



**Rule 10b5-1 Sales Plan**

**(Non-discretionary Plan)**

*Use this version of the Sales Plan if the seller wishes to indicate the amount, price and date of stock sales with such specificity that CL King & Associates will not have any discretion over how, when and whether to sell stock (other than the discretion inherent in applying ordinary principles of best execution).*

## Sales Plan

Sales Plan dated \_\_\_\_\_, 200\_\_\_\_ (this "Sales Plan") between [name of seller] ("Seller") and CL King & Associates ("KING"), acting as agent for Seller.

### **A. Recitals**

1. This Sales Plan is entered into between Seller and KING for the purpose of establishing a trading plan that complies with the requirements of Rule 10b5-1(c)(1) under the Securities Exchange Act of 1934, as amended (the "Exchange Act").

2. Seller is establishing this Sales Plan in order to permit the orderly disposition of a portion of Seller's holdings of the common stock, par value \$[ ] per share (the "Stock"), of [name of issuer] (the "Issuer").

### **B. Seller Representations, Warranties and Covenants**

1. As of the date hereof, Seller is not aware of any material nonpublic information concerning the Issuer or its securities. Seller is entering into this Sales Plan in good faith and not as part of a plan or scheme to evade compliance with the federal securities laws.

2. The securities to be sold under this Sales Plan are owned free and clear by Seller and are not subject to any agreement granting any pledge, lien, mortgage, hypothecation, security interest, charge, option or encumbrance, or any other limitation on disposition, other than those which may have been entered into between Seller and KING or imposed by Rules 144 or 145 under the Securities Act of 1933, as amended (the "Securities Act").

3. While this Sales Plan is in effect, Seller agrees not to enter into or alter any corresponding or hedging transaction or position with respect to the securities covered by this Sales Plan (including, without limitation, with respect to any securities convertible or exchangeable into the Stock) and agrees not to alter or deviate from the terms of this Sales Plan.

4. Seller agrees that Seller shall not, directly or indirectly, communicate any information relating to the Stock or the Issuer to any employee of KING or its affiliates who is involved, directly or indirectly, in executing this Sales Plan at any time while this Sales Plan is in effect. Any notice given to KING pursuant to this Sales Plan shall be given in accordance with paragraph F.5.

5.(a) Seller agrees to provide KING with a certificate dated as of the date hereof and signed by the Issuer substantially in the form of Exhibit B hereto prior to commencement of the Plan Sales Period (as defined below).

(b) Seller agrees to notify KING's compliance office by telephone at the number set forth in paragraph F.5 below as soon as practicable if Seller becomes aware of the occurrence of any event contemplated by paragraph 3 of the certificate set forth as Exhibit B hereto. Such notice shall indicate the anticipated duration of the restriction, but shall not include any other information about the nature of the restriction or its applicability to Seller and shall not in any way communicate any material nonpublic information about the Issuer or its securities to KING. Such notice shall be in addition to the notice required to be given to KING by the Issuer pursuant to the certificate set forth as Exhibit B hereto.

6. Seller agrees to complete, execute and deliver to KING a seller's representation letter dated as of the date hereof and in a form satisfactory to KING prior to the commencement of the Plan Sales Period (as defined below).

7. The execution and delivery of this Sales Plan by Seller and the transactions contemplated by this Sales Plan will not contravene any provision of applicable law or any agreement or other instrument binding on Seller or any of Seller's affiliates or any judgment, order or decree of any governmental body, agency or court having jurisdiction over Seller or Seller's affiliates.

8. Seller has consulted with Seller's own advisors as to the legal, tax, business, financial and related aspects of, and has not relied upon KING or any person affiliated with KING in connection with, Seller's adoption and implementation of this Sales Plan. Seller acknowledges that KING is not acting as a fiduciary or an advisor for Seller.

9. Seller agrees that until this Sales Plan has been terminated Seller shall not (i) enter into a binding contract with respect to the purchase or sale of Stock with another broker, dealer or financial institution (each, a "Financial Institution"), (ii) instruct another Financial Institution to purchase or sell Stock or (iii) adopt a plan for trading with respect to Stock other than this Sales Plan.

10.(a) Seller agrees to make all filings, if any, required under Sections 13(d), 13(g) and 16 of the Exchange Act in a timely manner, to the extent any such filings are applicable to Seller.

(b) Seller agrees that Seller shall at all times during the Plan Sales Period (as defined below), in connection with the performance of this Sales Plan, comply with all applicable laws, including, without limitation, Section 16 of the Exchange Act and the rules and regulations promulgated thereunder.

*[Include the following paragraph 11 if the Stock is to be sold under Rule 144 or 145:*

11.(a) Seller represents and warrants that the Stock to be sold pursuant to this Sales Plan is currently eligible for sale under Rule 144 or 145.

(b) Seller agrees not to take, and agrees to cause any person or entity with which Seller would be required to aggregate sales of Stock pursuant to paragraph (a)(2) or (e) of Rule 144 not to take, any action that would cause the sales hereunder not to meet all applicable requirements of Rule 144.

(c) Seller agrees to complete, execute and deliver to KING Forms 144 for the sales to be effected under this Sales Plan at such times and in such numbers as KING shall request, and KING agrees to file such Forms 144 on behalf of Seller as required by applicable law. Seller understands and agrees that KING shall make one Form 144 filing at the beginning of each three-month period commencing upon the first Sale Day under this Sales Plan.<sup>1</sup>

(d) Seller hereby grants KING a power of attorney to complete and/or file on behalf of Seller any required Forms 144. Notwithstanding such power of attorney, Seller acknowledges that KING shall have no obligation to complete or file Forms 144 on behalf of Seller except as set forth in subparagraph (c).

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<sup>1</sup> The Seller's representation on the Forms 144 regarding Seller's knowledge of material information regarding the Issuer may be made as of the date this Sales Plan is adopted. The "Remarks" section of each Form 144 should state that the sale is being made pursuant to a previously adopted plan intended to comply with Rule 10b5-1(c) and indicate the date the Sales Plan was adopted and that the representation is made as of such date.

(e) KING agrees to conduct all sales pursuant to this Sales Plan in accordance with the manner of sale requirement of Rule 144 of the Securities Act and in no event shall KING effect any sale if such sale would exceed the then-applicable amount limitation under Rule 144, assuming KING's sales pursuant to this Sales Plan are the only sales subject to that limitation.]

[12.] Seller acknowledges and agrees that Seller does not have, and shall not attempt to exercise, any influence over how, when or whether to effect sales of Stock pursuant to this Sales Plan.

### **C . Implementation of the Plan**

1. Seller hereby appoints KING to sell shares of Stock pursuant to the terms and conditions set forth on Exhibit A, "Specific Terms of Sales Plan". Exhibit A shall be deemed to be incorporated into this Sales Plan by reference. Subject to such terms and conditions, KING hereby accepts such appointment.

2. KING is authorized to begin selling Stock pursuant to this Sales Plan 14 days after the Sales Plan is adopted and shall cease selling Stock on the earliest to occur of (i) the date on which KING is required to suspend or terminate sales under the Sales Plan pursuant to paragraph D.1 below, (ii) the date on which KING receives notice of the death of Seller, (iii) the date on which the Issuer or any other person publicly announces a tender or exchange offer with respect to the Stock or a merger, acquisition, reorganization, recapitalization or comparable transaction affecting the securities of the Issuer as a result of which the Stock is to be exchanged or converted into shares of another company, (iv) the date on which KING receives notice of the commencement or impending commencement of any proceedings in respect of or triggered by Seller's bankruptcy or insolvency and (v) *(specify one or more occurrences that will mark the last day on which sales may occur):*

- (insert specific date)* \_\_\_\_\_ [and]
- the date that the aggregate number of shares of Stock sold pursuant to this Sales Plan reaches \_\_\_\_\_ shares (the "Total Sale Amount") [and]
- the date that the aggregate proceeds of sales pursuant to this Sales Plan (after deducting any commission, commission equivalent, mark-up or differential and other expenses of sale) reaches \$ \_\_\_\_\_

(the "Plan Sales Period").

3. KING shall not sell Stock hereunder at any time when:

(a) KING, in its sole discretion, has determined that a market disruption, banking moratorium, outbreak or escalation of hostilities or other crisis or calamity that could, in KING's judgment, impact sales of the Stock has occurred, or

(b) KING, in its sole discretion, has determined that it is prohibited from doing so by a legal, contractual or regulatory restriction applicable to it or its affiliates or to Seller or Seller's affiliates (other than any such restriction relating to Seller's possession or alleged possession of material nonpublic information about the Issuer or the Stock), or

(c) KING has received notice from the Issuer or Seller that trading should cease, or

(d) KING has received notice from Seller to terminate the Sales Plan in accordance with paragraph D.1 below.

4.(a) Seller agrees to deliver the Stock to be sold pursuant to this Sales Plan (with the amount to be estimated by Seller in good faith, if the Daily Sale Amount is designated as an aggregate dollar amount) (the “Plan Shares”) into an account at KING in the name of and for the benefit of Seller (the “Plan Account”) prior to the commencement of sales under this Sales Plan.

(b) KING shall withdraw Stock from the Plan Account in order to effect sales of Stock under this Sales Plan. KING agrees to notify Seller promptly if at any time during the Plan Sales Period the number of shares of Stock in the Plan Account is less than the number of Plan Shares remaining to be sold pursuant to this Sales Plan. Upon such notification, Seller agrees to deliver promptly to the Plan Account the number of shares of Stock necessary to eliminate this shortfall.

(c) To the extent that any Stock remains in the Plan Account after the end of the Plan Sales Period or upon termination of this Sales Plan, KING agrees to return such Stock promptly to the Issuer’s transfer agent for re-legending to the extent that such Stock would then be subject to transfer restrictions in the hands of the Seller.

5. KING shall in no event effect any sale under this Sales Plan if the Stock to be sold is not in the Plan Account.

6. KING may sell Stock on any national securities exchange, in the over-the-counter market, on an automated trading system or otherwise. Seller agrees that if KING is a market maker in the Stock at the time that any sale is to be made under this Sales Plan, KING may, at its sole discretion, purchase the Stock from Seller in its capacity as market maker.

7. Seller understands that KING may receive orders from other customers for the sale of the Stock. Seller authorizes KING to aggregate, in its discretion, sales under this Sales Plan with other KING customer orders for the sale of the Stock. Seller understands that, as a result, Seller may receive an average price for Seller’s sales which may be different from the prices Seller may have received had such sale not been aggregated.

8. KING agrees to use reasonable efforts to notify Seller of sales under this Sales Plan as soon as practicable following such sales.

#### ***D. Termination; Amendment***

1.(a) This Sales Plan may be suspended or terminated by Seller at any time upon three days prior written notice sent to KING’s compliance office by overnight mail and by facsimile at the address and fax number set forth in paragraph F.5 below. Seller agrees that Seller shall not suspend or terminate this Sales Plan except upon consultation with Seller’s own legal advisors.

(b) This Sales Plan shall be suspended or, at KING’s option, terminated, if KING receives notice from the Issuer to terminate or suspend this Sales Plan.

(c) If not sooner terminated, this Sales Plan shall automatically terminate on the first anniversary of the adoption of the Sales Plan.

2. Seller agrees that KING will execute this Sales Plan in accordance with its terms and will not be required to suspend or terminate any sales of the Stock unless KING has received notice from Seller

or the Issuer in accordance with paragraph D.1 above at least three days prior to the date on which this Sales Plan is to be suspended or terminated.

3. This Sales Plan may be amended by Seller only once during the initial term of this Sales Plan and only upon the written consent of KING and receipt by KING of the following documents, each dated as of the date of such amendment:

- (a) a representation signed by the Issuer substantially in the form of Exhibit B hereto,
- (b) a certificate signed by Seller certifying that the representations and warranties of Seller contained in this Sales Plan are true at and as of the date of such certificate as if made at and as of such date and
- (c) a seller representation letter completed and executed by Seller satisfactory to KING.

KING shall not begin selling Stock pursuant to such amendment until the later to occur of (A) 14 days after the date of such amendment and (B) the first day the Issuer's trading window opens after the public announcement of the Issuer's financial results for the then current quarter.

***E. Indemnification; Limitation of Liability.***

1.(a) Seller agrees to indemnify and hold harmless KING, its affiliates and their respective directors, officers, employees and affiliates from and against all claims, losses, damages and liabilities (including, without limitation, any legal or other expenses reasonably incurred in connection with defending or investigating any such action or claim) arising out of or attributable to KING's actions taken or not taken in compliance with this Sales Plan or arising out of or attributable to any breach by Seller of this Sales Plan (including Seller's representations and warranties hereunder) or any violation by Seller of applicable laws or regulations. This indemnification shall survive termination of this Sales Plan.

(b) Notwithstanding any other provision hereof, KING shall not be liable to Seller for:

- (i) special, indirect, punitive, exemplary or consequential damages, or incidental losses or damages of any kind, even if advised of the possibility of such losses or damages or if such losses or damages could have been reasonably foreseen, or
- (ii) any failure to perform or to cease performance or any delay in performance that results from a cause or circumstance that is beyond its reasonable control, including but not limited to failure of electronic or mechanical equipment, strikes, failure of common carrier or utility systems, severe weather, market disruptions or other causes commonly known as "acts of God".

2. Seller acknowledges and agrees that in performing obligations hereunder neither KING nor any of its affiliates nor any of their respective officers, employees or other representatives is exercising any discretionary authority or discretionary control respecting management of Seller's assets, or exercising any authority or control respecting management or disposition of Seller's assets, or otherwise acting as a fiduciary (within the meaning of Section 3(21) of the Employee Retirement Income Security Act of 1974, as amended, or Section 2510.3-21 of the Regulations promulgated by the United States Department of Labor) with respect to Seller or Seller's assets. Without limiting the foregoing, Seller further acknowledges and agrees that neither KING nor any of its affiliates nor any of their respective officers, employees or other representatives has provided any "investment advice" within the meaning of such provisions, and that no

views expressed by any such person will serve as a primary basis for investment decisions with respect to Seller's assets.

**F. General**

1. Proceeds from each sale of Stock effected under the Sales Plan will be delivered to Seller's account \_\_\_\_\_ (*specify account*) on a normal three-day settlement basis less any commission, commission equivalent, mark-up or differential and other expenses of sale to be paid to KING, [provided that any commission hereunder shall be \$ \_\_\_\_\_ per share of Stock sold].

2. In the event that it is necessary for KING to borrow or purchase shares of Stock in order to complete any sale on behalf of Seller pursuant to this Sales Plan, Seller authorizes KING to borrow or purchase such shares and agrees to be responsible for any expense or loss which KING may sustain relating to such borrowing or purchase, including any expense or loss KING may sustain as a result of its inability to borrow or purchase shares of the Stock to complete its delivery obligation.

3. Seller and KING acknowledge and agree that this Sales Plan is a "securities contract," as such term is defined in Section 741 (7) of Title 11 of the United States Code (the "Bankruptcy Code"), entitled to all of the protections given such contracts under the Bankruptcy Code.

4. This Sales Plan constitutes the entire agreement between the parties with respect to this Sales Plan and supercedes any prior agreements or understandings with regard to the Sales Plan.

5. All notices to KING under this Sales Plan shall be given to KING's compliance office in the manner specified by this Sales Plan by telephone at \_\_\_\_\_ by facsimile at \_\_\_\_\_ or by certified mail to the address below:

[ \_\_\_\_\_ ]  
[ \_\_\_\_\_ ]  
[ \_\_\_\_\_ ]  
Attn: [ \_\_\_\_\_ ]

6. Seller's rights and obligations under this Sales Plan may not be assigned or delegated without the written permission of KING.

7. This Sales Plan may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument.

8. If any provision of this Sales Plan is or becomes inconsistent with any applicable present or future law, rule or regulation, that provision will be deemed modified or, if necessary, rescinded in order to comply with the relevant law, rule or regulation. All other provisions of this Sales Plan will continue and remain in full force and effect.

9. This Sales Plan shall be governed by and construed in accordance with the internal laws of the State of New York and may be modified or amended only by a writing signed by the parties hereto.

**IN WITNESS WHEREOF**, the undersigned have signed this Sales Plan as of the date first written above.

[Name of Seller]

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

[CL King & Associates]

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

**EXHIBIT A**

**SPECIFIC TERMS OF SALES PLAN**

1. During the Plan Sales Period, KING shall sell the Daily Sale Amount (as defined below) for the account of Seller on each Sale Day (as defined below), subject to the following restrictions, if desired:

- KING shall not sell any shares of Stock pursuant to this Sales Plan at a price of less than \$ \_\_\_\_\_ per share (before deducting any commission, commission equivalent, mark-up or differential and other expenses of sale) (the "Minimum Sale Price").
  
- (insert other restrictions)* \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

2. A "Sale Day" is *(specify the days on which KING is to sell Stock, e.g., "each Trading Day" or "the first Monday of each month")* \_\_\_\_\_ during the Plan Sales Period, provided that if any Sale Day is not a Trading Day, such Sale Day shall be deemed to fall on the next succeeding Trading Day. A "Trading Day" is any day during the Plan Sales Period that the [name of principal market or exchange for the stock] (the "Principal Market") is open for business and the Stock trades regular way on the Principal Market.

3. The "Daily Sale Amount" for any Sale Day shall be *(please check the box corresponding to the amount of Stock that KING is to sell on each Sale Day)*:

- \_\_\_\_\_ shares of Stock.
  
- an amount of Stock resulting in aggregate proceeds (after deducting any commission, commission equivalent, mark-up or differential and other expenses of sale) of \$ \_\_\_\_\_<sup>1</sup>.
  
- the amount of Stock determined in accordance with the following formula: \_\_\_\_\_<sup>2</sup>  
\_\_\_\_\_.
  
- the amount of Stock set forth on the grid below opposite the per share price range that corresponds to the reported price of the opening reported market transaction in the Stock on such Sale Day.

<b>Reported Price of Opening Reported</b>	<b>Daily Sale Amount</b>
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<sup>1</sup> If the Daily Sale Amount is specified as a dollar amount, it is advisable to include a limit price in paragraph 1 so that there is some cap on the number of shares to be sold on each Sale Day.

<sup>2</sup> This formula, together with the other provisions of this Exhibit A, must identify the amount, price and date of sales with the specificity required by Rule 10b5-1(c)(1)(i)(B)(2).

<b>Market Transaction in the Stock</b>	
If the price is below \$ _____	
If the price is between \$ _____ and \$ _____	
If the price is between \$ _____ and \$ _____	
If the price is above \$ _____	

4. Subject to the restrictions set forth in paragraph 1 above, KING shall sell the Daily Sale Amount on each Sale Day under ordinary principles of best execution at the then-prevailing market price.

5. If, consistent with ordinary principles of best execution or for any other reason, KING cannot sell the Daily Sale Amount on any Sale Day, then (*select one*):

- the amount of such shortfall may be sold as soon as practicable on the immediately succeeding Trading Day and on each subsequent Trading Day as is necessary to sell such shortfall consistent with ordinary principles of best execution.
- KING's obligation to sell Stock on such Sale Day pursuant to this Sales Plan shall be deemed to have been satisfied.

Nevertheless, if any such shortfall exists after the close of trading on the last Trading Day of the Plan Sales Period, KING's authority to sell such shares for the account of Seller under this Sales Plan shall terminate.

6. The Daily Sale Amount, the Total Sale Amount, if applicable, and the Minimum Sale Price, if applicable, shall be adjusted automatically on a proportionate basis to take into account any stock split, reverse stock split or stock dividend with respect to the Stock or any change in capitalization with respect to the Issuer that occurs during the Plan Sales Period.

**EXHIBIT B**

**ISSUER REPRESENTATION**

1. [Name of Issuer] (the "Issuer") represents that it has reviewed and consented to the Sales Plan dated \_\_\_\_\_, 200\_\_ (the "Sales Plan") between [Name of Seller] ("Seller") and [CL King & Associates] ("KING") relating to the common stock, par value \$[ ] per share of the Issuer (the "Stock").

2. The sales to be made by KING for the account of Seller pursuant to the Sales Plan will not violate the Issuer's insider trading policies, and to the best of the Issuer's knowledge, without investigation, there are no legal, contractual or regulatory restrictions applicable to Seller or Seller's affiliates as of the date of this representation that would prohibit Seller from entering into the Sales Plan or prohibit any sale pursuant to the Sales Plan.

3. If, at any time during the Plan Sales Period, a legal, contractual or regulatory restriction that is applicable to Seller or Seller's affiliates, including, without limitation, any restriction related to a merger or acquisition or a stock offering requiring an affiliate lock-up, would prohibit any sale pursuant to the Sales Plan (other than any such restriction relating to Seller's possession or alleged possession of material nonpublic information about the Issuer or its securities), the Issuer agrees to give KING's compliance office notice of such restriction by telephone as soon as practicable. Such notice shall be made to [names] at [telephone number] and shall indicate the anticipated duration of the restriction, but shall not include any other information about the nature of the restriction or its applicability to Seller or otherwise communicate any material nonpublic information about the Issuer or its securities to KING.

4. To avoid delays in connection with transfers of stock certificates and settlement of transactions under the Sales Plan, and in acknowledgment of KING's agreement in paragraph 11 of the Sales Plan that sales of Stock under the Sales Plan will be effected in compliance with Rule 144 of the Securities Act of 1933, as amended, and KING's agreement in paragraph C.4 of the Sales Plan to return any unsold shares to the Issuer's transfer agent for relegending to the extent such shares would then be subject to transfer restrictions in the hands of the Seller, the Issuer agrees that it will, immediately upon Seller's directing delivery of Stock into an account at KING in the name of and for the benefit of Seller, instruct its transfer agent to process the transfer of shares and issue a new certificate to Seller that does not bear any legend or statement restricting its transferability to a buyer.

Dated: \_\_\_\_\_, 200\_\_\_\_\_

\_\_\_\_\_  
[NAME OF ISSUER]

By: \_\_\_\_\_  
[Name and title of authorized officer]