have received an opinion, dated such Closing Date, of Proskauer Rose LLP, counsel for the Company, in form and substance previously agreed to by, and satisfactory to, the Representatives.

(e) *Opinion of Counsel for the Selling Stockholders.* The Representatives shall have received an opinion, dated such Closing Date, of Proskauer Rose LLP, counsel for Ares Corporate Opportunities Fund III, L.P. and Ares Corporate Opportunities Fund IV, L.P., and of Whalen LLP, counsel for Norman H. Axelrod, in form and substance previously agreed to by, and satisfactory to, the Representatives.

(f) *Opinion of Counsel for Underwriters.* The Representatives shall have received from Latham & Watkins LLP, counsel for the Underwriters, such opinion or opinions, dated such Closing Date, with respect to such matters as the Representatives may require, and the Selling Stockholders and the Company shall have furnished to such counsel such documents as they request for the purpose of enabling them to pass upon such matters.

(g) *Officers' Certificate.* The Representatives shall have received a certificate, dated such Closing Date, of an executive officer of the Company and a principal financial or accounting officer of the Company in which such officers shall state, on behalf of the Company in their capacities as such officers: (i) the representations and warranties of the Company in this Agreement are true and correct, (ii) the Company has complied with all agreements and satisfied all conditions on its part to be performed or satisfied hereunder at or prior to such Closing Date, (iii) no stop order suspending the effectiveness of any Registration Statement has been issued and no proceedings for that purpose have been instituted or, to the best of their knowledge and after reasonable investigation, are contemplated by the Commission, (iv) the Additional Registration Statement (if any) satisfying the requirements of subparagraphs (1) and (3) of Rule 462(b) was timely filed pursuant to Rule 462(b), including payment of the applicable filing fee in accordance with Rule 111(a) or (b) of Regulation S-T of the Commission and (v) subsequent to the date of the most recent financial statements in the General Disclosure Package, there has been no material adverse change, nor any development or event involving a prospective material adverse change, in the condition (financial or otherwise), results of operations, business, properties or prospects of the Company and its subsidiaries taken as a whole except as set forth in the General Disclosure Package or as described in such certificate.

(h) *Officers' Certificate.* The Representatives shall have received a certificate, dated such Closing Date, of an

executive officer of each Selling Stockholder that is an entity, in which such officer shall state, on behalf of such Selling Stockholder in his or her capacity as such officer: (i) the representations and warranties of such Selling Stockholder in this Agreement are true and correct as of such Closing Date and (ii) such Selling Stockholder has complied with all agreements and satisfied all conditions on its part to be performed or satisfied hereunder at or prior to such Closing Date.

(i) *Lock-Up Agreements*. On or prior to the date hereof, the Representatives shall have received lockup letters, in the form attached hereto as Exhibit A, from each of the executive officers and directors of the Company and stockholder of the Company identified on Schedule D hereto.

(j) *No Objection*. FINRA has confirmed that it has not raised any objection with respect to the fairness and reasonableness of the underwriting terms and arrangements.

(k) *Chief Financial Officer's Certificate*. The Representatives shall have received certificates dated, respectively, the date hereof and each Closing Date, signed by the chief financial officer of the Company, substantially in the form attached hereto as Exhibit B.

(l) *Tax forms*. In order to document the Underwriters' compliance with the reporting and withholding provisions of applicable tax laws with respect to the transactions herein contemplated, each Selling Stockholder will deliver to the Representatives a properly completed and executed United States Treasury Department Form W-9 (or other applicable form or statement specified by Treasury Department regulations in lieu thereof).

The Company and the Selling Stockholders will furnish the Representatives with conformed copies of the above opinions, certificates, letters and documents delivered pursuant to this Section 7 as well as such other documents as the Representatives reasonably request. The Representatives may in their sole discretion waive on behalf of the Underwriters compliance with any conditions to the obligations of the Underwriters hereunder, whether in respect of an Optional Closing Date or otherwise.

8. *Indemnification and Contribution*. (a) *Indemnification of Underwriters*. The Company will indemnify and hold harmless each Underwriter, its partners, members, directors, officers, employees, agents, affiliates and each person, if any, who controls such Underwriter within the meaning of Section 15 of the Act or Section 20 of the Exchange Act (each, a "**Company Indemnified Party**"), from and against any and all losses, claims, damages or liabilities, joint or several, to which such Company Indemnified Party may become subject, under the Act, the Exchange Act, other Federal or state statutory law or regulation or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon (i) any untrue statement or alleged untrue statement of any material fact contained in any part of any Registration Statement at any time, any Statutory Prospectus as of any time, the Final Prospectus or any Issuer Free Writing Prospectus, or (ii) the omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein (in the case of any prospectus, in light of the circumstances under which they were made) not misleading, and will reimburse each Company Indemnified Party for any legal or other expenses reasonably incurred by such Company Indemnified Party in connection with investigating or defending against any loss, claim, damage, liability, action, litigation, investigation or proceeding whatsoever (whether or not such Company Indemnified Party is a party thereto), whether threatened or commenced, based upon any such untrue statement or omission or alleged untrue statement or omission and in connection with the enforcement of this provision with respect to any of the above as such expenses are incurred; provided, however that the Company will not be liable in any such case to the extent that any such loss, claim, damage or liability arises out of or is based upon an untrue statement or alleged untrue statement in or omission or alleged omission from any of such documents made in reliance upon and in conformity with (i) information furnished to the Company in writing by any Underwriter through the Representatives specifically for use therein, it being understood and agreed that the only such information furnished by any Underwriter consists of the information described as such in subsection (c) below, or (ii) the Selling Stockholder Information.

(b) *Indemnification of Underwriters by Selling Stockholders*. The Selling Stockholders, severally and not jointly, will indemnify and hold harmless each Underwriter, its partners, members, directors, officers, employees, agents, affiliates and each person, if any, who controls such Underwriter within the meaning of Section 15 of the Act or Section 20 of the Exchange Act (each, a "**Selling Stockholder Indemnified Party**"), from and against any and all losses, claims, damages or liabilities, joint or several, to which such Selling Stockholder Indemnified Party may become subject, under the Act, the Exchange Act, other Federal or state statutory law or regulation or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon (i) any untrue statement or alleged untrue statement of any material fact contained in any part of any Registration Statement at any time, any Statutory Prospectus as of any time, the Final Prospectus or any Issuer Free Writing Prospectus, or (ii) the omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein (in the case of any prospectus, in light of the circumstances under which they were made) not misleading, and will reimburse each Selling Stockholder Indemnified Party for any legal or other expenses reasonably incurred by such Selling Stockholder Indemnified Party in connection with investigating or defending against any loss, claim, damage, liability, action, litigation, investigation or proceeding whatsoever (whether or not such Selling Stockholder Indemnified Party is a party thereto), whether threatened or commenced, based upon any such untrue statement or omission or alleged untrue statement or omission and in connection with the enforcement of this provision with respect to any of the above as such expenses are incurred; provided, however that each Selling Stockholder shall only be liable in any such case to the extent that any such loss, claim, damage or liability arises out of or is based on an untrue statement or alleged untrue statement in or omission or alleged omission from any of such documents made in reliance upon and in conformity with such Selling Stockholder Information provided by such Selling Stockholder; and provided, further that the liability under this subsection of each Selling Stockholder shall be limited to an amount equal to the net proceeds (after deducting underwriting commissions and discounts, but before deducting



expenses), received by such Selling Stockholder from the sale of Offered Securities sold by such Selling Stockholder hereunder.

(c) *Indemnification of Company and Selling Stockholders.* Each Underwriter will severally and not jointly indemnify and hold harmless the Company, each of its directors and each of its officers who signs a Registration Statement and each person, if any, who controls the Company within the meaning of Section 15 of the Act or Section 20 of the Exchange Act, and each Selling Stockholder and each person, if

any, who controls such Selling Stockholder within the meaning of Section 15 of the Act or Section 20 of the Exchange Act (each, an “**Underwriter Indemnified Party**”), against any losses, claims, damages or liabilities to which such Underwriter Indemnified Party may become subject, under the Act, the Exchange Act, other Federal or state statutory law or regulation or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon (i) any untrue statement or alleged untrue statement of any material fact contained in any part of any Registration Statement at any time, any Statutory Prospectus as of any time, the Final Prospectus or any Issuer Free Writing Prospectus, or (ii) the omission or the alleged omission of a material fact required to be stated therein (in the case of any prospectus, in light of the circumstances under which they were made) not misleading, and will reimburse each Underwriter Indemnified Party for any legal or other expenses reasonably incurred by such Underwriter Indemnified Party in connection with investigating or defending against any such loss, claim, damage, liability, action, litigation, investigation or proceeding whatsoever (whether or not such Underwriter Indemnified Party is a party thereto), whether threatened or commenced, based upon any such untrue statement or omission or alleged untrue statement or omission and in connection with the enforcement of this provision with respect to any of the above as such expenses are incurred; provided, however that each Underwriter shall only be liable in any such case to the extent that any such loss, claim, damage or liability arises out of or is based upon an untrue statement or alleged untrue statement in or omission or alleged omission from any of such documents made in reliance upon and in conformity with information furnished to the Company in writing by such Underwriter through the Representatives specifically for use therein, it being understood and agreed that the only such information furnished by any Underwriter consists of the following information in the Final Prospectus furnished on behalf of each Underwriter: the concession and reallocation figures appearing in the paragraph under the caption “Underwriting” and the information contained in the seventh, eleventh and twelfth paragraphs under the caption “Underwriting.”

(d) *Actions against Parties; Notification.* Promptly after receipt by an indemnified party under this Section 8 of notice of the commencement of any action, such indemnified party will, if a claim in respect thereof is to be made against the indemnifying party under subsection (a), (b) or (c) above, notify the indemnifying party of the commencement thereof, provided, however the failure to notify the indemnifying party shall not relieve it from any liability that it may have under subsection (a), (b) or (c) above except to the extent that it has been materially prejudiced (through the forfeiture of substantive rights or defenses) by such failure; and provided further that the failure to notify the indemnifying party shall not relieve it from any liability that it may have to an indemnified party otherwise than under subsection (a), (b) or (c) above. In case any such action is brought against any indemnified party and it notifies the indemnifying party of the commencement thereof, the indemnifying party will be entitled to participate therein and, to the extent that it may wish, jointly with any other indemnifying party similarly notified, to assume the defense thereof, with counsel satisfactory to such indemnified party (who shall not, except with the consent of the indemnified party, be counsel to the indemnifying party), and after notice from the indemnifying party to such indemnified party of its election so to assume the defense thereof, the indemnifying party will not be liable to such indemnified party under this Section 8 for any legal or other expenses subsequently incurred by such indemnified party in connection with the defense thereof other than reasonable costs of investigation. No indemnifying party shall, without the prior written consent of the indemnified party, effect any settlement of any pending or threatened action in respect of which any indemnified party is or could have been a party and indemnity could have been sought hereunder by such indemnified party unless such settlement (i) includes an unconditional release of such indemnified party from all liability on any claims that are the subject matter of such action and (ii) does not include a statement as to, or an admission of, fault, culpability or a failure to act by or on behalf of an indemnified party.

(e) *Contribution.* If the indemnification provided for in this Section 8 is unavailable or insufficient to hold harmless an indemnified party under subsection (a), (b) or (c) above, then each indemnifying party shall contribute to the amount paid or payable by such indemnified party as a result of the losses, claims, damages or liabilities referred to in subsection (a), (b) or (c) above (i) in such proportion as is appropriate to reflect the relative benefits received by the Company and the Selling Stockholders on the one hand and the Underwriters on the other from the offering of the Offered Securities or (ii) if the allocation provided by clause (i) above is not permitted by applicable law, in such proportion as is

appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the Company and the Selling Stockholders on the one hand and the Underwriters on the other in connection with the statements or omissions which resulted in such losses, claims, damages or liabilities as well as any other relevant equitable considerations. The relative benefits received by the Company and the Selling Stockholders on the one hand and the Underwriters on the other shall be deemed to be in the same respective proportions as the net proceeds (after deducting underwriting commissions and discounts, but before deducting expenses) received by the Selling Stockholders from the sale of the Offered Securities pursuant to this Agreement, and the total underwriting discounts and commissions received by the Underwriters in connection therewith, bear to the aggregate offering price of the Offered Securities. The relative fault of the Company and the Selling Stockholders on the one hand and the Underwriters on the other shall be determined by

reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Company, the Selling Stockholders or the Underwriters and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such untrue statement or omission. The amount paid by an indemnified party as a result of the losses, claims, damages or liabilities referred to in the first sentence of this subsection (e) shall be deemed to include any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any action or claim which is the subject of this subsection (e). Notwithstanding the provisions of this subsection (e), (i) no Underwriter shall be required to contribute any amount in excess of the amount by which the total price at which the Offered Securities underwritten by it and distributed to the public were offered to the public exceeds the amount of any damages which such Underwriter has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission and (ii) the contribution by any Selling Stockholder pursuant to this Section 8(e) and the liability of such Selling Stockholder under Section 8(b) shall be several and not joint and in the aggregate shall be limited to an amount equal to the net proceeds (after deducting underwriting commissions and discounts, but before deducting expenses), received by such Selling Stockholder from the sale of Offered Securities sold by such Selling Stockholder hereunder. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. The Underwriters' obligations in this subsection (e) to contribute are several in proportion to their respective underwriting obligations hereunder and not joint. The Company and the Underwriters agree that it would not be just and equitable if contribution pursuant to this Section 8(d) were determined by pro rata allocation (even if the Underwriters were treated as one entity for such purpose) or by any other method of allocation which does not take account of the equitable considerations referred to in this subsection (e).

9. *Default of Underwriters.* If any Underwriter or Underwriters default in their obligations to purchase Offered Securities hereunder on either the First or any Optional Closing Date and the aggregate number of Offered Securities that such defaulting Underwriter or Underwriters agreed but failed to purchase does not exceed 10% of the total number of Offered Securities that the Underwriters are obligated to purchase on such Closing Date, Credit Suisse may make arrangements satisfactory to the Company and the Selling Stockholders for the purchase of such Offered Securities by other persons, including any of the Underwriters, but if no such arrangements are made by such Closing Date, the non-defaulting Underwriters shall be obligated severally, in proportion to their respective commitments hereunder, to purchase the Offered Securities that such defaulting Underwriters agreed but failed to purchase on such Closing Date. If any Underwriter or Underwriters so default and the aggregate number of shares of Offered Securities with respect to which such default or defaults occur exceeds 10% of the total number of shares of Offered Securities that the Underwriters are obligated to purchase on such Closing Date and arrangements satisfactory to Credit Suisse, the Company and the Selling Stockholders for the purchase of such Offered Securities by other persons are not made within 36 hours after such default, this Agreement will terminate without liability on the part of any non-defaulting Underwriter, the Company or the Selling Stockholders, except as provided in Section 10 hereof (provided that if such default occurs with respect to Optional Securities after the First Closing Date, this Agreement will not terminate as to the Firm Securities or any Optional Securities purchased prior to such termination). As used in this Agreement, the term "Underwriter" includes any person substituted for an Underwriter under this Section. Nothing herein will relieve a defaulting Underwriter from liability for its default.

10. *Survival of Certain Representations and Obligations.* The respective indemnities, agreements, representations, warranties and other statements of the Selling Stockholders, of the Company or its officers and of the several Underwriters set forth in or made pursuant to this Agreement will remain in full force and effect, regardless of any investigation, or statement as to the results thereof, made by or on behalf of any Underwriter, any Selling Stockholder, the Company or any of their respective representatives, officers or directors or any controlling person, and will survive delivery of and payment for the Offered Securities. If the purchase of the Offered Securities by the Underwriters is not consummated for any reason other than (A) any event specified in Section 7(c)(iii), (iv), (vi), (vii) or (viii) or (B) solely because of the termination of this Agreement pursuant to Section 9 hereof, the Company will reimburse the Underwriters for all reasonable and documented out-of-pocket expenses (including reasonable fees and disbursements of one counsel for the Underwriters) incurred by them in connection with the offering of the Offered Securities, and the respective obligations of the Company, the Selling Stockholders and the Underwriters pursuant to Section 8 hereof shall remain in effect. In addition, if any Offered Securities have been purchased hereunder, the representations and warranties in Section 2 and all obligations under Sections 5 and 8 shall also remain in effect.

11. *Notices.* All communications hereunder will be in writing and, if sent to the Underwriters, will be mailed, delivered or telegraphed and confirmed to the Representatives at Credit Suisse Securities (USA) LLC, Eleven Madison Avenue, New York, N.Y. 10010-3629, Attention: LCD-IBD and Morgan Stanley & Co. LLC, 1585 Broadway, New York, New York 10036, Attention: Equity Syndicate Desk, with a copy to the Legal Department, or, if sent to the Company, will be mailed, delivered or telegraphed and confirmed to it at Smart & Final Stores, Inc., 600 Citadel Drive, Commerce CA 90040, Attention: Richard N. Phegley; with a copy to Proskauer Rose LLP, 2049 Century Park East, Suite 3200, Los Angeles, CA 90067, Attention: Philippa M. Bond, or, if sent to Ares Corporate Opportunities Fund III, L.P. or Ares Corporate Opportunities Fund IV, L.P., will be mailed, delivered or telegraphed and confirmed to 2000 Avenue of the Stars, 12<sup>th</sup> Floor, Los Angeles, CA 90067, Attn: Adam Stein, with a copy to Proskauer Rose LLP, 2049 Century Park East, Suite 3200, Los Angeles, CA 90067, Attention: Philippa M. Bond, or, if sent to Norman H. Axelrod, will be mailed, delivered or telegraphed and confirmed to Whalen LLP, 19000 MacArthur Blvd # 600, Irvine, CA 92612, Attention: Michael Whalen; provided, however that any notice to an Underwriter pursuant to Section 8 will be mailed, delivered or telegraphed and confirmed to such Underwriter.

12. *Successors.* This Agreement will inure to the benefit of and be binding upon the parties hereto and their respective successors and the officers, directors, partners, members, employees, agents, affiliates and controlling persons referred to in Section 8 hereof, and no other person will have any right or obligation hereunder.

13. *Representation of Underwriters.* The Representatives will act for the several Underwriters in connection with the transactions contemplated by this Agreement, and any action under this Agreement taken by the Representatives jointly will be binding upon all the Underwriters.

14. *Counterparts.* This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all such counterparts shall together constitute one and the same Agreement.

15. *Absence of Fiduciary Relationship.* The Company and the Selling Stockholders acknowledge and agree that:

(a) *No Other Relationship.* The Underwriters have been retained solely to act as underwriters in connection with the sale of the Offered Securities and that no fiduciary, advisory or agency relationship between the Company or the Selling Stockholders, on the one hand, and the Underwriters, on the other hand, has been created in respect of any of the transactions contemplated by this Agreement or the Final Prospectus, irrespective of whether any Underwriter has advised or is advising the Company or the Selling Stockholders on other matters;

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(b) *Arms' Length Negotiations.* The price of the Offered Securities set forth in this Agreement was established by the Company and the Selling Stockholders following discussions and arms-length negotiations with the Representatives and the Company and the Selling Stockholders are capable of evaluating and understanding and understand and accept the terms, risks and conditions of the transactions contemplated by this Agreement;

(c) *Absence of Obligation to Disclose.* The Company and the Selling Stockholders have been advised that the Underwriters and their respective affiliates are engaged in a broad range of transactions which may involve interests that differ from those of the Company or the Selling Stockholders and that the Underwriters have no obligation to disclose such interests and transactions to the Company or the Selling Stockholders by virtue of any fiduciary, advisory or agency relationship; and

(d) *Waiver.* The Company and the Selling Stockholders waive, to the fullest extent permitted by law, any claims they may have against any Underwriter for breach of fiduciary duty or alleged breach of fiduciary duty and agree that no Underwriter shall have any liability (whether direct or indirect) to the Company or the Selling Stockholders in respect of such a fiduciary duty claim or to any person asserting a fiduciary duty claim on behalf of or in right of the Company, including stockholders, employees or creditors of the Company.

**16. *Applicable Law.* This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York.**

The Company hereby submits to the non-exclusive jurisdiction of the Federal and state courts in the Borough of Manhattan in The City of New York in any suit or proceeding arising out of or relating to this Agreement or the transactions contemplated hereby. The Company irrevocably and unconditionally waives any objection to the laying of venue of any suit or proceeding arising out of or relating to this Agreement or the transactions contemplated hereby in Federal and state courts in the Borough of Manhattan in The City of New York and irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such suit or proceeding in any such court has been brought in an inconvenient forum.

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If the foregoing is in accordance with the Representatives' understanding of our agreement, kindly sign and return to the Company one of the counterparts hereof, whereupon it will become a binding agreement among the Company, the Selling Stockholders and the several Underwriters in accordance with its terms.

Very truly yours,

SMART & FINAL STORES, INC.

By: /s/ Richard N. Phegley

Name: Richard N. Phegley  
Title: Senior Vice President

SELLING STOCKHOLDERS:

ARES CORPORATE OPPORTUNITIES FUND III, L.P.

By: ACOF Operating Manager III, LLC, its Manager

By: /s/ Naseem Sagati  
Name: Naseem Sagati  
Title: Authorized Signatory

ARES CORPORATE OPPORTUNITIES FUND IV, L.P.

By: ACOF Operating Manager IV, LLC, its Manager

By: /s/ Naseem Sagati  
Name: Naseem Sagati  
Title: Authorized Signatory

/s/ . Norman H. Axelrod  
Norman H. Axelrod

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The foregoing Underwriting Agreement is hereby confirmed and accepted as of the date first above written.

CREDIT SUISSE SECURITIES (USA) LLC

By: /s/ Jill Ford  
Name: Jill Ford  
Title: Managing Director

MORGAN STANLEY & CO. LLC

By: /s/ Thilakshani Dias  
Name: Thilakshani Dias  
Title: Executive Director

Acting on behalf of themselves and as the Representatives of the several Underwriters.

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#### SCHEDULE A

<u>Selling Stockholder</u>	<u>Number of Firm Securities to be Sold</u>	<u>Number of Optional Securities to be Sold</u>
Ares Corporate Opportunities Fund III, L.P.	4,991,394	748,709
Ares Corporate Opportunities Fund IV, L.P.	4,991,394	748,709
Norman H. Axelrod	<u>17,212</u>	<u>2,582</u>
Total	<u>10,000,000</u>	<u>1,500,000</u>

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#### SCHEDULE B

<u>Underwriter</u>	<u>Number of Firm Securities</u>
Credit Suisse Securities (USA) LLC	2,758,333
Morgan Stanley & Co. LLC	2,758,333

Deutsche Bank Securities Inc.	1,838,889
Barclays Capital Inc.	755,556
Citigroup Global Markets Inc.	708,333
Piper Jaffray & Co.	708,333
Guggenheim Securities, LLC	472,223
Total	<u>10,000,000</u>

## SCHEDULE C

### 1. General Use Issuer Free Writing Prospectuses (included in the General Disclosure Package)

“General Use Issuer Free Writing Prospectus” includes each of the following documents:

1. None.

### 2. Other Information Included in the General Disclosure Package

The following information is also included in the General Disclosure Package:

1. The price to the public of the Offered Securities shall be \$18.50 per share.
2. The Selling Stockholders are selling 10,000,000 shares of Firm Securities.
3. The Selling Stockholders have granted an option to the Underwriters, severally and not jointly, to purchase up to 1,500,000 shares of Optional Securities.

## EXHIBIT A

[Form of Lock-Up Agreement]

\_\_\_\_\_, 2015

Smart & Final Stores, Inc.  
600 Citadel Drive  
Commerce, CA 90040

Credit Suisse Securities (USA) LLC  
Morgan Stanley & Co. LLC  
As Representatives of the Several Underwriters,  
c/o Credit Suisse Securities (USA) LLC  
Eleven Madison Avenue  
New York, NY 10010-3629

Ladies and Gentlemen:

As an inducement to the Underwriters to execute the Underwriting Agreement (the “**Underwriting Agreement**”), providing for a public offering of common stock (the “**Securities**”) of Smart & Final Stores, Inc., and any successor (by merger or otherwise) thereto, (the “**Company**”), the undersigned hereby agrees that during the period specified in the following paragraph (the “**Lock-Up Period**”), the undersigned will not offer, sell, contract to sell, pledge or otherwise dispose of, directly or indirectly, any Securities or securities convertible into or exchangeable or exercisable for any Securities, enter into a transaction which would have the same effect, or enter into any swap, hedge or other arrangement that transfers, in whole or in part, any of the economic consequences of ownership of the Securities, whether any such aforementioned transaction is to be settled by delivery of the Securities or such other securities, in cash or otherwise, or publicly disclose the intention to make any such offer, sale, pledge or disposition, or to enter into any such transaction, swap, hedge or other arrangement, without, in each case, the prior written consent of Credit Suisse Securities (USA) LLC and Morgan Stanley & Co. LLC (collectively, the “**Representatives**”). In addition, the undersigned agrees that, without the prior written consent of the Representatives, it will not, during the Lock-Up Period, make any demand for or exercise any right with respect to, the registration

of any Securities or any security convertible into or exercisable or exchangeable for the Securities.

The initial Lock-Up Period will commence on the date of this Lock-Up Agreement and continue and include the date 90 days after the public offering date set forth on the final prospectus used to sell the Securities (the “**Public Offering Date**”) pursuant to the Underwriting Agreement, to which you are or expect to become parties; provided, however, that if (1) during the last 17 days of the initial Lock-Up Period, the Company releases earnings results or material news or a material event relating to the Company occurs or (2) prior to the expiration of the initial Lock-Up Period, the Company announces that it will release earnings results during the 16-day period beginning on the last day of the initial Lock-Up Period, then in each case the Lock-Up Period will be extended until the expiration of the 18-day period beginning on the date of release of the earnings results or the occurrence of the material news or material event, as applicable, unless the Representatives waive, in writing, such extension.

The undersigned agrees that, prior to engaging in any transaction or taking any other action that is subject to the terms of this Lock-Up Agreement during the period from the date of this Lock-Up Agreement to and including the 34<sup>th</sup> day following the expiration of the initial Lock-Up Period, it will give notice thereof to the Company and will not consummate such transaction or take any such action unless it has received written confirmation from the Company that the Lock-Up Period (as may have been extended pursuant to the previous paragraph) has expired.

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Any Securities received after the date hereof (including those received upon exercise of options granted to the undersigned) will also be subject to this Lock-Up Agreement. Any Securities acquired by the undersigned in the open market will not be subject to this Lock-Up Agreement, provided that no filing or public announcement by any party (donor, donee, transferor or transferee) under the Securities Exchange Act of 1934 (the “**Exchange Act**”) or otherwise shall be required or shall be voluntarily made in connection with subsequent transfers of such Securities (other than a filing on a Form 5 made after the expiration of the Lock-Up Period). Notwithstanding the foregoing, the undersigned may transfer Securities (i) as a distribution to limited partners, members or stockholders of the undersigned if the undersigned is a partnership, limited liability company or corporation; (ii) to the undersigned’s affiliates or to any investment fund or other entity controlled or managed by the undersigned; (iii) to a family member or trust for the benefit of the undersigned or a family member of the undersigned (including upon death by will or intestacy); (iv) as a bona fide gift or gifts; and (v) to a charitable organization; provided that in each case, the transferee agrees to be bound in writing by the terms of this Lock-Up Agreement prior to such transfer and no filing or public announcement by any party (donor, donee, transferor or transferee) under the Exchange Act or otherwise shall be required or shall be voluntarily made in connection with such transfer (other than a filing on a Form 5 made after the expiration of the Lock-Up Period). In addition, the foregoing will not apply to the registration of the offer and sale of the Offered Securities, and the sale of the Offered Securities to the underwriters, in each case as contemplated by the Underwriting Agreement.

In addition to the preceding paragraph and notwithstanding anything to the contrary herein, the undersigned may enter into an agreement or trading plan to allow brokerage sales of all or a portion of the Securities pursuant to Rule 10b5-1 of the Exchange Act, provided that (i) any such brokerage sales or transfer may not occur prior to the expiration of the Lock-Up Period and (ii) prior to the expiration of the Lock-Up Period, no public disclosure or filing under the Exchange Act or Rule 144 under the Securities Act of 1933, as amended, by any party shall be required, or made, voluntarily reporting such agreement or trading plan.

In furtherance of the foregoing, the Company and its transfer agent and registrar are hereby authorized to decline to make any transfer of shares of Securities if such transfer would constitute a violation or breach of this Lock-Up Agreement.

This Lock-Up Agreement shall be binding on the undersigned and the successors, heirs, personal representatives and assigns of the undersigned. This Lock-Up Agreement shall lapse and become null and void (i) if the Public Offering Date shall not have occurred on or before May 31, 2015 or (ii) upon written notice from an authorized officer of the Company to the Representatives, executed and delivered prior to the signing of the Underwriting Agreement, that the Company has determined not to proceed with the public offering of the Securities described herein. **This agreement shall be governed by, and construed in accordance with, the laws of the State of New York.**

Very truly yours,

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Name:

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Document Format Files

Seq	Description	Document	Type	Size
1	8-K	<a href="#">a15-7999_78k.htm</a>	8-K	26285
2	EX-1.1	<a href="#">a15-7999_7ex1d1.htm</a> <a href="#">0001101650_15</a>	EX-1.1	272347

