

AFC ENTERPRISES INC

FORM 8-K

(Current report filing)

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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

FORM 8-K

**CURRENT REPORT PURSUANT
TO SECTION 13 OR 15(D) OF THE
SECURITIES EXCHANGE ACT OF 1934**

Date of report (Date of earliest event reported) March 12, 2008

AFC Enterprises, Inc.

(Exact Name of Registrant as Specified in Its Charter)

Minnesota

(State or Other Jurisdiction of Incorporation)

000-32369

58-2016606

(Commission File Number)

(IRS Employer Identification No.)

5555 Glenridge Connector, NE, Suite 300, Atlanta, Georgia

30342

(Address of Principal Executive Offices)

(Zip Code)

(404) 459-4450

(Registrant's Telephone Number, Including Area Code)

Not applicable

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

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

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
 - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
 - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
 - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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Item 1.01. Entry into a Material Definitive Agreement.

AFC Enterprises, Inc. (the “Company”) has previously announced that its Board of Directors has authorized repurchases of up to \$165 million of the Company’s common stock. As of February 22, 2008, the remaining value of shares that may be repurchased under the program was \$56.4 million. Pursuant to this repurchase program, the Company has today entered into an accelerated stock repurchase agreement with a financial institution to repurchase \$15 million of common stock.

Under the agreement, the financial institution will borrow and deliver to the Company on March 13, 2008, approximately 1.956 million shares of common stock, and upon completion of the transaction, there will be an adjustment so that the Company will receive in total \$15 million of shares, based on a volume weighted average price for the common stock during a stated period, minus an agreed discount. The Company may undertake additional repurchases of its common stock in the open market, either before or after completion of the accelerated stock repurchase transaction.

A copy of the accelerated stock repurchase agreement is attached to this Current Report on Form 8-K as Exhibit 10.1 and is incorporated herein by reference.

Item 2.02. Results of Operations and Financial Condition.

On March 12, 2008, the Company reported results for its fiscal year 2007 ended December 30, 2007. The Company also announced a new strategic plan designed to enhance shareholder value and leverage the Popeyes brand through expanded marketing and menu offerings in addition to improving the guest experience and unit economics. A key component of the strategic plan is the commencement of a process to identify experienced and qualified franchisees to purchase company-operated restaurants. A copy of the Company’s press release is attached to this Current Report on Form 8-K as Exhibit 99.1 and is incorporated herein by reference.

Such information, including the Exhibits attached hereto, shall not be deemed “filed” for purposes of Section 18 of the Securities Exchange Act of 1934, nor shall it be deemed incorporated by reference in any filing under the Securities Act of 1933, except as shall be expressly set forth by specific reference in such filing.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits.

- 10.1 Accelerated Stock Repurchase Agreement by and between AFC Enterprises, Inc. and J.P. Morgan Securities Inc., as agent for JPMorgan Chase Bank, National Association, London Branch dated March 12, 2008.
 - 99.1 Press Release dated March 12, 2008.
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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.

AFC Enterprises, Inc.

Date: March 12, 2008

By: /s/ Harold M. Cohen
Harold M. Cohen
Senior Vice President, General Counsel and
Corporate Secretary



March 12, 2008

AFC Enterprises, Inc.
5555 Glenridge Connector, NE, Suite 300
Atlanta, Georgia, 30342

Ladies and Gentlemen:

The purpose of this letter agreement (this “ **Confirmation** ”) is to confirm the terms and conditions of the Transaction entered into between J.P. Morgan Securities Inc., as agent for JPMorgan Chase Bank, National Association, London Branch (the “ **Seller** ”), and AFC Enterprises, Inc., a Minnesota corporation (the “ **Purchaser** ”), on the Trade Date specified below (the “ **Transaction** ”). This Confirmation constitutes a “Confirmation” as referred to in the Agreement specified below.

This Confirmation evidences a complete and binding agreement between the Seller and the Purchaser as to the terms of the Transaction to which this Confirmation relates. This Confirmation shall supplement, form a part of, and be subject to an agreement in the form of the 2002 ISDA Master Agreement (the “ **Agreement** ”) as if the Seller and the Purchaser had executed an agreement in such form (but without any Schedule except for the election of the laws of the State of New York as the governing law but without regard to its choice of law provisions), on the Trade Date. In the event of any inconsistency between provisions of that Agreement and this Confirmation, this Confirmation will prevail for the purpose of the Transaction to which this Confirmation relates. The parties hereby agree that no Transaction other than the Transaction to which this Confirmation relates shall be governed by the Agreement.

ARTICLE 1
DEFINITIONS

Section 1.01 . *Definitions.* (a) As used in this Confirmation, the following terms shall have the following meanings:

“ **10b-18 VWAP** ” means, (A) for any Trading Day described in clause (x) of the definition of Trading Day hereunder, the volume-weighted average price at which the Common Stock trades as reported in the composite transactions for the principal United States securities exchange on which such Common Stock is then listed (or, if applicable, the Successor Exchange on which the Common Stock has been listed in accordance with Section 7.01(c)), on such Trading Day, excluding (i) trades that do not settle regular way, (ii) opening (regular way) reported trades in the consolidated system on such Trading Day, (iii) trades that occur in the last ten minutes before the scheduled close of trading on the Exchange on such Trading Day and ten minutes before the scheduled close of the primary trading in the market where the trade is effected, and (iv) trades on such Trading Day that do not satisfy the requirements of Rule 10b-18(b)(3), as determined in good faith by the Calculation Agent, or (B) for any Trading Day that is described in clause (y) of the definition of Trading Day hereunder, an amount determined in good faith by the Calculation Agent as 10b-18 VWAP. The Purchaser acknowledges that the Calculation Agent may refer to the Bloomberg Page “AFCE.UQ <Equity> AQR SEC” (or any successor thereto), in its judgment, for such Trading Day to determine the 10b-18 VWAP.

“ **Additional Termination Event** ” has the meaning set forth in Section 7.01.

“ **Agreement** ” has the meaning set forth in the second paragraph of this Confirmation.

JPMorgan Chase Bank, National Association
Organised under the laws of the United States as a National Banking Association.
Main Office 1111 Polaris Parkway, Columbus, Ohio 43271
Registered as a branch in England & Wales branch No. BR000746.
Registered Branch Office 125 London Wall, London EC2Y 5AJ
Authorised and regulated by the Financial Services Authority

“ **Affected Party** ” has the meaning set forth in Section 14 of the Agreement.

“ **Affected Transaction** ” has the meaning set forth in Section 14 of the Agreement.

“ **Affiliated Purchaser** ” means any “affiliated purchaser” (as such term is defined in Rule 10b-18) of the Purchaser.

“ **Alternative Termination Delivery Unit** ” means (i) in the case of a Termination Event (other than following consummation of a Merger Event or Nationalization) or Event of Default (as defined in the Agreement), one share of Common Stock and (ii) in the case of consummation of a Merger Event or Nationalization, a unit consisting of the number or amount of each type of property received by a holder of one share of Common Stock in such Merger Event or Nationalization; *provided* that if such Merger Event involves a choice of consideration to be received by holders of the Common Stock, an Alternative Termination Delivery Unit shall be deemed to include the amount of cash received by a holder who had elected to receive the maximum possible amount of cash as consideration for his shares.

“ **Bankruptcy Code** ” has the meaning set forth in Section 9.07.

“ **Business Day** ” means any day on which the Exchange is open for trading.

“ **Calculation Agent** ” means JPMorgan Chase Bank, National Association.

“ **Cash Distribution** ” has the meaning set forth in Section 7.01(f).

“ **Cash Settlement Amount** ” has the meaning set forth in Section 3.01(d).

“ **Cash Settlement Purchase Period** ” means the period during which the Seller purchases shares of Common Stock to unwind its hedge position following the Valuation Completion Date.

“ **Common Stock** ” has the meaning set forth in Section 2.01.

“ **Communications Procedures** ” has the meaning set forth in Annex C hereto.

“ **Confirmation** ” has the meaning set forth in the first paragraph of this letter agreement.

“ **Contract Fee** ” means the amount specified as such in the Pricing Supplement.

“ **Contract Period** ” means the period commencing on and including the Trade Date and ending on and including the date all payments or deliveries of shares of Common Stock pursuant to Section 3.01 or Section 7.03 have been made.

“ **Default Notice Day** ” has the meaning set forth in Section 7.02(a).

“ **De-Listing** ” has the meaning set forth in Section 7.01(c).

“ **Discount** ” means the amount specified as such in the Pricing Supplement.

“ **Distribution Termination Event** ” has the meaning set forth in Section 7.01(f).

“ **Early Termination Date** ” has the meaning set forth in Section 14 of the Agreement.

“ **Event of Default** ” has the meaning set forth in Section 14 of the Agreement.

“ **Exchange** ” means the NASDAQ Global Market.

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

“ **Expiration Date** ” means the 128th Trading Day following the Initial Settlement Date.

“ **Federal Funds Rate** ” means, for any day, the rate on such day for Federal Funds, as published by Telerate on page 129, titled Federal Funds Rate, under the column, “Open”; *provided* that if any such day is not a New York Banking Day, the Federal Funds Rate for such day shall be the Federal Funds Rate for the immediately preceding New York Banking Day.

“ **Federal Funds Spread** ” means the percentage specified as such in the Pricing Supplement.

“ **Indemnified Person** ” has the meaning set forth in Section 9.02.

“ **Indemnifying Party** ” has the meaning set forth in Section 9.02.

“ **Initial Delivery Percentage** ” means the percentage specified as such in the Pricing Supplement.

“ **Initial Number of Shares** ” means the number of shares of Common Stock, rounded down to the nearest integer, equal to the product of (i) the Initial Delivery Percentage and (ii) the Purchase Price *divided by* the Initial Share Price.

“ **Initial Settlement Date** ” has the meaning set forth in Section 2.02.

“ **Initial Share Price** ” means \$7.67.

“ **Maximum Delivery Shares** ” means, for any date, (i) 5,867,013 shares of Common Stock, *minus* (ii) the net number of shares of Common Stock delivered by the Purchaser to the Seller in respect of this Transaction on or prior to such date, *plus* (iii) the net number of shares of Common Stock delivered by the Seller to the Purchaser in respect of this Transaction on or prior to such date, subject to appropriate adjustments pursuant to Section 8.02.

“ **Merger Event** ” has the meaning set forth in Section 7.01(d).

“ **Nationalization** ” has the meaning set forth in Section 7.01(e).

“ **New York Banking Day** ” means any day other than a Saturday, a Sunday, a legal holiday or a day on which banking institutions are authorized or required by law or regulation to close in The City of New York.

“ **Number of Shares** ” has the meaning set forth in Section 2.01.

“ **Obligations** ” has the meaning set forth in Section 9.02.

“ **Pricing Supplement** ” means the Pricing Supplement attached hereto as Annex D.

“ **Private Placement Agreement** ” has the meaning set forth in Annex A hereto.

“ **Private Placement Price** ” means the private placement value of a share of Common Stock as determined in accordance with Annex A hereto.

“ **Private Placement Shares** ” has the meaning set forth in Section 3.01(b).

“ **Private Placement Procedures** ” has the meaning set forth in Annex A hereto.

“ **Private Securities** ” has the meaning set forth in Annex A hereto.

“ **Purchase Price** ” has the meaning set forth in Section 2.01.

“ **Purchaser** ” has the meaning set forth in the first paragraph of this Confirmation.

“ **Registered Shares** ” has the meaning set forth in Section 3.01(b).

“ **Registered Shares Fee** ” means the amount specified as such in the Pricing Supplement.

“ **Registration Procedures** ” has the meaning set forth in Annex B hereto.

“ **Regulation M** ” means Regulation M under the Exchange Act.

“ **Rule 10b-18** ” means Rule 10b-18 promulgated under the Exchange Act (or any successor rule thereto).

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

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

“ **Seller** ” has the meaning set forth in the first paragraph hereto.

“ **Seller Termination Share Purchase Period** ” has the meaning set forth in Section 7.03.

“ **Settlement Date** ” means (i) if Section 3.01(a)(i) is applicable, the fourth Business Day following the Valuation Completion Date; (ii) if settlement in cash is applicable pursuant to Section 3.01(d), the date of such cash payment determined in accordance with Section 3.01(d)(ii); (iii) if Section 3.01(e) is applicable, the Business Day immediately following the day on which the Seller informs the Purchaser, pursuant to Annex A hereto, of the number of Private Placement Shares required to be delivered; and (iv) if Section 3.01(f) is applicable, each of the dates so advised by the Seller pursuant to Annex B hereto.

“ **Settlement Number** ” means a number of shares of Common Stock, rounded down to the nearest integer and which number may be negative, equal to (i) the Valuation Number *minus* (ii) the Initial Number of Shares.

“ **Settlement Purchase Amount** ” means an amount in cash equal to (i) the absolute value of the Settlement Number *multiplied by* (ii) the dollar volume weighted average price per share at which Seller or its designated affiliate executes purchases of shares of Common Stock during the Cash Settlement Purchase Period in respect of its hedge position for the Transaction.

“ **Settlement Shares** ” has the meaning set forth in Section 3.01(b).

“ **Share De-listing Event** ” has the meaning set forth in Section 7.01(c).

“ **Successor Exchange** ” has the meaning set forth in Section 7.01(c).

“ **Termination Amount** ” has the meaning set forth in Section 7.02(a).

“ **Termination Event** ” has the meaning set forth in Section 14 of the Agreement.

“ **Termination Price** ” means the value of an Alternative Termination Delivery Unit to the Seller (determined as provided in Annex A hereto).

“ **Termination Settlement Date** ” has the meaning set forth in Section 7.03(a).

“ **Trade Date** ” has the meaning set forth in Section 2.01.

“ **Trading Day** ” means (x) any day (i) other than a Saturday, a Sunday or a day on which the Exchange is not open for business, (ii) during which trading of any securities of the Purchaser on any national securities exchange has not been suspended, (iii) during which there has not been, in the Seller’s judgment, a material

limitation in the trading of Common Stock or any options contract or futures contract related to the Common Stock, and (iv) during which there has been no suspension pursuant to Section 4.02 of this Confirmation, or (y) any day that, notwithstanding the occurrence of events contemplated in clauses (ii), (iii) and (iv) of this definition, the Seller determines to be a Trading Day.

“ **Transaction** ” has the meaning set forth in the first paragraph of this Confirmation.

“ **Valuation Completion Date** ” has the meaning set forth in the Pricing Supplement.

“ **Valuation Number** ” means (i) the Purchase Price *divided by* (ii) the arithmetic average of 10b-18 VWAP for each of the Trading Days in the Valuation Period *minus* the Discount, as determined by the Calculation Agent in its sole reasonable judgment.

“ **Valuation Period** ” means the period of consecutive Trading Days commencing on and including the first Trading Day following the Initial Settlement Date and ending on and including the Valuation Completion Date.

ARTICLE 2 PURCHASE OF THE STOCK

Section 2.01 . *Purchase of the Stock*. Subject to the terms and conditions of this Confirmation, the Purchaser agrees to purchase from the Seller, and the Seller agrees to sell to the Purchaser, on March 12, 2008 or on such other Business Day as the Purchaser and the Seller shall otherwise agree in writing (the “ **Trade Date** ”), a number of shares (the “ **Number of Shares** ”) of the Purchaser’s common stock, par value \$0.01 per share (“ **Common Stock** ”), for a purchase price equal to \$15,000,000.00 (the “ **Purchase Price** ”). The Number of Shares purchased by the Purchaser hereunder shall be determined in accordance with the terms of this Confirmation.

Section 2.02 . *Delivery and Payments*. On the first Business Day immediately following the Trade Date (such day, the “ **Initial Settlement Date** ”), the Seller shall deliver the Initial Number of Shares to the Purchaser, upon payment by the Purchaser of (i) an amount equal to the Purchase Price to the Seller and (ii) the Contract Fee to J.P. Morgan Securities Inc.; *provided* that if the Seller is unable to borrow or otherwise acquire a number of shares of Common Stock equal to the Initial Number of Shares for delivery to the Purchaser on the Initial Settlement Date, the Initial Number of Shares shall be reduced to such number of shares of Common Stock as the Seller is able to borrow or otherwise acquire and any amounts payable by the Purchaser pursuant to this Article 2 shall be reduced correspondingly. Such delivery and payment shall be effected in accordance with the Seller’s customary procedures.

Section 2.03 . *Conditions to Seller’s Obligations*. The Seller’s obligation to deliver the Initial Number of Shares to the Purchaser on the Initial Settlement Date is subject to the condition that the representations and warranties made by the Purchaser in the Agreement shall be true and correct as of the date hereof and the Initial Settlement Date.

ARTICLE 3 SUBSEQUENT PAYMENTS OR SHARE DELIVERIES

Section 3.01 . *Subsequent Payments or Share Deliveries*. (a) (i) If the Settlement Number is greater than zero, the Seller shall deliver to the Purchaser a number of shares of Common Stock equal to the Settlement Number on the Settlement Date in accordance with the Seller’s customary procedures; and

(ii) if the Settlement Number is less than zero, the Purchaser shall make a payment of cash or delivery of shares of Common Stock to the Seller in respect of the absolute value of the Settlement Number, as provided in this Section 3.01.

(b) Subject to Section 3.01(c), payment of the absolute value of the Settlement Number by the Purchaser to the Seller shall be in cash or validly issued shares of Common Stock (“ **Settlement Shares** ”), and if in shares of Common Stock, then in shares to be sold in a private placement (“ **Private Placement Shares** ”) or registered shares (“ **Registered Shares** ”), as the Purchaser shall elect, which binding election shall be made by written notice to the Seller no later than the close of business on the second Business Day following the Valuation Completion Date; *provided* that by making an election to deliver Settlement Shares pursuant to this Section 3.01(b), the Purchaser shall be deemed to make the representations and warranties in Section 5.01 as if made on the date of the Purchaser’s election; and *provided further* that if the Purchaser fails to make such election by such date, the Purchaser shall be deemed to have elected settlement in cash.

(c) (i) Any election by the Purchaser to deliver the absolute value of the Settlement Number in Settlement Shares pursuant to clause (b) of this Section 3.01 shall not be valid, and settlement in cash shall apply, if the representations and warranties made by the Purchaser to the Seller in Section 5.01 are not true and correct in all material respects as of the date the Purchaser makes such election.

(ii) Notwithstanding any election by the Purchaser to make payment of the absolute value of the Settlement Number in Settlement Shares, at any time prior to the time the Seller (or any affiliate of the Seller) has contracted to resell all or any portion of such Settlement Shares, the Purchaser may elect to deliver in lieu of such Settlement Shares an amount in cash equal to the absolute value of the Settlement Number with respect to any Settlement Shares not yet contracted to be sold, in which case the provisions of Section 3.01(d) shall apply with respect to such amount; *provided* that any such election by the Purchaser pursuant to this clause (ii) shall not be valid and settlement in Settlement Shares shall continue to apply if the representations and warranties made by the Purchaser to the Seller in Section 5.01(a) are not true and correct in all material respects as of the date the Purchaser makes such election.

(iii) If the Purchaser elects to make payment of the absolute value of the Settlement Number (A) in Private Placement Shares and fails to comply with the requirements set forth in Section 3.01(e) or Annex A hereto or takes any action that would make unavailable either (1) the exemption set forth in Section 4(2) of the Securities Act for the sale of any Private Placement Shares by the Purchaser to the Seller or (2) an exemption from the registration requirements of the Securities Act reasonably acceptable to the Seller for resales of Private Placement Shares by the Seller, or (B) in Registered Shares and fails to comply with the requirements set forth in Section 3.01(f) or Annex B hereto; then in the case of either (A) or (B), the Purchaser shall deliver in lieu of any Private Placement Shares or Registered Shares an amount in cash equal to the absolute value of the Settlement Number with respect to any Settlement Shares not yet sold, in which case the provisions of Section 3.01(d) shall apply with respect to such amount.

(d) (i) If the Purchaser elects to pay the absolute value of the Settlement Number in cash, if settlement in cash is otherwise applicable in accordance with this Section 3.01, or if the Purchaser elects to make payment of the absolute value of the Settlement Number in Private Placement Shares pursuant to Section 3.01(e), then the Calculation Agent shall determine an amount in cash (the “ **Cash Settlement Amount** ”) equal to (i) the Settlement Purchase Amount *plus* (ii) interest with respect thereto at the Federal Funds Rate *plus* the Federal Funds Spread for the period from and including the third Trading Day following the Valuation Completion Date to but excluding the Settlement Date.

(ii) If cash settlement is applicable, payment of the Cash Settlement Amount shall be made by wire transfer of immediately available U.S. dollar funds on the first Business Day immediately following the date of notification by the Seller to the Purchaser of the Cash Settlement Amount or such later Business Day as determined by the Seller in its sole discretion.

(e) If the Purchaser elects to make payment of the absolute value of the Settlement Number in Private Placement Shares, then on the Settlement Date, the Purchaser shall deliver to the Seller a number of

Settlement Shares equal to (A) the Cash Settlement Amount *divided by* (B) the Private Placement Price (determined by the Calculation Agent in accordance with the Private Placement Procedures contained in Annex A hereto).

(f) If the Purchaser elects to make payment of the absolute value of the Settlement Number in Registered Shares, then the Purchaser shall deliver to the Seller a number of Settlement Shares equal to (A) the absolute value of the Settlement Number *plus* (B) an additional number of Settlement Shares to take into account the Registered Shares Fee on the absolute value of the Settlement Number. Such Settlement Shares shall be delivered in such numbers and on such dates on or following the Valuation Completion Date as are specified by the Seller in accordance with the Registration Procedures contained in Annex B hereto.

Section 3.02 . *Private Placement Procedures and Registration Procedures.* If the Purchaser elects to deliver Private Placement Shares pursuant to Section 3.01(b) or elects to deliver Alternative Termination Delivery Units pursuant to Section 7.02(a), the Private Placement Procedures contained in Annex A hereto shall apply, and if the Purchaser elects to deliver Registered Shares pursuant to Section 3.01(b), the Registration Procedures contained in Annex B hereto shall apply.

Section 3.03 . *Continuing Obligation to Deliver Shares.* (a) If at any time, as a result of provisions limiting deliveries of shares of Common Stock to the number of Maximum Delivery Shares, the Purchaser fails to deliver to the Seller any shares of Common Stock, the Purchaser shall, to the extent that the Purchaser has at such time authorized but unissued shares of Common Stock not reserved for other purposes, promptly notify the Seller thereof and deliver to the Seller a number of shares of Common Stock not previously delivered as a result of such provisions.

(b) The Purchaser agrees to use its best efforts to cause the number of authorized but unissued shares of Common Stock to be increased, if necessary, to an amount sufficient to permit the Purchaser to fulfill its obligations under this Section 3.03.

ARTICLE 4 MARKET TRANSACTIONS

Section 4.01 . *Transactions by the Seller.* (a) The parties agree and acknowledge that:

(i) During any Cash Settlement Purchase Period and any Seller Termination Share Purchase Period, the Seller (or its agent or affiliate) may purchase shares of Common Stock in connection with this Confirmation. The timing of such purchases by the Seller, the price paid per share of Common Stock pursuant to such purchases and the manner in which such purchases are made, including without limitation whether such purchases are made on any securities exchange or privately, shall be within the sole judgment of the Seller; *provided* that the Seller shall use good faith efforts to make all purchases of Common Stock in a manner that would comply with the limitations set forth in clauses (b)(2), (b)(3), (b)(4) and (c) of Rule 10b-18 (but without regard to clause (a)(13)(iv) of Rule 10b-18) as if such rule were applicable to such purchases.

(ii) During the Valuation Period, the Seller (or its agent or affiliate) may effect transactions in shares of Common Stock in connection with this Confirmation. The timing of such transactions by the Seller, the price paid or received per share of Common Stock pursuant to such transactions and the manner in which such transactions are made, including without limitation whether such transactions are made on any securities exchange or privately, shall be within the sole judgment of the Seller.

(iii) The Purchaser shall, at least one day prior to the first day of the Valuation Period, any Cash Settlement Purchase Period and any Seller Termination Share Purchase Period, notify the Seller of the total number of shares of Common Stock purchased in Rule 10b-18 purchases of blocks pursuant to the once-a-week block exception set forth in Rule 10b-18(b)(4) by or for the Purchaser or any of its Affiliated Purchasers during each of the four calendar weeks preceding such day and during the calendar week in

which such day occurs (“ **Rule 10b-18 purchase** ” and “ **blocks** ” each being used as defined in Rule 10b-18), which notice shall be substantially in the form set forth as Exhibit A hereto.

(b) The Purchaser acknowledges and agrees that (i) all transactions effected pursuant to Section 4.01 hereunder shall be made in the Seller’s sole judgment and for the Seller’s own account and (ii) the Purchaser does not have, and shall not attempt to exercise, any influence over how, when or whether to effect such transactions, including, without limitation, the price paid or received per share of Common Stock pursuant to such transactions or whether such transactions are made on any securities exchange or privately. It is the intent of the Seller and the Purchaser that this Transaction comply with the requirements of Rule 10b5-1(c) of the Exchange Act and that this Confirmation shall be interpreted to comply with the requirements of Rule 10b5-1(c)(1)(i)(B) and the Seller shall take no action that results in the Transaction not so complying with such requirements.

(c) Notwithstanding anything to the contrary in this Confirmation, the Purchaser acknowledges and agrees that, on any day, the Seller shall not be obligated to deliver or receive any shares of Common Stock to or from the Purchaser and the Purchaser shall not be entitled to receive any shares of Common Stock from the Seller on such day, to the extent (but only to the extent) that after such transactions the Seller’s ultimate parent entity would directly or indirectly beneficially own (as such term is defined for purposes of Section 13(d) of the Exchange Act) at any time on such day in excess of 8.0% of the outstanding shares of Common Stock. Any purported receipt or delivery of shares of Common Stock shall be void and have no effect to the extent (but only to the extent) that after any receipt or delivery of such shares of Common Stock the Seller’s ultimate parent entity would directly or indirectly so beneficially own in excess of 8.0% of the outstanding shares of Common Stock. If, on any day, any delivery or receipt of shares of Common Stock by the Seller is not effected, in whole or in part, as a result of this provision, the Seller’s and Purchaser’s respective obligations to make or accept such receipt or delivery shall not be extinguished and such receipt or delivery shall be effected over time as promptly as the Seller determines, in the reasonable determination of the Seller, that after such receipt or delivery its ultimate parent entity would not directly or indirectly beneficially own in excess of 8.0% of the outstanding shares of Common Stock.

Section 4.02 . *Adjustment of Transaction for Securities Laws.* (a) Notwithstanding anything to the contrary in Section 4.01(a), if, based on the advice of counsel, Seller reasonably determines that on any Trading Day, Seller’s trading activity in order to manage its economic hedge in respect of the Transaction would not be advisable in respect of applicable securities laws, then Seller may extend the Expiration Date, modify the Valuation Period or otherwise adjust the terms of the Transaction in its good faith reasonable discretion to ensure Seller’s compliance with such laws and to preserve the fair value of the Transaction to the Seller. The Seller shall notify the Purchaser of the exercise of the Seller’s rights pursuant to this Section 4.02(a) upon such exercise. Upon request, the Seller shall provide the Purchaser with a schedule setting forth in reasonable detail the basis of any adjustment made to this Transaction pursuant to this Section 4.02(a).

(b) The Purchaser agrees that, during the Contract Period, neither the Purchaser nor any of its affiliates or agents shall make any distribution (as defined in Regulation M) of Common Stock, or any security for which the Common Stock is a reference security (as defined in Regulation M) or take any other action that would, in the view of the Seller, preclude purchases by the Seller of the Common Stock or cause the Seller to violate any law, rule or regulation with respect to such purchases.

Section 4.03 . *Purchases of Common Stock by the Purchaser.* Without the prior written consent of the Seller, the Purchaser shall not, and shall cause its affiliates and affiliated purchasers (each as defined in Rule 10b-18) not to, directly or indirectly (including, without limitation, by means of a derivative instrument) purchase, offer to purchase, place any bid or limit order that would effect a purchase of, or commence any tender offer relating to, any shares of Common Stock (or equivalent interest, including a unit of beneficial interest in a trust or limited partnership or a depository share) or any security convertible into or exchangeable for shares of Common Stock during the Contract Period; *provided, however* , that (a) the foregoing restriction shall not apply to any purchase of shares of Common Stock effected by or for a Purchaser “plan” by an “agent independent of the issuer” (each as interpreted under Rule 10b-18) and (b) without the prior written consent of the Seller the Purchaser may purchase shares of Common Stock pursuant to a publicly announced stock buyback program, so long as (i) on any day such purchases are conducted solely through the same broker or dealer used by Seller in effecting purchases of Common Stock in connection with this Confirmation; (ii) on any Trading Day during the Valuation Period, such purchases do

not exceed 2.5% of the ADTV (as defined in Rule 10b-18(a)(1)) on such Trading Day; and (iii) such purchases otherwise comply with other provisions of Rule 10b-18 and other applicable laws, rules and regulation.

ARTICLE 5

REPRESENTATIONS, WARRANTIES AND AGREEMENTS

Section 5.01 . *Repeated Representations, Warranties and Agreements of the Purchaser.* The Purchaser represents and warrants to, and agrees with, the Seller, on the date hereof and on any date pursuant to which the Purchaser makes an election to deliver Settlement Shares pursuant to Section 3.01, to pay cash in lieu of Settlement Shares pursuant to Section 3.01(c)(ii) or to receive or deliver Alternative Termination Delivery Units pursuant to Section 7.03, that:

(a) **Disclosure; Compliance with Laws.** The reports and other documents filed by the Purchaser with the SEC pursuant to the Exchange Act, since the date of the Purchaser's most recently completed fiscal year, when considered as a whole (with the more recent such reports and documents deemed to amend inconsistent statements contained in any earlier such reports and documents), do not contain any untrue statement of a material fact or any omission of a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances in which they were made, not misleading. Subject to the filings to be made and the press release to be issued relating to the Transactions, the Purchaser is not in possession of any material nonpublic information regarding the Purchaser or the Common Stock.

(b) **Rule 10b5-1.** The Purchaser acknowledges that (i) the Purchaser does not have, and shall not attempt to exercise, any influence over how, when or whether to effect purchases of Common Stock by the Seller (or its agent or affiliate) in connection with this Confirmation and (ii) the Purchaser is entering into the Agreement and this Confirmation in good faith and not as part of a plan or scheme to evade compliance with federal securities laws including, without limitation, Rule 10b-5 promulgated under the Exchange Act. The Purchaser also acknowledges and agrees that any amendment, modification, waiver or termination of this Confirmation must be effected in accordance with any applicable requirements for the amendment or termination of a "plan" as defined in Rule 10b5-1(c) under the Exchange Act. Without limiting the generality of the foregoing, any such amendment, modification, waiver or termination shall be made in good faith and not as part of a plan or scheme to evade the prohibitions of Rule 10b-5 under the Exchange Act, and no amendment, modification or waiver shall be made at any time at which the Purchaser or any officer or director of the Purchaser is aware of any material nonpublic information regarding the Purchaser or the Common Stock.

(c) **Nature of Shares Delivered.** Any shares of Common Stock or Alternative Termination Delivery Units delivered by the Purchaser to the Seller pursuant to this Confirmation, when delivered, shall have been duly authorized and shall be duly and validly issued, fully paid and nonassessable and free of preemptive or similar rights, and such delivery shall pass title thereto free and clear of any liens or encumbrances.

(d) **No Manipulation.** The Purchaser is not entering into this Confirmation to create actual or apparent trading activity in the Common Stock (or any security convertible into or exchangeable for Common Stock) or to manipulate the price of the Common Stock (or any security convertible into or exchangeable for Common Stock).

(e) **Regulation M.** The Purchaser is not engaged in a distribution, as such term is used in Regulation M, that would preclude purchases by the Purchaser or the Seller of the Common Stock or cause the Seller to violate any law, rule or regulation with respect to such purchases.

(f) **Board Authorization.** The Purchaser is entering into this Transaction in connection with its share repurchase program, which was approved by its board of directors and publicly disclosed, solely for the purposes stated in such board resolution and public disclosure. There is no internal policy of the Purchaser, whether written or oral, that would prohibit the Purchaser from entering into any aspect of this Transaction, including, but not limited to, the purchases of shares of Common Stock to be made pursuant hereto.

(g) **Due Authorization and Good Standing.** The Purchaser is a corporation duly organized, validly existing and in good standing under the laws of the State of Minnesota. This Confirmation has been duly authorized, executed and delivered by the Purchaser and (assuming due authorization, execution and delivery thereof by the Seller) constitutes a valid and legally binding obligation of the Purchaser. The Purchaser has all corporate power to enter into this Confirmation and to consummate the transactions contemplated hereby and to purchase the Common Stock and deliver any Settlement Shares in accordance with the terms hereof.

(h) **Certain Transactions.** There has not been any public announcement (as defined in Rule 165(f) under the Securities Act) of any merger, acquisition, or similar transaction involving a recapitalization relating to the Purchaser that would fall within the scope of Rule 10b-18(a)(13) (iv).

Section 5.02 . *Initial Representations, Warranties and Agreements of the Purchaser.* The Purchaser represents and warrants to, and agrees with the Seller, as of the date hereof, that:

(a) **Solvency .** The assets of the Purchaser at their fair valuation exceed the liabilities of the Purchaser, including contingent liabilities; the capital of the Purchaser is adequate to conduct the business of the Purchaser; and the Purchaser has the ability to pay its debts and obligations as such debts mature and does not intend to, or does not believe that it will, incur debt beyond its ability to pay as such debts mature.

(b) **Required Filings.** The Purchaser has made, and will use its best efforts to make, all filings required to be made by it with the SEC, any securities exchange or any other regulatory body with respect to the Transaction contemplated hereby.

(c) **No Conflict.** The execution and delivery by the Purchaser of, and the performance by the Purchaser of its obligations under, this Confirmation and the consummation of the transactions herein contemplated do not conflict with or violate (i) any provision of the certificate of incorporation, by-laws or other constitutive documents of the Purchaser, (ii) any statute or order, rule, regulation or judgment of any court or governmental agency or body having jurisdiction over the Purchaser or any of its subsidiaries or any of their respective assets or (iii) any contractual restriction binding on or affecting the Purchaser or any of its subsidiaries or any of its assets.

(d) **Consents .** All governmental and other consents that are required to have been obtained by the Purchaser with respect to performance, execution and delivery of this Confirmation have been obtained and are in full force and effect and all conditions of any such consents have been complied with.

(e) **Investment Company Act.** The Purchaser is not and, after giving effect to the transactions contemplated in this Confirmation, will not be required to register as an “investment company” as such term is defined in the Investment Company Act of 1940, as amended.

(f) **Commodity Exchange Act.** The Purchaser is an “eligible contract participant”, as such term is defined in Section 1a(12) of the Commodity Exchange Act, as amended.

Section 5.03 . *Additional Representations, Warranties and Agreements.* The Purchaser and the Seller represent and warrant to, and agree with, each other that:

(a) **Agency .** Each party agrees and acknowledges that (i) J.P. Morgan Securities Inc., an affiliate of the Seller (“**JPMSI**”), has acted solely as agent and not as principal with respect to this Transaction and (ii) JPMSI has no obligation or liability, by way of guaranty, endorsement or otherwise, in any manner in respect of this Transaction (including, if applicable, in respect of the settlement thereof). Each party agrees it will look solely to the other party (or any guarantor in respect thereof) for performance of such other party’s obligations under this Transaction. JPMSI is authorized to act as agent for the Seller.

(b) **Non-Reliance.** Each party has entered into this Transaction solely in reliance on its own judgment. Neither party has any fiduciary obligation to the other party relating to this Transaction. In addition, neither party has held itself out as advising, or has held out any of its employees or agents as having the authority to advise, the other party as to whether or not the other party should enter into this Transaction, any subsequent actions relating

this Transaction or any other matters relating to this Transaction. Neither party shall have any responsibility or liability whatsoever in respect of any advice of this nature given, or views expressed, by it or any such persons to the other party relating to this Transaction, whether or not such advice is given or such views are expressed at the request of the other party. The Purchaser has conducted its own analysis of the legal, accounting, tax and other implications of this Transaction and consulted such advisors, accountants and counsel as it has deemed necessary.

Section 5.04. *Representations and Warranties of the Seller.* The Seller represents and warrants to the Purchaser that:

(a) **Due Authorization.** This Confirmation has been duly authorized, executed and delivered by the Seller and (assuming due authorization, execution and delivery thereof by the Purchaser) constitutes a valid and legally binding obligation of the Seller. The Seller has all corporate power to enter into this Confirmation and to consummate the transactions contemplated hereby and to deliver the Common Stock in accordance with the terms hereof.

(b) **Right to Transfer.** The Seller will, at the Initial Settlement Date and on any other day on which it is required to deliver shares of Common Stock to the Purchaser hereunder, have the free and unqualified right to transfer the Number of Shares of Common Stock to be delivered by the Seller pursuant to Sections 2.01 and 3.01 hereof, free and clear of any security interest, mortgage, pledge, lien, charge, claim, equity or encumbrance of any kind.

(c) **Commodity Exchange Act.** The Seller is an “eligible contract participant”, as such term is defined in Section 1a(12) of the Commodity Exchange Act, as amended.

ARTICLE 6 ADDITIONAL COVENANTS

Section 6.01 . *Purchaser’s Further Assurances.* The Purchaser hereby agrees with the Seller that the Purchaser shall cooperate with the Seller, and execute and deliver, or use its best efforts to cause to be executed and delivered, all such other instruments, and to obtain all consents, approvals or authorizations of any person, and take all such other actions as the Seller may reasonably request from time to time, consistent with the terms of this Confirmation, in order to effectuate the purposes of this Confirmation and the Transaction contemplated hereby.

Section 6.02 . *Purchaser’s Hedging Transactions.* The Purchaser hereby agrees with the Seller that the Purchaser shall not, during the Contract Period, enter into or alter any corresponding or hedging transaction or position with respect to the Common Stock (including, without limitation, with respect to any securities convertible or exchangeable into the Common Stock) and agrees not to alter or deviate from the terms of this Confirmation.

Section 6.03 . *No Communications.* The Purchaser hereby agrees with the Seller that the Purchaser shall not, directly or indirectly, communicate any information relating to the Common Stock or this Transaction (including any notices required by Section 6.05) to any employee of the Seller or J.P. Morgan Securities Inc., other than as set forth in the Communications Procedures attached as Annex C hereto.

Section 6.04 . *Maximum Deliverable Number of Shares of Common Stock.* Notwithstanding any other provision of this Confirmation, the Purchaser shall not be required to deliver Settlement Shares, or shares of Common Stock or other securities comprising the aggregate Alternative Termination Delivery Units, in excess of the number of Maximum Delivery Shares, in each case except to the extent that the Purchaser has available at such time authorized but unissued shares of such Common Stock or other securities not expressly reserved for any other uses (including, without limitation, shares of Common Stock reserved for issuance upon the exercise of options or convertible debt). The Purchaser shall not permit the sum of (i) the number of Maximum Delivery Shares plus (ii) the aggregate number of shares expressly reserved for any such other uses, in each case whether expressed as caps or as numbers of shares reserved or otherwise, to exceed at any time the number of authorized but unissued shares of Common Stock.

Section 6.05. *Notice of Certain Transactions.* If at any time during the Contract Period, the Purchaser makes, or expects to be made, or has made, any public announcement (as defined in Rule 165(f) under the Securities Act) of any merger, acquisition, or similar transaction involving a recapitalization relating to the Purchaser (other than any such transaction in which the consideration consists solely of cash and there is no valuation period, or as to which the completion of such transaction or the completion of the vote by target shareholders has occurred), then the Purchaser shall (i) notify the Seller prior to the opening of trading in the Common Stock on any day on which the Purchaser makes, or expects to be made, or has made any such public announcement, (ii) notify the Seller promptly following any such announcement (or, if later, prior to the opening of trading in the Common Stock on the first day of any Seller Termination Share Payment Period) that such announcement has been made and (iii) promptly deliver to the Seller following the making of any such announcement (or, if later, prior to the opening of trading in the Common Stock on the first day of any Seller Termination Share Payment Period) a certificate indicating (A) the Purchaser's average daily Rule 10b-18 purchases (as defined in Rule 10b-18) during the three full calendar months preceding the date of such announcement and (B) the Purchaser's block purchases (as defined in Rule 10b-18) effected pursuant to paragraph (b)(4) of Rule 10b-18 during the three full calendar months preceding the date of such announcement. The information included in a notice under clause (i) of the preceding sentence may be limited to a statement by the Purchaser indicating that it constitutes a notice under such clause and the Seller agrees to maintain the confidentiality of any such notice that it may receive unless (A) the Seller is required by law, regulation or order of any court or regulatory commission, department or agency to make disclosure to any such court or commission, department or agency or (B) such notice or the information contained therein becomes a matter of public record. In addition, the Purchaser shall promptly notify the Seller of the earlier to occur of the completion of such transaction and the completion of the vote by target shareholders. Accordingly, the Purchaser acknowledges that its actions in relation to any such announcement or transaction must comply with the standards set forth in Section 6.03.

Section 6.06 . *No Dividends.* The Purchaser shall not declare any dividend with an ex-dividend date scheduled to occur during the Contract Period.

ARTICLE 7 TERMINATION

Section 7.01 . *Additional Termination Events.* (a) An Additional Termination Event shall occur in respect of which the Purchaser is the sole Affected Party and this Transaction is the sole Affected Transaction if, on any day, the Seller determines, in its sole reasonable judgment, that it is unable to establish, re-establish or maintain any hedging transactions reasonably necessary in the normal course of such party's business of hedging the price and market risk of entering into and performing under this Transaction, due to market illiquidity, illegality or lack of availability of hedging transaction market participants.

(b) An Additional Termination Event shall occur in respect of which the Purchaser is the sole Affected Party and this Transaction is the sole Affected Transaction if (i) a Share De-listing Event occurs; (ii) a Merger Event occurs; (iii) a Nationalization occurs, (iv) a Distribution Termination Event occurs or (v) an event described in paragraph III of Annex C occurs.

(c) A "**Share De-listing Event**" means that at any time during the Contract Period, the Common Stock ceases to be listed, traded or publicly quoted on the Exchange for any reason (other than a Merger Event, a "**De-Listing**") and is not immediately re-listed, traded or quoted as of the date of such de-listing, on another U.S. national securities exchange or a U.S. automated interdealer quotation system (a "**Successor Exchange**"); *provided* that it shall not constitute an Additional Termination Event if the Common Stock is immediately re-listed on a Successor Exchange upon its De-Listing from the Exchange, and the Successor Exchange shall be deemed to be the Exchange for all purposes. In addition, in such event, the Seller shall make any commercially reasonable adjustments it deems necessary to the terms of the Transaction to preserve the fair value of the Transaction to the Seller. Upon request, the Seller shall provide the Purchaser with a schedule setting forth in reasonable detail the basis of any adjustment made to this Transaction pursuant to this Section 7.01(c).

(d) A “ **Merger Event** ” means the public announcement, including any public announcement as defined in Rule 165(f) of the Securities Act (by the Purchaser or otherwise) at any time during the Contract Period of any (i) recapitalization, reclassification or change of the Common Stock planned by the Purchaser that will, if consummated, result in a transfer of more than 20% of the outstanding shares of Common Stock, (ii) planned consolidation, amalgamation, merger or similar transaction of the Purchaser with or into another entity (other than a consolidation, amalgamation or merger in which the Purchaser will be the continuing entity and which does not result in any such recapitalization, reclassification or change of more than 20% of such shares outstanding), (iii) other takeover offer for the shares of Common Stock that is aimed at resulting in a transfer of more than 30% of such shares of Common Stock (other than such shares owned or controlled by the offeror) or (iv) irrevocable commitment to any of the foregoing.

(e) A “ **Nationalization** ” means that all or substantially all of the outstanding shares of Common Stock or assets of the Purchaser are nationalized, expropriated or are otherwise required to be transferred to any governmental agency, authority or entity.

(f) A “ **Distribution Termination Event** ” means a declaration by the Purchaser of any cash dividend or distribution on shares of Common Stock that has a record date during the Contract Period.

Section 7.02 . *Consequences of Additional Termination Events.* (a) In the event of the occurrence or effective designation of an Early Termination Date under the Agreement, cash settlement, as set forth in Section 7.02(b), shall apply unless (i) the Purchaser elects (which election shall be binding), in lieu of payment of the amount payable in respect of this Transaction pursuant to Section 6(d)(ii) of the Agreement (the “ **Termination Amount** ”), to deliver or to receive Alternative Termination Delivery Units pursuant to Section 7.03, and (ii) notifies the Seller of such election by delivery of written notice to the Seller on the Business Day immediately following the Purchaser’s receipt of a notice (as required by Section 6(d) of the Agreement following the designation of an Early Termination Date in respect of this Transaction) setting forth the amounts payable by the Purchaser or by the Seller with respect to such Early Termination Date (the date of such delivery, the “ **Default Notice Day** ”); *provided* that the Purchaser shall not have the right to elect the delivery or receipt of the Alternative Termination Delivery Units pursuant to Section 7.03 if:

(i) the representations and warranties made by the Purchaser to the Seller in Section 5.01 are not true and correct as of the date the Purchaser makes such election, as if made on such date, or

(ii) in the event that the Termination Amount is payable by the Purchaser to the Seller, (A) the Purchaser has taken any action that would make unavailable (x) the exemption set forth in Section 4(2) of the Securities Act, for the sale of any Alternative Termination Delivery Units by the Purchaser to the Seller or (y) an exemption from the registration requirements of the Securities Act reasonably acceptable to the Seller for resales of Alternative Termination Delivery Units by the Seller, and (B) such Early Termination Date is in respect of an Event of Default which is within Purchaser’s control (including, without limitation, failure to execute a Private Placement Agreement or otherwise comply with the requirements applicable to Purchaser set forth in Annex A hereto).

For the avoidance of doubt, upon the Purchaser’s making an election to deliver Alternative Termination Delivery Units pursuant to this Section 7.02(a), the Purchaser shall be deemed to make the representations and warranties in Section 5.01 hereof as if made on the date of the Purchaser’s election. Notwithstanding the foregoing, at any time prior to the time the Seller (or any affiliate of the Seller) has contracted to resell the property to be delivered upon alternative termination settlement, the Purchaser may deliver in lieu of such property an amount in cash equal to the Termination Amount in the manner set forth in Section 6(d) of the Agreement.

(b) If cash settlement applies in respect of an Early Termination Date, Section 6 of the Agreement shall apply.

Section 7.03 . *Alternative Termination Settlement.* (a) Subject to Section 7.02(a), if the Termination Amount shall be payable by the Purchaser to the Seller and the Purchaser elects to deliver the Alternative Termination Delivery Units to the Seller, the Purchaser shall, as soon as directed by the Seller after the Default Notice Day (such date, the “ **Termination Settlement Date** ”), deliver to the Seller a number of Alternative

Termination Delivery Units equal to the quotient of (A) the Termination Amount *divided by* (B) the Termination Price.

(b) Subject to Section 7.02(a), if the Termination Amount shall be payable by the Seller to the Purchaser and the Purchaser elects to receive the Alternative Termination Delivery Units from the Seller, (i) the Seller shall, beginning on the first Trading Day following the Default Notice Day and ending when the Seller shall have satisfied its obligations under this clause (the “**Seller Termination Share Purchase Period**”), purchase (subject to the provisions of Section 4.01 and Section 4.02 hereof) a number of Alternative Termination Delivery Units equal to the quotient of (A) the Termination Amount *divided by* (B) the Termination Price; and (ii) the Seller shall deliver such Alternative Termination Delivery Units to the Purchaser on the settlement dates relating to such purchases.

Section 7.04 . *Notice of Default.* If an Event of Default occurs in respect of the Purchaser, the Purchaser will, promptly upon becoming aware of it, notify the Seller specifying the nature of such Event of Default.

ARTICLE 8 ADJUSTMENTS

Section 8.01 . *Reserved.*

Section 8.02 . *Other Dilution Adjustments.* If (x) any corporate event occurs involving the Purchaser or the Common Stock (other than any cash dividend but including, without limitation, a spin-off, a stock split, stock or other dividend or distribution, reorganization, rights offering or recapitalization or any other event having a dilutive or concentrative effect on the theoretical value of the Common Stock), or (y) as a result of the definition of Trading Day (whether because of a suspension of transactions pursuant to Section 4.02 or otherwise), any day that would otherwise be a Trading Day during the Contract Period is not a Trading Day or on such Trading Day, pursuant to Section 4.02, the Seller effects transactions with respect to shares of Common Stock at a volume lower than originally anticipated with respect to this Transaction, or (z) as a result of market conditions, the Seller incurs additional costs in connection with maintaining its hedge position with respect to this Transaction resulting from the insufficient availability of stock lenders willing and able to lend shares of Common Stock with a borrow cost not significantly greater than the cost as of the date hereof and otherwise on terms consistent with those as of the date hereof, then in any such case, the Calculation Agent shall make corresponding adjustments with respect to any variable relevant to the terms of the Transaction, as the Calculation Agent determines appropriate to preserve the fair value of the Transaction to the Seller, and shall determine the effective date of such adjustment.

ARTICLE 9 MISCELLANEOUS

Section 9.01 . *Successors and Assigns.* All covenants and agreements in this Confirmation made by or on behalf of either of the parties hereto shall bind and inure to the benefit of the respective successors and assigns of the parties hereto whether so expressed or not.

Section 9.02 . *Purchaser Indemnification.* The Purchaser (the “Indemnifying Party”) agrees to indemnify and hold harmless the Seller and its officers, directors, employees, affiliates, advisors, agents and controlling persons (each, an “Indemnified Person”) from and against any and all losses, claims, damages and liabilities, joint or several (collectively, “Obligations”), to which an Indemnified Person may become subject arising out of or in connection with any breach by the Purchaser of any of its representations, warranties, covenants or agreements contained in this Confirmation and any claim, litigation, investigation or proceeding relating to any such breach, regardless of whether any of such Indemnified Person is a party thereto, and to reimburse, within 30 days, upon written request, each such Indemnified Person for any reasonable legal or other expenses incurred in connection with investigating, preparation for, providing evidence for or defending any of the foregoing, provided, however, that the Indemnifying Party shall not have any liability to any Indemnified Person to the extent that such Obligations

(i) are finally determined by a court of competent jurisdiction to have resulted from the gross negligence or willful misconduct of such Indemnified Person (and in such case, such Indemnified Person shall promptly return to the Indemnifying Party any amounts previously expended by the Indemnifying Party hereunder) or (ii) are trading losses incurred by the Seller as part of its purchases or sales of shares of Common Stock pursuant to this Confirmation (unless the Purchaser has breached any agreement, term or covenant herein).

Section 9.03 . *Assignment and Transfer*. Notwithstanding the Agreement, the Seller may assign any of its rights or duties hereunder to any one or more of its affiliates without the prior written consent of the Purchaser. Notwithstanding any other provision in this Confirmation to the contrary requiring or allowing Seller to purchase, sell, receive or deliver any shares of Common Stock or other securities to or from the Purchaser, Seller may designate any of its affiliates to purchase, sell, receive or deliver such shares of Common Stock or other securities and otherwise to perform the Seller's obligations in respect of this Transaction and any such designee may assume such obligations. The Seller may assign the right to receive Settlement Shares to any third party who may legally receive Settlement Shares. The Seller shall be discharged of its obligations to the Purchaser only to the extent of any such performance. For the avoidance of doubt, Seller hereby acknowledges that notwithstanding any such designation hereunder, to the extent any of Seller's obligations in respect of this Transaction are not completed by its designee, Seller shall be obligated to continue to perform or to cause any other of its designees to perform in respect of such obligations.

Section 9.04 . *Calculation Agent*. Whenever the Calculation Agent is required to act or to exercise judgment in any way with respect to this Transaction, it will do so in good faith and in a commercially reasonable manner. Upon request, the Calculation Agent shall provide the Purchaser with a schedule setting forth in reasonable detail the basis of any such determination or calculation.

Section 9.05 . *Non-confidentiality*. The Seller and the Purchaser hereby acknowledge and agree that, subject to Section 6.03, each is authorized to disclose every aspect of this Confirmation and the transactions contemplated hereby to any and all persons, without limitation of any kind, and there are no express or implied agreements, arrangements or understandings to the contrary.

Section 9.06 . *Unenforceability and Invalidity*. To the extent permitted by law, the unenforceability or invalidity of any provision or provisions of this Confirmation shall not render any other provision or provisions herein contained unenforceable or invalid.

Section 9.07 . *Securities Contract*. The parties hereto agree and acknowledge as of the date hereof that (i) the Seller is a "financial institution" within the meaning of Section 101(22) of Title 11 of the United States Code (the "**Bankruptcy Code**") and (ii) this Confirmation is a "securities contract," as such term is defined in Section 741(7) of the Bankruptcy Code, entitled to the protection of Sections 362(b)(6) and 555 of the Bankruptcy Code.

Section 9.08 . *No Collateral, Netting or Setoff*. Notwithstanding any provision of the Agreement, or any other agreement between the parties, to the contrary, the obligations of the Purchaser hereunder are not secured by any collateral. Obligations under this Transaction shall not be netted, recouped or set off (including pursuant to Section 6 of the Agreement) against any other obligations of the parties, whether arising under the Agreement, this Confirmation, under any other agreement between the parties hereto, by operation of law or otherwise, and no other obligations of the parties shall be netted, recouped or set off (including pursuant to Section 6 of the Agreement) against obligations under this Transaction, whether arising under the Agreement, this Confirmation, under any other agreement between the parties hereto, by operation of law or otherwise, and each party hereby waives any such right of setoff, netting or recoupment.

Section 9.09 . *Notices*. Unless otherwise specified herein, any notice, the delivery of which is expressly provided for in this Confirmation, may be made by telephone, to be confirmed in writing to the address below. Changes to the information below must be made in writing.

(a) If to the Purchaser:

AFC Enterprises, Inc.
5555 Glenridge Connector, NE, Suite 300
Atlanta, Georgia, 30342
Attention: H. Melville Hope, III
Title: Chief Financial Officer
Telephone No: 404-459-4568
Facsimile No: 404-459-4539

(b) If to the Seller:

JPMorgan Chase Bank, National Association
c/o J.P. Morgan Securities Inc.
277 Park Avenue
New York, NY 10172
Attention: Mariusz Kwasnik
Title: Operations Analyst
EDG Corporate Marketing
Telephone No: (212) 622-6707
Facsimile No: (212) 622-8534

Please confirm that the foregoing correctly sets forth the terms of our agreement by executing the copy of this Confirmation enclosed for that purpose and returning it to us.

Yours sincerely,

J.P. MORGAN SECURITIES INC., as agent for JPMorgan Chase Bank, National Association, London Branch

By: /s/ James F. Smith

Name: James F. Smith

Title: Executive Director

Confirmed as of the date first above written:

AFC ENTERPRISES, INC.

By: /s/ H. Melville Hope, III

Name: H. Melville Hope, III

Title: Chief Financial Officer

JPMorgan Chase Bank, National Association
Organised under the laws of the United States as a National Banking Association.
Main Office 1111 Polaris Parkway, Columbus, Ohio 43271
Registered as a branch in England & Wales branch No. BR000746.
Registered Branch Office 125 London Wall, London EC2Y 5AJ
Authorised and regulated by the Financial Services Authority



NEWS RELEASE

**AFC REPORTS FINANCIAL RESULTS FOR FISCAL 2007
AND DEFINES NEW STRATEGIC PLAN**
*ALSO PROVIDES FISCAL 2008 GUIDANCE AND
ANNOUNCES \$15 MILLION ACCELERATED SHARE REPURCHASE*

Atlanta, Georgia, March 12, 2008 – AFC Enterprises, Inc. (NASDAQ: AFCE), the franchisor and operator of Popeyes[®] Chicken & Biscuits, today reported results for its fiscal year 2007 which ended December 30, 2007. The Company also announced a new strategic plan designed to enhance shareholder value and leverage the Popeyes brand through expanded marketing and menu offerings, in addition to improving guest experience and unit economics. A key component of the new strategic plan is the commencement of a process to identify experienced and qualified franchisees to purchase company-operated restaurants.

Fiscal year 2007 highlights*:

- Net income was \$23.1 million, or \$0.80 per diluted share, compared to \$22.4 million, or \$0.75 per diluted share, in fiscal 2006. For the twelve weeks in the fourth quarter of 2007, net income was \$3.6 million, or \$0.13 per diluted share, as compared to \$5.6 million, or \$0.19 per diluted share, for the thirteen weeks in the fourth quarter last year. The 53rd week in fiscal 2006 increased net income by approximately \$0.02 per diluted share.
- Total system-wide sales increased by 0.3 percent compared to 7.0 percent last year. Excluding the impact of the 53rd operating week in fiscal 2006, system-wide sales would have increased by 2.1 percent.
- Total domestic same-store sales decreased 2.3 percent compared to an increase of 1.6 percent in fiscal 2006. International same-store sales increased 1.1 percent compared to a decrease of 3.2 percent last year. Total global same-store sales decreased 2.0 percent compared to an increase of 1.1 percent last year.
- The Popeyes system opened 124 restaurants and closed 109 restaurants, bringing the total unit count to 1,905 compared to 1,878 at the end of 2006.
- The Company repurchased approximately 2.5 million shares of common stock for approximately \$39.4 million.

* Fiscal 2007 results included 52 weeks compared to 53 weeks in fiscal 2006.

New Strategic Plan

Commenting on the launch of the Company's new strategic plan, AFC Chief Executive Officer Cheryl Bachelder said, "Since I joined the Company in November, we have devoted substantial time and resources towards developing a new strategic plan which we are excited to share with our investors. We believe the new plan will set Popeyes on a firm foundation for accelerated unit growth and enhanced shareholder returns. Implementation of this plan is underway."

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The four key pillars of the new strategic plan include:

- Building the Popeyes Brand by offering franchisees a distinctive brand and menu with clear competitive advantages. Planned steps to exploit this advantage include:
 - o Launching new marketing messages to excite customers about the superiority of Popeyes core bone-in chicken products; and
 - o Rolling-out fresh and relevant menu platforms focused on portable snacks, quick lunch offerings, lighter alternatives and everyday value.
- Running Great Restaurants by strengthening restaurant operations and improving the Popeyes guest experience through:
 - o Implementing a guest experience monitor (GEM) to gauge guest satisfaction at every restaurant in the Popeyes system; and
 - o Restructuring the field operations team to accomplish quarterly operations assessments of restaurants against Popeyes standards and procedures.
- Strengthening Unit Economics by identifying cost savings to improve food, labor and overhead efficiencies in the restaurants by:
 - o Assembling a task force to address the operating cost structure of Popeyes restaurants and to identify ways to improve restaurant operating profit. The team includes franchisees, corporate operations, supplier partners and the Popeyes purchasing/distribution cooperative; and
 - o Improving Popeyes restaurant unit economics to better position franchisees to build new units as the economic environment improves.
- Aligning People and Resources to Deliver Results by making significant investments in brand building, operational tools and talent as evidenced by:
 - o Making non-recurring investments of \$3.5 million in 2008 to strengthen brand building and menu innovation to drive guest traffic increases; and
 - o Recruiting Ralph Bower as chief operations officer of Popeyes and Dick Lynch as chief marketing officer. These two experienced executives, working with the Company's existing talented team, complete the Popeyes leadership team.

Added Bachelder, "Today, we are also announcing our decision to commence a process to identify experienced and qualified franchisees to purchase our company-operated restaurants so that we can re-purpose our resources towards the critical initiatives set forth in our new strategic plan. The Company expects proceeds in the range of \$38-\$42 million which would

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yield \$0.08-\$0.14 of diluted earnings per share, if the divestiture is fully implemented. We believe our actions today prepare us for long term success, including EPS average growth of 12-15 percent, 4-6 percent net unit growth, 2-3 percent same-store sales, and with EBITDA margins and free cash flows among the highest in the industry, if our plans are successfully implemented.”

Ms. Bachelder concluded, “After completing an exhaustive assessment of the Popeyes brand and business opportunities, I am more convinced than ever that Popeyes will be set on a firm foundation and positioned for accelerated growth. Our strengths are significant — we have better chicken in a growing QSR segment. We have opportunities to improve our guest experience and our unit economics and we are attacking these with urgency. With strong fundamentals in place, we believe Popeyes’ broad appeal creates a large unit expansion opportunity, both domestically and internationally. In short, Popeyes now has a strategic plan to establish the brand as a growing QSR chain that delivers sound returns to its shareholders.”

2007 Financial Performance Review

Total system-wide sales increased by 0.3 percent. This growth was comprised of a 0.6 percent decrease in franchisee restaurant sales to \$1.65 billion, and a 22.7 percent increase in company-operated restaurant sales to approximately \$80.0 million. Excluding the impact of the 53rd week in fiscal 2006, system-wide sales would have increased by 2.1 percent.

Total domestic same-store sales decreased 2.3 percent compared to an increase of 1.6 percent in the prior year, and total global same-store sales decreased 2.0 percent compared to an increase of 1.1 percent in the prior year. Same-store sales softness reflects the increased level of value promotion activity in the QSR sector, as competitors strive to retain customers in an increasingly challenging economic environment.

Same-store sales for company-operated restaurants decreased 7.8 percent compared to a 9.0 percent increase last year. This decrease reflects the continued rollover effect of unusually high same-store sales of re-opened company-operated restaurants in New Orleans following Hurricane Katrina, as well as softer same-store sales in the Atlanta and Tennessee markets.

Total revenues were \$167.3 million, compared to \$153.0 million in the prior year. The \$14.3 million increase was comprised of approximately \$13.1 million from the re-opening of company-operated restaurants in New Orleans, \$5.4 million (net of lost franchise royalty revenue) from 13 franchised restaurants the Company acquired in the Memphis and Nashville markets in the second quarter of 2006, \$3.9 million from new openings of company-operated restaurants in the Atlanta market, and a \$2.1 million increase in revenue, primarily driven by sales from new franchised restaurants. These increases in total revenues were partially offset by a reduction of \$6.5 million from negative same-store sales, a \$2.5 million decrease from the impact of the 53rd week in fiscal 2006, and a \$1.2 million reduction as result of the sale of an entity which was consolidated in 2006.

General and administrative expenses were consistent with previous guidance at \$49.5 million, or 2.9 percent of system-wide sales, a \$1.4 million increase compared to 2006. This increase

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was primarily due to higher professional and severance costs, which were partially offset by a reduction in employee incentive payments due to lower sales performance and lower equity compensation.

Other income was \$2.7 million, or \$0.06 per diluted share, including a gain of \$4.5 million from Hurricane Katrina insurance recoveries, partially offset by an expense of \$1.8 million related to net losses for impairment and other charges.

Operating profit was \$45.6 million, compared to operating profit of \$45.3 million last year.

Fiscal 2007 EBITDA was \$52.5 million, at a margin of 31.4 percent of total revenue, compared to 2006 EBITDA of \$51.9 million, at a margin of 33.9 percent of total revenue. AFC's EBITDA computation and reconciliation to GAAP measures is described in detail under the heading "Use of Non-GAAP Financial Measures."

Income tax expense was \$13.8 million, yielding an effective tax rate of 37.4 percent, compared to an effective tax rate of 35.1 percent in the prior year.

Net income was \$23.1 million, or \$0.80 per diluted share, compared to \$22.4 million, or \$0.75 per diluted share, for fiscal 2006. Fiscal 2007 diluted earnings per share were consistent with the Company's revised fiscal 2007 guidance of \$0.78-\$0.80. Net income in fiscal 2006 benefited by approximately \$0.02 per diluted share for the 53rd operating week. Net of insurance recovery benefits and other expense charges, earnings per diluted share for fiscal 2007 would have been \$0.74 from the Company's core operations.

Free cash flow in fiscal 2007 was \$28.5 million. This free cash was used to invest in new company-operated restaurants, make required debt payments totaling \$1.1 million, and repurchase and retire shares of the Company's common stock. AFC's free cash flow computation and reconciliation to GAAP measures is described in detail under the heading "Use of Non-GAAP Financial Measures."

During fiscal 2007, the Company repurchased approximately 2.5 million shares of its common stock for approximately \$39.4 million. As of February 22, 2008, there were approximately 27.2 million shares of the Company's common stock outstanding.

The Popeyes system opened 124 new restaurants in fiscal 2007, below the lower end of the Company's expectations. Year-end openings fell below expectations due to construction delays in international markets and in the U.S. For fiscal 2007, the Popeyes system reported 109 restaurant closures, consistent with the Company's previous guidance. The closures included 61 units domestically and 48 units internationally.

On a system-wide basis, Popeyes had 1,905 units operating at the end of fiscal 2007, compared to 1,878 units at the end of last year. Total unit count was comprised of 1,583 domestic units and 322 international units in 24 foreign countries and two territories. Of this total, 1,840 were franchised and 65 were company-operated restaurants.

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**NEWS RELEASE****Fiscal 2008 Guidance**

“As mentioned, our new strategic plan for the Popeyes system requires a number of specific and significant investments in fiscal 2008 to strengthen the brand, build top-line sales, run stronger, more profitable restaurants and position the system for accelerated unit growth,” stated Ms. Bachelder.

For fiscal 2008, the Company expects diluted EPS to be in the range of \$0.63-\$0.68 per diluted share. This range includes \$3.5 million, or approximately \$0.08 per diluted share, related to investments to strengthen the Popeyes brand and which the Company believes are non-recurring. The Company’s fiscal 2008 diluted earnings per share guidance excludes the impact of potential recoveries related to historical Directors and Officers’ insurance claims and other one-time, non-operational benefits or expenses.

Excluding the non-recurring \$3.5 million of investments, the Company expects fiscal 2008 diluted earnings per share to be in the range of \$0.71-\$0.76, compared to fiscal 2007 diluted earnings per share of \$0.74, after excluding \$2.7 million, or approximately \$0.06 per diluted share, related to insurance recoveries and other non-recurring expense charges.

For fiscal 2008, the Company expects same-store sales in a difficult consumer environment to be flat to positive 1.0 percent and expects global new restaurant openings for 2008 in the range of 115-130. The Company expects its closure rate of restaurants to be similar to those experienced in the past few years as the Company continues to reinforce its operational standards and close underperforming restaurants throughout the system. Net openings are expected to be in the range of 5-15 units.

Popeyes general and administrative expenses as a percentage of system-wide sales have been maintained at slightly below 3 percent compared to the industry average of approximately 5 percent. During 2008, as result of the investments to retool and strengthen the brand, including non-recurring investments of \$3.5 million, general and administrative expenses as a percentage of system-wide sales, are expected to increase to 3.0 to 3.1 percent. After 2008, the Company expects to see that percentage return to a trend below 3 percent of system-wide sales on an on-going basis. The investments, which management believes are non-recurring, principally include transition costs associated with branding and marketing, operational changes and the cost of new licensed technology.

The Company expects its 2008 EBITDA margin and generation of free cash flow to be lower than fiscal 2007 due primarily to the \$3.5 million of non-recurring investments discussed above. However, the Company’s 2008 EBITDA margin and generation of free cash flow are still expected to rank among the most efficient in the industry.

Accelerated Share Repurchase

The Company previously announced that its Board of Directors has authorized additional repurchases of the Company’s common stock. As of February 22, 2008, the Company had approximately \$56.4 million remaining under this authorization. Pursuant to this repurchase program, the Company has today entered into an accelerated stock repurchase agreement with a financial institution to repurchase \$15 million of common stock. The Company may continue

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to undertake additional repurchases of its common stock in the open market, either before or after completion of the accelerated stock repurchase transaction. Under the terms of its current credit facility, the Company has the ability to repurchase more than \$35 million of shares during fiscal year 2008, including the \$15 million accelerated share repurchase.

Ms. Bachelder concluded, "We believe 2008 investments in marketing, operations and talent will jump start our strategic plan. Unit growth in 2008 will be modest as we concentrate on our new brand building initiatives. This year will set us on a firm foundation so that we can accelerate unit growth thereafter and deliver the returns our shareholders expect from a growing restaurant concept. Our entire team is enthusiastic and determined to drive strong returns for our stakeholders with the powerful Popeyes brand and franchise system."

Conference Call

The Company will host a conference call and internet webcast with the investment community at 9:00 A.M. Eastern Time on March 13, 2008, to review the results of fiscal 2007 and discuss the 2008 operating plan and provide 2008 guidance. To access the Company's webcast, go to www.afce.com, select "Investor Information" and then select "AFC Enterprises Fiscal 2007 Earnings Conference Call."

Corporate Profile

AFC Enterprises, Inc. is the franchisor and operator of Popeyes[®] Chicken & Biscuits, the world's second-largest quick-service chicken concept based on number of units. As of December 30, 2007, Popeyes had 1,905 restaurants in the United States, Puerto Rico, Guam and 24 foreign countries. AFC has a primary objective to be the world's Franchisor of Choice[®] by offering investment opportunities in its Popeyes Chicken & Biscuits brand and providing exceptional franchisee support systems and services. AFC Enterprises can be found at www.afce.com.

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Supplemental Financial Information on pages 7 – 12.

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AFC Enterprises, Inc.
Consolidated Balance Sheets
As of December 30, 2007 and December 31, 2006
(In millions, except share data)

	2007	2006
ASSETS		
Current assets:		
Cash and cash equivalents	\$ 5.0	\$ 6.7
Accounts and current notes receivable, net	13.1	12.9
Prepaid income taxes	0.5	7.4
Other current assets	16.6	15.6
Total current assets	<u>35.2</u>	<u>42.6</u>
Long-term assets:		
Property and equipment, net	42.4	39.9
Goodwill	11.7	11.7
Trademarks and other intangible assets, net	51.6	52.4
Other long-term assets, net	14.1	16.5
Total long-term assets	<u>119.8</u>	<u>120.5</u>
Total assets	<u>\$ 155.0</u>	<u>\$ 163.1</u>
LIABILITIES AND SHAREHOLDERS' DEFICIT		
Current liabilities:		
Accounts payable	\$ 26.1	\$ 23.8
Other current liabilities	14.9	10.9
Current debt maturities	14.0	1.4
Total current liabilities	<u>55.0</u>	<u>36.1</u>
Long-term liabilities:		
Long-term debt	118.8	132.6
Deferred credits and other long-term liabilities	21.5	25.6
Total long-term liabilities	<u>140.3</u>	<u>158.2</u>
Total liabilities	<u>195.3</u>	<u>194.3</u>
Commitments and contingencies		
Shareholders' deficit:		
Preferred stock (\$.01 par value; 2,500,000 shares authorized; 0 issued and outstanding)	—	—
Common stock (\$.01 par value; 150,000,000 shares authorized; 27,356,105 and 29,487,648 shares issued and outstanding at December 30, 2007 and December 31, 2006, respectively)	0.3	0.3
Capital in excess of par value	127.7	161.7
Notes receivable from officers, including accrued interest	—	—
Accumulated deficit	(168.5)	(194.4)
Accumulated other comprehensive income	0.2	1.2
Total shareholders' deficit	<u>(40.3)</u>	<u>(31.2)</u>
Total liabilities and shareholders' deficit	<u>\$ 155.0</u>	<u>\$ 163.1</u>

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AFC Enterprises, Inc.
Consolidated Statements of Operations
(In millions, except per share data)

	12/13 Weeks Ended		52/53 Weeks Ended	
	12/30/2007	12/31/2006	12/30/2007	12/31/2006
Revenues:				
Sales by company-operated restaurants	\$ 19.0	\$ 18.4	\$ 80.0	\$ 65.2
Franchise revenues	19.1	20.5	82.8	82.6
Other revenues	1.0	1.1	4.5	5.2
Total revenues	<u>39.1</u>	<u>40.0</u>	<u>167.3</u>	<u>153.0</u>
Expenses:				
Restaurant employee, occupancy and other expenses	10.0	9.5	40.7	33.7
Restaurant food, beverages and packaging	6.7	6.1	27.3	21.3
General and administrative expenses	13.8	12.4	49.5	48.1
Depreciation and amortization	1.6	1.5	6.9	6.4
Other expenses (income), net	(1.0)	0.4	(2.7)	(1.8)
Total expenses	<u>31.1</u>	<u>29.9</u>	<u>121.7</u>	<u>107.7</u>
Operating profit	8.0	10.1	45.6	45.3
Interest expense, net	2.2	2.2	8.7	11.1
Income before income taxes and discontinued operations	5.8	7.9	36.9	34.2
Income tax expense	2.2	2.3	13.8	12.0
Income before discontinued operations	3.6	5.6	23.1	22.2
Discontinued operations, net of income taxes	—	—	—	0.2
Net income	<u>\$ 3.6</u>	<u>\$ 5.6</u>	<u>\$ 23.1</u>	<u>\$ 22.4</u>
Basic earnings per common share:				
Income before discontinued operations	\$ 0.14	\$ 0.19	\$ 0.81	\$ 0.75
Discontinued operations, net of income taxes	—	—	—	0.01
Net income	<u>\$ 0.14</u>	<u>\$ 0.19</u>	<u>\$ 0.81</u>	<u>\$ 0.76</u>
Diluted earnings per common share:				
Income before discontinued operations	\$ 0.13	\$ 0.19	\$ 0.80	\$ 0.74
Discontinued operations, net of income taxes	—	—	—	0.01
Net income	<u>\$ 0.13</u>	<u>\$ 0.19</u>	<u>\$ 0.80</u>	<u>\$ 0.75</u>

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AFC Enterprises, Inc.
Consolidated Statements of Cash Flows
(In millions)

	2007	2006
Cash flows provided by (used in) operating activities:		
Net income	\$ 23.1	\$ 22.4
Adjustments to reconcile net income to net cash provided by (used in) operating activities:		
Discontinued operations, net of income taxes	—	(0.2)
Depreciation and amortization	6.9	6.4
Asset write downs	1.9	0.1
Net gain on sales of assets	(0.3)	(2.3)
Gain on insurance recoveries related to asset damages, net	(3.2)	—
Deferred income taxes	(0.5)	2.2
Non-cash interest, net	(0.3)	0.4
Provision for credit losses	0.4	(0.3)
Excess tax benefits from stock-based compensation	(0.9)	(1.8)
Stock-based compensation expense	1.7	3.4
Change in operating assets and liabilities:		
Accounts receivable	(0.6)	2.0
Prepaid income taxes	7.8	25.8
Other operating assets	0.4	(0.4)
Accounts payable and other operating liabilities	4.0	(9.0)
Net cash provided by operating activities of continuing operations	<u>40.4</u>	<u>48.7</u>
Net cash (used in) operating activities of discontinued operations	<u>—</u>	<u>—</u>
Cash flows provided by (used in) investing activities:		
Capital expenditures of continuing operations	(10.0)	(7.0)
Proceeds from dispositions of property and equipment	0.3	4.3
Property insurance proceeds	4.5	3.5
Acquisition of franchised restaurants	(0.4)	(9.3)
Purchases of short-term investments	—	(5.9)
Sales and maturities of short-term investments	—	36.7
Proceeds from notes receivable	0.8	0.8
Other, net	—	—
Net cash provided by (used in) investing activities	<u>(4.8)</u>	<u>23.1</u>
Cash flows provided by (used in) financing activities:		
Principal payments - 2005 Credit Facility (term loans)	(6.9)	(59.5)
Net borrowings under 2005 revolving credit facility	5.0	—
Principal payments — other notes (including VIEs)	(0.1)	(1.3)
Special cash dividend	(0.7)	(0.7)
Stock repurchases	(39.4)	(24.4)
Proceeds from exercise of employee stock options	3.3	10.7
Excess tax benefits from stock-based compensation	0.9	1.8
Decrease in restricted cash	1.1	0.7
Debt issuance costs	(0.2)	(0.1)
Other, net	(0.3)	(0.5)
Net cash (used in) financing activities	<u>(37.3)</u>	<u>(73.3)</u>
Net (decrease) in cash and cash equivalents	(1.7)	(1.5)
Cash and cash equivalents at beginning of year	6.7	8.2
Cash and cash equivalents at end of year	<u>\$ 5.0</u>	<u>\$ 6.7</u>





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	Q4 Ended 12/30/07	Q4 Ended 12/31/06	Year to Date 12/30/07	Year to Date 12/31/06
Total Same-Store Sales				
Company-operated	(7.4%)	(7.6%)	(7.8%)	9.0%
Franchised ^a	(1.3%)	(3.0%)	(2.1%)	1.3%
Total Domestic	(1.6%)	(3.1%)	(2.3%)	1.6%
International ^b	1.9%	0.8%	1.1%	(3.2%)
Total Global	(1.2%)	(2.8%)	(2.0%)	1.1%
Total Franchised (a and b)	(1.0%)	(2.6%)	(1.8%)	0.9%
New Unit Openings				
Company-operated	3	2	5	3
Franchised	21	34	77	97
Total Domestic	24	36	82	100
International	15	14	42	42
Total Global	39	50	124	142
Unit Count				
Company-operated	65	56	65	56
Franchised	1,518	1,503	1,518	1,503
Total Domestic	1,583	1,559	1,583	1,559
International	322	319	322	319
Total Global	1,905	1,878	1,905	1,878

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Use of Non-GAAP Financial Measures*EBITDA: Calculation and Definition*

The following table reconciles on a historical basis for 2006 and 2007, the Company's earnings before interest expense, taxes, depreciation and amortization ("EBITDA") on a consolidated basis to the line on our consolidated statement of operations entitled net income, which we believe is the most directly comparable GAAP measure on our consolidated statement of operations to EBITDA:

(dollars in millions)	<u>2006</u>	<u>2007</u>
Net income	\$ 22.4	\$ 23.1
Interest expense, net	\$ 11.1	\$ 8.7
Income tax expense	\$ 12.0	\$ 13.8
Depreciation and amortization	\$ 6.4	\$ 6.9
EBITDA	\$ 51.9	\$ 52.5
Total Revenue	\$153.0	\$167.3
EBITDA as a percentage of Total Revenue (EBITDA margin)	33.9%	31.4%

Free cash flow: Calculation and Definition

The following table reconciles on a historical basis for 2007, the Company's free cash flow on a consolidated basis to the line on our consolidated statement of operations entitled net income, which we believe is the most directly comparable GAAP measure on our consolidated statement of operations to free cash flow:

(dollars in millions)	<u>2007</u>
Net income	\$23.1
Depreciation and amortization	\$ 6.9
Stock compensation expense	\$ 1.7
Maintenance capital expenses	\$ (3.2)
Free cash flow	\$28.5

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**NEWS RELEASE***Management's Use of Non-GAAP Financial Measures*

EBITDA and free cash flow are supplemental non-GAAP financial measures. We use EBITDA and free cash flow, in addition to net income, operating profit and cash flows from operating activities, to assess our performance and believe it is important for investors to be able to evaluate us using the same measures used by management. We believe these measures are important indicators of our operational strength and performance of our business because they provide a link between profitability and operating cash flow. EBITDA and free cash flow as calculated by us are not necessarily comparable to similarly titled measures reported by other companies. In addition, EBITDA and free cash flow: (a) do not represent net income or cash flows from operations as defined by GAAP; (b) are not necessarily indicative of cash available to fund our cash flow needs; and (c) should not be considered as an alternative to net income, operating profit, cash flows from operating activities or our other financial information determined under GAAP.

Forward-Looking Statement: Certain statements in this release contain "forward-looking statements" within the meaning of the federal securities laws. Statements regarding future events and developments and our future performance, as well as management's current expectations, beliefs, plans, estimates or projections relating to the future, are forward-looking statements within the meaning of these laws. These forward-looking statements are subject to a number of risks and uncertainties. Examples of such statements in this press release include discussions regarding the Company's planned implementation of its new strategic plan and financial projections based on the full implementation of such plan, the Company's ability to repurchase shares of its common stock under its share repurchase program and the number of shares that may actually be repurchased (if any), expectations regarding same-store sales for fiscal 2008 and beyond, guidance for new openings and restaurant closures, and the Company's anticipated 2008 performances including projections regarding general and administrative expenses, net earnings per diluted share, EBITDA margins and free cash flows. Among the important factors that could cause actual results to differ materially from those indicated by such forward-looking statements are: competition from other restaurant concepts and food retailers, the loss of franchisees and other business partners, labor shortages or increased labor costs, increased costs of our principal food products, changes in consumer preferences and demographic trends, as well as concerns about health or food quality, instances of avian flu or other food-borne illnesses, the loss of senior management and the inability to attract and retain additional qualified management personnel, limitations on our business under our 2005 Credit Facility, failure of our franchisees, a decline in the number of franchised units, a decline in our ability to franchise new units, slowed expansion into new markets, unexpected and adverse fluctuations in quarterly results, increased government regulation, adverse effects of regulatory actions arising in connection with the restatement of our previously issued financial statements, effects of increased gasoline prices, general economic conditions, supply and delivery shortages or interruptions, currency, economic and political factors that affect our international operations, inadequate protection of our intellectual property and liabilities for environmental contamination and the other risk factors detailed in our 2007 Annual Report on Form 10-K and other documents we file with the Securities and Exchange Commission. Therefore, you should not place undue reliance on any forward-looking statements.

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