

**SECONDARY TRANSACTIONS MASTER CONFIDENTIALITY AGREEMENT**

This Secondary Transactions Master Confidentiality Agreement dated as of \_\_\_\_\_ (this "**Agreement**") by and between \_\_\_\_\_ and [Name of Bank].

1. This Agreement sets forth the terms and conditions that will apply, in each instance, to the treatment of certain non-public information that either party hereto (the "**Disclosing Party**") may supply to the other party hereto (the "**Recipient**") in connection with the consideration by the Recipient of its entering into a transaction with the Disclosing Party (a "**Transaction**") to buy and sell privately placed notes of the issuer thereof (the "**Issuer**") as specified in a Schedule, as defined below (the "**Investment**").

2. As used herein:

(a) "**Evaluation Material**" means (i) the non-public information furnished by the Disclosing Party to the Recipient, including any Information Memorandum, in respect of an Issuer or an Investment that the Disclosing Party identifies as non-public and supplies to the Recipient on or after the date of the Schedule in respect of such Transaction, (ii) all memoranda, notes, and other documents and analyses in respect of such Transaction (collectively, "**Analyses**") internally developed by the Disclosing Party that the Disclosing Party supplies to the Recipient, and (iii) all Analyses internally developed by the Recipient to the extent such Analyses contain or reflect any information specified under clauses (i) and (ii) above. The term "Evaluation Material" does not include any information that (x) at the time of disclosure or thereafter is available to the public other than as a result of a breach of this Agreement by the Recipient or its Representatives (as defined below), (y) is already in the possession of the Recipient or becomes available to the Recipient on a non-confidential basis from a source other than the Disclosing Party or its agents or advisors, *provided* that, to the knowledge of the Recipient, such source is not bound by an obligation of confidentiality to the Disclosing Party, the Issuer or another party, or (z) has been developed by the Recipient or its Representatives without use of or reference to the Evaluation Material.

(b) "**Participation**" means a transfer of an interest in a Transaction (or a grant of derivative rights in respect thereof), whether by assignment, participation or otherwise (and "**Participate**" and "**Participating**" shall have correlative meanings thereto).

(c) "**Representatives**" means the representatives of a person, including, without limitation, its and its affiliates' respective directors, officers, employees, agents, attorneys, accountants, other advisors and investment managers who will be actively involved in evaluating a Transaction.

3. With respect to a Transaction, the Disclosing Party shall complete, execute and deliver to the Recipient a schedule with respect to such Transaction in substantially the form of Exhibit A attached hereto (a "**Schedule**") which shall (a) identify which party hereto is the

Disclosing Party and which party is the Recipient, (b) identify the related Evaluation Material provided by the Disclosing Party to the Recipient, (c) identify the Issuer of the applicable Investment, and (d) provide a description of the Investment, and (e) provide a description of the documentation with respect to such Investment (the "**Operative Documentation**"). As a condition to the Disclosing Party furnishing the Recipient with any Evaluation Material in the possession of the Disclosing Party in respect of such Transaction, the Recipient shall execute and return to the Disclosing Party such Schedule.

4. The Recipient agrees, in respect of such Transaction, that (a) it will use all Evaluation Material in respect of such Transaction solely for the purposes of evaluating its possible Participation, or obtaining the Participation by one or more of its affiliates or managed accounts (an "**Additional Participant**"), in such Transaction and monitoring such Participation, if made, (b) the Recipient will use the Evaluation Material solely for the purposes of evaluating and administering the Investment, and (c) the Evaluation Material will be kept confidential by the Recipient in accordance with procedures adopted by the Recipient in good faith to protect confidential information of third parties delivered to the Recipient; *provided, however*, that any of such Evaluation Material may be disclosed to (x) Representatives of the Recipient who need to have access to such Evaluation Material for the purpose of assisting the Recipient in evaluating or administering the Investment (it being agreed that such Representatives will be made aware of the confidential nature of such Evaluation Material and shall treat such Evaluation Material confidentially) and (y) any Additional Participant and its Representatives who have agreed to keep the Evaluation Material confidential in accordance with this Agreement. The Recipient will be responsible for any disclosures by employees and affiliates of the Recipient.

5. In addition, the Recipient in respect of a Transaction agrees that prior to the settlement of its Participation in such Transaction, it will not disclose to any person, other than its Representatives, (a) the identity of the Disclosing Party with which discussions or negotiations are taking place concerning the possible Participation of the Recipient in such Transaction or any of the terms or conditions of such proposed Participation, or (b) the identity of the Issuer of the applicable Investment. The term "**person**" as used in this Agreement shall be broadly interpreted to include the media and any corporation, limited liability company, partnership, group, individual or other entity.

6. The Recipient in respect of a Transaction shall be permitted to disclose any related Evaluation Material (and the fact that such Evaluation Material has been made available to it and that discussions or negotiations are taking place concerning such Transaction or any of the terms, conditions or other facts with respect thereto) to the extent that the Recipient is required by law or regulation or requested by any governmental agency or other regulatory authority (including any self-regulatory organization having or claiming to have jurisdiction) or in connection with any legal proceedings. The Recipient agrees that it will notify the Disclosing Party as soon as practical in the event of any such disclosure (other than as a result of an examination by any regulatory agency), unless such notification shall be prohibited by applicable law or legal process.

7. If the Recipient in respect of a Transaction chooses not to Participate in such Transaction, then such Recipient agrees on request of the Disclosing Party to return to the Disclosing Party or destroy all written Evaluation Material with respect to the Issuer or the Investment that are the subject of such Transaction, as well as any other written material to the extent that such other written material contains or reflects any information that appears in such Evaluation Material and will not retain any copies, extracts, or other reproductions, in whole or in

part, of such Evaluation Material; *provided, however*, that (a) to the extent required by law or by the Recipient's internal legal, audit or document retention policies, the Recipient may retain such Evaluation Material and such other written material so long as any such Evaluation Material and any such other written material are kept confidential subject to the terms of internal policies and procedures of the Recipient and in accordance with this Agreement, and (b) neither the Recipient nor its Representatives shall be required to erase, destroy or return any information from computer systems or hard drives, tapes or memory or other electronic forms of information retention processes, materials or equipment.

8. The Recipient in respect of a Transaction understands and agrees that the Disclosing Party will have received the related Evaluation Material from third party sources and that the Disclosing Party bears no responsibility (and shall not be liable) for the accuracy or completeness (or lack thereof) of such Evaluation Material or any information contained therein.

9. The Recipient agrees that money damages may not be a sufficient remedy for breach of this Agreement, and that in addition to all other remedies available at law or in equity, the Disclosing Party shall be entitled to seek equitable relief, including injunction and specific performance, without proof of actual damages, in the event of a breach of this Agreement by the Recipient.

10. This Agreement (including each Schedule delivered pursuant hereto) embodies the entire understanding and agreement between the parties with respect to the confidentiality of all Evaluation Material for each Transaction and supersedes all prior understandings and agreements relating thereto. Unless otherwise agreed in writing between the parties hereto, the application of this Agreement shall terminate with respect to all Evaluation Material concerning each Transaction upon the earlier to occur of the closing of such Transaction and the date that is one year after the date of the Schedule for such Transaction.

11. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York excluding laws of such State that would permit the application of the laws of a jurisdiction other than such State. Venue for any action to enforce the provisions of this Agreement may be properly laid in the United States District Court for the Southern District of New York. **THE PARTIES HERETO HEREBY WAIVE TRIAL BY JURY IN ANY ACTION BROUGHT ON OR WITH RESPECT TO THIS AGREEMENT.**

12. This Agreement may be modified or waived only by a separate writing between the Disclosing Party and the Recipient.

13. This Agreement may be signed in counterparts, each of which shall be an original and both of which taken together shall constitute one instrument. Each counterpart may consist of a number of copies hereof, each signed by less than all, but together signed by all, of the parties hereto. Delivery of an executed counterpart of this Agreement by facsimile or transmitted electronically in either Tagged Image File Format ("**TIFF**") or Portable Document Format ("**PDF**") shall be equally effective as delivery of a manually executed counterpart hereof. Any party delivering an executed counterpart of this Agreement by facsimile, TIFF or PDF shall also deliver a manually executed counterpart hereof, but failure to do so shall not affect the validity, enforceability, or binding effect of this Agreement.

14. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or

unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall (to the full extent permitted by law) not invalidate or render unenforceable such provision in any other jurisdiction.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their respective authorized signatories as of the date first written above.

[COUNTERPARTY]

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

[NAME OF BANK]

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

**SCHEDULE**

This Schedule, dated as of \_\_\_\_\_, 20\_\_, is one of the Schedules referred to in the Master Confidentiality Agreement dated \_\_\_\_\_, 20\_\_ between \_\_\_\_\_ and \_\_\_\_\_. Terms used herein, unless defined herein, shall have the meanings specified in such Master Confidentiality Agreement unless otherwise defined herein.

1. Name(s) of the Issuer(s):
2. Description of the Notes:<sup>1</sup>
3. Description of the Operative Documentation:<sup>2</sup>
4. Term of Schedule: The earlier of one year from the date of this Schedule and the date when the Transaction contemplated hereby closes.
5. [Add any special provisions regarding such Issuer or the Investment.]

Disclosing Party

[NAME OF PARTY]

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

Received and accepted as of the date first written above:

Recipient

[COUNTERPARTY]

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

<sup>1</sup> e.g. \_\_\_% Senior Notes due \_\_\_\_\_

<sup>2</sup> Include a description of the primary document(s) and all other documents in respect of the Transaction that contain any provision regarding the confidentiality of information.