

384482-S9  
Justin Bourgeois



**CREDIT CARD ACCOUNT PURCHASE AGREEMENT**

**Between**

**Chase Bank USA, N. A.**

**And**

**Midland Funding, LLC**

**Dated as of**

[REDACTED]

[REDACTED]

**Washington Mutual Fresh Forward Flow**

## CREDIT CARD ACCOUNT PURCHASE AGREEMENT

THIS AGREEMENT is made as of [REDACTED] by and between CHASE BANK USA, N. A., a national banking association, ("Seller") and Midland Funding, LLC, a Delaware limited liability company ("Purchaser").

### WITNESSETH

WHEREAS, Seller in the normal course of its banking business operates MasterCard and Visa credit card programs, which include revolving credit products other than credit cards; pursuant to which accounts were established or maintained for Cardholders, which accounts are governed by the terms of applicable agreements;

WHEREAS, in connection with the operation of its program, Seller from time to time charges-off accounts which are delinquent, but the outstanding balances of which remain the obligations of the defaulting Cardholders;

WHEREAS, Seller desires to sell certain of these charged-off accounts;

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 and agreements of the parties hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Definitions**

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

"Account" means an account established or maintained for a Cardholder pursuant to Seller's MasterCard and Visa credit card program, or other revolving credit program, including the Unpaid Balance owed by the applicable Cardholder.

"Business Days" shall mean Monday – Friday except for federal holidays (e.g., New Years Day, Presidents Day, Memorial Day, Independence Day, Labor Day, Thanksgiving and Christmas) and such other days when Seller is closed or authorized to close.

"Cardholder" means the person or entity who or which is obligated to repay an Account, or if there are multiple persons or entities obligated to repay an Account, all such persons or entities collectively.

"Charged-off Account" means an Account which Seller has charged-off the

Unpaid Balance as uncollectible in accordance with its usual and customary banking practices as of the File Creation Date and applicable federal regulations.

“Closing Date” shall mean each date as may be agreed upon by Seller and Purchaser for the purchase and sale of Charged-off Accounts pursuant to Section 2 of this Agreement. [REDACTED]

“Confidential Information” shall mean all oral, written or electronically delivered information and material, in tangible or intangible form, including all copies thereof, partial or complete in whatever media and information relating to Seller and/or its Cardholders, including, but not limited to, names, addresses, telephone numbers, and Account numbers.

“File Creation Date” means the date Seller creates a list of Accounts that will be sold to Purchaser on the Closing Date and provides such list to Purchaser.

“Ineligible Account” means any Account in which on or prior to the File Creation Date: (i) the Primary Cardholder voluntarily filed for bankruptcy protection, involuntarily became subject to bankruptcy proceedings and which bankruptcy has not been dismissed or was discharged in bankruptcy; (ii) the Cardholder has asserted in writing to Purchaser that the Account or any transaction on the Account was fraudulently originated or used and is disputed, which allegation has not been resolved to Seller’s satisfaction; (iii) the statute of limitations for collection of the Account has elapsed; (iv) the Primary Cardholder has died; (v) it is determined that the Account is subject to pending litigation, other than a class action or a case purported to be a class action, or is being handled by a collection agency or attorney either through sale or assignment; (vi) the Account was validly settled; or (vii) Seller furnished, or is intending to furnish a Form 1099-C to the IRS.

“Primary Cardholder” means the first name on the account, as reflected in Seller’s records and which can be located on the sale file in columns titled Last Name and First Name.

“Purchase Price” means the amount to be paid by Purchaser to Seller on the Closing Date for the purchase and sale of Charged-off Accounts as determined pursuant to the provisions of Section 2(b) hereof.

“Recallable Account” means, any Account which, in the sole discretion of Seller, meets any of the following criteria:

- (i) any Account which is the subject of a Charge-off reversal;
- (ii) any Account which has been referred to the Seller’s office of the President, Seller’s regulators, or any federal, state or local government agency or authority;
- (iii) any Account which Seller has a reasonable business need to recall;



pursuant to wiring instructions provided to Purchaser. Until such time as Seller has received the Purchase Price for the applicable Charged-off Accounts and Seller has executed a Bill of Sale therefor, all such information shall be deemed Seller's Confidential Information and property. Prior to the aforesaid sale, without Seller's prior written consent, Purchaser shall not disclose or release any of Seller's Confidential Information to any third party, other than (i) to Purchaser's financing entities, lenders, accountants or counsel in connection with this Agreement or (ii) if compelled to do so pursuant to judicial or administrative order. Prior to providing any Seller Confidential Information to any such third-party, Purchaser will obtain a written acknowledgement from such third party that the information is Seller's Confidential Information and will not be used for any purpose other than for determining whether Purchaser shall purchase the Accounts or whether financing for Purchaser's purchase of Seller's Accounts shall be made available. Upon either a determination to not purchase the Accounts or to decline to finance the purchase, Purchaser shall obligate such third party to destroy Seller's Confidential Information. Purchaser hereby represents to Seller that Seller's Confidential Information shall be destroyed within ten (10) days of a determination to neither purchase or finance the purchase of Accounts as referenced above.

(g) Seller represents and warrants to Buyer that the Charged-Off Accounts purchased by the Purchaser under this [REDACTED] Agreement shall be randomly selected from the total [REDACTED] pool of Charged-Off Accounts, which [REDACTED] pool shall be comprised of Washington Mutual Accounts, shall be reasonably representative to the [REDACTED] due diligence file

### 3. Representations and Warranties of Seller

Seller represents and warrants to Purchaser as follows:

(a) Seller is a national banking association duly organized, validly existing and in good standing under the laws of the United States with full power and authority to enter into this Agreement, to sell the Charged-off Accounts, and to carry out the terms and provisions hereof.

(b) Seller has the power and authority and all licenses and permits ("Authorization"), if any, required by governmental authority to carry on its business as now being conducted which relate to the Charged-off Accounts, which Authorizations are in full force and effect.

(c) The execution and delivery of this Agreement and the performance hereunder have been duly authorized on or prior to the Closing Date, by all necessary action on the part of Seller and no provision of applicable law or regulation or the charter or by-laws of Seller or any agreement, judgment, injunction, order, decree or other instrument binding upon Seller is or will be contravened by Seller's execution and delivery of this Agreement or Seller's performance thereunder.

(d) No Authorization, consent, approval, license, qualification or formal exemption from, nor any filing, declaration or registration with, any governmental agency

or regulatory authority or any other body is required in connection with the execution, delivery or performance by Seller of this Agreement, which authorization, consent, approval, license, qualification or formal exemption from, or filing declaration or registration has not been obtained on or prior to the Closing Date hereunder.

(e) No Authorization, consent, approval, license, qualification or formal exemption from, nor any filing, declaration or registration with, any governmental agency or regulatory authority or other body is required in connection with the sale of any or all of the Charged-off Accounts to be sold on the Closing Date, which Authorization, consent, approval, license, qualification or formal exemption, or filing, declaration or registration has not been obtained on or prior to such date.

(f) Seller has good and marketable title to each Charged-off Account to be sold hereunder and each such Charged-off Account shall be transferred free and clear of any lien or encumbrance.

(g) Seller hereby acknowledges and represents that the sale of the Charged-off Accounts to Purchaser hereunder: (i) is not made in contemplation of the insolvency of Seller, (ii) is not made with the intent to hinder, delay or defraud the creditors of Seller, (iii) has been approved by an officer of Seller with the authority to approve the sale of Charged-off Accounts, (iv) will be recorded in the records of Seller, and (v) represents a *bona fide* and arm's length transaction undertaken for adequate consideration in the ordinary course of business. Further, Seller hereby acknowledges and represents that Purchaser is neither an insider nor an affiliate of Seller.

(h) Each of the Charged-off Accounts has been maintained and serviced by Seller in compliance with all applicable state and federal consumer credit laws, including, without limitation, the Truth-in-Lending Act, the Equal Credit Opportunity Act, and the Fair Credit Billing Act.

(i) None of the Charged-off Accounts is subject to pending collection litigation.

(j) The due diligence information supplied to Purchaser by Seller concerning the Charged-Off Accounts to be sold to Purchaser hereunder, is materially true and accurate to the best of Seller's knowledge.

(k) The Charged-Off Accounts to be sold to Purchaser hereunder have not been disputed, have not been subject to a complaint or request to cease communication, either written or oral, are valid and undisputed Accounts and the Unpaid Balance on each Account is the binding obligation of each Cardholder.

(l) Seller has not placed any of the Accounts with a law firm.

(m) Seller has not filed a 1099-C with respect to any Account

(n) **EXCEPT AS PROVIDED IN THIS SECTION, THE CHARGED-OFF ACCOUNTS ARE BEING SOLD "AS IS" AND "WITH ALL FAULTS", WITHOUT ANY REPRESENTATION OR WARRANTY WHATSOEVER, EITHER CONDITION, FITNESS FOR ANY PARTICULAR PURPOSE, MERCHANTABILITY OR ANY OTHER WARRANTY, EXPRESS OR IMPLIED, AND SELLER SPECIFICALLY DISCLAIMS ANY WARRANTY, REPRESENTATION, ORAL OR WRITTEN, PAST OR PRESENT, EXPRESS OR IMPLIED, CONCERNING THE CHARGED-OFF ACCOUNTS, OR THE STRATIFICATION OR PACKAGING OF THE CHARGED-OFF ACCOUNTS.**

(o) All representations and warranties contained in this Section 3 shall survive the execution and delivery of the Closing as represented by the Bill of Sale therefor until the second anniversary thereof.

4. **Representations and Warranties of Purchaser**

Purchaser Represents and Warrants to Seller as follows:

(a) Purchaser is a limited liability company duly organized, validly existing and in good standing under the laws of Delaware with full power and authority to enter into this Agreement, to purchase the Charged-off Accounts, and to carry out the terms and provisions hereof.

(b) Purchaser has the power and Authorizations, if any, required by governmental authority to carry on its business as now being conducted which relate to the Charged-off Accounts, which Authorization is in full force and effect.

(c) The execution and delivery of this Agreement and the performance thereunder have been duly authorized on or prior to the Closing Date, by all necessary action on the part of Purchaser and no provision of applicable law or regulation or the charter or by-laws of Purchaser or any agreement, judgment, injunction, order, decree or other instrument binding upon Purchaser is or will be contravened by Purchaser's execution and delivery of this Agreement or Purchaser's performance thereunder.

(d) No Authorization, consent, approval, license, qualification or formal exemption from, nor any filing, declaration or registration with, any governmental agency or regulatory authority or any other body is required in connection with the execution, delivery or performance by Purchaser of this Agreement, which authorization, consent, approval, license, qualification or formal exemption from, or filing declaration or registration has not been obtained on or prior to the Closing Date hereunder.

(e) No Authorization, consent, approval, license, qualification or formal exemption from, nor any filing, declaration or registration with, any governmental agency or regulatory authority or other body is required in connection with the sale of any or all of the Charged-off Accounts to be sold on the Closing Date, which authorization, consent,

approval, license, qualification or formal exemption, or filing, declaration or registration has not been obtained on or prior to such date.

(f) Purchaser is a sophisticated Purchaser that is in the business of buying or collecting accounts of the type being purchased or otherwise deals in the collection of consumer debt in the ordinary course of Purchaser's business.

(g) Purchaser agrees to immediately notify Seller in writing of any unauthorized misappropriation, disclosure or use by any person of any of Seller's Confidential Information which may come to its attention and to take immediate steps to limit, stop, or otherwise remedy such misappropriation, disclosure or use.

(h) All representations and warranties contained in this Section 4 shall survive the execution and delivery of the Closing as represented by the Bill of Sale therefor until the second anniversary thereof.

#### 5. Operations

(a) Seller may, or upon being notified in writing by Purchaser or by a Cardholder shall, report to each of the credit bureaus it uses, that the Accounts have been sold to Purchaser to the extent that each credit bureau provides such reporting. Except as set forth in the preceding sentence, Seller shall have no further obligation with respect to credit bureau reporting for the Accounts.

(b) Purchaser agrees not to refer any inquiries from a Cardholder whose Account is the subject of this Agreement to Seller but to handle any such inquiries directly with Seller.

(c) Purchaser represents and warrants that it shall continue to report to those credit bureaus to which it reports, after the Closing Date, appropriate updates with respect to each Charged-off Account purchased from Seller hereunder.

#### 6. Documentation

(a) For a period of up to three (3) years from the Closing Date and upon receipt of a written request from Purchaser, Seller shall, to the extent such documents are reasonably available, provide Purchaser with copies of signed Account applications, applicable terms and conditions, and other media relating to the Charged-off Accounts, up to a maximum monthly number of documents of 10% of the Charged-off Accounts sold hereunder.

If the total number of documents requested is greater than twenty percent (20%) but less than fifty percent (50%) of the Charged-off Accounts, Seller will honor such requests and charge Purchaser five dollars (\$5.00) for each provided document. If the total number of documents provided exceeds fifty percent (50%) of the Charged-off Accounts, Seller may in its sole discretion honor such request and charge Purchaser ten dollars (\$10.00) for each document provided. Notwithstanding the foregoing,



Seller shall have no obligation to retrieve or provide any documents to any assignee of the Purchaser without Seller's prior written consent.

(b) Payment for documents pursuant to subparagraph (a) is due thirty (30) days from Seller's invoice date.

(c) If Purchaser files any legal action to collect on a purchased Charged-off Account and requests or subpoenas an officer or employee of the Seller or an affiliate to appear at a trial, hearing or deposition to testify about the Charged-off Account, the Purchaser shall pay the Seller or the affiliate for the officer's or employee's time in traveling to, attending and testifying at the trial, hearing or deposition, whether or not the officer or employee is called as a witness, at the then current hourly rate of such officer or employee. The Purchaser will also reimburse the Seller or the affiliate for the officer's or employee's out-of-pocket, travel and other related expenses.

7. Compliance with the Law

In the performance of its collection efforts with respect to the purchased Charged-off Accounts, Purchaser represents and warrants that it shall comply with all requirements of all applicable federal, state and local laws, rules and regulations, including, without limitation, the requirements of the Fair Debt Collection Practices Act (15 U.S.C. § 1692 *et seq.*).

(b) In the event that Purchaser receives notice that a formal investigation has 1) been commenced against Purchaser by a federal or state governmental entity (excluding routine inquiries from a state's attorney general, licensing authority, or other similar regulatory office), 2) regarding alleged violations of any debt collection practices statute or regulation, and 3) involving an Account(s) sold by Seller to Purchaser pursuant to this Agreement, then Purchaser shall, unless otherwise prohibited by law, promptly, but in no event more than ten (10) days after receipt of such notice, notify Seller in writing that such investigation has been initiated and provide Seller with general details regarding the allegations made and Purchaser's intended response thereto.

8. 

(a)   


[REDACTED]

(b) [REDACTED]

[REDACTED]

9. Relationship

(a) Nothing in this Agreement is intended to or shall be construed to constitute or establish an agency, joint venture, partnership or fiduciary relationship between the parties, and neither party shall have the right or authority to act for or on behalf of the other with respect to any matter.

(b) Purchaser agrees that notwithstanding any sale by Purchaser of the Charged-off Accounts purchased pursuant to this Agreement, Purchaser shall continue to be subject to all terms and conditions set forth herein as to such Charged-off Accounts.

10. Notices

Any and all notices or other communications required or permitted under this Agreement shall be in writing and shall be delivered by Federal Express or similar courier service for delivery the next business morning, addressed as follows:

If to Seller:

Chase Bank USA, N.A.

[REDACTED]

and

Chase Bank USA, N.A.

[REDACTED]



If to Purchaser: Midland Funding LLC  
C/O Encore Capital Group, Inc.  
8875 Aero Drive, Suite 200  
San Diego, CA 92123  
Attention: Corporate Counsel, Transactions

or to such other address as either party shall have previously designated to the other by written notice sent Federal Express or similar courier service for delivery next business morning.

11. Entire Agreement/Amendment

This Agreement, including exhibits, constitutes the entire understanding between the parties with respect to the subject matter hereof and supersedes all prior written and oral proposals, understandings, agreements and representations, all of which are merged and incorporated herein. No representations, warranties, and/or covenants have been made by either party to the other except as expressly set forth herein. Purchaser acknowledges and agrees that it is not relying on any representations of Seller in executing this Agreement except as are set forth herein. No amendment of this Agreement shall be effective unless in writing and executed by each of the parties hereto.

12. 



13. Use of Seller's Name

(a) In any litigation which Purchaser undertakes to collect monies owed on the Charged-off Accounts, Purchaser shall not sue in Seller's own name and shall not include the Seller's name in the caption of the action, either as a plaintiff or in any other capacity.

(b) Purchaser shall not use the name of Seller in any way in the operation of its

collection of the Charged-off Accounts including, but not limited to, checks, drafts, letters, and forms, except that Purchaser may refer to a purchased Charged-off Account in the body of a collection letter as an Account purchased from Chase Bank USA, N.A.

14. **Repurchase of Accounts**

(a) If, within one hundred eighty (180) days following the Closing Date, Purchaser determines that an Ineligible Account (other than an Account subject to subparagraph (d) below) was included among the purchased Charged-off Accounts, then the Seller agrees, upon receipt of written demand by Purchaser within such 180-day period (the "Written Notice"), to repurchase such Ineligible Account. The repurchase price for the Ineligible Account shall be an amount equal to Purchase Price for such Charged-off Account determined in accordance with Section 2(b), less any amounts received by Purchaser in connection with such Ineligible Account. Each such demand for the repurchase of Ineligible Accounts shall be accompanied by documentary evidence as set forth on Exhibit E in addition to commercially recognized third party databases, reasonably satisfactory to Seller to establish that an Account is an Ineligible Account.

(b) For each Account identified in the Written Notice, Seller shall have forty-five (45) days from the date it receives such notice to provide Purchaser with specific evidence that an Account identified in the Written Notice is not, in fact, an Ineligible Account. Seller's failure to provide such evidence or Seller's failure to respond to the Written Notice within forty-five (45) days of its receipt of such notice shall mean that Seller concurs with Purchaser's findings. In such event, Seller shall repurchase the Ineligible Account within (sixty) 60 Business Days of its receipt of the Written Notice, and Seller shall have no further liability or obligation to the Purchaser hereunder; provided, however, that the repurchase shall not relieve Seller from its obligation to indemnify Purchaser as provided under Section 8 of this Agreement. In no event shall such repurchase release, discharge, or relieve Purchaser from any claim of any third party with respect to the underlying Ineligible Account or its collection.

(c) In the event of any purported class action naming the Seller as a defendant involving any Charged-off Account sold hereunder, Seller shall have the unlimited right to recall and repurchase such Account. The repurchase price for such Account shall be as described above. If any such Account has been sold to a third party by Purchaser, Purchaser shall first repurchase such Account from such third party.

(d) If, within forty-five (45) days following the Closing Date, Purchaser determines that an Account included in the purchased Charged-off Accounts is an Ineligible Account because a Cardholder voluntarily filed for bankruptcy protection or became the subject of an involuntary bankruptcy proceeding and that bankruptcy has not been dismissed, then Seller agrees, upon the written demand by Purchaser made within such 45-day period (the "Bankruptcy Written Notice"), to repurchase such Ineligible Account. The repurchase price for the Ineligible Account shall be an amount equal to Purchaser's payment for such Charged-off Account as determined by Section 2(b), less any amounts received by Purchaser in connection with such Ineligible Account. For each

Account that Purchaser has identified in the Bankruptcy Written Notice as an Ineligible Account, the Seller shall have forty-five (45) days from the date it receives such notice to provide specific evidence to the contrary. Seller's failure to provide specific evidence to the contrary or to respond within forty-five (45) days of receipt of the Written Notice shall mean that Seller concurs with the Purchaser's findings. In such event, Seller will repurchase the Ineligible Account within (sixty) 60 business days of the Written Notice, in accordance with the provisions set forth in subparagraphs (a) and (b) above, and Seller shall have no further liability for any such breach and no further obligation to the Purchaser hereunder; provided, however, that the repurchase shall not relieve Seller from its obligation to indemnify Purchaser, as provided under Section 8 of this Agreement. In no event shall such repurchase release, discharge, or relieve Purchaser from any claim of any third party with respect to the underlying Ineligible Account or its collection.

(e) In connection with the repurchase of Ineligible Accounts hereunder, Seller and Purchaser shall prepare, execute and exchange appropriate bills of sale. All communications in connection with a repurchase of an Ineligible Account involving Confidential information of a Cardholder shall be consistent with the standards set forth in Section 14(f) hereof.

(f) Purchaser shall provide at Seller's request an encrypted Excel spreadsheet reconciliation sale file using PC Guardian Secure Export file software or encrypted software as otherwise approved by Seller. The Excel spreadsheet shall include a list of Accounts, Seller's 16 digit Account number for each Account, Cardholder first and last name, and social security number. Such list will exclude Ineligible Accounts repurchased by Seller.

(g) This Section 14 shall be Purchaser's sole remedy in the event Seller has sold Ineligible Accounts to Purchaser

(h) Once an account has been repurchased by Seller, the Purchaser will remove all credit bureau reporting from the Cardholder's credit report.

#### **15. Seller's Recall**

(a) If, at anytime following the Closing Date, Seller determines that an Account is a Recallable Account, Seller shall have the right to repurchase such Account and Purchaser hereby agrees to return to the Seller the Recallable Account and any payments, information and correspondence relating to such Recallable Account within thirty (30) days after receiving written notice by Seller.

(b) If Seller recalls an Account determined to be a Recallable Account, Seller shall repurchase such Recallable Account as follows: (i) in the event that Seller elects to repurchase a Recallable Account, Seller shall remit to Purchaser an amount equal to the original Purchase Price within sixty (60) Business Days of the date Seller receives the payments and information required pursuant to subparagraph (a) above; or (ii) if Seller elects in its sole discretion to substitute a Recallable Account, Seller shall deliver to

24. **Brokers**

Neither party hereto has had or is having any dealings with, or has received any services from any finder, broker, agent or other similar party, who is or will be entitled to a commission, fee or other payment of any nature in connection with this Agreement or any transaction contemplated hereby.

25. **Independent Contractors**

Nothing in this Agreement shall be deemed to create a partnership or joint venture between the parties. Except as expressly set forth herein, no party shall have any authority to bind or commit the other party. In the performance of its duties or obligations under this Agreement or any other contract, commitment, undertaking or agreement made pursuant to this Agreement, each party hereto shall not be deemed to be, or permit itself to be, understood as an agent of the other party hereto and shall at all times take whatever measures are necessary to ensure that its status shall be that of an independent contractor operating a separate entity.

26. **Purchaser's Duty to Keep Information Confidential**

From and after the execution of this Agreement, Purchaser shall keep confidential, and shall cause its officers, directors, employees and agents to keep confidential the terms of this Agreement and all information related to the Charged-Off Accounts sold hereunder (other than as may be necessary to disclose in order to collect on those Charged-Off Accounts or to report Charged-Off Account experience to credit bureaus) and, any and all information obtained from Seller concerning the assets, properties, and business of Seller, and shall not use such Confidential Information for any purpose other than those contemplated by this Agreement, provided, however, the Purchaser shall not be subject to the obligations set forth in the proceeding clause with respect to any such information provided to it by Seller which either (i) was in Purchaser's possession at the time of Seller's disclosure, (ii) is lawfully obtained by Purchaser from a third party, or (iii) is or becomes a matter of public knowledge, (iv) is required to be disclosed to any governmental authority, court or regulatory agency. Purchaser agrees that Seller would suffer irreparable harm and that damages caused by a breach of this Section 26 would be impossible to calculate and would, therefore, be an inadequate remedy. Accordingly, the Purchaser agrees that Seller shall be entitled to temporary and permanent injunctive relief against the Purchaser and/or its agents for any threatened or actual breach hereof. In the event Seller initiates any action to enforce the obligation of the Purchaser or its agents hereunder, the Purchaser agrees to reimburse Seller for all costs and expenses, including reasonable attorney's fees, incurred by Seller in this regard. Nothing in this Agreement shall be construed to limit Purchaser's obligation under any provisions of any confidentiality agreement entered into between Purchaser and Seller.

27. **Public Announcement**

Neither Purchaser nor Seller shall make any public announcement of this Agreement or provide any information concerning this Agreement or the subject matter hereof to any representative of the news media or any other person not a party to this transaction without the prior approval of the other party. The parties herein will not respond to any inquiry from public, governmental or administrative authorities concerning this Agreement without prior consultation and coordination with each other.

28. **Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of New York, without regard to any conflict of law principles. Purchaser consents and submits to the jurisdiction of the state and federal courts of New York, County of New York in connection with any controversy arising out of and related to this Agreement. Both parties also agree to irrevocably waive all rights to trial by jury in any action proceeding or counterclaim arising out of or relating to this Agreement or any amendment hereto. The prevailing party in any such litigation shall be entitled to reimbursement for its reasonable attorney's fees and the cost of expenses of litigation.

29. **LIMITATION OF LIABILITY**

EXCEPT FOR EACH PARTY'S OBLIGATIONS UNDER SECTION 8 INDEMNIFICATION AND PURCHASER'S OBLIGATIONS WITH RESPECT TO SELLER'S CONFIDENTIAL INFORMATION, IN NO EVENT SHALL EITHER PARTY HERETO, ITS AFFILIATES, OR THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES OR THIRD PARTY PROVIDERS BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, OR FOR ANY DAMAGES FOR LOST DATA, BUSINESS INTERRUPTION, LOST PROFITS, LOST REVENUE OR LOST BUSINESS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, REGARDLESS OF WHETHER SUCH DAMAGES COULD HAVE BEEN FORESEEN OR PREVENTED BY EITHER PARTY HERETO OR WHETHER SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

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

CHASE BANK USA, N.A.

MIDLAND FUNDING LLC

By: *Keith Schuck* KH

By: *J. Brandon Bleck*

Name: KEITH SCHUCK  
PRESIDENT

Name: J. Brandon Bleck  
President

Title: \_\_\_\_\_

Title: \_\_\_\_\_