



TERMS OF PUBLIC SALE

NOTICE IS HEREBY GIVEN that on March 24, 2010 at 11:00 A.M. Eastern Standard Time (the “**Date of Sale**”), DekaBank Deutsche Girozentrale, a German banking corporation (the “**Secured Party**”), as secured party and assignee (through an assignment described under the listing of “**Transaction Documents**” below) of Column Financial, Inc., a Delaware corporation (“**Original Lender**”), under that certain Amended and Restated Mezzanine A Loan Agreement dated as of December 11, 2006 and effective as of October 4, 2006 (the “**Loan Agreement**”) between Original Lender and Hotels Union Square Mezz 1 LLC (f/k/a Istithmar Hotels Union Square Mezz 1 LLC), a Delaware limited liability company (“**Debtor**”), intends to sell the collateral described below at public sale in accordance with Section 9-610 of the Uniform Commercial Code as enacted in the State of New York (“**UCC**”). The public sale will be held at the offices of Sonnenschein Nath & Rosenthal LLP, 1221 Avenue of the Americas, 24th Floor, New York, New York 10020. Sheldon Good & Company shall act as auctioneer at the public sale.

Terms used and not defined in this Notice have the meanings given to them in the Transaction Documents (as defined below), which will be made available to prospective bidders that execute confidentiality agreements as detailed in the “Terms and Conditions” below.

The property to be sold at the public auction will be all of the Debtor's right, title and interest in 100% of the membership interests in Hotels Union Square LLC (f/k/a Istithmar Hotels Union Square LLC), a Delaware limited liability company (the “**Pledged Entity**”), and certain rights and property relating thereto, constituting the “**Collateral**” (as defined in the Pledge Agreement, a copy of which will be made available to prospective bidders that execute a confidentiality agreement as detailed in the “**Terms and Conditions**” below).

Based upon information provided by the Debtor and the Pledged Entity, it is the understanding of the Secured Party (but without representation or warranty of any kind by the Secured Party as to the accuracy of the following) that the principal asset of the Pledged Entity is a hotel located at 201 Park Avenue South, New York, New York 10003 and commonly known as the “**W Union Square**” (the “**Premises**”) and that the Pledged Entity's assets are subject to a mortgage loan (the “**Mortgage Loan**”) made by Original Lender, as mortgage lender, to the Pledged Entity securing indebtedness in the original principal amount (excluding accrued and unpaid interest and other fees and costs) of \$115,000,000.



Terms and Conditions

The terms and conditions of the public sale are as follows:

1. The sale shall be a public auction open to qualified bidders. The Collateral will be sold as a block, and will not be divided or sold in any lesser amounts. The Collateral will be offered on such other commercially reasonable terms as the Secured Party may determine. All bids shall be in cash. The minimum bidding increments will be \$100,000 or such other amount as Secured Party may announce at the auction. The Secured Party may, in its sole discretion, announce an opening bid amount and a higher initial minimum overbid increment. The Secured Party will be permitted to bid at the sale and, notwithstanding any requirement herein that the sale of the Collateral be for cash, the Secured Party may credit bid all or any portion of the outstanding balance of the amounts due to the Secured Party by the Debtor under the Loan Agreement and become the purchaser of the Collateral. The Secured Party reserves the right to (a) reject all bids and terminate the sale or adjourn the sale to such other date and time as the Secured Party may deem proper, by announcement prior to the date of sale or at the place and on the date of sale (but prior to the start of the bidding at the sale), and any subsequent adjournment thereof, without further publication, and (b) impose any other commercially reasonable conditions upon the sale of the Collateral as the Secured Party may deem proper.

2. The Collateral is generally offered "**AS-IS, WHERE IS**", with all faults, and there is no warranty by the Secured Party relating to possession, quiet enjoyment, merchantability, fitness or the like in this disposition. Secured Party makes no guarantee, representation or warranty, express or implied, as to the existence the quantity, quality, condition or description of the Collateral, the value of the Collateral or the Debtor's rights in the Collateral. Without limiting the foregoing, any purchaser must purchase the Collateral subject to the terms of the governing documents of the Pledged Entity (including its operating agreement). The Secured Party has been providing to prospective bidders on request and upon the execution of the "Confidentiality and Investment Agreement" (attached as Exhibit A) available from Secured Party (see Section 5 below for contact information), access to an online datasite that contains certain relevant information that Secured Party possesses concerning Debtor and the Pledged Entity, copies of the Pledge Agreement and other documents evidencing or relating to the loan evidenced thereby, including, but not limited to, certain documents evidencing and/or securing the Mortgage Loan (the "**Mortgage Loan Documents**"), excerpts of applicable provisions of the Intercreditor Agreement, and certain other related documents and information in Secured Party's possession. No information provided to a prospective bidder in response to any such request shall constitute a representation or warranty of any kind with respect to such information, the Collateral, the public sale or any other matter. A proposed form of contract will be provided to qualified bidders and bidders are encouraged to submit a redline of their bid terms against that proposed form of contract.

Prospective bidders are hereby advised that (a) although the Secured Party has provided access to certain information regarding the Debtor and/or the Collateral on the online datasite referenced above, there is no assurance that the Secured Party does not have information that it is contractually or legally prohibited from providing to potential bidders due to restrictions in confidentiality agreements or otherwise, or that it has disclosed all information in its possession relating to the Debtor and/or the Collateral, (b) the Secured Party may be in possession of

information which prospective bidders may not have, (c) the failure of a successful bidder to satisfy the requirements of a “Qualified Transferee” or meet certain “Eligibility Requirements” (each as defined in the Intercreditor Agreement) may result in a default under the Intercreditor Agreement and/or the inability of a successful bidder to purchase the Collateral subject to the Mortgage Loan, (d) the terms of the Mortgage Loan Documents contain restrictions related to the repayment of the senior debt, and (e) the winning bidder will be required to cure all payment and certain other defaults, if any, under the Mortgage Loan (both monetary and non-monetary) simultaneously on the Collateral Closing Date (hereinafter defined) to the extent required by the applicable provisions of the Intercreditor Agreement (“**Cure Requirement**”). **Prospective bidders are encouraged to perform such due diligence as they deem necessary** prior to attending the auction.

3. In order for a prospective bidder (other than the Secured Party) to be a “qualified bidder” and eligible to bid at the public auction, each such prospective bidder must (a) be physically present at the public auction, (b) register with the Secured Party and execute and deliver to the Secured Party a Confidentiality and Investment Agreement and a Certification, (c) deposit with a title company designated by the Secured Party (the “**Title Company**”) the sum of \$4,000,000 (the “**Required Deposit**”) by certified or bank check or by wire transfer of immediately available funds in accordance with instructions separately provided by the Secured Party (which Required Deposit shall be refunded, with interest earned, if any, by the Secured Party in the event that such bidder is not the successful bidder, subject to the right of the Secured Party to designate one or more back-up bidders and to retain their respective Required Deposits in accordance with the terms provided below) no later than the close of business (Eastern Standard Time) on March 22, 2010. In addition to the Required Deposit, each prospective bidder may be required to demonstrate to the Secured Party's satisfaction in advance of bidding its financial ability to tender payment for the Collateral and the Cure Requirement, if any, if it is selected as the winning bidder or a back up bidder.

All prospective bidders will be required to represent in writing in substantially the form of Exhibit B attached hereto (the “**Certification**”) to the Secured Party that it (i) understands that the Collateral has not been and will not be registered under the Securities Act of 1933 (the “Securities Act”) and is aware that the offer and sale of Collateral is being made in a transaction exempt from the registration requirements of the Securities Act; (ii) is acquiring the Collateral for investment purposes, solely for its own account and not with a view to distribution or resale of the Collateral; (iii) has sufficient knowledge and experience in financial and business matters so as to be capable of evaluating the merits and risks of investment and has sufficient financial means to afford the risk of investment in the Collateral; (iv) will not resell or otherwise hypothecate the Collateral without a valid registration under applicable federal or state laws, including, without limitation, the Securities Act, as amended, or an available exemption therefrom; (v) is either (1) is a “**Qualified Transferee**” as set forth in the Intercreditor Agreement and will meet all of the other requirements of Section 6(a) of the Intercreditor Agreement on the date of closing of the sale of the Collateral (the “**Collateral Closing Date**”), or (2) has obtained, or will prior to the Collateral Closing Date obtain, a Rating Agency Confirmation (as defined in the Intercreditor Agreement), and will otherwise meet all of the requirements of Section 6(a) of the Intercreditor Agreement on the Collateral Closing Date; and (vi) will effectuate the Cure Requirement, if any. The Certification shall also contain a provision requiring the prospective bidder to indemnify the Secured Party with respect to any claim based on any misrepresentation or inaccuracy contained

in the information in such Certification. A qualified bidder must satisfy the Secured Party (and its counsel) that (A) its purchase of the Collateral is in compliance with all applicable federal and state laws and (B) it can comply with clause (v) of this paragraph. A qualified bidder under (v) of this paragraph must meet the Eligibility Requirements set forth in the Intercreditor Agreement. Meeting any requirements of the Intercreditor Agreement or the Mortgage Loan Documents shall be at the sole risk, cost and expense of a prospective bidder. If a prospective bidder is a special purpose entity or an entity with creditworthiness that is, in Secured Party's reasonable judgment, insufficient to support the representations, warranties and indemnification provisions set forth in the Certification, Secured Party reserves the right to require additional credit support in the form of a guaranty by a creditworthy affiliate of such prospective bidder or other appropriate credit support.

No offers may be withdrawn once made during the auction, but no sale shall be final until accepted in writing by the Secured Party. Within one (1) New York business day following the conclusion of the sale, time being of the essence, the successful bidder (unless the successful bidder is the Secured Party) will be required to (a) deposit the sum of \$10,000,000 with the Title Company, by certified or bank check or by wire transfer of immediately available funds in accordance with instructions provided by the Secured Party in respect of the First Deposit (the "**Second Deposit**"), and (b) execute a confirmation of sale satisfactory to the Secured Party. The balance of the purchase price for the Collateral and the Cure Requirement, if any, must be paid by certified or bank check, or wire transfer of immediately available funds, to Secured Party upon the execution and delivery of any closing documents required by the Secured Party. The closing shall take place on a date set by the Secured Party no later than ten (10) days after the date of the auction, time being of the essence (such date, the "**Outside Date**"). The sale will be consummated immediately upon execution and delivery of closing documents and receipt of payment by the Secured Party in immediately available funds of the full bid price (together with all amounts due for sales or transfer taxes, if any, related to the sale of the Collateral, which shall be paid by the purchaser) and receipt by the Mortgage Loan holder of all amounts required to consummate the Cure Requirement, if any. Upon payment in full, the purchaser shall receive a certificate representing the Collateral purchased and a transfer statement transferring the Collateral, without guaranty of signatures, without payment of any transfer or other tax (which shall be the sole responsibility of the successful bidder), without warranty by or recourse to the Secured Party, its agents or its representatives, and subject to all defenses, in form and substance acceptable to the Secured Party. If the successful bidder is the Secured Party, then the foregoing requirements will not apply and payment for the Collateral may be made by applying against the purchase price the amounts due to the Secured Party by the Debtor under the Loan Agreement.

If the Secured Party is not the highest qualified bidder for the Collateral, the Secured Party reserves the right to designate a back-up bidder. If a back-up bidder is selected, the back-up bidder's Required Deposit will remain with the Title Company until refunded as provided below. If the highest qualified bidder posts its Second Deposit with respect to the Collateral, the Required Deposit will be promptly returned to the back-up bidder together with any interest accrued thereon. If the highest qualified bidder does not timely post its Second Deposit, then the back-up bidder shall be notified within two (2) New York business days after the auction (the "**Back-Up Bidder Notice**"), and shall be obligated, within one (1) New York business day of receiving the Back-Up Bidder Notice from the Secured Party, to (a) deposit with the Title Company the Second Deposit for the Collateral and (b) execute a confirmation of sale in a form

to be provided by the Secured Party. If a Back-Up Bidder Notice is not delivered to a back-up bidder within two (2) New York business days after the auction, then the Required Deposit shall be promptly returned to such back-up bidder together with any interest accrued thereon. If a back-up bidder is ultimately selected as the winning bidder for the Collateral, the back-up bidder will be required to pay the balance of the purchase price for the Collateral to be purchased by the back up bidder by certified or bank check, or wire transfer of immediately available funds, to Secured Party no later than five (5) business days after delivery of the Back-Up Bidder Notice from the Secured Party to the back-up bidder, time being of the essence. The sale of the Collateral to a back-up bidder will otherwise be consummated on the same terms as applicable to the successful bidder at the public auction, including the obligation of the Back-Up Bidder to satisfy the Cure Requirement, if any. If the back-up bidder for the Collateral is the Secured Party, then the foregoing requirements will not apply to the Collateral and payment for the Collateral may be made by applying against the purchase price the amounts due under the Loan Agreement.

4. If the Secured Party is unable for any reason to consummate the sale of the Collateral to a successful bidder at the public sale and to execute and deliver the closing documents, its sole obligation to the successful bidder shall be the return of the principal amount of the bidder's deposit(s), with any interest accrued thereon. If the successful bidder is unable for any reason to timely deliver the Second Deposit, the Secured Party shall retain the Required Deposit paid by the bidder as liquidated damages for the costs of the sale and for its loss of bargain, in lieu of all other damages, and the Secured Party may accept the next highest qualified bid at the public sale of the Collateral. If a successful bidder or back-up bidder timely delivers the Second Deposit for the Collateral, but is unable for any reason to consummate the purchase of the Collateral on or prior to the Outside Date, the Secured Party shall retain the Required Deposit and the Second Deposit paid by such bidder as liquidated damages for the costs of the sale and for its loss of bargain, in lieu of all other damages. By bidding at the sale, each bidder acknowledges that it would not be possible to ascertain the Secured Party's actual damages under the circumstances described in the preceding two sentences. A successful bidder or back up bidder shall have no right to postpone or nullify a sale of the Collateral if it is unable to meet any of the requirements under the Intercreditor Agreement, the Mortgage Loan Documents or any other document relating to the Collateral.
5. For further information concerning the Collateral or the public sale herein described, prospective bidders may contact John Wilcox of Savills LLC (Telephone (212) 328-2800) or may fax a signed copy of the Confidentiality and Investment Agreement to John Wilcox at (212) 328-2828.

Reference is hereby made to the following documents (the "**Transaction Documents**"):

- (a) Amended and Restated Mezzanine A Loan Agreement dated as of December 11, 2006 and effective as of October 4, 2006 (as amended, supplemented, assigned or otherwise modified from time to time, the "**Loan Agreement**") between Debtor and Original Lender.
- (b) Amended and Restated Promissory Note (Mezzanine A Loan) dated as of December 11, 2006 and effective as of October 4, 2006 (the "**Note**") executed by Debtor in favor of Original Lender evidencing a loan in the original principal amount of \$60,000,000 (as



amended, supplemented, assigned or otherwise modified from time to time, the “**Mezzanine A Loan**”).

- (c) Amended and Restated Mezzanine A Pledge and Security Agreement dated as of December 11, 2006 and effective as of October 4, 2006 given by Debtor for the benefit of Original Lender (as amended, supplemented, assigned or otherwise modified from time to time, the “**Pledge Agreement**”).
- (d) General Assignment dated as of January 16, 2007, between Original Lender, as assignor, and Secured Party, as assignee, pursuant to which Original Lender assigned to Secured Party all of Original Lender's right, title and interest in and to the Mezzanine A Loan, the Loan Agreement, the Note, the Pledge Agreement and all of the other documents and instruments evidencing, securing and otherwise governing and relating to the Mezzanine A Loan (the “**Mezzanine A Loan Documents**”).
- (e) Intercreditor Agreement dated as of December 11, 2006 and effective as of October 4, 2006 by and among Original Lender, as Senior Lender, Original Lender, as First Mezzanine Lender, Original Lender, as Second Mezzanine Lender, and Original Lender, as Third Mezzanine Lender (as amended, supplemented, assigned or otherwise modified from time to time, the “**Intercreditor Agreement**”).



Exhibit A

(See Confidentiality and Investment Agreement attached as a .pdf document)



Exhibit B

FORM OF CERTIFICATION

Reference is made to that certain Terms of Public Sale (the “Terms of Public Sale”) delivered by DekaBank Deutsche Girozentrale (“Secured Party”) or its designee to you in connection with that certain Confidentiality and Investment Agreement entered into between [] and Secured Party prior to the date hereof. Capitalized terms used but not defined in this certification shall have the meanings assigned to such terms in the Terms of Public Sale.

[] (“Bidder”), hereby certifies to Secured Party that it:

- (i) understands that the Collateral has not been and will not be registered under the Securities Act of 1933 (the “Securities Act”) and is aware that the offer and sale of Collateral is being made in a transaction exempt from the registration requirements of the Securities Act;
- (ii) is acquiring the Collateral for investment purposes, solely for its own account and not with a view to distribution or resale of the Collateral;
- (iii) has sufficient knowledge and experience in financial and business matters so as to be capable of evaluating the merits and risks of investment and has sufficient financial means to afford the risk of investment in the Collateral;
- (iv) will not resell or otherwise hypothecate the Collateral without a valid registration under applicable federal or state laws, including, without limitation, the Securities Act, as amended, or an available exemption therefrom;
- (v) [is a “Qualified Transferee” as set forth in the Intercreditor Agreement and will meet all of the other requirements of Section 6(a) of the Intercreditor Agreement on the date of closing of the sale of the Collateral][has obtained, or will prior to the date of closing of the sale of the Collateral obtain, a Rating Agency Confirmation (as defined in the Intercreditor Agreement), and will otherwise meet all of the requirements of Section 6(a) of the Intercreditor Agreement on the date of closing of the sale of the Collateral]; and
- (vi) will effectuate the Cure Requirement, if any.

Bidder hereby represents and warrants to Secured Party that the consummation by Bidder of the transactions contemplated by the Terms of Public Sale will not violate any federal, state, local or municipal law, statute, ordinance, rule, order or regulation or any order of any court or governmental authority that is binding on Bidder. Bidder hereby agrees to indemnify and hold Secured Party harmless against all liabilities, losses, damages, judgments, costs and expenses of any kind directly or indirectly associated with any claim based on any misrepresentation or inaccuracy contained in the information in this certification.

[Signature Page Follows]

The Savills logo consists of the word "savills" in a white, lowercase, sans-serif font, centered within a solid black square.

IN WITNESS WHEREOF, I have signed this certificate.

Date: _____, 201__

[_____], as Bidder

By: _____

Name:

Title:

DEKABANK DEUTSCHE GIROZENTRALE
Mainzer Landstrasse 16
60325 Frankfurt am Main
Germany

_____,20__

Re: **Confidentiality and Investment Agreement**

Ladies and Gentlemen:

Reference is made that certain Amended and Restated Mezzanine A Loan Agreement, dated as of December 11, 2006 and effective as of October 4, 2006 (as amended, restated, supplemented or otherwise modified from time to time, the "Loan Agreement"), by and between DekaBank Deutsche Girozentrale as lender (as assignee of the original lender thereunder) ("Secured Party") and Istithmar Hotels Union Square Mezz 1 LLC ("Borrower"). Borrower is the owner of 100% of the limited liability company interests in Istithmar Hotels Union Square LLC and certain related rights (the "Collateral") pledged to Secured Party.

Secured Party understands that you are considering the acquisition of the Collateral at a Uniform Commercial Code public foreclosure sale to be held on or about March 24, 2010 at the offices of Sonnenschein Nath & Rosenthal LLP, 1221 Avenue of the Americas, New York, New York 10020. Secured Party may furnish you with certain non-public, proprietary information concerning the Collateral in connection with your consideration of the acquisition of the Collateral (the "Proposed Transaction"). All information furnished in any form to you or any Representative (as defined below) by Secured Party or any of its representatives or agents relating to the Collateral and all notes, analyses, compilations, data, computer files, studies or other documents prepared by you or any Representative, or which contain, reflect or are based in whole or in part on any such furnished information or reflecting your review or evaluation of Proposed Transaction, is referred to herein collectively as the "Confidential Information."

In connection with your being furnished with the Confidential Information, you hereby agree as follows:

1. Except as set forth herein, neither you, nor any of your Representatives or agents or third parties retained by you will communicate or contact any person or party with respect to the Collateral or the Proposed Transaction, including without limitation Borrower, directly or indirectly, in an effort to obtain from any of them any information regarding the Collateral or the Proposed Transaction, without the prior written consent of Secured Party.

2. The Confidential Information is the sole and exclusive property of Secured Party and will be kept strictly confidential and will not, without the prior written consent of

Secured Party, be disclosed by you to any person in any manner whatsoever in whole or in part, including without limitation to Borrower (except to the extent that you are advised in writing by legal counsel that disclosure is required by applicable law or regulation or, subject to compliance with paragraph 8 below, you are served with a request for interrogatories (information or document) or are served with a subpoena or similar process compelling the discovery of the Confidential Information), and will not be used by you, directly or indirectly, for any purpose other than evaluating the related Proposed Transaction; provided, however that you may disclose the Confidential Information to any of your Representatives who need to know such Confidential Information for the purpose of assisting you in evaluating such Proposed Transaction (it being understood that such Representatives will be informed by you of the contents of this Agreement, the confidential nature of the Confidential Information, and that by receiving such Confidential Information, such Representatives are agreeing to be bound by this Agreement). You agree to take all reasonable measures to restrain your Representatives from prohibited or unauthorized disclosure or use of the Confidential Information. You will be responsible for any breach of this Agreement by any of your Representatives as if you yourself had committed such breach. “Representative” means you, your affiliates and your or your affiliates’ respective directors, officers or employees and, solely to the extent that you communicate with them regarding the subject matter hereof, your or your affiliates’ agents, including without limitation, attorneys, accountants, consultants and financial advisors.

3. Without the prior written consent of Secured Party, neither you nor any of your Representatives will disclose to any other person the fact that the Confidential Information has been made available, that investigations, discussions or negotiations are taking place concerning a Proposed Transaction or any of the terms, conditions or other facts with respect to any Proposed Transaction, including the status thereof, except as required by law and then only with prior written notice to Secured Party. The term “person” used in this Agreement shall be interpreted to include, without limitation, any corporation, company, group, partnership, similar entity or individual.

4. Upon Secured Party’s written request, the Confidential Information provided to you by Secured Party and any copies thereof either will be destroyed by you or returned to Secured Party immediately, and you agree to destroy all evaluation materials prepared by you or your Representatives and, at the request of Secured Party, such destruction shall be certified in writing to Secured Party by your authorized officer supervising such destruction. Notwithstanding the return or destruction of the Confidential Information, you and each Representative will continue to be bound by the terms of this Agreement.

5. The confidentiality and nondisclosure provisions of this Agreement shall not apply to such portions of the Confidential Information which: (i) are or become generally available and known to the public other than as a result of a disclosure directly or indirectly by you or any Representative; (ii) become lawfully available to you on a nonconfidential basis from a source other than Secured Party or one of its agents or representatives, which has not represented to you that it is bound by a confidentiality agreement with or other contractual, legal or fiduciary obligation of confidentiality to Secured Party or any other party with respect to any portion of the Confidential Information; or (iii) were lawfully known to you on a nonconfidential basis prior to its disclosure to you by Secured Party or its representatives as evidenced by prior documentation thereof.

6. Except for any representations and warranties contained in a definitive agreement as described in the next sentence, you understand that Secured Party has endeavored to include in the Confidential Information those materials that are believed to be reliable and relevant for the purpose of your evaluation, but you also understand and acknowledge that neither Secured Party nor any of its agents or representatives makes any representation or warranty, express or implied, as to the accuracy or completeness of the Confidential Information or its sufficiency for your purposes. You agree that neither Secured Party nor any of its agents or representatives shall have any liability to you or to any Representative as a result of the use of, or purported reliance upon, the Confidential Information by you or any Representative, it being understood that only those particular representations and warranties, if any, which may be made by Secured Party in a definitive agreement, when, as and if such an agreement is executed, and subject to such limitations and restrictions as may be specified in such agreement, shall have any legal effect.

7. You further agree that unless and until a definitive agreement regarding a Proposed Transaction has been executed, neither you nor Secured Party will be under any legal obligation of any kind whatsoever with respect to any Proposed Transaction by virtue of this Agreement except for the matters specifically agreed to herein. You acknowledge and agree that Secured Party reserves the right, in its sole discretion, to reject any and all proposals made by you or any Representative regarding a Proposed Transaction and to terminate discussions and negotiations with you at any time. Nothing herein is intended to (i) obligate either party to enter into a Proposed Transaction with the other or (ii) create any partnership, joint venture or business relationship between the parties hereto.

8. If you or any Representative to whom you transmit the Confidential Information pursuant to this Agreement is requested or becomes legally compelled in any judicial or administrative proceeding or by any governmental or regulatory authority (by oral questions, interrogatory request for information or documents, subpoena, criminal or civil investigative demand or similar process) to disclose any of the Confidential Information, prior to such disclosure, unless legally prohibited from doing so, you will provide Secured Party with prompt written notice so that Secured Party may seek (with your cooperation, if so requested by Secured Party), a protective order or other appropriate actions to limit or narrow the request; provided, however, that the requirement to so cooperate shall not require you to become a party to, or actively participate in, any such action by Secured Party except to the extent that such actions by you are legally required in order for such order or other remedy to be obtained. Prior to the consummation of any particular Proposed Transaction, if such protective order or other remedy is not obtained or Secured Party waives compliance with the provisions of this Agreement, you may make such disclosure with respect to such Proposed Transaction without liability but you agree to: (i) provide Secured Party with written notice of the Confidential Information to be disclosed as far in advance of its disclosure as is reasonable; (ii) furnish only that portion of the Confidential Information which you are advised by counsel is legally required; and (iii) use commercially reasonable efforts to obtain reasonable assurance that confidential treatment will be accorded the Confidential Information so disclosed.

9. You understand that the Collateral has not been and will not be registered under the Securities Act, and you are aware that the offer and sale of Collateral is being made in a transaction exempt from the registration requirements of the Securities Act of 1933 (the "Securities Act").

10. You have such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of an investment in the Collateral, and you are able to bear the economic risk of investment in the Collateral for an indefinite period.

11. You are acquiring the Collateral for your own account for investment purposes only and not with a view to any distribution of the Collateral subject, nevertheless, to the understanding that the disposition of your property shall at all times be and remain within your control.

12. You understand that the Collateral may not be reoffered, resold, pledged or otherwise transferred except: (a) pursuant to an effective registration statement under the Securities Act or (b) under a valid exemption from registration under the Securities Act.

13. You understand and acknowledge that the certain of the representations contained in this letter are required in connection with the laws of the United States and that Secured Party will be relying on these representations. You hereby irrevocably authorize Secured to rely upon these representations and to produce this letter to any interested party in any administrative or legal proceeding or official inquiry with respect to the matters covered hereby.

14. You acknowledge and agree that money damages would not be a sufficient remedy for any breach of any provision of this Agreement by you or your Representatives, and that in addition to all other remedies which Secured Party may have, Secured Party shall be entitled to specific performance and injunctive or other equitable relief as a remedy in the event of any breach of the confidentiality and nondisclosure provisions of this Agreement. Such remedies shall not be deemed to be the exclusive remedies for a breach of this Agreement by you or any Representative but shall be in addition to all other remedies available at law or in equity. No failure or delay in exercising any right, power or privilege will operate as a waiver thereof, nor will any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder. You also agree to indemnify Secured Party against all losses directly or indirectly associated with any breach by you of this Agreement, and you agree to reimburse Secured Party for all costs and expenses, including attorneys' fees, incurred by Secured Party in successfully enforcing your obligations under this Agreement. In the event of litigation between the parties with respect to this Agreement, the prevailing party's reasonable attorneys' fees and expenses shall be reimbursed upon demand by the losing party.

15. The confidentiality and nondisclosure provisions of this Agreement and the parties' obligations hereunder shall terminate and be of no further force or effect on the earlier to occur of (a) the date on which the parties into a definitive agreement with respect to a Proposed Transaction and (b) the date which is one year from the date hereof. In the event the parties enter into one or more definitive agreements setting forth terms of a Proposed Transaction, the confidentiality and nondisclosure provisions in those agreements shall supersede the terms of this Agreement with respect to the information disclosed under and pursuant to such agreements.

16. This Agreement contains the sole and entire agreement between the parties hereto with respect to the subject matter hereof. This Agreement may be amended, modified, or waived only by a separate written instrument duly executed by all parties hereto. The invalidity

or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provisions of this Agreement, which shall remain in full force and effect.

17. This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument. The parties agree that this Agreement, any documents to be delivered pursuant to this Agreement and any notices hereunder may be transmitted between them by email and/or facsimile. The parties intend that faxed signatures and electronically imaged signatures such as .pdf files shall constitute original signatures and are binding on all parties.

18. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

19. **This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to principles of conflicts of law (other than Section 5-1401 of the New York General Obligations Law, which shall govern).** Each party hereto hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of the courts of the State of New York sitting in the Borough of Manhattan and of the United States District Court for the Southern District of New York, and any appellate court from any thereof, in any suit, action, proceeding, claim or counterclaim brought by or on behalf of any party related to or arising out of this agreement (each a "Proceeding"), and each party hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such Proceeding may be heard and determined in such court. With respect to any such Proceeding, each party hereto hereby irrevocably and unconditionally waives, to the fullest extent permitted by applicable law, (i) any objection which it may now or hereafter have to the laying of venue, (ii) the defense of an inconvenient forum and (iii) any right to trial by jury.

If you agree with the foregoing, sign and return two (2) copies of this Agreement, which shall constitute our agreement with respect to the subject matter herein, effective as of the date first written above.

[Signature Page Follows]

Very truly yours,

DEKABANK DEUTSCHE
GIROZENTRALE, as Secured Party

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

CONFIRMED & AGREED:

[BIDDER]

By: _____

Name: _____

Title: _____