

SINGLE TRANSACTION
SECONDARY SALE AND PURCHASE AGREEMENT FORM
FOR DISTRESSED NOTES
MARCH 15, 2009

THIS SINGLE TRANSACTION SECONDARY SALE AND PURCHASE AGREEMENT FORM
IS INTENDED FOR USE IN CONNECTION WITH THE PURCHASE AND SALE OF
UNSECURED¹, DISTRESSED NOTES

SECONDARY SALE AND PURCHASE AGREEMENT

This Secondary Sale and Purchase Agreement (“**Agreement**”), dated as of _____, 20__, is by and between _____ (“**Seller**”) and _____ (“**Purchaser**”).

RECITALS

- A. Reference is made to (i) the Note Purchase Agreement dated as of _____ (the “**Note Purchase Agreement**”) by and between _____ (the “**Issuer**”), Seller and the other Institutional Investors that are named therein, and (ii) the Notes (as defined below) (the Note Purchase Agreement and the Notes, together with all documents executed pursuant thereto or in connection therewith, each of the foregoing as amended through and including the date of this Agreement, are referred to collectively in this Agreement as the “**Financing Documents**”). Capitalized terms that are used in this Agreement, unless otherwise defined in this Agreement, shall have the meanings set forth in the Financing Documents.
- B. Pursuant to the Note Purchase Agreement, Seller or Seller’s nominee is the registered holder of the Notes issued by the Issuer that are described in Schedule A, which is attached hereto and incorporated in this Agreement by this reference (the “**Notes**”).

AGREEMENT

In consideration of the mutual covenants and agreements contained in this Agreement, Seller and Purchaser hereby agree as follows:

A. SALE; PAYMENT OF PURCHASE PRICE; OBLIGATIONS

1. Effective upon payment by Purchaser to Seller of the Total Amount Due on Settlement Date that is set forth in Schedule A hereto (the “**Purchase Price**”), Seller hereby irrevocably sells, transfers, conveys and assigns the Transferred Rights (as such term is defined below) unto Purchaser. The date on which Purchaser actually pays the Purchase Price to Seller is referred to in this Agreement as the “**Closing Date**”.

2. Seller shall attach or shall cause its nominee to attach an appropriate, duly executed bond power [with a medallion signature-guarantee or other mutually acceptable authentication of the signature on each bond power]² or another mutually acceptable instrument of transfer (each a “**Bond Power**”) to

¹ Additional representations and warranties should be included in this Agreement if it is being used in connection with the sale of secured notes. There is a separate single transaction form for use regarding secondary sales of non-distressed notes.

² In certain cases, a medallion signature guarantee on the bond power is required. It makes re-registration of notes easier.

each Note and deliver the original Notes and Bond Powers to Purchaser on the Closing Date in accordance with Purchaser's delivery instructions that appear in Schedule A, against payment of the Purchase Price.³ Promptly upon delivery of the Notes and the Bond Powers, but (subject to such delivery) in no event later than 2:00 p.m. New York time on the date of delivery of the Notes and the Bond Powers, Purchaser shall pay the Purchase Price by wire transfer of immediately available funds to Seller in accordance with Seller's wire transfer instructions that appear in Schedule A. Such wire transfer must be received by Seller on the date on which such delivery of the Notes and the Bond Powers occurs.

3. The Closing Date shall occur on or before _____, 20____.

4. Subject to the terms and conditions of this Agreement, as of the Closing Date, Seller hereby sells, assigns and transfers to Purchaser, and Purchaser hereby purchases from Seller, the following: (i) the Notes and (ii) all of Seller's right, title and interest in, to and under the Financing Documents (collectively, the "**Transferred Rights**").

5. Subsequent to the Closing Date, Purchaser shall effect the re-registration of the Notes in the name of Purchaser or Purchaser's nominee and Seller shall cooperate with Purchaser to the extent reasonably necessary in connection with such re-registration.

6. Each party to this Agreement shall execute and deliver all further documents or instruments reasonably requested by the other party in order to effect the intent and purposes of this Agreement, *provided* that such further documents or instruments must be mutually acceptable to Seller and Purchaser in substance and form.

B. REPRESENTATIONS AND WARRANTIES

The following representations, warranties and agreements shall be deemed made on and as of the Closing Date.

1. Seller hereby represents and warrants to Purchaser that:

- (a) Seller is the sole beneficial owner of the Transferred Rights, free and clear of any rights, security interests, charges, encumbrances or claims of others of any kind arising by, through or under Seller. Seller is not acting as an agent or broker in selling the Transferred Rights to Purchaser under this Agreement.
- (b) Seller is duly organized and validly existing under the laws of the jurisdiction of its incorporation and has full right, power and authority to transfer the Transferred Rights to Purchaser.
- (c) The aggregate current outstanding principal amount of, and the current interest rate on, the Notes being sold to Purchaser are as set forth on Schedule A.
- (d) To Seller's actual knowledge, (i) no Event of Default has occurred and is continuing, and (ii) no event has occurred which with the giving of notice or passage of time or both would become an Event of Default, pursuant to the Financing Documents.

³ Additional and/or different language may be necessary if the Notes are held in book-entry form through The Depository Trust & Clearing Corporation (DTC) or another clearing company.

- (e) Seller is a sophisticated institutional investor that is an “accredited investor” within the meaning of Rule 501⁴ under the Securities Act of 1933, as amended (the “Act”).
- (f) Neither Seller nor anyone acting on Seller’s behalf has taken any action which would subject the sale of the Notes to the registration provisions of Section 5 of the Act.
- (g) Seller is not a person (either alone or together with others) directly or indirectly controlling or controlled by the Issuer or under direct or indirect common control with the Issuer within the meaning of the Act. Seller is not an affiliate (as such term is defined in Rule 405 promulgated under the Act⁵) of the Issuer.
- (h) Except as specifically set forth in this Agreement, Purchaser has made no representations, warranties or agreements, express or implied, of any kind

⁴ Rule 501 (Definitions and Terms Used in Regulation D) defines “Accredited Investor” as “any person who comes within any of the following categories, or who the issuer reasonably believes comes within any of the following categories, at the time of the sale of the securities to that person:

1. Any bank as defined in section 3(a)(2) of the Act, or any savings and loan association or other institution as defined in section 3(a)(5)(A) of the Act whether acting in its individual or fiduciary capacity; any broker or dealer registered pursuant to section 15 of the Securities Exchange Act of 1934; any insurance company as defined in section 2(a)(13) of the Act; any investment company registered under the Investment Company Act of 1940 or a business development company as defined in section 2(a)(48) of that Act; any Small Business Investment Company licensed by the U.S. Small Business Administration under section 301(c) or (d) of the Small Business Investment Act of 1958; any plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions, for the benefit of its employees, if such plan has total assets in excess of \$5,000,000; any employee benefit plan within the meaning of the Employee Retirement Income Security Act of 1974 if the investment decision is made by a plan fiduciary, as defined in section 3(21) of such act, which is either a bank, savings and loan association, insurance company, or registered investment adviser, or if the employee benefit plan has total assets in excess of \$5,000,000 or, if a self-directed plan, with investment decisions made solely by persons that are accredited investors;
2. Any private business development company as defined in section 202(a)(22) of the Investment Advisers Act of 1940;
3. Any organization described in section 501(c)(3) of the Internal Revenue Code, corporation, Massachusetts or similar business trust, or partnership, not formed for the specific purpose of acquiring the securities offered, with total assets in excess of \$5,000,000;
4. Any director, executive officer, or general partner of the issuer of the securities being offered or sold, or any director, executive officer, or general partner of a general partner of that issuer;
5. Any natural person whose individual net worth, or joint net worth with that person's spouse, at the time of his purchase exceeds \$1,000,000;
6. Any natural person who had an individual income in excess of \$200,000 in each of the two most recent years or joint income with that person's spouse in excess of \$300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year;
7. Any trust, with total assets in excess of \$5,000,000, not formed for the specific purpose of acquiring the securities offered, whose purchase is directed by a sophisticated person as described in Rule 506(b)(2)(ii) and
8. Any entity in which all of the equity owners are accredited investors.”

⁵ Rule 405 (as amended through January 4, 2008) defines “Affiliate” as follows: “An *affiliate* of, or person *affiliated* with, a specified person, is a person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person specified.”

regarding the Transferred Rights. Other than the obligations that are specifically set forth in this Agreement, Purchaser has no obligations to Seller, express or implied, including, without limitation, fiduciary obligations.

- (i) Seller is fully aware that, with regard to the sale of the Notes and Transferred Rights, Purchaser is relying upon the truth and accuracy of Seller's representations and warranties that appear in this Agreement.
- (j) This Agreement has been duly authorized, executed and delivered by or on behalf of Seller.
- (k) Neither the Financing Documents nor the Notes have been amended from their original form or supplemented, nor has compliance with any of the provisions thereof been waived or deferred.
- (l) Seller has delivered or caused to be delivered to Purchaser true and complete copies of the [following] Financing Documents[;]:

[List documents delivered]⁶

2. Purchaser hereby represents and warrants to Seller that:

- (a) Purchaser understands: that the Notes have not been and will not be registered under the Act or any state securities or "Blue Sky" laws, and may be resold only if registered pursuant to the provisions of the Act and applicable state securities laws or if an exemption from such registration is available; that neither the Issuer nor Seller is required to register the Notes; and that any transfer of the Notes must comply with the Financing Documents.
- (b) [Purchaser is acquiring the Notes for its own account, and not with a view to distribution thereof, *provided* that the disposition of Purchaser's property shall at all times be and remain within its control. Purchaser will comply with all applicable federal and state securities laws in connection with any subsequent resale of the Notes.]

OR

[Purchaser is acquiring the Notes for its own account as a dealer with the intention of reselling the Notes in reliance on an exemption from registration under the Act. Purchaser will comply with all applicable federal and state securities laws in connection with any subsequent resale of the Notes.]

- (c) Purchaser is a sophisticated institutional investor that is an "accredited investor" within the meaning of Rule 501 under the Act.

OR

Purchaser is a "qualified institutional buyer" as that term is defined in Rule 144A(a)(1) under the Act.

⁶ Use this provision if Purchaser is not an existing holder of Notes. See Purchaser's representation in Section 2(i).

- (d) Purchaser has conducted, to the extent it deemed necessary, an independent investigation of such matters, and has had the opportunity to receive such information and documents as, in its judgment, are necessary for it to make an informed investment decision. Purchaser has not relied upon Seller for any investigation or assessment to evaluate the transaction contemplated by this Agreement.
- (e) Purchaser is duly organized and validly existing under the laws of the jurisdiction of its incorporation and has full right, power and authority to purchase the Transferred Rights from Seller.
- (f) Except as specifically set forth in this Agreement, Seller has not made any representations, warranties or agreements, express or implied, of any kind. Other than the obligations that are specifically set forth in this Agreement, Seller has no obligations to Purchaser, express or implied, including, without limitation, fiduciary obligations.
- (g) Purchaser is fully aware that, with regard to the sale of the Notes and Transferred Rights, Seller is relying upon the truth and accuracy of these representations and warranties.
- (h) This Agreement has been duly authorized, executed and delivered by or on behalf of Purchaser.
- (i) Purchaser has either received from Seller or otherwise obtained copies of the Financing Documents, has received all other information, if any, that it has requested from Seller and has had an ample opportunity to review such Financing Documents and other information. Purchaser is acquiring the Transferred Rights in accordance and compliance with the terms of the Financing Documents. Purchaser understands that the terms of the Note Purchase Agreement provide that each waiver, amendment and agreement made by Seller shall be binding upon Purchaser as holder of the Transferred Rights.
- (j) Disclosure of any information concerning the Issuer or the Financing Documents made by Seller to Purchaser is made subject to any confidentiality provisions of the Financing Documents, and Purchaser covenants and agrees to comply with such confidentiality provisions.
- (k) Purchaser acknowledges that Seller makes no representation or warranty whatsoever concerning the accuracy, adequacy, completeness or truth of the statements made by the Issuer or any of the other parties to the Financing Documents (other than of Seller to the extent set forth in this Agreement); and that Seller shall have no liability for any misstatement of a material fact contained in the Financing Documents or for the omission therefrom of any material fact required to be stated therein in order to make the statements therein not misleading.
- (l) Purchaser is not a person (either alone or together with others) directly or indirectly controlling or controlled by the Issuer or under direct or indirect common control with the Issuer within the meaning of the Act. Purchaser is not

an affiliate (as such term is defined in Rule 405 promulgated under the Act) of the Issuer.

- (m) Purchaser is not acting as an agent or broker in purchasing the Transferred Rights from Seller under this Agreement.

C. ADDITIONAL PROVISIONS

1. Successors and Assigns. This Agreement, including, without limitation, the representations, warranties, covenants and obligations contained in this Agreement, (i) shall inure to the benefit of and be enforceable by Seller and Purchaser and their respective successors, assigns and transferees, and (ii) shall be binding upon and enforceable against Seller and Purchaser and their respective successors, assigns and transferees.

2. Amendment, Modification or Assignment. This Agreement may not be amended, modified or assigned except pursuant to a writing executed by Seller and Purchaser.

3. Governing Law. This Agreement shall be governed and construed and the obligations of the parties hereunder shall be determined in accordance with the laws of the State of New York (without regard to any conflict of laws provisions thereof that would require application of laws other than the laws of such State).

4. WAIVER OF JURY TRIAL. EACH OF SELLER AND PURCHASER HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT.

5. Counterparts. This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original, but all of which together shall constitute one Agreement binding on Seller and Purchaser. 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.

6. Notices. All communications between the parties to this Agreement or notices or other information sent in connection herewith shall be in writing, hand delivered or sent (a) by telecopy if the sender on the same day sends a confirming copy of such notice by a recognized overnight delivery service (charges prepaid), or (b) electronically in either TIFF or PDF if the sender on the same day sends a confirming copy of such notice by a recognized overnight delivery service (charges prepaid), or (c) by registered or certified mail with return receipt requested (postage prepaid), or (d) by a recognized overnight delivery service (with charges prepaid), in each case addressed to such party at its address set forth below or at such other address as such party shall have specified to the other party to this Agreement in writing:

If to Seller:

[Seller’s name]

[Address]

Attention: _____

Tel. No.:
Fax No.:
Email Address:

If to Purchaser:

[Purchaser's name]
[Address]
Attention: _____
Tel. No.:
Fax No.:
Email Address:

Notices under this Section 6 will be deemed given only when actually received.

7. Brokers. Each of Seller and Purchaser represents and warrants that no broker, finder or agent acting pursuant to the authority of such party is entitled to any brokerage fee, finder's fee, commission or similar amount from the other party hereto in connection with the purchase or sale of the Transferred Rights hereunder.

8. Entire Agreement. This Agreement constitutes the entire agreement and understanding between Seller and Purchaser with respect to the subject matter of this Agreement, and supersedes all prior agreements, understandings or representations pertaining to the subject matter of this Agreement, whether oral or written. There are no warranties, representations or other agreements between the parties in connection with the subject matter of this Agreement except as specifically set forth in this Agreement.

[NOTE: Optional provisions may be found in the Appendix to this Agreement.]

IN WITNESS WHEREOF, Seller and Purchaser have executed this Agreement by their duly authorized signatories as of the date first set forth above.

[SELLER]

By _____
[Title]

[PURCHASER]

By _____
[Title]

SCHEDULE A

Issuer:

Guarantor (if any):

Description of Notes: _____% _____ Notes due
_____, _____

Par Principal Amount being sold:

Date through which interest has been paid:

Price (in US\$):

Accrued Interest:⁷

Total Amount Due on Settlement Date :

Trade Date:

Settlement Date:

Seller's wire transfer instructions:

Purchaser's delivery instructions:

⁷ Purchaser shall pay Seller accrued interest on the Notes through the day immediately preceding the Closing Date as part of the Purchase Price (as such terms are defined in this Agreement). In the event that the Closing Date is a date other than the Settlement Date specified above, the Accrued Interest and Total Amount Due on Settlement Date specified above shall be adjusted accordingly.

APPENDIX

OPTIONAL ADDITIONAL PROVISIONS

RECITALS

- C. FOR DISTRESSED TRANSACTIONS: On or about _____, _____ (the “**Petition Date**”), the Issuer [and affiliates of the Issuer] ([collectively,] the “**Debtor[s]**”), filed petitions with the United States Bankruptcy Court for the _____ District of _____ (the “**Bankruptcy Court**”) commencing case[s] number _____ [through _____, jointly administered] ([collectively,] the “**Case**”), under Chapter 11 of Title 11 of the United States Code (the “**Bankruptcy Code**”).
- D. FOR DISTRESSED TRANSACTIONS: As of the Petition Date and as of the date of this Agreement, the aggregate principal amount of \$_____ is outstanding under the Notes.

AGREEMENT

A. SALE; PAYMENT OF PURCHASE PRICE; OBLIGATIONS

4. FOR DISTRESSED TRANSACTIONS – OPTIONAL LONGER VERSION OF SECTION A.4: Subject to the terms and conditions of this Agreement, Seller hereby sells, assigns and transfers to Purchaser, and Purchaser hereby purchases from Seller, the following as of the Closing Date: (i) the Notes, (ii) all of Seller’s right, title and interest in, to and under the Financing Documents, (iii) any and all rights, claims (including any “claims” within the meaning of Section 101(3) of the Bankruptcy Code) and causes of action, whether known or unknown, that Seller now has or may hereafter acquire against the Issuer, any guarantor of the Issuer’s obligations, any agent, independent contractor, advisor (including, without limitation, any attorney, accountant, broker or investment banker), or other person or entity, arising from, or under, pursuant or relating to, or in connection with the Notes and/or the Financing Documents (the “**Related Claims**”), and (iv) any and all cash, notes, interest (including, without limitation, interest accrued and unpaid as of the date of this Agreement), dividends and other property which may be exchanged for, distributed or collected in respect of the Notes, the Financing Documents or the Related Claims, and the proceeds thereof (the “**Proceeds**”) (collectively, the “**Transferred Rights**”).

____. Subject to the terms and conditions of this Agreement, Purchaser hereby assumes the obligations of Seller under the Financing Documents to the extent such obligations arise or accrue, and are attributable to the period from and after the Closing Date (the “**Assumed Obligations**”). Notwithstanding anything in this Agreement to the contrary, the Assumed Obligations shall not include, and Purchaser is not assuming and shall not be responsible for, any obligations arising under or in connection with (i) Seller’s breach of any of its representations, warranties, covenants or agreements in this Agreement, (ii) Seller’s breach prior to the Closing Date of any of its representations, warranties, covenants or agreements in the Financing Documents, or (iii) Seller’s gross negligence or willful misconduct (the exclusions in clauses (i), (ii) and (iii) are hereinafter referred to as the “**Retained Obligations**”).

____. FOR DISTRESSED TRANSACTIONS: Within three (3) days after the Closing Date, Seller shall tender its resignation of its membership on the Official Committee of Unsecured Creditors appointed in the Case to the Chair of such Committee.

B. REPRESENTATIONS AND WARRANTIES

The following representations, warranties and agreements shall be deemed made on and as of the Closing Date and shall survive the Closing Date for a period of [one year] after the Closing Date.

1. Seller hereby represents and warrants to Purchaser that:

- () This Agreement has been duly executed and delivered by Seller. This Agreement has been duly and validly authorized by all necessary corporate action on the part of Seller, and constitutes the legal, valid and binding obligation of Seller enforceable against Seller in accordance with its terms, except as such enforceability may be limited by (i) applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally, and (ii) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law) and no consent or approval of any party is required in connection with the execution, delivery and performance of this Agreement by Seller or the sale and transfer by Seller of the Transferred Rights.
- () Seller is not a Person described or designated in the Specially Designated Nationals and Blocked Persons List of the Office of Foreign Assets Control (the "**OFAC List**") or in Section 1 of the Executive Order No. 13,224 of September 24, 2001, Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit or Support Terrorism, 66 U.S. Fed. Reg. 49, 079 (2001), as amended (the "**Anti-Terrorism Order**"), nor does Seller engage in any dealings or transactions with any such Person. Seller is in compliance, in all material respects, with the United States Public Law 107-56, Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001, as amended from time to time, and the rules and regulations promulgated thereunder from time to time in effect (the "**USA Patriot Act**"). As used in this paragraph, "**Person**" shall have the meanings given to such term in the OFAC List or Section 1 of the Anti-Terrorism Order, as the case may be.
- () Seller is aware that Purchaser may possess material non-public information regarding the Issuer or the Transferred Rights, and the value of the security therefor ("**Purchaser's Material Information**"). Seller has not requested Purchaser's Material Information. Seller hereby waives any and all claims it may have or may hereafter acquire against Purchaser relating to any failure by Purchaser to disclose Purchaser's Material Information to Seller in connection with Seller's sale of the Transferred Rights to Purchaser.

- () FOR DISTRESSED TRANSACTIONS: Except as otherwise provided in this Agreement, Seller makes no representation or warranty relating to the effect of the Case on the value of the Transferred Rights. [[Other than the Case,] [T]here are no judicial, administrative or other proceedings arising out of or in connection with the Transferred Rights pending against Seller before any court, administrative or governmental body which would materially adversely affect the Transferred Rights or Purchaser's rights and remedies under this Agreement or in respect of the Transferred Rights. To the best of Seller's knowledge, (i) Seller has not received any written notice, claim or demand from or on behalf of the Issuer or any other person or entity which asserts that any transfer, including transfers of payments received from or on account of the Transferred Rights is void or voidable as an actual or constructive fraudulent transfer, and (ii) the Transferred Rights are not void or voidable or subject to any defense, right of set-off or recoupment, counterclaim, claim, subordination or impairment of any kind.
- () FOR DISTRESSED TRANSACTIONS: The amount of accrued interest on the Notes as of the Petition Date is set forth on Schedule A. Seller makes no representations as to the amount and collectibility of any make-whole compensation, legal fees or post-petition interest with respect to the Notes.
- () FOR DISTRESSED TRANSACTIONS: Seller has delivered to Purchaser true and correct copies of the Proofs of Claim filed in the Case by or on behalf of Seller.
- () FOR DISTRESSED TRANSACTIONS: Seller is not a member of any official Creditors' Committee appointed by the Bankruptcy Court or the office of the United States Trustee. Seller is not an "insider" of the Debtor[s] within the meaning of Section 101(31) of the Bankruptcy Code. [Proofs of Claim were duly and timely filed by or on behalf of Seller with the Bankruptcy Court prior to the bar date of _____, ____;] **OR** [No Proofs of Claim have been filed in the Case.]

2. Purchaser hereby represents and warrants to Seller that:

- () Purchaser is not a Person described or designated in the OFAC List or in Section 1 of the Anti-Terrorism Order, nor does Purchaser engage in any dealings or transactions with any such Person. Purchaser is in compliance, in all material respects, with the USA Patriot Act. As used in this paragraph, "**Person**" shall have the meanings given to such term in the OFAC List or Section 1 of the Anti-Terrorism Order, as the case may be.
- () Purchaser is an existing Holder of one or more notes that were issued pursuant to the Note Purchase Agreement and is presumed to have the same information regarding the Issuer [and the Guarantor, if any] that Seller may have.
- () Purchaser is aware that Seller may possess material non-public information regarding the Issuer or the Transferred Rights, [and the value of the security therefor], including, without limitation, information received at, and in connection with, meetings of creditors with the Issuer (all such non-public information is called "**Seller's Material Information**"). Purchaser has not requested Seller's Material Information from Seller. Purchaser hereby waives

any and all claims it may have or may hereafter acquire against Seller relating to any failure by Seller to disclose Seller's Material Information to Purchaser in connection with Purchaser's purchase of the Transferred Rights.

- () In the event that Purchaser resells the Notes and Transferred Rights acquired hereunder, Purchaser shall execute such resale pursuant to an agreement substantially similar to this Agreement[, including, but not limited to, the provisions of this Agreement regarding Purchaser's Material Information and Seller's Material Information].
- () This Agreement has been duly executed and delivered by Purchaser. This Agreement has been duly and validly authorized by all necessary corporate action on the part of Purchaser, and constitutes the legal, valid and binding obligation of Purchaser enforceable against Purchaser in accordance with its terms, except as such enforceability may be limited by (i) applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally, and (ii) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law) and no consent or approval of any party is required in connection with the execution, delivery and performance of this Agreement by Purchaser or the purchase by Purchaser of the Transferred Rights.
- () Purchaser hereby makes to Seller and the Issuer the representations and warranties that appear in Section [6.2 (Source of Funds)]⁸ of the Note Purchase Agreement.
- () Purchaser is not a Competitor of the Issuer.⁹
- () FOR DISTRESSED TRANSACTIONS: The consideration given for the purchase by Purchaser of the Transferred Rights may differ both in kind and in amount from any payments or distributions which Purchaser may ultimately receive with respect to the Transferred Rights, and Purchaser shall not have any recourse to Seller for any deficiency.

C. ADDITIONAL PROVISIONS

____. Submission to Jurisdiction. Each of Seller and Purchaser hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of the federal and state courts located in New York County, New York, including the United States District Court for the Southern District of New York, in connection with any claim brought with respect to this Agreement or

⁸ The original purchasers' representations and warranties to the Issuer regarding the source of funds for the purchase of the Notes and ERISA appear in Section 6.2 of the ACIC Model Forms of Note Purchase Agreement. The drafter will need to review the Note Purchase Agreement pursuant to which the Notes that are the subject of this Agreement were originally issued to see where such ERISA representations and warranties appear in that document. It should also be noted that the last sentence of Section 3.2 of the Model Forms of Note Purchase Agreement states: "Any transferee, by its acceptance of a Note registered in its name (or the name of its nominee) shall be deemed to have made the representation in Section 6.2." Please note that such representation is made to the Issuer only (and not to Seller under this Agreement).

⁹ This provision should be included if the underlying Note Purchase Agreement contains a provision that restricts transfers of Notes to entities that are Competitors (as defined in the underlying Note Purchase Agreement) of the Issuer.

related matter and waives any right to claim such forum would be inappropriate, including concepts of *forum nonconveniens*.

___ Amendments. No amendment of any provision of this Agreement shall be effective unless it is in writing and signed by Seller and Purchaser, and no waiver of any provision of this Agreement, nor consent to any departure by Seller or Purchaser therefrom, shall be effective unless it is in writing and signed by the other party or parties, as applicable, affected thereby, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

___ Waivers. No failure on the part of any party to exercise, and no delay in exercising, any right hereunder or under any related document shall operate as a waiver thereof by such party, nor shall any single or partial exercise of any right hereunder or under any other related document preclude any other or further exercise thereof or the exercise of any other right. The rights and remedies of each party provided in this Agreement and in other related documents (x) are cumulative and are in addition to, and not exclusive of, any rights or remedies provided by law (except as otherwise expressly set forth in this Agreement), and (y) are not conditional or contingent on any attempt by such party to exercise any of its rights under any other related document against the other party or any other entity.

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

___ FOR DISTRESSED TRANSACTIONS: Notice of Transfer. Seller acknowledges that Purchaser may cause to be filed with the Bankruptcy Court a notice of transfer and transfer agreement pursuant to Bankruptcy Rule 3001(e)(1) notifying the Bankruptcy Court of the transfer of the Transferred Rights to Purchaser. Seller agrees to cooperate with Purchaser at no cost to Seller in making such filing.