

**AMERICAN BAR ASSOCIATION**

**SECTION OF TAXATION AND SECTION OF REAL  
PROPERTY, PROBATE, AND TRUST LAW  
2007 JOINT FALL MEETING**

**Installment Sales – Myths, Legend, Pitfalls and Difficult Issues**

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**Winstead PC**

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John F. Bergner is a shareholder in the Dallas, Texas office of Winstead PC. Mr. Bergner has been with Winstead for more than 22 years and serves as chairman of the wealth preservation practice group. Mr. Bergner is a specialist in estate planning and probate law certified by the Texas Board of Legal Specialization. His practice involves complex tax, estate and business succession planning as well as administration of estates. He earned a B.B.A. from Washburn University, a J.D. from Washburn University, and an M.L.T. from the Georgetown University Law Center. Mr. Bergner is active in the American Bar Association and is currently Chair of the Estate and Gift Tax Committee of the ABA's Tax Section. He is a Fellow of the American College of Trust and Estate Counsel and has lectured at numerous tax and estate planning seminars.

**Edward M. Manigault**  
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Ed Manigault is a partner of Jones Day and concentrates his practice on income and transfer tax planning for high net worth families and their affiliated entities. Ed also represents tax-exempt organizations on a variety of tax and non-tax legal issues. Ed is an ACTEC Fellow and a member of the RPTE and Tax Sections of the ABA. Ed serves as vice chair of RPTE's Income and Transfer Tax Planning Group and is a member of RPTE's Corporate Sponsorship, Groups and Committees, and Task Force on USA Patriot Act Committees. Ed is a member of the Estate & Gift Taxes, Exempt Organizations, and Individual Income Tax Committees of the Tax Section. He is chair of the Taxation Section of the Georgia Bar and co-chair of the Communications Committee of the Fiduciary Law Section.

**Steve R. Akers**  
**Bessemer Trust Company, N.A.**

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Steve R. Akers, JD, is a Managing Director with Bessemer Trust Company, N.A., in Dallas, Texas. Mr. Akers is a member of the Advisory Committee to the University of Miami Philip E. Heckerling Institute on Estate Planning. He serves as the Chair Elect of the American Bar Association's Section of Real Property, Trust and Estate Law. He is a Fellow of the American College of Trust and Estate Counsel, and currently serves on the ACTEC Long Range Planning Committee. He is a past Chair of the State Bar of Texas Real Estate, Probate and Trust Law Section and of the Dallas Bar Probate, Trusts and Estates Section.

**Laura S. Hundley**  
**Holland & Hart LLP**

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Laura Hundley is a partner at Holland & Hart LLP and focuses her practice on estate and wealth transfer planning for high net worth individuals. She is a frequent speaker on estate and charitable planning topics and is actively involved in the nonprofit community, including service as Chair of the Board of Trustees of the Community Foundation, in Boulder, and board memberships with the Colorado Conservation Trust and Colorado Music Festival. Previously, she practiced at Ropes & Gray, in Boston; most recently, she was a principal at Crestone Capital Advisors LLC, a national wealth advisory firm. She is a member of the ABA's Tax and RPTE Sections. She earned an A.B. from Harvard College (magna cum laude with highest honors, Phi Beta Kappa) and a J.D. from Cornell Law School (cum laude).

**Derek L. Fletcher**  
**Winstead PC**

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Derek Fletcher is a shareholder in the Dallas, Texas office of Winstead PC whose practice involves estate planning for high net worth individuals, with particular emphasis on the organization, administration and succession of closely held business interests. Derek is a Certified Public Accountant and is board certified in estate planning and probate law by the Texas Board of Legal Specialization. Derek earned a B.B.A. in accounting from Texas Tech University and a J.D. from the University of Texas at Austin. Derek is active in a variety of professional organizations, including service as (i) a member of the Board of Governors of the Dallas Estate Planning Council, (ii) former chairman of the Probate, Trusts and Estates Section of the Dallas Bar Association, (iii) webpage editor for the American Bar Association Estate and Gift Tax Committee and (iv) a member of the Dallas Foundation Advisory Council.

# **Installment Sales – Myths, Legend, Pitfalls and Difficult Issues**

THESE SAMPLE FORMS ARE SUBMITTED WITHOUT WARRANTY AND ARE NOT INTENDED TO, AND CANNOT, REPLACE THE INDEPENDENT JUDGMENT OF EACH ATTORNEY WITH RESPECT TO THEIR APPLICABILITY, ACCURACY, VALIDITY AND TAX CONSEQUENCES IN PARTICULAR CIRCUMSTANCES.

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## PURCHASE AGREEMENT

### CLASS B UNITS IN XYZ INVESTMENTS LLC

THIS PURCHASE AGREEMENT (this "Agreement") is made this \_\_\_ day of \_\_\_\_\_, 200\_\_\_, by and between [TRUSTEE #1] and [TRUSTEE #2], as Co-Trustees of the [DYNASTY TRUST] ("Purchaser") and [SELLER] ("Seller"). Seller and Purchaser are the "parties" under this Agreement. [BENEFICIARY #1] and [BENEFICIARY #2] are also signing this Agreement as guarantors (the "Guarantors").

#### RECITALS:

- A. Seller owns 990 Class B Units in XYZ INVESTMENTS LLC.
- B. Purchaser desires to purchase from Seller, and Seller desires to sell to Purchaser, all right, title and interest in all 990 of Seller's Class B Units in XYZ INVESTMENTS LLC (the "Purchased Units"), at a purchase price to be determined as set forth below.

#### AGREEMENTS:

Purchaser and Seller, upon the terms and subject to the conditions contained in this Agreement, agree as follows:

1. Purchase of Purchased Units. Simultaneously with the execution of this Agreement, Seller agrees to sell, transfer and convey all of Seller's right, title and interest in and to, and Purchaser agrees to purchase from Seller, the Purchased Units pursuant to the terms and conditions of this Agreement.
2. Purchase Price. The purchase price paid to Seller for the Purchased Units shall be equal to the Fair Market Value of the Purchased Units as of the execution of this Agreement (the "Purchase Price"). For purposes of this Agreement, "Fair Market Value" shall mean the price as of the execution of this Agreement at which the Purchased Units would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts, as finally determined for federal gift tax purposes. As appropriate, such determination of Fair Market Value shall take into account any appropriate discounts (including, without limitation, discounts for lack of marketability, minority interest, or both). The Purchase Price shall be paid according to the terms of the Promissory Note and Security Agreement (the forms of which are attached as Exhibits A and B), to be executed simultaneously with the execution of this Agreement by Purchaser, and the Guaranty (the form of which is attached as Exhibit C), also to be executed simultaneously with the execution of this Agreement by each of the Guarantors.
3. Independent Appraisal. Within ninety (90) days of this Agreement, \_\_\_\_\_, or such other independent appraiser as agreed to by the parties, shall determine the Fair

Market Value of the Purchased Units as of the execution of this Agreement. Such independently appraised value shall be the Purchase Price hereunder unless and until there is any final determination that the Fair Market Value, as finally determined for federal gift tax purposes, is higher or lower, in which event the Purchase Price shall be adjusted to reflect such higher or lower final determination of Fair Market Value.

4. Closing. The closing of the purchase of the Purchased Units (the “Closing”) shall occur simultaneously with the execution of this Agreement. At the Closing, Purchaser shall execute and deliver to Seller a Promissory Note and a Security Agreement (which grants a security interest in the Purchased Units, as well as in any and all other assets of Purchaser, as collateral for the Promissory Note) and the Guarantors shall each execute and deliver a Guaranty.
5. Representations, Warranties and Agreements of Seller. As a material inducement to Purchaser to consummate the transactions contemplated in this Agreement, Seller hereby represents and warrants the following to Purchaser:
  - (a) At Closing, Seller shall have full and complete authority to sell and transfer the Purchased Units to Purchaser as herein provided, free from any liens, claims or encumbrances, and without the approval or consent of any other person or entity; and
  - (b) At Closing, Seller shall sell and transfer to Purchaser good title to the Purchased Units, free and clear of all liens, claims and encumbrances (except for the security interest in the Purchased Units granted by Purchaser to Seller as collateral for the Promissory Note).
6. No Personal Obligation of Trustee. By signing this Agreement on behalf of Purchaser, [TRUSTEE #1] and [TRUSTEE #2], as Co-Trustees (the “Co-Trustees”) are obligating the [DYNASTY TRUST] (the “Trust”) and are not undertaking any personal obligation. Seller shall have recourse to only the assets of the Trust and not to any of the Co-Trustees’ or Trust beneficiaries’ personal assets, except as provided in any Guaranty.
7. Miscellaneous.
  - (a) The representations, warranties, covenants and agreements of Seller and Purchaser set forth herein shall survive the sale of the Purchased Units described herein and shall not be extinguished by the execution of that sale.
  - (b) This Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their heirs, legal representatives, successors and assigns.
  - (c) THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK. Any legal action or proceeding with respect to this Agreement

shall be brought in the courts of the State of New York in New York City or the Southern District of New York, and, by execution and delivery of this Agreement, the Purchaser hereby irrevocably accepts for itself and in respect of its property, generally and unconditionally, the nonexclusive jurisdiction of such courts. The Purchaser further irrevocably consents to the service of process out of any of the aforementioned courts in any such action or proceeding by the mailing of copies thereof by registered or certified mail, postage prepaid, to it at the address set out for notices in the Promissory Note, such service to become effective three (3) days after such mailing. Nothing herein shall affect the right of the Seller to serve process in any other manner permitted by law or to commence legal proceedings or to otherwise proceed against the Purchaser in any other jurisdiction. The Purchaser hereby irrevocably waives any objection which Purchaser may now or hereafter have to the laying of venue of any of the aforesaid actions or proceedings arising out of or in connection with this Agreement brought in the courts referred to herein and hereby further irrevocably waives and agrees not to plead or claim in any such court that any such action or proceeding brought in any such court has been brought in an inconvenient forum.

- (d) Any default under any other promissory note payable by Purchaser to Seller (or any subsequent holder of the Promissory Note) shall be a default under the Promissory Note.
- (e) This Agreement embodies the entire agreement of the parties hereto relating to the purchase of the Purchased Units. All prior understandings and agreements relating to the purchase and sale of the Purchased Units are hereby expressly waived and terminated by the parties hereto.
- (f) In case one or more of the provisions contained in this Agreement shall be held to be invalid, illegal, or unenforceable, for any reason and in any respect, the same shall not affect any other provision in this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
- (g) The headings contained in this Agreement are for convenience of reference only and shall not be considered in construing this Agreement.
- (h) This Agreement and the rights and interests of a party hereunder may not be assigned, transferred, pledged or conveyed without the prior written consent of the other parties hereto.
- (i) This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which shall constitute the same agreement.



IN WITNESS WHEREOF, Purchaser has executed and delivered this Agreement as of the date and year first shown above.

PURCHASER:

**[TRUSTEE #1] and [TRUSTEE #2], as Co-Trustees of the [DYNASTY TRUST]**

By: \_\_\_\_\_ [SEAL]  
[TRUSTEE #1], Co-Trustee

By: \_\_\_\_\_ [SEAL]  
[TRUSTEE #2], Co-Trustee

IN WITNESS WHEREOF, Seller and Guarantors have executed and delivered this Agreement as of the date and year first shown above.

SELLER:

\_\_\_\_\_ [SEAL]  
**[SELLER]**

GUARANTORS:

\_\_\_\_\_ [SEAL]  
**[BENEFICIARY #1]**

\_\_\_\_\_ [SEAL]  
**[BENEFICIARY #2]**

**EXHIBIT A**

[Promissory Note]

**EXHIBIT B**

[Security Agreement]

**EXHIBIT C**

[Guaranty]

## PROMISSORY NOTE

\_\_\_\_\_, 200\_\_

FOR VALUE RECEIVED, the undersigned, [TRUSTEE #1] and [TRUSTEE #2], as Co-Trustees of the [DYNASTY TRUST] (“Maker”), hereby promise to pay to the order of [SELLER] (“Holder”) the principal amount as defined and calculated below (the “Principal Amount”) as payment of the Purchase Price pursuant to the terms of the Purchase Agreement dated this date between Maker and Holder (the “Purchase Agreement”), together with interest from the date of this Promissory Note (this “Note”) on the Principal Amount from time to time outstanding at the Note Rate (as defined below).

1. Principal Amount. The Principal Amount due under this Note shall be the Purchase Price as finally determined under the Purchase Agreement, a true and correct copy of which is attached hereto as Exhibit A and incorporated by reference herein.
2. Payments.
  - (a) Principal and Interest Payments. Maker shall pay installment payments of interest and principal hereon as follows:
    - (i) Subject to possible prepayment pursuant to subparagraph 2(d), interest shall accrue for the first nine (9) years of this Note at a rate of [MID-TERM AFR]% per annum, compounded annually (the “Note Rate”).
    - (ii) On the earlier to occur of the nine year anniversary of this Note or maturity, whether as a result of repayment in full, acceleration or otherwise, Maker shall pay to the then Holder of this Note a payment equal to the sum of the then outstanding principal balance of this Note plus accrued and unpaid interest as of the date of such payment.
  - (b) Payment Dates Not Falling On Business Days. If any payment on this Note is due on a Saturday, Sunday or any day on which national banks are not required to be open for business in New York (any other day being a “Business Day”), such payment shall be made (without penalty) on the immediately preceding Business Day.
  - (c) Manner of Payment. Maker shall make all payments to the then Holder of this Note of principal and interest in immediately available United States funds (or in such other form as shall be acceptable to the then Holder) at \_\_\_\_\_, or at such other place as Holder shall have designated to Maker in writing.
  - (d) Prepayment. Maker may prepay all or any portion of this Note at any time or times and in any amount without premium or penalty.

3. Events of Default. This Note shall become due and payable immediately, without notice, upon the occurrence of one or more of the following events (each an "Event of Default"):
- (a) Maker fails to pay when due any amount due under this Note, or any amount due under any other promissory note payable by Maker to Holder;
  - (b) If, pursuant to or within the meaning of the United States Bankruptcy Code or any other federal or state law relating to insolvency or relief of debtors (a "*Bankruptcy Law*"), Maker shall (i) commence a voluntary case or proceeding; (ii) consent to the entry of an order for relief against it in an involuntary case; (iii) consent to the appointment of a trustee, receiver, assignee, liquidator, or similar official; (iv) make an assignment for the benefit of its creditors; or (v) admit in writing its inability to pay its debts as they become due;
  - (c) If a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that (i) is for relief against Maker in an involuntary case, or (ii) appoints a trustee, receiver, assignee, liquidator, or similar official for Maker or substantially all of Maker's properties, and in each case the order or decree is not dismissed within 60 days; or
  - (d) Any judgment in excess of \$25,000.00 is entered against Maker, or any attachment, levy, or garnishment is issued against any property of Maker.
4. Remedies. If this Note is not paid at maturity, whether by acceleration or otherwise, Holder shall have all of the rights and remedies provided by any law or agreement. Any requirement of reasonable notice shall be met if Holder sends the notice to Maker at:

c/o [TRUSTEE #1], Co-Trustee

\_\_\_\_\_  
\_\_\_\_\_.

If reasonably possible, such notice shall be sent by Holder to Maker at least seven (7) days prior to the date of the event giving rise to the required notice. Maker is liable to Holder for all reasonable costs and expenses of every kind incurred in the making or collection of this Note, including, without limitation, reasonable attorneys' fees and court costs. These costs and expenses shall include, without limitation, any costs or expenses incurred by any Holder in any bankruptcy, reorganization, insolvency, or other similar proceeding.

5. Security. This Note is secured by a Security Agreement granted as of this date by Maker to Holder and a Guaranty by each of [BENEFICIARY #1] and [BENEFICIARY #2] executed as of this date, as the same may be amended from time to time.
6. Waivers; Severability. Maker hereby waives demand, presentment, notice of dishonor or protest, and consents to any extension or postponement of time of payment without limit as to the number or period, to the addition of any party, and to the release or discharge of, or suspension of any rights and remedies against, any person who may be liable for the payment of this Note. No delay on the part of a Holder in the exercise of any rights or

remedy shall operate as a waiver. No single or partial exercise by a Holder of any right or remedy shall preclude any other future exercise of it or any other Holder or the exercise of any other right or remedy. No waiver or indulgence by a Holder of any default shall be effective unless in writing and signed by Holder, nor shall a waiver on one occasion be construed as a bar to or waiver of that right on any future occasion.

7. Governing Law; Interpretation. THIS NOTE AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK. Any legal action or proceeding with respect to this Note shall be brought in the courts of the State of New York in New York City or the Southern District of New York, and, by execution and delivery of this Note, Maker hereby irrevocably accepts for itself and in respect of its property, generally and unconditionally, the nonexclusive jurisdiction of such courts. Maker further irrevocably consents to the service of process out of any of the aforementioned courts in any such action or proceeding by the mailing of copies thereof by registered or certified mail, postage prepaid, to it at the address set out herein for notices, such service to become effective three (3) days after such mailing. Nothing herein shall affect the right of Holder to serve process in any other manner permitted by law or to commence legal proceedings or to otherwise proceed against Maker in any other jurisdiction. Maker hereby irrevocably waives any objection which Maker may now or hereafter have to the laying of venue of any of the aforesaid actions or proceedings arising out of or in connection with this Note brought in the courts referred to herein and hereby further irrevocably waives and agrees not to plead or claim in any such court that any such action or proceeding brought in any such court has been brought in an inconvenient forum.
8. Invalidity. If any one or more of the provisions contained herein shall be invalid, illegal or unenforceable in any respect, the validity, legality or enforceability of all the remaining provisions shall not in any way be affected or impaired.
9. Assignment. This Note is binding upon the legal representatives, successors and assigns of Maker, and inures to the benefit of Holder, any subsequent Holder hereof, and their respective representatives, successors and assigns.
10. No Personal Obligation of Trustee. By signing this Agreement on behalf of Purchaser, [TRUSTEE #1] and [TRUSTEE #2], as Co-Trustees (the "Co-Trustees") are obligating The [DYNASTY TRUST] (the "Trust") and are not undertaking any personal obligation. Seller shall have recourse to only the assets of the Trust and not to any of the Co-Trustees' or Trust beneficiaries' personal assets, except as provided in any Guaranty.

IN WITNESS WHEREOF, Maker has caused this Note to be duly executed as of the date first above written.

MAKER:

[TRUSTEE #1] and [TRUSTEE #2], as Co-Trustees of the [DYNASTY TRUST]

By: \_\_\_\_\_ [SEAL]  
[TRUSTEE #1], Co-Trustee

By: \_\_\_\_\_ [SEAL]  
[TRUSTEE #2], Co-Trustee

HOLDER:

\_\_\_\_\_ [SEAL]  
[SELLER]



**EXHIBIT A**

**[COPY OF PURCHASE AGREEMENT]**

## SECURITY AGREEMENT

THIS SECURITY AGREEMENT (this "Agreement") is made this \_\_ day of \_\_\_\_\_, 200\_\_, by and between [TRUSTEE #1] and [TRUSTEE #2], as Co-Trustees of the [DYNASTY TRUST] ("Purchaser") and [SELLER] ("Seller").

### RECITALS:

- A. Purchaser and Seller entered into a certain Purchase Agreement dated the date hereof (the "Purchase Agreement").
- B. At the closing of the transaction contemplated by the Purchase Agreement, Seller is to deliver to Purchaser the "Purchased Units," as defined in the Purchase Agreement. Purchaser is to deliver to Seller a promissory note dated this date for the balance of the purchase price (the "Note").
- C. The Purchase Agreement requires Purchaser to grant a security interest in the Purchased Units and other assets pursuant to this Agreement.
- D. Seller is unwilling to enter into the Note unless, among other things, Purchaser enters into this Agreement and grants a security interest in the Purchased Units and any and all other assets of Purchaser as collateral for the Note.
- E. Purchaser is willing to grant a security interest in the Collateral (as herein defined) to induce Seller to enter into the Note.

### AGREEMENTS:

Purchaser and Seller, upon the terms and subject to the conditions contained in this Agreement, agree as follows:

- 1. Grant of Security Interest in the Collateral.
  - (a) To secure the prompt payment and performance in full when due, whether by lapse of time, acceleration, mandatory prepayment or otherwise, of the Purchaser's obligations under the Note (the "Purchaser's Obligations"), Purchaser hereby grants to Seller a continuing security interest in, and a right to set off against, any and all right, title and interest of Purchaser in and to the following, whether now owned or existing or owned, acquired, or arising hereafter (with all of the following terms, as used in this Section 1(a), having the meaning given such terms in the Uniform Commercial Code as in effect in the State of New York, to the extent defined therein) (collectively, the "Collateral"): the Purchased Units; all accounts; all cash; all chattel paper; all deposit accounts and any replacement or successor accounts relating thereto; all documents; all equipment; all fixtures; all general intangibles; all goods; all instruments; all inventory; all investment property; all letter-of-

credit rights; all agreements, contracts, leases, licenses, tax sharing agreements or hedging arrangements now or hereafter entered into by Purchaser, as such agreements may be amended or otherwise modified from time to time (collectively, the "Assigned Agreements"), including, without limitation, (i) all rights of Purchaser to receive moneys due and to become due under or pursuant to the Assigned Agreements, (ii) all rights of Purchaser to receive proceeds of any insurance, indemnity, warranty or guaranty with respect to the Assigned Agreements, (iii) claims of Purchaser for damages arising out of or for breach of or default under the Assigned Agreements and (iv) the right of Purchaser to terminate the Assigned Agreements, to perform thereunder and to compel performance and otherwise exercise all remedies thereunder; all supporting obligations; all books, records, ledger cards, files, correspondence, computer programs, tapes, disks, and related data processing software (owned by Purchaser or in which it has an interest) that at any time evidence or contain information relating to any Collateral or are otherwise necessary or helpful in the collection thereof or realization thereupon; all other personal property of any kind or type whatsoever owned by Purchaser; and to the extent not otherwise included, all accessions, proceeds and products of any and all of the foregoing.

- (b) The Purchaser and the Seller hereby acknowledge and agree that the security interest created hereby in the Collateral (i) constitutes continuing collateral security for all of the Purchaser's Obligations, whether now existing or hereafter arising and (ii) is not to be construed as an assignment of any intellectual property.
- (c) Purchaser hereby grants Seller a limited power of attorney to sell or transfer the Collateral as provided in this Agreement. Purchaser shall execute and deliver to Seller as appropriate all such proxies, powers of attorney and other instruments as Seller may reasonably request for the purpose of enabling Seller to exercise the rights and powers which she is entitled to exercise pursuant to this Agreement.

2. Termination.

- (a) This Agreement, the security interests granted herein to Seller in the Collateral and the retention of the Collateral by Seller shall terminate upon the earlier to occur of:
  - (i) the date on which the Collateral has been delivered to Purchaser pursuant to Section 2(b) hereof; or
  - (ii) the date on which all of the Collateral has been sold at public or private sale by Seller pursuant to the rights and remedies provided to Seller under Section 7 hereof, the sales price for such sale has been paid in full, and the sales proceeds applied in accordance with Section 8 hereof.

- (b) Upon satisfaction in full of Purchaser's Obligations and receipt by Seller from Purchaser of written demand therefor, Seller shall, within five (5) business days of the receipt of such demand, take such action (at Purchaser's expense) which is reasonably necessary to release Seller's security interest in the Collateral.
- 3. Ownership and Property Rights With Respect to the Collateral. Unless and until an "Event of Default" (as hereinafter defined) shall have occurred and be continuing, and subject to Section 7 of this Agreement,
  - (a) Purchaser shall have and retain full legal and beneficial ownership of the Collateral or any part thereof, and Purchaser shall have the sole right to exercise all voting and other consensual rights with respect to the Collateral;
  - (b) Purchaser shall have the benefit of any increases and bear the risk of any decreases in the value of the Collateral;
  - (c) Purchaser shall have the sole right to exercise all rights with respect to the Collateral;
  - (d) Purchaser shall pay all taxes, assessments or other charges upon or with respect to the Collateral; and
  - (e) Purchaser shall have the right to hold any distributions declared with respect to the Collateral.
- 4. Affirmative Covenants of Purchaser. Purchaser covenants and agrees with Seller from and after the date hereof and until this Agreement is terminated that Purchaser will punctually pay or cause to be paid the Note according to the terms thereof.
- 5. Negative Covenants of Purchaser. Purchaser covenants and agrees that during the term of this Agreement and until performance and payment of Purchaser's Obligation it will not, without the prior written consent of Seller, grant a security interest, pledge, hypothecate, set over, assign or transfer, or attempt to grant a security interest, pledge, hypothecate, set over, assign or transfer, subject to this Agreement or otherwise, any interest in the Collateral or any part thereof.
- 6. Event of Default. For purposes of this Agreement, "Event of Default" shall mean:
  - (a) the failure by Purchaser to make any payment of interest or principal when due under the Note, or under any other promissory note payable by Purchaser to Seller; or
  - (b) the breach by Purchaser of any duty, obligation, agreement, warranty or covenant under this Agreement, or the Purchase Agreement, which breach is not cured within thirty (30) days after Seller shall have given Purchaser written notice thereof.

7. Remedies Upon Default.

- (a) If any Event of Default shall have occurred and be continuing, Seller may take any or all of the following actions without being required to give notice to Purchaser except as may be specifically required by applicable law or elsewhere in this Agreement:
  - (i) exercise from time to time any remedies available to Seller under the Uniform Commercial Code as in effect at that time in New York or otherwise available to Seller; and
  - (ii) subject to the requirements of applicable law, and without limiting any rights otherwise available hereunder or under law, transfer into Seller's name, or into the name of any nominee or nominees of Seller, all or part of all of the Collateral and retain the same or sell, assign and deliver all of the Collateral at public or private sale for cash, on credit or for other property, for immediate or future delivery, without any assumption of credit risk, and for such commercially reasonable price or prices and terms as Seller in her sole discretion may determine.
- (b) Purchaser agrees that, to the extent notice of sale shall be required by law, at least five (5) days notice to Purchaser of the time and place of any public sale or of the time after which any private sale is to be made shall constitute reasonable notification. Seller shall not be obligated to make any sale of the Collateral regardless of notice of sale having been given. Seller may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned. With respect to any of the Collateral that consists of securities not registered under the securities laws of the United States or any state, Purchaser agrees that it shall be commercially reasonable for Seller to sell the Collateral to a buyer who shall represent that he, she, or it is purchasing solely for investment and not with a view to the resale or distribution of such securities, or in such other manner as counsel for Seller may require to comply with applicable securities laws.
- (c) PURCHASER HEREBY WAIVES ALL PROVISIONS OF THE NEW YORK UNIFORM COMMERCIAL CODE AND SIMILAR STATUTES ENACTED FOR THE BENEFIT OF DEBTORS, INCLUDING, WITHOUT LIMITATION, ALL NOTICE REQUIREMENTS, TO THE FULL EXTENT THAT PROVISIONS MAY BE WAIVED.

8. Application of Proceeds of Sale and Cash. The proceeds of sale of any Collateral sold pursuant to Section 7 hereof shall be applied by Seller in the following order:

- (a) First, to the payment of all costs and expenses paid or incurred by Seller in connection with such sales, if any, including, but not limited to, all court costs and

reasonable fees and expenses of counsel for Seller in connection therewith and the payment of all reasonable and necessary costs and expenses paid or incurred by Seller on the exercise of any right or remedy hereunder or under the Note, or under the Purchase Agreement.

- (b) Next, to the satisfaction of Purchaser's Obligations to the extent such obligations have not been previously satisfied in full by Purchaser.
  - (c) Finally, as to any remaining proceeds, to Purchaser, or such other person who or which may be entitled thereto.
9. No Waiver. No failure on the part of Seller to exercise, and no delay in exercising any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or remedy by Seller preclude any other or further exercise thereof or the exercise of any right, power or remedy. No express waiver or assent by Seller to any breach of or default in any term, covenant or condition which this Agreement requires to be performed or observed shall constitute a waiver of or assent to any succeeding breach of or default in the same or any other term, covenant or condition hereof. All remedies hereunder are cumulative and are not exclusive of any other remedies provided by law.
10. No Personal Obligation of Trustee. By signing this Agreement on behalf of Purchaser, [TRUSTEE #1] and [TRUSTEE #2], as Co-Trustees (the "Co-Trustees") are obligating the [DYNASTY TRUST] (the "Trust") and are not undertaking any personal obligation. Seller shall have recourse to only the assets of the Trust and not to any of the Co-Trustees' or Trust beneficiaries' personal assets, except as provided in any Guaranty.
11. Authority of Seller. Seller shall have and be entitled to exercise all power granted to it hereunder, together with such powers as are reasonably incidental thereto.
12. Duty to Preserve the Collateral. Purchaser agrees that Seller shall have no duty to it with respect to the preservation of the value of any of the Collateral.
13. Binding Agreement. This Agreement shall be binding upon and inure to the benefit of the heirs, personal representatives of the estates, or successors, as the case may be, of Seller or Purchaser.
14. Notices. All notices shall be in writing and shall be deemed to have been given and to be effective on the day on which delivered to any party hereto at the address specified below (or at such other address as such party shall specify to the other parties in writing in accordance with the provisions of this Section) or, if sent by certified U.S. mail, postage prepaid, on the fifth business day after the day on which mailed, addressed to such party as such address:

Purchaser: c/o [TRUSTEE #1], Co-Trustee

\_\_\_\_\_  
\_\_\_\_\_

Seller: [SELLER]

\_\_\_\_\_  
\_\_\_\_\_

15. Governing Law. THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK. Any legal action or proceeding with respect to this Agreement shall be brought in the courts of the State of New York in New York City or the Southern District of New York, and, by execution and delivery of this Agreement, the Purchaser hereby irrevocably accepts for itself and in respect of its property, generally and unconditionally, the nonexclusive jurisdiction of such courts. The Purchaser further irrevocably consents to the service of process out of any of the aforementioned courts in any such action or proceeding by the mailing of copies thereof by registered or certified mail, postage prepaid, to it at the address set out herein for notices, such service to become effective three (3) days after such mailing. Nothing herein shall affect the right of the Seller to serve process in any other manner permitted by law or to commence legal proceedings or to otherwise proceed against the Purchaser in any other jurisdiction. The Purchaser hereby irrevocably waives any objection which Purchaser may now or hereafter have to the laying of venue of any of the aforesaid actions or proceedings arising out of or in connection with this Agreement brought in the courts referred to herein and hereby further irrevocably waives and agrees not to plead or claim in any such court that any such action or proceeding brought in any such court has been brought in an inconvenient forum.
16. Amendments. This Agreement may not be amended or modified, nor, except as specifically provided herein, any of the Collateral released or the security interest created thereby extended, unless pursuant to a writing signed by the parties hereto. Any such amendment or modification shall only be effective in the specific instance and for the specific purpose for which given.
17. Further Assurances. Purchaser agrees to do such further acts and things, and to execute and deliver such additional conveyances, assignments, agreements and instruments, as Seller may at any time reasonably request in connection with the administration and enforcement of this Agreement or relative to any of the Collateral or any part thereof, or in order to better to assure and confirm unto Seller her rights and remedies hereunder.
18. Headings. The headings contained in this Agreement are for convenience of reference only and shall not be considered in construing this Agreement.
19. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which shall constitute the same agreement.

IN WITNESS WHEREOF, Purchaser and Seller have executed and delivered this Agreement as of the date and year first shown above.

PURCHASER:

[TRUSTEE #1] and [TRUSTEE #2], as Co-Trustees of the [DYNASTY TRUST]

By: \_\_\_\_\_ [SEAL]  
[TRUSTEE #1], Co-Trustee

By: \_\_\_\_\_ [SEAL]  
[TRUSTEE #2], Co-Trustee

SELLER:

\_\_\_\_\_ [SEAL]  
[SELLER]