CNO FINANCIAL GROUP, INC.

Filed by

PAULSON & CO INC

FORM SC 13D

(Statement of Beneficial Ownership)

Filed 11/23/09

Address	11825 N PENNSYLVANIA ST CARMEL, IN 46032
Telephone	3178176100
CIK	0001224608
Symbol	CNO
SIC Code	6321 - Accident and Health Insurance
Industry	Insurance (Life)
Sector	Financial
Fiscal Year	12/31

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

SCHEDULE 13D

Under the Securities Exchange Act of 1934
(Amendment No. _____)*

Conseco, Inc.
(Name of Issuer)

Common Stock
(Title of Class of Securities)

208464883
(CUSIP Number)

Stephen M. Schultz, Esq.
Kleinberg, Kaplan, Wolff & Cohen, P.C.
551 Fifth Avenue, New York, New York 10176
Tel: (212) 986-6000
(Name, Address and Telephone Number of Person Authorized to Receive Notices and Communications)

November 13, 2009
(Date of Event Which Requires Filing of this Statement)

If the filing person has previously filed a statement on Schedule 13G to report the acquisition that is the subject of this Schedule 13D, and is filing this schedule because of §§ 240.13d-1(e), 240.13d-1(f) or 240.13d-1(g), check the following box ☐ .

Note : Schedules filed in paper format shall include a signed original and five copies of the schedule, including all exhibits. See § 240.13d-7 for other parties to whom copies are to be sent.

*The remainder of this cover page shall be filled out for a reporting person's initial filing on this form with respect to the subject class of securities, and for any subsequent amendment containing information which would alter disclosures provided in a prior cover page.

The information required on the remainder of this cover page shall not be deemed to be "filed" for the purpose of Section 18 of the Securities Exchange Act of 1934 ("Act") or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act (however, see the Notes).

CUSIP No. 208464883	13D	

1	NAME OF REPORTING PERSON Paulson & Co. Inc.	
2	CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (see instructions)	**(a)** ☒ **(b)** ☐
3	SEC USE ONLY	
4	SOURCE OF FUNDS AF	
5	CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) or 2(e) ☐	
6	CITIZENSHIP OR PLACE OF ORGANIZATION Delaware	
NUMBER OF SHARES BENEFI-CIALLY OWNED BY EACH REPORT-ING PERSON WITH	7	SOLE VOTING POWER 0
	8	SHARED VOTING POWER 20,000,000
	9	SOLE DISPOSITIVE POWER 0
	10	SHARED DISPOSITIVE POWER 20,000,000
11	AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON 20,000,000	
12	CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES (see instructions) ☐	
13	PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11) 9.9 %	
14	TYPE OF REPORTING PERSON IA	

CUSIP No. 208464883	13D	

1	NAME OF REPORTING PERSON Paulson Advantage Master Ltd.		
2	CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (see instructions)		(a) ☒ (b) ☐
3	SEC USE ONLY		
4	SOURCE OF FUNDS WC		
5	CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) or 2(e) ☐		
6	CITIZENSHIP OR PLACE OF ORGANIZATION Cayman Islands		
NUMBER OF SHARES BENEFI-CIALLY OWNED BY EACH REPORT-ING PERSON WITH	7	SOLE VOTING POWER 0	
	8	SHARED VOTING POWER 3,235,863	
	9	SOLE DISPOSITIVE POWER 0	
	10	SHARED DISPOSITIVE POWER 3,235,863	
11	AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON 3,235,863		
12	CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES (see instructions) ☐		
13	PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11) 1.6 %		
14	TYPE OF REPORTING PERSON CO		

CUSIP No. 208464883	13D	

1	NAME OF REPORTING PERSON Paulson Advantage Plus Master Ltd.	
2	CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (see instructions)	(a) ☒ (b) ☐
3	SEC USE ONLY	
4	SOURCE OF FUNDS WC	
5	CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) or 2(e) ☐	
6	CITIZENSHIP OR PLACE OF ORGANIZATION Cayman Islands	
NUMBER OF SHARES BENEFI-CIALLY OWNED BY EACH REPORT-ING PERSON WITH	7	SOLE VOTING POWER 0
	8	SHARED VOTING POWER 6,994,010
	9	SOLE DISPOSITIVE POWER 0
	10	SHARED DISPOSITIVE POWER 6,994,010
11	AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON 6,994,010	
12	CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES (see instructions) ☐	
13	PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11) 3.5 %	
14	TYPE OF REPORTING PERSON CO	

CUSIP No. 208464883	13D	

1	NAME OF REPORTING PERSON Paulson Advantage Select Master Fund Ltd.	
2	CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (see instructions)	**(a)** ☒ **(b)** ☐
3	SEC USE ONLY	
4	SOURCE OF FUNDS WC	
5	CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) or 2(e) ☐	
6	CITIZENSHIP OR PLACE OF ORGANIZATION Cayman Islands	
NUMBER OF SHARES BENEFI-CIALLY OWNED BY EACH REPORT-ING PERSON WITH	7	SOLE VOTING POWER 0
	8	SHARED VOTING POWER 70,127
	9	SOLE DISPOSITIVE POWER 0
	10	SHARED DISPOSITIVE POWER 70,127
11	AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON 70,127	
12	CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES (see instructions) ☐	
13	PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11) Less than 0.1 **%**	
14	TYPE OF REPORTING PERSON CO	

CUSIP No. 208464883	13D	

1	NAME OF REPORTING PERSON Paulson Recovery Master Fund Ltd.		
2	CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (see instructions)		(a) ☒ (b) ☐
3	SEC USE ONLY		
4	SOURCE OF FUNDS WC		
5	CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) or 2(e) ☐		
6	CITIZENSHIP OR PLACE OF ORGANIZATION Cayman Islands		
NUMBER OF SHARES BENEFI-CIALLY OWNED BY EACH REPORT-ING PERSON WITH	7	SOLE VOTING POWER 0	
	8	SHARED VOTING POWER 9,700,000	
	9	SOLE DISPOSITIVE POWER 0	
	10	SHARED DISPOSITIVE POWER 9,700,000	
11	AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON 9,700,000		
12	CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES (see instructions) ☐		
13	PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11) 4.8%		
14	TYPE OF REPORTING PERSON CO		

CUSIP No. 208464883	13D	

1	NAME OF REPORTING PERSON John Paulson	
2	CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (see instructions)	(a) ☒ (b) ☐
3	SEC USE ONLY	
4	SOURCE OF FUNDS AF	
5	CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) or 2(e) ☐	
6	CITIZENSHIP OR PLACE OF ORGANIZATION United States	
NUMBER OF SHARES BENEFI-CIALLY OWNED BY EACH REPORT-ING PERSON WITH	7	SOLE VOTING POWER 0
	8	SHARED VOTING POWER 20,000,000
	9	SOLE DISPOSITIVE POWER 0
	10	SHARED DISPOSITIVE POWER 20,000,000
11	AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON 20,000,000	
12	CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES (see instructions) ☐	
13	PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11) 9.9%	
14	TYPE OF REPORTING PERSON IN	

This Schedule 13D reflects the shares of Common Stock (as defined below) held by the Reporting Persons (as defined below) as of November 23, 2009.

Item 1. Security and Issuer.

This statement on Schedule 13D relates to the common stock, par value $0.01 per share (the " Common Stock "), of Conseco, Inc., a Delaware corporation (the " Issuer "). The principal executive offices of the Issuer are located at 11825 N. Pennsylvania Street, Carmel, Indiana 46032.

Item 2. Identity and Background.

(a) NAME

The names of the persons filing this statement on Schedule 13D (the " Reporting Persons ") are:

- Paulson & Co. Inc. (" Paulson & Co.");
- Paulson Advantage Master Ltd. (" Advantage Master ");
- Paulson Advantage Plus Master Ltd. (" Advantage Plus Master");
- Paulson Advantage Select Master Fund Ltd. (" Select Master ");
- Paulson Recovery Master Fund Ltd. (" Recovery Master "); and
- John Paulson

(b) RESIDENCE OR BUSINESS ADDRESS

Paulson & Co. and John Paulson each have a business address at 1251 Avenue of the Americas, 50th Floor, New York, New York 10020.

Advantage Master, Advantage Plus Master, Select Master and Recovery Master each have a business address at c/o BNY Alternative Investment Services Ltd., 18 Church Street, Skandia House, Hamilton, HM11, Bermuda.

(c) PRESENT PRINCIPAL OCCUPATION OR EMPLOYMENT AND THE NAME, PRINCIPAL BUSINESS AND ADDRESS OF ANY CORPORATION OR OTHER ORGANIZATION IN WHICH SUCH EMPLOYMENT IS CONDUCTED

Paulson & Co., an investment advisor that is registered under the Investment Advisors Act of 1940, furnishes investment advice to and manages onshore and offshore investment funds and separately managed accounts, including each of Advantage Master, Advantage Plus Master, Select Master and Recovery Master.

The principal business of each of Advantage Master, Advantage Plus Master, Select Master and Recovery Master is that of a private investment fund engaged in the purchase and sale of securities for its own account.

John Paulson's primary business is serving as the President and sole Director of Paulson & Co.

Information regarding the directors, executive officers and/or control persons of the Reporting Persons (collectively, the " Instruction C Persons ") is set forth in Exhibit 4 attached hereto.

(d), (e) CRIMINAL CONVICTIONS; CIVIL PROCEEDINGS

During the last five years, none of the Reporting Persons or Instruction C Persons has (i) been convicted in a criminal proceeding (excluding traffic violations or similar misdemeanors) or (ii) been a party to a civil proceeding of a judicial or administrative body of competent jurisdiction and as a result of such proceeding was or is subject to a judgment, decree or final order enjoining future violations of, or prohibiting or mandating activities subject to, federal or state securities laws or finding any violation with respect to such laws.

(f) CITIZENSHIP

Paulson & Co. is a Delaware corporation.

Each of Advantage Master, Advantage Plus Master, Select Master and Recovery Master is a Cayman Islands exempted company.

John Paulson is a United States citizen.

Item 3. Source and Amount of Funds or Other Consideration.

The consideration for the purchase of the shares of Common Stock reported as beneficially owned by the Reporting Persons herein, including the 3,600,000 shares of Common Stock previously acquired by Recovery Master in the ordinary course of business, was derived from available capital of the investment funds managed by Paulson. A total of $92,758,718 was paid to acquire such shares and the Warrants (as described in Item 4).

Item 4. Purpose of Transaction.

On November 13, 2009, the Reporting Persons acquired 16,400,000 shares of Common Stock (the " Shares ") and warrants to purchase, upon exercise, an aggregate of 5,000,000 shares of Common Stock at an exercise price of $6.50 per share, subject to adjustment for certain events (the " Warrants ," and together with the Shares, the " Securities "), pursuant to the terms of a Stock and Warrant Purchase Agreement entered into as of October 13, 2009

(the " Purchase Agreement "), by and between the Issuer and Paulson & Co. on behalf of the Reporting Persons (the " Purchaser "). Prior to June 30, 2013, the Warrants will not be exercisable, except under limited circumstances beyond the control of the Reporting Persons, and, therefore, the shares of Common Stock underlying such Warrants are not currently deemed to be beneficially owned by the Reporting Persons for purposes of this Schedule 13D. Commencing on June 30, 2013, the Warrants will be exercisable for shares of Common Stock at the option of the Reporting Persons, subject to certain exceptions.

The description of the Purchase Agreement in this report is a summary only and is qualified in its entirety by the terms of the Purchase Agreement, which is attached hereto as Exhibit 5 and is incorporated by reference herein.

Subject to the terms of the Purchase Agreement, the Investor Rights Agreement (as defined in Item 6) and the Lock-Up Agreement (as defined in Item 6), the Reporting Persons reserve the right to acquire, or cause to be acquired, additional securities of the Issuer, to dispose of, or cause to be disposed, such securities at any time or to formulate any purposes, plans or proposals regarding the Issuer or any of its securities, to the extent deemed advisable in light of general investment and trading policies of the Reporting Persons, market conditions or other factors. Subject to the terms of the Purchase Agreement, the Investor Rights Agreement and the Lock-Up Agreement, the Reporting Persons may communicate with the Issuer's management and/or board of directors or with other stockholders to discuss any purposes, plans or proposals.

The information set forth in Item 6 is incorporated by reference herein.

Item 5. Interest in Securities of the Issuer.

(a-b) Collectively, the Reporting Persons beneficially own 20,000,000 shares of Common Stock representing 9.9% of the outstanding shares of Common Stock.

I. Paulson & Co.

(a) Amount beneficially owned: 20,000,000

(b) Percent of Class: 9.9%

(c) Number of shares of Common Stock as to which Paulson & Co. has:

(i) Sole power to vote or direct the vote: 0

(ii) Shared power to vote or direct the vote: 20,000,000 (See Note 1 below)

(iii) Sole power to dispose or direct the disposition: 0

(iv) Shared power to dispose or direct the disposition: 20,000,000 (See Note 1 below)

II. Advantage Master

(a) Amount beneficially owned: 3,235,863

(b) Percent of class: 1.6%

(c) Number of shares of Common Stock as to which Advantage Master has:

(i) Sole power to vote or direct the vote: 0

(ii) Shared power to vote or direct the vote: 3,235,863 (See Note 1 below)

(iii) Sole power to dispose or direct the disposition: 0

(iv) Shared power to dispose or direct the disposition: 3,235,863 (See Note 1 below)

III. Advantage Plus Master

(a) Amount beneficially owned: 6,994,010

(b) Percent of class: 3.5%

(c) Number of shares of Common Stock as to which Advantage Plus Master has:

(i) Sole power to vote or direct the vote: 0

(ii) Shared power to vote or direct the vote: 6,994,010 (See Note 1 below)

(iii) Sole power to dispose or direct the disposition: 0

(iv) Shared power to dispose or direct the disposition: 6,994,010 (See Note 1 below)

IV. Select Master

(a) Amount beneficially owned: 70,127

(b) Percent of class: Less than 0.1%

(c) Number of shares of Common Stock as to which Select Master has:

(i) Sole power to vote or direct the vote: 0

(ii) Shared power to vote or direct the vote: 70,127 (See Note 1 below)

(iii) Sole power to dispose or direct the disposition: 0

(iv) Shared power to dispose or direct the disposition: 70,127 (See Note 1 below)

V. Recovery Master

(a) Amount beneficially owned: 9,700,000

(b) Percent of class: Less than 4.8%

(c) Number of shares of Common Stock as to which Recovery Master has:

(i) Sole power to vote or direct the vote: 0

(ii) Shared power to vote or direct the vote: 9,700,000 (See Note 1 below)

(iii) Sole power to dispose or direct the disposition: 0

(iv) Shared power to dispose or direct the disposition: 9,700,000 (See Note 1 below)

VI. John Paulson

(a) Amount beneficially owned: 20,000,000

(b) Percent of Class: 9.9%

(c) Number of shares of Common Stock as to which John Paulson has:

(i) Sole power to vote or direct the vote: 0

(ii) Shared power to vote or direct the vote: 20,000,000 (See Note 1 below)

(iii) Sole power to dispose or direct the disposition: 0

(iv) Shared power to dispose or direct the disposition: 20,000,000 (See Note 1 below)

Note 1: Each of Advantage Master, Advantage Plus Master, Select Master and Recovery Master may be deemed to have with Paulson & Co. and John Paulson shared power to vote or to direct the vote and shared power to dispose or to direct the disposition of the shares of Common Stock beneficially owned by it.

(c) A list of the transactions in the Issuer's Common Stock that were effected by the Reporting Persons during the past sixty days is attached as Exhibit 1.

(d) Not applicable.

(e) Not applicable.

Item 6. Contracts, Arrangements, Understandings or Relationships With Respect to Securities of the Issuer.

Forward Purchase Agreements

On October 14, 2009, each of Paulson Credit Opportunities Master Ltd. (" Opportunities Master ") and Recovery Master entered into a Forward Purchase Agreement (together, the " Forward Purchase Agreements ") with Morgan Stanley & Co. Incorporated (" Morgan Stanley "). Under the terms of the Forward Purchase Agreements, Opportunities Master and Recovery Master each agreed to purchase from Morgan Stanley up to $100,000,000 aggregate principal amount of the 7.0% Convertible Senior Notes due 2016 of the Issuer (the " Convertible Notes "). Opportunities Master and Recovery Master will purchase the Convertible Notes from Morgan Stanley in multiple closings pursuant to the terms of the Forward Purchase Agreement.

The description of the Forward Purchase Agreements in this report is a summary only and is qualified in its entirety by the terms of the Forward Purchase Agreements, which are attached hereto as Exhibits 6 and 7 and are incorporated by reference herein.

The Convertible Notes will not be convertible prior to June 30, 2013, except under limited circumstances beyond the control of Opportunities Master and Recovery Master, and, therefore, the shares of Common Stock underlying such Convertible Notes are not deemed to be beneficially owned by the Reporting Persons for purposes of this Schedule 13D. Commencing on June 30, 2013, the Convertible Notes will be convertible into shares of Common Stock at the option of the holder at any time, subject to certain exceptions, based on an initial conversion rate of 182.1494 shares of Common Stock per $1,000 principal amount of Convertible Notes, subject to certain adjustments, which is the equivalent to an initial conversion price of approximately $5.49 per share of Common Stock.

Investor Rights Agreement

In connection with the transactions contemplated by the Purchase Agreement, the Reporting Persons entered into an Investor Rights Agreement (the " Investor Rights Agreement ") with the Issuer on November 13, 2009. The Investor Rights Agreement contains, among other things, provisions regarding: (i) certain restrictions on transfers of shares of Common Stock by the Reporting Persons, (ii) the registration under the Securities Act of 1933, as amended, of the Common Stock and Warrants issued to the Reporting Persons pursuant to the Purchase Agreement and other securities of the Issuer owned by the Reporting Persons, (iii) pre-emptive rights granted to the Reporting Persons, (iv) the Reporting Persons' agreement to forebear from taking certain actions with respect to the acquisition of additional shares of Common Stock of the Issuer and the Issuer's ownership and management and (v) certain limitations on the Reporting Persons' ability to vote the shares of Common Stock owned by them.

The description of the Investor Rights Agreement in this report is a summary only and is qualified in its entirety by the terms of the Investor Rights Agreement, which is attached hereto as Exhibit 8 and is incorporated by reference herein.

Lock-Up Agreement

The Reporting Persons entered into a letter agreement with Morgan Stanley on October 14, 2009 (the " Lock-Up Agreement ") that restricts the Reporting Persons' ability to dispose of shares of Common Stock of the Issuer.

The description of the Lock-Up Agreement in this report is a summary only and is qualified in its entirety by the terms of the Lock-Up Agreement, which is attached hereto as Exhibit 9 and is incorporated by reference herein.

Item 7. Material to Be Filed as Exhibits.

The following documents are filed as exhibits:

Exhibit 1: List of the transactions in the Issuer's Common Stock that were effected by the Reporting Persons during the past sixty days

Exhibit 2: Joint Filing Agreement

Exhibit 3: Power of Attorney

Exhibit 4: Instruction C Person Information

Exhibit 5: Stock and Warrant Purchase Agreement made as of October 13, 2009, by and between Conseco, Inc., a Delaware corporation, and Paulson & Co. Inc., a Delaware corporation, on behalf of the several investment funds and accounts managed by it

Exhibit 6: Forward Purchase Agreement dated as of October 14, 2009 between Paulson Credit Opportunities Master Ltd. and Morgan Stanley & Co. Incorporated

Exhibit 7: Forward Purchase Agreement dated as of October 14, 2009 between Paulson Recovery Master Fund Ltd. and Morgan Stanley & Co. Incorporated

Exhibit 8: Investor Rights Agreement entered into as of November 13, 2009, by and among Conseco, Inc., a Delaware corporation, and Paulson & Co. Inc., a Delaware corporation, on behalf of the several investment funds and accounts managed by it

Exhibit 9: Letter Agreement dated October 14, 2009 between Morgan Stanley & Co. Incorporated and Paulson & Co. Inc., on behalf of the several investment funds and accounts managed by it

Signature

After reasonable inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

Dated: November 23, 2009

PAULSON & CO. INC.

By: /s/ Stuart L. Merzer
Name: Stuart L. Merzer
Title: General Counsel & Chief Compliance Officer

PAULSON ADVANTAGE MASTER LTD.
By: Paulson & Co. Inc., as Investment Manager

By: /s/ Stuart L. Merzer
Name: Stuart L. Merzer
Title: General Counsel & Chief Compliance Officer

PAULSON ADVANTAGE PLUS MASTER LTD.
By: Paulson & Co. Inc., as Investment Manager

By: /s/ Stuart L. Merzer
Name: Stuart L. Merzer
Title: General Counsel & Chief Compliance Officer

PAULSON ADVANTAGE SELECT MASTER FUND LTD.
By: Paulson & Co. Inc., as Investment Manager

By: /s/ Stuart L. Merzer
Name: Stuart L. Merzer
Title: General Counsel & Chief Compliance Officer

PAULSON RECOVERY MASTER FUND LTD.
By: Paulson & Co. Inc., as Investment Manager

By: /s/ Stuart L. Merzer
Name: Stuart L. Merzer
Title: General Counsel & Chief Compliance Officer

/s/ Stuart L. Merzer
Stuart L. Merzer, as
Attorney-in-Fact For John Paulson

EXHIBIT 1

TRANSACTIONS EFFECTED DURING THE PAST SIXTY DAYS

Other than the transactions reported in this Schedule 13D, no transactions with respect to securities of the Issuer were effected by the Reporting Persons within the past sixty days.

EXHIBIT 2

JOINT FILING AGREEMENT

The undersigned hereby agree that the statement on Schedule 13D with respect to the common stock of Conseco, Inc. dated as of November 23, 2009 is, and any further amendments thereto signed by each of the undersigned shall be, filed on behalf of each of the undersigned pursuant to and in accordance with the provisions of Rule 13d-1(k)(1) under the Securities Exchange Act of 1934, as amended.

Dated: November 23, 2009

PAULSON & CO. INC.

By: /s/ Stuart L. Merzer
Name: Stuart L. Merzer
Title: General Counsel & Chief Compliance Officer

PAULSON ADVANTAGE MASTER LTD.
By: Paulson & Co. Inc., as Investment Manager

By: /s/ Stuart L. Merzer
Name: Stuart L. Merzer
Title: General Counsel & Chief Compliance Officer

PAULSON ADVANTAGE PLUS MASTER LTD.
By: Paulson & Co. Inc., as Investment Manager

By: /s/ Stuart L. Merzer
Name: Stuart L. Merzer
Title: General Counsel & Chief Compliance Officer

PAULSON ADVANTAGE SELECT MASTER FUND LTD.
By: Paulson & Co. Inc., as Investment Manager

By: /s/ Stuart L. Merzer
Name: Stuart L. Merzer
Title: General Counsel & Chief Compliance Officer

PAULSON RECOVERY MASTER FUND LTD.
By: Paulson & Co. Inc., as Investment Manager

By: /s/ Stuart L. Merzer
Name: Stuart L. Merzer
Title: General Counsel & Chief Compliance Officer

/s/ Stuart L. Merzer
Stuart L. Merzer, as Attorney-in-Fact
For John Paulson

EXHIBIT 3

POWER OF ATTORNEY

The undersigned hereby makes, constitutes and appoints Stuart Merzer as the undersigned's true and lawful authorized representative, attorney-in-fact and agent, with the power individually to execute for and on behalf of the undersigned and to file with and deliver to the United States Securities and Exchange Commission and any other authority or party required or entitled to receive the same: (a) any Forms 3, 4 and 5, and any amendments thereto, in accordance with Section 16(a) of the Securities Exchange Act of 1934, as amended (the "1934 Act"), and the rules promulgated thereunder; and (b) any Schedule 13D or Schedule 13G, and any amendments thereto, on behalf of the undersigned in accordance with Section 13 of the 1934 Act and the rules promulgated thereunder.

The undersigned also hereby grants to such attorney-in-fact the full power and authority to do and perform all and every act and thing whatsoever requisite, necessary and proper to be done in the exercise of any of the rights and powers herein granted, hereby ratifying and confirming all that such attorney-in-fact shall lawfully do or cause to be done by virtue of this power of attorney and the rights and powers herein granted. The undersigned acknowledges that the foregoing attorney-in-fact, in serving in such capacity at the request of the undersigned, is not assuming any of the undersigned's responsibilities to comply with Section 16 or Section 13 of the 1934 Act or any other provision of the 1934 Act or the rules promulgated thereunder.

This Power of Attorney shall remain in full force and effect until earlier revoked by the undersigned in a signed writing delivered to the foregoing attorney-in-fact.

IN WITNESS WHEREOF, the undersigned has caused this Power of Attorney to be executed as of October 29, 2008.

/s/ John Paulson
John Paulson

ACKNOWLEDGEMENT IN NEW YORK STATE

STATE OF NEW YORK, COUNTY OF NEW YORK ss.:

On October 29, 2008, before me, the undersigned personally appeared, John Paulson, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

/s/ Marsha Rojas
Marsha Rojas
(signature and office of individual taking acknowledgement)
[Notary Stamp and Seal]

EXHIBIT 4

INFORMATION REGARDING THE INSTRUCTION C PERSONS

The following table sets forth the name, title, principal occupation, business address, place of employment and citizenship of each of the executive officers and directors of Paulson & Co. Inc.

Name	Title and Principal Occupation	Business Address and Place of Employment	Citizenship
John Paulson	President and Sole Director	1251 Avenue of the Americas 50th Floor New York, NY 10020	United States
Chris Bodak	Chief Financial Officer	1251 Avenue of the Americas 50th Floor New York, NY 10020	United States
Stuart Merzer	General Counsel	1251 Avenue of the Americas 50th Floor New York, NY 10020	United States
Andrew Hoine	Managing Director	1251 Avenue of the Americas 50th Floor New York, NY 10020	United States
Michael Waldorf	Managing Director	1251 Avenue of the Americas 50th Floor New York, NY 10020	United States
Keith Hannan	Managing Director	1251 Avenue of the Americas 50th Floor New York, NY 10020	United States

The following table sets forth the name, title, principal occupation, business address, place of employment and citizenship of each of the executive officers and directors of Paulson Advantage Master Ltd.

Name	Title	Principal Occupation	Business Address and Place of Employment	Citizenship
John Paulson	Director	President and Sole Director of Paulson & Co. Inc.	1251 Avenue of the Americas, 50th Floor, New York, NY 10020	United States
David G. Cooper	Director	Partner at law firm of Cox Hallett & Wilkinson	Milner House, 18 Parliament Street, P.O. Box HM 1561, Hamilton HM FX, Bermuda	Great Britain
Graham H. Cook	Director	Managing Director of TMF (BVI) Ltd.	PO Box 964 Road Town, Tortola, British Virgin Islands	Great Britain

Paulson Advantage Master Ltd. has no executive officers.

The following table sets forth the name, title, principal occupation, business address, place of employment and citizenship of each of the executive officers and directors of Paulson Advantage Plus Master Ltd.

Name	Title	Principal Occupation	Business Address and Place of Employment	Citizenship
John Paulson	Director	President and Sole Director of Paulson & Co. Inc.	1251 Avenue of the Americas, 50th Floor, New York, NY 10020	United States
David G. Cooper	Director	Partner at law firm of Cox Hallett & Wilkinson	Milner House, 18 Parliament Street, P.O. Box HM 1561, Hamilton HM FX, Bermuda	Great Britain
Graham H. Cook	Director	Managing Director of TMF (BVI) Ltd.	PO Box 964 Road Town, Tortola, British Virgin Islands	Great Britain

Paulson Advantage Plus Master Ltd. has no executive officers.

The following table sets forth the name, title, principal occupation, business address, place of employment and citizenship of each of the executive officers and directors of Paulson Advantage Select Master Fund Ltd.

Name	Title	Principal Occupation	Business Address and Place of Employment	Citizenship
John Paulson	Director	President and Sole Director of Paulson & Co. Inc.	1251 Avenue of the Americas, 50th Floor, New York, NY 10020	United States
David G. Cooper	Director	Partner at law firm of Cox Hallett & Wilkinson	Milner House, 18 Parliament Street, P.O. Box HM 1561, Hamilton HM FX, Bermuda	Great Britain
Graham H. Cook	Director	Managing Director of TMF (BVI) Ltd.	PO Box 964 Road Town, Tortola, British Virgin Islands	Great Britain

Paulson Advantage Select Master Fund Ltd. has no executive officers.

The following table sets forth the name, title, principal occupation, business address, place of employment and citizenship of each of the executive officers and directors of Paulson Recovery Master Fund Ltd.

Name	Title	Principal Occupation	Business Address and Place of Employment	Citizenship
John Paulson	Director	President and Sole Director of Paulson & Co. Inc.	1251 Avenue of the Americas, 50th Floor, New York, NY 10020	United States
David G. Cooper	Director	Partner at law firm of Cox Hallett & Wilkinson	Milner House, 18 Parliament Street, P.O. Box HM 1561, Hamilton HM FX, Bermuda	Great Britain
Graham H. Cook	Director	Managing Director of TMF (BVI) Ltd.	PO Box 964 Road Town, Tortola, British Virgin Islands	Great Britain

Paulson Recovery Master Fund Ltd. has no executive officers.

EXHIBIT 5

EXECUTION VERSION

STOCK AND WARRANT

PURCHASE AGREEMENT

by and between

CONSECO, INC.

and

PAULSON & CO. INC.

October 13, 2009

CONSECO, INC.

STOCK AND WARRANT PURCHASE AGREEMENT

This Stock and Warrant Purchase Agreement (this " Agreement ") is made as of October 13, 2009, by and between Conseco, Inc., a Delaware corporation (the " Company "), and Paulson & Co. Inc., a Delaware corporation, on behalf of the several investment funds and accounts managed by it (" Purchaser ").

RECITALS

WHEREAS , the Company desires to issue and sell and Purchaser desires to purchase certain shares of the Company's common stock, par value $0.01 per share (the " Company Common Stock "), and warrants to purchase shares of Company Common Stock, in each case on the terms set forth herein;

WHEREAS , prior to the date of this Agreement, the New York Stock Exchange (the " NYSE ") has agreed to grant the Company an exemption from the shareholder approval requirements of Section 312 of the NYSE Listed Company Manual with respect to the transactions contemplated by this Agreement (the " NYSE Exemption "); and

WHEREAS , simultaneously with the Closing hereunder, the Company and Purchaser intend to enter into an Investor Rights Agreement in substantially the form attached hereto as Exhibit A (the " Investor Rights Agreement " and together with the Warrants (as defined below) and this Agreement, the " Transaction Documents ").

NOW, THEREFORE , in consideration of the foregoing recitals and the mutual promises hereinafter set forth, the parties hereto agree as follows:

SECTION 1

Agreement to Sell and Purchase

Subject to the terms and conditions hereof, Purchaser agrees to purchase from the Company and the Company agrees to sell and issue to the Purchaser, on the Closing Date, 16,400,000 shares (the " Shares ") of Company Common Stock and warrants to purchase 5,000,000 shares of Company Common Stock in the aggregate in substantially the form and subject to the terms set forth in Exhibit B hereto (the " Warrants " and together with the Shares, the " Securities ") for an aggregate purchase price payable by Purchaser for the Securities (the " Purchase Price ") equal to $77,900,000 (such issuance, sale and purchase of the Securities, along with the other commitments by each party to the other set forth in this Agreement, the " Transaction ").

SECTION 2

Closing, Delivery and Payment

2.1 **Closing** . The closing (the " Closing ") of the purchase and sale of the Securities shall take place at the offices of Simpson Thacher & Bartlett LLP, 425 Lexington Avenue, New York, New York, at 10:00 a.m., local time on (i) the first Business Day (as defined below) upon which each of the conditions set forth in Section 8 (other than those conditions that by their nature are to be satisfied at the Closing, but subject to the fulfillment or waiver of those conditions) are waived or fulfilled or (ii) such other date and time as the parties hereto may mutually agree. The date on which the Closing occurs is referred to herein as the " Closing Date ." For purposes of this Agreement, a " Business Day " shall mean any day that is not a Saturday, Sunday or other day in which banks in the State of Indiana or the State of New York are authorized or required by law to be closed.

2.2 **Delivery** . At the Closing, subject to the terms and conditions hereof, the Company will deliver to Purchaser (i) a certificate or certificates evidencing the Shares and (ii) the Warrants, in each case registered in such names and denominations as set forth in the instructions of Purchaser provided to the Company at least three (3) Business Days in advance of the Tender Offer Closing free and clear of any liens or other encumbrances (other than

those placed thereon by or on behalf of Purchaser and subject to any restrictions on resale in accordance with applicable law or the provisions of the Investor Rights Agreement) and Purchaser will make payment to the Company of the Purchase Price, by wire transfer of immediately available funds to an account designated in writing by the Company at least three (3) Business Days in advance of the Tender Offer Closing. Purchaser and the Company shall execute a cross receipt acknowledging receipt of the Securities and the Purchase Price, respectively.

2.3 **Anti-Dilution** . If, between the date of this Agreement and the Closing Date, the outstanding shares of Company Common Stock shall have been changed into or exchanged for a different number or kind of shares or securities as a result of any reorganization, recapitalization, reclassification, stock dividend, stock split, reverse stock split or other substantially similar transaction (a " Recapitalization "), a reasonable, appropriate and proportionate adjustment shall be made to the number of Shares, the number of shares of Common Stock subject to, or the exercise price reflected in, the Warrants, and, as applicable, to the Purchase Price, as the case may be, for the Shares, to the extent that such Recapitalization is consistent with the covenants of the Company contained in this Agreement and subject to such anti-dilution adjustments being reasonably acceptable to the Purchaser.

SECTION 3

Representations and Warranties of the Company

Except (i) as otherwise disclosed or incorporated by reference and readily apparent in the Company's Annual Report on Form 10-K for the year ended December 31, 2008, its Quarterly Report on Form 10-Q for the quarter ended March 30, 2009, its Quarterly Report on Form 10-Q for the quarter ended June 30, 2009, each Current Report on Form 8-K of the Company filed after June 30, 2009 and prior to the date hereof (in each case, including any supplements or amendments thereto) and the Current Report on Form 8-K of the Company regarding certain accounting matters to be filed the date hereof, a draft of which has been provided to Purchaser (the " 2009 Reports ") or (ii) as disclosed on Schedule 3 hereto, the Company hereby represents and warrants to Purchaser, as of the date hereof and as of the Closing, as follows:

3.1 **Organization and Standing .** (a) The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware. The Company is duly qualified to do business and is in good standing as a foreign corporation in each jurisdiction where the ownership or operation of its assets or properties or conduct of its business requires such qualification, except where the failure to be so qualified or in good standing is not reasonably likely to have, individually or in the aggregate, a Material Adverse Effect (as defined below). As used in this Agreement, a " Material Adverse Effect " means any effect, circumstance, occurrence or change that is material and adverse to the business, assets, results of operations or financial condition of the Company and Company Subsidiaries (as defined below), taken as a whole, or the legality, validity or enforceability of this Agreement or the Company's ability to perform any of its obligations under this Agreement in substantially the manner set forth herein; *provided , however* , that Material Adverse Effect shall not be deemed to include (A) any effects, circumstances, occurrences or changes generally affecting the insurance industry, the economy, or the financial, real estate, securities or credit markets in the United States, including effects on such industry, economy or markets resulting from any regulatory or political conditions or developments, or any outbreak or escalation of hostilities, declared or undeclared acts of war or terrorism, (B) changes in generally accepted accounting principles in the United States (" GAAP "), (C) changes in laws governing financial institutions and laws of general applicability or related policies or interpretations of any Governmental Authority *)*, (in the case of each of clause (A), (B) and (C), other than effects, circumstances, occurrences or changes that arise after the date of this Agreement but before the Closing to the extent that such effects, circumstances, occurrences or changes have a materially disproportionate adverse effect on the Company and Company Subsidiaries relative to other companies in the insurance industry), or (D) changes in the market price or trading volume of Company Common Stock (it being understood and agreed that the exception set forth in this clause (D) does not apply to the underlying reason or cause giving rise to or contributing to any such change).

(b) Each Company Subsidiary is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization or incorporation. Each Company Subsidiary is duly qualified to do business and is in good standing as a foreign corporation in each jurisdiction where the ownership or operation of its assets or properties or conduct of its business requires such qualification, except where the failure to be so qualified or in good standing is not reasonably likely to have, individually or in the aggregate, a Material Adverse Effect. The Company has delivered to Purchaser a true and complete list as of the date hereof of each Company Subsidiary that

conducts insurance operations (" Company Insurance Subsidiaries "), identifying the states or jurisdictions where such Company Insurance Subsidiaries are domiciled or " commercially domiciled " for insurance regulatory purposes. As used in this Agreement, " Company Subsidiary " means any person of which at least a majority of the securities or ownership interests having by their terms ordinary voting power to elect a majority of the board of directors or other persons performing similar functions is directly or indirectly owned or controlled by the Company or by one or more of its Company Subsidiaries; and " person " means an individual, corporation, limited liability company, partnership, association, trust, unincorporated organization, other entity or group (as defined in Section 13(d) of the Securities Exchange Act of 1934, as amended (the " Exchange Act ")).

3.2 **Company Capital Stock .**

(a) As of the date hereof, the authorized capital stock of the Company consists solely of 8,000,000,000 shares of Company Common Stock, of which 184,886,216 shares are issued and outstanding (excluding 677,500 shares of unvested restricted stock), and 265,000,000 shares of preferred stock, par value $0.01 per share, none of which are issued and outstanding. As of the date hereof, 8,615,150 shares of Company Common Stock are issuable upon the exercise of outstanding options to acquire such shares, 1,475,525 shares of Company Common Stock are issuable pursuant to unvested performance share units and there are 677,500 outstanding shares of unvested restricted stock. Each outstanding option to acquire Company Common Stock was granted with an exercise price per share equal to or greater than the per share fair market value (as such term is used in Section 409A of the Internal Revenue Code of 1986, as amended (the " Code "), and the Department of Treasury regulations and other interpretive guidance issued thereunder) of the Company Common Stock underlying such option on the grant date thereof and was otherwise issued in compliance with applicable laws. The outstanding shares of Company Common Stock have been duly authorized and are validly issued, fully paid and nonassessable, have been issued in compliance with all federal and state securities laws and are not subject to preemptive rights (and were not issued in violation of any preemptive rights). Except for (a) the Company's 3.50% Convertible Debentures due September 30, 2035 (the " Convertible Debentures "), issued pursuant to an Indenture, dated as of August 15, 2005, between the Company and The Bank of New York Trust Company, N.A., as trustee (as may be amended from time to time, the " Indenture "), (b) the Section 382 Rights Agreement, dated as of January 20, 2009, between the Company and American Stock Transfer & Trust Company, LLC (the " 382 Rights Agreement "), (c) the Amended and Restated Long Term Incentive Plan of the Company and equity awards granted thereunder, (d) the Purchase Agreement between the Company and Morgan Stanley & Co., Incorporated, dated as of the date of this Agreement, pursuant to which Morgan Stanley has agreed to purchase up to $293 million in aggregate principal amount of the Company's 7% Convertible Senior Debentures due 2016 (the " Purchase Agreement "), (e) the Indebtedness issued pursuant to the Company Refinancing (as defined below) and (f) the Warrants, neither the Company nor any Company Subsidiary has, and none is bound by, (i) any outstanding subscriptions, options, warrants, calls, commitments or agreements of any character calling for the purchase, repurchase, redemption or other acquisition of, or issuance of, or securities or rights convertible into or exchangeable for, any shares of capital stock of the Company or any securities representing the right to purchase or otherwise receive any shares of capital stock of the Company (including any rights plan or agreement), (ii) any right of first refusal or offer, preemptive right, right of participation, or any similar right to participate in the transactions contemplated by this Agreement, (iii) any stockholders agreements, voting agreements or other similar agreements with respect to the Company's capital stock, nor does, to the knowledge of the Company, any such agreement exist between or among any of the Company's stockholders, (iv) any obligation to issue shares of Company Common Stock or other securities to any person (other than the Purchaser), (v) any obligation to, as a result of the issuance and the sale of the Securities, adjust (whether automatically or otherwise) the exercise, conversion, exchange or reset price under any Company securities.

(b) Each of the Shares, the Warrants and the shares of Company Common Stock issuable upon exercise of the Warrants have been duly authorized by all necessary corporate action on the part of the Company and, when issued and paid for in accordance with this Agreement and, as applicable, the terms of the Warrants, will be duly and validly issued, fully paid and nonassessable, free and clear of all liens, other than restrictions on transfer provided for by applicable federal and state securities laws and the Transaction Documents and liens imposed by or through the Purchasers.

3.3 **Subsidiaries** . The names, jurisdictions of organization and authorized and issued capital stock and other equity and voting interests of all Company Subsidiaries are set forth on Schedule 3.3. Except as set forth on Schedule 3.3 hereto, the Company owns, directly or indirectly, all of the capital stock or other equity or voting

interests of each Company Subsidiary free and clear of any liens (other than pursuant to the Credit Agreement, as defined below) and all the issued and outstanding shares of capital stock or other equity or voting interests of each Company Subsidiary have been duly authorized and validly issued and are fully paid, non-assessable and free of preemptive and similar rights to subscribe for or purchase securities. No Company Subsidiary owns any shares of Company Common Stock. There are no outstanding options, warrants, rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities, rights or obligations convertible into or exercisable or exchangeable for, or giving any person any right to subscribe for or acquire, any shares of capital stock or other equity or voting interests of any Company Subsidiary, or contracts, commitments, understandings or arrangements by which the Company or any Company Subsidiary is or may become bound to issue additional shares of capital stock or other equity or voting interests of any Company Subsidiary or any securities convertible into or exercisable or exchangeable for shares of capital stock or other equity or voting interests of any Company Subsidiary. There are no outstanding agreements of any kind which obligate the Company or any Company Subsidiaries to repurchase, redeem or otherwise acquire any capital stock or other equity or voting interests of any Company Subsidiary.

3.4 **Corporate Power .** The Company and each Company Subsidiary has all requisite power and authority (corporate and otherwise) to carry on its business as it is now being conducted and to own, lease or operate all its properties and assets; and the Company has all requisite corporate power and authority and has taken all corporate action necessary in order to execute, deliver and perform its obligations under the Transaction Documents and to consummate the Transaction. Neither the Company nor any Company Subsidiary is in violation or default of any of the provisions of its respective certificate or articles of incorporation, certificate of designations, bylaws or charter documents.

3.5 **Corporate Authority .** This Agreement and the Transaction, including the issuance of the Shares, the Warrants, and any shares of Company Common Stock issuable upon exercise of the Warrants, have been, and the other Transaction Documents when delivered hereunder will have been, duly authorized by all necessary corporate action of the Company and the board of directors of the Company (the " Company Board "). This Agreement has been, and the other Transaction Documents when delivered hereunder will have been, duly executed and delivered by the Company and, assuming the due authorization, execution and delivery of this Agreement by Purchaser, this Agreement is, and the other Transaction Documents when delivered hereunder will be, valid and legally binding agreements of the Company, enforceable against the Company in accordance with their respective terms, subject to bankruptcy, insolvency, reorganization, moratorium, fraudulent transfer and similar laws of general applicability relating to or affecting creditors' rights or to general equity principles.

3.6 **Regulatory Approvals; No Violations .** (a) Assuming the accuracy of Purchaser's representations and warranties set forth in Sections 4.1, 4.2 and, solely as this representation relates to requirements under the Hart-Scott-Rodino Act of 1976, as amended (the " HSR Act "), 4.7, no consents, approvals, permits, orders or authorizations of, exemptions, reviews or waivers by, or notices, reports, filings, declarations or registrations with, any federal, state or local court, governmental, legislative, judicial, administrative or regulatory authority, agency, commission, body or other governmental entity or self regulatory organization or stock exchange (each, a " Governmental Authority ") or of, by or with any other third party are required to be made or obtained by the Company or any Company Subsidiary in connection with the execution, delivery and performance by the Company of this Agreement, or, when delivered hereunder, the other Transaction Documents, or the consummation of the Transaction, except for (A) forms, filings, registrations, submissions, statements, certifications, reports and documents required to be filed or furnished by the Company with the U.S. Securities and Exchange Commission (the " SEC ") after the date hereof under the Exchange Act or the Securities Act of 1933, as amended (the " Act "), (B) a supplemental listing application and supporting documents required to be filed with the NYSE in respect of the Shares and the shares of Common Stock reserved in respect of the Warrants, and (C) any securities or "blue sky" filings of any state.

(b) The execution, delivery and performance of this Agreement by the Company does not, and the execution, delivery and performance of the other Transaction Documents when delivered hereunder, and the consummation by the Company of the Transaction, the Company Refinancing and the Public Offering, will not, (A) constitute or result in a breach or violation of, or a default under, the acceleration of any obligations or penalties or the creation of any charge, mortgage, pledge, security interest, restriction, claim, lien, equity, encumbrance or any other encumbrance or exception to title of any kind on the assets of the Company or any Company Subsidiaries (with or without notice, lapse of time, or both) pursuant to, agreements binding upon the Company or any Company Subsidiary or to which the Company or any Company Subsidiary or any of their respective properties is subject or

bound or any law, regulation, judgment or governmental or non-governmental permit or license to which the Company or any Company Subsidiary or any of their respective properties is subject, (B) constitute or result in a breach or violation of, or a default under, the certificate of incorporation of the Company, as amended, or the bylaws of the Company or (C) require any consent or approval or notice or other filing under any such agreement except, in the case of clauses (A) or (C) above, for any breach, violation, default, acceleration, creation, change, consent or approval that, individually or in the aggregate, is not reasonably likely to have a Material Adverse Effect.

(c) As of the date of this Agreement, after giving effect, pro forma , to the Transaction and the other transactions contemplated hereby, the Company Refinancing and the Public Offering, the Company is in compliance with the covenants set forth in Sections 7.11, 7.12, 7.14, 7.15, 7.16 and 7.17 of the Credit Agreement as of September 30, 2009.

3.7 **No Brokers .** Neither the Company nor any Company Subsidiary nor any of their respective officers, directors, employees, agents or representatives has employed any broker or finder or incurred any liability for any brokerage fees, commissions or finders or similar fees in connection with the Transaction, other than fees and expenses payable to Morgan Stanley & Co. pursuant to an engagement letter, which fees have been previously disclosed to Purchaser.

3.8 **Company Reports; Financial Statements .** Except as set forth on Schedule 3.8 hereto:

(a) The Company, and each Company Subsidiary has filed or furnished, as applicable, all forms, filings, registrations, submissions, statements, certifications, reports and documents required to be filed or furnished by it with the SEC under the Exchange Act or the Act since December 31, 2006 (the forms, statements, reports and documents filed or furnished since December 31, 2006 and through the date hereof, including any amendments thereto, the " Company Reports "). Each of the Company Reports, at the time of its filing or being furnished complied, or if not yet filed or furnished, will comply, in all material respects with the applicable requirements of the Act and the Exchange Act, and any rules and regulations promulgated thereunder applicable to the Company Reports. As of their respective dates (or, if amended prior to the date hereof, as of the date of such amendment), the Company Reports did not, and any Company Reports filed or furnished with the SEC subsequent to the date hereof will not, contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements made therein, in light of the circumstances in which they were made, not misleading.

(b) The Company's consolidated financial statements (including, in each case, any notes thereto) contained in the Company Reports, were or will be prepared (i) in accordance with GAAP applied on a consistent basis throughout the periods indicated (except as may be indicated in the notes thereto or, in the case of interim consolidated financial statements, where information and footnotes contained in such financial statements are not required under the rules of the SEC to be in compliance with GAAP) and (ii) in compliance as to form, as of their respective date of filing with the SEC, in all material respects with applicable accounting requirements and with the published rules and regulations of the SEC with respect thereto, and in each case such consolidated financial statements fairly presented, in all material respects, the consolidated financial position, results of operations, changes in stockholder's equity and cash flows of the Company and the consolidated Company Subsidiaries as of the respective dates thereof and for the respective periods covered thereby (subject, in the case of unaudited statements, to normal year-end adjustments which were not and which are not expected to be, individually or in the aggregate, material to the Company and its consolidated Company Subsidiaries taken as a whole).

(c) The audited balance sheets of each of the Company Insurance Subsidiaries as of December 31, 2006, 2007, and 2008 and the related statements of income, surplus and cash flows for the years thus ended, and their respective annual statements for the fiscal years ended December 31, 2006, 2007, and 2008 (the " Insurance Subsidiary Annual Statements "), as filed with the principal Regulatory Authority overseeing insurance businesses conducted in the jurisdiction of domicile of such Company Insurance Subsidiary and the National Association of Insurance Commissioners (together, the " Principal Insurance Regulatory Authorities "), have been prepared in accordance with SAP (as defined below) applied on a consistent basis and present fairly in all material respects their respective statutory financial conditions as of such date and the results of their respective statutory operations and cash flows for the year then ended. As used herein, " SAP " means the accounting procedures and practices prescribed or permitted from time to time by the respective states of domicile of the Company Insurance Subsidiaries and applied in a consistent manner throughout the periods involved. The balance sheets of the Company and the Company Subsidiaries at dates after December 31, 2008, and the related statements of income, surplus and

cash flows, which have been filed with the Principal Insurance Regulatory Authorities (the " 2009 SAP Statements " and together with the Insurance Subsidiary Annual Statements, the " SAP Statement "), copies of which have been made available to the Purchaser by the Company, have been prepared in accordance with SAP applied on a consistent basis and present fairly in all material respects the applicable Company Insurance Subsidiaries' respective statutory financial conditions as of such dates and the results of their respective operations and cash flows. Schedule 3.8(c) hereto sets forth all prescribed or permitted accounting practices that have been adopted since December 31, 2006, by any of the Company Insurance Subsidiaries, and the effect of such prescribed or permitted practices are fully and accurately reflected in the SAP-basis financial statements described above.

(d) The Company Common Stock is registered pursuant to Section 12(b) of the Exchange Act, and the Company has taken no action designed to, or which to its knowledge is likely to have the effect of, terminating the registration of the Company Common Stock under the Exchange Act nor has the Company received any notification that the SEC is contemplating terminating such registration.

(e) The Company is in compliance in all material respects with the applicable listing and corporate governance rules and regulations of the New York Stock Exchange (the " NYSE ") and any further requirements imposed by the NYSE Exemption or any subsequent exemption that would satisfy the condition to closing set forth in Section 8.1(e). Except as set forth on Schedule 3.8(e), the Company has not, in the preceding twelve (12) months, received notice from the NYSE to the effect that the Company is not in compliance with the listing or maintenance requirements of the NYSE. The Company is, and, assuming the consummation of the transactions contemplated hereby, the Company Refinancing and the Public Offering, has no reason to believe that it will not in the foreseeable future continue to be, in compliance with all such listing and maintenance requirements.

(f) Except as set forth on Schedule 3.8(f), the Company is in material compliance with all provisions of the Sarbanes Oxley Act of 2002 that are applicable to it. The Company maintains disclosure controls and procedures required by Rule 13a-15 or 15d-15 under the Exchange Act. Such disclosure controls and procedures are designed to provide reasonable assurance that information required to be disclosed by the Company is recorded and reported on a timely basis to the individuals responsible for the preparation of the Company's filings with the SEC and other public disclosure documents. The Company maintains internal control over financial reporting (as defined in Rule 13a-15 or 15d-15, as applicable, under the Exchange Act). Such internal control over financial reporting is designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP and includes policies and procedures that (i) pertain to the maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of the assets of the Company, (ii) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with GAAP, and that receipts and expenditures of the Company are being made only in accordance with authorizations of management and directors of the Company, and (iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the Company's assets that could have a material effect on its financial statements.

(g) The Company has disclosed, based on the most recent evaluation of its chief executive officer and its chief financial officer prior to the date hereof, to the Company's auditors and the audit committee of the Company Board (A) any significant deficiencies and material weaknesses in the design or operation of its internal control over financial reporting that are reasonably likely to adversely affect the Company's ability to record, process, summarize and report financial information and has identified for the Company's auditors and audit committee of the Company Board any material weaknesses in internal control over financial reporting and (B) any fraud, whether or not material, that involves management or other employees who have a significant role in the Company's internal control over financial reporting. Since the filing date of the Company's most recently filed periodic report under the Exchange Act, there have been no changes in the Company's internal control over financial reporting or disclosure controls and procedures or, to the knowledge of the Company, in other factors that could significantly affect the Company's internal controls.

(h) The Company and Company Subsidiaries have filed all reports and statements, together with any amendments required to be made with respect thereto, that they were required to file since December 31, 2006, with any Governmental Authority having jurisdiction over its business or any of its assets or properties (each a " Regulatory Authority "), and has paid all fees and assessments due and payable in connection therewith, except where the failure to so file such reports and statements or pay such fees is not reasonably likely to have, individually or in the aggregate, a Material Adverse Effect. As of their respective dates, such reports and statements complied in

all material respects with all the laws, rules and regulations of the applicable Regulatory Authority with which they were filed.

3.9 **Absence of Certain Changes** . Since December 31, 2008, (1) the Company and Company Subsidiaries have conducted their respective businesses in all material respects in the ordinary course, consistent with prior practice, and (2) no event or events have occurred that have had or would be reasonably likely to have, individually or in the aggregate, a Material Adverse Effect.

3.10 **Compliance with Laws; Insurance .**

(a) The Company and each Company Subsidiary have all material permits, licenses, authorizations, orders and approvals of, and have made all material filings, applications and registrations with, any Governmental Authority that are required in order to permit them to own or lease their properties and assets and to carry on their business as presently conducted and that are material to the business of the Company or such Company Subsidiary; and all such material permits, licenses, certificates of authority, orders and approvals are in full force and effect and, to the knowledge of the Company, no material suspension or cancellation of any of them is threatened, and all such filings, applications and registrations are current. The conduct by the Company and each Company Subsidiary of their business and the condition and use of their properties does not violate or infringe any applicable domestic (federal, state or local) or foreign law, statute, ordinance, license or regulation, except for conduct which has not had or is not reasonably likely to have a Material Adverse Effect. Neither the Company nor any Company Subsidiary is in default under any order, license, regulation, demand, writ, injunction or decree of any Governmental Authority, except for any default which has not had or is not reasonably likely to have a Material Adverse Effect. The Company and the Company Subsidiaries currently are complying with, and to the knowledge of the Company, none of them has been threatened to be charged with or given notice of any violation of, all applicable federal, state, local and foreign laws, regulations, rules, judgments, injunctions or decrees, except where such non-compliance has not had nor is reasonably likely to have a Material Adverse Effect. Except for statutory or regulatory restrictions of general application to life and health insurance companies, no Governmental Authority has placed any material restriction on the business or properties of the Company or any Company Subsidiary. Except for routine examinations by insurance regulators, as of the date hereof, no investigation by any Governmental Authority with respect to the Company or any of the Company Subsidiaries is pending or, to the knowledge of the Company, threatened.

(b) The Company and each Company Subsidiary is presently insured, and during each of the past five calendar years (or during such lesser period of time as the Company has owned such Company Subsidiary) has been insured, for amounts and against such risks as companies engaged in a similar business would, in accordance with good business practice, customarily be insured. All insurance policies issued by any Company Subsidiary that are now in force are, to the extent required under applicable law, in a form acceptable in all material respects to applicable Governmental Authorities, or have been filed with and not objected to by such Governmental Authorities within the period provided for such objection.

3.11 **Litigation** . Except as set forth on Schedule 3.11 hereto, as of the date hereof, (i) no civil, criminal or administrative litigation, claim, action, suit, hearing, arbitration, investigation or other proceeding before any Governmental Authority or arbitrator is pending or, to the actual knowledge of the Company, threatened against the Company or any Company Subsidiary, (ii) neither the Company nor any Company Subsidiary is subject to any order, judgment or decree, and (iii) there are no facts or circumstances that could result in any claims against, or obligations or liabilities of, the Company or any Company Subsidiary, except with respect to (i), (ii) and (iii) for those that are not, individually or in the aggregate, reasonably likely to have a Material Adverse Effect.

3.12 **Reserves** .

(a) The aggregate reserves of the Company Insurance Subsidiaries as recorded in the Company SAP Statements have been determined in all material respects in accordance with generally accepted actuarial principles consistently applied (except as set forth therein) and are considered by management of the Company to be adequate as of the date of such statements to cover the total amount of all reasonably anticipated insurance liabilities of the Company Insurance Subsidiaries. All reserves of the Company Insurance Subsidiaries set forth in the Company SAP Statements are fairly stated in accordance with sound actuarial principles and meet the requirements of all applicable Insurance Laws including the applicable SAP, except where failure to so state reserves or meet such requirements, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect.

(b) Each Company Insurance Subsidiary (i) is in compliance with all applicable insurance regulatory minimum capital or surplus requirements; (ii) has not become subject to any " Company Action Level " pursuant to applicable risk-based capital guidelines, and has not received notice of any pending action that would result in its becoming so subject; (iii) has not taken any steps towards commencing, and has not received notice of any actions taken by relevant Regulatory Authorities to commence, any rehabilitation, delinquency or insolvency proceedings under applicable insurance laws in any state or foreign jurisdiction; (iv) has assets that exceed its respective total reserves, all as computed in accordance with applicable statutory accounting principles applied consistently with past practice and (v) has sufficient financial resources, based on reasonable assumptions as to future pay-out patterns, premium increases and other relevant factors, to pay its policy liabilities and other obligations as the foregoing become due in the ordinary course of business.

3.13 **Rights Agreement** . On or prior to the date hereof, the Company Board has taken all action necessary and appropriate to ensure that the Purchaser shall be an "Exempted Entity" under the 382 Rights Agreement in connection with the purchase of the Securities, the purchase and the exercise of the Warrants and the purchase and the conversion of any Convertible Debentures that Purchaser may purchase in the Company Refinancing.

3.14 **Undisclosed Events** . Neither the Company nor any of the Company Subsidiaries has any liabilities or obligations of any nature (absolute, accrued, contingent or otherwise) which are not properly reflected or reserved against in the Company's financial statements included in the 2009 Reports to the extent required to be so reflected or reserved against in accordance with GAAP, except for (i) liabilities that have arisen in the ordinary course of business consistent with past practice and that have not had a Material Adverse Effect, and (ii) liabilities that have not had and would not reasonably be expected to have a Material Adverse Effect.

3.15 **Labor .** Neither the Company nor any Company Subsidiary is a party to any collective bargaining agreement or employs any member of a union. The Company and the Company Subsidiaries are in material compliance with all U.S. federal, state and local laws and regulations relating to employment and employment practices, terms and conditions of employment and wages and hours, and employee benefits plans (including, without limitation, the Employee Retirement Income Securities Act of 1974, as amended), except where such non-compliance has not had or is not reasonably likely to have a Material Adverse Effect. Neither the chief executive officer nor the chief financial officer of the Company has notified the Company of his intended resignation or retirement or other termination of such officer's employment with the Company.

3.16 **Transactions With Affiliates and Employees** . Except as set forth in the Company Reports, none of the officers or directors of the Company and, to the knowledge of the Company, none of the employees of the Company is currently a party to any transaction with the Company or any Company Subsidiary (other than for services as employees, officers and directors), including any contract, agreement or other arrangement providing for the furnishing of services to or by, providing for rental of real or personal property to or from, or otherwise requiring payments to or from any officer, director or such employee or, to the knowledge of the Company, any entity in which any officer, director, or any such employee has a substantial interest or is an officer, director, trustee or partner, in each case in excess of $120,000 other than for (i) payment of salary or consulting fees for services rendered, (ii) reimbursement for expenses incurred on behalf of the Company and (iii) other employee benefits, including agreements under any equity compensation plans.

3.17 **Investment Company** . The Company is not, and immediately after receipt of payment for the Securities, will not be, an "investment company" within the meaning of the Investment Company Act of 1940, as amended.

3.18 **No Integrated Offering** . Assuming the accuracy of the Purchaser's representations and warranties set forth in Section 4 hereof, the sale of the Securities to Purchaser and the Company Refinancing does not require the registration of the Shares, the Warrants or any shares of Company Common Stock issuable upon exercise of the Warrants under the Act.

3.19 **Taxes** . The Company and each Company Subsidiary has timely filed all material federal, state, local and foreign income, franchise and other tax returns, reports and declarations required by any Governmental Authority with jurisdiction over the Company or any Company Subsidiary and has paid or accrued all taxes shown as due thereon except for any taxes which are being contested in good faith (by appropriate proceedings and in respect of which adequate reserves with respect thereto are maintained in accordance with GAAP), or where the

failure to file such returns or pay such taxes would not, individually or in the aggregate, have or be reasonably likely to have a Material Adverse Effect. All such returns were complete and correct in all material respects and the Company has no knowledge of a material tax deficiency which has been asserted or threatened against the Company or any Company Subsidiary. Except as set forth on Schedule 3.19 hereto, the Company is not under audit by any taxing authority. The Company has set aside on its books provisions reasonably adequate for the payment of all taxes for periods to which those returns, reports or declarations apply. The Company is not, nor has it been in the last five (5) years, a U.S. real property holding corporation under Section 897 of the Code. There are no unpaid taxes in any material amount claimed to be due by any taxing authority. For purposes of this Section 3.19, taxes shall include any and all interest and penalties.

3.20 **Indebtedness; Other Contracts** .

(a) Neither the Company nor any of its Subsidiaries has any outstanding material Indebtedness. For purposes of this Agreement: (x) " Indebtedness " of any person means, without duplication (A) all indebtedness for borrowed money, (B) all obligations issued, undertaken or assumed as the deferred purchase price of property or services, including, without limitation, "capital leases" in accordance with GAAP (other than trade payables entered into in the ordinary course of business), (C) all reimbursement or payment obligations with respect to letters of credit, surety bonds and other similar instruments, (D) all obligations evidenced by notes, bonds, debentures or similar instruments, including obligations so evidenced incurred in connection with the acquisition of property, assets or businesses, (E) all indebtedness created or arising under any conditional sale or other title retention agreement, or incurred as financing, in either case with respect to any property or assets acquired with the proceeds of such indebtedness (even though the rights and remedies of the seller or bank under such agreement in the event of default are limited to repossession or sale of such property), (F) all monetary obligations under any leasing or similar arrangement which, in connection with GAAP, consistently applied for the periods covered thereby, is classified as a capital lease, (G) all indebtedness referred to in clauses (A) through (F) above secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any mortgage, lien, pledge, charge, security interest or other encumbrance upon or in any property or assets (including accounts and contract rights) owned by any person, even though the person which owns such assets or property has not assumed or become liable for the payment of such indebtedness, and (H) all Contingent Obligations (as defined below) in respect of indebtedness or obligations of others of the kinds referred to in clauses (A) through (G) above; (y) " Contingent Obligation " means, as to any person, any direct or indirect liability, contingent or otherwise, of that person with respect to any indebtedness, lease, dividend or other obligation of another person if the primary purpose or intent of the person incurring such liability, or the primary effect thereof, is to provide assurance to the obligee of such liability that such liability will be paid or discharged, or that any agreements relating thereto will be complied with, or that the holders of such liability will be protected (in whole or in part) against loss with respect thereto.

(b) True, complete and correct copies of each material contract of the Company or any Company Subsidiary required to be filed on a Current Report on Form 8-K, a Quarterly Report on Form 10-Q, or an Annual Report on Form 10-K, in each case pursuant to Item 601(a) and Item 601(b)(10) of Regulation S-K under the Exchange Act (the " Company Material Agreements ") are attached or incorporated as exhibits to the 2009 Reports. Except as set forth in the 2009 Reports: (1) each of the Company Material Agreements is valid and binding on the Company and the Company Subsidiaries, as applicable, and in full force and effect, (2) the Company and each of the Company Subsidiaries, as applicable, are in all material respects in compliance with and have in all material respects performed all obligations required to be performed by them to date under each Company Material Agreement; (3) neither the Company nor any of the Company Subsidiaries knows of, or has received notice of, any material violation or default (or any condition which with the passage of time or the giving of notice would cause such a violation of or a default) by any party under any Company Material Agreement.

3.21 **Environmental Matters** . The Company and the Company Subsidiaries (i) are in compliance with any and all applicable foreign, federal, state and local laws and regulations relating to the protection of human health and safety, the environment or hazardous or toxic substances or wastes, pollutants or contaminants (" Environmental Laws "), (ii) have received all permits, licenses or other approvals required of them under applicable Environmental Laws to conduct their respective businesses and (iii) are in compliance with all terms and conditions of any such permit, license or approval, except, in the case of (i), (ii) and (iii), where such non-compliance or failure to receive such permit, license or approval has not had and would not be reasonably likely to have, individually or in the aggregate, a Material Adverse Effect.

3.22 **Regulation M Compliance** . The Company has not, and to its knowledge no one acting on its behalf has, (i) taken, directly or indirectly, any action designed to cause or to result in the stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of any of the Securities or (ii) sold, bid for, purchased or paid any compensation for soliciting purchases of any of the Securities.

3.23 **Shell Company Status** . The Company is not, and has never been, an issuer of the type described in paragraph (i) of Rule 144 under the Act.

3.24 **NYSE Exemption** . The NYSE notified the Company that the NYSE will grant the NYSE Exemption upon execution by NYSE of a supplemental listing application for, among other things, the Shares and the shares of Company Common Stock issuable upon exercise of the Warrants. The transactions contemplated by this Agreement will, prior to and through the Closing Date, be exempt from the requirements of Section 312 of the NYSE Listed Company Manual as a result of the NYSE Exemption.

3.25 **Estimates and Projections** . The Company has previously provided the Purchaser with operating and financial projections and forecasts prepared as of June 30, 2009 (the "June 30 Projections"). It is the Company's practice to prepare and update its internal operating and financial projections and forecasts on a quarterly basis, and such projections and forecasts prepared for the quarter ending September 30, 2009, to the extent any portion of the June 30 Projections are no longer relevant, shall supersede such portions of the June 30 Projections.

3.26 **Certain Business Practices** . To the knowledge of the Company, none of the Company or any Company Subsidiary or any director, officer, agent, employee or other person acting for or on behalf of Company or any Company Subsidiary has violated the U.S. Foreign Corrupt Practices Act of 1977, as amended, or any other anti-bribery or anti-corruption laws applicable to the Company or any Company Subsidiary.

SECTION 4

Representations and Warranties of Purchaser

Purchaser hereby represents and warrants to the Company as follows:

4.1 **Institutional Accredited Investor; Experience** . Purchaser is an "accredited investor" (as defined in Rule 501 under the Act) and is capable of evaluating the merits and risks of its investment in the Company and has the capacity to protect its own interests.

4.2 **Investment** . Purchaser is acquiring the Securities for its own account, for investment and not with the view to distribution in violation of securities laws; provided, that this representation and warranty shall not be deemed to limit the Purchaser's right to sell the Securities pursuant to an effective registration statement or otherwise in compliance with applicable federal and state securities laws. As used in this Agreement, " Affiliate " means, with respect to any person, any other person that directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such person, and the term " control " (including the terms " controlled by " and " under common control with ") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such person, whether through ownership of voting securities, by contract or otherwise.

4.3 **No Reliance** . Purchaser has relied upon the representations and warranties set forth herein and its own investigations and diligence, including a review of the 2009 Reports filed with the SEC and including with respect to the tax consequences of this investment and the Transaction. Purchaser understands and acknowledges that neither the Company nor any of the Company's representatives, agents or attorneys is making or has made at any time any warranties or representations of any kind or character, express or implied, with respect to any matter or the Company Common Stock, except as expressly set forth herein.

4.4 **Organization and Standing .** Purchaser is a corporation duly organized, validly existing and in good standing under the laws of the States of Delaware and is qualified to do business and in good standing in the State of New York.

4.5 **Corporate Power .** Purchaser has all requisite corporate power and authority and has taken all corporate action necessary in order to execute, deliver and perform its obligations under this Agreement and to consummate the Transaction.

4.6 **Corporate Authority .** This Agreement and the Transaction have been duly authorized by all necessary corporate action of Purchaser. This Agreement has been duly executed and delivered by Purchaser, and, assuming the due authorization, execution and delivery of this Agreement by the Company, this Agreement is a valid and legally binding agreement of Purchaser, enforceable against Purchaser in accordance with its terms, subject to bankruptcy, insolvency, reorganization, moratorium, fraudulent transfer and similar laws of general applicability relating to or affecting creditors' rights or to general equity principles.

4.7 **Regulatory Approvals; No Violations** . (a) No consents, approvals, permits, order or authorizations of, exemptions, reviews or waivers by, or notices, reports, filings or registrations with any Governmental Authority or with any other third party are required to be made or obtained by Purchaser or any of its Affiliates or any of their respective officers, directors or employees in connection with the execution, delivery and performance by Purchaser of this Agreement or the consummation of the Transaction except for those already obtained or made.

(b) Immediately following the purchase of the Securities, no ultimate parent entity of any investment fund managed by the Purchaser will hold more than $65,200,000 of shares of Company Common Stock.

(c) The execution, delivery, and performance of this Agreement by Purchaser does not, and the consummation by Purchaser of the Transaction will not, (A) constitute or result in a breach or violation of, or a default under, or the acceleration or creation of any obligations, penalties or the creation of any charge, mortgage, pledge, security interest, restriction, claim, lien or equity, encumbrance or any other encumbrance or exception to title of any kind on the assets or properties of Purchaser (with or without notice, lapse of time, or both) pursuant to agreements binding upon Purchaser or to which Purchaser or any of its properties is subject or bound or any law, regulation, judgment or governmental or non-governmental permit or license to which Purchaser or any of its properties is subject, (B) constitute or result in a breach or violation of, or a default under, the certificate of incorporation, as amended, or the bylaws or other organizational documents of Purchaser or (C) require any consent or approval under any such agreement except, in the case of clauses (A) or (C) above, for any breach, violation, default, acceleration, creation, change, consent or approval that, individually or in the aggregate, is not reasonably likely to have a material adverse effect on the ability of Purchaser to timely consummate the Transaction.

4.8 **Ownership of Shares** . As of the date of this Agreement, Purchaser and its Affiliates are the owners of record or the beneficial owners (as such term is defined under Rule 13d-3 under the Exchange Act) of 3,600,000 shares of Company Common Stock or securities convertible into or exchangeable for Company Common Stock. As of the Closing, Purchaser and its Affiliates shall not be the owners of record or the beneficial owners of Company Common Stock other than the shares or securities set forth in the preceding sentence (and any securities issued in respect thereof, or in substitution therefor, in connection with any stock split, dividend, spin-off or combination, or any reclassification, recapitalization, merger, consolidation, exchange or other similar reorganization or business combination) and the Securities purchased hereunder.

4.9 **Available Funds** . Purchaser will have available to it at Closing all funds necessary for the payment to the Company of the aggregate Purchase Price.

SECTION 5

Covenants

5.1 **Reasonable Best Efforts; Further Assurances** . (a) Subject to the terms and conditions of this Agreement, each of the Company and Purchaser agrees to cooperate with the other and use its reasonable best efforts in good faith to take, or cause to be taken, all actions, and to do, or cause to be done, all things necessary on its part under this Agreement or under applicable laws to consummate and make effective the Transaction as promptly as reasonably practicable, including the satisfaction of the conditions set forth in Section 8 hereof; provided, however, that neither Purchaser nor the Company shall be required to obtain or seek any Principal Insurance Regulatory Authority's clearance, approval, consent, authorization, exemption, waiver or similar order (" Insurance Regulatory Approvals"). Purchaser hereby covenants and agrees that it shall not, prior to the Closing, knowingly take any action that is reasonably likely to require that Purchaser obtain an Insurance Regulatory Approval that will be an Approval (as defined in Section 8.1(c) hereof).

(b) (i) Purchaser and the Company each has made its own legal determination, based on existing facts and, in the case of the Company, based in part upon and assuming the accuracy of Purchaser's representations and warranties set forth in Section 4.7(b) hereof, that no premerger notification is required by the HSR Act in connection with the Closing. Purchaser hereby covenants and agrees that it shall not, prior to the Closing, knowingly take any action that is reasonably likely to result in an HSR Event.

(ii) Notwithstanding the foregoing, in the event that either the Company or Purchaser, in consultation with legal counsel, finally determines that the Transaction will, or is reasonably likely to, require a premerger notification under the HSR Act (an " HSR Event "), such party shall notify the other as soon as is reasonably practicable, and in any event within 24 hours after making such final determination.

(c) If, at any time a filing is required by the HSR Act with respect to the Transaction, then the parties shall reasonably cooperate and consult with each other and each of the Company and Purchaser shall use their respective reasonable best efforts to make any filings required by the HSR Act as promptly as practicable and, in the case of a filing under the HSR Act that is an Approval, in any event within twenty (20) days following delivery of notice in respect of an HSR Event. The Company shall pay any filing fees in connection with such filing under the HSR Act. If, after the Closing, Purchaser determines that a filing under the HSR Act is necessary for it or its affiliates to acquire, convert or exercise any securities of the Company, the parties will also cooperate and consult with each other in the same manner.

(d) Subject to the terms and conditions of this Agreement, each of the Company and Purchaser shall use reasonable best efforts, at the Company's sole expense, to lift any injunction to the Transaction as promptly as reasonably practicable.

(e) Upon the request of Purchaser, the Company shall, and shall cause each of its controlled Affiliates to, (i) cooperate with the filing of any statement, notice, petition or application by or on behalf of the Purchaser or any of its Affiliates in order to obtain any Insurance Regulatory Approvals in connection with Purchaser's acquisition of beneficial ownership of Company Common Stock or securities convertible into Company Common Stock, (ii) furnish to Purchaser all information concerning the Company and each Company Subsidiary, and their respective directors, officers and stockholders and such other matters as may be reasonably necessary or advisable in connection with any such Insurance Regulatory Approvals, (iii) respond to any government requests for information, and (iv) contest and resist any action, including any legislative, administrative or judicial action, and to have vacated, lifted, reversed or overturned any Order that restricts, prevents or prohibits the consummation of the transactions contemplated by any such filing, including by pursuing all available avenues of administrative and judicial appeal and all available legislative action, (v) cooperate with Purchaser in connection with any analyses, appearances, presentations, memoranda, briefs, arguments, opinions and proposals made or submitted by or on behalf of Purchaser or any of its Affiliates in connection with proceedings under or relating to such Insurance Regulatory Approvals or any other federal, state or foreign laws applicable to the insurance industry as conducted by the Company and its Affiliates, and (vi) provide Purchaser with copies of all material communications from and filings with, any Governmental Authorities in connection with this Section 5.1(e).

(f) Notwithstanding anything to the contrary herein, neither party nor any of their respective Affiliates shall be required to take any action pursuant to this Section 5.1 which would be reasonably likely to be unreasonably burdensome on such party or any of its respective Affiliates, or to require such party or its respective Affiliates to divest or dispose of any assets, securities or other instruments whether now owned or hereafter acquired or to accept any limitation on any of its investment activities.

5.2 **Press Releases.** The Company shall, by 8:30 a.m. (New York City time) on the Business Day immediately following the date of this Agreement and the Closing Date, issue a press release disclosing the material terms of the transactions contemplated hereby and file a Current Report on Form 8-K, filing the Transaction Documents as exhibits thereto. The Company and Purchaser shall consult with each other before issuing any press release with respect to the Transaction or this Agreement and shall not issue any such press release or make any public statements (including any non-confidential filings with Governmental Authorities that name another party hereto) without the prior consent of such other party, which consent shall not be unreasonably withheld or delayed; provided, however, that a party may, without the prior consent of the other party, issue such press release or make such public statements as may upon the advice of outside counsel be required by law or the rules or regulations of the NYSE, the SEC, any other Governmental Authority or any other applicable regulation, in which such case the disclosing party shall provide the other party with prior notice of such public statement; provided that such party

shall use its reasonable best efforts to consult with and coordinate such press release with the other party; provided, further, that such party shall only include in a press release not receiving the consent of the non-filing party such information that is legally required to be disclosed upon the advice of counsel.

5.3 **Conduct of Business Prior to the Closing** . Except as otherwise expressly contemplated or permitted by this Agreement or with the prior written consent of Purchaser (which consent shall not be unreasonably withheld or delayed), during the period from the date of this Agreement to the Closing Date, the Company shall, and shall cause each Company Subsidiary to, (i) conduct its business only in the usual, regular and ordinary course consistent with past practice and (ii) take no action which would reasonably be expected to adversely affect or delay (x) the receipt of any approvals of any Governmental Authority required to consummate the transactions contemplated hereby or (y) the consummation of the transactions contemplated hereby.

5.4 **Company Forbearances** . Except as expressly contemplated or permitted by this Agreement or as set forth in Schedule 5.4, during the period from the date of this Agreement to the Closing, the Company shall not, and shall not permit any Company Subsidiary to, without the prior written consent of Purchaser (which consent shall not be unreasonably withheld or delayed):

(a) set any record or payment dates for the payment of any dividends or distributions on its capital stock, including, without limitation, any shares of preferred stock, or other equity interest or make, declare or pay any dividend or make any other distribution on, or directly or indirectly redeem, purchase or otherwise acquire, any shares of its capital stock or other equity interest or any securities or obligations convertible into or exchangeable for any shares of its capital stock or other equity interest or stock appreciation rights or grant any person any right to acquire any shares of its capital stock or other equity interest, other than (A) dividends paid by any of Company Subsidiaries so long as such dividends are only paid to the Company or any of its other wholly owned Subsidiaries; (B) pursuant to the Company Refinancing and (C) pursuant to the Company's equity incentive plan;

(b) issue or commit to issue any additional shares of capital stock, including, without limitation, any shares of preferred stock or other equity interest, or any securities convertible into or exercisable for, or any rights, warrants or options to acquire, any additional shares of capital stock or other equity interest, except (i) pursuant to the Company Refinancing, (ii) options, restricted stock or other equity grants under the Company's equity incentive plan or (iii) pursuant to the exercise of Company options or vesting of restricted stock or other equity grants under the Company's equity incentive plan;

(c) take any action which would result in the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby to cause the Purchaser to become an "Acquiring Person" for purposes of the 382 Rights Agreement; or

(d) effect any Recapitalization, enter into or agree to enter into any merger or consolidation with any person, or sell any properties or assets that are material to the business of Company or any Company Subsidiary, as applicable, except for reinsurance in the ordinary course of business;

(e) incur any Indebtedness for borrowed money or guarantee any such Indebtedness, except for (i) the Company Refinancing and (ii) intercompany Indebtedness among the Company and or one or more of its wholly-owned Company Subsidiaries; or

(f) agree to, or make any commitment to, take any of the actions prohibited by this Section 5.4

5.5 **Public Offering; Registration of Shares** . Without limiting any rights of the Purchaser set forth in the Investor Rights Agreement, the Company will file a registration statement on Form S-1 (or other reasonably appropriate form) for a registered public offering of the Company Common Stock for net cash proceeds to the Company of not less than $200 million (the "Public Offering"), no later than forty five (45) days after the date of the Tender Offer Closing (as defined below) and the Company shall use its reasonable best efforts to have such registration statement declared effective by the SEC and use its reasonable best efforts to consummate the Public Offering, in each case, no later than one hundred and twenty (120) days after the date of the Tender Offer Closing; provided that, the net cash proceeds to the Company required to be received in such Public Offering shall be reduced if, and to the extent that, the Company Board determines in good faith that the Public Offering will otherwise jeopardize or endanger the availability to the Company of its net operating loss carryforwards to be used to offset its taxable income in such year or future years, and the basis for such determination is provided in writing to Purchaser.

5.6 **Refinancing** . Subject to the terms and conditions of, and to the extent permitted by, the Second Amended and Restated Credit Agreement, dated as of October 10, 2006, by and among the Company, the lenders signatory thereto, and Bank of America N.A. as administrative agent, as amended by Amendment No. 1 thereto dated June 12, 2007, and Amendment No. 2 thereto dated March 30, 2009 (as may be further amended from time to time, the " Credit Agreement"), the Convertible Debentures and the Indenture, the Company shall use its reasonable best efforts to promptly consummate one or more offerings of Indebtedness (as such term is defined in the Credit Agreement) substantially on the terms set forth in on Schedule 5.6 hereto, resulting in aggregate proceeds to the Company sufficient to allow the Company to purchase up to the outstanding principal amount of the Convertible Debentures (such transaction, the " Company Refinancing"); provided that , for the avoidance of doubt, the Company's obligation to use reasonable best efforts shall not create any obligation of the Company to agree to alter the proposed terms of any such Company Refinancing, including the prices paid upon tender of Convertible Debentures, interest or conversion rates applicable to offered Indebtedness, or otherwise.

5.7 **Listing of Shares** . The Company shall use its reasonable best efforts to cause the Shares to be approved for listing on the NYSE, subject to official notice of issuance, as promptly as practicable, and in any event before the Closing.

5.8 **Preservation of NOLs** . The Company will not enter into any transaction (other than a sale of the entire Company) with any person that would result in the loss of or limit the ability of the Company to fully utilize their net operating losses without the prior written consent of Purchaser, except in connection with a transaction that the Company Board determines in good faith is reasonably likely to provide a benefit to the Company and its stockholders that exceeds the harm caused by and resulting from the loss of or limitation of the ability of the Company to fully utilize their net operating losses. Notwithstanding the foregoing, the Company's obligations under this Section 5.8 shall expire on the first date that the Purchaser and its Affiliates beneficially own or own of record less than 5% of the voting stock of the Company on an as-converted basis.

5.9 **Takeover Protections** . Except with respect to the Company's 382 Rights Agreement, which is addressed in Section 3.13 hereof, prior to the Closing, the Company and the Company Board will have taken all necessary action, if any, in order to render inapplicable any control share acquisition, business combination, poison pill (including any distribution under a rights agreement) or other similar anti takeover provision under the Company's certificate of incorporation (or similar charter documents) or the laws of the state of Delaware (including Section 203 of the Delaware General Corporation Law) that is or could become applicable to the Purchaser as a result of the Purchaser and the Company fulfilling their obligations or exercising their rights hereunder, including, without limitation, as a result of the Company's issuance of the Shares and the Warrants and Purchaser's ownership of the Shares and Warrants and any Indebtedness of the Company that Purchaser may acquire in the Company Refinancing.

5.10 **Material Non-Public Information** . Except in connection with any notice required to be provided hereunder or in connection with any reasonable response to unsolicited written or oral requests from Purchaser or its representatives and affiliates for information, between the date hereof and Closing, the Company shall use its reasonable best efforts to refrain from providing the Purchaser with any material, non-public information without the Purchaser's prior written consent.

SECTION 6

Private Placement of the Securities

6.1 **Securities Act Exemption .** It is intended that the Company Common Stock and Warrants to be issued pursuant to this Agreement will not be registered under the Act in reliance on the exemption from the registration requirements of Section 5 of the Act set forth in Section 4(2) and Regulation D under the Act.

6.2 **Rule 144 Reporting** . With a view to making available to Purchaser the benefits of certain rules and regulations of the SEC which may permit the sale of the Securities to the public without registration, the Company agrees, at all times after the effective date of this Agreement and until the Purchaser no longer holds any Securities, any shares of Common Stock issuable upon exercise of the Warrants, any convertible Indebtedness it may acquire in the Company Refinancing or any Common Stock issuable upon conversion thereof, to use its reasonable best efforts to:

(a) make and keep public information available, as those terms are understood and defined in Rule 144(c)(1) under the Act or any similar or analogous rule promulgated under the Act;

(b) file with the SEC, in a timely manner, all reports and other documents required of the Company under the Exchange Act;

(c) not terminate its status as an issuer required to file reports under the Exchange Act (even if the Exchange Act or the rules and regulations thereunder would permit such termination); and

(d) furnish to Purchaser forthwith upon request: a written statement by the Company as to its compliance with the reporting requirements of Rule 144 under the Act, and of the Exchange Act; a copy of the most recent annual or quarterly report of the Company; and such other reports and documents as Purchaser may reasonably request in availing itself of any rule or regulation of the SEC allowing it to sell any such securities without registration.

SECTION 7

Indemnity

7.1 **Indemnity for Purchaser** . (a) The Company agrees to indemnify and hold harmless Purchaser and its Affiliates and each of their respective officers, directors, partners, members and employees, and each person who controls Purchaser within the meaning of the Exchange Act and the rules and regulations promulgated thereunder (each an " Indemnified Person "), to the fullest extent lawful, from and against any and all claims, damages, liabilities, deficiencies, judgments, fines, amounts paid in settlement and expenses (including reasonable attorneys' fees and expenses) (collectively, " Losses ") arising out of or resulting from any action, suit, claim, arbitration, mediation, proceeding or investigation by any Governmental Authority, stockholder of the Company or any other person arising out of or resulting from (i) any inaccuracy in or breach of the Company's representations or warranties in this Agreement; (ii) the Company's breach of agreements or covenants made by the Company in this Agreement; (iii) any third party claims arising out of or resulting from the Transaction or any other Transaction Document (unless such claim is based upon conduct by the Purchaser that constitutes fraud, gross negligence or willful misconduct); or (iv) any third party claims arising directly or indirectly out of the Purchaser's status as owner of the Securities or the actual, alleged or deemed control or ability to influence the Company or any Company Subsidiary (unless such claim is based upon conduct by the Purchaser that constitutes fraud, gross negligence or willful misconduct); *provided* , that Losses shall not include any consequential or punitive damages (except to the extent Purchaser and its Affiliates are liable to a third party for such consequential or punitive damages).

(b) Notwithstanding the foregoing, the Company shall have no liability to indemnify any Indemnified Person on account of any claim pursuant to clauses (i) and (ii) of Section 7.1(a) (1) unless and until the liability of the Company with respect to any individual claim or demand (or series of reasonably related claims or demands) equals or exceeds $100,000, (2) unless and until the liability of the Company in respect of such claims, when aggregated with their liability in respect of all other claims made pursuant to clauses (i) and (ii) of Section 7.1(a), amounts to more than $1,000,000 and (3) in respect of claims made pursuant to clause (i) of Section 7.1(a), unless such claim is asserted in writing by such Indemnified Party prior to the termination of the applicable representation and warranty as set forth in Section 9.5 hereof, whereupon the Company shall be liable to pay amounts due pursuant to clauses (i) and (ii) of Section 7.1(a). The maximum aggregate liability of the Company for any and all claims under clauses (i) and (ii) of Section 7.1(a) shall not exceed the Purchase Price.

7.2 **Indemnity Procedures** . Each Indemnified Person shall give prompt written notice to the Company of any claim, action, suit or proceeding commenced against it in respect of which indemnity may be sought hereunder, but failure to so notify the Company shall not relieve the Company from any liability which it may have under the indemnity provided in Section 7.1, unless and to the extent the Company shall have been actually and materially prejudiced by the failure of such Indemnified Person to so notify the Company. Such notice shall describe in reasonable detail such claim. In case any claim, action, suit or proceeding is brought against an Indemnified Person, the Indemnified Person shall be entitled to hire, at its own expense, separate counsel and participate in the defense thereof. If the Company so elects within a reasonable time after receipt of notice, the Company may assume the defense of the action or proceeding at the Company's own expense with counsel chosen by the Company and approved by the Indemnified Person, which approval shall not be unreasonably withheld, and

the Indemnified Party may participate in such defense at its own expense; *provided* , *however* , that the Company will not settle or compromise any claim, action, suit or proceeding, or consent to the entry of any judgment with respect to any such pending or threatened claim, action, suit or proceeding without the written consent of the Indemnified Person unless such settlement, compromise or consent secures the unconditional release of the Indemnified Person from all liabilities arising out of such claim, action, suit or proceeding and requires nothing other than the payment of money by the Company; *provided* , *further* , that if the defendants in any such claim, action, suit or proceeding include both the Indemnified Person and the Company and the Indemnified Person reasonably determines, based upon advice of legal counsel, that such claim, action, suit or proceeding involves a conflict of interest (other than one of a monetary nature) that would reasonably be expected to make it inappropriate for the same counsel to represent both the Company and the Indemnified Person, then the Company shall not be entitled to assume the defense of the Indemnified Person and the Indemnified Person shall be entitled to separate counsel at the Company's expense, which counsel shall be chosen by the Indemnified Person and approved by the Company, which approval shall not be unreasonably withheld; and *provided* , *further* , that it is understood that the Company shall not be liable for the fees, charges and disbursements of more than one separate firm for the Indemnified Persons. If the Company assumes the defense of any claim, action, suit or proceeding, all Indemnified Persons shall thereafter deliver to the Company copies of all notices and documents (including court papers) received by such Indemnified Persons relating to the claim, action, suit or proceeding, and each Indemnified Person shall cooperate in the defense or prosecution of such claim. Such cooperation shall include the retention and (upon the Company's request) the provision to the Company of records and information that are reasonably available to the Indemnified Party and that are reasonably relevant to such claim, action, suit or proceeding, and making employees available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder. If the Company is not entitled to assume the defense of such claim, action, suit or proceeding as a result of the second proviso to the fourth sentence of this Section 7.2, the Company's counsel shall be entitled to conduct the Company's defense and counsel for the Indemnified Person shall be entitled to conduct the defense of the Indemnified Person, it being understood that both such counsel will cooperate with each other, to the extent feasible in light of the conflict of interest or different available legal defenses, to conduct the defense of such action or proceeding as efficiently as possible. If the Company is not so entitled to assume the defense of such action or does not assume the defense, after having received the notice referred to in the first sentence of this Section 7.2, the Company will pay the reasonable fees and expenses of counsel for the Indemnified Person; in that event, however, the Company will not be liable for any settlement of any claim, action, suit or proceeding effected without the written consent of the Company, which may not be unreasonably withheld, delayed or conditioned. If the Company is entitled to assume, and assumes, the defense of an action or proceeding in accordance with this Section 7.2, the Company shall not be liable for any fees and expenses of counsel for the Indemnified Person incurred thereafter in connection with that action or proceeding except as set forth in the proviso in the fourth sentence of this Section 7.2. Unless and until a final judgment is rendered that an Indemnified Person is not entitled to the costs of defense under the provisions of this Section 7.2, the Company shall reimburse, promptly as they are incurred, the Indemnified Person's costs of defense. The Company's obligation to indemnify the Indemnified Persons for Losses hereunder is irrespective of whether the Indemnified Person has itself made payments in respect of such Losses.

7.3 **Exclusive Remedy** . Following the Closing, the indemnification obligations of this Article VII shall be the sole and exclusive remedy for any Indemnified Party in respect of the Company's breaches of this Agreement, and no other remedy shall be had in contract, tort or otherwise, except in cases of fraud.

SECTION 8

Conditions

8.1 **Conditions to Each Party's Obligations to Close the Transaction** . The obligation of Purchaser to purchase the Securities, and of the Company to issue and sell the Securities, at Closing is subject to the fulfillment of the following conditions as of the Closing Date:

(a) **No Injunction** . No Governmental Authority of competent jurisdiction shall have enacted, issued, promulgated, enforced or entered any statute, law, ordinance, rule, regulation, judgment, decree, injunction or other order (whether temporary, preliminary or permanent) that is in effect and restrain, enjoins or otherwise prohibits consummation of any transaction contemplated by this Agreement (collectively, an " Order ").

(b) **Purchase Agreement**. The Purchase Agreement shall be in full force and effect.

(c) **Approvals**. All material consents, authorizations, approvals and filings required to be obtained from or filed with a Governmental Authority in order to consummate the Transaction (collectively, "Approvals") shall have been obtained or made (as applicable), and such Approvals shall not contain any condition that would (i) require Purchaser or the Company or any of its Subsidiaries to divest or dispose of any assets, securities or other instruments, (ii) restrain or impose any limit on the Purchaser's or the Company's or any of its Subsidiaries' investment activities, (iii) require an amendment or waiver of any term or condition of any Transaction Document, or (iv) be reasonably likely to have a material adverse effect on the Purchaser or a Material Adverse Effect.

(d) **Refinancing**. The first closing of the Company Refinancing shall have occurred or shall occur simultaneously, and the Company shall, on the Closing Date, apply 100% of the proceeds therefrom to repurchase Convertible Notes at the closing of a tender offer for such Convertible Notes (collectively, the "Tender Offer Closing"); provided, however, that no party may delay or prevent the Closing on the basis that this condition has not been satisfied if the failure of this condition to be so satisfied is as a result of or arises from such party's actions or its failure to act or its breach of this Agreement.

(e) **NYSE Exemption**. The transactions contemplated hereby shall not require the approval of the Company's shareholders pursuant to Section 312 of the NYSE Listed Company Manual, whether as a result of the NYSE Exemption or a comparable exemption granted by the NYSE imposing conditions and subject to qualifications no more burdensome to Purchaser or the Company than those anticipated to be included in the NYSE Exemption and delivered to Purchaser prior to the date hereof, or otherwise reasonably acceptable to Purchaser and the Company.

8.2 **Conditions to the Obligations of Purchaser**. The obligation of Purchaser to purchase the Securities is, at the option of Purchaser, subject to the fulfillment of the following conditions as of the Closing Date:

(a) **Representations and Warranties; Covenants**. The representations and warranties of the Company set forth in this Agreement shall be true and correct at and as of the date hereof and as of the Closing Date (except to the extent such representations and warranties relate to an earlier date, in which case such representations and warranties shall be true and correct on and as of such earlier date). The Company shall have performed or complied in all material respects with all covenants and agreements of the Company in this Agreement.

(b) **Bringdown Certificate**. The Company shall have delivered to Purchaser a certificate of the Company, executed by the chief executive officer and chief financial officer of the Company, dated the Closing Date, and certifying to the fulfillment of the conditions specified in clause (a) of this Section 8.2.

(c) **Legal Opinion**. The Company shall have (i) caused the primary legal officer of the Company to deliver a legal opinion to Purchaser in the form of Exhibit C hereto; and (ii) caused Simpson Thacher & Bartlett LLP to deliver a legal opinion to Purchaser in substantially the form of Exhibit D hereto.

(d) **No Delisting**. From the date of this Agreement to and including the Closing Date the Company Common Stock shall not have been delisted by the NYSE nor shall trading in the Company Common Stock have been suspended by the NYSE.

(e) **Credit Agreement Repayment Acceleration; Pro Forma Compliance**. No acceleration of the Company's repayment obligations pursuant to Section 8.2 of the Credit Agreement shall have occurred and not been withdrawn. No "Default" or "Event of Default" shall have occurred and be continuing under the Credit Agreement. As of September 30, 2009, pro forma for the transactions contemplated by this Agreement, the Company Refinancing and the Public Offering, the Company shall be in compliance with each of the covenants set forth in Sections 7.11, 7.12, 7.14, 7.15, 7.16 and 7.17 of the Credit Agreement.

(f) **Investor Rights Agreement**. The Company shall have executed and delivered the Investor Rights Agreement to Purchaser.

8.3 **Conditions to Closing of Company**. The Company's obligation to sell and issue the Securities is, at the option of the Company, subject to the fulfillment of the following conditions as of the Closing Date:

(a) **Representations and Warranties; Covenants**. The representations and warranties of Purchaser in this Agreement shall be true and correct at and as of the Closing (except to the extent such representations and

warranties relate to an earlier date, in which case such representations and warranties shall be true and correct on and as of such earlier date). Purchaser shall have performed or complied in all material respects with all covenants and agreements of Purchaser in this Agreement.

(b) **Bringdown Certificate** . Purchaser shall have delivered to the Company a certificate of Purchaser, executed by an authorized officer of Purchaser, dated the Closing Date, and certifying to the fulfillment of the conditions specified in clause (a) of this Section 8.3.

(c) **Investor Rights Agreement** . Purchaser shall have executed and delivered the Investor Rights Agreement to the Company.

SECTION 9

Miscellaneous

9.1 **Governing Law; Venue** . This Agreement shall be deemed to be made in and in all respects shall be interpreted, construed and governed by and in accordance with the laws of the State of New York (except to the extent that mandatory provisions of Delaware law are applicable). The parties hereby irrevocably submit to the jurisdiction of the courts of the State of New York and the federal courts of the United States of America located in the State of New York solely for the purposes of any suit, action or other proceeding between any of the parties hereto arising out of this Agreement or any transaction contemplated hereby, and hereby waive, and agree to assert, as a defense in any action, suit or proceeding for the interpretation or enforcement hereof, that it is not subject thereto or that such action, suit or proceeding may not be brought or is not maintainable in said courts or that the venue thereof may not be appropriate or that this Agreement may not be enforced in or by such courts, and the parties hereto irrevocably agree that all claims with respect to such action or proceeding shall be heard and determined in such New York state or federal court. The parties hereby consent to and grant any such court jurisdiction over the person of such parties and over the subject matter of such dispute and agree that mailing of process or other papers in connection with any such action or proceeding in the manner provided in Section 9.8 or in such other manner as may be permitted by law, shall be valid and sufficient service thereof. **EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.**

9.2 **Fees and Expenses** . The Company shall reimburse Purchaser for all reasonable costs and expenses incurred in connection with the transactions contemplated by this Agreement (including all reasonable legal fees and disbursements in connection with the documentation and implementation of the transactions contemplated by this Agreement and due diligence in connection therewith and fees incurred in connection with regulatory filings and clearances including one filing under the HSR Act and under insurance regulations of each Principal Insurance Regulatory Authority incurred in connection with each of (i) the Purchaser's acquisition of the Shares, (ii) the Purchaser's exercise of the Warrants and (iii) the Purchaser's conversion of any convertible Indebtedness of the Company acquired by Purchaser in the Refinancing, which amount shall be withheld by the Purchaser from the Purchase Price payable by the Purchaser at the Closing or, if incurred after the Closing, shall be promptly reimbursed to the Purchaser by the Company. The Company shall be responsible for its own fees and expenses incurred in connection with the transactions contemplated by this Agreement. The Company shall pay all fees of its transfer agent, stamp taxes and other taxes and duties levied in connection with the delivery of the Securities to the Purchaser.

9.3 **Attorney's Fees .** In the event of any action of any kind between the parties hereto with respect to this Agreement, the prevailing party shall be entitled to recover from the other party its reasonable attorney's fees and related costs, expenses and disbursements incurred in connection with such action.

9.4 **Termination** . This Agreement may be terminated at any time prior to the Closing:

(a) by either Purchaser or the Company if the Closing shall not have occurred by October 15, 2010 (the " Termination Date "), *provided, however* that the right to terminate this Agreement under this Section 9.4 (a) shall not be available to any party whose breach of any representation or warranty or failure to perform any

obligation under this Agreement shall have caused or resulted in the failure of the Closing to occur on or prior to such date; or

(b) by either Purchaser or the Company in the event that any Governmental Authority shall have issued an Order and such Order shall have become final and nonappealable; or

(c) by the Company if there has been a breach of any representation, warranty, covenant or agreement made by Purchaser in this Agreement, or any such representation and warranty shall have become untrue after the date of this Agreement, such that Section 8.3(a) would not be satisfied and such breach or condition is not curable or, if curable, is not cured within thirty (30) days after written notice thereof is given by the Company to Purchaser (but in any event not later than the Termination Date); or

(d) by Purchaser if there has been a breach of any representation, warranty, covenant or agreement made by the Company in this Agreement, or any such representation and warranty shall have become untrue after the date of this Agreement, such that Section 8.2(a) would not be satisfied and such breach or condition is not curable or, if curable, is not cured within thirty (30) days after written notice thereof is given by Purchaser to the Company (but in any event not later than the Termination Date); or

(e) by either party if the NYSE notifies the Company that it will not provide the NYSE Exemption, or if the NYSE Exemption (or any subsequent exemption applicable hereunder), after issuance, is revoked, rescinded, expires or is no longer in full force and is not replaced within ten (10) Business Days with an exemption that satisfies the condition to each party's obligation to close the Transaction set forth in Section 8.1(e); or

(f) by the mutual written consent of Purchaser and the Company.

In the event of termination of this Agreement as provided in this Section 9.4, this Agreement shall forthwith become void, except that (a) this Section 9 shall survive, (b) the Mutual Nondisclosure Agreement, dated as of August 27, 2009, by and between the Company and Purchaser (the " Confidentiality Agreement ") shall survive in accordance with its terms and (c) no such termination shall relieve any party from liability for any breach of this Agreement, material misrepresentation or fraud.

9.5 **Survival** . The representations and warranties made herein shall expire as of the third anniversary of the Closing, provided , however , that (i) the representations and warranties contained in Section 3.2(b) shall survive the Closing and remain in effect indefinitely and (ii) the representations and warranties contained in Sections 3.10, 3.19 and 3.21 shall survive the Closing until the expiration of the applicable statute of limitations. The covenants and agreements set forth in Sections 5.1(b)(ii), 5.1(c), 5.1(e), 5.1(f), 5.2, 5.5, 5.6, 5.7, 5.8, 5.9,5.10, 6.2, 7 and 9 shall survive the Closing.

9.6 **Successors and Assigns** . Except as otherwise provided herein, the provisions hereof shall inure to the benefit of, and be binding upon, the successors, assigns, heirs, executors and administrators of the parties hereto.

9.7 **Entire Agreement; Amendment** . This Agreement, the Investor Rights Agreement and the Confidentiality Agreement (in each case including any Exhibits, Schedules or other attachments thereto) constitute the full and entire understanding and agreement between the parties with regard to the subjects hereof and thereof, and no party shall be liable or bound to any other party in any manner by any warranties, representations or covenants except as specifically set forth herein or therein. Except as expressly provided herein, neither this Agreement nor any term hereof may be amended, waived, discharged or terminated other than by a written instrument signed by the party against whom enforcement of any such amendment, waiver, discharge or termination is sought.

9.8 **Notices, Etc** . Any notice, request, instruction or other document to be given hereunder by any party to the other will be in writing and will be deemed to have been duly given (a) on the date of delivery if delivered personally or by telecopy or facsimile, upon confirmation of receipt, (b) on the first Business Day following the date of dispatch if delivered by a recognized next-day courier service, or (c) on the third Business Day following the date of mailing if delivered by registered or certified mail, return receipt requested, postage prepaid. All notices hereunder shall be delivered as set forth below, or pursuant to such other instructions as may be designated in writing by the party to receive such notice.

If to Purchaser to it at:

Paulson & Co. Inc.
1251 Avenue of the Americas, 50th Floor
New York, NY, 10020
Attn: Mr. Michael Waldorf
Telephone: (212) 956-2221
Fax: (212) 351-5887

with a copy to (which copy alone shall not constitute notice):

Kleinberg, Kaplan, Wolff & Cohen, P.C.
551 Fifth Avenue, 18 th Floor
New York, New York 10176
Attn: Stephen M. Schultz, Esq.

Telephone: (212) 986-6000
Fax: (212) 986-8866

If to the Company:

Conseco, Inc.
11825 North Pennsylvania Street
Carmel, Indiana 46032
Attn: General Counsel
Telephone: (317) 817-2889
Fax: (317) 817-2826

with a copy to (which copy alone shall not constitute notice):

Simpson Thacher & Bartlett LLP
425 Lexington Avenue
New York, New York 10017
Attn: Gary I. Horowitz, Esq.
Telephone: (212) 455-2000
Fax: (212) 455-2502

9.9 **Specific Performance** . The Company and Purchaser acknowledge and agree that irreparable damage to the other party would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that each party shall be entitled to an injunction, injunctions or other equitable relief, without the necessity of posting a bond, to prevent or cure breaches of the provisions of this Agreement and to enforce specifically the terms and provisions hereof, this being in addition to any other remedy to which the parties may be entitled by law or equity.

9.10 **Delays or Omissions** . It is agreed that no delay or omission to exercise any right, power or remedy accruing to any party, upon any breach, default or noncompliance by another party under this Agreement, shall impair any such right, power or remedy, nor shall it be construed to be a waiver of any such breach, default or noncompliance, or any acquiescence therein, or of or in any similar breach, default or noncompliance thereafter occurring. It is further agreed that any waiver, permit, consent or approval of any kind or character on the part of any party hereto of any breach, default or noncompliance under this Agreement or any waiver on such party's part of any provisions or conditions of this Agreement, must be in writing and shall be effective only to the extent specifically set forth in such writing. All remedies, either under this Agreement, by law, or otherwise afforded to any party, shall be cumulative and not alternative.

9.11 **No Third Party Beneficiaries .** Other than as set forth in Section 7.3, nothing in this Agreement, expressed or implied, is intended to confer upon any person, other than the parties hereto or their respective successors, any rights, remedies, obligations or liabilities under or by reason of this Agreement.

9.12 **No Assignment .** This Agreement shall not be assignable other than by operation of law; *provided , however* , that Purchaser may assign its rights and obligations under this Agreement without the Company's consent to any Affiliate, but only if the assignee agrees in writing with the Company in form and substance reasonably satisfactory to the Company to be bound by the terms of this Agreement and, in conjunction therewith, makes to the

Company representations and warranties substantially equivalent (with necessary conforming changes) to those contained in Section 4 as if such assignee were "Purchaser" therein (any such transferee shall be included in the term "Purchaser"); *provided , further* , that no such assignment shall be permitted without the Company's consent if it (x) would require any consents or approvals from or filings or notices with any Governmental Authority or other person or (y) would reasonably be expected to adversely affect or delay the consummation of the transactions contemplated hereby.

9.13 **Counterparts** . This Agreement may be executed in any number of counterparts, each of which shall be enforceable against the parties actually executing such counterparts, and all of which together shall constitute one instrument. This Agreement may be executed by facsimile signature(s).

9.14 **Severability** . In the event that any provision of this Agreement becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable or void, this Agreement shall continue in full force and effect without said provision; *provided* that no such severability shall be effective if it materially changes the economic benefit of this Agreement to any party.

9.15 **Titles and Subtitles** . The titles and subtitles used in this Agreement are used for convenience only and are not considered in construing or interpreting this Agreement.

[SIGNATURE PAGE FOLLOWS]

This STOCK AND WARRANT PURCHASE AGREEMENT is hereby executed as of the date first above written.

"COMPANY"	**CONSECO, INC.**
	By: / s/ C. James Prieur
	Name: C. James Prieur
	Title: Chief Executive Officer
"PURCHASER"	**PAULSON & CO. INC., on behalf of the several investment funds and accounts managed by it**
	By: / s/ Michael Waldorf
	Name: Michael Waldorf
	Title: Managing Director

EXHIBIT 6

FORWARD PURCHASE AGREEMENT

dated as of

October 14, 2009

between

PAULSON CREDIT OPPORTUNITIES MASTER LTD.,

and

MORGAN STANLEY & CO. INCORPORATED

relating to the purchase and sale

of

UP TO $100,000,000 AGGREGATE PRINCIPAL AMOUNT

7.0% CONVERTIBLE SENIOR NOTES DUE 2016

of

CONSECO, INC.

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FORWARD PURCHASE AGREEMENT

AGREEMENT (this " **Agreement** ") dated as of October 14, 2009 between Paulson Credit Opportunities Master Ltd., a Cayman limited company (together with any of its transferees or assignees under this Agreement, the " **Buyer** "), and Morgan Stanley & Co. Incorporated, a Delaware corporation (" **Morgan Stanley** ").

W I T N E S S E T H :

WHEREAS, the Company has agreed to issue and sell to Morgan Stanley, as initial purchaser, up to $293 million aggregate principal amount of its 7.0% Convertible Senior Notes due 2016, in one or more series on one or more Closing Dates (as defined below) (collectively, the " **Securities** " and each $1,000 principal amount of such Securities, a " **Security** ") pursuant to the purchase agreement between the Company and Morgan Stanley dated as of the date hereof (the " **Purchase Agreement** ");

WHEREAS, pursuant to the Purchase Agreement, Morgan Stanley has agreed to purchase from the Company, subject to the terms and conditions set forth therein, Securities in an aggregate principal amount equal to the sum of (x) the aggregate principal amount of the Company's 3.50% Convertible Debentures due September 30, 2035 (the " **Existing Convertibles** ") purchased by the Company in the Company tender offer that the Company intends to commence promptly after the execution of this Agreement and any subsequent Company tender offer for the Existing Convertibles that expires before October 5, 2010 (each, a " **Tender Offer** " and the business day following the date on which the Tender Offer expires, a " **Tender Offer Closing Date** "), (y) the aggregate principal amount of Existing Convertibles that the Company is required by holders thereof to repurchase on September 30, 2010 (such date, the " **Put Right Closing Date** ") pursuant to the terms of the Existing Convertibles, and (z) the aggregate principal amount of Existing Convertibles redeemed by the Company on October 5, 2010 (such date, the " **Redemption Closing Date** " and collectively with the Tender Offer Closing Date(s) and the Put Right Closing Date, the " **Closing Dates** " and each, a " **Closing Date** ") pursuant to the terms of the Existing Convertibles. The Securities will be issued by the Company pursuant to an Indenture to be dated as of October 16, 2009, as supplemented by an authentication order with respect to each series of Securities issued on each Closing Date, between the Company and The Bank of New York Mellon Trust Company, N. A. (" **BONY** "), as trustee (the " **Indenture** ").

WHEREAS, the Securities will be convertible into shares of common stock, par value $0.01, of the Company (the " **Underlying Securities** ");

WHEREAS, pursuant to the Purchase Agreement, Morgan Stanley has advised the Company that it will make an offering of the Securities it has agreed to purchase thereunder to certain buyers in the manner permitted thereunder, as soon as practicable after the Purchase Agreement is entered into;

WHEREAS, the Buyer desires to purchase, and Morgan Stanley desires to sell, in each case upon the terms and subject to the conditions hereinafter set forth, the aggregate principal amount of Securities specified herein;

WHEREAS, the Securities are being offered and sold without registration under the Securities Act in reliance on an exemption from registration thereunder; and

WHEREAS, the Buyer and Morgan Stanley have entered into a security agreement dated as of the date hereof (the " **Security Agreement** ") pursuant to which the Buyer has granted Morgan Stanley a security interest (the " **Security Interest** ") in the Controlled Deposit Account (as defined below) into which funds from time to time are credited (such funds, together with any proceeds related thereto, collectively, the " **Collateral** ").

The parties hereto agree as follows:

ARTICLE 1
Definitions

Section 1.01. *Definitions* . (a) As used herein, the following terms have the following meanings:

“ **Affiliate** ” means, with respect to any Person, any other Person directly or indirectly controlling, controlled by, or under common control with such Person; *provided* that neither the Company nor any Subsidiary shall be considered an Affiliate of Morgan Stanley.

“ **Applicable Law** ” means, with respect to any Person, any federal, state or local law (statutory, common or otherwise), constitution, treaty, convention, ordinance, code, rule, regulation, order, injunction, judgment, decree, ruling or any insurance laws and regulations or other similar requirement enacted, adopted, promulgated or applied by a Governmental Authority that is binding upon or applicable to such Person, as amended unless expressly specified otherwise.

“ **Applicable Percentage Commitment** ” means the aggregate principal amount of the Securities that the Buyer has agreed, pursuant to this Agreement, to purchase from Morgan Stanley, as set forth on the signature page hereof, expressed as a percentage of $293,000,000.

“Business Day” means a day, other than Saturday, Sunday or other day on which commercial banks in New York, New York are authorized or required by Applicable Law to close.

“ **Buyer Purchase Price Funding Obligation** ” means the product of the Buyer’s Applicable Percentage Commitment and the $291,426,630.14.

“ **Buyer Security Funding Obligation** ” means an amount in cash equal to the sum of (i) Buyer Purchase Price Funding Obligation plus (ii) the product of the Buyer’s Applicable Percentage Commitment and $45,000.

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

“ **Common Stock** ” means the common stock, par value $0.01 per share, of the Company.

“ **Company** ” means Conseco, Inc., a Delaware corporation.

“ **Credit Agreement** ” means the Second Amended and Restated Credit Agreement dated as of October 10, 2006 among the Company, Bank of America, N.A., as Agent, J.P. Morgan Chase Bank, N.A., as Syndication Agent, and the other parties thereto, as amended by Amendment No. 1 thereto dated as of June 12, 2007 and Amendment No. 2 thereto dated as of March 30, 2009.

“Bank ” means The Bank of New York Mellon, in its capacity as custodian of the applicable Controlled Deposit Account, or any other bank reasonably acceptable to Morgan Stanley and the Buyer, in such capacity, together with any successor custodian.

“ **Control Agreement** ” means a deposit account control agreement substantially in the form of Exhibit A to the Security Agreement (with any changes that Morgan Stanley and the Buyer shall have both approved) to be entered into among the Buyer, Morgan Stanley and the Bank on or prior to the date funds are deposited into a Pledgor Deposit Account.

“ **Controlled Deposit Account** ” means any Deposit Account that is an Initial Deposit Account or a Pledgor Deposit Account.

“ **Deposit Account** ” shall have the meaning ascribed to such term under UCC Section 9-102.

“ **Governmental Authority** ” means any transnational, domestic or foreign federal, state or local, governmental authority, insurance regulatory authority, self-regulatory authority, department, court, agency or official, including any political subdivision thereof.

“ **Initial Deposit Account** ” means a Deposit Account maintained on the books of The Bank of New York Mellon in the name of “Morgan Stanley – Collateral Pledged by Paulson Credit Opportunities Master Ltd.,” with respect to which Morgan Stanley is the Bank’s “customer” within the meaning of UCC Section 4-104 (together with any successor account).

“ **NYSE** ” means the New York Stock Exchange.

“ **Person** ” means an individual, corporation, partnership, limited liability company, association, trust or other entity or organization, including a Governmental Authority.

" **Pledgor Deposit Account** " means a Deposit Account of the Buyer established with the Bank that is subject to a Control Agreement (together with any successor account).

" **Purchased Percentage** " means, for any Forward Purchase Closing Date, the aggregate principal amount of the Securities purchased by the Buyer on such Forward Purchase Closing Date, expressed as a percentage of the aggregate principal amount of the Securities that the Buyer has agreed, pursuant to this Agreement, to purchase from Morgan Stanley, as set forth on the signature page hereof.

" **Purchase Price** " means, with respect to each Forward Purchase Closing Date, an amount equal to the aggregate principal amount of Securities required to be purchased by the Buyer hereunder on such Forward Purchase Closing Date multiplied by (1 – ((0.07 x N)/365)), where N equals the number of days from, and including, the Security Funding Date to, and excluding, the applicable Closing Date.

" **Securities Act** " means the Securities Act of 1933, as amended.

" **Security Documents** " means the Control Agreement and the Security Agreement.

" **Subsidiary** " means any entity of which securities or other ownership interests having ordinary voting power to elect a majority of the board of directors or other persons performing similar functions are at the time directly or indirectly owned by the Company.

" **UCC** " means the Uniform Commercial Code as in effect from time to time in the State of New York; *provided* that, if perfection or the effect of perfection or non-perfection or the priority of the Security Interest on any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than New York, " **UCC** " means the Uniform Commercial Code as in effect from time to time in such other jurisdiction for purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority.

(b) Each of the following terms is defined in the Section set forth opposite such term:

Term	**Section**
Agreement	Preamble
Bankruptcy Code	7.11
BONY	Preamble
Buyer	Preamble
Closing Date	Preamble
Collateral	Preamble
Defaulting Party	Section 6.01
Early Termination Event	Section 6.02(b)
Effectiveness Certificate	2.02
Excess Amount	7.13
Existing Convertibles	Preamble
Forward Purchase Closing Date	2.01
Indenture	Preamble
Morgan Stanley	Preamble
Non-Defaulting Party	Section 6.01
Private Placement	5.01(d)
Purchase Agreement	Preamble
Put Right Closing Date	Preamble
Redemption Closing Date	Preamble
Security or Securities	Preamble
Security Agreement	Preamble
Security Funding Date	2.02
Tender Offer	Preamble
Tender Offer Closing Date	Preamble
Termination Amount	6.02(c)
Termination Date	6.02(b)
Termination Notice	6.02(b)
Transaction Termination Value	6.02(d)

Transfer	7.04
Underlying Securities	Preamble

Section 1.02 . *Other Definitional and Interpretative Provisions.* The words "hereof", "herein" and "hereunder" and words of like import used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. The captions herein are included for convenience of reference only and shall be ignored in the construction or interpretation hereof.

ARTICLE 2
Purchase and Sale

Section 2.01. *Purchase and Sale.* Upon the terms and subject to the conditions herein, the Buyer agrees to purchase from Morgan Stanley, and Morgan Stanley agrees to sell to the Buyer, on the date that is two Business Days after each Closing Date (each such date, a " **Forward Purchase Closing Date** "), at the applicable Purchase Price for such Forward Purchase Closing Date, an aggregate principal amount of Securities equal to the product of the Buyer's Applicable Percentage Commitment and the aggregate principal amount of Securities issued to Morgan Stanley by the Company pursuant to the Purchase Agreement on the immediately preceding Closing Date. The Purchase Price in respect of each Forward Purchase Closing Date shall be paid as provided in Section 2.03.

Section 2.02 . *Funding of Controlled Deposit Account.* Provided that (i) Morgan Stanley's obligations under the Purchase Agreement have become effective under Section 5 thereof, and (ii) Morgan Stanley has delivered to the Buyer a certificate attesting to the foregoing substantially in the form of Exhibit A hereto (the " **Effectiveness Certificate** "), then prior to 3:00 p.m. New York City time two Business Days after the date hereof (such date, the " **Security Funding Date** "), the Buyer hereby agrees to deposit an amount in U.S. dollars equal to the Buyer Security Funding Obligation into (i) the Pledgor Deposit Account, if the Pledgor Deposit Account has been established and the Control Agreement has been entered into by the parties thereto on or prior to the Security Funding Date or (ii) the Initial Deposit Account, if the Pledgor Deposit Account has not been established on or prior to the Security Funding Date, in each case established and maintained on the books of the Bank. All funds deposited into the applicable Controlled Deposit Account shall be pledged in favor of Morgan Stanley pursuant to the Security Agreement to secure the Buyer's obligations hereunder. Such funds shall be held in the applicable Controlled Deposit Account until they are (A) withdrawn by Morgan Stanley or released to the Buyer, in each case upon satisfaction of the conditions set forth in Article 5 on a Forward Purchase Closing Date, (B) released to the Buyer in accordance with Section 2.03(c), (C) transferred in accordance with Article 6 following a termination of this Agreement or (D) released to the Buyer upon a Transfer in accordance with Section 7.04.

Section 2.03. *Closing* . Each closing of the purchase and sale of Securities hereunder shall take place at the offices of Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, New York, on each Forward Purchase Closing Date, or on such other date as Morgan Stanley and the Buyer may mutually agree, upon satisfaction of the conditions set forth in Article 5. The Buyer shall inform Morgan Stanley two Business Days before each Forward Purchase Closing Date as to the account in The Depositary Trust Company to which it requires the Securities to be delivered, *provided* , that Morgan Stanley shall provide the Buyer with at least three Business Days notice of the date that is scheduled to be a Forward Purchase Closing Date.

(a) At each closing on a Forward Purchase Closing Date, the Buyer shall deliver to Morgan Stanley the applicable Purchase Price in immediately available funds and Morgan Stanley shall deliver to the Buyer the aggregate principal amount of Securities purchased by the Buyer on such Forward Purchase Closing Date. The foregoing payment and delivery obligations shall be settled in the manner provided below.

(b) On each Forward Purchase Closing Date, upon satisfaction or waiver of the conditions set forth in Section 5.01 hereof, Morgan Stanley is authorized and instructed to withdraw from the applicable Controlled Deposit Account and deliver to itself an amount equal to the applicable Purchase Price, which shall constitute payment of the applicable Purchase Price by the Buyer; *provided*, that on the first Forward Purchase Closing Date, Morgan Stanley shall be entitled to withdraw from the applicable Controlled Deposit Account an additional amount equal to the Buyer's Applicable Percentage Commitment times $45,000. Simultaneously with the withdrawal of

such funds by Morgan Stanley on the relevant Forward Purchase Closing Date, (A) the aggregate principal amount of Securities purchased by the Buyer on such date shall be delivered to the Buyer by Morgan Stanley by book-entry transfer through the facilities of The Depository Trust Company, to the account designated by the Buyer, and (B) funds shall be transferred to the Buyer in an amount equal to (i) the excess of (x) the product of the Purchased Percentage for such Forward Purchase Closing Date times the Buyer Purchase Price Funding Obligation over (y) the sum of the Purchase Price of such Securities and the aggregate amount of any Excess Amounts previously released to the Buyer less (ii), in the case of the first Forward Purchase Closing Date, the Buyer's Applicable Percentage Commitment times $45,000.

(c) If, on any Closing Date, the aggregate principal amount of Securities purchased by Morgan Stanley, together with any Securities purchased by Morgan Stanley on any prior Closing Date, equals $293 million and, after the closing on the related Forward Purchase Closing Date, there are funds remaining on deposit in the applicable Controlled Deposit Account, Morgan Stanley shall promptly instruct the Bank to release to the Buyer any such excess funds following payment for the Securities, if any.

(d) If the Buyer Security Funding Obligation is deposited into the Initial Deposit Account because the Pledgor Deposit Account has not been established on or prior to the Security Funding Date, then upon the establishment of the Pledgor Deposit Account and the execution of the Control Agreement by the parties thereto, Morgan Stanley shall transfer the entire Buyer Security Funding Obligation to the Pledgor Deposit Account, *provided* , that, if the Pledgor Deposit Account has not been established on or prior to the 30th Business Day following the Security Funding Date, Morgan Stanley and the Buyer shall negotiate in good faith to identify a new Bank and to request that such new Bank open a Deposit Account into which the Buyer Security Funding Obligation may be transferred by Morgan Stanley, *provided, further* , that if a new Bank has not been identified, or if identified, such new Bank shall not have opened a Deposit Account into which the Buyer Security Funding Obligation may be transferred by Morgan Stanley or such new Bank and the Buyer shall not have executed a Control Agreement in respect of such Deposit Account on or before the 90th Business Day following the Security Funding Date, the Buyer Security Funding Obligation shall remain deposited in the Initial Deposit Account for the term of this Agreement.

(e) If the aggregate principal amount of Securities to be purchased by the Buyer on any Forward Purchase Closing Date is not an integral multiple of $1,000, Morgan Stanley shall round such principal amount to the nearest $1,000 (with $500 being rounded upwards) and may make corresponding adjustments to the applicable Purchase Price of such Securities and to the amount to be released to the Buyer pursuant to Sections 2.03(b) and (c).

ARTICLE 3
Representations and Warranties of Buyer

The Buyer represents and warrants to Morgan Stanley as of the date hereof that:

Section 3.01. *Corporate Authorization* . The execution, delivery and performance by the Buyer of this Agreement and the Security Documents and the consummation of the transactions contemplated hereby and thereby are within the corporate or equivalent powers of the Buyer and have been duly authorized by all necessary corporate or other action on the part of the Buyer. This Agreement and the Security Documents constitute valid and binding agreements of the Buyer, enforceable in accordance with each of their terms.

Section 3.02. *Governmental Authorization* . The execution, delivery and performance by the Buyer of this Agreement and the Security Documents and the consummation of the transactions contemplated hereby and thereby require no material action by or in respect of, or material filing with, any Governmental Authority.

Section 3.03. *Non-contravention* . The execution, delivery and performance by the Buyer of this Agreement and the Security Documents and the consummation of the transactions contemplated hereby and thereby do not and will not (i) violate the organizational documents or bylaws of the Buyer or agreements that are material to the Buyer or (ii) violate any Applicable Law.

Section 3.04. *Financing* . The Buyer has, or will have prior to the Security Funding Date, sufficient cash, available lines of credit or other sources of immediately available funds to enable it to make payment of the Buyer Security Funding Obligation and any other amounts to be paid by it hereunder.

Section 3.05. *No Reliance* . The Buyer has received a copy of the Time of Sale Memorandum (as defined in the Purchase Agreement) and the Final Memorandum (as defined in the Purchase Agreement) and acknowledges that it has relied solely on the Time of Sale Memorandum (as defined in the Purchase Agreement) and the Final Memorandum (as defined in the Purchase Agreement) in connection with the decision to purchase the Securities pursuant to this Agreement and to accept the Securities on each Forward Purchase Closing Date, and not upon any other information provided by or on behalf of the Company or Morgan Stanley in making the decision to purchase the Securities. The Buyer understands and acknowledges that neither the Company or Morgan Stanley nor any of the Company's or Morgan Stanley's representatives, agents or attorneys is making or has made at any time any warranties or representations of any kind or character, express or implied, with respect to the Company, its Subsidiaries, their respective businesses or results of operations, or any other matter related thereto. The Buyer also acknowledges that Morgan Stanley has not made any warranties or representations as to the accuracy or completeness of the Time of Sale Memorandum (as defined in the Purchase Agreement) or the Final Memorandum (as defined in the Purchase Agreement), and nothing contain therein is, or shall be relied upon as, a promise or representation by Morgan Stanley.

Section 3.06. *No Duty to Update.* The Buyer acknowledges that Morgan Stanley has no duty to update the Time of Sale Memorandum (as defined in the Purchase Agreement) and the Final Memorandum (as defined in the Purchase Agreement) after the date hereof and that, as of the date hereof, the Buyer is committing to purchase the Securities, subject only to the conditions set forth in Section 5.01 ; the Buyer further acknowledges that the Securities will not be issued and delivered until a future date, which could be as late as October 5, 2010. The Buyer further acknowledges that the business, operations, and financial condition of the Company may be adversely affected subsequent to the date hereof and that such adverse effect, even if material, may not release the Buyer from the obligation hereunder to purchase and pay for the Securities as contemplated herein, subject to Section 5.01. The Buyer further acknowledges that the value of the Securities it has committed to purchase under this Agreement may decrease materially between the date hereof and any Forward Purchase Closing Date on which it is required hereunder to pay the Purchase Price for any Securities to be purchased on such date.

Section 3.07 . *Qualified Institutional Buyer Investor Status* . The Buyer is a "qualified institutional buyer" as defined in the Securities Act.

Section 3.08 . *Transfer Restrictions* . The Securities that are being acquired by the Buyer hereunder are being acquired by it, and the Underlying Securities will be acquired by it, for its own account and not with a view to the distribution thereof. The Buyer (either alone or together with its advisors) has sufficient knowledge and experience in financial and business matters so as to be capable of evaluating the merits and risks of its investment in the Securities and is capable of bearing the economic risks of such investment. The Buyer understands that neither the Securities nor the Underlying Securities have been registered under the Securities Act and are being offered and sold to the Buyer pursuant to an exemption from the registration requirements of the Securities Act for transactions not involving a public offering.

The Buyer represents, agrees and confirms that it will comply with the restrictions on transfer of the Securities described in the Time of Sale Memorandum (as defined in the Purchase Agreement) and the Final Memorandum (as defined in the Purchase Agreement) under the caption "Notice to Investors" and hereby makes the other acknowledgments, representations and warranties contained therein.

Section 3.09. *Delayed Settlement* . The Buyer understands and agrees that the earliest possible Forward Purchase Closing Date is two Business Days after the first Tender Offer Closing Date (expected to be November 13, 2009, unless otherwise extended), which will be more than three Business Days after the date of the Final Memorandum (as defined in the Purchase Agreement). Accordingly, the Buyer understands and agrees that if it seeks to trade Securities after it enters into this Agreement and prior to a Forward Purchase Closing Date, it will be required, by virtue of the fact that the Securities will settle from time to time, to specify an alternative settlement date at the time of any such trade to prevent a failed settlement. The Buyer further understands and agrees that it should also consult its own advisors in this regard.

Section 3.10. *Security Documents.* The representations and warranties with respect to the Collateral made by the Buyer under the Security Documents are true and correct.

ARTICLE 4
Representations and Warranties of Morgan Stanley

Morgan Stanley represents and warrants to the Buyer as of the date hereof that:

Section 4.01. *Corporate Authorization.* The execution, delivery and performance by Morgan Stanley of this Agreement and the Security Documents and the consummation of the transactions contemplated hereby and thereby are within the corporate powers of Morgan Stanley and have been duly authorized by all necessary corporate action on the part of Morgan Stanley. This Agreement and the Security Documents constitute valid and binding agreements of Morgan Stanley, enforceable in accordance with each of their terms.

Section 4.02. *Governmental Authorization.* The execution, delivery and performance by Morgan Stanley of this Agreement and the Security Documents and the consummation of the transactions contemplated hereby and thereby require no material action by or in respect of, or material filing with, any Governmental Authority.

Section 4.03. *Non-contravention.* The execution, delivery and performance by Morgan Stanley of this Agreement and the Security Documents and the consummation of the transactions contemplated hereby and thereby do not and will not (i) violate the organizational documents or bylaws of Morgan Stanley or agreements that are material to Morgan Stanley or (ii) violate any Applicable Law.

ARTICLE 5
Conditions to Closing

Section 5.01. *Conditions to Obligation of the Buyer* . The obligation of the Buyer to consummate the purchase of the Securities on each Forward Purchase Closing Date is subject to the satisfaction of the following conditions:

(a) On or prior to the Security Funding Date, Morgan Stanley shall have delivered to the Buyer the Effectiveness Certificate.

(b) On the relevant Closing Date prior to each Forward Purchase Closing Date, there shall not have occurred and be continuing an Event of Default (as defined in the Credit Agreement) under the Credit Agreement;

(c) On the relevant Closing Date prior to each Forward Purchase Closing Date, there shall not have occurred and be continuing an Event of Default (as defined in the Indenture) under any previously issued Securities;

(d) The closing, on or prior to the first Closing Date, of that certain private placement under Section 4(2) of the Securities Act between the Company and Paulson & Co., Inc. of 16.4 million shares of Common Stock and warrants to purchase 5.0 million shares of Common Stock (the " **Private Placement** ");

(e) On or prior to the first Closing Date, the Company shall have (i) received approval from the NYSE under Section 312.05 of the NYSE Listed Company Manual to issue 16.4 million shares of Common Stock and warrants to purchase 5.0 million shares of Common Stock pursuant to the Private Placement and up to $293 million aggregate principal amount of Securities without shareholder approval and (ii) notified all of its shareholders by mail no later than 10 days prior to the first Tender Offer Closing Date alerting them to the Company's reliance on the exception to shareholder approval under Section 312.05 of the NYSE Listed Company Manual in connection with the Company's issuance of 16.4 million shares of Common Stock, warrants to purchase 5.0 million shares of Common Stock and up to $293 million aggregate principal amount of Securities and indicating that the Company's audit committee has approved reliance on such shareholder approval exception; and

(f) (i) Prior to the first Closing Date, the Company shall have filed with the Commission a quarterly report on Form 10-Q for its fiscal quarter ended September 30, 2009, on or before November 19, 2009; such Form 10-Q shall have included the financial statements required by Form 10-Q and such financial statements shall have been subject to a completed SAS 100 review by the Company's independent auditors; and the Company's management shall not have concluded, in connection with such filing that there is substantial doubt regarding the Company's ability to continue as a going concern, and (ii) prior to

any subsequent Closing Date, the Company shall have filed with the Commission a quarterly report on Form 10-Q or an annual report on Form 10-K, as the case may be, within the deadline for such filing specified in such Form, for the immediately preceding fiscal period for which the deadline for the filing of such Form shall have passed prior to such Closing Date, and such Form filed by the Company shall have included the financial statements required by such Form and such financial statements shall have been subject to a completed SAS 100 review or an audit report issued by the Company's independent auditors; and neither the Company's management nor the Company's independent auditors shall have concluded, in connection with such filing, that there is substantial doubt regarding the Company's ability to continue as a going concern, *provided, however*, that filing any Form referred to in (ii) above within the deadline for such filing shall not be a condition to the Buyer's obligations if, on the Business Day following the date any such Form was required to be filed, the Company provides Morgan Stanley with a certificate stating that the reason for the late filing is not related to there being a substantial doubt regarding the Company's ability to continue as a going concern.

(g) (i) Morgan Stanley shall have performed in all material respects all of its obligations hereunder required to be performed by it at or prior to each Forward Purchase Closing Date, (ii) the representations and warranties of Morgan Stanley contained in this Agreement shall be true in all material respects at and as of each Forward Purchase Closing Date, as if made at and as of such date and (iii) the Buyer shall have received a certificate signed by a duly authorized officer of Morgan Stanley to the foregoing effect and as set forth in Exhibit B.

Section 5.02. *Conditions to Obligation of Morgan Stanley* . The obligation of Morgan Stanley to consummate the sale and delivery of the Securities on each Forward Purchase Closing Date is subject to the satisfaction of the following conditions (i) the Buyer shall have performed in all material respects all of its obligations hereunder required to be performed by it at or prior to each Forward Purchase Closing Date, including the obligation under Section 2.02 to deposit into the applicable Controlled Deposit Account the Buyer Security Funding Obligation, (ii) the representations and warranties of the Buyer contained in this Agreement shall be true in all material respects at and as of each Forward Purchase Closing Date, as if made at and as of such date and (iii) Morgan Stanley shall have received a certificate signed by a duly authorized officer or employee of the Buyer to the foregoing effect and as set forth in Exhibit C.

ARTICLE 6
Termination

Section 6.01. *Grounds for Termination* . This Agreement may be terminated at any time:

(a) by mutual written agreement of Morgan Stanley and the Buyer;

(b) with no action required by Morgan Stanley or the Buyer, if Morgan Stanley's obligations under the Purchase Agreement shall have been terminated, *provided* , that, notwithstanding anything to the contrary herein, unless earlier terminated, this Agreement shall terminate on October 6, 2010;

(c) by Morgan Stanley, if the Buyer shall have failed to deposit the Buyer Security Funding Obligation in the applicable Controlled Deposit Account with the Bank as required under Section 2.02;

(d) by Morgan Stanley, in the event that the Buyer (1) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (2) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due; (3) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (4)(a) institutes or has instituted against it, by a regulator, supervisor or any similar official with primary insolvency, rehabilitative or regulatory jurisdiction over it in the jurisdiction of its incorporation or organization or the jurisdiction of its head or home office, a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation by it or such regulator, supervisor or similar official, or (b) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and such proceeding or petition is instituted or presented by a person or entity not described in clause (a) above and either (i) results in a judgment of insolvency or bankruptcy or

the entry of an order for relief or the making of an order for its winding-up or liquidation or (ii) is not dismissed, discharged, stayed or restrained in each case within 30 days of the institution or presentation thereof; (5) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger); (6) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets; (7) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 30 days thereafter; (8) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (1) to (7) above (inclusive); or (9) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

(e) by the Buyer, in the event that Morgan Stanley (1) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (2) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due; (3) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (4)(a) institutes or has instituted against it, by a regulator, supervisor or any similar official with primary insolvency, rehabilitative or regulatory jurisdiction over it in the jurisdiction of its incorporation or organization or the jurisdiction of its head or home office, a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation by it or such regulator, supervisor or similar official, or (b) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and such proceeding or petition is instituted or presented by a person or entity not described in clause (a) above and either (i) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation or (ii) is not dismissed, discharged, stayed or restrained in each case within 30 days of the institution or presentation thereof; (5) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger); (6) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets; (7) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 30 days thereafter; (8) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (1) to (7) above (inclusive); or (9) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

(f) by Morgan Stanley, if on any Forward Purchase Closing Date, any governmental authority of competent jurisdiction shall have enacted, issued, promulgated, enforced or entered any statute, law, ordinance, rule, regulation, judgment, decree, injunction or other order (whether temporary, preliminary or permanent) that is in effect and restrains, enjoins or otherwise prohibits the Buyer from purchasing the Securities on such Forward Purchase Closing Date pursuant to this Agreement.

(g) by Morgan Stanley, if on any Forward Purchase Closing Date, the Buyer shall have failed to satisfy the conditions set forth in Section 5.02.

(h) by the Buyer, if on any Forward Purchase Closing Date, Morgan Stanley shall have failed to satisfy the conditions set forth in Section 5.01(g).

If Morgan Stanley or the Buyer, as applicable, terminates this Agreement pursuant to Sections 6.01(c), (d), (e), (f), (g) or (h), the terminating party (the " **Non-defaulting Party** ") shall give notice of such termination to the other party (the " **Defaulting Party** ").

Section 6.02. *Effect of Termination.* (a) If this Agreement is terminated pursuant to Section 6.01(a) or Section 6.01(b), such termination shall be without liability of either party (or any stockholder, director, officer, employee, agent, consultant or representative of such party) to the other party to this Agreement; *provided* Morgan

Stanley shall promptly instruct the Bank to release to the Buyer any and all amounts then remaining on deposit in the applicable Controlled Deposit Account, *provided, further* , that any termination pursuant to Section 6.01 (b) that occurs after a Closing Date and prior to the immediately succeeding Forward Purchase Closing Date shall not take effect until after the closing of the Buyer's purchase of Securities on such Forward Purchase Closing Date, unless otherwise agreed by both parties in writing.

(b) Any termination notice delivered in connection with a termination of this Agreement (a " **Termination Notice** ") pursuant to Sections 6.01(c), (d), (e), (f), (g) or (h) (each, an " **Early Termination Event** ") shall specify a date (the " **Termination Date** ") as of which the termination of this Agreement shall be effective, provided that the Termination Date may be any date specified in such notice, including the date of the Termination Notice. Any Termination Notice shall be delivered by the Defaulting Party to the Non-Defaulting Party within 20 calendar days of the occurrence of the relevant Early Termination Event. Without prejudice to any other provisions of this Agreement, upon the occurrence or designation of a Termination Date, no further payments or deliveries under Article 2 will be required to be made.

The amount, if any, payable in respect of a Termination Date will be determined as follows:

(i) On or as soon as reasonably practicable following such Termination Date, the Non-Defaulting Party shall calculate the Termination Amount (as defined below) in respect of such Termination Date and shall provide to the Defaulting Party a notice specifying such Termination Amount and showing its calculations in reasonable detail.

(ii) If the Termination Amount is a positive number, the Defaulting Party shall pay such amount to the Non-Defaulting Party, and if such amount is negative, the Non-Defaulting Party shall pay the absolute value of such number to the Defaulting Party.

(iii) The Termination Amount shall be payable on the day on which the notice specifying the amount payable is effective.

In the event Morgan Stanley is the Non-Defaulting Party, it shall be entitled, upon the occurrence and during the continuation of an Early Termination Event or upon the designation of a Termination Date, to exercise all rights and remedies available to it under the Security Documents or Applicable Law, including, without limitation, the right to withdraw funds from the applicable Controlled Deposit Account and apply any such funds to any Termination Amount payable by the Buyer to Morgan Stanley. In the event the Buyer is the Non-Defaulting Party, it shall be entitled, upon the occurrence and during the continuation of an Early Termination Event or upon the designation of a Termination Date, to exercise all rights and remedies available to it under the Security Documents or Applicable Law, including, without limitation, its rights under Section 12 of the Control Agreement.

(c) " **Termination Amount** " means the sum of the following: (i) with respect to any Forward Purchase Closing Date that has occurred on or prior to the Termination Date, the difference (whether positive or negative) of any amounts owing by the Buyer to Morgan Stanley on such Forward Purchase Closing Date minus the fair market value, as determined by the Non-Defaulting Party using commercially reasonable procedures, of any Securities purchased by Morgan Stanley from the Company and that were to have been delivered by Morgan Stanley on such Forward Purchase Closing Date, in each case which remain unpaid or undelivered as of the Termination Date; and (ii) with respect to any other remaining performance under this Agreement, the amount (whether positive or negative) of the Transaction Termination Value (as defined below). In the event that the Buyer is the Defaulting Party, the Termination Amount payable to Morgan Stanley shall in no event exceed the amount of funds on deposit in the applicable Controlled Deposit Account.

The parties agree that an amount recoverable under this Article 6 is a reasonable estimate of loss and not a penalty. Such amount is payable for the loss of bargain and the loss of protection against future risks, and except as otherwise provided herein neither party will be entitled to recover any additional damages as a consequence of the termination of this Agreement.

(d) Upon the occurrence of an Early Termination Event, all amounts then remaining on deposit in the applicable Controlled Deposit Account less the Termination Amount (if a positive number, where Morgan Stanley is the Non-defaulting Party, or if a negative number, where Morgan Stanley is the Defaulting Party) shall promptly be released to the Buyer pursuant to the Security Agreement.

As used herein, " **Transaction Termination Value** " means the amount of losses or costs of the Non-Defaulting Party that are or would be incurred under then prevailing circumstances (expressed as a positive number) or gains of the Non-Defaulting Party that are or would be realized under then prevailing circumstances (expressed as a negative number) in replacing or providing for the Non-Defaulting Party the economic equivalent of the material terms of the transactions hereunder, including without limitation the terms of the Security Documents and the payments and deliveries by the parties hereunder that would, but for the occurrence of the relevant Termination Date, have been required after that date (assuming satisfaction of the applicable conditions precedent). The Transaction Termination Value will be determined by the Non-Defaulting Party acting in good faith and using commercially reasonable procedures, and will be determined as of the Termination Date or, if that would not be commercially reasonable, as of such following date or dates as would be commercially reasonable. In determining the Transaction Termination Value, the Non-Defaulting Party may consider any relevant information, including without limitation one or more of the following: (i) quotations (either firm or indicative) for replacement transactions supplied by one or more third parties, including, without limitation, dealers, end-users, information vendors, brokers and other sources of market information, that may take into account the creditworthiness of the Non-Defaulting Party; (ii) information consisting of relevant market data supplied by one or more third parties including, without limitation, relevant rates, prices, yields, yield curves, volatilities, spreads, correlations or other relevant market data; or (iii) information of the types described in clause (i) or (ii) above from internal sources (including any of the Non-Defaulting Party's affiliates) used by the Non-Defaulting Party in the regular course of its business for the valuation of similar transactions. In this connection, the Non-Defaulting Party may include costs of funding, to the extent costs of funding are not a component of the other information being utilized. Without duplication and when it is commercially reasonable to do so, the Non-Defaulting Party may in addition consider any loss or cost incurred in connection with its terminating, liquidating or re-establishing any hedge related to the transactions hereunder (or any gain resulting therefrom).

ARTICLE 7
Miscellaneous

Section 7.01. *Notices* . All notices, requests and other communications to any party hereunder shall be in writing (including facsimile transmission) and shall be given,

if to the Buyer, to:

Paulson Credit Opportunities Master Ltd.
c/o Paulson & Co., Inc.
1251 Avenue of the Americas
New York, New York 10020
Attention: Michael Waldorf, Managing Director
Facsimile No.: (212) 351-5887

with a copy to:

Kleinberg, Kaplan, Wolff & Cohen, P. C.
551 Fifth Avenue
New York, New York 10176
Attention: Stephen Schultz
Facsimile No.: (212) 880-9840

if to Morgan Stanley, to:

Morgan Stanley & Co. Incorporated
1585 Broadway
New York, New York 10036
Attention: Convertible Debt Syndicate Desk
Facsimile No.: (212) 761-0538

with a copy to:

Davis Polk & Wardwell LLP
450 Lexington Avenue
New York, New York 10017
Attention: Deanna Kirkpatrick
Facsimile No.: (212) 450-5704

or such other address or facsimile number as such party may hereafter specify for the purpose by notice to the other parties hereto. All such notices, requests and other communications shall be deemed received on the date of receipt by the recipient thereof if received prior to 5 p.m. in the place of receipt and such day is a Business Day in the place of receipt. Otherwise, any such notice, request or communication shall be deemed not to have been received until the next succeeding Business Day in the place of receipt.

Morgan Stanley and the Buyer shall provide the other party with wire transfer instructions, for effecting any payment or transfer of funds pursuant to this Agreement, to the addresses listed above at least one Business Day prior to the date any such payment or transfer of funds is scheduled or required to occur.

Section 7.02. *Amendments and Waivers.* (a) Any provision of this Agreement may be amended or waived if, but only if, such amendment or waiver is in writing and is signed, in the case of an amendment, by each party to this Agreement, or in the case of a waiver, by the party against whom the waiver is to be effective.

(b) No failure or delay by any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by law.

Section 7.03. *Expenses* . Except as otherwise provided herein, Morgan Stanley shall not pay for the Buyer's costs and expenses incurred in connection with this Agreement and the Buyer shall not pay for Morgan Stanley's costs and expenses incurred in connection with this Agreement.

Section 7.04 . *Successors and Assigns; Transfers* . The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns; *provided* that no party may assign, delegate or otherwise transfer (a " **Transfer** ") any of its rights or obligations under this Agreement without the consent of the other party hereto, such consent not to be unreasonably withheld by Morgan Stanley in the case of a Transfer by the Buyer to its affiliate, *provided, further* , that a Buyer may Transfer, in whole or in part, its rights and obligations under this Agreement only if (a) the transferee is a "qualified institutional buyer" as defined in Rule 144A under the Securities Act, (b) the transferee enters into a forward purchase agreement with Morgan Stanley substantially in the form of this Agreement pursuant to which the transferee agrees to purchase from Morgan Stanley the portion of the Buyer's Applicable Percentage Commitment to be transferred to such transferee and makes to Morgan Stanley representations and warranties substantially equivalent (with necessary conforming changes) to those contained herein as if such transferee were the Buyer herein and (c) the transferee enters into a Security Agreement and, if applicable, a Control Agreement substantially in the forms entered into by the Buyer and deposits in a Controlled Deposit Account an amount in cash acceptable to Morgan Stanley. Upon any such deposit, Morgan Stanley shall instruct the Bank to release an equal amount in cash to the Buyer. If the Buyer so Transfers less than all of its rights and obligations under this Agreement, the Buyer shall enter into an amendment to this Agreement to reflect the reduction in the Buyer's Applicable Percentage Commitment. If the Buyer so Transfers all of its rights and obligations under this Agreement, this Agreement shall terminate without liability of either party (or any stockholder, director, officer, employee, agent, consultant or representative of such party) to the other party to this Agreement.

Section 7.05. *Governing Law* . This Agreement shall be governed by and construed in accordance with the law of the State of New York, without regard to the conflicts of law rules of such state.

Section 7.06. *Jurisdiction* . The parties hereto agree that any suit, action or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the transactions contemplated hereby shall be brought in the United States District Court for the Southern District of New York or any New York State court sitting in New York City, so long as one of such courts shall have subject matter jurisdiction over such suit, action or proceeding, and that any cause of action arising out of this Agreement shall be deemed to have arisen from a transaction of business in the State of New York, and each of the parties hereby

irrevocably consents to the jurisdiction of such courts (and of the appropriate appellate courts therefrom) in any such suit, action or proceeding and irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such court or that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. Process in any such suit, action or proceeding may be served on any party anywhere in the world, whether within or without the jurisdiction of any such court. Without limiting the foregoing, each party agrees that service of process on such party as provided in Section 7.01 shall be deemed effective service of process on such party.

Section 7.07. *WAIVER OF JURY TRIAL* . EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 7.08. *Counterparts; Effectiveness; Third Party Beneficiaries* . This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. This Agreement shall become effective when each party hereto shall have received a counterpart hereof signed by the other party hereto. Until and unless each party has received a counterpart hereof signed by the other party hereto, this Agreement shall have no effect and no party shall have any right or obligation hereunder (whether by virtue of any other oral or written agreement or other communication). No provision of this Agreement is intended to confer any rights, benefits, remedies, obligations, or liabilities hereunder upon any Person other than the parties hereto and their respective successors and assigns.

Section 7.09. *Entire Agreement* . This Agreement constitutes the entire agreement between the parties with respect to the subject matter of this Agreement and supersedes all prior agreements and understandings, both oral and written, between the parties with respect to the subject matter of this Agreement.

Section 7.10. *Severability.* If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction or other Governmental Authority to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such a determination, the parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the fullest extent possible.

Section 7.11. *Securities Contract* . The parties hereto agree and acknowledge that Morgan Stanley is a “stockbroker” and “financial participant” within the meaning of Sections 101(53A) and 101(22A) of Title 11 of the United States Code (the “ **Bankruptcy Code** ”). The parties hereto further agree and acknowledge that (A) this Agreement is a “securities contract,” as such term is defined in Section 741(7) of the Bankruptcy Code, and that each payment and delivery hereunder or in connection herewith is a ”settlement payment” and “transfer” and any cash, securities or other property provided as performance assurance, credit support or collateral with respect to the transactions hereunder is a “margin payment” and “transfer” within the meaning of Section 546 of the Bankruptcy Code; (B) the rights given to Morgan Stanley hereunder and under the Security Documents upon the occurrence of an event with respect to the Buyer described in Section 5.01(d) constitute a “contractual right” to cause the liquidation, termination or acceleration of under or in connection with, a “securities contract” and a “contractual right” under a security agreement or arrangement forming a part of or related to a “securities contract”, as such terms are used in Sections 555, 561 and 362(b)(6) of the Bankruptcy Code, and (C) Morgan Stanley is entitled to the protections afforded by, among other sections, Sections 362(b)(6), 362(o), 546(e), 548 (d)(2), 555, and 561 of the Bankruptcy Code.

Section 7.12 . *Specific Performance.* The parties hereto agree that irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms hereof and that the parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement or to enforce specifically the performance of the terms and provisions hereof in the United States District Court for the Southern District of New York or any New York State court sitting in New York City, in addition to any other remedy to which they are entitled at law or in equity.

Section 7.13 . *Right To Withdraw Excess Funds.* The Buyer shall have the right, whenever the Excess Amount (as defined below) exceeds $500,000, to request that Morgan Stanley, as the secured party under the Security Agreement, direct the Bank to release to the Buyer an amount (the "Excess Amount") equal to the excess of the amount in the Controlled Deposit Account over the sum of (i) the Purchase Price (calculated as if the date of the Buyer's request were a Forward Purchase Closing Date and the date two Business Days prior to the date of such request were a Closing Date) for the purchase of all the Securities the Buyer is then still committed to purchase under this Agreement and (ii) if the Buyer's request is made prior to the first Forward Purchase Closing Date, the Buyer's Applicable Percentage Commitment times $45,000.

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

Paulson & Co., Inc., on behalf of
Paulson Credit Opportunities Master Ltd.

By: /s/ Michael Waldorf
Name: Michael Waldorf
Title: Managing Director

Aggregate Principal Amount of Securities to be Purchased: $100,000,000

Applicable Percentage Commitment: 34.129 %

Morgan Stanley & Co. Incorporated
By: /s/ Scott Pecullan
Name: Scott Pecullan
Title: Managing Director

EXHIBIT 7

FORWARD PURCHASE AGREEMENT

dated as of

October 14, 2009

between

PAULSON RECOVERY MASTER FUND LTD.,

and

MORGAN STANLEY & CO. INCORPORATED

relating to the purchase and sale

of

UP TO $100,000,000 AGGREGATE PRINCIPAL AMOUNT

7.0% CONVERTIBLE SENIOR NOTES DUE 2016

of

CONSECO, INC.

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FORWARD PURCHASE AGREEMENT

AGREEMENT (this " **Agreement** ") dated as of October 14, 2009 between Paulson Recovery Master Fund Ltd., a Cayman limited company (together with any of its transferees or assignees under this Agreement, the " **Buyer** "), and Morgan Stanley & Co. Incorporated, a Delaware corporation (" **Morgan Stanley** ").

W I T N E S S E T H :

WHEREAS, the Company has agreed to issue and sell to Morgan Stanley, as initial purchaser, up to $293 million aggregate principal amount of its 7.0% Convertible Senior Notes due 2016, in one or more series on one or more Closing Dates (as defined below) (collectively, the " **Securities** " and each $1,000 principal amount of such Securities, a " **Security** ") pursuant to the purchase agreement between the Company and Morgan Stanley dated as of the date hereof (the " **Purchase Agreement** ");

WHEREAS, pursuant to the Purchase Agreement, Morgan Stanley has agreed to purchase from the Company, subject to the terms and conditions set forth therein, Securities in an aggregate principal amount equal to the sum of (x) the aggregate principal amount of the Company's 3.50% Convertible Debentures due September 30, 2035 (the " **Existing Convertibles** ") purchased by the Company in the Company tender offer that the Company intends to commence promptly after the execution of this Agreement and any subsequent Company tender offer for the Existing Convertibles that expires before October 5, 2010 (each, a " **Tender Offer** " and the business day following the date on which the Tender Offer expires, a " **Tender Offer Closing Date** "), (y) the aggregate principal amount of Existing Convertibles that the Company is required by holders thereof to repurchase on September 30, 2010 (such date, the " **Put Right Closing Date** ") pursuant to the terms of the Existing Convertibles, and (z) the aggregate principal amount of Existing Convertibles redeemed by the Company on October 5, 2010 (such date, the " **Redemption Closing Date** " and collectively with the Tender Offer Closing Date(s) and the Put Right Closing Date, the " **Closing Dates** " and each, a " **Closing Date** ") pursuant to the terms of the Existing Convertibles. The Securities will be issued by the Company pursuant to an Indenture to be dated as of October 16, 2009, as supplemented by an authentication order with respect to each series of Securities issued on each Closing Date, between the Company and The Bank of New York Mellon Trust Company, N. A. (" **BONY** "), as trustee (the " **Indenture** ").

WHEREAS, the Securities will be convertible into shares of common stock, par value $0.01, of the Company (the " **Underlying Securities** ");

WHEREAS, pursuant to the Purchase Agreement, Morgan Stanley has advised the Company that it will make an offering of the Securities it has agreed to purchase thereunder to certain buyers in the manner permitted thereunder, as soon as practicable after the Purchase Agreement is entered into;

WHEREAS, the Buyer desires to purchase, and Morgan Stanley desires to sell, in each case upon the terms and subject to the conditions hereinafter set forth, the aggregate principal amount of Securities specified herein;

WHEREAS, the Securities are being offered and sold without registration under the Securities Act in reliance on an exemption from registration thereunder; and

WHEREAS, the Buyer and Morgan Stanley have entered into a security agreement dated as of the date hereof (the " **Security Agreement** ") pursuant to which the Buyer has granted Morgan Stanley a security interest (the " **Security Interest** ") in the Controlled Deposit Account (as defined below) into which funds from time to time are credited (such funds, together with any proceeds related thereto, collectively, the " **Collateral** ").

The parties hereto agree as follows:

ARTICLE 1
Definitions

Section 1.01. *Definitions* . (a) As used herein, the following terms have the following meanings:

" **Affiliate** " means, with respect to any Person, any other Person directly or indirectly controlling, controlled by, or under common control with such Person; *provided* that neither the Company nor any Subsidiary shall be considered an Affiliate of Morgan Stanley.

" **Applicable Law** " means, with respect to any Person, any federal, state or local law (statutory, common or otherwise), constitution, treaty, convention, ordinance, code, rule, regulation, order, injunction, judgment, decree, ruling or any insurance laws and regulations or other similar requirement enacted, adopted, promulgated or applied by a Governmental Authority that is binding upon or applicable to such Person, as amended unless expressly specified otherwise.

" **Applicable Percentage Commitment** " means the aggregate principal amount of the Securities that the Buyer has agreed, pursuant to this Agreement, to purchase from Morgan Stanley, as set forth on the signature page hereof, expressed as a percentage of $293,000,000.

"Business Day" means a day, other than Saturday, Sunday or other day on which commercial banks in New York, New York are authorized or required by Applicable Law to close.

" **Buyer Purchase Price Funding Obligation** " means the product of the Buyer's Applicable Percentage Commitment and the $291,426,630.14.

" **Buyer Security Funding Obligation** " means an amount in cash equal to the sum of (i) Buyer Purchase Price Funding Obligation plus (ii) the product of the Buyer's Applicable Percentage Commitment and $45,000.

" **Commission** " means the Securities and Exchange Commission.

" **Common Stock** " means the common stock, par value $0.01 per share, of the Company.

" **Company** " means Conseco, Inc., a Delaware corporation.

" **Credit Agreement** " means the Second Amended and Restated Credit Agreement dated as of October 10, 2006 among the Company, Bank of America, N.A., as Agent, J.P. Morgan Chase Bank, N.A., as Syndication Agent, and the other parties thereto, as amended by Amendment No. 1 thereto dated as of June 12, 2007 and Amendment No. 2 thereto dated as of March 30, 2009.

"Bank " means The Bank of New York Mellon, in its capacity as custodian of the applicable Controlled Deposit Account, or any other bank reasonably acceptable to Morgan Stanley and the Buyer, in such capacity, together with any successor custodian.

" **Control Agreement** " means a deposit account control agreement substantially in the form of Exhibit A to the Security Agreement (with any changes that Morgan Stanley and the Buyer shall have both approved) to be entered into among the Buyer, Morgan Stanley and the Bank on or prior to the date funds are deposited into a Pledgor Deposit Account.

" **Controlled Deposit Account** " means any Deposit Account that is an Initial Deposit Account or a Pledgor Deposit Account.

" **Deposit Account** " shall have the meaning ascribed to such term under UCC Section 9-102.

" **Governmental Authority** " means any transnational, domestic or foreign federal, state or local, governmental authority, insurance regulatory authority, self-regulatory authority, department, court, agency or official, including any political subdivision thereof.

" **Initial Deposit Account** " means a Deposit Account maintained on the books of The Bank of New York Mellon in the name of "Morgan Stanley – Collateral Pledged by Paulson Recovery Master Fund Ltd.," with respect to which Morgan Stanley is the Bank's "customer" within the meaning of UCC Section 4-104 (together with any successor account).

" **NYSE** " means the New York Stock Exchange.

" **Person** " means an individual, corporation, partnership, limited liability company, association, trust or other entity or organization, including a Governmental Authority.

" **Pledgor Deposit Account** " means a Deposit Account of the Buyer established with the Bank that is subject to a Control Agreement (together with any successor account).

" **Purchased Percentage** " means, for any Forward Purchase Closing Date, the aggregate principal amount of the Securities purchased by the Buyer on such Forward Purchase Closing Date, expressed as a percentage of the aggregate principal amount of the Securities that the Buyer has agreed, pursuant to this Agreement, to purchase from Morgan Stanley, as set forth on the signature page hereof.

" **Purchase Price** " means, with respect to each Forward Purchase Closing Date, an amount equal to the aggregate principal amount of Securities required to be purchased by the Buyer hereunder on such Forward Purchase Closing Date multiplied by (1 – ((0.07 x N)/365)), where N equals the number of days from, and including, the Security Funding Date to, and excluding, the applicable Closing Date.

" **Securities Act** " means the Securities Act of 1933, as amended.

" **Security Documents** " means the Control Agreement and the Security Agreement.

" **Subsidiary** " means any entity of which securities or other ownership interests having ordinary voting power to elect a majority of the board of directors or other persons performing similar functions are at the time directly or indirectly owned by the Company.

" **UCC** " means the Uniform Commercial Code as in effect from time to time in the State of New York; *provided* that, if perfection or the effect of perfection or non-perfection or the priority of the Security Interest on any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than New York, " **UCC** " means the Uniform Commercial Code as in effect from time to time in such other jurisdiction for purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority.

(b) Each of the following terms is defined in the Section set forth opposite such term:

Term	**Section**
Agreement	Preamble
Bankruptcy Code	7.11
BONY	Preamble
Buyer	Preamble
Closing Date	Preamble
Collateral	Preamble
Defaulting Party	Section 6.01
Early Termination Event	Section 6.02(b)
Effectiveness Certificate	2.02
Excess Amount	7.13
Existing Convertibles	Preamble
Forward Purchase Closing Date	2.01
Indenture	Preamble
Morgan Stanley	Preamble
Non-Defaulting Party	Section 6.01
Private Placement	5.01(d)
Purchase Agreement	Preamble
Put Right Closing Date	Preamble
Redemption Closing Date	Preamble
Security or Securities	Preamble
Security Agreement	Preamble
Security Funding Date	2.02
Tender Offer	Preamble
Tender Offer Closing Date	Preamble
Termination Amount	6.02(c)
Termination Date	6.02(b)
Termination Notice	6.02(b)

Transaction Termination Value	6.02(d)
Transfer	7.04
Underlying Securities	Preamble

Section 1.02 . *Other Definitional and Interpretative Provisions.* The words "hereof", "herein" and "hereunder" and words of like import used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. The captions herein are included for convenience of reference only and shall be ignored in the construction or interpretation hereof.

ARTICLE 2
Purchase and Sale

Section 2.01. *Purchase and Sale.* Upon the terms and subject to the conditions herein, the Buyer agrees to purchase from Morgan Stanley, and Morgan Stanley agrees to sell to the Buyer, on the date that is two Business Days after each Closing Date (each such date, a " **Forward Purchase Closing Date** "), at the applicable Purchase Price for such Forward Purchase Closing Date, an aggregate principal amount of Securities equal to the product of the Buyer's Applicable Percentage Commitment and the aggregate principal amount of Securities issued to Morgan Stanley by the Company pursuant to the Purchase Agreement on the immediately preceding Closing Date. The Purchase Price in respect of each Forward Purchase Closing Date shall be paid as provided in Section 2.03.

Section 2.02 . *Funding of Controlled Deposit Account.* Provided that (i) Morgan Stanley's obligations under the Purchase Agreement have become effective under Section 5 thereof, and (ii) Morgan Stanley has delivered to the Buyer a certificate attesting to the foregoing substantially in the form of Exhibit A hereto (the " **Effectiveness Certificate** "), then prior to 3:00 p.m. New York City time two Business Days after the date hereof (such date, the " **Security Funding Date** "), the Buyer hereby agrees to deposit an amount in U.S. dollars equal to the Buyer Security Funding Obligation into (i) the Pledgor Deposit Account, if the Pledgor Deposit Account has been established and the Control Agreement has been entered into by the parties thereto on or prior to the Security Funding Date or (ii) the Initial Deposit Account, if the Pledgor Deposit Account has not been established on or prior to the Security Funding Date, in each case established and maintained on the books of the Bank. All funds deposited into the applicable Controlled Deposit Account shall be pledged in favor of Morgan Stanley pursuant to the Security Agreement to secure the Buyer's obligations hereunder. Such funds shall be held in the applicable Controlled Deposit Account until they are (A) withdrawn by Morgan Stanley or released to the Buyer, in each case upon satisfaction of the conditions set forth in Article 5 on a Forward Purchase Closing Date, (B) released to the Buyer in accordance with Section 2.03(c), (C) transferred in accordance with Article 6 following a termination of this Agreement or (D) released to the Buyer upon a Transfer in accordance with Section 7.04.

Section 2.03. *Closing* . Each closing of the purchase and sale of Securities hereunder shall take place at the offices of Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, New York, on each Forward Purchase Closing Date, or on such other date as Morgan Stanley and the Buyer may mutually agree, upon satisfaction of the conditions set forth in Article 5. The Buyer shall inform Morgan Stanley two Business Days before each Forward Purchase Closing Date as to the account in The Depositary Trust Company to which it requires the Securities to be delivered, *provided* , that Morgan Stanley shall provide the Buyer with at least three Business Days notice of the date that is scheduled to be a Forward Purchase Closing Date.

(a) At each closing on a Forward Purchase Closing Date, the Buyer shall deliver to Morgan Stanley the applicable Purchase Price in immediately available funds and Morgan Stanley shall deliver to the Buyer the aggregate principal amount of Securities purchased by the Buyer on such Forward Purchase Closing Date. The foregoing payment and delivery obligations shall be settled in the manner provided below.

(b) On each Forward Purchase Closing Date, upon satisfaction or waiver of the conditions set forth in Section 5.01 hereof, Morgan Stanley is authorized and instructed to withdraw from the applicable Controlled Deposit Account and deliver to itself an amount equal to the applicable Purchase Price, which shall constitute payment of the applicable Purchase Price by the Buyer; *provided*, that on the first Forward Purchase Closing Date, Morgan Stanley shall be entitled to withdraw from the applicable Controlled Deposit Account an additional amount

equal to the Buyer's Applicable Percentage Commitment times $45,000. Simultaneously with the withdrawal of such funds by Morgan Stanley on the relevant Forward Purchase Closing Date, (A) the aggregate principal amount of Securities purchased by the Buyer on such date shall be delivered to the Buyer by Morgan Stanley by book-entry transfer through the facilities of The Depository Trust Company, to the account designated by the Buyer, and (B) funds shall be transferred to the Buyer in an amount equal to (i) the excess of (x) the product of the Purchased Percentage for such Forward Purchase Closing Date times the Buyer Purchase Price Funding Obligation over (y) the sum of the Purchase Price of such Securities and the aggregate amount of any Excess Amounts previously released to the Buyer less (ii), in the case of the first Forward Purchase Closing Date, the Buyer's Applicable Percentage Commitment times $45,000.

(c) If, on any Closing Date, the aggregate principal amount of Securities purchased by Morgan Stanley, together with any Securities purchased by Morgan Stanley on any prior Closing Date, equals $293 million and, after the closing on the related Forward Purchase Closing Date, there are funds remaining on deposit in the applicable Controlled Deposit Account, Morgan Stanley shall promptly instruct the Bank to release to the Buyer any such excess funds following payment for the Securities, if any.

(d) If the Buyer Security Funding Obligation is deposited into the Initial Deposit Account because the Pledgor Deposit Account has not been established on or prior to the Security Funding Date, then upon the establishment of the Pledgor Deposit Account and the execution of the Control Agreement by the parties thereto, Morgan Stanley shall transfer the entire Buyer Security Funding Obligation to the Pledgor Deposit Account, *provided* , that, if the Pledgor Deposit Account has not been established on or prior to the 30th Business Day following the Security Funding Date, Morgan Stanley and the Buyer shall negotiate in good faith to identify a new Bank and to request that such new Bank open a Deposit Account into which the Buyer Security Funding Obligation may be transferred by Morgan Stanley, *provided, further* , that if a new Bank has not been identified, or if identified, such new Bank shall not have opened a Deposit Account into which the Buyer Security Funding Obligation may be transferred by Morgan Stanley or such new Bank and the Buyer shall not have executed a Control Agreement in respect of such Deposit Account on or before the 90th Business Day following the Security Funding Date, the Buyer Security Funding Obligation shall remain deposited in the Initial Deposit Account for the term of this Agreement.

(e) If the aggregate principal amount of Securities to be purchased by the Buyer on any Forward Purchase Closing Date is not an integral multiple of $1,000, Morgan Stanley shall round such principal amount to the nearest $1,000 (with $500 being rounded upwards) and may make corresponding adjustments to the applicable Purchase Price of such Securities and to the amount to be released to the Buyer pursuant to Sections 2.03(b) and (c).

ARTICLE 3
Representations and Warranties of Buyer

The Buyer represents and warrants to Morgan Stanley as of the date hereof that:

Section 3.01. *Corporate Authorization* . The execution, delivery and performance by the Buyer of this Agreement and the Security Documents and the consummation of the transactions contemplated hereby and thereby are within the corporate or equivalent powers of the Buyer and have been duly authorized by all necessary corporate or other action on the part of the Buyer. This Agreement and the Security Documents constitute valid and binding agreements of the Buyer, enforceable in accordance with each of their terms.

Section 3.02. *Governmental Authorization* . The execution, delivery and performance by the Buyer of this Agreement and the Security Documents and the consummation of the transactions contemplated hereby and thereby require no material action by or in respect of, or material filing with, any Governmental Authority.

Section 3.03. *Non-contravention* . The execution, delivery and performance by the Buyer of this Agreement and the Security Documents and the consummation of the transactions contemplated hereby and thereby do not and will not (i) violate the organizational documents or bylaws of the Buyer or agreements that are material to the Buyer or (ii) violate any Applicable Law.

Section 3.04. *Financing* . The Buyer has, or will have prior to the Security Funding Date, sufficient cash, available lines of credit or other sources of immediately available funds to enable it to make payment of the Buyer Security Funding Obligation and any other amounts to be paid by it hereunder.

Section 3.05. *No Reliance* . The Buyer has received a copy of the Time of Sale Memorandum (as defined in the Purchase Agreement) and the Final Memorandum (as defined in the Purchase Agreement) and acknowledges that it has relied solely on the Time of Sale Memorandum (as defined in the Purchase Agreement) and the Final Memorandum (as defined in the Purchase Agreement) in connection with the decision to purchase the Securities pursuant to this Agreement and to accept the Securities on each Forward Purchase Closing Date, and not upon any other information provided by or on behalf of the Company or Morgan Stanley in making the decision to purchase the Securities. The Buyer understands and acknowledges that neither the Company or Morgan Stanley nor any of the Company's or Morgan Stanley's representatives, agents or attorneys is making or has made at any time any warranties or representations of any kind or character, express or implied, with respect to the Company, its Subsidiaries, their respective businesses or results of operations, or any other matter related thereto. The Buyer also acknowledges that Morgan Stanley has not made any warranties or representations as to the accuracy or completeness of the Time of Sale Memorandum (as defined in the Purchase Agreement) or the Final Memorandum (as defined in the Purchase Agreement), and nothing contain therein is, or shall be relied upon as, a promise or representation by Morgan Stanley.

Section 3.06. *No Duty to Update.* The Buyer acknowledges that Morgan Stanley has no duty to update the Time of Sale Memorandum (as defined in the Purchase Agreement) and the Final Memorandum (as defined in the Purchase Agreement) after the date hereof and that, as of the date hereof, the Buyer is committing to purchase the Securities, subject only to the conditions set forth in Section 5.01 ; the Buyer further acknowledges that the Securities will not be issued and delivered until a future date, which could be as late as October 5, 2010. The Buyer further acknowledges that the business, operations, and financial condition of the Company may be adversely affected subsequent to the date hereof and that such adverse effect, even if material, may not release the Buyer from the obligation hereunder to purchase and pay for the Securities as contemplated herein, subject to Section 5.01. The Buyer further acknowledges that the value of the Securities it has committed to purchase under this Agreement may decrease materially between the date hereof and any Forward Purchase Closing Date on which it is required hereunder to pay the Purchase Price for any Securities to be purchased on such date.

Section 3.07 . *Qualified Institutional Buyer Investor Status* . The Buyer is a "qualified institutional buyer" as defined in the Securities Act.

Section 3.08 . *Transfer Restrictions* . The Securities that are being acquired by the Buyer hereunder are being acquired by it, and the Underlying Securities will be acquired by it, for its own account and not with a view to the distribution thereof. The Buyer (either alone or together with its advisors) has sufficient knowledge and experience in financial and business matters so as to be capable of evaluating the merits and risks of its investment in the Securities and is capable of bearing the economic risks of such investment. The Buyer understands that neither the Securities nor the Underlying Securities have been registered under the Securities Act and are being offered and sold to the Buyer pursuant to an exemption from the registration requirements of the Securities Act for transactions not involving a public offering.

The Buyer represents, agrees and confirms that it will comply with the restrictions on transfer of the Securities described in the Time of Sale Memorandum (as defined in the Purchase Agreement) and the Final Memorandum (as defined in the Purchase Agreement) under the caption "Notice to Investors" and hereby makes the other acknowledgments, representations and warranties contained therein.

Section 3.09. *Delayed Settlement* . The Buyer understands and agrees that the earliest possible Forward Purchase Closing Date is two Business Days after the first Tender Offer Closing Date (expected to be November 13, 2009, unless otherwise extended), which will be more than three Business Days after the date of the Final Memorandum (as defined in the Purchase Agreement). Accordingly, the Buyer understands and agrees that if it seeks to trade Securities after it enters into this Agreement and prior to a Forward Purchase Closing Date, it will be required, by virtue of the fact that the Securities will settle from time to time, to specify an alternative settlement date at the time of any such trade to prevent a failed settlement. The Buyer further understands and agrees that it should also consult its own advisors in this regard.

Section 3.10. *Security Documents.* The representations and warranties with respect to the Collateral made by the Buyer under the Security Documents are true and correct.

ARTICLE 4
Representations and Warranties of Morgan Stanley

Morgan Stanley represents and warrants to the Buyer as of the date hereof that:

Section 4.01. *Corporate Authorization.* The execution, delivery and performance by Morgan Stanley of this Agreement and the Security Documents and the consummation of the transactions contemplated hereby and thereby are within the corporate powers of Morgan Stanley and have been duly authorized by all necessary corporate action on the part of Morgan Stanley. This Agreement and the Security Documents constitute valid and binding agreements of Morgan Stanley, enforceable in accordance with each of their terms.

Section 4.02. *Governmental Authorization.* The execution, delivery and performance by Morgan Stanley of this Agreement and the Security Documents and the consummation of the transactions contemplated hereby and thereby require no material action by or in respect of, or material filing with, any Governmental Authority.

Section 4.03. *Non-contravention.* The execution, delivery and performance by Morgan Stanley of this Agreement and the Security Documents and the consummation of the transactions contemplated hereby and thereby do not and will not (i) violate the organizational documents or bylaws of Morgan Stanley or agreements that are material to Morgan Stanley or (ii) violate any Applicable Law.

ARTICLE 5
Conditions to Closing

Section 5.01. *Conditions to Obligation of the Buyer* . The obligation of the Buyer to consummate the purchase of the Securities on each Forward Purchase Closing Date is subject to the satisfaction of the following conditions:

(a) On or prior to the Security Funding Date, Morgan Stanley shall have delivered to the Buyer the Effectiveness Certificate.

(b) On the relevant Closing Date prior to each Forward Purchase Closing Date, there shall not have occurred and be continuing an Event of Default (as defined in the Credit Agreement) under the Credit Agreement;

(c) On the relevant Closing Date prior to each Forward Purchase Closing Date, there shall not have occurred and be continuing an Event of Default (as defined in the Indenture) under any previously issued Securities;

(d) The closing, on or prior to the first Closing Date, of that certain private placement under Section 4(2) of the Securities Act between the Company and Paulson & Co., Inc. of 16.4 million shares of Common Stock and warrants to purchase 5.0 million shares of Common Stock (the " **Private Placement** ");

(e) On or prior to the first Closing Date, the Company shall have (i) received approval from the NYSE under Section 312.05 of the NYSE Listed Company Manual to issue 16.4 million shares of Common Stock and warrants to purchase 5.0 million shares of Common Stock pursuant to the Private Placement and up to $293 million aggregate principal amount of Securities without shareholder approval and (ii) notified all of its shareholders by mail no later than 10 days prior to the first Tender Offer Closing Date alerting them to the Company's reliance on the exception to shareholder approval under Section 312.05 of the NYSE Listed Company Manual in connection with the Company's issuance of 16.4 million shares of Common Stock, warrants to purchase 5.0 million shares of Common Stock and up to $293 million aggregate principal amount of Securities and indicating that the Company's audit committee has approved reliance on such shareholder approval exception; and

(f) (i) Prior to the first Closing Date, the Company shall have filed with the Commission a quarterly report on Form 10-Q for its fiscal quarter ended September 30, 2009, on or before November 19, 2009; such Form 10-Q shall have included the financial statements required by Form 10-Q and such financial statements shall have been subject to a completed SAS 100 review by the Company's independent auditors; and the Company's management shall not have concluded, in connection with such filing that there is substantial doubt regarding the Company's ability to continue as a going concern, and (ii) prior to

any subsequent Closing Date, the Company shall have filed with the Commission a quarterly report on Form 10-Q or an annual report on Form 10-K, as the case may be, within the deadline for such filing specified in such Form, for the immediately preceding fiscal period for which the deadline for the filing of such Form shall have passed prior to such Closing Date, and such Form filed by the Company shall have included the financial statements required by such Form and such financial statements shall have been subject to a completed SAS 100 review or an audit report issued by the Company's independent auditors; and neither the Company's management nor the Company's independent auditors shall have concluded, in connection with such filing, that there is substantial doubt regarding the Company's ability to continue as a going concern, *provided, however*, that filing any Form referred to in (ii) above within the deadline for such filing shall not be a condition to the Buyer's obligations if, on the Business Day following the date any such Form was required to be filed, the Company provides Morgan Stanley with a certificate stating that the reason for the late filing is not related to there being a substantial doubt regarding the Company's ability to continue as a going concern.

(g) (i) Morgan Stanley shall have performed in all material respects all of its obligations hereunder required to be performed by it at or prior to each Forward Purchase Closing Date, (ii) the representations and warranties of Morgan Stanley contained in this Agreement shall be true in all material respects at and as of each Forward Purchase Closing Date, as if made at and as of such date and (iii) the Buyer shall have received a certificate signed by a duly authorized officer of Morgan Stanley to the foregoing effect and as set forth in Exhibit B.

Section 5.02. *Conditions to Obligation of Morgan Stanley* . The obligation of Morgan Stanley to consummate the sale and delivery of the Securities on each Forward Purchase Closing Date is subject to the satisfaction of the following conditions (i) the Buyer shall have performed in all material respects all of its obligations hereunder required to be performed by it at or prior to each Forward Purchase Closing Date, including the obligation under Section 2.02 to deposit into the applicable Controlled Deposit Account the Buyer Security Funding Obligation, (ii) the representations and warranties of the Buyer contained in this Agreement shall be true in all material respects at and as of each Forward Purchase Closing Date, as if made at and as of such date and (iii) Morgan Stanley shall have received a certificate signed by a duly authorized officer or employee of the Buyer to the foregoing effect and as set forth in Exhibit C.

ARTICLE 6
Termination

Section 6.01. *Grounds for Termination* . This Agreement may be terminated at any time:

(a) by mutual written agreement of Morgan Stanley and the Buyer;

(b) with no action required by Morgan Stanley or the Buyer, if Morgan Stanley's obligations under the Purchase Agreement shall have been terminated, *provided* , that, notwithstanding anything to the contrary herein, unless earlier terminated, this Agreement shall terminate on October 6, 2010;

(c) by Morgan Stanley, if the Buyer shall have failed to deposit the Buyer Security Funding Obligation in the applicable Controlled Deposit Account with the Bank as required under Section 2.02;

(d) by Morgan Stanley, in the event that the Buyer (1) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (2) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due; (3) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (4)(a) institutes or has instituted against it, by a regulator, supervisor or any similar official with primary insolvency, rehabilitative or regulatory jurisdiction over it in the jurisdiction of its incorporation or organization or the jurisdiction of its head or home office, a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation by it or such regulator, supervisor or similar official, or (b) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and such proceeding or petition is instituted or presented by a person or entity not described in clause (a) above and either (i) results in a judgment of insolvency or bankruptcy or

the entry of an order for relief or the making of an order for its winding-up or liquidation or (ii) is not dismissed, discharged, stayed or restrained in each case within 30 days of the institution or presentation thereof; (5) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger); (6) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets; (7) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 30 days thereafter; (8) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (1) to (7) above (inclusive); or (9) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

(e) by the Buyer, in the event that Morgan Stanley (1) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (2) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due; (3) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (4)(a) institutes or has instituted against it, by a regulator, supervisor or any similar official with primary insolvency, rehabilitative or regulatory jurisdiction over it in the jurisdiction of its incorporation or organization or the jurisdiction of its head or home office, a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation by it or such regulator, supervisor or similar official, or (b) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and such proceeding or petition is instituted or presented by a person or entity not described in clause (a) above and either (i) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation or (ii) is not dismissed, discharged, stayed or restrained in each case within 30 days of the institution or presentation thereof; (5) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger); (6) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets; (7) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 30 days thereafter; (8) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (1) to (7) above (inclusive); or (9) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

(f) by Morgan Stanley, if on any Forward Purchase Closing Date, any governmental authority of competent jurisdiction shall have enacted, issued, promulgated, enforced or entered any statute, law, ordinance, rule, regulation, judgment, decree, injunction or other order (whether temporary, preliminary or permanent) that is in effect and restrains, enjoins or otherwise prohibits the Buyer from purchasing the Securities on such Forward Purchase Closing Date pursuant to this Agreement.

(g) by Morgan Stanley, if on any Forward Purchase Closing Date, the Buyer shall have failed to satisfy the conditions set forth in Section 5.02.

(h) by the Buyer, if on any Forward Purchase Closing Date, Morgan Stanley shall have failed to satisfy the conditions set forth in Section 5.01(g).

If Morgan Stanley or the Buyer, as applicable, terminates this Agreement pursuant to Sections 6.01(c), (d), (e), (f), (g) or (h), the terminating party (the " **Non-defaulting Party** ") shall give notice of such termination to the other party (the " **Defaulting Party** ").

Section 6.02. *Effect of Termination.* (a) If this Agreement is terminated pursuant to Section 6.01(a) or Section 6.01(b), such termination shall be without liability of either party (or any stockholder, director, officer, employee, agent, consultant or representative of such party) to the other party to this Agreement; *provided* Morgan

Stanley shall promptly instruct the Bank to release to the Buyer any and all amounts then remaining on deposit in the applicable Controlled Deposit Account, *provided, further* , that any termination pursuant to Section 6.01 (b) that occurs after a Closing Date and prior to the immediately succeeding Forward Purchase Closing Date shall not take effect until after the closing of the Buyer's purchase of Securities on such Forward Purchase Closing Date, unless otherwise agreed by both parties in writing.

(b) Any termination notice delivered in connection with a termination of this Agreement (a " **Termination Notice** ") pursuant to Sections 6.01(c), (d), (e), (f), (g) or (h) (each, an " **Early Termination Event** ") shall specify a date (the " **Termination Date** ") as of which the termination of this Agreement shall be effective, provided that the Termination Date may be any date specified in such notice, including the date of the Termination Notice. Any Termination Notice shall be delivered by the Defaulting Party to the Non-Defaulting Party within 20 calendar days of the occurrence of the relevant Early Termination Event. Without prejudice to any other provisions of this Agreement, upon the occurrence or designation of a Termination Date, no further payments or deliveries under Article 2 will be required to be made.

The amount, if any, payable in respect of a Termination Date will be determined as follows:

(i) On or as soon as reasonably practicable following such Termination Date, the Non-Defaulting Party shall calculate the Termination Amount (as defined below) in respect of such Termination Date and shall provide to the Defaulting Party a notice specifying such Termination Amount and showing its calculations in reasonable detail.

(ii) If the Termination Amount is a positive number, the Defaulting Party shall pay such amount to the Non-Defaulting Party, and if such amount is negative, the Non-Defaulting Party shall pay the absolute value of such number to the Defaulting Party.

(iii) The Termination Amount shall be payable on the day on which the notice specifying the amount payable is effective.

In the event Morgan Stanley is the Non-Defaulting Party, it shall be entitled, upon the occurrence and during the continuation of an Early Termination Event or upon the designation of a Termination Date, to exercise all rights and remedies available to it under the Security Documents or Applicable Law, including, without limitation, the right to withdraw funds from the applicable Controlled Deposit Account and apply any such funds to any Termination Amount payable by the Buyer to Morgan Stanley. In the event the Buyer is the Non-Defaulting Party, it shall be entitled, upon the occurrence and during the continuation of an Early Termination Event or upon the designation of a Termination Date, to exercise all rights and remedies available to it under the Security Documents or Applicable Law, including, without limitation, its rights under Section 12 of the Control Agreement.

(c) " **Termination Amount** " means the sum of the following: (i) with respect to any Forward Purchase Closing Date that has occurred on or prior to the Termination Date, the difference (whether positive or negative) of any amounts owing by the Buyer to Morgan Stanley on such Forward Purchase Closing Date minus the fair market value, as determined by the Non-Defaulting Party using commercially reasonable procedures, of any Securities purchased by Morgan Stanley from the Company and that were to have been delivered by Morgan Stanley on such Forward Purchase Closing Date, in each case which remain unpaid or undelivered as of the Termination Date; and (ii) with respect to any other remaining performance under this Agreement, the amount (whether positive or negative) of the Transaction Termination Value (as defined below). In the event that the Buyer is the Defaulting Party, the Termination Amount payable to Morgan Stanley shall in no event exceed the amount of funds on deposit in the applicable Controlled Deposit Account.

The parties agree that an amount recoverable under this Article 6 is a reasonable estimate of loss and not a penalty. Such amount is payable for the loss of bargain and the loss of protection against future risks, and except as otherwise provided herein neither party will be entitled to recover any additional damages as a consequence of the termination of this Agreement.

(d) Upon the occurrence of an Early Termination Event, all amounts then remaining on deposit in the applicable Controlled Deposit Account less the Termination Amount (if a positive number, where Morgan Stanley is the Non-defaulting Party, or if a negative number, where Morgan Stanley is the Defaulting Party) shall promptly be released to the Buyer pursuant to the Security Agreement.

As used herein, " **Transaction Termination Value** " means the amount of losses or costs of the Non-Defaulting Party that are or would be incurred under then prevailing circumstances (expressed as a positive number) or gains of the Non-Defaulting Party that are or would be realized under then prevailing circumstances (expressed as a negative number) in replacing or providing for the Non-Defaulting Party the economic equivalent of the material terms of the transactions hereunder, including without limitation the terms of the Security Documents and the payments and deliveries by the parties hereunder that would, but for the occurrence of the relevant Termination Date, have been required after that date (assuming satisfaction of the applicable conditions precedent). The Transaction Termination Value will be determined by the Non-Defaulting Party acting in good faith and using commercially reasonable procedures, and will be determined as of the Termination Date or, if that would not be commercially reasonable, as of such following date or dates as would be commercially reasonable. In determining the Transaction Termination Value, the Non-Defaulting Party may consider any relevant information, including without limitation one or more of the following: (i) quotations (either firm or indicative) for replacement transactions supplied by one or more third parties, including, without limitation, dealers, end-users, information vendors, brokers and other sources of market information, that may take into account the creditworthiness of the Non-Defaulting Party; (ii) information consisting of relevant market data supplied by one or more third parties including, without limitation, relevant rates, prices, yields, yield curves, volatilities, spreads, correlations or other relevant market data; or (iii) information of the types described in clause (i) or (ii) above from internal sources (including any of the Non-Defaulting Party's affiliates) used by the Non-Defaulting Party in the regular course of its business for the valuation of similar transactions. In this connection, the Non-Defaulting Party may include costs of funding, to the extent costs of funding are not a component of the other information being utilized. Without duplication and when it is commercially reasonable to do so, the Non-Defaulting Party may in addition consider any loss or cost incurred in connection with its terminating, liquidating or re-establishing any hedge related to the transactions hereunder (or any gain resulting therefrom).

ARTICLE 7
Miscellaneous

Section 7.01. *Notices* . All notices, requests and other communications to any party hereunder shall be in writing (including facsimile transmission) and shall be given,

if to the Buyer, to:

Paulson Recovery Master Fund Ltd.
c/o Paulson & Co., Inc.
1251 Avenue of the Americas
New York, New York 10020
Attention: Michael Waldorf, Managing Director
Facsimile No.: (212) 351-5887

with a copy to:

Kleinberg, Kaplan, Wolff & Cohen, P. C.
551 Fifth Avenue
New York, New York 10176
Attention: Stephen Schultz
Facsimile No.: (212) 880-9840

if to Morgan Stanley, to:

Morgan Stanley & Co. Incorporated
1585 Broadway
New York, New York 10036
Attention: Convertible Debt Syndicate Desk
Facsimile No.: (212) 761-0538

with a copy to:

Davis Polk & Wardwell LLP
450 Lexington Avenue
New York, New York 10017
Attention: Deanna Kirkpatrick
Facsimile No.: (212) 450-5704

or such other address or facsimile number as such party may hereafter specify for the purpose by notice to the other parties hereto. All such notices, requests and other communications shall be deemed received on the date of receipt by the recipient thereof if received prior to 5 p.m. in the place of receipt and such day is a Business Day in the place of receipt. Otherwise, any such notice, request or communication shall be deemed not to have been received until the next succeeding Business Day in the place of receipt.

Morgan Stanley and the Buyer shall provide the other party with wire transfer instructions, for effecting any payment or transfer of funds pursuant to this Agreement, to the addresses listed above at least one Business Day prior to the date any such payment or transfer of funds is scheduled or required to occur.

Section 7.02. *Amendments and Waivers.* (a) Any provision of this Agreement may be amended or waived if, but only if, such amendment or waiver is in writing and is signed, in the case of an amendment, by each party to this Agreement, or in the case of a waiver, by the party against whom the waiver is to be effective.

(b) No failure or delay by any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by law.

Section 7.03. *Expenses* . Except as otherwise provided herein, Morgan Stanley shall not pay for the Buyer's costs and expenses incurred in connection with this Agreement and the Buyer shall not pay for Morgan Stanley's costs and expenses incurred in connection with this Agreement.

Section 7.04 . *Successors and Assigns; Transfers* . The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns; *provided* that no party may assign, delegate or otherwise transfer (a " **Transfer** ") any of its rights or obligations under this Agreement without the consent of the other party hereto, such consent not to be unreasonably withheld by Morgan Stanley in the case of a Transfer by the Buyer to its affiliate, *provided, further* , that a Buyer may Transfer, in whole or in part, its rights and obligations under this Agreement only if (a) the transferee is a "qualified institutional buyer" as defined in Rule 144A under the Securities Act, (b) the transferee enters into a forward purchase agreement with Morgan Stanley substantially in the form of this Agreement pursuant to which the transferee agrees to purchase from Morgan Stanley the portion of the Buyer's Applicable Percentage Commitment to be transferred to such transferee and makes to Morgan Stanley representations and warranties substantially equivalent (with necessary conforming changes) to those contained herein as if such transferee were the Buyer herein and (c) the transferee enters into a Security Agreement and, if applicable, a Control Agreement substantially in the forms entered into by the Buyer and deposits in a Controlled Deposit Account an amount in cash acceptable to Morgan Stanley. Upon any such deposit, Morgan Stanley shall instruct the Bank to release an equal amount in cash to the Buyer. If the Buyer so Transfers less than all of its rights and obligations under this Agreement, the Buyer shall enter into an amendment to this Agreement to reflect the reduction in the Buyer's Applicable Percentage Commitment. If the Buyer so Transfers all of its rights and obligations under this Agreement, this Agreement shall terminate without liability of either party (or any stockholder, director, officer, employee, agent, consultant or representative of such party) to the other party to this Agreement.

Section 7.05. *Governing Law* . This Agreement shall be governed by and construed in accordance with the law of the State of New York, without regard to the conflicts of law rules of such state.

Section 7.06. *Jurisdiction* . The parties hereto agree that any suit, action or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the transactions contemplated hereby shall be brought in the United States District Court for the Southern District of New York or any New York State court sitting in New York City, so long as one of such courts shall have subject matter jurisdiction over such suit, action or proceeding, and that any cause of action arising out of this Agreement shall be deemed to have arisen from a transaction of business in the State of New York, and each of the parties hereby

irrevocably consents to the jurisdiction of such courts (and of the appropriate appellate courts therefrom) in any such suit, action or proceeding and irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such court or that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. Process in any such suit, action or proceeding may be served on any party anywhere in the world, whether within or without the jurisdiction of any such court. Without limiting the foregoing, each party agrees that service of process on such party as provided in Section 7.01 shall be deemed effective service of process on such party.

Section 7.07. *WAIVER OF JURY TRIAL* . EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 7.08. *Counterparts; Effectiveness; Third Party Beneficiaries* . This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. This Agreement shall become effective when each party hereto shall have received a counterpart hereof signed by the other party hereto. Until and unless each party has received a counterpart hereof signed by the other party hereto, this Agreement shall have no effect and no party shall have any right or obligation hereunder (whether by virtue of any other oral or written agreement or other communication). No provision of this Agreement is intended to confer any rights, benefits, remedies, obligations, or liabilities hereunder upon any Person other than the parties hereto and their respective successors and assigns.

Section 7.09. *Entire Agreement* . This Agreement constitutes the entire agreement between the parties with respect to the subject matter of this Agreement and supersedes all prior agreements and understandings, both oral and written, between the parties with respect to the subject matter of this Agreement.

Section 7.10. *Severability.* If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction or other Governmental Authority to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such a determination, the parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the fullest extent possible.

Section 7.11. *Securities Contract* . The parties hereto agree and acknowledge that Morgan Stanley is a “stockbroker” and “financial participant” within the meaning of Sections 101(53A) and 101(22A) of Title 11 of the United States Code (the “ **Bankruptcy Code** ”). The parties hereto further agree and acknowledge that (A) this Agreement is a “securities contract,” as such term is defined in Section 741(7) of the Bankruptcy Code, and that each payment and delivery hereunder or in connection herewith is a ”settlement payment” and “transfer” and any cash, securities or other property provided as performance assurance, credit support or collateral with respect to the transactions hereunder is a “margin payment” and “transfer” within the meaning of Section 546 of the Bankruptcy Code; (B) the rights given to Morgan Stanley hereunder and under the Security Documents upon the occurrence of an event with respect to the Buyer described in Section 5.01(d) constitute a “contractual right” to cause the liquidation, termination or acceleration of under or in connection with, a “securities contract” and a “contractual right” under a security agreement or arrangement forming a part of or related to a “securities contract”, as such terms are used in Sections 555, 561 and 362(b)(6) of the Bankruptcy Code, and (C) Morgan Stanley is entitled to the protections afforded by, among other sections, Sections 362(b)(6), 362(o), 546(e), 548 (d)(2), 555, and 561 of the Bankruptcy Code.

Section 7.12 . *Specific Performance.* The parties hereto agree that irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms hereof and that the parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement or to enforce specifically the performance of the terms and provisions hereof in the United States District Court for the Southern District of New York or any New York State court sitting in New York City, in addition to any other remedy to which they are entitled at law or in equity.

Section 7.13 . *Right To Withdraw Excess Funds.* The Buyer shall have the right, whenever the Excess Amount (as defined below) exceeds $500,000, to request that Morgan Stanley, as the secured party under the Security Agreement, direct the Bank to release to the Buyer an amount (the "Excess Amount") equal to the excess of the amount in the Controlled Deposit Account over the sum of (i) the Purchase Price (calculated as if the date of the Buyer's request were a Forward Purchase Closing Date and the date two Business Days prior to the date of such request were a Closing Date) for the purchase of all the Securities the Buyer is then still committed to purchase under this Agreement and (ii) if the Buyer's request is made prior to the first Forward Purchase Closing Date, the Buyer's Applicable Percentage Commitment times $45,000.

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

Paulson & Co., Inc., on behalf of
Paulson Recovery Master Fund Ltd.

By: /s/ Michael Waldorf
Name: Michael Waldorf
Title: Managing Director

Aggregate Principal Amount of Securities to be Purchased: $100,000,000

Applicable Percentage Commitment: 34.129 %

Morgan Stanley & Co. Incorporated
By: /s/ Scott Pecullan
Name: Scott Pecullan
Title: Managing Director

EXHIBIT 8

INVESTOR RIGHTS AGREEMENT

THIS INVESTOR RIGHTS AGREEMENT (this " Agreement ") is entered into as of November 13, 2009, by and among Conseco, Inc., a Delaware corporation (the " Company "), and Paulson & Co. Inc., a Delaware corporation on behalf of the several investment funds and accounts managed by it (the " Stockholder ") and any other Investors agreeing in writing to be bound by the terms of this Agreement.

W I T N E S S E T H :

WHEREAS, pursuant to the Stock Purchase Agreement, dated as of October 13, 2009 (the " Purchase Agreement "), by and among the Company and the Stockholder, the Company issued to the Stockholder shares of Common Stock (as defined below) and Warrants (as defined below);

WHEREAS, as a result of and immediately following the consummation of the transactions contemplated by the Purchase Agreement, the Stockholder owns 16,400,000 Shares (as defined below) and Warrants (as defined below) to purchase 5,000,000 shares of Common Stock; and

WHEREAS, in connection with the consummation of the transactions contemplated by the Purchase Agreement, each of the Company and the Stockholder desire to enter into this Agreement to set forth certain rights and obligations of the Company and the Stockholder with respect to the ownership by the Stockholder of the Company's securities and certain other matters, all in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE I

DEFINITIONS

SECTION 1.1 Certain Defined Terms . Capitalized terms used and not otherwise defined herein shall have the respective meanings ascribed to such terms in the Purchase Agreement. For purposes of this Agreement, the following terms shall have the following meanings:

" 5% Shareholder " shall mean a Person or group of Persons that is a "5-percent shareholder" of the Company pursuant to Treasury Regulation § 1.382-2T(g).

" Additional Effective Date " shall have the meaning set forth in Sections 3.1(c) and 3.2(b).

" Additional Filing Date " shall have the meanings set forth in Sections 3.1(c) and 3.2(b).

" Adjusted Ownership " means, with respect to any Person a percentage determined by dividing (a) the sum of (i) the number of issued and outstanding Voting Securities of the Company owned by such person and (ii) the number of Voting Securities issuable upon the conversion or exercise of any Equity Securities of the Company owned by such person, by (b) the sum of (i) the number of issued and outstanding Voting Securities of the Company in the aggregate and (ii) the number of Voting Securities issuable upon the conversion or exercise of any Equity Securities of the Company owned by such person, then multiplying such quotient by 100%.

" Affiliate " means, with respect to any Person, any other Person that directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with, such specified Person, for so long as such Person remains so associated to the specified Person.

" Affiliated Assignee " shall have the meaning set forth in Section 8.9.

" Assignment Period " shall have the meaning set forth in Section 3.1(d).

" beneficial owner " or " beneficially own " has the meaning given such term in Rule 13d-3 under the Exchange Act and a Person's beneficial ownership of either Common Stock or other Voting Securities of the Company shall be calculated in accordance with the provisions of such Rule; *provided , however* , that for purposes of determining beneficial ownership, a Person shall be deemed to be the beneficial owner of any security which may be acquired by such Person whether within sixty (60) days or thereafter, upon the conversion, exchange or exercise of any options, rights or other securities.

" Black Out Period " shall have the meanings set forth in Sections 3.3(a)(i) and (ii).

" Business Day " means any day other than a day on which banks are required or authorized by law to be closed in the State of New York or the State of Indiana.

" Capital Stock " means, with respect to any Person at any time, any and all shares, interests, participations or other equivalents (however designated, whether voting or non-voting) of capital stock, partnership interests (whether general or limited) or equivalent ownership interests in or issued by such Person and, with respect to the Company, includes any and all shares of Common Stock, preferred stock and any other equity interests of the Company.

" Claims " shall have the meaning set forth in Section 4.4(a).

" Closing " has the meaning assigned to such term in the Purchase Agreement.

" Closing Date " has the meaning assigned to such term in the Purchase Agreement.

" Common Stock " means the common stock, par value $0.01 per share, of the Company and any securities issued in respect thereof, or in substitution therefor, in connection with any stock split, dividend, spin-off or combination, or any reclassification, recapitalization, merger, consolidation, exchange or other similar reorganization or business combination.

" Company Affiliate " refers to any Investor during and for the three months following such time such Investor (i) holds in excess of 10% of the Voting Securities of the Company or (ii) has a material relationship with any director of the Company.

" Company Board " means the Board of Directors of the Company.

" Company Non-Affiliate " means any Investor other than a Company Affiliate.

" Company Offering " means any public offering of securities of the Company, in whole or in part, by the Company (other than pursuant to Form S-8 or Form S-4).

" Confidentiality Agreement " means the Mutual Nondisclosure Agreement dated as of August 27, 2009, by and between the Stockholder and the Company.

" control " (including the terms " controlled by " and " under common control with "), with respect to the relationship between or among two or more Persons, means the possession, directly or indirectly, of the power to direct or cause the direction of the affairs or management of a Person, whether through the ownership of voting securities, as trustee or executor, by contract or otherwise.

" Covered Securities " means Common Stock and any securities convertible into or exercisable or exchangeable for Common Stock, other than securities that are (A) Indebtedness issued in connection with the Company Refinancing (as such terms are defined in the Purchase Agreement), (B) the Warrants, (C) issued by the Company pursuant to any employment contract, employee or benefit plan, stock purchase plan, stock ownership plan, stock option or equity compensation plan or other similar plan where stock is being issued or offered to a trust, other entity to or for the benefit of any employees, potential employees, consultants, officers or director of the Company, (D) issued by the Company in connection with a business combination or other merger, acquisition or disposition transaction, (E) issued with reference to the common stock of a Subsidiary (i.e., a carve-out transaction), (F) issued as a dividend or in connection with a dividend investment or stockholder purchase plan or (G) issued in exchange for, or upon exercise or conversion of, (i) currently outstanding securities or (ii) securities issued hereafter that are securities described in clauses (A) through (F) above.

" Demand Limitation " shall have the meaning set forth in Section 3.2.

" Demand Notice " shall have the meaning set forth in Section 3.2.

" Designated Securities " shall have the meaning set forth in Section 5.2.

" Effective Date " shall have the meaning set forth in Section 3.1(c).

" Equity Securities " means with respect to the Company, any and all shares of Capital Stock of the Company or securities of the Company, options or other rights convertible into, or exchangeable or exercisable for, such shares.

" Excess Shares " shall have the meaning set forth in Section 7.1(c).

" Exchange Act " means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

" Filing Date " shall have the meaning set forth in Section 3.1(c).

" Holdback Period " shall have the meaning set forth in Section 4.6.

" incur " or " incurrence " means to incur, create, assume, guarantee or otherwise become directly or indirectly liable with respect to.

" Indemnified Parties " shall have the meaning set forth in Section 4.4(a).

" Initial Effective Date " shall have the meaning set forth in Section 3.1(a)(ii).

" Initial Filing Date " shall have the meaning set forth in Section 3.1(a)(i).

" Investor " means any of the Stockholder Parties and the Unaffiliated Assignees.

" Investor Representative " means the Stockholder or its Affiliated designee, or, on or after such date as the Stockholder Parties hold less than 50% of the Registrable Securities outstanding (determined based on the Registrable Securities Purchase Price of the Registrable Securities then held by the Stockholder Parties as a percentage of the aggregate Registrable Securities Purchase Price applicable to all Registrable Securities then outstanding) for a 90 consecutive day period, the Investor or group of Affiliated Investors who hold the largest single block of Registrable Securities.

" Liquidated Damages " shall have the meaning set forth in Section 3.3(d)(i).

" Lock-Up Period " means the period commencing on the Closing Date and ending on the date that is the earlier of (a) 90 days after the closing of the Public Offering (as defined in the Purchase Agreement) and (b) six months after the Closing Date.

" NYSE" means The New York Stock Exchange, Inc.

" Percentage Interest " means, as of any date, the percentage equal to (i) the aggregate number of Shares beneficially owned or otherwise held by the Stockholder Parties as of such date, divided by (ii) the total number of outstanding shares of Company Common Stock as of such date.

" Person " means any individual, corporation, limited liability company, limited or general partnership, joint venture, association, joint-stock company, trust, unincorporated organization, government or any agency or political subdivisions thereof or any Group (as such term is defined in Section 13(d)(3) of the Exchange Act) comprised of two or more of the foregoing.

" Permitted Assignee " shall have the meaning set forth in Section 8.9.

" Plan of Distribution " shall have the meaning set forth in Section 3.1(a)(i).

" Private Placement " shall have the meaning set forth in Section 5.3(b).

" Public Offering " has the meaning attributed thereto in the Purchase Agreement.

" Purchase Agreement " shall have the meaning set forth in the Recitals.

" Qualified Offering " shall have the meaning set forth in Section 5.1.

" Registrable Securities " means any Shares and Warrants issued to the Stockholder pursuant to the Purchase Agreement or subsequently issued with respect thereto (including, without limitation, upon exercise of the Warrants), any convertible Indebtedness issued in connection with the Company Refinancing and any other shares of Common Stock now owned or hereafter acquired by the Stockholder (including shares issued upon conversion, exercise, or otherwise in respect of any Equity Securities), other than (i) shares of Common Stock subject to registration or registration rights pursuant to any past, present or future obligation of the Company under any other Agreement (other than shares of Common Stock issued upon conversion of convertible Indebtedness acquired by Stockholder in the Company Refinancing), and (ii) in the case of any Permitted Assignee hereunder, shares of Common Stock acquired by such Permitted Assignee that were not (or, if issuable upon conversion or exercise of any Equity Securities of the Company, would not have been if so converted by the prior holder) Registrable Securities immediately prior to the acquisition of such shares of Common Stock or Equity Securities convertible thereinto. As to any particular Registrable Securities, once issued, such Registrable Securities shall cease to be Registrable Securities when (i) a registration statement with respect to the sale by the Investor of such securities shall have become effective under the Securities Act and such securities shall have been disposed of in accordance with such registration statement, (ii) such securities shall have been distributed to the public pursuant to Rule 144 (or any successor provision), (iii) such securities are eligible to be a sold by the holder thereof pursuant to Rule 144 without restriction or limitation thereunder on volume or manner of sale (other than restrictions imposed hereunder) in the reasonable opinion of counsel to the Company; (iv) such securities are sold in a private transaction in which the transferor's rights under this Agreement are not assigned to the transferee of the securities; or (v) such securities shall have ceased to be outstanding. For purposes of this Agreement, any required calculation of the amount of, or percentage of, Registrable Securities shall be based on the number of Shares or other shares of Common Stock which are Registrable Securities.

" Registrable Securities Purchase Price " means, with respect to any Registrable Security, the purchase price actually paid by the Investor holding such Registrable Security (or, if such Registrable Security was acquired upon exercise or conversion of other Equity Securities, the exercise price or conversion price thereof), in

all cases subject to adjustment for any stock split, dividend, spin-off or combination, or any reclassification, recapitalization, merger, consolidation, exchange or other similar reorganization or business combination. Notwithstanding the foregoing, the Registrable Securities Purchase Price for (i) the Shares shall be $4.29 per Share and (ii) the Warrants shall be $1.50 per share of common stock issuable upon exercise of the Warrants, in all cases subject to adjustment for any stock split, dividend, spin-off or combination, or any reclassification, recapitalization, merger, consolidation, exchange or other similar reorganization or business combination.

" Registration Default " shall have the meaning set forth in Section 3.1(d).

" Registration Expenses " means any and all expenses incident to performance of or compliance with Articles III, IV and V of this Agreement, including (i) all SEC and NYSE or other securities exchange registration and filing fees, (ii) all fees and expenses of complying with securities or blue sky laws (including the reasonable fees and disbursements of counsel for the underwriters in connection with blue sky qualifications of the Registrable Securities), (iii) all printing, messenger and delivery expenses, (iv) all fees and expenses incurred in connection with the listing of the Registrable Securities on the NYSE or any other securities exchange pursuant to this Agreement and all rating agency fees, (v) the fees and disbursements of counsel for the Company and of the Company's independent public accountants, including the expenses of any special audits and/or "cold comfort" letters required by or incident to such performance and compliance, (vi) the reasonable fees and disbursements of counsel, (vii) any reasonable fees and disbursements of underwriters and their counsel customarily paid by the issuers or sellers of securities (including, without limitation, fees and expenses related to filings with the Financial Industry Regulatory Authority, Inc.), and the reasonable fees and expenses of special experts retained in connection with the requested registration, but excluding underwriting discounts and commissions and transfer taxes, if any, and (viii) all expenses incurred in connection with any road shows (including the reasonable out-of-pocket expenses of the holder of the applicable Registrable Securities).

" Registration Statement " means any registration statement of the Company under the Securities Act which covers any of the Registrable Securities pursuant to the provisions of this Agreement, including the prospectus, amendments and supplements to such registration statement, including post-effective amendments, all exhibits and all material incorporated by reference or deemed to be incorporated by reference in such registration statement. For the avoidance of doubt, the definition of "Registration Statement" includes any Shelf Registration.

" Response Period " shall have the meaning set forth in Section 3.2.

" Rule 144 " means Rule 144 (or any successor provision) under the Securities Act.

" Scheduled Earnings Blackouts " shall have the meaning set forth in Section 3.3(a)(ii).

" SEC " means the U.S. Securities and Exchange Commission or any other federal agency then administering the Securities Act or the Exchange Act and other federal securities laws.

" Securities Act " means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

" Sell-Down " shall have the meaning set forth in Section 5.5.

" Shares " shall mean (a) the Shares acquired by the Stockholder pursuant to the Purchase Agreement, (b) any Common Stock issued to any Investor in connection with the exercise of the Warrants, and any securities issued in respect of (a) or (b), or in substitution therefor, in connection with any stock split, dividend, spin-off or combination, or any reclassification, recapitalization, merger, consolidation, exchange or other similar reorganization or business combination.

" Shelf Registration " shall have the meaning set forth in Section 3.1(a)(i).

" Stockholder Party " means any of the Stockholder and the Affiliated Assignees.

" Subsidiary " means (i) any corporation of which a majority of the securities entitled to vote generally in the election of directors thereof, at the time as of which any determination is being made, are owned by another entity, either directly or indirectly, and (ii) any joint venture, general or limited partnership, limited liability company or other legal entity in which an entity is the record or beneficial owner, directly or indirectly, of a majority of the voting interests or the general partner and, with respect to the Company.

" Suspension Notice " shall have the meaning set forth in Section 3.3(a).

" Transaction Agreements " shall mean the Confidentiality Agreement and the Purchase Agreement.

" Transfer " shall mean, with respect to any security or instrument, any voluntary or involuntary attempt to, directly or indirectly, offer, sell, assign, transfer, grant a participation in, pledge, hypothecate or otherwise encumber or dispose of, including, without limitation, by way of entry into any swap or other agreement or transaction that hedges or transfers, in whole or in part, directly or indirectly, the economic consequence of ownership of such security or instrument, or the consummation of any such transactions.

" Unaffiliated Assignee " shall have the meaning set forth in Section 8.9.

" Underwriter Cutback " shall have the meaning set forth in Section 3.2.

" Underwritten Offering " shall have the meaning set forth in Section 3.2.

" Voting Securities " means, at any time, shares of any class of Equity Securities which are then entitled to vote generally in the election of Directors.

" Voting Threshold " means, at any time and with respect to any matter upon which holders of any class or series of Capital Stock of the Company are then entitled to vote or consent, 19.9% of the aggregate voting power of all Capital Stock so entitled. If approval of such matter requires the separate vote or consent of any class(es) or series of Capital Stock of the Company, the "Voting Threshold" will be determined in respect of, and by reference to, the aggregate voting power of all class(es) or series of Capital Stock entitled to vote in each such vote or consent.

" Warrants " shall mean the warrants to acquire an aggregate 5,000,000 shares of Common Stock purchased by the Stockholder pursuant to the Purchase Agreement.

" Withheld Shares " shall have the meaning set forth in Section 7.1(b).

SECTION 1.2 Other Definitional Provisions . (a) The words "hereof", "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement, and Article and Section references are to this Agreement unless otherwise specified.

(b) The meanings given to terms defined herein shall be equally applicable to both the singular and plural forms of such terms.

ARTICLE II

RESTRICTIONS ON TRANSFER

SECTION 2.1 Transfer of the Shares . No Investor shall Transfer any Shares or Warrants without the Company's written consent except (i) any Transfer by a Stockholder Party to any Affiliate of the Stockholder who agrees to be bound by all of the provisions of this Agreement as a Stockholder Party (subject to Section 8.9), which Affiliate of the Stockholder will then be a Stockholder Party entitled to further transfer as a Stockholder Party hereunder to Affiliates of the Stockholder in accordance with the terms hereof, or (ii) (x) upon the expiration of the Lock-Up Period, (y) pursuant to a Transfer described in Section 2.3(b) or (z) in the event of a Sell-Down and, in the case of clauses (x), (y) and (z):

(a) pursuant to an effective registration statement under the Securities Act;

(b) pursuant to Rule 144; or

(c) upon receipt by the Company of an opinion of counsel reasonably satisfactory to the Company that such Transfer is exempt from registration under the Securities Act and applicable state laws.

SECTION 2.2 Restrictive Legends . Each of the Investors hereby acknowledges and agrees that, during the term of this Agreement, each of the certificates or book-entry confirmations representing Shares or Warrants shall be subject to stop transfer instructions and shall include the applicable portion(s) of the legends set forth below:

"THE SECURITIES REPRESENTED BY THIS CERTIFICATE OR CONFIRMATION HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), AND MAY NOT BE TRANSFERRED, SOLD, ASSIGNED, PLEDGED, HYPOTHECATED OR OTHERWISE DISPOSED OF ("TRANSFERRED") EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE ACT OR AN EXEMPTION FROM REGISTRATION THEREUNDER."

In the event that any Shares, Warrants or Common Stock issuable upon exercise of the Warrants or upon conversion of convertible Indebtedness acquired by Stockholder in the Company Refinancing (i) are no longer subject to the transfer restrictions set forth in this Agreement, (ii) are Transferred in a transaction registered under the Act, (iii) are Transferred in a transaction exempt from the registration requirements of the Act, and upon delivery to the Company of such documents as it may reasonably request with respect to such exemption, (iv) upon an Investor's request and receipt by the Company and its transfer agent of an opinion of Investor's counsel reasonably satisfactory to the Company and its transfer agent to the effect that a "private placement" legend is no longer required under the Act and applicable state laws or (v) upon an Investor's request and receipt by the Company and its transfer agent of the certificate attached hereto as Exhibit A certifying that such shares of Common Stock are eligible for resale without limitation under Rule 144 (other than Company information requirements of Rule 144(c)), the Company shall promptly issue new certificates or book-entry confirmations representing such Shares or Warrants, at the expense of the Company. The Company shall cause its counsel to issue a legal opinion, if required (or requested by the Company's transfer agent), to effect the removal of such legend or notation, as applicable, in accordance with this Section 2.2.

SECTION 2.3 Restriction on Certain Transactions . (a) From and after the date hereof, each Investor hereby covenants and agrees that it shall not, without the prior written consent of the Company, Transfer any of the Shares to any person if such Transfer, taken together with any other Transfers of shares of Common Stock by the Investor to the same person or any of its Affiliates at any time, would, to the knowledge of the Investor, cause such Person and its Affiliates to become a 5% Shareholder. Notwithstanding this Section 2.3, nothing shall prevent any Stockholder Party from making a Transfer in violation of Section 2.3 under the following circumstances:

(a) Transfers with the consent of the Company Board (such consent not to be withheld unless the Company Board determines in good faith that such Transfer will jeopardize or endanger the availability to the Company of its net operating loss carryforwards to be used to offset its taxable income in such year or future years and the basis for such determination is provided in writing to the applicable Stockholder Party) to any Stockholder Party if the transferee agrees in writing for the benefit of the Company (with a copy thereof to be furnished to the Company) to be bound by the terms of this Agreement and *provided* that, in conjunction therewith, the transferee makes to the Company, at and as of the date of such transfer, each of the representations and warranties contained in Sections 4.1, 4.2 and 4.7 of the Purchase Agreement as if such assignee were "Purchaser" therein;

(b) Transfers pursuant to a merger, tender offer or exchange offer or other business combination, acquisition of assets or similar transaction or change of control involving the Company or any Subsidiary of the Company so long as (i) such transaction has been approved by the Company Board or (ii) none of the Stockholder Parties (x) is a member of the group (as such term is defined in Section 13(d)(3) of the Exchange Act) conducting such transaction or (y) has taken any actions otherwise prohibited pursuant to Section 6.2 hereunder in connection with such transaction; and

(c) Transfers in connection with the sale of shares in a widely-distributed Underwritten Offering.

SECTION 2.4 Transfers Not In Compliance . A purported or attempted Transfer of Shares or Warrants by an Investor, and any purported assignment of Investor's rights and obligations hereunder, that does not comply with Section 2.1, Section 2.2, Section 2.3 and Section 8.9 shall be void *ab initio* and the purported transferee or successor by operation of law shall not be deemed to be a stockholder or warrantholder of the Company for any purpose and shall not be entitled to any of the rights of (i) in the case of a Transfer of Shares, a stockholder, including, without limitation, the right to vote any Shares entitled to vote or to receive a certificate or certificates for the Shares or any dividends or other distributions on or with respect to the Shares or (ii) in the case of a Transfer of Warrants, a warrantholder, including, without limitation, the right to exercise such Warrants or to receive shares of Common Stock in respect thereof.

ARTICLE III

REGISTRATION RIGHTS WITH RESPECT TO THE REGISTRABLE SECURITIES

SECTION 3.1 Shelf Registration Statement Matters .

(a) Shelf Registration Statement . Subject to Section 3.3, the Company shall:

(i) on or prior to the 60 th day after the Closing (the " Initial Filing Date "), prepare and file with the SEC a "shelf" Registration Statement covering the resale of 100% of the Registrable Securities (a " Shelf Registration ") on such Initial Filing Date for an offering to be made on a continuous basis pursuant to Rule 415 under the Securities Act (or any successor provisions), which Shelf Registration shall be on Form S-3 (except if the Company is not then eligible to register for resale the Registrable Securities on Form S-3, in which case such registration shall be on Form S-1 or another reasonably appropriate form) and shall contain substantially the " Plan of Distribution " attached hereto as Annex A;

(ii) use reasonable best efforts to cause the Shelf Registration to become effective as soon as practicable after such filing, but in no event later than the 120 th day after the Closing (the " Initial Effective Date "); *provided , however* , that in the event the Company is notified by the SEC that the Shelf Registration will not be reviewed or is no longer subject to further review and comments, the Initial Effective Date shall be the fifth Business Day following the date on which the Company is so notified if such date precedes the date otherwise required above;

(iii) use reasonable best efforts to maintain continuously in effect, supplement and amend, if necessary, the Shelf Registration, as required by the instructions applicable to such registration form or by the Securities Act, until there are no remaining Registrable Securities;

(iv) furnish, upon request, to the holders of the Registrable Securities to which the Shelf Registration relates copies of any supplement or amendment to such Shelf Registration prior to such supplement or amendment being used and/or filed with the SEC; and

(v) pay all Registration Expenses in connection with the Shelf Registration, whether or not it becomes effective, and whether all, some or none of the Registrable Securities to which it relates are sold pursuant to it.

(b) Effective Shelf Registration Statement . (i) If at any time, the Shelf Registration ceases to be effective, the Company shall, subject to Section 3.3, file, not later than 30 days after such prior Shelf Registration ceased to be Effective (a " New Filing Date "), and use its reasonable best efforts to cause to become effective a new Shelf Registration as soon as practicable, but not later than the 90 th day after such New Filing Date (a " New Effective Date "); *provided , however* , that in the event the Company is notified by the SEC that the Shelf Registration will not be reviewed or is no longer subject to further review or comments, the New Effective Date shall be the fifth Business Day following the date on which the Company is so notified if such date precedes the date otherwise required above.

(ii) If, after any Shelf Registration has become effective, it is interfered with by any stop order, injunction or other order or requirement of the SEC or other governmental agency or authority, the Company shall use its reasonable best efforts to prevent the issuance of any stop order suspending the effectiveness of the Shelf Registration or of any order preventing or suspending the use of any prospectus and, if any such order is issued, to obtain the withdrawal of any such order at the earliest possible moment, but not later than the 90 th day after such order is issued (a " Withdrawal Date ").

(c) Additional Registrable Securities . At any time that the Company knows that the number of Registrable Securities at such time exceeds 115% of the number of shares of Common Stock then registered on all Registration Statements applicable to the Registrable Securities, the Company shall, subject to Section 3.3, use its reasonable best efforts to amend any existing Registration Statement, or to file an additional Registration Statement, to register for resale by the Holders of not less than 100% of the Registrable Securities as soon as reasonably practicable, but not later than the 30 th day after the Company first knows of such circumstance (an " Additional Filing Date " and together with the Initial Filing Date, the New Filing Date, a " Filing Date "), and shall use its reasonable best efforts to cause such amendment or additional Registration Statement to be declared

effective, as soon as practicable, but not later than the 60 th day after the Additional Filing Date (an " Additional Effective Date " and together with the Initial Effective Date and the New Effective Date and the Withdrawal Date, an " Effective Date "); *provided , however* that in the event the Company is notified by the SEC that such additional Registration Statement will not be reviewed or is no longer subject to further review and comments, such Additional Effective Date as to such Registration Statement shall be the fifth Business Day following the date on which the Company is so notified if such date precedes the date otherwise required above.

(d) Delay Payments . (i) The Company and each Investor each agree that the Investor will suffer damages, and it would not be feasible to ascertain the extent of such damages with precision, if the Company fails to fulfill its obligations under Article III hereof. Subject in all cases to Section 3.3 (including any applicable Blackout Period imposed in accordance therewith) and Section 4.6 (including any Holdback Period imposed in accordance therewith, whether such period is pursuant to the agreement set forth in Section 4.6 or a separate agreement with the underwriters of any Company Offering or Underwritten Offering), if (A) a Registration Statement is not filed on or prior to any Filing Date applicable thereto, (B) a Registration Statement is not declared effective by the SEC or any order of a governmental authority preventing or suspending the use of any prospectus is not lifted prior to any Effective Date applicable thereto, (C) the Company fails to file with the SEC a request for acceleration of effectiveness in accordance with Rule 461 promulgated under the Securities Act, within five Business Days after the date that the Company is notified in writing by the SEC that a Registration Statement will not be "reviewed," or is not subject to further review, (D) after the Effective Date, the Shares are not listed on the NYSE, (E) after the Effective Date, a Registration Statement required to be effective hereunder ceases for any reason to remain effective (without being succeeded immediately by a replacement Registration Statement filed and declared effective) or usable (excluding during the Lock-Up Period, and excluding as a result of a post-effective amendment thereto that is required by applicable law in order to cause a Permitted Assignee hereunder to be named as a selling securityholder therein, provided that such post-effective amendment is filed by the Company within 10 Business Days after the Company receiving notice from any Investor that such post-effective amendment is required (any such 10 Business Day period, an " Assignment Period ") for the resale of Registrable Securities, or the Investors are otherwise unable to effect the resale of any Registrable Securities hereunder as a result of a breach by the Company of its obligations hereunder, in each case for such period of time (excluding the duration of any Black Out Period applicable to such Registrable Securities, any Holdback Period, any Assignment Period or the Lock-up Period) as to any Registrable Securities for which any Registration Statement is then required to be effective hereunder (each of the events referred to in clauses (A) through (E), a " Registration Default ") the Company shall pay to any Investor holding any Registrable Securities not eligible for resale as a result of such Registration Default, for the duration of such Registration Default as it applies to such Registrable Securities held by such Investor:

(1) if such Investor is a Company Affiliate, an amount (the " Affiliate Liquidated Damages ") equal to (i) one-half of one percent (0.5%) per year of the Registrable Securities Purchase Price applicable to such Registrable Securities for the period up to and including the 70 th day in any 360 consecutive-day period during which a Registration Default has occurred and is continuing, payable in cash on each January 1 and July 1 and calculated on the basis of a 360 calendar-day year consisting of twelve 30 calendar-day months, and (ii) one percent (1.0%) per 30 days of the Registrable Securities Purchase Price applicable to such Registrable Securities for the period exceeding the 70 th day in any 360 consecutive-day period during which a Registration Default has occurred and is continuing, payable in cash on the second business day of each calendar month in respect of payments accruing through the last day of the preceding calendar month, with late payments accruing interest at a rate of 18% per annum (or such lesser maximum amount that is permitted to be paid by applicable law), compounding on each payment date; or

(2) If such Investor is a Company Non-Affiliate, an amount equal to one percent (1.0%) per 30 days of the Registrable Securities Purchase Price applicable to such Registrable Securities, payable in cash on the second business day of each calendar month in respect of payments accruing through the last day of the preceding calendar month, with late payments accruing interest at a rate of 18% per annum (or such lesser maximum amount that is permitted to be paid by applicable law), compounding on each payment date (the payments described in clauses (1) and (2) of this Section 3.3(d)(i), the " Liquidated Damages ")

(ii) Notwithstanding anything to the contrary herein, in no event shall the Company be liable for Liquidated Damages in excess of $8,000,000 in any calendar year, pro-rated for the remaining portion of the calendar year in which this Agreement is entered into. Each of the Company and each Investor agree that the Liquidated Damages provided for in this Section 3.1(d) constitute a reasonable

estimate of the damages that may be incurred by the Investor by reason of a Registration Default and that such Liquidated Damages are the only monetary damages available to the Stockholder in the event of a Registration Default. Notwithstanding anything to the contrary set forth in this Section 3.1, no event shall be considered a Registration Default hereunder if such event or the primary cause thereof (i) was consented to in writing by the Stockholder or Investors holding in excess of 50% of the then-outstanding Registrable Securities (determined based on the Registrable Securities Purchase Price applicable to the then-outstanding Registrable Securities), or (ii) results (and shall not be considered a Registration Default for as long as it continues to result) primarily from (x) any breach or delay in performance by any Investor of any of its obligations set forth in this Agreement, (y) an Investor's objection pursuant to Section 4.1(c) or (z) any delay caused or requested by any underwriter or underwriters in connection with an Underwritten Offering, including as a result of any holdback period contemplated by Section 4.6 hereof.

SECTION 3.2 Underwritten Offerings; Demand Registration . Subject to Section 3.3 (including any Blackout Period imposed in accordance therewith) and 4.6 (including any Holdback Period imposed in accordance therewith, whether such period is pursuant to the agreement set forth in Section 4.6 or a separate agreement with the underwriters of any Company Offering or Underwritten Offering), the Stockholder or, if the Stockholder has assigned its rights under this Section 3.2 in accordance with the terms of this Agreement, Investors holding more than 50% of the Registrable Securities at such time (determined based on the Registrable Securities Purchase Price applicable to the then-outstanding Registrable Securities)) may deliver a notice to the Company stating that it wishes to effect an underwritten offering of all or part of its Registrable Securities (an " Underwritten Offering ") and stating the number of the Registrable Securities to be included in the Underwritten Offering (a " Demand Notice "). The Company shall, promptly after its receipt of a Demand Notice, give all other Investors written notice of such request. Each such Investor may, by delivery of written notice to the Company within twenty (20) days after the Company's delivery of notice to such Investor (the " Response Period "), request that all or any portion of such Investor's Registrable Securities be included in such Underwritten Offering. Notwithstanding the foregoing, the Stockholder and the other Investors, collectively, shall be entitled to deliver to the Company no more than three (3) Demand Notices in the aggregate (the " Demand Limitation "); *provided* that no Demand Notice shall be counted against the Demand Limitation unless and until the Registration Statement filed pursuant to such Demand Notice is declared effective and the Registrable Securities registered thereunder have been sold (other than any such Registrable Securities excluded from such Underwritten Offering as a result of a determination by the underwriter that marketing factors required a limitation on the number of shares to be underwritten in such offering (an " Underwriter Cutback "), except in the event that (i) the Stockholder or Investors holding of more than 50% of the Registrable Securities requested to be registered in such Underwritten Offering (determined based on the Registrable Securities Purchase Price applicable to such Registrable Securities) elect to abandon such offering or (ii) the Underwritten Offering is not consummated primarily as a result of the action, or failure to act, of one or more Investors holding Registrable Securities requested to be included therein. Notwithstanding the foregoing, if, in connection with an Underwritten Offering requested pursuant to the final Demand Notice permitted under the Demand Limitation set forth above, (i) the Stockholder Parties request that all of their remaining Registrable Securities be included in such Underwritten Offering, and (ii) solely as a result of an Underwriter Cutback, the Stockholder Parties are required to sell less than 75% of such Registrable Securities requested to be distributed in such Underwritten Offering, then the Stockholder Parties will be entitled, collectively, to request one additional Underwritten Offering with respect to all of their remaining Registrable Securities, in which all Investors will be entitled to participate as if in connection with, and pursuant to the procedures applicable to, the delivery of a Demand Notice; *provided* that, in connection with such additional Underwritten Offering, any Underwriter Cutbacks shall be applied first, pro rata, with respect to the Registrable Securities of Unaffiliated Assignees requested to be included therein, and thereafter, pro rata, with respect to the Registrable Securities of the Stockholder Parties requested to be included therein.

Upon expiration of such Response Period (or, if the Lock-Up Period has not then expired, upon expiration of the Lock-Up Period), and subject to Section 3.3 hereof, as soon as reasonably practicable and subject to such Underwriter Cutbacks as may be requested by the managing underwriter(s) of such Underwritten Offering:

(a) if there is, at such time, an effective Shelf Registration in respect of the Registrable Securities, the Company shall promptly amend or supplement the Shelf Registration if and as may be necessary in order to enable such Registrable Securities to be distributed pursuant to an Underwritten Offering, but in any event no later than 30 days after the expiration of the Response Period, and shall use its reasonable best efforts to cause such amendment to become effective as soon as practicable after such filing, but in any event no later than 90 days after the expiration of the Response Period; or

(b) if there is, at such time, no effective Shelf Registration in effect in respect of the Registrable Securities, the Company shall:

(i) cause to be prepared and to file a Registration Statement as promptly as reasonably practicable after expiration of the Response Period, but in any event no later than 30 days thereafter;

(ii) use reasonable best efforts to cause such Registration Statement to become effective as soon as practicable after filing, but in any event no later than 90 days after expiration of the Response Period;

(iii) use reasonable best efforts to maintain in effect, supplement and amend, if necessary, the Registration Statement, as required by the instructions applicable to such registration form or by the Securities Act for the period required to consummate the Underwritten Offering;

(iv) furnish, upon request, to the holders of the Registrable Securities to which the Registration Statement relates copies of any supplement or amendment to such Registration Statement prior to such supplement or amendment being used and/or filed with the SEC; and

(v) pay all Registration Expenses in connection with the Registration Statement, whether or not it becomes effective, and whether all, some or none of the Registrable Securities to which it relates are sold pursuant to it.

The date that is thirty (30) days after the expiration of the Response Period shall be an "Additional Filing Date" for purposes of Section 3.1(d) hereunder, and the date that is ninety (90) days after the expiration of the Response Period shall be an "Additional Effective Date" for purposes of Section 3.1(d) hereunder.

SECTION 3.3 Suspension of Registration Rights . (a) Notwithstanding anything to the contrary herein, if the Company shall at any time furnish to the Stockholder a certificate signed by any of its authorized officers (a " Suspension Notice ") stating that:

(i) the Company has pending or in process a material transaction, the disclosure of which would, in the good faith judgment of the Company Board, after consultation with its outside counsel, materially and adversely affect the Company; or

(ii) the Company Board has made the good faith determination (after consultation with counsel and including, without limitation, recurring earnings blackout periods established by the Company Board or a designated committee thereof (" Scheduled Earnings Blackouts ")) (i) that use or continued use of any proposed or effective Registration Statement for purposes of effecting offers or sales of Registrable Securities pursuant thereto would require, under the Securities Act, premature disclosure in such Registration Statement (or the prospectus relating thereto) of material, non-public information (without disclosing the specific material, non-public information, unless the Stockholder specifically requests in writing to receive such material, non-public information), (ii) that such premature disclosure would not be in the best interest of the Company and (iii) that it is therefore essential to defer the filing or to suspend the use of such Registration Statement (and the prospectus relating thereto) for purposes of effecting offers or sales of Registrable Securities pursuant thereto,

then the right of the Investors to require the Company to file any Registration Statement or, after the filing thereof, use any Registration Statement (and the prospectus relating thereto) for purposes of effecting offers or sales of Registrable Securities pursuant thereto shall be suspended for a period (a " Black Out Period ") of not more than (i) with respect to any Company Affiliate, 180 days in any 360 consecutive-day period (and no more than 45 consecutive days in any 360 consecutive day period except, in the case of a Suspension Notice delivered, or a Scheduled Earnings Blackout designated, in respect of the Company's year-end earnings reports, no more than 65 consecutive days after delivery of such Suspension Notice or start of such Scheduled Earnings Black Out), (ii) with respect to any Company Non-Affiliate, 90 days in any 360 consecutive-day period (and no more than 45 consecutive days in any 360 consecutive day period except, in the case of a Suspension Notice delivered, or Scheduled Earnings Blackout designated, in respect of the Company's year-end earnings reports, no more than 65 consecutive days after delivery of such Suspension Notice or start of such Scheduled Earnings Black Out). For avoidance of doubt, with respect to any Registrable Security, no Registration Default shall be applicable to such Registrable Security during any Black Out Period permitted to be imposed on the holder of such Registrable Security pursuant to this Section 3.3. Notwithstanding anything to the contrary in this Section 3.3(a), the Company shall not impose any Black Out

Period, including any Scheduled Earnings Black Out, in a manner that is more restrictive (including, without limitation, as to duration) than the comparable restrictions the Company may impose on Transfers of the Company's Equity Securities by its directors and senior executive officers.

(b) During any Black Out Period, no Investor shall offer or sell any Registrable Securities pursuant to or in reliance upon any Registration Statement (or the prospectus relating thereto) filed by the Company. Notwithstanding the foregoing, if the public announcement of such material, nonpublic information is made during a Black Out Period, then the Black Out Period shall terminate without any further action of the parties and the Company shall immediately notify the Investors of such termination. Except in connection with any notice required to be provided hereunder or in connection with any reasonable response to unsolicited written or oral requests from a Stockholder Party or its representatives and affiliates for information, the Company shall use its reasonable best efforts to refrain from providing any Stockholder Party with any material, non-public information without such Stockholder Party's prior written consent.

SECTION 3.4 Incidental Registration Rights . If the Company at any time proposes to offer Covered Securities in a registered Company Offering for its own account, each such time it will promptly give written notice to the Investors of its intention so to do. Upon the written request of any Investor, received by the Company within thirty (30) days after delivery of any such notice by the Company, requesting to register any or all of its Registrable Securities, the Company will use its reasonable best efforts to cause such Registrable Securities to be included in the securities to be covered by the Registration Statement proposed to be filed in connection with the registered Company Offering to the extent required to permit the sale or other disposition by such Investor of such Registrable Securities. If such registered Company Offering involves an underwriting, the Company shall so advise the Investors as a part of the written notice given pursuant to this Section 3.4. In such event, the right of any Investor to registration pursuant to this Section 3.4 shall be conditioned upon such Investor's participation in such underwriting to the extent provided herein. If any Investor proposes to distribute any or all of its Registrable Securities through such underwritten Company Offering, it shall (together with the Company and any other Investors so participating) enter into an underwriting agreement in customary form with the underwriter or underwriters selected for underwriting by the Company. Notwithstanding any other provision of this Section 3.4, if there is an Underwriter Cutback, such limitation will be imposed first pro rata with respect to all securities whose holders have a contractual, incidental right to include such securities in the Registration Statement (including, without limitation, any Investors) and as to which inclusion has been requested pursuant to such right. The Company shall be obligated to include in such Registration Statement only such limited portion of Registrable Securities with respect to which any Investor has requested inclusion hereunder. Notwithstanding the foregoing provisions, the Company may withdraw any Registration Statement referred to in this Section 3.4 without thereby incurring any liability to any Investor. If any Investor disapproves of the terms of any such underwriting, it may elect to withdraw therefrom by written notice to the Company and the underwriter or in such other manner as may be required by any underwriting agreement to which the Investor becomes a party in connection with such underwriting. Any Registrable Securities or other securities excluded or withdrawn from such underwriting shall be withdrawn from such registration and the Company Offering, and the Registration Statement applicable to such registration shall not be available for use by such Investor in respect of such withdrawn Registrable Securities.

ARTICLE IV

REGISTRATION PROCEDURES

SECTION 4.1 Registration Procedures . (a) If and whenever the Company is required to effect or cause the registration of any Registrable Securities under the Securities Act under this Agreement:

(b) The Company will use its reasonable best efforts to cause the Registration Statement applicable to such Registrable Securities to become effective and, subject to Section 3.3 hereof, the Company will prepare and file with the SEC such amendments and supplements to the Registration Statement and the prospectus or prospectus supplement used in connection therewith as may be necessary (i) in the case of a Shelf Registration, to keep such Shelf Registration continuously effective and usable for resale of the Registrable Securities for a period from the date of its initial effectiveness until such time as there are no such Registrable Securities remaining (including by refiling the Shelf Registration (or a new Shelf Registration) if the initial Shelf Registration expires, (ii) in the case of any other Registration Statement, to keep such Registration Statement effective and usable for resale of all of the Registrable Securities intended to be sold pursuant thereto and (iii) to comply with the provisions of the Securities Act with respect to the disposition of the Registrable Securities covered by such Registration Statement. The Company shall use its reasonable best efforts to cause any amendment to any

Registration Statement to be declared effective by the SEC as soon as practicable following the filing thereof with the SEC. In the event that the Company is a well-known seasoned issuer (as defined under Rule 405 of the Act) at the time of the filing of the Shelf Registration with the SEC, such Shelf Registration shall be designated by the Company as an automatic Shelf Registration.

(c) Not less than five (5) Business Days prior to the filing of each Registration Statement and not less than one (1) Business Day prior to the filing of any related prospectus or any amendment or supplement thereto (including any document that would be incorporated or deemed to be incorporated therein by reference), the Company shall, upon request of any Investor (but not if such Investor does not so request) (i) furnish to such Investor drafts of all such documents proposed to be filed, which documents (other than those incorporated or deemed to be incorporated by reference) will be subject to the review of such Investor, and (ii) cause its officers and directors, counsel and independent certified public accountants to respond, during normal business hours and upon reasonable notice, to such inquiries as shall be necessary, in the reasonable opinion of counsel to such Investor, to conduct a reasonable investigation within the meaning of the Securities Act. If such Investor reasonably and in good faith objects in writing and with specificity to any proposed disclosure in a draft Registration Statement or prospectus (no later than three (3) Business Days after the Stockholder has been furnished copies thereof) or any amendments or supplements thereto (no later than one (1) Business Day after the Stockholder has been furnished copies thereof) (i) regarding such Investor or (ii) on the basis that the disclosure, as proposed, contains one or more untrue statements of a material fact or omissions to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they are made, not misleading, in each case whether such disclosure is contained in the "selling stockholder" section thereof or otherwise, the Company shall not file such Registration Statement or such prospectus or amendments or supplements thereto until it has taken such steps as it deems reasonably appropriate to address the Investor's concerns.

(d) The Company will furnish to each Investor such number of copies of the applicable Registration Statement and each such amendment and supplement thereto (including in each case all exhibits) and of a prospectus, including a preliminary prospectus, in conformity with the requirements of the Securities Act, and such other documents as such Investor may reasonably request in order to facilitate the disposition of Registrable Securities owned or to be distributed by such Investor.

(e) The Company shall use its reasonable best efforts to register and qualify the Registrable Securities under such other securities or "blue sky" laws of such jurisdictions within the United States as shall be reasonably requested by the Investors, to keep such registration or qualification in effect for so long as such Registrable Securities remain outstanding, and to take any other action which may be reasonably necessary to enable the Investors to consummate the disposition in such jurisdictions within the United States of the Registrable Securities; *provided* that the Company shall not be required in connection therewith or as a condition thereto to qualify to do business or to file a general consent to service of process in any such states or jurisdictions.

(f) After the filing of any Registration Statement, the Company will promptly notify the Investors of any stop order issued or threatened by the SEC and shall use its reasonable best efforts to prevent the entry of such stop order or to remove it if entered.

(g) The Company shall use its reasonable best efforts to cause the Shares and the Common Stock issued upon exercise of the Warrants to be listed on the NYSE or such other securities exchange on which the Common Stock is then listed. The Company will comply in all material respects with the Company's reporting, filing and other obligations under the NYSE Listed Company Manual or bylaws or other rules of the NYSE or comparable regulations of such other securities exchanges on which the Common Stock is then listed. The Company will not take any action which would be reasonably expected to result in the delisting or suspension of trading of the Common Stock, including the Shares and the Common Stock issued upon exercise of the Warrants, on the NYSE or a comparable national securities exchange.

(h) The Company shall promptly notify the Investors:

(i) of the existence of any fact of which the Company is aware or the occurrence of an event or the passage of time that makes the financial statements included in a Registration Statement ineligible for inclusion therein or any statement made in a Registration Statement or related prospectus untrue in any material respect or that otherwise requires the preparation of a supplement or amendment thereto so that, as thereafter amended or supplemented, such Registration Statement or related prospectus will not contain an untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statement therein, in light of the circumstances under which

they are made, not misleading and promptly make available to the Investors a reasonable number of copies of any such supplement or amendment; *provided* that any Suspension Notice (including, with respect to Scheduled Earnings Blackouts, any such Suspension Notice describing the Company's Scheduled Earnings Blackout policy) shall satisfy the notice requirements hereunder;

(ii) when any Registration Statement filed pursuant to this Agreement or any amendment thereto (other than through the incorporation by reference therein of any report, statement or other document required to be filed pursuant to the Exchange Act and the rules and regulations thereunder) has been filed with the SEC and when such Registration Statement or any post-effective amendment thereto has become effective;

(iii) of any request by the SEC for amendments or supplements to any Registration Statement or the prospectus included therein; and

(iv) of the receipt by the Company or its legal counsel of any notification with respect to the suspension of the qualification of the Common Stock for sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose or the issuance of any stop order suspending the effectiveness of any registration statement.

(i) The Company shall use reasonable best efforts to procure the cooperation of the Company's transfer agent in settling any offering or sale of Registrable Securities, including with respect to the transfer of physical stock certificates into book-entry form in accordance with any procedures reasonably requested by any Investor.

(j) In connection with an Underwritten Offering, the Company shall:

(i) enter into such customary agreements, including a customary underwriting agreement, in each case in form and substance reasonably satisfactory to the Company, which may include indemnification provisions in favor of underwriters and other Persons in addition to, or in substitution for the provisions of Section 4.4 hereof, and take such other actions as the Stockholder Parties, the Investor Representative or the underwriters may reasonably request in order to expedite or facilitate the disposition of such Registrable Securities;

(ii) obtain one or more comfort letters, dated such date or dates as are customary for the Company in the context of an underwritten Company Offering, addressed to any underwriters of the Underwritten Offering, signed by the Company's independent public accountants, in form and covering such matters of the type customarily covered by comfort letters delivered by the Company in connection with underwritten Company Offerings as the lead underwriters may reasonably request;

(iii) make available for inspection by the Stockholder, by the Investor Representative, by any underwriter participating in any disposition to be effected pursuant to an Underwritten Offering and by any attorney, accountant or other agent retained by the Stockholder, the Investor Representative or any such underwriter, all pertinent financial and other records, pertinent corporate documents and properties of the Company, and cause all of the Company's officers, directors and employees to supply all information reasonably requested by the Stockholder, the Investor Representative or any such underwriter, attorney, accountant or agent in connection with such Underwritten Offering;

(iv) if requested by the managing underwriter or agent or the Stockholder or the Investor Representative, promptly incorporate in a prospectus supplement or post-effective amendment such information as the managing underwriter or agent or Investor Representative or the Stockholder reasonably requests to be included therein, including, with respect to the number of Registrable Securities being sold by the Investors to such underwriter or agent, the purchase price being paid therefor by such underwriter or agent and with respect to any other terms of the underwritten offering and make all required filings of such prospectus supplement or post-effective amendment as soon as reasonably practicable after being notified of the matters incorporated in such prospectus supplement or post-effective amendment;

(v) use its reasonable best efforts to obtain for delivery to the underwriter or agent an opinion or opinions from counsel for the Company in customary form and in form, substance and scope reasonably satisfactory to such underwriters or agents and their counsel;

(vi) use its commercially reasonable efforts (taking into account the interests of the Company) to make available the executive officers of the Company to participate with the Stockholder, the Investor Representative and any underwriters in any customary "road shows" or other selling efforts that may be reasonably requested by the Stockholder and the Investor Representative, on the one hand, or managing underwriters, on the other hand, in connection with an Underwritten Offering.

SECTION 4.2 Information Supplied . The Company may require any Investor to furnish the Company with, and such Investor shall promptly furnish, such information regarding the Investor and pertinent to the disclosure requirements reasonably relating to the registration and the distribution of the Registrable Securities as the Company may from time to time reasonably request in writing.

SECTION 4.3 Restrictions on Disposition . Each Investor agrees that, upon receipt of any notice from the Company of the happening of any event of the kind described in Section 4.1(h), such Investor will forthwith discontinue disposition of Registrable Securities pursuant to the registration statement covering such Registrable Securities until such Investor's receipt of the copies of the supplemented or amended prospectus contemplated by Section 4.1(h), and, if so directed by the Company, such Investor will deliver to the Company all copies, other than permanent file copies then in such Investor's possession, of the prospectus covering such Registrable Securities current at the time of receipt of such notice; *provided* that, for the duration of any such suspension of the use of the Registration Statement that is not included as a Black Out Period, Liquidated Damages shall accrue and be payable pursuant to Section 3.1(d) hereof.

SECTION 4.4 Indemnification . (a) In the event of any registration of any Registrable Securities under the Securities Act pursuant to Articles III or IV of this Agreement, the Company shall, and it hereby does, indemnify and hold harmless, to the extent permitted by law, the seller of any Registrable Securities covered by such registration statement, each Affiliate of such seller and their respective directors, officers, employees and stockholders or members or general and limited partners (and any director, officer, Affiliate, employee, stockholder and controlling Person of any of the foregoing), each Person who participates as an underwriter in the offering or sale of such securities and each other Person, if any, who controls such seller or any such underwriter within the meaning of the Securities Act (collectively, the " Indemnified Parties "), against any and all losses, claims, damages or liabilities, joint or several, actions or proceedings (whether commenced or threatened) in respect thereof (" Claims ") and expenses (including reasonable attorney's fees and reasonable expenses of investigation) to which such Indemnified Party may become subject under the Securities Act, common law or otherwise, insofar as such Claims or expenses arise out of, relate to or are based upon (i) any untrue statement or alleged untrue statement of any material fact contained in any registration statement under which such securities were registered under the Securities Act, any preliminary, final or summary prospectus contained therein, or any amendment or supplement thereto, or (ii) any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein (in the case of a prospectus, in light of the circumstances under which they were made) not misleading; *provided* , that the Company shall not be liable to any Indemnified Party in any such case to the extent that any such Claim or expense arises out of, relates to or is based upon any untrue statement or alleged untrue statement or omission or alleged omission made in such registration statement or amendment or supplement thereto or in any such preliminary, final or summary prospectus in reliance upon and in conformity with written information furnished to the Company by or on behalf of such seller specifically for use in the preparation thereof; and, *provided* , *further* , that the Company will not be liable in any such case to the extent, but only to the extent, that the foregoing indemnity with respect to any untrue statement contained in or omitted from a registration statement or the prospectus shall not inure to the benefit of any party (or any person controlling such party) who is obligated to deliver a prospectus in transactions in a security as to which a registration statement has been filed pursuant to the Securities Act and from whom the person asserting any such Damages purchased any of the Registrable Securities to the extent that it is finally judicially determined that such Damages resulted solely from the fact that such party sold Registrable Securities to a person to whom there was not sent or given, at or prior to the written confirmation of such sale, a copy of the registration statement or the prospectus, as amended or supplemented, and (x) the Company shall have previously and timely furnished sufficient copies of the registration statement or prospectus, as so amended or supplemented, to such party in accordance with this Agreement and (y) the registration statement or prospectus, as so amended or supplemented, would have corrected such untrue statement or omission of a material fact. The Company's obligation to indemnify for Claims and expenses hereunder is irrespective of whether the Indemnified Party has itself paid such Claims or expenses.

(b) As a condition to including any Registrable Securities in any registration statement filed in accordance with Sections 3.2 or 3.4 herein, the Company shall have received a customary agreement from the prospective seller of such Registrable Securities or any underwriter to indemnify and hold

harmless (in the same manner and to the same extent as set forth in Section 4.4(a)) the Company and all other prospective sellers or any underwriter, as the case may be, with respect to any untrue statement or alleged untrue statement in or omission or alleged omission from such registration statement, any preliminary, final or summary prospectus contained therein, or any amendment or supplement thereto, if such untrue statement or alleged untrue statement or omission or alleged omission was made in reliance upon and in conformity with written information furnished to the Company by or on behalf of such seller or underwriter specifically for use in the preparation of such registration statement, preliminary, final or summary prospectus or amendment or supplement, or a document incorporated by reference into any of the foregoing. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of the Company or any of the prospective sellers, or any of their respective Affiliates, directors, officers or controlling Persons and shall survive the transfer of securities by any seller. In no event shall the liability of any selling holder of Registrable Securities hereunder be greater in amount than the dollar amount of the proceeds received by such holder upon the sale of the Registrable Securities giving rise to such indemnification obligation.

(c) Each indemnified party hereunder shall give prompt written notice to the indemnifying party of any Claim commenced against it in respect of which indemnity may be sought hereunder, but failure to so notify the indemnifying party shall not relieve such indemnifying party from any liability which it may have under the indemnity provided in this Section 4.4, unless and to the extent the indemnifying party shall have been actually and materially prejudiced by the failure of such indemnified party to so notify the indemnifying party. Such notice shall describe in reasonable detail such Claim. In case any Claim is brought against an indemnified party, the indemnified party shall be entitled to hire, at its own expense, separate counsel and participate in the defense thereof. If the indemnifying party so elects within a reasonable time after receipt of notice, the indemnifying party may assume the defense of the Claim at the indemnifying party's own expense with counsel chosen by the indemnifying party and approved by the indemnified party, which approval shall not be unreasonably withheld, and the indemnified party may participate in such defense at its own expense; *provided , however* , that the indemnifying party will not settle or compromise any Claim, or consent to the entry of any judgment with respect to any such pending or threatened Claim, without the written consent of the indemnified party unless such settlement, compromise or consent secures the unconditional release of the indemnified party from all liabilities arising out of such Claim; *provided , further* , that if the defendants in any such Claim include both the indemnified party and the indemnifying party and the indemnified party reasonably determines, based upon advice of legal counsel, that such Claim involves a conflict of interest (other than one of a monetary nature) that would reasonably be expected to make it inappropriate for the same counsel to represent both the indemnifying party and the indemnified party, then the indemnifying party shall not be entitled to assume the defense of the indemnified party and the indemnified party shall be entitled to separate counsel at the indemnifying party's expense, which counsel shall be chosen by the indemnified party and approved by the indemnifying party, which approval shall not be unreasonably withheld; and *provided , further* , that it is understood that the indemnifying party shall not be liable for the fees, charges and disbursements of more than one separate firm for the indemnified parties. If the indemnifying party assumes the defense of any Claim, all indemnified parties shall thereafter deliver to the indemnifying party copies of all notices and documents (including court papers) received by such indemnified parties relating to the Claim, and each indemnified party shall cooperate in the defense or prosecution of such Claim. Such cooperation shall include the retention and (upon the indemnifying party's request) the provision to the indemnifying party of records and information that are reasonably available to the Indemnified Party and that are reasonably relevant to such Claim and making employees available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder. If the indemnifying party is not entitled to assume the defense of such Claim as a result of the second proviso to the fourth sentence of this Section 4.4(c), the indemnifying party's counsel shall be entitled to conduct the indemnifying party's defense and counsel for the indemnified party shall be entitled to conduct the defense of the indemnified party, it being understood that both such counsel will cooperate with each other, to the extent feasible in light of the conflict of interest or different available legal defenses, to conduct the defense of such action or proceeding as efficiently as possible. If the indemnifying party is not so entitled to assume the defense of such action or does not assume the defense, after having received the notice referred to in the first sentence of this Section 4.4(c), the indemnifying party will pay the reasonable fees and expenses of counsel for the indemnified party; in that event, however, the indemnifying party will not be liable for any settlement of any Claim effected without the written consent of the indemnifying party, which may not be unreasonably withheld, delayed or conditioned. If the indemnifying party is entitled to assume, and assumes, the defense of an action or proceeding in accordance with this Section 4.4(c), the indemnifying party shall not be liable for any fees and expenses of counsel for the indemnified party incurred thereafter in connection with that action or proceeding except as set forth in the proviso in the fourth sentence of this Section 4.4(c). Unless and until a final judgment is rendered that an indemnified party is not entitled to the costs of defense under the provisions of this Section 4.4(c), the indemnifying

party shall reimburse, promptly as they are incurred, the indemnified party's costs of defense. The indemnifying party's obligation to indemnify the indemnified parties for Claims hereunder is irrespective of whether the indemnified party has itself made payments in respect of such Claims.

(d) (i) If the indemnification provided for in this Section 4.4 from the indemnifying party is unavailable to an indemnified party hereunder in respect of any Claim or expenses referred to herein, then the indemnifying party, in lieu of indemnifying such indemnified party, shall contribute to the amount paid or payable by such indemnified party as a result of such Claim or expenses in such proportion as is appropriate to reflect the relative fault of the indemnifying party and indemnified party in connection with the actions which resulted in such Claim or expenses, as well as any other relevant equitable considerations. The relative fault of such indemnifying party and indemnified party shall be determined by reference to, among other things, whether any action in question, including any untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact, has been made by, or relates to information supplied by, such indemnifying party or indemnified party, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such action. The amount paid or payable by a party under this Section 4.4(d) as a result of the Claim and expenses referred to above shall be deemed to include any legal or other fees or expenses reasonably incurred by such party in connection with any action or proceeding.

(ii) The parties hereto agree that it would not be just and equitable if contribution pursuant to this Section 4.4(d) were determined by pro rata allocation or by any other method of allocation which does not take account of the equitable considerations referred to in Section 4.4(d)(i). No Person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation.

(e) Indemnification similar to that specified in this Section 4.4 (with appropriate modifications) shall be given by the Company and each seller of Registrable Securities with respect to any required registration or other qualification of securities under any law or with any governmental authority other than as required by the Securities Act.

(f) The obligations of the parties under this Section 4.4 shall be in addition to any liability which any party may otherwise have to any other party.

SECTION 4.5 Required Reports . So long as there are Registrable Securities, the Company shall not terminate its status as an issuer required to file reports under the Exchange Act (even if the Exchange Act or the rules and regulations thereunder would permit such termination) and the Company agrees that it will use reasonable best efforts to timely file the reports required to be filed by it under the Securities Act and the Exchange Act and it will take such further action as any Investor may reasonably request, all to the extent required from time to time to enable such Investor to sell shares of Registrable Securities pursuant to this Agreement, including without registration under the Securities Act within the limitation of the exemptions provided by (i) Rule 144 under the Securities Act, as such Rule may be amended from time to time, or (ii) any similar rule or regulation hereafter adopted by the SEC. Upon the request of any Investor, the Company will deliver to such Investor a written statement as to whether it has complied with such requirements.

SECTION 4.6 Holdback Agreement . If any Company Offering or any sale of securities in connection with a registration under Article III hereof shall be in connection with an underwritten public offering, each of the Company and each Investor agree and, if so requested by any underwriter in connection with such offering or sale, shall enter into a customary agreement with such underwriter agreeing, not to effect any sale or distribution, including, in the case of Investors, any sale pursuant to Rule 144 under the Securities Act, of any such securities of the Company, or options or other rights convertible into, or exchangeable or exercisable for, such securities (other than as part of such underwritten public offering), within seven (7) days before, or ninety (90) days (or such lesser period as the managing underwriters may permit) after, the effective date of any such Company Offering or registration pursuant to Article III or the closing of any sale of securities in connection with a registration under Section 3.2 (except as part of any such registration or sale) (such period, a " Holdback Period "); *provided* , that, notwithstanding the foregoing, with respect to any Company Offering, the Investors shall have no obligation under this Section 4.6, and shall not be required to enter into any agreement with an underwriter pursuant to this Section 4.6, in each case that is more restrictive than the obligations imposed on and agreements required to be entered into by the directors and senior executive officers of the Company in connection with such Company Offering and/or in each case that would restrict or prohibit a Sell-Down.

SECTION 4.7 No Inconsistent Agreement . The Company represents and warrants that it will not enter into, or cause or permit any of its Subsidiaries to enter into, any agreement which conflicts with or limits or prohibits the exercise of the rights granted to the holders of Registrable Securities in this Agreement.

ARTICLE V

PREEMPTIVE RIGHTS; SHARE REPURCHASES

SECTION 5.1 Company Sale of Covered Securities . If the Company offers to sell Covered Securities in a public or private offering of Covered Securities solely for cash (a " Qualified Offering "), the Stockholder Parties shall be afforded the opportunity to acquire from the Company, for the same price and on the same terms as such Covered Securities are offered, in the aggregate up to the amount of Covered Securities required to enable it to maintain its then-current Percentage Interest, but solely to the extent that (i) any such issuance of shares of Covered Securities would not result in the issuance of Covered Securities that would require a vote of the stockholders of the Company pursuant to the rules of the NYSE and (ii) the Company Board determines in its good faith discretion that the acquisition of such Covered Shares by the Stockholder will not jeopardize or endanger the availability to the Company of its net operating loss carryforwards to be used to offset its taxable income in such year or future years, and the basis for such determination shall be provided to the Stockholder in writing; *provided* , *however* , that this Section 5.1 shall not apply to any Qualified Offering the gross proceeds of which, together with the aggregate gross proceeds of any other Qualified Offering of Covered Securities after the date hereof, do not exceed $1,000,000. For the avoidance of doubt, to the extent that the Stockholder Parties' acquisition of Covered Securities required to enable the Stockholder Parties to maintain their then-current Percentage Interest would result in an event described in clause (i) or (ii) of the preceding sentence, the Stockholder Parties may nonetheless acquire up to the maximum amount that would not result in the occurrence of such event. In addition prior to the date of this Agreement, the Company and the Company Board will have taken all necessary action, if any, in order to render inapplicable any control share acquisition, business combination, poison pill (including any distribution under a rights agreement) or other similar anti takeover provision under the Company's certificate of incorporation (or similar charter documents) or other agreements or the laws of its state of incorporation (including, without limitation, Section 203 of the Delaware General Corporation Law) that is or could become applicable to Stockholder as a result of the Stockholder exercising its rights under this Section 5.1 to acquire Covered Securities as set forth herein; *provided* that the Company and the Company Board shall not be required to take any such action in respect of the Company's Section 382 Rights Agreement, dated as of January 20, 2009, between the Company and American Stock Transfer & Trust Company, LLC (the " 382 Rights Agreement ") (which will not be applicable to the extent clause (ii) above does not apply).

SECTION 5.2 Notice . Prior to making any Qualified Offering of Covered Securities, the Company shall give the Stockholder written notice of its intention (including, in the case of a registered public offering and to the extent possible, a copy of the prospectus included in the registration statement filed in respect of such), describing, to the extent then known, the anticipated amount of securities, price (or, in the case of a registered public offering, an estimated range of prices) and other material terms upon which the Company proposes to offer the same. The Stockholder shall have ten (10) days from the provision of such notice to notify the Company in writing that it intends to exercise such preemptive purchase rights and as to the amount of Covered Securities the Stockholder desires to purchase, up to the maximum amount calculated pursuant to Section 5.1 (the " Designated Securities "). Such notice shall constitute a non-binding indication of interest of the Stockholder to purchase the amount of Designated Securities so specified (or a proportionately lesser amount if the amount of Covered Securities to be offered in such Qualified Offering is subsequently reduced) at the price (or range of prices) and other terms set forth in the Company's notice to it. The failure to respond during such ten (10) day period shall constitute a waiver of preemptive rights in respect of such offering. Any notice provided by the Company pursuant to this Section 5.2, and any information provided to the Stockholder otherwise in connection with such Qualified Offering, shall be subject to the terms of the Confidentiality Agreement applicable to "Evaluation Material" thereunder until the 90 th day following the consummation of any such Qualified Offering of Covered Securities, regardless of any termination thereof. If the sale of Covered Securities contemplated by the Qualified Offering described in such notice delivered to the Stockholder (i) is not subject to a binding agreement between the Company and the purchasers of such Covered Securities, (ii) is not otherwise consummated within thirty (30) days of delivery of such notice to the Stockholder, or (iii) if the terms of such binding agreement in respect of the Qualified Offering are materially amended, or if the terms relating to price are amended whatsoever, then such Qualified Offering shall again be subject to the requirements of this Article V.

SECTION 5.3 Purchase Mechanism . (a) If the Stockholder exercises its preemptive purchase rights provided in this Article V with respect to a Qualified Offering that is an underwritten public offering or a private offering made to qualified institutional buyers (as such term is defined in Rule 144A under the Act) for resale pursuant to Rule 144A under the Act, the Company shall offer the Stockholder, if such underwritten public offering or Rule l44A offering is consummated, the Designated Securities (as adjusted downward or, at the Stockholder's option, upward to reflect the actual size of such offering when priced) at the same price and on the same terms as the Covered Securities are offered to the initial purchasers in such offering and shall provide written notice of such price to the Stockholder as soon as practicable prior to such consummation.

(b) If the Stockholder exercises its preemptive rights provided in this Article V with respect to a Qualified Offering that is not an underwritten public offering or Rule 144A offering (a " Private Placement "), the closing of the purchase of the Covered Securities with respect to which such right has been exercised shall be conditioned on the consummation of the Private Placement giving rise to such preemptive purchase rights and shall take place simultaneously with the closing of the Private Placement or on such other date as the Company and the Stockholder shall agree in writing; *provided* that the actual amount of Covered Securities to be sold to the Stockholder pursuant to its exercise of preemptive rights hereunder shall be reduced if the aggregate amount of Covered Securities sold in the Private Placement is reduced and, at the option of the Stockholder (to be exercised by delivery of written notice to the Company within five (5) Business Days of receipt of notice of such increase), shall be increased if such aggregate amount of Covered Securities sold in the Private Placement is increased. In connection with its purchase of Designated Securities, the Stockholder shall, if it continues to wish to exercise its preemptive rights with respect to such offering, execute an agreement containing representations, warranties and agreements of the Stockholder that are substantially similar in all material respects to the agreements executed by other purchasers in such Private Placement.

(c) If, prior to consummation of Qualified Offering, the terms of the proposed issuance change with the result that the price is less than the minimum price or more than the maximum price set forth in the notice contemplated by Section 5.2 or the other principal terms are more favorable in any material respect to the prospective purchaser than those set forth in such notice, it shall be necessary for a separate notice to be furnished, and the terms and provisions of this Article V separately complied with.

SECTION 5.4 Termination of Preemptive Rights . Anything to the contrary in this Article V notwithstanding, the preemptive right to purchase Covered Securities granted by this Article V shall terminate as of and not be available for any offering that commences at any time after the date on which the Stockholder Transfers any Shares, other than Transfers (i) to Affiliates of the Stockholder or (ii) pursuant to a Sell-Down.

SECTION 5.5 Notice of Share Repurchase, Redemption . Unless otherwise instructed in writing by the Stockholder, following the date hereof and until the earlier of (i) the fifth anniversary of the date hereof, (ii) such time as the Stockholder Parties' Adjusted Ownership no longer exceeds 10% and (iii) such time as the Stockholder Parties no longer hold any indebtedness of the Company, the Company will not, directly or indirectly, redeem, purchase or otherwise acquire, any of its Voting Securities without providing the Stockholder at least 90 days prior written notice, which notice shall not be delivered prior to the date of public announcement of such proposed redemption or repurchase. Beginning on the date of delivery of such notice until the first to occur of (i) the date such share repurchase, redemption or acquisition is commenced or (ii) the date such Stockholder receives notice from the Company that it has abandoned the repurchase, redemption or acquisition disclosed in such notice, the Stockholder Parties shall be permitted to Transfer Equity Securities of the Company without regard to the Lock-Up Period and shall have no obligation pursuant to Section 4.6 hereof, in each case to the extent reasonably required to ensure that no Stockholder Party, or a direct or indirect owner of such Stockholder Party (that is a non-U.S. person) is deemed to be a 10% or more owner of the Company for purposes of the portfolio interest exemption from withholding as set forth in Sections 871 and 881 of the Internal Revenue Code of 1986, as amended (a " Sell-Down "). Notwithstanding the foregoing, the Company shall not, directly or indirectly, redeem, purchase or otherwise acquire any of its Voting Securities prior to the date which is 90 days following the closing of the Public Offering.

ARTICLE VI

STANDSTILL

SECTION 6.1 No Acquisition . Prior to the first anniversary of the date of this Agreement, each of the Investors shall not, and shall cause each of their respective controlled Affiliates not to, directly or indirectly,

acquire, or agree to acquire, by purchase or otherwise, beneficial ownership of any Capital Stock of the Company (except pursuant to the Purchase Agreement, the provisions of Article V of this Agreement, the exchange of rights issued pursuant to the 382 Rights Agreement, the exercise of the Warrants, or the conversion of any convertible indebtedness acquired in connection with the Company Refinancing or by way of any stock split, dividend, spin-off, combination, reclassification or recapitalization of the Company and its Common Stock) to the extent such acquisition would result in such Investor and its controlled Affiliates beneficially owning in excess of 19.9% of the Voting Securities of the Company; *provided* that, for purposes of this Section 6.1, "beneficial ownership" shall have the meaning given to such term in Rule 13d-3 of the Exchange Act without regard to the proviso included in the definition of "beneficial ownership" set forth in Section 1.1 hereof. For the avoidance of doubt, this prohibition shall not apply to acquisitions of (i) the Company's convertible Indebtedness (or the conversion of such convertible Indebtedness into Capital Stock of the Company) issued in connection with the Company Refinancing, (ii) the Warrants (or the receipt of the Common Stock of the Company upon exercise of the Warrants), (iii) in connection with any exchange of rights under the 382 Rights Agreement; (iv) purchases of Covered Securities in a Qualified Offering pursuant to and subject to the limitations set forth in Article V hereof and (v) purchases of Common Stock on the market if, and to the extent, required to maintain such Investor's Ownership Percentage after giving effect to any preemptive rights available to such Investor pursuant to Article V. Notwithstanding anything to the contrary herein, nothing in this Agreement shall be construed as an exemption of any Investor from the provisions of the 382 Rights Agreement, or a waiver of the applicability thereof, absent (and solely to the extent of) an express determination of exemption or inapplicability by the Company Board in accordance with the terms of the 382 Rights Agreement.

SECTION 6.2 Other Restrictions . Each of the Investors shall not, and will cause its controlled Affiliates not to, directly or indirectly, alone or in concert with others, unless specifically requested in writing by the Chief Executive Officer of the Company or by a resolution of the Company Board, take any of the actions set forth below (or take any action that would require the Company to make an announcement regarding any of the following:

(a) effect, seek, offer, engage in, propose (whether publicly or otherwise) or cause or participate in, or assist any other Person to effect, seek, engage in, offer, cause, propose (whether publicly or otherwise) or participate in:

(i) any acquisition of beneficial ownership of Voting Securities of the Company which would result in a breach of Section 6.1 of this Agreement;

(ii) any tender or exchange offer, merger, consolidation, share exchange, business combination, recapitalization, restructuring, liquidation, dissolution or other extraordinary transaction involving the Company or any material portion of its business or any purchase of all or any substantial part of the assets of the Company or any material portion of its business; *provided* that, if such transaction is being conducted by a third-party unaffiliated with such Investor, the foregoing shall not prevent such Investor from tendering, exchanging, exercising voting rights in respect of, or otherwise exercising rights in respect of and opting to receive the benefit of such transactions in the same manner as offered to other holders of the Company's Common Stock not participating in the "group" (as such term is used in Section 13(d)(3) of the Exchange Act) conducting such transaction; or

(iii) any "solicitation" of "proxies" (as such terms are used in the proxy rules of the SEC, but without regard to the exclusion set forth in Section 14a-1(l)(2)(iv) from the definition of "solicitation") with respect to the Company or any of its Affiliates or any action resulting in the Stockholder, or any of its controlled Affiliates, or such other Person becoming a "participant" in any "election contest" (as such terms are used in the proxy rules of the SEC) with respect to the Company or any of its Subsidiaries.

(b) propose any matter for submission to a vote of stockholders of the Company or any of its Affiliates;

(c) seek election to, seek to place a representative on, or seek the removal of, any director of the Company or any of its Affiliates;

(d) except as contemplated by this Agreement and except for proxies granted to Affiliates of the Stockholder (and their respective employees, attorneys and agents (other than Persons who are

attorneys and agents solely as a result of the granting of such proxy), grant any proxy with respect to any Capital Stock of the Company;

(e) form, join or participate in a "group" (as such term is used in Section 13(d)(3) of the Exchange Act) with respect to any Capital Stock of the Company, or deposit any Capital Stock of the Company in a voting trust or, except as contemplated by this Agreement, subject any Capital Stock of the Company to any arrangement or agreement with respect to the voting of such Capital Stock or other agreement having similar effect;

(f) take any other actions to seek to affect the control of the Company Board or the management of the Company or any of its Affiliates, including publicly suggesting or announcing its willingness to engage in or have another Person engage in a transaction that could reasonably be expected to result in a business combination or to increase the percentage of Capital Stock owned by the Investor; *provided* that from and after the first anniversary of this Agreement, each Investor and its Affiliates shall not be prohibited by this clause (g) from acquiring Capital Stock of the Company;

(g) enter into any discussions, negotiations, arrangements or understandings with any Persons with respect to any of the foregoing, or advise, assist, encourage or seek to persuade others to take any action with respect to any of the foregoing; or

(h) disclose to any Person (other than an Affiliate) or otherwise induce, encourage, discuss or facilitate, any intention, plan or arrangement inconsistent with the foregoing or with the restrictions on transfer set forth in Article II or form any such intention which would result in the Company or any of its Affiliates or any Investor or any of its Affiliates being required to make any such disclosure in any filing with a Governmental Authority or being required to make a public announcement with respect thereto;

provided , however , that notwithstanding the foregoing restrictions, each Investor shall be entitled to make any disclosure required by securities or similar disclosure laws, as advised in writing by outside counsel reasonably familiar with such matters; *provided , further* that the Stockholder shall not be prohibited from requesting that the Company Board consider nominating a designee of the Stockholder for election to the Company Board and, if so elected, from assisting such designee in the conduct of such designee's office and the fulfillment of such designee's fiduciary duties in such office. Subject to Section 7.1, nothing in this Agreement, including this Section 6.2, will prohibit, limit, condition or delay each Investor's ability (i) to vote (including by proxy) or consent with respect to any matter properly brought before stockholders of the Company for a vote or consent, or (ii) to tender or exchange its shares); *provided , further* , that the Stockholder shall not be required to take any such action as a result of the request of the Company or a resolution of the Company Board, but, if so requested, prior to receipt of written notice from the Company to the contrary, the Stockholder may continue to take such actions that are reasonably related to the matters addressed in, reasonably in furtherance of, and not in conflict with, such request or resolution and, if available, the publicly stated position of the Company with respect to the matters addressed therein.

SECTION 6.3 Termination of Standstill . The provisions of this Article VI (except for the last sentence of Section 6.1 hereof) shall terminate in respect of any individual Investor in the event (i) the Company Board approves a tender offer for 50% or more of the outstanding Capital Stock of the Company (*provided* that if such offer is withdrawn or expires without being consummated, this Article VI shall be reinstated),(ii) it is publicly disclosed that Capital Stock representing 33-1/3% or more of the voting power of the Company's stockholders have been acquired by any Person (including any group of Persons acting in concert) other than such Investor and its Affiliates, (iii) of (a) the filing by the Company of a voluntary petition in bankruptcy; (b) the entry of an order of relief in any bankruptcy or insolvency proceeding in respect of the Company or the entry of an order that the Company is a bankrupt or insolvent; or (c) any involuntary proceeding seeking liquidation, reorganization or other relief against the Company under any bankruptcy, insolvency or other similar law now or hereafter in effect that has not been dismissed 60 days after the commencement thereof, (iv) of the public announcement of any merger, consolidation, share exchange, business combination, recapitalization, restructuring, liquidation, dissolution or other extraordinary transaction, in each case involving a change of control of the Company or substantially all of its business or any purchase of all or substantially all of the assets of the Company or substantially all of its business, in each case conducted by any Person (including any group of Persons acting in concert) other than such Investor and its Affiliates, (v) solely with respect to the Stockholder Parties, the Stockholder Parties' aggregate Adjusted Ownership has not exceeded 9.9% for 120 consecutive days or (vi) of the first anniversary of the first date upon which the Warrants may be exercised in accordance with their terms.

ARTICLE VII

VOTING LIMITATION

SECTION 7.1 Limitation on Voting . At any meeting of the Company's stockholders, however called, including any adjournment or postponement thereof, or in connection with any written consent of the Company's stockholders, unless otherwise consented to by the Company Board:

(a) each Investor shall, and shall cause its controlled Affiliates to, appear at each such meeting or otherwise cause all Capital Stock of the Company beneficially owned or owned of record by such Investor or its controlled Affiliates entitled to vote on any matter at such meeting to be duly counted as present thereat for purposes of calculating a quorum (to the extent such shares of Capital Stock may be so counted);

(b) with respect to any proposals requiring approval by the affirmative vote of a percentage of the votes cast in respect of such proposal, in person or by proxy, at such meeting, each Investor shall, and shall cause its controlled Affiliates to, vote, or cause to be voted, collectively, that number of shares of its and their Capital Stock entitled to be voted in respect of such proposal representing no more than the Voting Threshold in respect of such proposal, and shall cause any remaining shares of its and their Capital Stock entitled to vote thereon to be properly withheld (but not cast as abstaining votes) from voting on such matter (such remaining shares, the " Withheld Shares ");

(c) with respect to any proposals at any such meeting requiring approval by the affirmative vote of a percentage of the outstanding shares of Capital Stock or of aggregate voting power entitled to vote in respect of such proposal, in person or by proxy, at such meeting, or in respect of any written consent of the Company's stockholders, or any proposal in respect of which the provisions of Section 7.1(b) cannot or do not apply, each Investor shall, and shall cause its controlled Affiliates to, vote, or cause to be voted, all shares of its and their Capital Stock entitled to be voted in respect of such proposal in excess of the Voting Threshold (such excess shares, the " Excess Shares ") in the same proportion as all other votes cast on such proposal (including any votes cast by such Investor and its controlled Affiliates other than Excess Shares).

SECTION 7.2 No Inconsistent Agreements . Each Investor hereby represents, warrants, covenants and agrees that, except for this Agreement, the neither such Investor nor any of its controlled Affiliates (a) have entered into, and none shall enter into at any time while this Agreement remains in effect, any voting agreement or voting trust with respect to such Investor's or its controlled Affiliates' Capital Stock of the Company and (b) have granted, and none shall grant at any time while this Agreement remains in effect, a proxy, consent or power of attorney with respect to such Investor's or its controlled Affiliates' Capital Stock of the Company that is inconsistent with this Agreement.

SECTION 7.3 Termination of Voting Rights . The provisions of this Article VII shall terminate in respect of any individual Investor in the event (i) the Company Board approves a tender offer for 50% or more of the outstanding Capital Stock of the Company (*provided* that if such offer is withdrawn or expires without being consummated, this Article VII shall be reinstated), (ii) it is publicly disclosed that Capital Stock representing 33-1/3% or more of the voting power of the Company's stockholders has been acquired by any Person (including any group of Persons acting in concert) other than such Investor and its Affiliates, (iii) of (a) the filing by the Company of a voluntary petition in bankruptcy; (b) the entry of an order of relief in any bankruptcy or insolvency proceeding in respect of the Company or the entry of an order that the Company is bankrupt or insolvent; or (c) any involuntary proceeding seeking liquidation, reorganization or other relief against the Company under any bankruptcy, insolvency or other similar law now or hereafter in effect that has not been dismissed 60 days after the commencement thereof, (iv) of the public announcement of any merger, consolidation, share exchange, business combination, recapitalization, restructuring, liquidation, dissolution or other extraordinary transaction, in each case involving a change of control of the Company or substantially all of its business or any purchase of all or substantially all of the assets of the Company or substantially all of its business, in each case conducted by any Person (including any group of Persons acting in concert) other than such Investor and its Affiliates, or (v) solely with respect to the Stockholder Parties, upon the date that the Stockholder Parties' aggregate Adjusted Ownership has not exceeded 9.9% for 120 consecutive days.

ARTICLE VIII

MISCELLANEOUS

SECTION 8.1 Governing Law; Venue . This Agreement shall be deemed to be made in and in all respects shall be interpreted, construed and governed by and in accordance with the laws of the State of New York (except to the extent that mandatory provisions of Delaware law are applicable). The parties hereby irrevocably submit to the jurisdiction of the courts of the State of New York and the federal courts of the United States of America located in the State of New York solely for the purposes of any suit, action or other proceeding between any of the parties hereto arising out of this Agreement or any transaction contemplated hereby, and hereby waive, and agree to assert, as a defense in any action, suit or proceeding for the interpretation or enforcement hereof, that it is not subject thereto or that such action, suit or proceeding may not be brought or is not maintainable in said courts or that the venue thereof may not be appropriate or that this Agreement may not be enforced in or by such courts, and the parties hereto irrevocably agree that all claims with respect to such action or proceeding shall be heard and determined in such New York state or federal court. The parties hereby consent to and grant any such court jurisdiction over the person of such parties and over the subject matter of such dispute and agree that mailing of process or other papers in connection with any such action or proceeding in the manner provided in Section 8.5 or in such other manner as may be permitted by law, shall be valid and sufficient service thereof. **EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.**

SECTION 8.2 Attorney's Fees . In the event of any action of any kind between the parties hereto with respect to this Agreement, the prevailing party shall be entitled to recover from the other party its reasonable attorney's fees and related costs, expenses and disbursements incurred in connection with such action.

SECTION 8.3 Termination . The provisions of Article III and Article IV of this Agreement shall terminate upon the earliest to occur of (a) the date when no Registrable Securities remain outstanding, (b) June 30, 2017 and (c), solely with respect to any individual Investor, when such Investor no longer holds any Registrable Securities or Warrants. The remaining provisions of this agreement shall terminate in accordance with their terms, or, if no such termination is provided for hereunder, shall survive until terminated by written agreement of each of the parties hereto. Nothing herein shall relieve any party from any liability for the breach of any provisions set forth in this Agreement.

SECTION 8.4 Entire Agreement; Amendments . This Agreement and the Transaction Agreements constitute the full and entire understanding and agreement between the parties with regard to the subjects hereof and thereof, and no party shall be liable or bound to any other party in any manner by any warranties, representations or covenants except as specifically set forth herein or therein. Except as expressly provided herein, neither this Agreement nor any term hereof may be amended, waived, discharged or terminated other than by a written instrument signed by the party against whom enforcement of any such amendment, waiver, discharge or termination is sought.

SECTION 8.5 Notices . Any notice, request, instruction or other document to be given hereunder by any party to the other will be in writing and will be deemed to have been duly given (a) on the date of delivery if delivered personally or by telecopy or facsimile, upon confirmation of receipt, (b) on the first Business Day following the date of dispatch if delivered by a recognized next-day courier service, or (c) on the third Business Day following the date of mailing if delivered by registered or certified mail, return receipt requested, postage prepaid. All notices hereunder shall be delivered as set forth below, or pursuant to such other instructions as may be designated in writing by the party to receive such notice.

If to the Stockholder to it at:

Paulson & Co. Inc.
1251 Avenue of the Americas, 50 th Floor
New York, New York 10020
Attn: Mr. Michael Waldorf
Telephone: (212) 956-2221
Fax: (212) 351-5886

with a copy to (which copy alone shall not constitute notice):

Kleinberg, Kaplan, Wolff & Cohen, P.C.
551 Fifth Avenue, 18 th Floor
New York, New York 10176
Attn: Stephen M. Schultz, Esq.

Telephone: (212) 986-6000
Fax: (212) 986-8866

If to the Company:

Conseco, Inc.
11825 North Pennsylvania Street
Carmel, Indiana 46032
Attn: General Counsel
Telephone: (317) 817-2889
Fax: (317) 817-2826

with a copy to (which copy alone shall not constitute notice):

Simpson Thacher & Bartlett LLP
425 Lexington Avenue
New York, New York 10017
Attn: Gary I. Horowitz, Esq.
Telephone: (212) 455-2000
Fax: (212) 455-2502

SECTION 8.6 Specific Performance . The Company and the Stockholder acknowledge and agree that irreparable damage to the other party would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that each party shall be entitled to an injunction, injunctions or other equitable relief, without the necessity of posting a bond, to prevent or cure breaches of the provisions of this Agreement and to enforce specifically the terms and provisions hereof, this being in addition to any other remedy to which the parties may be entitled by law or equity.

SECTION 8.7 Delays or Omissions . It is agreed that no delay or omission to exercise any right, power or remedy accruing to any party, upon any breach, default or noncompliance by another party under this Agreement, shall impair any such right, power or remedy, nor shall it be construed to be a waiver of any such breach, default or noncompliance, or any acquiescence therein, or of or in any similar breach, default or noncompliance thereafter occurring. It is further agreed that any waiver, permit, consent or approval of any kind or character on the part of any party hereto of any breach, default or noncompliance under this Agreement or any waiver on such party's part of any provisions or conditions of this Agreement, must be in writing and shall be effective only to the extent specifically set forth in such writing. All remedies, either under this Agreement, by law, or otherwise afforded to any party, shall be cumulative and not alternative.

SECTION 8.8 No Third Party Beneficiaries . Other than as set forth in Section 4.4, nothing in this Agreement, expressed or implied, is intended to confer upon any person, other than the parties hereto or their respective successors, any rights, remedies, obligations or liabilities under or by reason of this Agreement.

SECTION 8.9 Successors, Assigns; Transferees . This Agreement shall bind and inure to the benefit of and be enforceable by the parties hereto and their respective successors and permitted assigns and transferees. Except as expressly provided herein, this Agreement may not be assigned by any party hereunder except by operation of law or with the prior written consent of the Company, in the case of any assignment by an Investor, or of the Stockholder, in the case of the Company, except that an Investor hereunder may assign the rights to cause the Company to register any Registrable Securities that such Investor Transfers to a transferee pursuant to and in accordance with this Agreement (but, for so long as such Investor holds Equity Securities of the Company, no such Transfer or assignment shall relieve such Investor of its obligations hereunder), if such transferee (a) (i) acquires at least 10% of the Registrable Securities (other than convertible Indebtedness issued in connection with the Company Refinancing) pursuant to such transfer and (ii) as a result of such acquisition, beneficially owns at least 10% of the Common Stock of the Company (excluding convertible Indebtedness issued in connection with the Company Refinancing) or (b) is an Affiliate of the Stockholder (a transferee described in clause (a), an " Unaffiliated Assignee ", a transferee described in clause (b), an " Affiliated Assignee ", and collectively, the " Permitted

Assignees "), in each case subject to the succeeding sentence. Any purported Permitted Assignee shall agree to be bound by and subject to the obligations attributable to an Investor and of a holder of Registrable Securities found in Articles I, II, III, IV, VI, VII and VIII of this Agreement but excluding any rights and obligations attributable solely to the Stockholder or, in the case of an Unaffiliated Assignee, to an Affiliated Assignee) and, solely with respect to purported Permitted Assignees that are Affiliates of the Stockholder, Article V hereof, and as a condition to such transferee's receipt of such shares and such rights, such transferee, if not already bound in writing by such provisions hereof, shall execute an agreement in form and substance reasonably satisfactory to the Company, agreeing to be bound by such provisions hereof. For avoidance of doubt, however, no such transfer and assignment shall (i) act to duplicate any limited rights to which the Stockholder is otherwise entitled hereunder, including, without limitation, the right to deliver no more than three Demand Notices pursuant to Section 3.2 hereunder or (ii) act to assign or transfer any of the rights and obligations set forth in Article V hereof except in respect of a transfer and assignment to a Permitted Assignee who is also an Affiliate of the Stockholder.

SECTION 8.10 Expenses . Except as otherwise expressly provided herein, each of the Company and the Stockholder shall bear its own respective expenses incurred on its behalf with respect to this Agreement.

SECTION 8.11 Payment Obligations . Notwithstanding anything to the contrary herein, the Company will make any payment required to be made by it pursuant to the terms of this Agreement only to the extent not prohibited by any material agreement of the Company in effect on the date hereof, and any failure to make a payment otherwise so required hereunder shall not constitute a default or breach of the Company's obligations hereunder to the extent so prohibited by any such material agreement.

SECTION 8.12 Counterparts . This Agreement may be executed in any number of counterparts, each of which shall be enforceable against the parties actually executing such counterparts, and all of which together shall constitute one instrument. This Agreement may be executed by facsimile signature(s).

SECTION 8.13 Severability . In the event that any provision of this Agreement becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable or void, this Agreement shall continue in full force and effect without said provision; *provided* that no such severability shall be effective if it materially changes the economic benefit of this Agreement to any party..

SECTION 8.14 Titles and Subtitles . The titles and subtitles used in this Agreement are used for convenience only and are not considered in construing or interpreting this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed the INVESTOR RIGHTS AGREEMENT as of the date set forth in the first paragraph hereof.

CONSECO, INC.
By: /s/ Edward J. Bonach
Name: Edward J. Bonach
Title: Executive Vice President and Chief Financial Officer

PAULSON & CO. INC., on behalf of the several investment funds and accounts managed by it
By: /s/ Michael Waldorf
Name: Michael Waldorf
Title: Managing Director

EXHIBIT 9

October 14, 2009

Morgan Stanley & Co. Incorporated
c/o Morgan Stanley & Co. Incorporated
1585 Broadway
New York, NY 10036

Ladies and Gentlemen:

The undersigned understands that Morgan Stanley & Co. Incorporated **("Morgan Stanley"** or the **"Initial Purchaser")** proposes to enter into a Purchase Agreement (the **"Purchase Agreement")** with Conseco, Inc., a Delaware corporation (the **"Company")** , in connection with the proposed offering (the **"Offering")** of up to $293.0 million aggregate principal amount of the Company's 7.0% Convertible Senior Debentures due 2016 (the **"Securities")** to be issued, in one or more series, pursuant to the provisions of an Indenture to be entered into between the Company and The Bank of New York Mellon Trust Company, N. A., as trustee. Capitalized terms used and not otherwise defined herein shall have the meanings attributed to them in the Purchase Agreement. The Securities will be convertible into shares of common stock, par value $0.01, of the Company **("Common Stock")** .

To induce the Initial Purchaser to continue its efforts in connection with the Offering, the undersigned hereby agrees that, without the prior written consent of Morgan Stanley, it will not, during the period commencing on the date hereof and ending 90 days after the date of the Purchase Agreement, (1) offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, lend, or otherwise transfer or dispose of, directly or indirectly, any shares of Common Stock or any securities convertible into or exercisable or exchangeable for Common Stock (including, without limitation, the Company's 3.50% Convertible Debentures due September 30, 2035 *),* or (2) enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of the Common Stock, whether any such transaction described in clause (1) or (2) above is to be settled by delivery of Common Stock or such other securities, in cash or otherwise.

The foregoing shall not apply to (a) transactions relating to shares of Common Stock or other securities acquired in open market transactions after the date of the Purchase Agreement, (b) transfers of shares of Common Stock or any security convertible into Common Stock as a bona fide gift, (c) transfers to an immediate family member of the undersigned, (d) transfers to any trust for the direct or indirect benefit of the undersigned, provided that the trustee of the trust agrees to be bound in writing by the restrictions set forth herein, and provided further that any such transfer shall not involve a disposition for value, (e) transfers to an affiliate (as that term is defined in Rule 405 under the Securities Act of 1933, as amended) of the undersigned, (f) distributions of shares of Common Stock or any security convertible into Common Stock to limited partners or stockholders of the undersigned, *provided* that in the case of any transfer or distribution pursuant to clause (b), (c), (e) or (f), each donee, distributee or transferee shall sign and deliver a lock-up letter substantially in the form of this letter, (g) the establishment of a trading plan pursuant to Rule 10b5-1 under the Exchange Act for the transfer of shares of Common Stock, *provided* that such plan does not provide for the transfer of Common Stock during the 90-day restricted period, (h) transfers in connection with mergers, tender offers, exchange offers or business combinations, or (i) transfers or sales to reduce Paulson's beneficial ownership in common stock to 9.9 percent.

For purposes of this letter agreement, **"immediate family"** shall mean any relationship by blood, marriage or adoption, not more remote than first cousin. In addition, notwithstanding the foregoing, if the undersigned is a corporation, the corporation may transfer the capital stock of the Company to any wholly-owned subsidiary of such corporation; *provided,* that in any such case, (i) it shall be a condition to the transfer that the transferee execute a letter agreement stating that the transferee is receiving and holding such capital stock subject to the provisions of this letter agreement and (ii) there shall be no further transfer of such capital stock except in accordance with this letter agreement, and provided further that any such transfer shall not involve a disposition for value.

In addition, the undersigned agrees that, without the prior written consent of Morgan Stanley, it will not, during the period commencing on the date hereof and ending 90 days after the date of the Purchase Agreement,

make any demand for or exercise any right with respect to, the registration of any shares of Common Stock or any security convertible into or exercisable or exchangeable for Common Stock, *provided*, that notwithstanding the foregoing, the undersigned shall be entitled to enforce its rights under the Investor Rights Agreement to be entered into between the Company and Paulson & Co., Inc., but such enforcement right shall not be construed to permit the undersigned to engage in any transaction prohibited by the second paragraph in this letter during the period commencing on the date hereof and ending 90 days after the date of the Purchase Agreement. The undersigned also agrees and consents to the entry of stop transfer instructions with the Company's transfer agent and registrar against the transfer of the undersigned's shares of Common Stock except in compliance with the foregoing restrictions.

The undersigned understands that the Company and the Initial Purchaser are relying upon this letter agreement in proceeding toward consummation of the Offering. The undersigned further understands that this letter agreement is irrevocable and shall be binding upon the undersigned's heirs, legal representatives, successors and assigns.

The undersigned understands that, if the Purchase Agreement does not become effective prior to October 23, 2009, or if the Purchase Agreement (other than the provisions thereof which survive termination) shall terminate or be terminated prior to payment for and delivery of the Securities to be sold thereunder, the undersigned shall be released from all obligations under this letter agreement.

Whether or not the Offering actually occurs depends on a number of factors, including market conditions. Any Offering will only be made pursuant to the Purchase Agreement, the terms of which are subject to negotiation between the Company and the Initial Purchaser.

This letter agreement shall be governed by and construed in accordance with the laws of the State of New York.

Very truly yours,

/s/ Paulson & Co. Inc.

PAULSON & CO. INC., on behalf of the several investment funds and accounts managed by it

/s/ Michael Waldorf

Michael Waldorf, Managing Director