CNO FINANCIAL GROUP, INC.

FORM 8-K
(Current report filing)

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

FORM 8-K

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

Date of Report (Date of earliest event reported): October 13, 2009

CONSECO, INC.

(Exact Name of Registrant as Specified in Charter)

Delaware	**001-31792**	**75-3108137**
(State or Other Jurisdiction of Incorporation)	(Commission File Number)	(I.R.S. Employer Identification No.)

11825 North Pennsylvania Street
Carmel, Indiana 46032
(Address of Principal Executive Offices) (Zip Code)

(317) 817-6100
(Registrant's telephone number, including area code)

Not Applicable
(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

☑ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

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Item 1.01. Entry into a Material Definitive Agreement .

On October 13, 2009, Conseco, Inc. (the " Company ") entered into a Stock and Warrant Purchase Agreement (the " Stock and Warrant Purchase Agreement ") with Paulson & Co. Inc. on behalf of the several investment funds and accounts managed by it (" Paulson ") to issue and sell 16.4 million shares (the " Shares ") of the Company's common stock, par value $0.01 per share (the " Common Stock ") and warrants to purchase, upon exercise, an aggregate of 5.0 million shares of the Company's 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 " and such transaction, the " Private Placement ")). Paulson will pay an aggregate purchase price of $77.9 million for the Securities (the " Purchase Price "). The Company and Paulson have also agreed to enter into an Investor Rights Agreement (the " Investor Rights Agreement ") concurrently with, and as a condition to, the closing of the Private Placement. Upon the closing of the Private Placement, Paulson is expected to own approximately 9.9% of the outstanding shares of Common Stock, including shares of Common Stock Paulson has previously acquired in open market transactions.

The completion of the Private Placement is contingent upon satisfaction or waiver of certain conditions described below under "Stock and Warrant Purchase Agreement—Conditions to Closing," including the consummation of a tender offer (the " Tender Offer ") to acquire any or all of the Company's 3.50% Convertible Debentures due September 30, 2035 (the " Existing Convertible Debentures "), of which $293.0 million aggregate principal amount is outstanding as of the date hereof. The Company expects to finance its purchase of the Existing Convertible Debentures in the Tender Offer with the proceeds of the sale (the " Debentures Offering ") of up to $293.0 million aggregate principal amount of its new 7.0% Convertible Senior Debentures due 2016 (the " New Convertible Debentures ") in a private offering that is exempt from the registration requirements of the Securities Act of 1933, as amended (the " Securities Act "), as further described in the press release announcing the Private Placement attached as Exhibit 99.1 hereto. The Stock and Warrant Purchase Agreement provides that the Private Placement will be completed on the business day that all of the closing conditions contained in the Stock and Warrant Purchase Agreement have been satisfied or waived. No assurance can be given that the Private Placement will close when expected, with the terms described herein, or at all.

The Private Placement and the issuance in the Debentures Offering of the New Convertible Debentures, which will be convertible into shares of Common Stock, will result in the Company's issuing equity securities in excess of 20% of the currently outstanding equity securities of the Company, which would generally require stockholder approval under Section 312.03 of the New York Stock Exchange (the " NYSE ") Listed Company Manual (the " Manual "). The Company intends to conduct the transaction pursuant to Section 312.05 of the Manual, which provides an exception from the requirements of Section 312.03 of the Manual where the delay involved securing stockholder approval would seriously jeopardize the financial viability of the listed company (the " NYSE Exception "). In accordance with Section 312.05 of the Manual, the audit committee of the Company's board of directors has expressly approved the Company's reliance on the NYSE Exception, and the NYSE has approved the Company's

application to rely on the NYSE Exception, in connection with the Private Placement and the issuance of the New Convertible Debentures in the Debentures Offering. Pursuant to the NYSE Exception, the Company will mail a letter to its stockholders describing the Private Placement and the issuance of the New Convertible Debentures in the Debentures Offering no less than 10 days prior to the issuance of the Securities or the New Convertible Debentures.

In connection with its review and approval of the Private Placement and the issuance of the New Convertible Debentures, the Company's board of directors considered the impact of the Private Placement and the issuance of the New Convertible Debentures on the Company's net operating loss carryforwards (the " NOLs "), and determined, after consultation with its outside tax advisors, that the Private Placement and the issuance of the New Convertible Debentures will not limit the Company's ability to use its NOLs to offset taxable income in 2009 and in future years, and the board deemed Paulson an "Exempted Entity," and therefore not an "Acquiring Person," under the Section 382 Rights Agreement, dated as of January 20, 2009, between the Company and American Stock Transfer & Trust Company (the "Section 382 Rights Agreement"), solely with respect to (i) shares of Common Stock and securities convertible into Common Stock and exchangeable or exercisable for Common Stock owned by Paulson on the date of the Stock and Warrant Purchase Agreement, (ii) the Shares, (iii) the Common Stock issuable upon exercise of the Warrants and (iv) the Common Stock issuable upon conversion of any New Convertible Debentures acquired by Paulson. Because the exemption from the provisions of the Company's Section 382 Rights Agreement granted by the Company's board of directors is limited in the foregoing manner, any subsequent acquisition of Common Stock by Paulson would be subject to the provisions of the 382 Rights Agreement, absent further consideration and approval by the Company's board of directors.

Stock and Warrant Purchase Agreement

Representations and Warranties

The Company made various representations and warranties to Paulson in the Stock and Warrant Purchase Agreement with respect to the Company, its business, its compliance with laws and the issuance of the Securities. Among these, the Company has provided a representation and warranty that no material adverse effect on the Company and its Subsidiaries has occurred since December 31, 2008, subject to customary exceptions, including, but not limited to, changes in market conditions, changes in law and other matters applicable to entities in the Company's line of business.

Paulson also made customary representations and warranties to the Company in the Stock and Warrant Purchase Agreement about itself, its compliance with securities laws, its current ownership of Common Stock and its ability to fund the Purchase Price for the Securities.

Covenants and Additional Agreements

The Stock and Warrant Purchase Agreement contains various covenants, including, among others, covenants relating to the conduct of the Company's business prior to closing, and its agreement to forbear from taking certain actions without Paulson's consent (which consent shall not be unreasonably withheld or delayed), including, among other things, paying dividends,

issuing securities, recapitalizing, and incurring indebtedness for borrowed money. The Company has also agreed to use its reasonable best efforts to consummate the Debentures Offering, to consummate the Tender Offer, and to consummate a public offering of its Common Stock for gross proceeds of not less than $200.0 million within 120 days of the consummation of the Tender Offer, to the extent that such offering will not jeopardize or endanger the Company's ability to use its existing NOLs.

Based in part upon representations of Paulson to the Company in the Stock and Warrant Purchase Agreement, the Company does not anticipate that any approvals of insurance regulatory authorities in the United States will be required to complete the Private Placement, and neither party has agreed to seek such approvals if ultimately required. However, the Company and its affiliates have agreed to cooperate with Paulson in connection with obtaining regulatory approvals should Paulson decide to seek any such approvals. Paulson has agreed not to knowingly take any action that is reasonably likely to result in such approvals being required prior to the closing of the Private Placement.

For as long as Paulson and its affiliates beneficially own or own of record 5% or more of the voting stock of the Company, the Company has agreed to obtain Paulson's consent prior to entering into any transaction (other than the sale of the entire company) that would result in the loss of or limit the Company's use of its NOLs, unless the Company's board of directors determines in good faith that such a transaction is reasonably likely to provide a net benefit to the Company and its stockholders.

Indemnity

The Company has agreed in the Stock and Warrant Purchase Agreement to indemnify Paulson and its affiliates for inaccuracies in and breaches of representations and warranties, breaches of covenants and third party claims arising out the issuance of, or Paulson's status as an owner of, the Securities or deemed control of or ability to influence the Company. The Company's indemnification obligation for breaches of representations and warranties, which generally survive for three years, and covenants, which survive according to their terms, are capped at the Purchase Price, and are subject to a $1.0 million aggregate threshold prior to which no indemnity is required, and a $100,000 de minimis threshold before any individual claim or series of related claims may be made for indemnification. The Company is not liable for consequential or punitive damages unless Paulson and its affiliates are liable to a third party for such damages.

Conditions to Closing

The obligations of the Company and Paulson to close the Private Placement are subject to fulfillment or waiver of various conditions, including that:

- no governmental authority of competent jurisdiction shall have enacted or issued any regulation, injunction or other order (whether temporary, preliminary or permanent) that restrains, enjoins or otherwise prohibits the closing;

- a purchase agreement between the Company and Morgan Stanley & Co. Incorporated with respect to the New Convertible Debentures offered in the Debentures Offering remains in effect;
- the parties have received all required governmental approvals;
- the consummation of the Debentures Offering has occurred or will concurrently occur, and the Company shall concurrently consummate the Tender Offer; and
- the NYSE Exception remains in effect.

In addition, Paulson's obligation to acquire the Securities is subject to the fulfillment, or waiver by Paulson, of the following conditions:

- the Company's representations and warranties are true and correct as of the date of closing and the Company has provided an officer's certificate to that effect;
- the Company has performed or complied in all material respects with all of its covenants and agreements;
- Simpson Thacher & Bartlett LLP has provided a legal opinion with respect to the validity of the Securities and certain other matters;
- the Company has provided a legal opinion with respect to its material agreements and certain other matters.
- the Common Stock has not been delisted by the NYSE nor has trading of the Common Stock been suspended by the NYSE;
- the Company's repayment obligations under the Second Amended and Restated Credit Agreement, dated October 10, 2006 (as amended by Amendments No. 1 and 2, dated as of June 12, 2007 and March 30, 2009, respectively) have not been accelerated; there shall not have occurred and be continuing a "Default" or "Event of Default" under that credit agreement; and, pro forma for the transactions contemplated by the Stock and Warrant Purchase Agreement and the Debentures Offering, the Tender Offer and the proposed registered offering of Common Stock, as of September 30, 2009, the Company shall be in compliance with the credit agreement's financial covenants; and
- the Company has entered into the Investor Rights Agreement.

The Company's obligation to issue and sell the Securities is subject to fulfillment, or waiver by the Company, of the following conditions:

- Paulson's representations and warranties are true and correct as of the date of closing and Paulson has provided an officer's certificate to that effect;

- Paulson has performed or complied in all material respects with all of its covenants and agreements; and
- Paulson has entered into the Investor Rights Agreement.

Termination

The Stock and Warrant Purchase Agreement may be terminated by mutual consent, or by either party if:

- the closing of Private Placement does not occur by October 15, 2010;
- the Private Placement is prohibited by law;
- the other party has materially breached the agreement in a manner that cannot be cured, or is not cured within 30 days after notice of such breach; or
- the NYSE Exception is withdrawn or rendered ineffective and is not replaced within 10 business days.

Expenses

The Company has agreed in the Stock and Warrant Purchase Agreement to reimburse Paulson for its reasonable costs and expenses incurred in the transactions contemplated by the Stock and Warrant Purchase Agreement, including reasonable legal fees and disbursements. The Company has also agreed to pay Paulson's costs of making certain regulatory filings in the future upon the exercise or conversion of the Company's securities, subject to certain limitations.

The foregoing description of the Stock and Warrant Purchase Agreement in this report is a summary only and is qualified in its entirety by the terms of the Stock and Warrant Purchase Agreement, which is attached hereto as Exhibit 10.1, and incorporated herein by reference.

Investor Rights Agreement

As a condition to, and concurrently with, the closing of the Private Placement, the Company and Paulson will enter into an Investor Rights Agreement establishing certain rights and obligations of Paulson, its affiliates and certain permitted assignees (collectively, " Rights Holders ").

Restrictions on Transfer .

In addition to restrictions on transfers in violation of securities laws, the parties will agree that the Securities and Common Stock issuable upon exercise of the Warrants and upon conversion of New Convertible Debentures held by the Rights Holders, if any (together, the " Restricted Securities ") may not be transferred during a lock-up period ending on the earlier of the 90 th day after the closing of the Company's anticipated public offering of Common Stock and the date that is 6 months after the closing of the Private Placement, subject to certain exceptions. Without the consent of the Company's board of directors, holders of the Restricted Securities will also be prohibited from transferring the Restricted Securities to any person or group if such transfer

would cause such person or group to become a “5-percent shareholder” of the Company within the meaning of Treasury Regulation Section 1.382-2T(g), subject to certain limited exceptions.

Registration Rights .

The Company has agreed to file and maintain, at the Company’s expense, a shelf registration statement covering the resale of (i) the Securities, (ii) the Common Stock issuable upon exercise of the Warrants, (iii) to the extent held by Paulson and its permitted assignees, if any, the New Convertible Debentures, (iv) to the extent held by Paulson and its permitted assignees, if any, the Common Stock issuable upon conversion of the New Convertible Debentures and (v) other shares of Common Stock acquired by Paulson and its affiliates and not otherwise subject to registration rights (collectively, the “ Registrable Securities ”) and will have the ability to suspend distribution of the Registrable Securities in certain circumstances. In the event the Company fails to comply with certain registration obligations under the Investor Rights Agreement, the Company will be obligated to make payments of liquidated damages to the holders of the Registrable Securities, up to a maximum amount of $8 million per year. In addition, Rights Holders will have the ability to demand up to three total underwritten offerings, and to participate as incidental (“piggy-back”) registrants in the Company’s public offerings following the lock-up period.

The registration rights will terminate upon the earliest to occur of:

- the date when no Registrable Securities remain outstanding;
- June 30, 2017; and
- solely with respect to any individual holder of any Registrable Securities, when such person no longer holds any Registrable Securities or when the holder can trade its Registrable Securities without substantial limitations under exemptions from the registration requirements of the Securities Act of 1933, as amended.

Preemptive Rights

Subject to limited exceptions, until Paulson sells any of its Shares, Paulson and its affiliates will be afforded the right to participate, pro rata and on the same terms and conditions offered to others, in any offering of Company securities to the extent required to maintain their ownership interest in the Company. The shares of Common Stock issuable upon exercise of the Warrants, any shares of Common Stock otherwise acquired by Paulson in the future and, to the extent held by Paulson and its permitted assignees, if any, the shares of Common Stock issuable upon conversion of the New Convertible Debentures are excluded from such preemptive rights.

Standstill

For one year following the closing of the Private Placement, Rights Holders will agree to refrain from acquiring beneficial ownership of the Company’s equity to the extent that such acquisition would result in their holding over 19.9% of the voting securities of the Company, except under limited circumstances.

Rights Holders will also agree to refrain from taking certain actions with respect to the Company's ownership and management, including, among other things,

- conducting or participating in transactions to acquire control, either by accumulation of shares, solicitation of proxies, or otherwise,
- proposing matters for stockholder consideration,
- seeking to nominate or remove any director of the Company or any or its affiliates,
- granting proxies with respect to the vote of any of the equity securities of the Company,
- forming, joining or participating in a "group" (as such term is used in Section 13(d)(3) of the Securities and Exchange Act of 1934, as amended) with respect to any equity securities of the Company, or entering into a voting trust or voting agreement, and
- taking any other action to seek to control the Company, its board or its management, including through public statements.

These forbearances terminate:

- if the Company's board of directors approves a tender offer for 50% or more of the outstanding equity securities of the Company (subject to reinstatement if withdrawn);
- if it is publicly disclosed that equity securities representing 33-1/3% or more of the voting power of the Company's stockholders have been acquired by an unaffiliated person or group;
- if specified events of insolvency or bankruptcy occur;
- if a change of control or similar transaction is announced;
- solely with respect to Paulson and its affiliates, if their aggregate beneficial ownership of voting securities of the Company (on a fully diluted basis) has not exceeded 9.9% of the outstanding voting securities of the Company for 120 consecutive days; or
- on the first anniversary of the first date upon which the Warrants may be exercised.

Voting

At any meeting of the Company's stockholders or in connection with any written consent of the Company's stockholders, unless otherwise consented by the Company's board of directors, Rights Holders will agree, and will cause their affiliates to agree, not to vote shares collectively exceeding 19.9% of the voting power of the Company. In some circumstances, Paulson has agreed to give effect to this limitation by voting shares in excess of 19.9% of the voting power of the Company in the same proportion as all other votes cast on the matter or consented to in writing by the Company's stockholders.

These voting limitations will terminate with respect to any individual Rights Holder if:

- the Company's board of directors approves a tender offer for 50% or more of the outstanding equity securities of the Company (subject to reinstatement if withdrawn);
- it is publicly disclosed that securities representing 33-1/3% or more of the voting power of the Company's stockholders have been acquired by an unaffiliated person or group;
- specified events of insolvency or bankruptcy occur;
- a change of control or similar transaction is announced; or
- solely with respect to Paulson and its Affiliates, their aggregate beneficial ownership of Equity Securities has not exceeded, on an as-converted basis, 9.9% of the outstanding voting securities of the Company for 120 consecutive days.

The foregoing description of the Investor Rights Agreement in this report is a summary only and is qualified in its entirety by the terms of the Form of the Investor Rights Agreement, which is attached hereto as Exhibit 10.2, and incorporated herein by reference.

Description of the Warrants

The terms and conditions of the Warrants will be contained in the certificate evidencing the Warrants expected to be executed and delivered at the closing of the Private Placement.

Prior to June 30, 2013, the Warrants will not be exercisable, except upon the occurrence of certain extraordinary events and change of control transactions with respect to the Company. Commencing on June 30, 2013, the Warrants will be exercisable, in whole or in part, at any time and from time to time, except in circumstances where any limitation on exercise is in effect with respect to a Warrantholder's Warrants. The Warrants will be exercisable at an initial exercise price per share of Common Stock of $7.00 (subject to customary anti-dilution adjustments). The Warrants will expire on December 30, 2016. The exercise price can be paid, at the option of the exercising holder, (i) in cash in an amount equal to the aggregate exercise price of the exercised Warrants, or (ii) by having the Company withhold a number of shares of Common Stock issuable upon exercise that have a market value (based on the closing sale price on the trading day immediately preceding the exercise date) equal to the aggregate exercise price of the exercised Warrants.

The initial exercise price of the Warrants will be subject to customary adjustments upon the occurrence of certain events. The Warrants and the shares of Common Stock issuable upon exercise of the Warrants will generally be subject to the restrictions on transfer set forth in the Investor Rights Agreement.

The foregoing description of the Warrants in this report is a summary only and is qualified in its entirety by the terms of the form of Warrant, which is attached hereto as Exhibit 10.3, and incorporated herein by reference.

Item 3.02. Unregistered Sales of Equity Securities .

The information contained in Item 1.01 is hereby incorporated into this Item 3.02. The Company will issue the Shares, the Warrants, and any shares of Common Stock issued upon exercise of the Warrants in connection with a cash payment of the exercise price in reliance upon the exemption from registration pursuant to Section 4(2) of the Securities Act, and the rules and regulations promulgated thereunder, including Regulation D. The Company relied on this exemption from registration based in part on representations made by Paulson in the Stock and Warrant Purchase Agreement. The Company will issue any shares of Common Stock issued upon exercise of the Warrants in connection with a cashless exercise in reliance upon the exemption from registration pursuant to Section 3(a)(9) of the Securities Act.

Item 7.01. Regulation FD Disclosure.

On October 13, 2009, the Company issued a press release announcing the Private Placement and certain other transactions. The press release is attached hereto as Exhibit 99.1 and is incorporated herein by reference.

The information set forth under "Item 7.01 Regulation FD Disclosure" and Exhibit 99.1 hereto is intended to be furnished pursuant to Item 7.01. Such information, including Exhibit 99.1 attached hereto, shall not be deemed "filed" for purposes of Section 18 of the Securities Exchange Act of 1934, nor shall it be deemed incorporated by reference into any filing under the Securities Act of 1933, except as shall be expressly set forth by specific reference in such filing. The furnishing of this information pursuant to Item 7.01 shall not be deemed an admission by the Company as to the materiality of such information.

CAUTIONARY LANGUAGE CONCERNING FORWARD-LOOKING STATEMENTS

Information set forth in this Current Report on Form 8-K (including the exhibits and attachments hereto) contains forward-looking statements within the meaning of the federal securities laws and the Private Securities Litigation Report Act of 1995. These forward-looking statements are subject to a number of risks and uncertainties. A discussion of factors that may affect future results is contained in the Company's filings with the Securities and Exchange Commission. The Company disclaims any obligation to update forward-looking statements except as may be required by law.

Item 9.01. Financial Statements and Exhibits .

(d) *Exhibits.*

Exhibit No.	Description
10.1	Stock and Warrant Purchase Agreement, dated October 13, 2009, between Conseco, Inc. and Paulson & Co. Inc. on behalf of the several investment funds and accounts managed by it.
10.2	Form of Investor Rights Agreement between Conseco, Inc. and Paulson & Co. Inc. on behalf of the several investment funds and accounts managed by it.
10.3	Form of Warrant.
99.1	Press Release, dated October 13, 2009.

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SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

CONSECO, INC.

DATED: October 13, 2009

By: /s/ John R. Kline
Name: John R. Kline
Title: Senior Vice President and Chief Accounting Officer

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10.3	Form of Warrant.
99.1	Press Release, dated October 13, 2009.

EXHIBIT 10.1

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(d), 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 10.2

EXHIBIT A

INVESTOR RIGHTS AGREEMENT

THIS INVESTOR RIGHTS AGREEMENT (this " Agreement ") is entered into as of ___, 20___, 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 [___] 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 . 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 . 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 144A 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: _____
Name:
Title:

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

By: _____
Name:
Title:

Annex A

Plan of Distribution

We are registering the shares offered by this prospectus on behalf of the selling stockholders named in this prospectus. The selling stockholders may, from time to time, sell, transfer or otherwise dispose of any or all of their shares of common stock or interests in shares of common stock on any stock exchange, market or trading facility on which the shares are traded or in private transactions directly or through one or more underwriters, broker-dealers or agents. If the shares of common stock are sold through underwriters or broker-dealers, the selling stockholders will be responsible for underwriting discounts or commissions or agent's commissions. These dispositions may be at fixed prices, at prevailing market prices at the time of sale, at prices related to the prevailing market price, at varying prices determined at the time of sale, or at negotiated prices.

The selling stockholders will act independently of us in making decisions as to the timing, manner and size of each sale. The selling stockholders may use any one or more of the following methods when disposing of shares or interests therein:

- in the over-the-counter market;
- on any national securities exchange or market, if any, on which our common stock may be listed at the time of sale;
- in transactions otherwise than on an exchange or in the over-the-counter market, or in a combination of any such transactions;
- through block trades in which the broker or dealer so engaged will attempt to sell the shares as agent, but may position and resell a portion of the block as principal to facilitate the transaction;
- through purchases by a broker or dealer as principal and resale by such broker or dealer for its account pursuant to this prospectus;
- in ordinary brokerage transactions and transactions in which the broker solicits purchasers;
- through writing of options, swaps, forwards, or derivatives;
- in privately negotiated transactions;
- in transactions to cover short sales;
- through transactions in which broker-dealers may agree with the selling stockholders to sell a specified number of such shares at a stipulated price per share;
- through a combination of any such methods of sale.

The selling stockholders may, from time to time, pledge or grant a security interest in some or all of the shares of common stock owned by them and, if they default in the performance of their secured obligations, the pledgees or secured parties may offer and sell the shares of common stock, from time to time, under this prospectus, or under an amendment or supplement to this prospectus under Rule 424(b)(3) or other applicable provision of the Securities Act of 1933, as amended amending the list of selling stockholders to include the pledgee, transferee or other successors in interest as selling stockholders under this prospectus.

The selling stockholders may sell their shares of our common stock directly to purchasers or may use brokers, dealers, underwriters or agents to sell such shares. In effecting sales, brokers and dealers engaged by the selling stockholders may arrange for other brokers or dealers to participate. Brokers or dealers may receive commissions, discounts or concessions from a selling stockholder or, if any such broker-dealer acts as agent for the purchaser of such shares, from a purchaser in amounts to be negotiated. Such compensation may, but is not expected to, exceed that which is customary for the types of transactions involved. Broker-dealers may agree with a selling stockholder to sell a specified number of such shares at a stipulated price per share, and, to the extent such broker-dealer is unable to do so acting as agent for a selling stockholder, to purchase as principal any unsold shares at the price required to fulfill the broker-dealer commitment to the selling stockholders. Broker-dealers who acquire shares as principal may thereafter resell such shares from time to time in transactions, which may involve block transactions and sales to and through other broker-dealers, including transactions of the nature described above, in the over-the-counter market or otherwise at prices and on terms then prevailing at the time of sale, at prices then related to the then-current market price or in negotiated transactions. In connection with such resales, broker-dealers may pay to, or receive from, the purchasers of such shares commissions as described above.

The selling stockholders and any broker-dealers or agents that participate with the selling stockholders in sales of their shares of our common stock may be deemed to be “underwriters” within the meaning of the Securities Act of 1933, as amended in connection with such sales. In such event, any commissions received by such broker-dealers or agents and any profit on the resale of such shares purchased by them may be deemed to be underwriting commissions or discounts under the Securities Act of 1933, as amended.

From time to time, the selling stockholders may engage in short sales, short sales against the box, puts and calls and other hedging transactions in our securities, and may sell and deliver their shares of our common stock in connection with such transactions or in settlement of securities loans. These transactions may be entered into with broker-dealers or other financial institutions. In addition, from time to time a selling stockholder may pledge our shares pursuant to the margin provisions of customer agreements with broker-dealers or other financial institutions. Upon delivery of such shares or a default by a selling stockholder, the broker-dealer or financial institution may offer and sell such pledged shares from time to time under this prospectus, or under an amendment or supplement to this prospectus under Rule 424(b)(3) or other applicable provision of the Securities Act of 1933, as amended amending the list of selling stockholders to

include the pledgee, transferee or other successors in interest as selling stockholders under this prospectus.

The selling stockholders also may resell all or a portion of the shares in open market transactions in reliance upon Rule 144 under the Securities Act of 1933, as amended provided that they meet the criteria and conform to the requirements of that rule.

We are required to pay all fees and expenses incident to the registration of the common stock. We have agreed to indemnify the selling stockholders against certain losses, claims, damages and liabilities under the Securities Act of 1933, as amended.

The selling stockholders are subject to applicable provisions of the Securities Exchange Act of 1934, as amended and the SEC's rules and regulations, including Regulation M, which provisions may limit the timing of purchases and sales of the shares by the selling stockholders.

In order to comply with certain states' securities laws, if applicable, the shares may be sold in those jurisdictions only through registered or licensed brokers or dealers. In certain states the shares may not be sold unless the shares have been registered or qualified for sale in such state, or unless an exemption from registration or qualification is available and is obtained.

We will file supplements to this prospectus as required by item 508 of Regulation S-K to the extent applicable.

The selling stockholders are not restricted as to the price or prices at which they may sell their common shares. Sales of such common shares may have an adverse effect on the market price of the securities, including the market price of the common shares. Moreover, the selling stockholders are not restricted as to the number of common shares that may be sold at any time, and it is possible that a significant number of common shares could be sold at the same time, which may have an adverse effect on the market price of the common shares.

We and the selling stockholders may agree to indemnify any underwriter, broker-dealer or agent that participates in transactions involving sales of the common shares against certain liabilities, including liabilities arising under the Securities Act.

EXHIBIT A

FORM OF REQUEST FOR REMOVAL OF RESTRICTIVE LEGEND IN CONNECTION WITH A TRANSFER PURSUANT TO RULE 144

To be delivered to:

Conseco, Inc.
11825 North Pennsylvania Street
Carmel, Indiana 46032
Attn: General Counsel

[Address of Transfer Agent]

Re: Shares, Warrants or Common Stock issuable upon exercise of the Warrants or upon conversion of convertible Indebtedness acquired by Stockholder in the Company Refinancing (collectively, the " Securities ")

Reference is hereby made to the Investor Rights Agreement dated as of _____, 20 ___(the " Rights Agreement ") 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, and any other Investors agreeing in writing to be bound by the terms of the Rights Agreement. Capitalized terms used by not defined herein will have the respective meanings ascribed to such terms in the Rights Agreement.

This letter relates to the following Securities held by the undersigned Investor (the " Subject Securities "):

☐ Warrants to acquire _____shares of Common Stock represented by certificate number(s): _____ _____.

☐ _____shares of Common Stock represented by certificate number(s): _____ _____.

The undersigned Investor requests that the restrictive legend included on the face of the Subject Securities described above pursuant to Section 2.2 of the Rights Agreement (the " Restrictive Legend ") be removed. In connection with such request, the undersigned Investor does hereby certify that neither the Restrictive Legend nor the restrictions on transfer set forth therein are required to ensure that transfers of the Subject Securities will not violate the registration requirements of the Securities Act for the reason checked below:

The Subject Securities are being Transferred in a transaction exempt from registration under the Securities Act pursuant to Rule 144. The Investor hereby certifies that the Subject Securities are eligible for resale without limitation under Rule 144 (other than company information requirements of paragraph (c) of Rule 144). In connection with this Transfer, the Investor hereby represents and warrants as follows:

1. The Investor is not, and has not been at any time during the three months preceding the date hereof, an affiliate (as defined under Rule 144) of the Company;

2. The Subject Securities were acquired from the Issuer or from an affiliate of the Issuer, and the full purchase price or other consideration was paid therefore, at least six months prior to the date hereof; and

3. The Investor is not aware of any material adverse information with regard to the Company which has not been publicly disclosed.

Notwithstanding anything to the contrary herein, and without otherwise limiting the Investor's remedies under the Rights Agreement, if the Company is not in compliance with the Company information requirements of paragraph (c) of Rule 144, the Investor hereby instructs the Company to disregard this request until such time as the Company is again in compliance with such requirements of paragraph (c) of Rule 144.

This certificate and the statements contained herein are made for the benefit of the Company and the Company's transfer agent on behalf of the undersigned Investor.

[NAME OF INVESTOR]

By: _____
Name:
Title:

Dated: _____, _____

EXHIBIT 10.3

EXHIBIT B

THE SECURITIES REPRESENTED BY THIS WARRANT 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.

THE SECURITIES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO TRANSFER AND OTHER RESTRICTIONS SET FORTH IN AN INVESTOR RIGHTS AGREEMENT, DATED AS OF [ ], 2009, COPIES OF WHICH ARE ON FILE WITH THE SECRETARY OF THE ISSUER.

CONSECO, INC.

WARRANT TO PURCHASE

[5,000,000]

SHARES OF COMMON STOCK

Issue Date: [___], 2009

1. Definitions . Unless the context otherwise requires, when used herein the following terms shall have the meanings indicated.

" Board of Directors " means the board of directors of the Company or any committee thereof duly authorized to act in the relevant matter on behalf of such board of directors.

" Business Day " means any day except Saturday, Sunday and any day which shall be a legal holiday or a day on which banking institutions in the State of Indiana or the State of New York generally are authorized or required by law or other governmental actions to close.

" 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.

" Clause A Distribution " has the meaning set forth in Section 12(C).

" Clause B Distribution " has the meaning set forth in Section 12(C).

" Clause C Distribution " has the meaning set forth in Section 12(C).

" close of business " means 5:00 p.m., New York City time.

" Closing Sale Price " of the Common Stock or any securities distributed in a Spin-Off, as the case may be, on any date of determination means:

(a) the closing sale price per share of the Common Stock or such other securities (or if no closing sale price is reported, the average of the closing bid and closing ask prices or, if more than one in either case, the average of the average closing bid and the average closing ask prices) as reported by the New York Stock Exchange on such date;

(b) if the Common Stock or such other securities are not listed on the New York Stock Exchange on such date, the closing sale price per share of the Common Stock or such other securities (or if no closing sale price is reported, the average of the closing bid and closing ask prices or, if more than one in either case, the average of the average closing bid and the average closing ask prices) as reported in composite transactions for the principal U.S. national or regional securities exchange on which the Common Stock or such other securities are traded; or

(c) if the Common Stock or such other securities are not listed on a U.S. national or regional securities exchange, the last quoted bid price for the Common Stock or such other securities on such date in the over-the-counter market as reported by Pink OTC Markets Inc. or other similar organization; or

(d) if the Common Stock or such other securities are not so quoted by Pink OTC Markets Inc. or any similar organization, as determined by a nationally recognized securities firm retained by the Company for this purpose.

The Closing Sale Price will be determined without reference to early hours, after hours or extended market trading.

" Code " means the Internal Revenue Code of 1986, as amended.

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

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

" Continuing Director " means, during any period of 12 consecutive calendar months, those individuals who (a) were directors of the Company on the first day of each such period or (b) who subsequently became directors of the Company and whose election or initial nomination for election subsequent to that date was approved by a majority of the Continuing Directors then on the Company Board, to constitute a majority of the Company Board.

" Distributed Property " has the meaning set forth in Section 12(C).

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

" Ex-Dividend Date " means, with respect to any issuance, dividend or distribution, the first date on which shares of the Common Stock trade on the applicable exchange or in the applicable market, regular way, without the right to receive the issuance, dividend or distribution in question.

" Exercise Date " means any date, on or prior to the Expiration Date, on which the Warrantholder exercises the right to purchase the Shares, in whole or in part, pursuant to and in accordance with the terms and conditions described herein.

" Exercise Price " means $6.50 per share of Common Stock, subject to adjustment as provided in Section 12, and all references thereto shall be deemed to mean such defined term as adjusted, if applicable.

" Expiration Date " means the day on which the Expiration Time occurs.

" Expiration Time " has the meaning set forth in Section 3.

" Fair Market Value " means the amount which a willing buyer would pay a willing seller in an arm's-length transaction as reasonably determined by the Board of Directors in good faith; provided , however, that if the Warrantholder disputes such valuation, then such determination shall be made at the expense of the Company by a third party valuation expert reasonably acceptable to the Company and the Warrantholder; provided , further, that if the initial determination of the Board of Directors is within the range of reasonable valuations of "Fair Market Value" determined by such valuation firm, then the Warrantholder shall reimburse the Company for the fees and expenses of such valuation.

" Fundamental Change " shall be deemed to have occurred at the time after this Warrant is originally issued if any of the following occurs:

(a) any acquisition, directly or indirectly, by any person, or two or more persons acting in concert, of beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Exchange Act) of 50% or more of the outstanding shares of voting stock of the Company, in each case other than any transaction:

(i) involving a merger or consolidation that does not result in a reclassification, conversion, exchange or cancellation of the outstanding Common Stock; or

(ii) pursuant to which the holders of the Common Stock immediately prior to the transaction have the entitlement to exercise, directly or indirectly, 50% or more of the total voting power of all shares of capital stock entitled to vote generally in the election of directors of the continuing or surviving corporation immediately after the transaction, with such holders' proportional voting power immediately after the transaction vis-à-vis each other with respect to the securities they receive in such transaction being in substantially the same proportions as their respective voting power vis-à-vis each other with respect to the Common Stock that they held immediately before such transaction; or

(iii) that is effected solely to change the Company's jurisdiction of incorporation and results in a reclassification, conversion or exchange of outstanding shares of the Common Stock solely into shares of common stock of the surviving entity; or

(b) during any period of 12 consecutive calendar months, commencing on the original issuance date of this Warrant, the ceasing of the Continuing Directors to constitute a majority of the Board of Directors; or

(c) the Company conveys, sells, transfers or leases all or substantially all of its assets to another Person; or;

(d) a Termination of Trading; or

(e) the holders of the Common Stock approve any plan or proposal for the liquidation or dissolution of the Company.

For the purpose of this definition only, " person " includes any syndicate or group deemed to be a " person " under Section 13(d)(3) of the Exchange Act.

" Investor Rights Agreement " means the Investor Rights Agreement, dated ___, 2009, between the Company and Paulson & Co., Inc., on behalf of the several investment funds and accounts managed by it.

" Market Disruption Event " means:

(a) a failure by the principal market on which the Common Stock is listed or approved for trading to open for trading during its regular trading session; or

(b) the occurrence or existence for more than a one half-hour period in the aggregate on any Scheduled Trading Day of any suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the principal market on which the Common Stock is listed or approved for trading or otherwise) in the shares of the Common Stock or in any options, contracts or future contracts relating to shares of the Common Stock, and such suspension or limitation occurs or exists at any time before 1:00 p.m., New York City time, on such day.

" open of business " means 9:00 a.m., New York City time.

" Person " means a legal person, including any individual, corporation, estate, partnership, joint venture, association, joint-stock corporation, limited liability company, limited liability partnership or trust.

" Reference Property " shall have the meaning set forth in Section 13.

" Regulatory Approvals " means, with respect to the Warrantholder, the receipt of approvals and authorizations of, filings and registrations with, notifications to, or expiration or termination of any applicable waiting period under, (x) the Hart-Scott-Rodino Antitrust

Improvements Act of 1976 and the rules and regulations thereunder or the competition or merger control laws of other jurisdictions or (y) all insurance statutes and regulations applicable to the direct and indirect insurance company subsidiaries of the Company, in each case to the extent applicable and necessary to permit the Warrantholder to exercise this Warrant, in whole or in part, and own the Shares purchased thereby.

" Reorganization Event " has the meaning set forth in Section 13.

" Restricted Ownership Percentage " has the meaning set forth in Section 3A(C).

" Scheduled Trading Day " means any day that is scheduled to be a Trading Day on the principal U.S. national or regional securities exchange or market on which the Common Stock is listed or admitted for trading; provided , that if the Common Stock is not listed or traded, " Scheduled Trading Day " shall mean any Business Day.

" SEC " means the U.S. Securities and Exchange Commission.

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

" Shares " has the meaning set forth in Section 2.

" Spin-Off " has the meaning set forth in Section 12(C).

" Spin-Off Valuation Period " has the meaning set forth in Section 12(C).

" Stock and Warrant Purchase Agreement " means the Stock and Warrant Purchase Agreement, dated as of October 13, 2009, between the Company and the Purchaser, including all schedules and exhibits thereto

" Subsidiary " means, with respect to any person, any corporation, partnership, limited liability company, limited liability partnership, joint venture, trust, association or other unincorporated organization of which or in which such person and such person's Subsidiaries own directly or indirectly more than 50% of (a) the combined voting power of all classes of stock having general voting power under ordinary circumstances to elect a majority of the board of directors, if it is a corporation; (b) the voting or managing interests (which shall mean the general partner in the case of a partnership), if it is a partnership, joint venture or similar entity; (c) the beneficial interest, if it is a trust, association or other unincorporated organization; or (d) the membership interest, if it is a limited liability company.

" Termination of Trading " means any time that the Common Stock ceases to be listed for trading on any of the New York Stock Exchange, the NASDAQ Global Select Market or the NASDAQ Global Market (or any of their respective successors).

" TO Expiration Date " has the meaning set forth in Section 12(E).

" TO Expiration Time " has the meaning set forth in Section 12(E).

" Trading Day " means a day on which (a) there is no Market Disruption Event and (b)(i) trading in the Common Stock generally occurs on the New York Stock Exchange, or if the Common Stock is not listed on the New York Stock Exchange, then as generally occurs on the principal U.S. national or regional securities exchange on which the Common Stock is then traded, or (ii) if the Common Stock is not listed or approved for trading on the New York Stock Exchange or another U.S. national or regional securities exchange; provided, that if the Common Stock is not so listed or traded, " Trading Day " shall mean any Business Day.

" Trigger Event " has the meaning set forth in Section 12(C).

" unit of Reference Property " shall have the meaning set forth in Section 13.

" Warrantholder " has the meaning set forth in Section 2.

" Warrant " means this Warrant, issued pursuant to the Stock and Warrant Purchase Agreement.

2. Number of Shares; Exercise Price . This certifies that, for value received, [NAME OF WARRANTHOLDER] (the " Warrantholder ") is entitled, upon the terms and subject to the conditions hereinafter set forth, to acquire from the Company, in whole or in part, subject to receipt of Regulatory Approval (or, in the case of any required insurance regulatory approvals, upon entry into mutually agreed alternative arrangements (such as delivery of the Shares into an escrow account or voting trust) permitting exercise of this Warrant pending receipt of any required insurance regulatory approvals) and in compliance with the limitations on exercise set forth in Section 3A, up to an aggregate of [ ] fully paid and non-assessable shares of Common Stock (the " Shares "), at a purchase price per Share equal to the Exercise Price.

3. Exercise of Warrant; Term . Subject to Section 2 and Section 3A, and to the extent permitted by applicable laws and regulations, the right to purchase the Shares represented by this Warrant is exercisable, in whole or in part, by the Warrantholder, at any time or from time to time (i) after the earlier to occur of (x) the open of business on June 30, 2013, or (y) receipt of a notice of a Fundamental Change as provided in Section 17 from the Company following a Fundamental Change, (ii) but in no event later than the close of business on December 30, 2016 (the " Expiration Time "), by:

(1) the surrender of this Warrant and Notice of Exercise annexed hereto, duly completed and executed on behalf of the Warrantholder, at the office of the Company in Carmel, Indiana (or such other office or agency of the Company in the United States as it may designate by notice in writing to the Warrantholder at the address of the Warrantholder appearing on the books of the Company), and

(2) payment of the aggregate Exercise Price for the number of Shares thereby purchased, at the election of the Warrantholder, in one of the following manners:

(i) by tendering in cash, by certified or cashier's check or by wire transfer payable to the order of the Company; or

(ii) by having the Company withhold a number of shares of Common Stock issuable upon exercise of this Warrant equal in value to the aggregate Exercise Price as to which this Warrant is so exercised based on the Closing Sale Price of the Common Stock on the Trading Day prior to the date on which this Warrant and the Notice of Exercise are delivered to the Company.

In the event this Warrant is surrendered for exercise in respect of less than all the Shares issuable on such exercise at any time prior to the Expiration Time, the Warrantholder will be entitled to receive from the Company within a reasonable time, and in any event not exceeding three Business Days following such Exercise Date, a new Warrant in substantially identical form for the purchase of the number of Shares equal to the difference between the number of Shares subject to this Warrant and the number of Shares as to which this Warrant is so exercised, in which case such surrendered Warrant shall be cancelled. Notwithstanding anything to the contrary set forth herein, upon exercise of any portion of this Warrant in accordance with the terms hereof, the Warrantholder shall not be required to physically surrender this Warrant to the Company unless such Warrantholder is purchasing the full number of Shares represented by this Warrant, in which case the Warrantholder shall promptly surrender this Warrant to the Company. The Warrantholder and the Company shall each maintain records showing the number of Shares so exercised and issued hereunder and the dates of such exercises or shall use such other method, reasonably satisfactory to the Warrantholder and the Company, so as not to require physical surrender of this Warrant upon each such exercise. In the event of any dispute or discrepancy, such records of the Company establishing the number of Shares to which the Warrantholder is entitled shall be controlling and determinative in the absence of demonstrable error. Notwithstanding the foregoing, if this Warrant is exercised as aforesaid, the Warrantholder may not transfer or assign this Warrant unless such Warrantholder first physically surrenders this Warrant to the Company, whereupon the Company will forthwith issue and deliver upon order of the Warrantholder a new Warrant of like tenor, registered on the books of the Company as the Warrantholder may reasonably request, representing the number of Shares not then exercised. The Warrantholder and any permitted assignee, by acceptance of this Warrant or a new Warrant, acknowledge and agree that, by reason of the provisions of this Section 3, following exercise of any portion of this Warrant, the number of Shares represented by this Warrant may be less than the number of Shares set forth on the face hereof.

3A. Limitations on Exercise .

(A) Section 382 . This Warrant shall not be exercisable by the Warrantholder to the extent that the exercise hereof would cause the Warrantholder to become, directly or indirectly, a “5-percent shareholder” (as such term is used in Section 382 of the Code and the Treasury regulations promulgated thereunder), unless the Warrantholder has received prior approval of the Board of Directors.

(B) 9.9% Limitation . Except with respect to Section 3A(C) below, the number of Shares issuable to the Warrantholder upon exercise hereof shall not, when added to the total number of shares of Common Stock deemed beneficially owned by such Warrantholder at such time (other than by virtue of the ownership of securities or rights to acquire securities (including the Shares) that have limitations on the Warrantholder’s right to convert, exercise or purchase

similar to the limitation set forth herein), as determined pursuant to the rules and regulations promulgated under Section 13(d) of the Exchange Act, including all shares of Common Stock deemed beneficially owned (other than by virtue of the ownership of securities or rights to acquire securities that have limitations on the right to convert, exercise or purchase similar to the limitations set forth herein) at such time by persons that would be aggregated for purposes of determining whether a "group" exists under Section 13(d) of the Exchange Act, exceed 9.9% of the total issued and outstanding shares of the Common Stock (the " Restricted Ownership Percentage "). Warrantholder shall have the right (x) at any time and from time to time to reduce its Restricted Ownership Percentage immediately upon notice to the Company and (y) (subject to waiver) at any time and from time to time, to increase its Restricted Ownership Percentage immediately in the event of the announcement as pending or planned, of a Fundamental Change.

(C) The foregoing Section 3A(B) shall not apply to the extent that the Warrantholder is subject to Section 16(a) of the Exchange Act, without regard to the aggregate number of shares of Common Stock issuable upon exercise of this Warrant or issuable upon conversion or exercise of other securities or instruments containing limitations on the Warrantholder's right to convert, exercise or purchase shares of Common Stock similar to the limitation set forth in Section 3A(B) above.

(D) The Company may rely, without limitation, solely upon receipt of any Notice of Exercise by the Warrantholder hereunder as sufficient evidence of the inapplicability of each of the limitations to exercise set forth in this Section 3A. The Company shall not be liable to the Warrantholder or any other Person for any breach of the provisions of this Section 3A resulting from actions the Company is otherwise required to take in connection with any exercise of all or any part of this Warrant in reliance on a Notice of Exercise delivered by the Warrantholder.

4. Reservation of Shares; Shares to Be Fully Paid; Listing of Shares .

(A) The Company shall at all times reserve and keep available, out of its authorized but unissued Common Stock, a sufficient number of shares of Common Stock to satisfy the exercise of this Warrant from time to time as this Warrant is presented for exercise in accordance with the terms of this Warrant. The Company hereby represents and warrants that any Shares issued upon the exercise of this Warrant in accordance with the terms of this Warrant will be duly authorized, validly issued, fully paid and non-assessable and free and clear of preemptive rights.

(B) The person(s) in whose name(s) any Shares so issued, as designated by the Warrantholder, will be deemed to be the holder(s) of record of such Shares as of the close of business on the Exercise Date, notwithstanding that the stock transfer books of the Company may then be closed or certificates representing such Shares may not be actually delivered on such date; *provided, however* , that if such Exercise Date occurs after the Ex-Dividend Date of an event that requires an adjustment to the Exercise Price and on or prior to the record date for such event, the person in whose name any Shares so issued upon exercise will be deemed to be the holder of record of such Shares as of the open of business on the Business Day immediately following the record date for such event.

(C) Certificates for Shares issued upon exercise of this Warrant will be issued in such name(s) as the Warrantholder may designate and will be delivered to such named person(s) within a reasonable time, not to exceed three Business Days after any Exercise Date; provided, however, that the delivery of the certificates representing such Shares will be delayed until the Business Day immediately following the record date for an event that requires an adjustment to the Exercise Price if such Business Day is later than three Business Days after the applicable Exercise Date.

(D) If at any time the Company's Common Stock shall be listed on any national securities exchange or automated quotation system, the Company will use reasonable best efforts to list, and keep listed, so long as the Common Stock shall be so listed on such exchange or automated quotation system, any Shares issuable upon exercise.

5. No Fractional Shares or Scrip . Any exercise of this Warrant shall be for a whole number of Shares. No fractional Shares or scrip representing fractional Shares shall be issued upon any exercise of this Warrant. Upon exercise of this Warrant, if the Shares that the Warrantholder shall be entitled to receive include a fractional share of Common Stock, the Company will increase the number of Shares issuable to the next whole number of Shares.

6. No Rights as Warrantholder; Transfer Books . This Warrant does not entitle the Warrantholder to any voting rights or other rights as holder of Common Stock of the Company prior to the date of exercise hereof. The Company will at no time close its transfer books against transfer of this Warrant in any manner which interferes with the timely exercise of this Warrant.

7. Taxes on Shares Issued . The Company shall pay any documentary, stamp or similar issue or transfer tax due on the issue or delivery of Shares on exercise of this Warrant pursuant hereto; provided, however, that if such documentary, stamp or similar issue or transfer tax is due because the Warrantholder has requested that the Shares be issued in a name other than that of the Warrantholder or an affiliate of the Warrantholder, then such taxes shall be paid by such Warrantholder, and the Company shall not be required to issue or deliver any stock certificate representing the Shares unless and until such Warrantholder shall have paid to the Company the amount of such tax or shall have established to the satisfaction of the Company that such tax have been paid.

8. Transfer/Assignment .

(A) Subject to compliance with clause (B) of this Section 8, this Warrant and all rights hereunder are transferable, in whole or in part, upon the books of the Company by the registered holder hereof in person or by duly authorized attorney, and a new warrant or new warrants shall be made and delivered by the Company, of the same tenor and date as this Warrant but registered in the name or names of one or more transferees, upon surrender of this Warrant, duly endorsed, to the office or agency of the Company described in Section 2. All expenses (other than issue or transfer taxes) and other charges payable in connection with the preparation, execution and delivery of the new warrants pursuant to this Section 8 shall be paid by the Company.

(B) Notwithstanding the foregoing, this Warrant and any rights hereunder, and any Shares issued upon exercise of this Warrant, shall be subject to the applicable restrictions as set forth in the Investor Rights Agreement.

(C) If and for so long as required by the Investor Rights Agreement, this Warrant Certificate, and any Shares issued upon exercise of this Warrant, shall contain a legend as set forth in Section 2.2 of the Investor Rights Agreement.

9. Exchange and Registry of Warrant . This Warrant is exchangeable, upon the surrender hereof by the Warrantholder to the Company, for a new warrant or warrants of like tenor and representing the right to purchase the same aggregate number of Shares. The Company shall maintain a registry showing the name and address of the Warrantholder as the registered holder of this Warrant. This Warrant may be surrendered for exchange or exercise, in accordance with its terms, at the office of the Company, and the Company shall be entitled to rely in all respects, prior to written notice to the contrary, upon such registry.

10. Loss, Theft, Destruction or Mutilation of Warrant . Upon receipt by the Company of evidence reasonably satisfactory to it of the loss, theft, destruction or mutilation of this Warrant, and in the case of any such loss, theft or destruction, upon receipt of an indemnity or security reasonably satisfactory to the Company, or, in the case of any such mutilation, upon surrender and cancellation of this Warrant, the Company shall make and deliver, in lieu of such lost, stolen, destroyed or mutilated Warrant, a new Warrant of like tenor and representing the right to purchase the same aggregate number of Shares as provided for in such lost, stolen, destroyed or mutilated Warrant.

11. Rule 144 Information . The Company agrees, at all times after the execution and delivery of this Warrant and until one year after the Expiration Time, to use its reasonable best efforts to:

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

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

(iii) 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

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

12. Adjustment of Exercise Price . The Exercise Price shall be adjusted from time to time by the Company if any of the following events occurs, except that no adjustment to the

Exercise Price shall be made if the Warrantholder participates at the same time and upon the same terms as holders of the Common Stock and solely as a result of holding this Warrant, in any of the transactions described in this Section 12.

(A) If the Company pays a dividend or effects a distribution on the Common Stock exclusively in shares of its Common Stock to all or substantially all holders of the Common Stock, or if the Company subdivides or combines the shares of Common Stock, the Exercise Price shall be adjusted based on the following formula:

$$P' = P \times \frac{OS}{OS'}$$

where,

P = the Exercise Price in effect immediately prior to the open of business on the Ex-Dividend Date of such dividend or distribution, or immediately prior to the open of business on the effective date of such share subdivision or share combination, as applicable;

P' = the Exercise Price in effect immediately after the open of business on such Ex-Dividend Date, or immediately after the open of business on such effective date, as the case may be;

OS = the number of shares of Common Stock outstanding immediately prior to the open of business on such Ex-Dividend Date, or immediately prior to the open of business on such effective date, as the case may be; and

OS' = the number of shares of Common Stock outstanding immediately after such dividend or distribution, or immediately after such effective date, as the case may be.

Any adjustment made under this Section 12(A) shall become effective immediately after the open of business on the Ex-Dividend Date for such dividend or distribution, or immediately after the open of business on the effective date for such share subdivision or share combination. If any dividend or distribution of the type described in this Section 12(A) is declared but not so paid or made, or any share subdivision or share combination of the type described in this Section 12(A) is announced but the outstanding shares of Common Stock are not subdivided or combined, as the case may be, the Exercise Price shall be immediately readjusted, effective as of the date the Board of Directors determines not to pay such dividend or distribution, or not to subdivide or combine the outstanding shares of Common Stock, as the case may be, to the Exercise Price that would then be in effect if such dividend, distribution, share subdivision or share combination had not been declared or announced.

(B) If the Company distributes to all or substantially all holders of its Common Stock any rights, options or warrants that allow the holders to purchase (for a period expiring within 60 days) shares of Common Stock at a price per share less than the average of the Closing Sale Prices for the 10 consecutive Trading Day period ending on, and including, the Trading Day

immediately preceding the date of announcement of such distribution, the Exercise Price shall be adjusted based on the following formula:

$$P' = P \times \frac{OS + [(N \times PP) / M]}{OS + N}$$

where,

P = the Exercise Price in effect immediately prior to the open of business on the Ex-Dividend Date for such distribution;

P' = the Exercise Price in effect immediately after the open of business on such Ex-Dividend Date;

OS = the number of shares of Common Stock outstanding immediately prior to the open of business on such Ex-Dividend Date;

N = the number of additional shares of Common Stock issuable pursuant to such rights, options or warrants;

PP = the per-share offering price payable to exercise such rights, options or warrants for the additional shares, plus the per-share consideration (if any) the Company receives for such rights, options or warrants; and

M = the average of the Closing Sale Prices over the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the date of announcement of such distribution.

Any adjustment made under this Section 12(B) shall be made successively whenever any such rights, options or warrants are issued and shall become effective immediately after the open of business on the Ex-Dividend Date for such issuance. To the extent any such rights, options or warrants are not exercised prior to their expiration, the Exercise Price shall be readjusted to the Exercise Price that would then be in effect had the adjustment in the Exercise Price with respect to the distribution of such rights, options or warrants been made on the basis of delivery of only the number of such rights, options or warrants actually exercised prior to their expiration. If such rights, options or warrants are not so distributed, the Exercise Price shall be adjusted to the Exercise Price that would then be in effect if such Ex-Dividend Date for such distribution had not occurred.

For purposes of this Section 12(B), in determining whether any rights, options or warrants entitle the holders to subscribe for or purchase shares of the Common Stock at less than such average of the Closing Sale Prices for the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the date of announcement for such distribution, and in determining the aggregate offering price of such shares of the Common Stock, there shall be taken into account any consideration received by the Company for such rights, options or warrants and any amount payable on exercise or conversion thereof, the value of such consideration, if other than cash, to be determined by the Board of Directors.

(C) If the Company pays dividends or distributes to all or substantially all holders of the Common Stock consisting of its debt, securities, assets or rights to purchase securities of the Company, excluding:

(i) dividends or distributions as to which an adjustment was or will be effected pursuant to Section 12(A);

(ii) distributions of rights, options or warrants as to which an adjustment was or will be effected pursuant to Section 12(B);

(iii) dividends or distributions paid exclusively in cash as to which an adjustment was or will be made pursuant to Section 12(D);

(iv) dividends or distributions in connection with a Reorganization Event covered by Section 13; and

(v) any Spin-Off as to which the provisions set forth below in this Section 12(C) shall apply,

(any of such debt, securities, assets or rights to purchase securities of the Company, the " Distributed Property "), then the Exercise Price shall be adjusted based on the following formula:

$$P' = P \times \frac{M - F}{M}$$

where,

P = the Exercise Price in effect immediately prior to the open of business on the Ex-Dividend Date for such distribution;

P' = the Exercise Price in effect immediately after the open of business on such Ex-Dividend Date;

M = the average of the Closing Sale Prices over the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding such Ex-Dividend Date; and

F = the Fair Market Value of the portion of the Distributed Property distributed in respect of each share of the Common Stock immediately prior to the open of business on the Ex-Dividend Date for such distribution.

If the Board of Directors determines the " F " (as defined above) of any distribution for purposes of this Section 12(C) by reference to the actual or when-issued trading market for any securities, it shall in doing so consider the prices in such market over the same period used in computing the Closing Sale Prices over the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the Ex-Dividend Date for such distribution.

Notwithstanding the foregoing, if " F " (as defined above) is equal to or greater than " M " (as defined above), in lieu of the foregoing adjustment, the Warrantholder shall thereafter be entitled to receive (without having to exercise the Warrant), at the same time and upon the same terms as holders of the Common Stock receive the Distributed Property, the amount and kind of the Distributed Property that such Warrantholder would have received had such Warrantholder owned a number of shares of Common Stock on the Ex-Dividend Date for the distribution equal to the number of Shares such Warrantholder would have received if such Warrantholder had exercised this Warrant on such Ex-Dividend Date (with reference to the Exercise Price then in effect).

Any adjustment made under the above portion of Section 12(C) shall become effective immediately after the open of business on the Ex-Dividend Date for such distribution. If such distribution is not so paid or made, the Exercise Price shall be immediately readjusted, effective as of the date the Board of Directors determines not to pay such dividend or distribution, to the Exercise Price that would then be in effect if such distribution had not been declared.

With respect to an adjustment pursuant to this Section 12(C) where there has been a payment of a dividend or other distribution on the Common Stock to all or substantially all holders of the Common Stock in shares of Capital Stock of any class or series, or similar equity interest, of or relating to a Subsidiary or other business unit of the Company, where such Capital Stock or similar equity interest is listed or quoted (or will be listed or quoted upon consummation of the transaction) on a national securities exchange or reasonably comparable non-U.S. equivalent (a " Spin-Off "), the Exercise Price shall be adjusted based on the following formula:

$$P' = P \times \frac{MP}{F + MP}$$

where,

P = the Exercise Price in effect immediately prior to the open of business on the Ex-Dividend Date for the Spin-Off;

P' = the Exercise Price given effect immediately after the open of business on such Ex-Dividend Date;

F = the average of the Closing Sale Prices of the Capital Stock or similar equity interest distributed to holders of the Common Stock applicable to one share of Common Stock over the first 10 consecutive Trading Day period immediately following, and including, the effective date of the Spin-Off (the "Spin-Off Valuation Period"); and

MP = the average of the Closing Sale Prices over the Spin-Off Valuation Period.

The adjustment to the Exercise Price under the preceding paragraph shall occur immediately after the open of business on the day after the last day of the Spin-Off Valuation Period, but will be given effect as of the open of business on the Ex-Dividend Date for the Spin-Off.

If the effective date of the Spin-Off is less than 10 Trading Days prior to, and including, the Expiration Date, references in the portion of this Section 12(C) related to Spin-Offs to 10 Trading Days shall be deemed replaced, for purposes of calculating the Exercise Price, with such lesser number of Trading Days as have elapsed from, and including, such effective date of the Spin-Off to, and including, the Expiration Date. For purposes of determining the Exercise Price in respect of any exercise during the 10 Trading Day period commencing on the effective date of any Spin-Off, references within the portion of this Section 12(C) related to Spin-Offs to 10 Trading Days shall be deemed replaced with such lesser number of Trading Days as have elapsed from, and including, the effective date of such Spin-Off to, but excluding, the relevant Exercise Date.

For the purposes of this Section 12(C), rights, options or warrants distributed by the Company to all or substantially all of the holders of the Common Stock entitling them to acquire securities of the Company (either initially or under certain circumstances), which rights, options or warrants, until the occurrence of a specified event or events (a " Trigger Event "):

(1) are deemed to be transferred with such shares of Common Stock;

(2) are not exercisable; and

(3) are also issued in respect of future issuances of Common Stock,

shall be deemed not to have been distributed for purposes of this Section 12(C) (and no adjustment to the Exercise Price under Section 12 (C) will be required) until the occurrence of the earliest Trigger Event, whereupon such rights, options or warrants shall be deemed to have been distributed and an appropriate adjustment (if any is required) to the Exercise Price shall be made under this Section 12(C). If any such right, option or warrant, including any such existing rights, options or warrants distributed prior to the date of this Warrant, are subject to events, upon the occurrence of which such rights, options or warrants become exercisable to purchase different securities, evidences of indebtedness or other assets, then the date of the occurrence of any and each such event shall be deemed to be the date of distribution and Ex-Dividend Date of such deemed distribution (in which case the original rights, options or warrants shall be deemed to terminate and expire on such date without exercise by any of the holders). In addition, in the event of any distribution or deemed distribution of rights, options or warrants, or any Trigger Event or other event (of the type described in the preceding sentence) with respect thereto that was counted for purposes of calculating a distribution amount for which an adjustment to the Exercise Price under this Section 12(C) was made,

(1) in the case of any such rights, options or warrants which shall all have been redeemed or purchased without exercise by any holders thereof, upon such final redemption or repurchase (x) the Exercise Price shall be readjusted as if such rights, options or warrants had not been issued and (y) the Exercise Price shall then again be readjusted to give effect to such distribution, deemed distribution or Trigger Event, as the case may be, as though it were a cash distribution, equal to the per share redemption or purchase price received by holders of Common Stock with respect to such rights, options or warrants (assuming each such holder had retained such rights, options or warrants), made to all holders of Common Stock as of the date of such redemption or purchase, and

(2) in the case of such rights, options or warrants which shall have expired or been terminated without exercise by any holders thereof, the Exercise Price shall be readjusted as if such rights, options and warrants had not been issued.

For purposes of this Section 12(C) and subsections (A) and (B) of this Section 12, any dividend or distribution to which this Section 12 (C) applies and which also includes one or both of:

(a) a dividend or distribution of shares of Common Stock to which Section 12(A) applies (the " Clause A Distribution "); and

(b) a dividend or distribution of rights, options or warrants to which Section 12(B) applies (the " Clause B Distribution "), then

(I) such dividend or distribution, other than the Clause A Distribution and the Clause B Distribution, shall be deemed to be a dividend or distribution to which this Section 12(C) applies (the " Clause C Distribution ") and any Exercise Price adjustment required by this Section 12(C) with respect thereto shall then be made, and

(II) the Clause A Distribution and Clause B Distribution shall be deemed to immediately follow the Clause C Distribution and any Exercise Price adjustment required by Section 12(A) and Section 12(B) with respect thereto shall then be made,

except that, if determined by the Company,

(I) the " Ex-Dividend Date " of the Clause A Distribution and the Clause B Distribution shall be deemed to be the Ex-Dividend Date of the Clause C Distribution and

(II) any shares of Common Stock included in the Clause A Distribution or Clause B Distribution shall be deemed not to be " outstanding immediately prior to the open of business on such Ex-Dividend Date or such effective date " within the meaning of Section 12(A) or " outstanding immediately prior to the open of business on such Ex-Dividend Date " within the meaning of Section 12 (B).

(D) If the Company makes any distribution of cash to all or substantially all holders of the Common Stock, the Exercise Price shall be adjusted based on the following formula:

$$P' = P \times \frac{SP - C}{SP}$$

where,

P = the Exercise Price in effect immediately prior to the open of business on the Ex-Dividend Date for such distribution;

P' = the Exercise Price in effect immediately after the open of business on such Ex-Dividend Date;

SP = the average of the Closing Sale Prices over the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding such Ex-Dividend Date; and

C = the amount in cash per share that the Company distributes to holders of the Common Stock.

Any adjustment pursuant to this Section 12(D) shall become effective immediately after the open of business on the Ex-Dividend Date for such dividend or distribution. Notwithstanding the foregoing, if " C " (as defined above) is equal to or greater than " SP " (as defined above), in lieu of the foregoing adjustment, the Warrantholder shall thereafter be entitled to receive (without having to exercise this Warrant), at the same time and upon the same terms as the holders of the Common Stock receive the cash distribution, the amount of cash that such Warrantholder would have received had such Warrantholder owned a number of shares of Common Stock on the Ex-Dividend Date for the distribution equal to the number of Shares such Warrantholder would have received if such Warrantholder had exercised this Warrant on such Ex-Dividend Date (with reference to the Exercise Price then in effect).

If such distribution is not so paid, the Exercise Price shall be immediately readjusted, effective as of the date the Board of Directors determines not to pay such dividend or distribution, to the Exercise Price that would then be in effect if such distribution had not been declared.

(E) If the Company or any of its Subsidiaries make a payment to all or substantially all holders of the Common Stock in respect of a tender offer or exchange offer, other than an odd-lot offer, by the Company or any of its Subsidiaries for the Common Stock, to the extent that the cash and value of any other consideration included in the payment per share of the Common Stock exceeds the average of the Closing Sale Prices over the 10 consecutive Trading Day period commencing on, and including, the Trading Day following the last date on which tenders or exchanges may be made pursuant to such tender or exchange offer (the " TO Expiration Date "), the Exercise Price shall be adjusted based on the following formula:

$$P' = P \times \frac{OS \times SP}{F + (SP \times OS')}$$

where,

P = the Exercise Price in effect immediately prior to the open of business on the Trading Day immediately following the TO Expiration Date;

P' = the Exercise Price given effect immediately after the open of business on the Trading Day following the TO Expiration Date;

F = the Fair Market Value of the aggregate consideration payable in such tender offer or exchange offer (up to any maximum amount specified in the terms of the tender or exchange offer) for all shares of Common Stock the Company or any of its Subsidiaries purchase in such tender or exchange offer, such Fair Market Value to be measured as of the expiration time of the tender or exchange offer (the "TO Expiration Time");

OS = the number of shares of Common Stock outstanding immediately prior to the TO Expiration Time (prior to giving effect to the purchase of any shares of Common Stock accepted for purchase or exchange in such tender or exchange offer);

OS' = the number of shares of Common Stock outstanding immediately after the TO Expiration Time (after giving effect to the purchase of all shares of Common Stock accepted for purchase or exchange in such tender or exchange offer); and

SP = the average of the Closing Sale Prices over the 10 consecutive Trading Day period commencing on, and including, the Trading Day following the TO Expiration Date.

The adjustment to the Exercise Price under this Section 12(D) shall occur immediately after the open of business on the 11th Trading Day following the TO Expiration Date, but will be given effect at the open of business on the Trading Day following the TO Expiration Date. If the Trading Day following the TO Expiration Date is less than 10 Trading Days prior to, and including, the Expiration Date, references within this Section 12(E) to 10 Trading Days shall be deemed replaced, for purposes of calculating the Exercise Price, with such lesser number of Trading Days as have elapsed from, and including, the Trading Day following the TO Expiration Date to, and including, the Expiration Date. For purposes of determining the Exercise Price in respect of any exercise of this Warrant during the 10 Trading Days commencing on the Trading Day following the TO Expiration Date, references within this Section 12(E) to 10 Trading Days shall be deemed replaced with such lesser number of Trading Days as have elapsed from, and including, the Trading Day following the TO Expiration Date to, but excluding, such Exercise Date.

(F) The Company from time to time may decrease the Exercise Price by any amount for a period of at least 20 Business Days; provided that the Board of Directors shall have made a determination that such decrease would be in the best interests of the Company (which determination shall be conclusive) and such decrease is irrevocable during such period. Whenever the Exercise Price is decreased pursuant to this Section 12 (F), the Company shall mail to the Warrantholder a notice of the decrease at least ten calendar days prior to the date the decreased Exercise Price takes effect, and such notice shall state the decreased Exercise Price and the period during which it will be in effect.

(G) The Company may (but shall not be required to) decrease the Exercise Price, in addition to any adjustments pursuant to clause (A), (B), (C), (D) and (E) of this Section 12, if the

Board of Directors considers such decrease to be advisable to avoid or diminish any income tax to holders of Common Stock, or rights to acquire shares of Common Stock, in connection with any dividend or distribution of shares of Common Stock (or rights to acquire shares of Common Stock) or similar event. If the Company pays U.S. federal withholding tax in respect of any adjustment to the Exercise Price pursuant to this Section 12, it may, at its option, set off such payments against any other payments otherwise due to a Warrantholder (including any actual cash dividends or distributions subsequently made with respect to Shares received upon exercise of this Warrant).

(H) If, with respect to any exercise of this Warrant:

(i) any distribution or transaction described in clause (A), (B), (C), (D) and (E) of this Section 12 has not yet resulted in an adjustment to the Exercise Price on a given Trading Day prior to the Expiration Time; and

(ii) any Shares deliverable upon exercise of this Warrant in respect of such Trading Day are not entitled to participate in the relevant distribution or transaction (because they were not held on a related record date or otherwise);

then the Exercise Price in respect of such Trading Day shall be adjusted to reflect the relevant distribution or transaction.

(I) All calculations under this Section 12 shall be made by the Company and shall be made to the nearest cent.

(J) No adjustment shall be required to be made for the Company's issuance of shares of Common Stock or any securities convertible into or exchangeable for shares of Common Stock or rights to purchase shares of Common Stock or such convertible or exchangeable securities, other than as provided in this Section 12.

(K) The Company shall not take any action that would result in any adjustment to the Exercise Price, pursuant to the provisions of this Section 12, in such a manner as to result in the reduction of the Exercise Price to less than the par value per share of the Common Stock. If an adjustment in Exercise Price made hereunder would reduce the Exercise Price to an amount below par value of the Common Stock, then such adjustment in Exercise Price made hereunder shall reduce the Exercise Price to the par value of the Common Stock.

(L) Whenever the Exercise Price is adjusted as provided in this Section 12, the Company shall promptly file at the principal office of the Company a statement setting forth the Exercise Price after such adjustment and setting forth a brief statement of the facts requiring such adjustment, and the Company shall prepare a notice of such adjustment of the Exercise Price setting forth the adjusted Exercise Price and the date on which each adjustment becomes effective and shall mail such notice to the Warrantholder. Failure to deliver such notice shall not affect the legality or validity of any such adjustment.

(M) For purposes of this Section 12, the number of shares of Common Stock at any time outstanding shall not include shares held in the treasury of the Company so long as the Company does not pay any dividend or make any distribution on shares of Common Stock held in the treasury of the Company, but shall include shares issuable in respect of scrip certificates issued in lieu of fractions of shares of Common Stock.

(N) Notwithstanding anything to the contrary in this Section 12, no adjustment to the Exercise Price shall be made:

(i) upon the issuance of any shares of Common Stock pursuant to any present or future plan providing for the reinvestment of dividends or interest payable on the Company's securities and the investment of additional optional amounts in shares of Common Stock under any plan;

(ii) upon the issuance of any shares of Common Stock or options or rights to purchase those shares pursuant to any present or future employee, director or consultant benefit plan or program of the Company;

(iii) for ordinary course of business stock repurchases (including, without limitation, structured or derivative transactions) pursuant to a stock repurchase program approved by the Board of Directors;

(iv) upon the issuance of any shares of Common Stock pursuant to any option, warrant, right or exercisable, exchangeable or convertible security not described in clause (ii) of this subsection (N) of Section 12 and outstanding as of the date hereof; or

(v) in connection with a change in the par value of the Common Stock.

(O) If the Company adopts a stockholder rights plan under which the Company issues rights providing that each share of Common Stock issued upon conversion of the Warrant, at any time prior the distribution of separate certificates representing such rights, will be entitled to receive such rights, then there shall be no adjustment to the Exercise Price as a result of (i) the issuance of such rights, (ii) the distribution of separate certificates representing such rights, (iii) the exercise or redemption of such rights in accordance with any rights agreement, or (iv) the termination or invalidation of any such rights. However, each Share, if any, issued upon exercise of this Warrant shall be entitled to receive the appropriate number of rights, if any, and the certificates representing Shares issued upon such exercise shall bear such legends, if any, in each case, as may be provided by the terms of the Investor Rights Agreement, as the same may be amended from time to time. Notwithstanding the foregoing, if prior to any conversion such rights have separated from the shares of Common Stock in accordance with the provisions of the applicable stockholder rights agreement, the Exercise Price shall be adjusted at the time of separation as if the Company had distributed to all holders of the Common Stock its debt, securities, assets or rights to purchase securities of the Company as described in Section 12(C), subject to readjustment in the event of the expiration, termination or redemption of such rights.

(P) No adjustment in the Exercise Price will be required unless the adjustment would require an increase or decrease of more than 1% of the applicable Exercise Price. If the adjustment is not made because the adjustment does not change the applicable Exercise Price by more than 1%, then the adjustment that is not made will be carried forward and taken into account in any future adjustment. Notwithstanding the foregoing, all such carried forward

adjustments shall be made with respect to the Shares issuable upon exercise of this Warrant when they add up to 1%.

(Q) If, during a period applicable for calculating the Closing Sale Price of the Common Stock or any other security, an event occurs that requires an adjustment to the Exercise Price, the Closing Sale Price of such security shall be calculated for such period in a manner reasonably determined by the Company to appropriately reflect the impact of such event on the price of such security during such period. Whenever any provision of this Section 12 requires a calculation of an average of Closing Sale Prices of Common Stock or any other security over multiple days, appropriate adjustments shall be made to account for any adjustment to the Exercise Price that becomes effective, or any event requiring an adjustment to the Exercise Price where the Ex-Dividend Date of the event occurs, at any time during the period during which the average is to be calculated.

(R) Upon any adjustment of the Exercise Price pursuant to this Section 12, the number of Shares issuable upon exercise of this Warrant shall be automatically adjusted to such number of Shares issuable immediately prior to such adjustment multiplied by a fraction, the numerator of which shall be the Exercise Price in effect immediately before such adjustment and the denominator of which shall be the Exercise Price in effect immediately following such adjustment (irrespective of the number of Shares set forth on the face hereof).

13. Effect of Recapitalization, Reclassification, Consolidation, Merger or Sale .

In the event of:

(i) any reclassification (including through a recapitalization) or other change of the Common Stock;

(ii) any consolidation, merger, combination or binding share exchange involving the Company; or

(iii) any sale or conveyance (including through a lease or other transfer) to a third party of all or substantially all of the property and assets of the Company,

in each case in which the holders of the outstanding Common Stock are entitled to receive stock, other securities, other property or assets (including cash or any combination thereof) (any such event, a " Reorganization Event "), then, at the effective time of such Reorganization Event, the right of the Warrantholder to purchase the Shares evidenced by this Warrant shall be changed into a right to purchase the type and amount of shares of stock, other securities or other property or assets (including cash or any combination thereof) that the Warrantholder would have been entitled to purchase had the Warrantholder owned a number of shares of Common Stock immediately prior to such Reorganization Event equal to the number of Shares the Warrantholder would have received if the Warrantholder had exercised this Warrant immediately prior to such Reorganization Event (with reference to the Exercise Price then in effect) (the " Reference Property ", with each " unit of Reference Property " meaning the type and amount of Reference Property that a holder of one share of Common Stock is entitled to receive) and, concurrently with or promptly following the effective time of such Reorganization Event, upon the Warrantholder's surrender of this Warrant to the Company or the successor or purchasing

person, as the case may be, pursuant to procedures comparable to those set forth in Section 9 hereof, the Company or the successor or purchasing person, as the case may be, shall issue in favor of the Warrantholder a new warrant or warrants of like tenor and representing the right to purchase a number of units of Reference Property corresponding to the number of Shares such surrendered Warrant previously entitled the Warrantholder to purchase upon cashless or cash exercise, and subject to the Exercise Price then in effect; provided, however, that any Shares that the Company would have been required to deliver upon exercise of this Warrant in accordance with Sections 3 and 4, if any, shall instead be deliverable in the amount and type of Reference Property that a holder of that number of shares of Common Stock would have been entitled to receive in such Reorganization Event.

If, as a result of the Reorganization Event, holders of the Common Stock are entitled to receive more than a single type of consideration because such holders have the right to elect the types of consideration they receive, then:

(i) the Reference Property for which this Warrant will be exercisable will be deemed to be the weighted average of the types and amounts of consideration received by the holders of Common Stock that affirmatively make such an election, and

(ii) the unit of Reference Property for purposes of the foregoing sentence shall refer to the consideration referred to in clause (i) attributable to one share of Common Stock.

The Company shall notify the Warrantholder of such weighted average as soon as practicable after such determination is made.

The Company shall not become a party to any such Reorganization Event unless its terms are consistent with this Section 13. Such new warrant described in the second immediately preceding paragraph shall provide for adjustments to Exercise Price thereunder which shall be equivalent to the adjustments provided for in Section 13. If, in the case of any such Reorganization Event, the Reference Property receivable thereupon by a holder of Common Stock includes shares of stock, securities or other property or assets (including cash or any combination thereof) of a Person other than the successor or purchasing Person, as the case may be, in such Reorganization Event, then such Warrant shall additionally be executed and delivered by such other Person.

14. Governing Law . This Warrant shall be binding upon any successors or assigns of the Company. This Warrant 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).

15. Attorneys' Fees . In any litigation, arbitration or court proceeding between the Company and the Warrantholder as the holder of this Warrant relating hereto, the prevailing party shall be entitled to reasonable attorneys' fees and expenses incurred in enforcing this Warrant.

16. Amendments . This Warrant may be amended, and the observance of any term of this Warrant may be waived, only with the written consent of the Company and the Warrantholder.

17. Notices .

(A) All notices hereunder shall be in writing and shall be effective:

(i) on the day on which delivered if delivered personally or transmitted by telex or telegram or telecopier with evidence of receipt;

(ii) one Business Day after the date on which the same is delivered to a nationally recognized overnight courier service with evidence of receipt; or

(iii) five Business Days after the date on which the same is deposited, postage prepaid, in the U.S. mail, sent by certified or registered mail, return receipt requested, and addressed to the party to be notified at the address indicated below for the Company, or at the address for the Warrantholder provided to the Company, or at such other address and/or telecopy or telex number and/or to the attention of such other person as the Company or the Warrantholder may designate by ten-day advance written notice.

(B) In case of any:

(i) action by the Company or one of its Subsidiaries that would require an adjustment in the Exercise Price pursuant to Section 12 or Section 13;

(ii) Reorganization Event;

(iii) voluntary or involuntary dissolution, liquidation or winding up of the Company or any of its Subsidiaries; or

(iv) Fundamental Change;

then, in each case, the Company shall cause to be mailed to the Warrantholder at the address provided to the Company as promptly as practicable a notice stating:

(i) the date on which a record is to be taken for the purpose of such action by the Company or one of its Subsidiaries or, if a record is not to be taken, the date as of which the holders of Common Stock of record are to be determined for the purposes of such action by the Company or one of its Subsidiaries, or

(ii) the date on which such Reorganization Event, Fundamental Change, dissolution, liquidation or winding up is expected to become effective or occur, and the date as of which it is expected that holders of Common Stock of record shall be entitled to exchange their Common Stock for securities or other property deliverable upon such Reorganization Event, Fundamental Change, dissolution, liquidation or winding up.

Failure to give any such notice, or any defect therein, shall not affect the legality or validity of such dividend (or any other distribution), Reorganization Event, Fundamental Change, dissolution, liquidation or winding up.

18. Prohibited Actions . The Company agrees that it will not take any action which would entitle the Warrantholder to an adjustment of the Exercise Price if the total number of shares of Common Stock issuable after such action upon exercise of this Warrant, together with all shares of Common Stock then outstanding and all shares of Common Stock then issuable upon the exercise of all outstanding options, warrants, conversion and other rights, would exceed the total number of shares of Common Stock then authorized by its articles of incorporation.

19. Entire Agreement . This Warrant and the forms attached hereto, the Stock and Warrant Purchase Agreement, and the Investor Rights Agreement contain the entire agreement between the parties with respect to the subject matter hereof and supersede all prior and contemporaneous arrangements or undertakings with respect thereto.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Company has caused this Warrant to be duly executed by a duly authorized officer.

Dated: [_____],

CONSECO, INC.

By: _____
Name:

Title:

Attest:

By: _____
Name:

Title:

[Signature Page to Warrant]

[Form Of Notice Of Exercise]

Date: _____

TO: Conseco, Inc.

RE: Election to Subscribe for and Purchase Common Stock

The undersigned, pursuant to the provisions set forth in the attached Warrant, hereby agrees to subscribe for and purchase the number of shares of the Common Stock set forth below covered by such Warrant. The undersigned, in accordance with Section 3 of the Warrant, hereby agrees to pay the aggregate Exercise Price for such shares of Common Stock in the manner set forth below. A new warrant evidencing the remaining shares of Common Stock covered by such Warrant, but not yet subscribed for and purchased, should be issued in the name set forth below. If the new warrant is being transferred, an opinion of counsel is attached hereto with respect to the transfer of such warrant.

Number of Shares of Common Stock: _____

Method of Payment of Exercise Price (note if cashless exercise pursuant to Section 3(ii) of the Warrant): _____

Name and Address of Person to be Issued New Warrant:

_____

Holder: _____

By: _____

Name: _____

Title: _____

EXHIBIT 99.1

CONSECO ANNOUNCES THAT PAULSON
AGREES TO BUY COMMON STOCK AND WARRANTS

Carmel, Ind., October 13, 2009 — Conseco, Inc. (NYSE: CNO) announced today that, as part of a series of transactions intended to enhance its capital position, it entered into a stock and warrant purchase agreement with Paulson & Co. Inc., on behalf of the several investment funds and accounts managed by it (collectively, "Paulson"), to sell to Paulson 16.4 million shares of common stock and warrants to purchase 5.0 million shares of common stock for an aggregate purchase price of $77.9 million. In addition, Conseco announced its intention to privately offer, subject to certain conditions, up to $293.0 million aggregate principal amount of convertible senior debentures to fund a substantial portion of the purchase price of its existing convertible debentures that are tendered in a cash tender offer for its existing convertible debentures that Conseco intends to commence in the near future.

Upon closing the private sale of common stock, Paulson will own approximately 9.9% of Conseco's outstanding shares, including shares Paulson previously acquired in open market transactions. Conseco will grant certain registration rights to Paulson in connection with its acquisition of the common stock and warrants. Half of the net proceeds from the issuance of these shares will be used to repay indebtedness under Conseco's credit agreement. The remaining net proceeds will be used:

- to pay the portion of the purchase price of the existing convertible debentures that are tendered in the cash tender offer that Conseco intends to commence for such debentures (or any subsequent issuer tender offer that expires on or prior to October 5, 2010) that is not funded by the issuance of new convertible debentures;

- to pay the portion of the repurchase price of the existing convertible debentures on September 30, 2010 that Conseco is required by the holders thereof to repurchase that is not funded by the issuance of new convertible debentures, if any;
- to pay the portion of the redemption price of existing convertible debentures on October 5, 2010 that is not funded by the issuance of new convertible debentures, if any existing convertible debentures remain outstanding at that time and Conseco elects to redeem such existing convertible debentures; and
- for general corporate purposes.

The warrants that Paulson will receive will have an exercise price of $6.50 per share of common stock, subject to customary anti-dilution adjustments. Prior to June 30, 2013, the warrants will not be exercisable, except under limited circumstances. Commencing on June 30, 2013, the warrants will be exercisable for shares of Conseco's common stock at the option of the holder at any time. The warrants expire on December 30, 2016. The closing of the common stock and warrant sale is subject to satisfaction of certain conditions and is expected to occur on the earliest closing date for the new convertible debentures that Conseco intends to privately offer.

The issuance of the 16.4 million shares of common stock and warrants to purchase 5.0 million shares of common stock to Paulson together with the issuance of new convertible debentures that Conseco intends to offer, which will be convertible into shares of common stock, will exceed the 20% threshold set forth in Section 312.03 of the New York Stock Exchange (the "NYSE") Listed Company Manual. While the rules of the NYSE generally

require stockholder approval prior to the issuance of securities in excess of the 20% threshold, the NYSE's Shareholder Approval Policy provides an exception in cases where the delay involved in securing stockholder approval for the issuance would seriously jeopardize the financial viability of the listed company. In accordance with the NYSE rule providing that exception, the Audit Committee of Conseco's Board of Directors has expressly approved Conseco's intended use of the exception. The NYSE has approved Conseco's reliance on the exception in connection with Conseco's private sale of common stock and warrants to Paulson and the new convertible debentures that Conseco intends to privately offer and, in accordance with such exception, Conseco will not consummate the transactions until at least 10 days after the mailing of a letter to stockholders describing the transactions.

This press release does not constitute an offer to sell, or the solicitation of an offer to buy, any securities. The common stock and warrants being sold to Paulson have not been registered under the Securities Act or the securities laws of any other jurisdiction and may not be offered or sold in the United States absent registration or an applicable exemption from registration requirements.

Details of the intended tender offer for Conseco's existing convertible debentures will be provided in an offer to purchase and related documents, which will be filed with the Securities and Exchange Commission as exhibits to a Schedule TO. Holders of the existing convertible debentures are advised to read the Schedule TO and the exhibits thereto because they will contain important information. Holders of the existing convertible debentures may obtain copies of the documents Conseco files with the Securities and Exchange Commission, including the Schedule TO and related exhibits, free from the Securities and Exchange Commission's

website, which may be accessed at *www.sec.gov* , and the investor relations section of Conseco's website, which may be accessed at *investor.conseco.com* .

About Conseco

Conseco, Inc.'s insurance companies help protect working American families and seniors from financial adversity: Medicare supplement, long-term care, cancer, critical illness and accident policies protect people against major unplanned expenses; annuities and life insurance products help people plan for their financial futures.

Cautionary Statement Regarding Forward-Looking Statements

The statements, trend analyses and other information contained in this press release and elsewhere (such as in filings by Conseco with the SEC, presentations by Conseco or its management or oral statements) relative to markets for Conseco's products and trends in the Conseco's operations or financial results, as well as other statements, contain forward-looking statements within the meaning of the federal securities laws and the Private Securities Litigation Reform Act of 1995. Forward-looking statements typically are identified by the use of terms such as "anticipate," "believe," "plan," "estimate," "expect," "project," "intend," "may," "will," "would," "contemplate," "possible," "attempt," "seek," "should," "could," "goal," "target," "on track," "comfortable with," "optimistic" and similar words, although some forward-looking statements are expressed differently. Statements that contain these words should be considered carefully because they describe the Conseco's expectations, plans, strategies and goals and the Conseco's beliefs concerning future business conditions, the Conseco's results of operations, financial position, and the Conseco's business outlook or they state other "forward-looking"

information based on currently available information. The “Risk Factors” section of Conseco’s Annual Report on Form 10-K and Quarterly Reports on Form 10-Q provides examples of risks, uncertainties and events that could cause the Conseco’s actual results to differ materially from the expectations expressed in forward-looking statements.

All written or oral forward-looking statements attributable to Conseco are expressly qualified in their entirety by the foregoing cautionary statement. The forward-looking statements speak only as of the date made. Conseco assumes no obligation to update or to publicly announce the results of any revisions to any of the forward-looking statements to reflect actual results, future events or developments, changes in assumptions or changes in other factors affecting the forward-looking statements.