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Transactional Matter Files

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**APA - Article V Representation and Warranties of Buyer**

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## **ARTICLE V- REPRESENTATIONS AND WARRANTIES OF BUYER**

Buyer hereby represents and warrants to Seller, as of the date hereof, that the following statements are true and correct:

### **5.1 Organization and Good Standing.**

Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware, and has all requisite corporate power and authority and material Permits to own, operate, lease and otherwise hold its assets and to carry on its business as it is now being conducted and as it is currently intended to be conducted.

### **5.2 Authorization of Agreement.**

Buyer has all corporate power and authority to execute and deliver this Agreement and each other agreement, document, instrument or certificate contemplated by this Agreement or to be executed by Buyer in connection with the consummation of the transactions contemplated hereby and thereby (the "**Buyer Documents**"), and to consummate the transactions contemplated hereby and thereby. The execution, delivery and performance of this Agreement and each Buyer Document by Buyer, and the consummation of the transactions contemplated hereby and thereby, have been duly authorized by all requisite corporate action on the part of Buyer. This Agreement has been and as of the completion of the Closing each Buyer Document will have been duly and validly executed and delivered by Buyer, and (assuming the due authorization, execution and delivery by the other parties hereto and thereto) this Agreement and each Buyer Document constitutes, the legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally, and subject, as to enforceability, to general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity).

### **5.3 Conflicts; Consents of Third Parties.**

(a) Neither the execution and delivery by Buyer of this Agreement or the Buyer Documents, the consummation of the transactions contemplated hereby or thereby, nor the compliance by Buyer with any of the provisions hereof or thereof will, directly or indirectly:

(i) contravene, conflict with or result in a violation of (A) the certificate of incorporation or by-laws of Buyer, or (B) any resolution adopted by the directors or stockholders of Buyer; or

(ii) to the knowledge of Buyer, contravene, conflict with or result in a violation of, or give any Governmental Body or other Person the right to challenge the transactions contemplated by this Agreement or the Buyer Documents under any Law

applicable to Buyer or any Order to which Buyer is subject.

(b) To the knowledge of Buyer, no consent, waiver, approval, Order, Permit, or declaration or filing with, or notification to, any Person or Governmental Body is required on the part of Buyer in connection with the execution and delivery of this Agreement or the Buyer Documents or the compliance by Buyer with any of the provisions hereof or thereof, or the consummation of the transactions contemplated hereby and thereby.

#### **5.4 Litigation.**

As of the date of this Agreement, there are no Legal Proceedings pending or, to the knowledge of Buyer, threatened against Buyer to enjoin or otherwise challenge the consummation of any of the transactions contemplated by this Agreement, the Seller Documents or the Buyer Documents.

#### **5.5 Financial Advisors.**

No Person has acted, directly or indirectly, as a broker, finder or financial advisor for Buyer or any of its Affiliates in connection with the transactions contemplated by this Agreement in a manner that would entitle any Person to any fee or commission or like payment in respect thereof from Seller.

#### **5.6 Sufficient Funds.**

Buyer has sufficient funds or access to sufficient funds to satisfy its obligations hereunder, including remittances at Closing.

#### **5.7 Full Disclosure.**

No representation or warranty of Buyer in this Agreement omits or will omit to state any material fact, necessary, in light of the circumstances under which it was made, in order to make the statements herein not misleading.

### **ARTICLE VI- COVENANTS**

#### **6.1 Further Assurances.**

(a) Subject to the terms and conditions of this Agreement, Buyer and Seller shall (i) use commercially reasonable efforts to consummate the transactions contemplated by this Agreement as promptly as reasonably practical, (ii) take all actions and do all things necessary, proper or advisable to cause the fulfillment at the earliest practicable date of all of the conditions to their respective obligations to consummate the transactions contemplated by this Agreement and (iii) cooperate with each other to ensure the orderly transition of the Acquired Assets and Assumed Liabilities from Seller to Buyer.

(b) In case at any time after the Closing Date any further action is reasonably necessary to carry out the purposes of this Agreement, each of the parties will