



## CHARGED-OFF ACCOUNT PURCHASE AGREEMENT

### WITNESSETH

This Charged-off Account Purchase Agreement ("Agreement") is made and entered into on this 18th day of February 2011 by and between U.S. Bank National Association ("USB"), including its Retail Collections division ("USBRC"), a national banking association with offices at \_\_\_\_\_ and USBRC hereinafter collectively referred to as "SELLER"), and \_\_\_\_\_ with offices at \_\_\_\_\_, hereinafter collectively referred to as "PURCHASER".

WHEREAS, SELLER from time to time will charge-off consumer receivables from its books, resulting in charged-off accounts that are delinquent but for which the outstanding balance remains the obligation of the defaulting customer;

WHEREAS, SELLER desires to and has the right to sell certain of its charged-off accounts to PURCHASER;

WHEREAS, PURCHASER desires to purchase such charged-off accounts, all on the terms and conditions hereinafter set forth;

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants, agreements and conditions of the SELLER and PURCHASER contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the SELLER and PURCHASER agree as follows:

#### 1. DEFINITIONS

*As used herein, the following terms have the following respective meanings:*

"Account(s)" means those consumer and other account receivables generated by SELLER in connection with the operation of SELLER's business.

"Account Document" means any application, agreement, billing statement, notice, correspondence or other information in the SELLER's possession that relates to an Account.

"Customer(s)" means the person who is obligated to repay an Account, or if there are multiple persons obligated to repay an Account, all such persons collectively.

"Charged-off Account(s)" means an Account which SELLER has charged-off its books as uncollectible in accordance with its charge-off policies.

"Direct Payments" shall mean payments made by Customers directly to SELLER.

"Ineligible Account(s)" means any Account which SELLER has knowledge of bankruptcy, threatened or pending legal action, documented dispute, notification of complaint with any independent body, or prior acknowledgement of settlement: (i) the Account was discharged in bankruptcy; (ii) the Customer has asserted, in writing and prior to the Closing Date, a counterclaim or defense based on fraud or forgery; or (iii) the account was previously settled and the amount of the settlement has been satisfied or the account has been paid in full.

"Person" shall mean any natural person, firm, corporation, partner, shareholder, partnership, proprietorship, joint venture, venturer, organization, trust, group of natural persons, or other association or entity separately identifiable whether or not such entity has a recognized legal existence in its own right.

"Purchased Account(s)" has the meaning set forth in Section 2(a).

"Purchaser" shall mean the person referred to in the Preamble above, including its employees, officers, directors, shareholders, partners, venturers, agents,



representatives, attorneys or any other persons acting or purporting to act on its behalf.

**"Unpaid Balance"** means, as to any Account at the time of closing the total outstanding unpaid principal balance, less payments (excluding any interest accrued subsequent to charge-off), as shown on SELLER's books and records.

## 2. SALE OF ACCOUNTS

(a) Subject to the terms and conditions of this Agreement, as of the aforementioned Closing Date, SELLER hereby agrees to sell, assign and transfer to PURCHASER all of its rights, title and interest in and to Charged-off Accounts which, on the Closing Date, have an aggregate Unpaid Balance.

(b) In consideration for the sale by SELLER to PURCHASER of Charged-off Accounts as provided in Section 2 (a), PURCHASER agrees to pay SELLER the amounts (collectively the "Purchase Price") identified in Appendix "A".

**(c) EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, THE PURCHASED ACCOUNTS ARE SOLD "AS IS", AND SELLER MAKES NO WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE PURCHASED ACCOUNTS, AND HEREBY EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

(d) "AS IS" Exceptions. Accounts that are found to be settled prior or paid in full Prior to the closing date will be eligible for replacement/repurchase by the seller. A period of one (1) year from the closing date will be given to the Purchaser to return said accounts. Purchaser will provide a copy of cancelled check and/or letter at the time of replacement/repurchase.

## 3. OPERATIONAL RESPONSIBILITIES

PURCHASER agrees not to refer any Customer whose account is the subject of this Agreement to SELLER but to handle any inquiries itself. PURCHASER also agrees that it is the sole duty and responsibility of PURCHASER to manage, service, oversee, ascertain and perform all activity associated with the Purchased Accounts. SELLER shall have no duty to take any action with respect to any Purchased Accounts and shall have no obligation to ascertain, monitor, identify, investigate or report any activity associated with the Purchased Accounts. SELLER agrees that it shall serve as custodian of the Account Documents, and shall function in a limited capacity as set forth in Section 9. SELLER does not retain any interest in or ownership of any of the Purchased Accounts. Notwithstanding the SELLER's administrative responsibilities as described in Section 9, PURCHASER shall be the sole owner and holder of the Purchased Accounts and any retail installment contracts or promissory notes evidencing the Customers' obligations under the Purchased Accounts consistent with the Uniform Commercial Code. PURCHASER agrees that it is the PURCHASER's sole responsibility to monitor and track all Direct Payments made with respect to the Purchased Accounts. SELLER agrees that for a period of two (2) years following the date of this Agreement, SELLER shall promptly remit or forward all direct payments, partial payments, settlement offers, or any other correspondence received by SELLER which pertains to the Purchased Accounts within thirty (30) days of receipt by SELLER. However, SELLER has no duty to ascertain or identify any activity on any Purchased Accounts including Direct Payments, and is under no duty of inquiry of Direct Payments on Purchased Accounts. Identifying Direct Payments is the sole duty of PURCHASER and SELLER shall not be liable in any way for not reimbursing PURCHASER for Direct Payments which are not

otherwise brought to the attention of SELLER by PURCHASER and confirmed by PURCHASER to be Direct Payments.

**4. COMPLIANCE WITH LAW**

SELLER represents and warrants that the Purchased Accounts were acquired, serviced and the deposit balance was obtained in compliance with all local, state and federal laws. In the performance of its collection efforts with respect to Purchased Accounts, PURCHASER agrees at all times to conform with all requirements of all applicable federal, state and local laws, regulations, rules, ordinances and orders of any court applicable to the conduct of such activities, including without limitation, The Fair Debt Collection Practices Act, 15 U.S.C. Section 1692 et seq., as amended, The Gramm-Leach-Bliley Act, 15 U.S.C. Section 6801 et seq., the Fair Credit Reporting Act, 15 U.S.C. Section 1681 et seq., as amended, the rules adopted under each such statute and any and all applicable state and local laws and rules regarding PURCHASER's debt collection activities. It shall be solely the PURCHASER's responsibility to determine the status, legal, factual or otherwise, of each Purchased Account and to act in accordance with all applicable laws in its actions relating to each such Purchased Account.

**5. PURCHASER'S INDEMNIFICATION**

PURCHASER will indemnify, defend and hold SELLER harmless from and against any and all costs, expenses (including attorneys' and paralegals' fees and disbursements), losses, claims, damages and liabilities, whatsoever, to the extent that any such cost, expense, loss, claim, damage or liability arose out of or was imposed upon SELLER directly or indirectly as a result of any acts or omissions of PURCHASER, or through the willful misfeasance, bad faith, negligence or violation of any applicable federal, state, or local law or regulation, by PURCHASER, PURCHASER's employees, contractors, agents, successors or assigns (in each case, whether or not a permitted successor, assignee, agent or contractor) in the performance of its services and/or obligations under this Agreement including PURCHASER's administration of Purchased Accounts after the Closing Date; or by reason of its breach of any of its obligations and duties hereunder. PURCHASER reserves the right to conduct the defense of any such claim, action or suit and may, at its election, select, engage and direct the activities of counsel.

**6. PURCHASER'S REQUEST FOR DOCUMENTATION**

SELLER and PURCHASER recognize this is an "as is" sale. Both SELLER and PURCHASER agree that special circumstances may arise from cause of claim or action similar to that outlined in Section 4 which may require additional documentation. PURCHASER shall have the right to request documents not limited to bank statements, signature cards or any and all terms and condition disclosure materials related to such Purchased Accounts from SELLER but will be required to pay a "reasonable fee" to cover the administrative costs of securing such data. Buyer will pay \$10.00 per account itemization requested, located and delivered. If PURCHASER does not agree to pay a "reasonable fee" for such documentation, the SELLER is not obligated to provide it, except in cases involving dual claims or ineligible accounts as defined in this contract. If Seller is unable to locate any Media, Seller will provide an Affidavit of Lost Documents, Affidavit of Correctness and /or Affidavit of Sale. The failure of Seller to locate requested media shall not be deemed a breach of this agreement. Seller will reasonably provide all media requested to Buyer within a reasonable time frame no more that sixty (60) days maximum.

**7. SELLER'S INDEMNIFICATION**

SELLER agrees to indemnify, and hold PURCHASER (including its officers, directors, employees, stockholders, and agents) harmless from and against any claims, actions, suits or other actual or threatened proceedings, and all losses, judgments, damages, expenses or other costs (including reasonable fees and disbursements of counsel) incurred or suffered by PURCHASER by reason of willful misconduct or violation of applicable law, rule or regulation by SELLER (or its employees or agents) in connection with the collection of the Purchased Accounts prior to closing date. SELLER reserves the right to conduct the defense of any such claim, action or suit and may, at its election, select, engage and direct the activities of counsel.

**8. RELATIONSHIP**

Nothing in this Agreement is intended to or shall be construed to constitute or establish an agency, joint venture, investment relationship, partnership or fiduciary relationship between the SELLER and PURCHASER and neither SELLER nor PURCHASER shall have the right or authority to act for or on behalf of the other with respect to any matter.

**9. NOTICES**

Any notices given pursuant to this Agreement shall be sufficient if mailed by certified mail, return receipt requested, to the following notice addresses:

US BANK NATIONAL ASSOCIATION

425 Walnut St  
Cincinnati, OH 45020

**11. ENTIRE AGREEMENT/AMENDMENT**

This Agreement, including the Account Purchase Summary (Appendix "A"), Reputational risk (Appendix "B"), Bill of Sale (Appendix "C"), Forward flow agreement Appendix "D") and List of Purchased Accounts (Appendix "E"), constitutes the entire understanding between the parties with respect to the subject matter and supersedes all prior written and oral proposals, understandings, agreements and representations all of which are merged herein. No amendment of this Agreement shall be effective unless in writing and executed by each of the parties hereto. All Appendices are attached to this Agreement, and incorporated herein by reference for all intents and purposes. To the extent that a dispute arises that an Appendix conflicts with this Agreement, the terms and provisions of this Agreement shall control. Appendix "C" is evidence of the Closing of the sale of Purchased Accounts to all third parties, including consumers, without having to disclose the terms and provisions of this Agreement.

**12. ASSIGNMENT/RESALE**

The PURCHASER shall retain the right to sell, transfer, subcontract or assign the Purchased Accounts to any third party, including any attorney, without the express written consent of the SELLER.

**13. CLOSING**

Closing on the purchase and sale of the Purchased Accounts, hereof occur on the Closing Date. Closing shall take place in the principal business offices of SELLER or at such other place as shall be mutually agreed upon between the parties. The parties agree that the closing may take place in counterparts.

**14. GOVERNING LAW/MEDIATION/ARBITRATION**

The terms and conditions of this Agreement and all obligations hereunder shall be governed by and construed in accordance with the laws of the State of Minnesota. The parties agree to the exclusive jurisdiction and venue of the applicable state and federal courts in Hennepin County, Minnesota.

**15. CONFIDENTIALITY**

(a) SELLER will keep confidential and will not, without PURCHASER's written consent, which will not be unreasonably withheld, divulge, disclose or disseminate information pertaining to this transaction except to those persons, regulators or agencies that have a bona fide need or legal right to receive such information.

(b) PURCHASER expressly acknowledges and agrees SELLER's books, records, documents, this Agreement, and all other information of any type furnished by whatever means to PURCHASER relating to any Accounts or otherwise pursuant to this Agreement (collectively, the "Proprietary Information") shall be confidential at all times, including after any cancellation or termination under the terms of this Agreement. PURCHASER will not release or otherwise divulge any Proprietary Information to any other person without the express written consent of SELLER except:

- (i) to those persons, including PURCHASER's employees, officers and agents, acting in concert with PURCHASER to carry out the provisions of any Section of this Agreement; or
- (ii) in response to a valid and binding subpoena or order of a court of competent jurisdiction.

**16. PAYMENT ACCEPTANCE**

SELLER's Acceptance of PURCHASER's offer to purchase cannot be confirmed until all applicable notices are signed and returned to SELLER by February 18, 2011. Purchased Accounts cannot be delivered until this Agreement and all accompanying sale documentation is executed by both parties, and SELLER has confirmed receipt of funds from PURCHASER.

**17. SEVERABILITY**

If any term, covenant, condition or provision of this Agreement is deemed to be unlawful, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect the remaining provisions of this Agreement, which shall remain in full force and effect and shall be binding upon the parties.

**18. TERMINATION**

Subject to all other terms and provisions of this Agreement, this Agreement will remain in effect for as long as PURCHASER retains ownership and control of the Purchased Accounts.

**19. LIENS RELEASED**

The title of the Purchased Accounts shall be free and clear of any and all liens, encumbrances, interests etc., and to the best of SELLER's knowledge, there is no continuing liability to any collection agency, attorney, financial institution or other similar entity.



IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the day and year first above written. Parties by their signatures below may cause this Agreement to be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same instrument.

US BANK NATIONAL ASSOCIATION

By:

Jacob van Breda, VP Retail Collections & Recovery

US BANK NATIONAL ASSOCIATION

By:

Lorena McEachin, SVP Retail Collections & Recovery

Purchaser:

By:





REPUTATIONAL RISK  
Appendix "B"

US Bank would request you do not re-sell any of the accounts that you have just purchased from US Bank to the following companies or any of their affiliates: Chi Capital, PMG, RATC, Integritas and Regent Asset Management due to US Bank's past history with these companies. The business practices of these companies were not of the high standard and caliber US Bank requires to service the accounts adequately. We at US Bank understand that their business practice does not reflect on US Bank hopes that you will honor this request to continue to keep the business relationship between our two companies.

US BANK NATIONAL ASSOCIATION

By:   
Jacob vanBrandwijk VP Retail Collections & Recovery

US BANK NATIONAL ASSOCIATION

By:   
Lorenza McEachin SVP Retail Collections & Recovery

Purchaser:

By: \_\_\_\_\_





Forward Flow  
Appendix "D"

Upon US Bank entering this Forward Flow agreement with \_\_\_\_\_ for the year 2011, the agreement is in place only for the calendar year of 2011. All parties agree that the sales agreed upon in this agreement will commence on the following dates: February 18, 2011, May 14, 2011, August 20, 2011 and November 12, 2011. The agreed purchase price for each sale has been set at the following: February 18, 2011 \_\_\_\_\_, May 14, 2011 \_\_\_\_\_, August 20, 2011 \_\_\_\_\_ and November 12, 2011 \_\_\_\_\_. US Bank and \_\_\_\_\_ also agree that each sale will net US Bank the minimum of \$1,000,000.00. Each sale is to be approved by US Bank's Credit Risk Administration each quarter prior to the closing date. If for some reason US Bank decides to not commence with any of the sales they must notify \_\_\_\_\_ in writing at least but no more than five (5) business days. Once notified neither party may not hold the other liable for any money or efforts put forth toward said sale. This agreement may be terminated by either party at any time with a thirty (30) day written notice.

US BANK NATIONAL ASSOCIATION

By: \_\_\_\_\_

Jacob vanBrandwijk VP Retail Collections & Recovery

US BANK NATIONAL ASSOCIATION

By: \_\_\_\_\_

Lorenza McEachin SVP Retail Collections & Recovery

Purchaser: \_\_\_\_\_

By: \_\_\_\_\_